
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2106 **Hearing Date:** July 2, 2024
Author: McCarty
Version: May 16, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Probation*

HISTORY

Source: Author

Prior Legislation: SB 46 (Roth), Ch. 481, Stats. 2023
AB 890 (Joe Patterson), Ch. 818, Stats. 2023
AB 1360 (McCarty), Ch. 685, Stats. 2023
AB 1950 (Kamlager), Ch. 328, Stats. 2020

Support: California District Attorneys Association; (if amended) Chief Probation Officers of California

Opposition: ACLU California Action; All of Us or None Los Angeles; California Public Defenders Association; Californians United for a Responsible Budget; County Behavioral Health Directors Association of California; Ella Baker Center for Human Rights; Legal Services for Prisoner With Children; Reform Alliance; Smart Justice California; Vera Institute of Justice

Assembly Floor Vote: 53 - 0

PURPOSE

The purpose of this bill is to increase the maximum term of probation in misdemeanor drug cases from one year to two years and to require a court to reduce the term of probation if the defendant completes a drug treatment program, as defined.

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 the probation officer. (Pen. Code, § 1203, subd. (a).)

Existing law authorizes the court to order up to one year of probation for misdemeanors, except when an offense specifies the probation term. (Pen. Code, § 1203a.)

Existing law authorizes the court to order up to two years of probation for felonies, except as specified. (Pen. Code, § 1203.1, subs. (a), (m).)

Existing law requires the court, upon a conviction of specified a controlled substance offense and when recommended by the probation officer, to require as a condition of probation that the

defendant not use or be under the influence of any controlled substance, and that the defendant submit to drug and substance abuse testing as directed by the probation officer. (Pen. Code 1203.1ab, subd. (a).)

Existing law requires a person convicted of a nonviolent drug possession offense to receive probation, except as provided. Requires the court to require, as a condition of probation, participation in and completion of an appropriate drug treatment program. (Pen. Code, § 1210.1, subd. (a).)

Existing law requires the trial court to order, after conviction for a drug offense and as a condition of probation, the person to complete successfully a controlled substance education or treatment program, as appropriate for the individual, as described, or if none is available, from a local community agency designated by the court. (Health & Saf. Code, § 11373, subd. (a)(1).)

Existing law defines “complete successfully” to mean that a defendant who has had controlled substance education or treatment imposed as a condition of probation has completed the prescribed course of controlled substance education or treatment as recommended by the treatment provider and ordered by the court. Provides that completion of education or treatment does not require cessation of narcotic replacement therapy. (Health & Saf. Code, § 11373, subd. (a)(2).)

Existing law makes it unlawful to possess several specified controlled substances, including heroin, cocaine, cocaine base, opium, hydrocodone, and fentanyl. Provides that the punishment is imprisonment in the county jail for not more than one year unless the person has one or more prior convictions for a serious or violent felony, as specified, or for an offense requiring sex offender registration, in which case it is punishable as a felony. (Health & Saf. Code, § 11350, subd. (a).)

Existing law makes it unlawful to possess several specified controlled substances, including methamphetamine, amphetamine, phencyclidine (PCP), and gamma hydroxybutyric acid (GHB). Provides that the punishment is imprisonment in the county jail for not more than one year unless the person has one or more prior convictions for a serious or violent felony, as specified, or for an offense requiring sex offender registration, in which case it is punishable as a felony. (Health & Saf. Code, § 11377, subd. (a).)

This bill requires, in instances where a defendant is charged with a controlled substances offense and granted probation, the term of probation be for a period not exceeding two years in misdemeanor cases, and upon those terms and conditions as the court determines, including a court-mandated drug treatment program or drug education pursuant to Section 11373 of the Health and Safety Code.

This bill requires the court to reduce a probation term upon a showing that the defendant successfully completed a court-mandated drug treatment program.

This bill defines the following terms:

- “Drug treatment program” means a state-licensed or state-certified community drug treatment program, which may include one or more of the following: drug education, outpatient services, narcotic replacement therapy, residential treatment, detoxification services, and aftercare services.

- “Successfully completed” means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court. Provides that completion of treatment does not require cessation of narcotic replacement therapy.

COMMENTS

1. Need For This Bill

According to the author:

Despite spending millions of dollars on post-release rehabilitative programs, services and resources, California has achieved limited success in its rehabilitation of formerly incarcerated people with substance use disorder (SUD). California had the second highest inmate population in 2021 the nation in the most incarcerated people, with only 50,000 being granted parole that same year. The state does not encourage enrollment into rehabilitation programs for those suffering from SUD to the extent it should. It was noted that in 2020-2021 only 8,213 people were enrolled into which, only 2 of 5 parolees that did participate ever completed rehabilitative services offered to them.

AB 2106 would remedy these problems in the rehabilitation system by creating probation terms for controlled substance offenders that; accurately resolve issues of sobriety, establish supportive facilities, programs and comprehensive services. Misdemeanor offenders’ probation period will be a maximum of 2 years and a maximum of 3 years for felony offenders. The bill will require court mandated drug treatment programs for those suffering from SUDs as part of their probationary period, allowing them to access services to improve their wellbeing.

2. Probation

Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be “formal” or “informal.” Formal probation is under the direction and supervision of a probation officer. Under informal probation, a defendant is not supervised by a probation officer but instead reports to the court. In general, the level of probation supervision will be linked to the level of risk the probationer presents to the community.

Probation can include a sentence in county jail before the conditional release to the community. Defendants convicted of misdemeanors, and most felonies, are eligible for probation based on the discretion of the court. When considering the imposition of probation, the court must evaluate the safety of the public, the nature of the offense the interests of justice, the loss to the victim, and the needs of the defendant. (Pen. Code, § 1202.7.)

The court has broad discretion to impose conditions that foster the defendant’s rehabilitation and protect the public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*Id.* at p. 1121.)

Prior to 2021, when a defendant was convicted of a felony, the court could impose a term of probation for up to five years, or no longer than the prison term that can be imposed if the maximum prison term exceeds five years. (Pen. Code, § 1203.1.) In misdemeanor cases, the court could impose a term of probation for up to three years, or no longer than the maximum term of imprisonment if more than three years. (Pen. Code, § 1203a.) AB 1950 (Kamlager), Chapter 328, Statutes of 2020, limited probation to two years for a felony and one year for a misdemeanor, except as provided.

Current law requires a trial court to order a person granted probation subsequent to a conviction for any controlled substance offense to complete successfully a controlled substance education or treatment program, as appropriate for the individual. (Health & Saf. Code, § 11373, subd. (a)(1).) If an education or treatment program is not available, the court must designate a local community agency to offer education or treatment. (*Ibid.*) “Complete successfully” is defined as meaning that “a defendant who has had controlled substance education or treatment imposed as a condition of probation has completed the prescribed course of controlled substance education or treatment as recommended by the treatment provider and ordered by the court.” (Health & Saf. Code, § 11373, subd. (a)(2).) Under Proposition 36, any person convicted of a nonviolent drug possession offense must be granted probation, unless otherwise precluded by law. (Pen. Code, § 1210.1, subd. (a).)

3. AB 1950

As noted above, AB 1950 (Kamlager), Chapter 328, Statutes of 2020, generally reduced the maximum length of probation terms to two years for a felony and one year for a misdemeanor. AB 1950 explicitly provided that it did not apply to offenses with a specified probation term in statute, and additionally excluded specified violent felonies and specified theft-related offenses in which the value of the stolen property exceeds \$25,000.

The arguments in support of and against AB 1950 were outlined as follows:

Proponents of reducing the length of probation terms argue that probation supervision is most beneficial in the early part of a probation term. In addition, advocates argue that increased levels of supervision can lead to increased involvement with the criminal justice system due to the likelihood that minor violations will be detected. The proponents of probation reform further contend that reducing the length of probation terms would enable probation officers to more effectively manage their caseloads by focusing resources on those most at risk of reoffending.

Opponents of this bill assert that a case-by-case approach is needed rather than an across the board decrease in the length of probation terms. Additionally, some argue that the bill is unnecessary given that the courts currently enjoy some discretion with respect to the length of the probation period it may order as well as the authority to terminate probation early. (Sen. Com. on Public Safety, Analysis of Assem. Bill 1950 (2019-2020 Reg. Sess.) as amended Jun. 10, 2020, p. 5.)

4. Effect of This Bill

This bill increases the maximum term of probation in misdemeanor drug cases from one year to two years. It also requires a court to reduce the term of probation if the defendant completes a drug treatment program, defined as “a state-licensed or state-certified community drug treatment program.”

5. Argument in Support

The California District Attorneys Association writes:

AB 2106 ... will incentivize convicted drug offenders to participate in and successfully complete court-ordered drug treatment programs as conditions of probation.

...[M]any drug offenders today lack the incentives to address their drug addictions. ...[A]llowing courts to order longer probation terms, will help them succeed. [This] bill also authorizes a court to shorten probation terms and therefore reward those who succeed in their treatment programs.

6. Argument in Opposition

According to Smart Justice:

Existing law authorizes the court to impose probation for a period not to exceed one year in misdemeanor cases and two years in felony cases. This bill would double the maximum term of probation to 2 years in misdemeanor cases. The bill would also direct a court to reduce the period of probation if the defendant successfully completes a court-mandated drug treatment program.

We understand this bill is intended to encourage a person to complete a drug program because of the incentive to reduce a probationary period. This approach is unlikely to succeed due to the many existing barriers to substance use treatment. Currently, most individuals on probation are simply ordered to participate in AA or NA programs but not provided any access to effective substance use treatment. The bill mandates participation in “a state-licensed or state-certified community drug treatment program.” But there is a severe shortage of such programs California and this bill does nothing to increase treatment capacity. Thus, the vast majority of individuals will not be able to comply with the treatment mandate in the bill even if they wanted to do so.

Much more must be done to ensure that every person in California has access to high quality substance use treatment on demand. For example, successful programs like the CA Bridge program, which provides emergency room patients with access to medically assisted treatment and support navigating the barriers to treatment, can be replicated for those in contact with the criminal legal system. This bill, however, fails to increase treatment to access in any way.

Instead, by doubling the amount of time a person is on misdemeanor probation, this bill increases the period of time a person is under surveillance by the criminal

legal system, increasing the risks of incarceration for minor, technical violations. In passing ... AB 1950, the Legislature recognized that longer periods of probation are counter-productive and do not lead to better outcomes.

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