

AMENDED IN ASSEMBLY APRIL 1, 2013  
AMENDED IN ASSEMBLY FEBRUARY 19, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 63**

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**Introduced by Assembly Member Patterson**  
**(Coauthors: Assembly Members Bigelow, Conway, Beth Gaines,**  
***Hagman, Harkey, Maienschein, Melendez, Morrell, Waldron,***  
**and Wilk)**  
(Coauthors: Senators ~~Berryhill and Huff~~ *Berryhill, Gaines, Huff, and*  
*Nielsen*)

January 7, 2013

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An act to amend Section 3000.08, 3000.09, 3455, and 3458 of, and to add Section 3010.10 to, to the Penal Code, relating to electronic monitoring.

LEGISLATIVE COUNSEL'S DIGEST

AB 63, as amended, Patterson. Electronic monitoring: removing or disabling.

Existing law permits, and with respect to certain sex offenders requires, the use of electronic monitoring by county probation departments and the Department of Corrections and Rehabilitation to electronically monitor the whereabouts of persons on postrelease community supervision and parole, respectively. Under existing law, a person on postrelease community supervision or parole *parole, or mandatory supervision* who fails to comply with the rules or conditions for the use of electronic monitoring as a supervision tool may be found to have violated the terms of his or her postrelease community

supervision ~~or parole~~, *parole, or mandatory supervision*, respectively, and may be required to serve a term of imprisonment in the county jail.

This bill would provide that unauthorized removal, as specified, of an electronic, global positioning system (GPS), or other monitoring device affixed as a condition of postrelease community supervision ~~or parole~~ *parole, or mandatory supervision* is an offense punishable by imprisonment in the county jail for not more than one year, or in the state prison for 16 months, 2 years, or 3 years. This bill would also provide that a person on postrelease community supervision ~~or parole~~ *parole, or mandatory supervision* who is ordered pursuant to a revocation hearing to serve a term of imprisonment, incarceration, or confinement for violating the conditions of release, when the violation was based on the removal or disabling of an electronic, GPS, or other monitoring device affixed as a condition of release, and the person has not been prosecuted for that conduct, shall serve that term in the state prison. This bill would also make related, conforming changes.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. ~~Section 3000.08 of the Penal Code, as amended~~  
 2 ~~by Section 35 of Chapter 43 of the Statutes of 2012, is amended~~  
 3 ~~to read:~~  
 4 3000.08. (a) ~~Persons released from state prison prior to or on~~  
 5 ~~or after July 1, 2013, after serving a prison term or, whose sentence~~  
 6 ~~has been deemed served pursuant to Section 2900.5, for any of the~~  
 7 ~~following crimes shall be subject to parole supervision by the~~  
 8 ~~Department of Corrections and Rehabilitation and the jurisdiction~~  
 9 ~~of the court in the county where the parolee is released or resides~~  
 10 ~~for the purpose of hearing petitions to revoke parole and impose~~  
 11 ~~a term of eustody:~~

1 ~~(1) A serious felony as described in subdivision (c) of Section~~  
2 ~~1192.7.~~

3 ~~(2) A violent felony as described in subdivision (c) of Section~~  
4 ~~667.5.~~

5 ~~(3) A crime for which the person was sentenced pursuant to~~  
6 ~~paragraph (2) of subdivision (c) of Section 667 or paragraph (2)~~  
7 ~~of subdivision (c) of Section 1170.12.~~

8 ~~(4) Any crime where the person eligible for release from prison~~  
9 ~~is classified as a High Risk Sex Offender.~~

10 ~~(5) Any crime where the person is required, as a condition of~~  
11 ~~parole, to undergo treatment by the Department of Mental Health~~  
12 ~~pursuant to Section 2962.~~

13 ~~(b) Notwithstanding any other provision of law, all other~~  
14 ~~offenders released from prison shall be placed on postrelease~~  
15 ~~supervision pursuant to Title 2.05 (commencing with Section~~  
16 ~~3450).~~

17 ~~(c) At any time during the period of parole of a person subject~~  
18 ~~to this section, if any parole agent or peace officer has probable~~  
19 ~~cause to believe that the parolee is violating any term or condition~~  
20 ~~of his or her parole, the agent or officer may, without warrant or~~  
21 ~~other process and at any time until the final disposition of the case,~~  
22 ~~arrest the person and bring him or her before the court, or the court~~  
23 ~~may, in its discretion, issue a warrant for that person's arrest~~  
24 ~~pursuant to Section 1203.2.~~

25 ~~(d) Upon review of the alleged violation and a finding of good~~  
26 ~~cause that the parolee has committed a violation of law or violated~~  
27 ~~his or her conditions of parole, the supervising parole agency may~~  
28 ~~impose additional and appropriate conditions of supervision,~~  
29 ~~including rehabilitation and treatment services and appropriate~~  
30 ~~incentives for compliance, and impose immediate, structured, and~~  
31 ~~intermediate sanctions for parole violations, including flash~~  
32 ~~incarceration in a county jail. Periods of "flash incarceration," as~~  
33 ~~defined in subdivision (c) are encouraged as one method of~~  
34 ~~punishment for violations of a parolee's conditions of parole.~~  
35 ~~Nothing in this section is intended to preclude referrals to a reentry~~  
36 ~~court pursuant to Section 3015.~~

37 ~~(e) "Flash incarceration" is a period of detention in county jail~~  
38 ~~due to a violation of a parolee's conditions of parole. The length~~  
39 ~~of the detention period can range between one and 10 consecutive~~  
40 ~~days. Shorter, but if necessary more frequent, periods of detention~~

1 for violations of a parolee's conditions of parole shall appropriately  
2 punish a parolee while preventing the disruption in a work or home  
3 establishment that typically arises from longer periods of detention.

4 (f) If the supervising parole agency has determined, following  
5 application of its assessment processes, that intermediate sanctions  
6 up to and including flash incarceration are not appropriate, the  
7 supervising parole agency shall, pursuant to Section 1203.2,  
8 petition the court in the county in which the parolee is being  
9 supervised to revoke parole. At any point during the process  
10 initiated pursuant to this section, a parolee may waive, in writing,  
11 his or her right to counsel, admit the parole violation, waive a court  
12 hearing, and accept the proposed parole modification or revocation.  
13 The petition shall include a written report that contains additional  
14 information regarding the petition, including the relevant terms  
15 and conditions of parole, the circumstances of the alleged  
16 underlying violation, the history and background of the parolee,  
17 and any recommendations. The Judicial Council shall adopt forms  
18 and rules of court to establish uniform statewide procedures to  
19 implement this subdivision, including the minimum contents of  
20 supervision agency reports. Upon a finding that the person has  
21 violated the conditions of parole, the court shall have authority to  
22 do any of the following:

23 (1) Return the person to parole supervision with modifications  
24 of conditions, if appropriate, including a period of incarceration  
25 in county jail.

26 (2) Revoke parole and order the person to confinement in the  
27 county jail.

28 (3) Refer the person to a reentry court pursuant to Section 3015  
29 or other evidence-based program in the court's discretion.

30 (4) When a violation is found based on the conduct described  
31 in Section 3010.10, revoke parole and order the person to  
32 confinement in the state prison.

33 (g) (1) Confinement pursuant to paragraphs (1) and (2) of  
34 subdivision (f) shall not exceed a period of 180 days in the county  
35 jail.

36 (2) Notwithstanding subdivision (e) of Section 3057,  
37 confinement pursuant to paragraph (4) of subdivision (f) shall be  
38 in accordance with subdivisions (a) to (d), inclusive, of Section  
39 3057.

1 ~~(h) Notwithstanding any other provision of law, in any case~~  
2 ~~where Section 3000.1 or paragraph (4) of subdivision (b) of Section~~  
3 ~~3000 applies to a person who is on parole and the court determines~~  
4 ~~that the person has committed a violation of law or violated his or~~  
5 ~~her conditions of parole, the person on parole shall be remanded~~  
6 ~~to the custody of the Department of Corrections and Rehabilitation~~  
7 ~~and the jurisdiction of the Board of Parole Hearings for the purpose~~  
8 ~~of future parole consideration.~~

9 ~~(i) Notwithstanding subdivision (a), any of the following persons~~  
10 ~~released from state prison shall be subject to the jurisdiction of,~~  
11 ~~and parole supervision by, the Department of Corrections and~~  
12 ~~Rehabilitation for a period of parole up to three years or the parole~~  
13 ~~term the person was subject to at the time of the commission of~~  
14 ~~the offense, whichever is greater:~~

15 ~~(1) The person is required to register as a sex offender pursuant~~  
16 ~~to Chapter 5.5 (commencing with Section 290) of Title 9 of Part~~  
17 ~~1, and was subject to a period of parole exceeding three years at~~  
18 ~~the time he or she committed a felony for which they were~~  
19 ~~convicted and subsequently sentenced to state prison.~~

20 ~~(2) The person was subject to parole for life pursuant to Section~~  
21 ~~3000.1 at the time of the commission of the offense that resulted~~  
22 ~~in a conviction and state prison sentence.~~

23 ~~(j) Parolees subject to this section who have a pending~~  
24 ~~adjudication for a parole violation on July 1, 2013, shall be subject~~  
25 ~~to the jurisdiction of the Board of Parole Hearings. Parole~~  
26 ~~revocation proceedings conducted by the Board of Parole Hearings~~  
27 ~~prior to July 1, 2013, if reopened on or after July 1, 2013, shall be~~  
28 ~~subject to the jurisdiction of the Board of Parole Hearings.~~

29 ~~(k) Except as described in subdivision (c), any person who is~~  
30 ~~convicted of a felony that requires community supervision and~~  
31 ~~who still has a period of state parole to serve shall discharge from~~  
32 ~~state parole at the time of release to community supervision.~~

33 ~~(l) This section shall become operative on July 1, 2013.~~

34 ~~SEC. 2. Section 3000.09 of the Penal Code is amended to read:~~

35 ~~3000.09. (a) Notwithstanding any other law, any parolee who~~  
36 ~~was paroled from state prison prior to October 1, 2011, shall be~~  
37 ~~subject to this section.~~

38 ~~(b) Parolees subject to this section shall remain under~~  
39 ~~supervision by the Department of Corrections and Rehabilitation~~  
40 ~~until one of the following occurs:~~

1 ~~(1) Jurisdiction over the person is terminated by operation of~~  
2 ~~law.~~

3 ~~(2) The supervising agent recommends to the Board of Parole~~  
4 ~~Hearings that the offender be discharged and the parole authority~~  
5 ~~approves the discharge.~~

6 ~~(3) The offender is subject to a period of parole of up to three~~  
7 ~~years pursuant to paragraph (1) of subdivision (b) of Section 3000~~  
8 ~~and was not imprisoned for committing a violent felony, as defined~~  
9 ~~in subdivision (e) of Section 667.5, a serious felony, as defined by~~  
10 ~~subdivision (e) of Section 1192.7, or is required to register as a~~  
11 ~~sex offender pursuant to Section 290, and completes six~~  
12 ~~consecutive months of parole without violating their conditions,~~  
13 ~~at which time the supervising agent shall review and make a~~  
14 ~~recommendation on whether to discharge the offender to the Board~~  
15 ~~of Parole Hearings and the Board of Parole Hearings approves the~~  
16 ~~discharge.~~

17 ~~(e) Parolees subject to this section who are being held for a~~  
18 ~~parole violation in state prison on October 1, 2011, upon~~  
19 ~~completion of a revocation term on or after November 1, 2011,~~  
20 ~~shall either remain under parole supervision of the department~~  
21 ~~pursuant to Section 3000.08 or shall be placed on postrelease~~  
22 ~~community supervision pursuant to Title 2.05 (commencing with~~  
23 ~~Section 3450). Any person placed on postrelease community~~  
24 ~~supervision pursuant to Title 2.05 (commencing with Section 3450)~~  
25 ~~after serving a term for a parole revocation pursuant to this~~  
26 ~~subdivision shall serve a period of postrelease supervision that is~~  
27 ~~no longer than the time period for which the person would have~~  
28 ~~served if the person remained on parole. Notwithstanding Section~~  
29 ~~3000.08, any parolee who is in a county jail serving a term of~~  
30 ~~parole revocation or being held pursuant to Section 3056 on~~  
31 ~~October 1, 2011, and is released directly from county jail without~~  
32 ~~returning to a state facility on or after October 1, 2011, shall remain~~  
33 ~~under the parole supervision of the department. Any parolee that~~  
34 ~~is pending final adjudication of a parole revocation charge prior~~  
35 ~~to October 1, whether located in county jail or state prison, may~~  
36 ~~be returned to state prison and shall be confined pursuant to~~  
37 ~~subdivisions (a) to (d), inclusive, of Section 3057. Any subsequent~~  
38 ~~parole revocations of a parolee on postrelease community~~  
39 ~~supervision shall be served in county jail pursuant to Section 3056,~~  
40 ~~unless the revocation is based on the conduct described in Section~~

1 ~~3010.10, in which case the subsequent parole revocation shall be~~  
2 ~~served in state prison.~~

3 ~~(d) Any parolee who was paroled prior to October 1, 2011, who~~  
4 ~~commits a violation of parole shall, until July 1, 2013, be subject~~  
5 ~~to parole revocation procedures in accordance with the rules and~~  
6 ~~regulations of the department consistent with Division 2 of Title~~  
7 ~~15 of the California Code of Regulations. On and after July 1,~~  
8 ~~2013, any parolee who was paroled prior to October 1, 2011, shall~~  
9 ~~be subject to the procedures established under Section 3000.08.~~

10 ~~SEC. 3.~~

11 *SECTION 1.* Section 3010.10 is added to the Penal Code, to  
12 read:

13 3010.10. (a) Except as provided in paragraph (2) of subdivision  
14 (c), a person subject to ~~parole~~ *mandatory supervision pursuant to*  
15 *subparagraph (B) of paragraph (5) of subdivision (h) of Section*  
16 *1170, parole, or postrelease community supervision who willfully*  
17 *removes or disables, or willfully permits another to remove or*  
18 *disable, an electronic, global positioning system (GPS), or other*  
19 *monitoring device affixed to his or her person, and the device was*  
20 *affixed as a condition of* ~~parole~~ *mandatory supervision, parole, or*  
21 *postrelease community supervision, is guilty of a public offense,*  
22 *punishable by imprisonment in the county jail not exceeding one*  
23 *year, or in the state prison for 16 months, two years, or three years.*

24 (b) Except as provided in subdivision (c), a person who willfully  
25 removes or disables an electronic, GPS, or other monitoring device  
26 affixed to the person of another, knowing that the device was  
27 affixed as a condition of ~~parole~~ *mandatory supervision, parole, or*  
28 *postrelease community supervision is guilty of a felony, punishable*  
29 *by imprisonment in a county jail not exceeding one year, or in the*  
30 *state prison for 16 months, two years, or three years.*

31 (c) (1) Subdivision (b) shall not apply to the removal or  
32 disabling of an electronic, GPS, or other monitoring device by a  
33 physician, emergency medical services technician, or by any other  
34 emergency response or medical personnel when doing so is  
35 necessary during the course of medical treatment of the person  
36 subject to the electronic, GPS, or other monitoring device.

37 (2) This section shall not apply where the removal or disabling  
38 of the electronic, GPS, or other monitoring device is authorized  
39 or required by a court of law, or by the law enforcement, probation,  
40 parole authority, or other entity responsible for placing the

1 electronic, GPS, or other monitoring device upon the person, or  
2 that has, at the time, the authority and responsibility to monitor  
3 the electronic, GPS, or other monitoring device.

4 (d) Notwithstanding any other law, any imprisonment,  
5 incarceration, or confinement ordered pursuant to a revocation  
6 hearing described in Section 3000.08 or ~~3455~~ 3455, *or ordered as*  
7 *a result of a proceeding to revoke mandatory supervision pursuant*  
8 *to either subdivisions (a) and (b) of Section 1203.2 or Section*  
9 *1203.3*, as a result of a person violating the conditions of parole  
10 or postrelease community supervision by engaging in the conduct  
11 described in subdivision (a), when that individual has not been  
12 prosecuted under subdivision (a), shall be served in state prison.

13 (e) Nothing in this section shall preclude prosecution under any  
14 other law.

15 ~~SEC. 4. Section 3455 of the Penal Code is amended to read:~~

16 ~~3455. (a) If the supervising county agency has determined,~~  
17 ~~following application of its assessment processes, that intermediate~~  
18 ~~sanctions as authorized in subdivision (b) of Section 3454 are not~~  
19 ~~appropriate, the supervising county agency shall petition the court~~  
20 ~~pursuant to Section 1203.2 to revoke, modify, or terminate~~  
21 ~~postrelease community supervision. At any point during the process~~  
22 ~~initiated pursuant to this section, a person may waive, in writing,~~  
23 ~~his or her right to counsel, admit the violation of his or her~~  
24 ~~postrelease community supervision, waive a court hearing, and~~  
25 ~~accept the proposed modification of his or her postrelease~~  
26 ~~community supervision. The petition shall include a written report~~  
27 ~~that contains additional information regarding the petition,~~  
28 ~~including the relevant terms and conditions of postrelease~~  
29 ~~community supervision, the circumstances of the alleged~~  
30 ~~underlying violation, the history and background of the violator,~~  
31 ~~and any recommendations. The Judicial Council shall adopt forms~~  
32 ~~and rules of court to establish uniform statewide procedures to~~  
33 ~~implement this subdivision, including the minimum contents of~~  
34 ~~supervision agency reports. Upon a finding that the person has~~  
35 ~~violated the conditions of postrelease community supervision, the~~  
36 ~~revocation hearing officer shall have authority to do all of the~~  
37 ~~following:~~

38 ~~(1) Return the person to postrelease community supervision~~  
39 ~~with modifications of conditions, if appropriate, including a period~~  
40 ~~of incarceration in county jail.~~

1 ~~(2) Revoke and terminate postrelease community supervision~~  
2 ~~and order the person to confinement in the county jail.~~

3 ~~(3) Refer the person to a reentry court pursuant to Section 3015~~  
4 ~~or other evidence-based program in the court's discretion.~~

5 ~~(4) When a violation is found based on the conduct described~~  
6 ~~in Section 3010.10, revoke and terminate postrelease community~~  
7 ~~supervision and order the person to confinement in the state prison.~~

8 ~~(b) (1) At any time during the period of postrelease community~~  
9 ~~supervision, if any peace officer has probable cause to believe a~~  
10 ~~person subject to postrelease community supervision is violating~~  
11 ~~any term or condition of his or her release, the officer may, without~~  
12 ~~a warrant or other process, arrest the person and bring him or her~~  
13 ~~before the supervising county agency established by the county~~  
14 ~~board of supervisors pursuant to subdivision (a) of Section 3451.~~  
15 ~~Additionally, an officer employed by the supervising county agency~~  
16 ~~may seek a warrant and a court or its designated hearing officer~~  
17 ~~appointed pursuant to Section 71622.5 of the Government Code~~  
18 ~~shall have the authority to issue a warrant for that person's arrest.~~

19 ~~(2) The court or its designated hearing officer shall have the~~  
20 ~~authority to issue a warrant for any person who is the subject of a~~  
21 ~~petition filed under this section who has failed to appear for a~~  
22 ~~hearing on the petition or for any reason in the interests of justice,~~  
23 ~~or to remand to custody a person who does appear at a hearing on~~  
24 ~~the petition for any reason in the interests of justice.~~

25 ~~(c) The revocation hearing shall be held within a reasonable~~  
26 ~~time after the filing of the revocation petition. Based upon a~~  
27 ~~showing of a preponderance of the evidence that a person under~~  
28 ~~supervision poses an unreasonable risk to public safety, or the~~  
29 ~~person may not appear if released from custody, or for any reason~~  
30 ~~in the interests of justice, the supervising county agency shall have~~  
31 ~~the authority to make a determination whether the person should~~  
32 ~~remain in custody pending the first court appearance on a petition~~  
33 ~~to revoke postrelease community supervision, and upon that~~  
34 ~~determination, may order the person confined pending his or her~~  
35 ~~first court appearance.~~

36 ~~(d) (1) Confinement pursuant to paragraphs (1) and (2) of~~  
37 ~~subdivision (a) shall not exceed a period of 180 days in the county~~  
38 ~~jail for each custodial sanction.~~

39 ~~(2) Notwithstanding subdivision (c) of Section 3057,~~  
40 ~~confinement pursuant to paragraph (4) of subdivision (a) shall be~~

1 in accordance with subdivisions (a) to (d), inclusive, of Section  
2 3057.

3 (e) A person shall not remain under supervision or in custody  
4 pursuant to this title on or after three years from the date of the  
5 person's initial entry onto postrelease community supervision,  
6 except when his or her supervision is tolled pursuant to Section  
7 1203.2 or subdivision (b) of Section 3456.

8 SEC. 5. Section 3458 of the Penal Code is amended to read:  
9 3458. Except as described in Section 3010.10, no person subject  
10 to this title shall be returned to prison for a violation of any  
11 condition of the person's postrelease supervision agreement.

12 SEC. 6.  
13 SEC. 2. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.