

ASSEMBLY BILL

No. 2562

Introduced by Assembly Member Nielsen

February 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2562, as introduced, Nielsen. Probation.

Existing law authorizes the court to grant probation to certain persons convicted of a crime. Under existing law, if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court is required to refer the matter to a probation officer to investigate and report to the court the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.

This bill would make technical, nonsubstantive changes to these provisions.

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 of the Penal Code is amended to
- 2 read:
- 3 1203. (a) As used in this code, "probation" means the
- 4 suspension of the imposition or execution of a sentence and the
- 5 order of conditional and revocable release in the community under
- 6 the supervision of a probation officer. As used in this code,

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

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

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

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

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

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

38 (i) The amount the defendant should be required to pay as a
39 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
6 request of the defendant or prosecuting attorney, nine days, prior
7 to the time fixed by the court for the hearing and determination of
8 the report, and shall be filed with the clerk of the court as a record
9 in the case at the time of the hearing. The time within which the
10 report 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 there shall be no waiver unless
33 the court consents thereto. However, if the defendant is ultimately
34 sentenced and committed to the state prison, a probation report
35 shall be completed pursuant to Section 1203c.

36 (c) 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 phencyclidine.

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 (f) When probation is granted in a case which comes within
6 subdivision (e), the court shall specify on the record and shall enter
7 on the minutes the circumstances indicating that the interests of
8 justice would best be served by that disposition.

9 (g) If a person is not eligible for probation, the judge shall refer
10 the matter to the probation officer for an investigation of the facts
11 relevant to determination of the amount of a restitution fine
12 pursuant to subdivision (b) of Section 1202.4 in all cases where
13 the determination is applicable. The judge, in his or her discretion,
14 may direct the probation officer to investigate all facts relevant to
15 the sentencing of the person. Upon that referral, the probation
16 officer shall immediately investigate the circumstances surrounding
17 the crime and the prior record and history of the person and make
18 a written report to the court of his or her findings. The findings
19 shall include a recommendation of the amount of the restitution
20 fine as provided in subdivision (b) of Section 1202.4.

21 (h) If a defendant is convicted of a felony and a probation report
22 is prepared pursuant to subdivision (b) or (g), the probation officer
23 may obtain and include in the report a statement of the comments
24 of the victim concerning the offense. The court may direct the
25 probation officer not to obtain a statement if the victim has in fact
26 testified at any of the court proceedings concerning the offense.

27 (i) No probationer shall be released to enter another state unless
28 his or her case has been referred to the *Compact Administrator* of
29 the ~~Interstate Probation and Parole Compacts~~ *Compact for Adult*
30 *Offender Supervision*, pursuant to the Uniform Act for Out-of-State
31 Probationer or Parolee Supervision (Article 3 (commencing with
32 Section 11175) of Chapter 2 of Title 1 of Part 4) and the
33 probationer has reimbursed the county that has jurisdiction over
34 his or her probation case the reasonable costs of processing his or
35 her request for interstate compact supervision. The amount and
36 method of reimbursement shall be in accordance with Section
37 1203.1b.

38 (j) In any court where a county financial evaluation officer is
39 available, in addition to referring the matter to the probation officer,
40 the court may order the defendant to appear before the county

1 financial evaluation officer for a financial evaluation of the
2 defendant's ability to pay restitution, in which case the county
3 financial evaluation officer shall report his or her findings regarding
4 restitution and other court-related costs to the probation officer on
5 the question of the defendant's ability to pay those costs.

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

11 (k) Probation shall not be granted to, nor shall the execution of,
12 or imposition of sentence be suspended for, any person who is
13 convicted of a violent felony, as defined in subdivision (c) of
14 Section 667.5, or a serious felony, as defined in subdivision (c) of
15 Section 1192.7, and who was on probation for a felony offense at
16 the time of the commission of the new felony offense.