

AMENDED IN ASSEMBLY FEBRUARY 27, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 133

Introduced by Assembly Member Scott
(Coauthor: Senator Peace)

January 16, 1997

An act to amend Section 1203.085 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 133, as amended, Scott. Crimes: probation.

Existing law provides that a person convicted of a violent or serious felony who was on probation for a felony offense at the time of the commission of the new offense is ineligible for probation. Existing law also provides that a person convicted of a violent felony who was on parole for a felony offense at the time of the commission of the new offense who is convicted of a felony while on parole for a violent felony, or who is convicted of a violent felony while on parole for any felony, is ineligible for probation for the new offense.

This bill would provide, in addition, that a person convicted of a serious felony who was on parole for a felony offense at the time of the commission of the new offense, or convicted of any felony while on parole for a serious felony, is ineligible for probation. By increasing the punishment for existing crimes, the 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 1203.085 of the Penal Code is~~
2 ~~amended to read:~~

3 ~~1203.085. (a) Any person convicted of a violent~~
4 ~~felony, as defined in subdivision (e) of Section 667.5, or a~~
5 ~~serious felony, as defined in subdivision (c) of Section~~
6 ~~1192.7, shall not, in any case, be granted probation or have~~
7 ~~the execution or imposition of sentence suspended, if~~
8 ~~such offense was committed while the person was on state~~
9 ~~prison parole, pursuant to Section 3000.~~

10 ~~(b) The existence of any fact which would make a~~
11 ~~person ineligible for probation under subdivision (a) shall~~
12 ~~be alleged in the information or indictment, and either~~
13 ~~admitted by the defendant in open court, or found to be~~
14 ~~true by the jury trying the issue of guilt or by the court~~
15 ~~where guilt is established by plea of guilty or nolo~~
16 ~~contendere or by trial by the court sitting without a jury.~~
17

18 *SECTION 1. Section 1203.085 of the Penal Code is*
19 *amended to read:*

20 1203.085. (a) Any person convicted of an offense
21 punishable by imprisonment in ~~a~~ *the* state prison but
22 without an alternate sentence to ~~the~~ *a* county jail shall
23 not, ~~in any case,~~ be granted probation or have the
24 execution or imposition of sentence suspended, if ~~such~~
25 *the* offense was committed while the person was on state
26 ~~prison~~ parole; *from state prison* pursuant to Section 3000,
27 following a term of imprisonment imposed for a ~~“violent~~
28 ~~felony”~~ *violent felony*, as defined in subdivision (c) of
29 Section 667.5, or a *serious felony*, as defined in subdivision
30 (c) of Section 1192.7.



1 (b) Any person convicted of a ~~“violent felony”~~ *violent*
2 *felony*, as defined in subdivision (c) of Section 667.5, or a
3 *serious felony*, as defined in subdivision (c) of Section
4 1192.7, shall not, ~~in any case~~, be granted probation or have
5 the execution or imposition of sentence suspended, if
6 ~~such~~ *the* offense was committed while the person was on
7 ~~state prison parole~~; *from state prison* pursuant to Section
8 3000.

9 (c) The existence of any fact ~~which~~ *that* would make
10 a person ineligible for probation under subdivision (a) or
11 (b) shall be alleged in the information or indictment, and
12 either admitted by the defendant in open court, or found
13 to be true by the jury trying the issue of guilt or by the
14 court where guilt is established by plea of guilty or nolo
15 contendere or by trial by the court sitting without a jury.

16 SEC. 2. Section 1 of this act, which amends Section
17 1203.085 of the Penal Code, shall not be construed to
18 affect or supersede the application of Sections 667 or
19 1170.12 of the Penal Code.

20 SEC. 3. No reimbursement is required by this act
21 pursuant to Section 6 of Article XIII B of the California
22 Constitution because the only costs that may be incurred
23 by a local agency or school district will be incurred
24 because this act creates a new crime or infraction,
25 eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section
27 17556 of the Government Code, or changes the definition
28 of a crime within the meaning of Section 6 of Article
29 XIII B of the California Constitution.

30 Notwithstanding Section 17580 of the Government
31 Code, unless otherwise specified, the provisions of this act
32 shall become operative on the same date that the act
33 takes effect pursuant to the California Constitution.

