

AMENDED IN SENATE JUNE 7, 2012
AMENDED IN ASSEMBLY MAY 3, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2527

Introduced by Assembly Member Swanson

February 24, 2012

An act to amend Section 1203.3 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2527, as amended, Swanson. Probation: mandatory termination of period of probation.

Existing law defines probation as 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 prescribes who is eligible for probation and the process by which probation is granted. Existing law authorizes a court to terminate the period of probation and discharge the probationer at any time when the ends of justice will be subserved, and when the good conduct and reform of the person so held on probation warrant it.

This bill would instead require the court to terminate the period of probation and discharge the probationer at any time when the ends of justice will be subserved, and when the good conduct and reform of the person so held on probation warrant it. The bill would ~~also establish specified criteria that the court would be authorized~~ *authorize the court to consider specified factors, among others, in determining whether to*

terminate the period of probation for good conduct and reform of the person so held on 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 1203.3 of the Penal Code is amended to
2 read:

3 1203.3. (a) The court shall have authority at any time during
4 the term of probation to revoke, modify, or change its order of
5 suspension of imposition or execution of sentence. The court shall
6 at any time when the ends of justice will be subserved thereby,
7 and when the good conduct and reform of the person so held on
8 probation shall warrant it, terminate the period of probation, and
9 discharge the person so held.

10 (b) The exercise of the court's authority in subdivision (a) to
11 revoke, modify, change, or terminate probation is subject to the
12 following:

13 (1) Before any sentence or term or condition of probation is
14 modified, a hearing shall be held in open court before the judge.
15 The prosecuting attorney shall be given a two-day written notice
16 and an opportunity to be heard on the matter, except that, as to
17 modifying or terminating a protective order in a case involving
18 domestic violence, as defined in Section 6211 of the Family Code,
19 the prosecuting attorney shall be given a five-day written notice
20 and an opportunity to be heard.

21 (A) If the sentence or term or condition of probation is modified
22 pursuant to this section, the judge shall state the reasons for that
23 modification on the record.

24 (B) As used in this section, modification of sentence shall
25 include reducing a felony to a misdemeanor.

26 (2) No order shall be made without written notice first given by
27 the court or the clerk thereof to the proper probation officer of the
28 intention to revoke, modify, or change its order.

29 (3) In all cases, if the court has not seen fit to revoke the order
30 of probation and impose sentence or pronounce judgment, the
31 defendant shall at the end of the term of probation or any extension
32 thereof, be by the court discharged subject to the provisions of
33 these sections.

1 (4) The court may modify the time and manner of the term of
2 probation for purposes of measuring the timely payment of
3 restitution obligations or the good conduct and reform of the
4 defendant while on probation. The court shall not modify the dollar
5 amount of the restitution obligations due to the good conduct and
6 reform of the defendant, absent compelling and extraordinary
7 reasons, nor shall the court limit the ability of payees to enforce
8 the obligations in the manner of judgments in civil actions.

9 (5) Nothing in this section shall be construed to prohibit the
10 court from modifying the dollar amount of a restitution order
11 pursuant to subdivision (f) of Section 1202.4 at any time during
12 the term of the probation.

13 (6) The court may limit or terminate a protective order that is
14 a condition of probation in a case involving domestic violence, as
15 defined in Section 6211 of the Family Code. In determining
16 whether to limit or terminate the protective order, the court shall
17 consider if there has been any material change in circumstances
18 since the crime for which the order was issued, and any issue that
19 relates to whether there exists good cause for the change, including,
20 but not limited to, consideration of all of the following:

21 (A) Whether the probationer has accepted responsibility for the
22 abusive behavior perpetrated against the victim.

23 (B) Whether the probationer is currently attending and actively
24 participating in counseling sessions.

25 (C) Whether the probationer has completed parenting
26 counseling, or attended alcohol or narcotics counseling.

27 (D) Whether the probationer has moved from the state, or is
28 incarcerated.

29 (E) Whether the probationer is still cohabiting, or intends to
30 cohabit, with any subject of the order.

31 (F) Whether the defendant has performed well on probation,
32 including consideration of any progress reports.

33 (G) Whether the victim desires the change, and if so, the victim's
34 reasons, whether the victim has consulted a victim advocate, and
35 whether the victim has prepared a safety plan and has access to
36 local resources.

37 (H) Whether the change will impact any children involved,
38 including consideration of any child protective services
39 information.

1 (I) Whether the ends of justice would be served by limiting or
2 terminating the order.

3 (7) In determining whether to terminate the period of probation
4 for good conduct and reform by the probationer, the court may
5 consider *factors, including, but not limited to, all of the following*:

6 (A) Whether the probationer is pursuing or has obtained a GED
7 or high school diploma.

8 (B) Whether the probationer is performing community service.

9 (C) Whether the probationer is participating in an internship
10 with a government agency or with a nonprofit entity.

11 (c) If a probationer is ordered to serve time in jail, and the
12 probationer escapes while serving that time, the probation is
13 revoked as a matter of law on the day of the escape.

14 (d) If probation is revoked pursuant to subdivision (c), upon
15 taking the probationer into custody, the probationer shall be
16 accorded a hearing or hearings consistent with the holding in the
17 case of *People v. Vickers* (1972) 8 Cal.3d 451. The purpose of that
18 hearing or hearings is not to revoke probation, as the revocation
19 has occurred as a matter of law in accordance with subdivision
20 (c), but rather to afford the defendant an opportunity to require the
21 prosecution to establish that the alleged violation did in fact occur
22 and to justify the revocation.

23 (e) This section does not apply to cases covered by Section
24 1203.2.