

AMENDED IN SENATE MAY 8, 2013
AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 419

Introduced by Senator Block

February 21, 2013

An act to amend Sections 1203.2 of, and to add *and repeal* Section 1203.35 ~~to~~ of, the Penal Code, relating to supervised persons.

LEGISLATIVE COUNSEL'S DIGEST

SB 419, as amended, Block. Supervised persons: flash incarceration.

(1) Existing law authorizes a probation officer, parole officer, or peace officer, at any time during the period of supervision of a person released on probation, conditional sentence, summary probation, or mandatory supervision, or when that person is subject to revocation of postrelease community supervision or revocation of parole supervision, to, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring him or her before the court or the court may, in its discretion, issue a warrant for that person's rearrest. Existing law additionally authorizes, upon rearrest or upon the issuance of a warrant for rearrest, the court to revoke and terminate the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe that the person has, among other things, violated any of the conditions of his or her supervision. Existing law specifies that nothing in those provisions affects the authority of the supervising agency to impose intermediate sanctions, including flash incarceration, to persons supervised on parole or postrelease community supervision, as specified.

This bill would specify that nothing in the above provisions affects the authority of the supervising agency to impose intermediate sanctions,

including flash incarceration, not only to persons supervised on parole or postrelease community supervision, as specified, but also to persons on *court-ordered* probation or mandatory supervision.

(2) Existing law requires postrelease community supervision to include specified conditions, including, among other things, that the person obey all laws and waive any right to a court hearing prior to the imposition of a period of flash incarceration in a county jail of not more than 10 consecutive days for any violation of his or her postrelease supervision conditions. Existing law permits each county agency responsible for postrelease supervision to determine additional specified appropriate conditions of supervision consistent with public safety, including the use of continuous electronic monitoring, and flash incarceration in a county jail. Existing law encourages periods of flash incarceration as one method of punishment for violations of an offender's condition of postrelease supervision.

~~This bill would require, until January 1, 2018, require the court, in any case where the court grants probation or imposes a sentence that includes mandatory supervision, to authorize the agency responsible for that probation or mandatory supervision to use flash incarceration for any violation of the conditions of that probation or mandatory supervision if, at the time of granting probation or ordering mandatory supervision, the court obtains from the defendant a waiver to a court hearing prior to the imposition of a period of flash incarceration in a county jail of not more than 10 consecutive days for any violation of a person's conditions of probation or mandatory supervision, that he or she waive any right to a court hearing. This bill would also permit each county agency responsible for probation or mandatory supervision to determine additional appropriate conditions of supervision consistent with public safety, including the use of continuous electronic monitoring, appropriate rehabilitation and treatment services, appropriate incentives, and appropriate responses to alleged violations, which may include, among other things, flash incarceration in a county jail. This bill would encourage periods of flash incarceration, as defined, as one method of punishment for violations of an offender's condition of probation or mandatory supervision. incarceration. The bill would exempt from the imposition of flash incarceration under these circumstances any defendant convicted of a nonviolent drug possession offense who receives probation.~~

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

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

1 SECTION 1. Section 1203.2 of the Penal Code is amended to
2 read:

3 1203.2. (a) At any time during the period of supervision of a
4 person (1) released on probation under the care of a probation
5 officer pursuant to this chapter, (2) released on conditional sentence
6 or summary probation not under the care of a probation officer,
7 (3) placed on mandatory supervision pursuant to subparagraph (B)
8 of paragraph (5) of subdivision (h) of Section 1170, (4) subject to
9 revocation of postrelease community supervision pursuant to
10 Section 3455, or (5) subject to revocation of parole supervision
11 pursuant to Section 3000.08, if any probation officer, parole officer,
12 or peace officer has probable cause to believe that the supervised
13 person is violating any term or condition of his or her supervision,
14 the officer may, without warrant or other process and at any time
15 until the final disposition of the case, rearrest the supervised person
16 and bring him or her before the court or the court may, in its
17 discretion, issue a warrant for his or her rearrest. Upon such
18 rearrest, or upon the issuance of a warrant for rearrest the court
19 may revoke and terminate the supervision of the person if the
20 interests of justice so require and the court, in its judgment, has
21 reason to believe from the report of the probation or parole officer
22 or otherwise that the person has violated any of the conditions of
23 his or her supervision, has become abandoned to improper
24 associates or a vicious life, or has subsequently committed other
25 offenses, regardless whether he or she has been prosecuted for
26 such offenses. However, the court shall not terminate parole
27 pursuant to this section. Supervision shall not be revoked for failure
28 of a person to make restitution imposed as a condition of
29 supervision unless the court determines that the defendant has
30 willfully failed to pay and has the ability to pay. Restitution shall
31 be consistent with a person's ability to pay. The revocation,
32 summary or otherwise, shall serve to toll the running of the period
33 of supervision.

34 (b) (1) Upon its own motion or upon the petition of the
35 supervised person, the probation or parole officer or the district
36 attorney of the county in which the person is supervised, the court
37 may modify, revoke, or terminate supervision of the person
38 pursuant to this subdivision, except that the court shall not

1 terminate parole pursuant to this section. A person supervised on
2 parole or postrelease community supervision pursuant to Section
3 3455 may not petition the court pursuant to this section for early
4 release from supervision, and a petition under this section shall
5 not be filed solely for the purpose of modifying parole. Nothing
6 in this section shall prohibit the court from modifying parole when
7 acting on its own motion or a petition to revoke parole. The court
8 shall give notice of its motion, and the probation or parole officer
9 or the district attorney shall give notice of his or her petition to the
10 supervised person, his or her attorney of record, and the district
11 attorney or the probation or parole officer, as the case may be. The
12 supervised person shall give notice of his or her petition to the
13 probation or parole officer and notice of any motion or petition
14 shall be given to the district attorney in all cases. The court shall
15 refer its motion or the petition to the probation or parole officer.
16 After the receipt of a written report from the probation or parole
17 officer, the court shall read and consider the report and either its
18 motion or the petition and may modify, revoke, or terminate the
19 supervision of the supervised person upon the grounds set forth in
20 subdivision (a) if the interests of justice so require.

21 (2) The notice required by this subdivision may be given to the
22 supervised person upon his or her first court appearance in the
23 proceeding. Upon the agreement by the supervised person in
24 writing to the specific terms of a modification or termination of a
25 specific term of supervision, any requirement that the supervised
26 person make a personal appearance in court for the purpose of a
27 modification or termination shall be waived. Prior to the
28 modification or termination and waiver of appearance, the
29 supervised person shall be informed of his or her right to consult
30 with counsel, and if indigent the right to secure court appointed
31 counsel. If the supervised person waives his or her right to counsel
32 a written waiver shall be required. If the supervised person consults
33 with counsel and thereafter agrees to a modification, revocation,
34 or termination of the term of supervision and waiver of personal
35 appearance, the agreement shall be signed by counsel showing
36 approval for the modification or termination and waiver.

37 (c) Upon any revocation and termination of probation the court
38 may, if the sentence has been suspended, pronounce judgment for
39 any time within the longest period for which the person might have
40 been sentenced. However, if the judgment has been pronounced

1 and the execution thereof has been suspended, the court may revoke
2 the suspension and order that the judgment shall be in full force
3 and effect. In either case, the person shall be delivered over to the
4 proper officer to serve his or her sentence, less any credits herein
5 provided for.

6 (d) In any case of revocation and termination of probation,
7 including, but not limited to, cases in which the judgment has been
8 pronounced and the execution thereof has been suspended, upon
9 the revocation and termination, the court may, in lieu of any other
10 sentence, commit the person to the Department of Corrections and
11 Rehabilitation, Division of Juvenile Facilities if he or she is
12 otherwise eligible for such commitment.

13 (e) If probation has been revoked before the judgment has been
14 pronounced, the order revoking probation may be set aside for
15 good cause upon motion made before pronouncement of judgment.
16 If probation has been revoked after the judgment has been
17 pronounced, the judgment and the order which revoked the
18 probation may be set aside for good cause within 30 days after the
19 court has notice that the execution of the sentence has commenced.
20 If an order setting aside the judgment, the revocation of probation,
21 or both is made after the expiration of the probationary period, the
22 court may again place the person on probation for that period and
23 with those terms and conditions as it could have done immediately
24 following conviction.

25 (f) As used in this section, the following definitions shall apply:

26 (1) "Court" means a judge, magistrate, or revocation hearing
27 officer described in Section 71622.5 of the Government Code.

28 (2) "Probation officer" means a probation officer as described
29 in Section 1203 or an officer of the agency designated by the board
30 of supervisors of a county to implement postrelease community
31 supervision pursuant to Section 3451.

32 (3) "Supervised person" means a person who satisfies any of
33 the following:

34 (A) He or she is released on probation subject to the supervision
35 of a probation officer.

36 (B) He or she is released on conditional sentence or summary
37 probation not under the care of a probation officer.

38 (C) He or she is subject to mandatory supervision pursuant to
39 subparagraph (B) of paragraph (5) of subdivision (h) of Section
40 1170.

1 (D) He or she is subject to revocation of postrelease community
2 supervision pursuant to Section 3455.

3 (E) He or she is subject to revocation of parole pursuant to
4 Section 3000.08.

5 (g) Nothing in this section affects the authority of the supervising
6 agency to impose *on a person* intermediate sanctions, including
7 flash incarceration, ~~to persons supervised on parole pursuant to~~
8 ~~Section 3008.08, probation, mandatory supervision, or postrelease~~
9 ~~community supervision pursuant to Part 3 (commencing with~~
10 ~~Section 3450) of Title 2.05: if the person is subject to any of the~~
11 ~~following:~~

- 12 (1) Parole supervision pursuant to Section 3000.08.
- 13 (2) Postrelease community supervision pursuant to Part 3
- 14 (commencing with Section 3450) of Title 2.05.
- 15 (3) Court-ordered probation.
- 16 (4) Mandatory supervision pursuant to paragraph (5) of
- 17 subdivision (h) of Section 1170.

18 SEC. 2. Section 1203.35 is added to the Penal Code,
19 immediately following Section 1203.3, to read:

20 ~~1203.35.— (a) A person subject to probation or mandatory~~
21 ~~supervision shall waive any right to a court hearing prior to the~~
22 ~~imposition of a period of flash incarceration in a county jail of not~~
23 ~~more than 10 consecutive days for any violation of his or her~~
24 ~~conditions of probation or mandatory supervision.~~

25 ~~(b) Each county agency responsible for probation or mandatory~~
26 ~~supervision may determine and order additional appropriate~~
27 ~~conditions of supervision consistent with public safety, including~~
28 ~~the use of continuous electronic monitoring as defined in Section~~
29 ~~1210.7, appropriate rehabilitation and treatment services,~~
30 ~~appropriate incentives, and appropriate responses to alleged~~
31 ~~violations, including, but not limited to, immediate, structured,~~
32 ~~and intermediate sanctions up to and including referral to a reentry~~
33 ~~court pursuant to Section 3015, or flash incarceration in a county~~
34 ~~jail. Periods of flash incarceration are encouraged as one method~~
35 ~~of punishment for violations of an offender’s condition of probation~~
36 ~~or mandatory supervision.~~

37 ~~(e) For~~
38 *1203.35. (a) In any case where the court grants probation or*
39 *imposes a sentence that includes mandatory supervision pursuant*
40 *to paragraph (5) of subdivision (h) of Section 1170, the court shall*

1 *authorize the agency responsible for that probation or mandatory*
2 *supervision to use flash incarceration for any violation of the*
3 *conditions of probation or mandatory supervision if, at the time*
4 *of granting probation or ordering mandatory supervision, the*
5 *court obtains from the defendant a waiver to a court hearing prior*
6 *to the imposition of a period of flash incarceration.*

7 *(b) For purposes of this chapter, “flash incarceration” is a period*
8 *of detention in the county jail due to a violation of an*
9 *offender’s conditions of probation or mandatory supervision.*

10 *The length of the detention period may range between one and 10*
11 *consecutive days. Flash incarceration is a tool that may be used*
12 *by each county agency responsible for probation or mandatory*
13 *supervision. Shorter, but if necessary more frequent, periods of*
14 *detention for violations of an offender’s probation or mandatory*
15 *supervision shall appropriately punish an offender while preventing*
16 *the disruption in a work or home establishment that typically arises*
17 *from longer term revocations.*

18 *(c) This section shall not apply to any defendant sentenced*
19 *pursuant to Section 1210.1.*

20 *(d) This section shall remain in effect only until January 1, 2018,*
21 *and as of that date is repealed, unless a later enacted statute, that*
22 *is enacted before January 1, 2018, deletes or extends that date.*