

AMENDED IN SENATE JUNE 21, 2016

AMENDED IN SENATE JUNE 16, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2888**

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**Introduced by Assembly Member ~~Dodd~~ Members Low and Dodd**  
(Coauthor: Senator Hill)

February 29, 2016

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An act to amend Section ~~1203~~ 1203.065 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2888, as amended, ~~Dodd~~ *Low*. ~~Probation: sex crimes. Sex crimes: mandatory prison sentence.~~

*Existing law prohibits a court from granting probation or suspending the execution or imposition of a sentence if a person is convicted of violating specified provisions of law, including rape by force, pandering, aggravated sexual assault of a child, and others.*

*This bill would prohibit a court from granting probation or suspending the execution or imposition of a sentence if a person is convicted of rape, sodomy, penetration with a foreign object, or oral copulation if the victim was either unconscious or incapable of giving consent due to intoxication.*

~~Existing law defines probation to mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. Existing law authorizes a court to grant probation for some, but not all, felony convictions, as enumerated.~~

~~This bill would prohibit a court from granting probation to a defendant who is convicted of committing specified acts of rape, sodomy, oral copulation, or sexual penetration upon the victim who was prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, or was unconscious, as specified under those provisions.~~

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

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

1     SECTION 1. Section 1203.065 of the Penal Code is amended  
 2     to read:

3     1203.065. (a) Notwithstanding any other ~~provision~~ of law,  
 4     probation shall not be granted to, nor shall the execution or  
 5     imposition of sentence be suspended for, ~~any~~ a person who is  
 6     convicted of violating paragraph ~~(2)~~ (2), (3), (4), or (6) of  
 7     subdivision (a) of Section 261, Section 264.1, 266h, 266i, 266j,  
 8     or 269, paragraph (2) or (3) of subdivision (c), or subdivision (d),  
 9     (f), or (i) of Section 286, paragraph (2) or (3) of subdivision (c),  
 10     or subdivision (d), (f), or (i) of Section 288a, Section 288.7,  
 11     subdivision ~~(a)~~ (a), (e), or (f) of Section 289, or subdivision (b) of  
 12     Section 311.4.

13     (b) (1) Except in unusual cases where the interests of justice  
 14     would best be served if the person is granted probation, probation  
 15     shall not be granted to ~~any~~ a person who is convicted of violating  
 16     paragraph (7) of subdivision (a) of Section 261, subdivision (k) of  
 17     Section 286, subdivision (k) of Section 288a, subdivision (g) of  
 18     Section 289, or Section 220 for assault with intent to commit a  
 19     specified sexual offense.

20     (2) ~~When~~ *If* probation is granted, the court shall specify on the  
 21     record and shall enter on the minutes the circumstances indicating  
 22     that the interests of justice would best be served by the disposition.

23     SECTION 1. ~~Section 1203 of the Penal Code is amended to~~  
 24     read:

25     ~~1203.~~ (a) ~~As used in this code, “probation” means the~~  
 26     suspension of the imposition or execution of a sentence and the  
 27     order of conditional and revocable release in the community under  
 28     the supervision of a probation officer. ~~As used in this code,~~  
 29     “conditional sentence” means the suspension of the imposition or

1 execution of a sentence and the order of revocable release in the  
2 community subject to conditions established by the court without  
3 the supervision of a probation officer. It is the intent of the  
4 Legislature that both conditional sentence and probation are  
5 authorized whenever probation is authorized in any code as a  
6 sentencing option for infractions or misdemeanors.

7 (b) (1) Except as provided in subdivision (j), if a person is  
8 convicted of a felony and is eligible for probation, before judgment  
9 is pronounced, the court shall immediately refer the matter to a  
10 probation officer to investigate and report to the court, at a specified  
11 time, upon the circumstances surrounding the crime and the prior  
12 history and record of the person, which may be considered either  
13 in aggravation or mitigation of the punishment.

14 (2) (A) The probation officer shall immediately investigate and  
15 make a written report to the court of his or her findings and  
16 recommendations, including his or her recommendations as to the  
17 granting or denying of probation and the conditions of probation,  
18 if granted.

19 (B) Pursuant to Section 828 of the Welfare and Institutions  
20 Code, the probation officer shall include in his or her report any  
21 information gathered by a law enforcement agency relating to the  
22 taking of the defendant into custody as a minor, which shall be  
23 considered for purposes of determining whether adjudications of  
24 commissions of crimes as a juvenile warrant a finding that there  
25 are circumstances in aggravation pursuant to Section 1170 or to  
26 deny probation.

27 (C) If the person was convicted of an offense that requires him  
28 or her to register as a sex offender pursuant to Sections 290 to  
29 290.023, inclusive, or if the probation report recommends that  
30 registration be ordered at sentencing pursuant to Section 290.006,  
31 the probation officer's report shall include the results of the  
32 State-Authorized Risk Assessment Tool for Sex Offenders  
33 (SARATSO) administered pursuant to Sections 290.04 to 290.06,  
34 inclusive, if applicable.

35 (D) The probation officer may also include in the report his or  
36 her recommendation of both of the following:

37 (i) The amount the defendant should be required to pay as a  
38 restitution fine pursuant to subdivision (b) of Section 1202.4.

1 (ii) ~~Whether the court shall require, as a condition of probation,~~  
2 ~~restitution to the victim or to the Restitution Fund and the amount~~  
3 ~~thereof.~~

4 (E) ~~The report shall be made available to the court and the~~  
5 ~~prosecuting and defense attorneys at least five days, or upon request~~  
6 ~~of the defendant or prosecuting attorney nine days, prior to the~~  
7 ~~time fixed by the court for the hearing and determination of the~~  
8 ~~report, and shall be filed with the clerk of the court as a record in~~  
9 ~~the case at the time of the hearing. The time within which the report~~  
10 ~~shall be made available and filed may be waived by written~~  
11 ~~stipulation of the prosecuting and defense attorneys that is filed~~  
12 ~~with the court or an oral stipulation in open court that is made and~~  
13 ~~entered upon the minutes of the court.~~

14 (3) ~~At a time fixed by the court, the court shall hear and~~  
15 ~~determine the application, if one has been made, or, in any case,~~  
16 ~~the suitability of probation in the particular case. At the hearing,~~  
17 ~~the court shall consider any report of the probation officer,~~  
18 ~~including the results of the SARATSO, if applicable, and shall~~  
19 ~~make a statement that it has considered the report, which shall be~~  
20 ~~filed with the clerk of the court as a record in the case. If the court~~  
21 ~~determines that there are circumstances in mitigation of the~~  
22 ~~punishment prescribed by law or that the ends of justice would be~~  
23 ~~served by granting probation to the person, it may place the person~~  
24 ~~on probation. If probation is denied, the clerk of the court shall~~  
25 ~~immediately send a copy of the report to the Department of~~  
26 ~~Corrections and Rehabilitation at the prison or other institution to~~  
27 ~~which the person is delivered.~~

28 (4) ~~The preparation of the report or the consideration of the~~  
29 ~~report by the court may be waived only by a written stipulation of~~  
30 ~~the prosecuting and defense attorneys that is filed with the court~~  
31 ~~or an oral stipulation in open court that is made and entered upon~~  
32 ~~the minutes of the court, except that a waiver shall not be allowed~~  
33 ~~unless the court consents thereto. However, if the defendant is~~  
34 ~~ultimately sentenced and committed to the state prison, a probation~~  
35 ~~report shall be completed pursuant to Section 1203e.~~

36 (e) ~~If a defendant is not represented by an attorney, the court~~  
37 ~~shall order the probation officer who makes the probation report~~  
38 ~~to discuss its contents with the defendant.~~

39 (d) ~~If a person is convicted of a misdemeanor, the court may~~  
40 ~~either refer the matter to the probation officer for an investigation~~

1 and a report or summarily pronounce a conditional sentence. If  
2 the person was convicted of an offense that requires him or her to  
3 register as a sex offender pursuant to Sections 290 to 290.023,  
4 inclusive, or if the probation officer recommends that the court,  
5 at sentencing, order the offender to register as a sex offender  
6 pursuant to Section 290.006, the court shall refer the matter to the  
7 probation officer for the purpose of obtaining a report on the results  
8 of the State-Authorized Risk Assessment Tool for Sex Offenders  
9 administered pursuant to Sections 290.04 to 290.06, inclusive, if  
10 applicable, which the court shall consider. If the case is not referred  
11 to the probation officer, in sentencing the person, the court may  
12 consider any information concerning the person that could have  
13 been included in a probation report. The court shall inform the  
14 person of the information to be considered and permit him or her  
15 to answer or controvert the information. For this purpose, upon  
16 the request of the person, the court shall grant a continuance before  
17 the judgment is pronounced.

18 (e) ~~Except in unusual cases where the interests of justice would~~  
19 ~~best be served if the person is granted probation, probation shall~~  
20 ~~not be granted to any of the following persons:~~

21 (1) ~~Unless the person had a lawful right to carry a deadly~~  
22 ~~weapon, other than a firearm, at the time of the perpetration of the~~  
23 ~~crime or his or her arrest, any person who has been convicted of~~  
24 ~~arson, robbery, carjacking, burglary, burglary with explosives,~~  
25 ~~rape with force or violence, torture, aggravated mayhem, murder,~~  
26 ~~attempt to commit murder, trainwrecking, kidnapping, escape from~~  
27 ~~the state prison, or a conspiracy to commit one or more of those~~  
28 ~~crimes and who was armed with the weapon at either of those~~  
29 ~~times.~~

30 (2) ~~Any person who used, or attempted to use, a deadly weapon~~  
31 ~~upon a human being in connection with the perpetration of the~~  
32 ~~crime of which he or she has been convicted.~~

33 (3) ~~Any person who willfully inflicted great bodily injury or~~  
34 ~~torture in the perpetration of the crime of which he or she has been~~  
35 ~~convicted.~~

36 (4) ~~Any person who has been previously convicted twice in this~~  
37 ~~state of a felony or in any other place of a public offense which,~~  
38 ~~if committed in this state, would have been punishable as a felony.~~

39 (5) ~~Unless the person has never been previously convicted once~~  
40 ~~in this state of a felony or in any other place of a public offense~~

1 which, if committed in this state, would have been punishable as  
2 a felony, any person who has been convicted of burglary with  
3 explosives, rape with force or violence, torture, aggravated  
4 mayhem, murder, attempt to commit murder, trainwrecking,  
5 extortion, kidnapping, escape from the state prison, a violation of  
6 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one  
7 or more of those crimes:

8 (6) Any person who has been previously convicted once in this  
9 state of a felony or in any other place of a public offense which,  
10 if committed in this state, would have been punishable as a felony,  
11 if he or she committed any of the following acts:

12 (A) Unless the person had a lawful right to carry a deadly  
13 weapon at the time of the perpetration of the previous crime or his  
14 or her arrest for the previous crime, he or she was armed with a  
15 weapon at either of those times:

16 (B) The person used, or attempted to use, a deadly weapon upon  
17 a human being in connection with the perpetration of the previous  
18 crime.

19 (C) The person willfully inflicted great bodily injury or torture  
20 in the perpetration of the previous crime.

21 (7) Any public official or peace officer of this state or any city,  
22 county, or other political subdivision who, in the discharge of the  
23 duties of his or her public office or employment, accepted or gave  
24 or offered to accept or give any bribe, embezzled public money,  
25 or was guilty of extortion:

26 (8) Any person who knowingly furnishes or gives away  
27 phenylelidine:

28 (9) Any person who intentionally inflicted great bodily injury  
29 in the commission of arson under subdivision (a) of Section 451  
30 or who intentionally set fire to, burned, or caused the burning of,  
31 an inhabited structure or inhabited property in violation of  
32 subdivision (b) of Section 451:

33 (10) Any person who, in the commission of a felony, inflicts  
34 great bodily injury or causes the death of a human being by the  
35 discharge of a firearm from or at an occupied motor vehicle  
36 proceeding on a public street or highway:

37 (11) Any person who possesses a short-barreled rifle or a  
38 short-barreled shotgun under Section 33215, a machinegun under  
39 Section 32625, or a silencer under Section 33410:

- 1     ~~(12) Any person who is convicted of violating Section 8101 of~~  
2 ~~the Welfare and Institutions Code.~~
- 3     ~~(13) Any person who is described in subdivision (b) or (c) of~~  
4 ~~Section 27590.~~
- 5     ~~(14) Any person who is convicted of violating paragraph (3) or~~  
6 ~~(4) of subdivision (a) of Section 261, paragraph (2) or (3) of~~  
7 ~~subdivision (a) of Section 262, subdivision (f) or (i) of Section~~  
8 ~~286, subdivision (f) or (i) of Section 288a, or subdivision (d) or~~  
9 ~~(e) of Section 289.~~
- 10    ~~(f) When probation is granted in a case which comes within~~  
11 ~~subdivision (e), the court shall specify on the record and shall enter~~  
12 ~~on the minutes the circumstances indicating that the interests of~~  
13 ~~justice would best be served by that disposition.~~
- 14    ~~(g) If a person is not eligible for probation, the judge shall refer~~  
15 ~~the matter to the probation officer for an investigation of the facts~~  
16 ~~relevant to determination of the amount of a restitution fine~~  
17 ~~pursuant to subdivision (b) of Section 1202.4 in all cases where~~  
18 ~~the determination is applicable. The judge, in his or her discretion,~~  
19 ~~may direct the probation officer to investigate all facts relevant to~~  
20 ~~the sentencing of the person. Upon that referral, the probation~~  
21 ~~officer shall immediately investigate the circumstances surrounding~~  
22 ~~the crime and the prior record and history of the person and make~~  
23 ~~a written report to the court of his or her findings. The findings~~  
24 ~~shall include a recommendation of the amount of the restitution~~  
25 ~~fine as provided in subdivision (b) of Section 1202.4.~~
- 26    ~~(h) If a defendant is convicted of a felony and a probation report~~  
27 ~~is prepared pursuant to subdivision (b) or (g), the probation officer~~  
28 ~~may obtain and include in the report a statement of the comments~~  
29 ~~of the victim concerning the offense. The court may direct the~~  
30 ~~probation officer not to obtain a statement if the victim has in fact~~  
31 ~~testified at any of the court proceedings concerning the offense.~~
- 32    ~~(i) A probationer shall not be released to enter another state~~  
33 ~~unless his or her case has been referred to the Administrator of the~~  
34 ~~Interstate Probation and Parole Compacts, pursuant to the Uniform~~  
35 ~~Act for Out-of-State Probationer or Parolee Supervision (Article~~  
36 ~~3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part~~  
37 ~~4) and the probationer has reimbursed the county that has~~  
38 ~~jurisdiction over his or her probation case the reasonable costs of~~  
39 ~~processing his or her request for interstate compact supervision.~~

1 The amount and method of reimbursement shall be in accordance  
2 with Section 1203.1b.

3 (j) ~~In any court where a county financial evaluation officer is~~  
4 ~~available, in addition to referring the matter to the probation officer,~~  
5 ~~the court may order the defendant to appear before the county~~  
6 ~~financial evaluation officer for a financial evaluation of the~~  
7 ~~defendant's ability to pay restitution, in which case the county~~  
8 ~~financial evaluation officer shall report his or her findings regarding~~  
9 ~~restitution and other court-related costs to the probation officer on~~  
10 ~~the question of the defendant's ability to pay those costs.~~

11 Any order made pursuant to this subdivision may be enforced  
12 as a violation of the terms and conditions of probation upon willful  
13 failure to pay and at the discretion of the court, may be enforced  
14 in the same manner as a judgment in a civil action, if any balance  
15 remains unpaid at the end of the defendant's probationary period.

16 (k) ~~Probation shall not be granted to, nor shall the execution of,~~  
17 ~~or imposition of sentence be suspended for, any person who is~~  
18 ~~convicted of a violent felony, as defined in subdivision (e) of~~  
19 ~~Section 667.5, or a serious felony, as defined in subdivision (e) of~~  
20 ~~Section 1192.7, and who was on probation for a felony offense at~~  
21 ~~the time of the commission of the new felony offense.~~