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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 194                      **Hearing Date:** April 4, 2017  
**Author:** Anderson  
**Version:** January 30, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Probation: Revocation: New Period*

## HISTORY

**Source:** San Diego District Attorney's Office

**Prior Legislation:** AB 2205 (Dodd), failed passage in Assembly Public Safety (2016)  
AB 2477 (Patterson), failed passage in Assembly Public Safety (2016)  
SB 517 (Monning), Ch. 61, Stats. of 2015  
AB 2339 (Quirk), failed passage in Assembly Public Safety (2014)

**Support:** California District Attorneys Association; California Police Chiefs Association

**Opposition:** American Civil Liberties Union of California; California Attorneys from Criminal Justice; California Public Defenders Association

## PURPOSE

*The purpose of this bill is to authorize a court to place the person on probation for a new period of probation that exceeds the statutory maximum when the order setting aside the judgment, the revocation of probation, or both was made before the expiration of the probationary period, whereas under existing law it is only authorized after the probationary period has expired.*

*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. (Pen. Code, § 1203, subd. (a).)

*Existing law* provides that the court, in granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as provided, and upon those terms and conditions as it shall determine. The court may imprison the defendant in county jail as a condition of probation for a period not exceeding the maximum time fixed by law in the case. (Pen. Code, § 1203.1, subd. (a).)

*Existing law* gives the court discretion in felony cases to grant probation for up to five years, or no longer than the prison term that can be imposed when the prison term exceeds five years. (Pen. Code, § 1203.1, subd. (a).)

*Existing law* gives the court discretion in misdemeanor cases to generally grant probation for up to three years, or no longer than the consecutive sentence imposed if more than three years. (Pen. Code, § 1203a.)

*Existing law* provides that the probationary period terminates automatically on the last day. (Pen. Code, § 1203.3, subd. (b)(3).)

*Existing law* authorizes the court to impose and require any or all reasonable conditions as it may determine are fitting and proper and if the probationer violates any of the terms or conditions imposed by the court, it shall have the authority to modify and change any and all terms and conditions and to reimprison the probationer in county jail within the limitations of specified for the offense. (Pen. Code, § 1203.1, subd. (j).)

*Existing law* states that upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of probation, the court shall place the defendant or probationer in and under the charge of the probation officer for the period or term fixed for probation. (*Id.*)

*Existing law* allows a probation officer, parole officer, or peace officer to arrest a person without warrant or other process during the period that a person is released on probation, conditional sentence or summary probation, mandatory supervision, postrelease community supervision, or parole supervision, if the officer has probable cause to believe that the supervised person is violating the terms of his or her supervision. (Pen. Code, § 1203.2, subd. (a).)

*Existing law* authorizes a 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 from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of his or her supervision, has become abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless whether he or she has been prosecuted for such offenses. (*Id.*)

*Existing law* states that the revocation, summary or otherwise, shall serve to toll the running of the period of supervision. (*Id.*)

*Existing law* provides that a court, upon its own motion or upon the petition of the supervised person, the probation or parole officer, or the district attorney, may modify, revoke, or terminate supervision of the person pursuant to this subdivision. (Pen. Code, § 1203.2, subd. (b)(1).)

*Existing law* states that, upon any revocation and termination of probation the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced. On the other hand, if the judgment has been pronounced and its execution suspended, the court may revoke the suspension and order that the judgment be in full force and effect. (Pen. Code, § 1203.2, subd. (c).)

*Existing law* provides that upon any revocation and termination of probation the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced, or if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke the suspension and order that the judgment shall be in full force and effect. (Pen. Code, § 1203.2, subd. (c).)

*Existing law* states if probation has been revoked before the judgment has been pronounced, the order revoking probation may be set aside for good cause upon motion made before pronouncement of judgment. If probation has been revoked after the judgment has been pronounced, the judgment and the order which revoked the probation may be set aside for good cause within 30 days after the court has notice that the execution of the sentence has commenced. (Pen. Code, § 1203.2, subd. (e).)

*Existing law* provides that if an order setting aside the judgment, the revocation of probation, or both is made after the expiration of the probationary period, the court may again place the person on probation for that period with those terms and conditions as it could have done immediately following conviction. (*Id.*)

*This bill* would allow the court to place the person on probation for a new period of probation with those terms and conditions as it could have done immediately following conviction whether the order setting aside the judgment, the revocation of probation, or both was made before or after the expiration of the probationary period.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

Existing law allows a judge to impose a new term of probation beyond the statutory maximum only in such cases where probation is summarily revoked during the term of probation, but the order granting probation beyond the statutory maximum is entered after the original term would have ended.

While case law suggests that the defendant is estopped from complaining if the court extends probation beyond the statutory maximum without objection, or with defendant's consent, most judges will not do that because it is an act in excess of the court's jurisdiction.

The result is that if a defendant is picked up on a probation violation a month before his initial term expires, the court has no choice but to either execute sentence, or continue him on probation for only one month. If he is picked up a day after his initial term expires, the court can order a new term of probation up to the statutory maximum but starting over again.

As the purpose of our criminal justice system is now accountability, rehabilitation and restorative justice, it makes sense to fix this anomaly in the law.

This bill would allow the court to place the person on probation for a new period of probation with those terms and conditions as it could have done immediately following conviction whether the order setting aside the judgment, the revocation of probation, or both was made before or after the expiration of the probationary period.

## 2. Expiration of Supervision

In the absence of an order revoking probation, probation expires by operation of law on the last day of the probationary period. (Pen. Code, § 1203.3, subd. (b)(3).) If no order of modification or revocation is made before the end of the period of probation delineated in the original or any subsequent probation grant, the court has no authority or jurisdiction over the defendant. (*In re Griffin* (1967) 67 Cal.2d 343, 346; *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, 772-773.) If the probationary period has expired after probation was timely revoked, the court may set aside the revocation and again place the person on probation for that period and with those terms and conditions that it could have done immediately following conviction. (Pen. Code, § 1203.2, subd. (e).) This provision authorizes a defendant to be placed on probation for a period of time that exceeds the statutory maximum term only if the original probationary period has expired. (*People v. Jackson* (2005) 134 Cal. App. 4th 929, 931.)

Another way that the probationary period may be extended beyond the maximum statutory term is through an agreement by defense counsel or the defendant to a probationary period longer than the maximum statutory period estops a claim that probation has expired. (*People v. Ford* (2015) 61 Cal.4th 282, 286-288; *People v. Jackson, supra*, 134 Cal.App.4th at 933.)

In *Ford, supra*, defendant appealed an order to pay victim restitution claiming that the court lacked jurisdiction because the hearing to determine restitution was conducted one week after his period of probation expired. The restitution hearing had been scheduled within the period of probation but was later rescheduled with defendant's consent. The Court of Appeal held that the defendant was estopped from challenging the court's jurisdiction. "By agreeing to a continuance of the restitution hearing to a date after his probationary term expired, defendant impliedly gave his consent to the court's continued exercise of jurisdiction." (*People v. Ford, supra*, 61 Cal.4th at 285.)

## 3. Parole Revocation

A trial court has the authority to modify, revoke or terminate probation at any time during the probationary period. (Pen. Code, §§ 1203.2, subd. (b)(1); 1203.3, subd. (a).) This power includes the power to extend the probationary term. "A change in circumstances is required before a court has jurisdiction to extend or otherwise modify probation." (*People v. Cookson* (1991) 54 Cal.3d 1091, 1095.)

The revocation process is generally divided into two components: the summary revocation and a subsequent formal revocation hearing where a final decision is made whether to reinstate, permanently revoke or terminate probation. The court may summarily revoke a defendant's probation at any time during the period of probation if it believes the defendant has violation probation. (Pen. Code, § 1203.2, subd. (a).) A summary revocation serves to toll the running of the probationary period so that a court may preserve its jurisdiction pending a formal revocation hearing. (*Id.*) A violation must have occurred during the initial probationary term even if a summary revocation tolls the running of the term. (*People v. Leiva* (2013) 56 Cal.4th 498.)

The purpose of the formal hearing is not to revoke probation, because this has already occurred as a matter of law with summary revocation; rather the purpose is to give the defendant an opportunity to require the prosecution to prove the alleged violation occurred and that it justifies revocation. (*People v. Leiva, supra*, 56 Cal.4th at 505, citing *People v. Clark* (1996) 51 Cal.App.4th 575, 581.) When a probation violation is established at the formal revocation

hearing, the court may modify, revoke, terminate, or reinstate probation. (Pen. Code, § 1203.2, subd. (b)(1).)

#### 4. Due Process Considerations

Under existing law, the only authority to extend the probationary period beyond the statutory maximum is found in Penal Code section 1203.2, subdivision (e) which states in pertinent part that “if an order setting aside the judgment, the revocation of probation, or both is made *after the expiration of the probationary period*, the court may again place the person on probation for that period with those terms and conditions as it could have done immediately following conviction.” (Italics added.)

The purpose of this provision is to provide the court with an alternative to sentencing a defendant to imprisonment following revocation of his or her probation. This provision was added to the statute in 1957 in response to a case where a defendant’s probation was revoked during the probationary period, but he was not arrested until 14 years later. Since his probationary period had expired, the court’s only option was to pronounce the judgment. Subdivision (e) was added to give the court the option of imposing probation instead. (*People v. Jackson, supra*, 134 Cal.App.4th at 937.) While a defendant may benefit from this provision, as well as the change proposed by this bill, because otherwise the court may only have the option to reinstate probation for the remainder of the person’s original probationary term which could be a very short period of time, or to pronounce judgment which may be a term of imprisonment, opponents of the bill are concerned that it would give court’s unlimited authority to grant several new terms for minor or purely technical violations.

In *People v. Jackson, supra*, the defendant’s probationary term was extended several times under Penal Code section 1203.2, subdivision (e), which resulted in her probationary term lasting 13 years when the statutory maximum is 5 years. Other cases that discussed the same provision had similarly long extensions. (*People v. Sem* (2014) 229 Cal.App.4th 1176, involved a woman convicted of welfare fraud that the court attempted to keep on probation for more than 11 years to pay restitution. *People v. Medeiros* (1994) 25 Cal.App.4th 1260, involved a woman convicted of check fraud that the court attempted to keep on probation for more than ten years to pay restitution.) Does allowing a person to be placed on probation for years or decades beyond the maximum period of probation authorized by statute comport with the general requirements of due process?

Should this bill be amended to place limitations on the court’s ability to impose multiple new terms of probation and to provide a general guideline that the new term must be the shortest amount of time required to meet the rehabilitative goals of the defendant?

#### 5. Argument in Support

The San Diego District Attorney’s Office is the sponsor of this bill and writes in support:

Currently, a judge may impose a new term of probation beyond the initial statutory maximum only in such cases where an offender violates probation, resulting in a summary revocation during the initial term of probation, but the hearing a formal order setting aside probation occurs after the original term has ended. This happens, for example, when a probationer has absconded during his probationary term, but he is not caught on the warrant for his arrest for the

probation violation until the term otherwise would have expired. In this case, the court has continued jurisdiction to set aside probation, impose a prison term, terminate probation, or grant a new term of probation with terms and conditions that may include treatment. This then gives the offender a new period to engage in rehabilitative efforts.

If, on the other hand, an offender violates probation resulting in a summary revocation, he is picked up on the ensuing warrant, and the hearing and formal order setting aside probation occur before the original term has ended, the only options the court has is to terminate probation, impose a prison term, or maintain the offender on probation until the end of the statutory term, which may only be days, weeks, or months – not enough time for a meaningful opportunity to get the offender back on track. The court is not statutorily authorized to grant a new term of probation.

In other words, if a defendant is picked up on a probation violation a month before his initial term expires, the court has no choice but to either sentence him to State Prison, or continue him on probation for only one month. On the other hand, if he is picked up a day after his initial term expires, the court can order a new term of probation up to the statutory maximum, and start over again.

## 6. Argument in Opposition

According to the California Public Defenders Association (CPDA):

Existing law, Penal Code section 1203.1, subdivision (a), provides that when the court initially grants probation (either by suspending the imposition of judgment, or by imposing judgment and suspending its execution), this can be “for a period of time not exceeding the maximum possible term of the sentence ... [but] where the maximum possible ... sentence is five years or less, probation may continue for up to five years.”

Under existing law, if the court revokes probation, and then (usually after a hearing) reinstates it, Penal Code section 1203.2, subdivision (e), provides that the period of probation must be “for that period ... as it could have done immediately following conviction.”

An example shows how this works in practice; take the case of a person convicted of felony theft, with a maximum possible term of three years, and who was initially granted probation for a period of five years. If after, say, two years, that person violated probation, perhaps in a minor or technical way, the court could revoke probation, and could then reinstate it. Under current law, the reinstated probation could last for no more than the remaining three years of the initial grant.

This bill, by amending Penal Code section 1203.2, subdivision (e), would permit the court, upon reinstating probation, to impose “a new period.” In other words, the reinstated probation, instead of lasting the three years remaining on the initial grant, can be for a new period of up to five years.

CPDA opposes this bill because it would permit probation to continue for years and years past the original grant, potentially renewing for several new terms, for even minor, even for purely technical, violations. This bill contains no restrictions or conditions limiting the court's authority to do this.

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