
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1421 **Hearing Date:** June 11, 2019
Author: Bauer-Kahan
Version: February 22, 2019
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Supervised Release: Revocation*

HISTORY

Source: Author

Prior Legislation: AB 2839 (Thurmond), Ch. 769, Stats. 2016
AB 1375 (Thurmond), Ch. 209, Stats. 2015

Support: American Civil Liberties Union of California; California Public Defenders Association; Chief Probation Officers of California; Disability Rights California; Ella Baker Center on Human Rights; National Association of Social Workers, California Chapter

Opposition: None known

Assembly Floor Vote: 75 - 0

PURPOSE

The purpose of this bill is to prohibit the revocation of supervision for failure of a person to pay fines, fees, or assessments, unless the court determines that the defendant has willfully failed to pay and has the ability to pay.

Existing law prohibits the imposition of excessive fines. (Cal. Const., art. 1, § 17.)

Existing law authorizes the court to revoke, modify, extend, or terminate an order of supervised release, including probation, mandatory supervision, post-release, or parole. (Pen. Code, §§ 1203.2.)

Existing law prohibits the revocation of any type of supervised release for failure to pay restitution, unless the failure to pay is willful and the defendant has the ability to pay. (Pen. Code, § 1203.2, subd. (a).)

Existing law authorizes the court to incarcerate a defendant until an imposed criminal fine is satisfied, but limits such imprisonment to the maximum term permitted for the particular offense of conviction. (Pen. Code, § 1205, subd. (a).)

Existing law requires that the time of imprisonment for failure to pay a fine be calculated as no more than one day for every \$125 of the fine. (Pen. Code, § 1205, subd. (a).)

This bill prohibits the revocation of supervised release for failure of a person to pay fines, fees, or assessments, unless the court determines that the defendant has willfully failed to pay and has the ability to pay.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Under current law an individual on probation may not be re-arrested or incarcerated for their inability to pay court ordered restitution. This is not the same for those individuals whom the court orders fines, fees, or assessments on.

This is not smart justice.

By revoking probation to any individual who lacks the ability to pay and who otherwise is meeting all terms of supervision, the court and probation in essence are driving individuals deeper into poverty.

AB 1421 fixes inequities in law by clarifying that an individual, who is on probation and lacks the ability to pay court ordered fines, fees, and assessments, will not have their probation revoked while providing the state significant savings.

2. Authority to Revoke Supervision

Supervised release includes probation, mandatory supervision, post-release community supervision and parole. While a person is on supervised release, there are conditions that are placed on the person that the person shall not violate. Upon finding the defendant has violated one of these conditions, the court may modify, revoke, or terminate the defendant's probation or other type of supervised release. (Pen. Code, § 1203.2, subds. (a), & (b)(1).) The court may reinstate probation on the same terms, reinstate probation with modified terms, or terminate probation and execute the prison or jail sentence. (*People v. Bolian* (2014) 231 Cal.App.4th 1415, 1420.) The decision whether to reinstate or terminate probation rests within the broad discretion of the trial court. (*Id.* at p. 1421.)

Despite the court's broad authority in this area, the court is expressly prohibited from revoking a defendant's probation based on the failure to pay restitution ordered as a condition of probation, unless the defendant had the ability to pay and willfully failed to do so. (*People v. Self* (1991) 233 Cal.App.3d 414, 417; *People v. Ryan* (1988) 203 Cal.App.3d 189, 199; see also Pen. Code, 1203.2, subd. (a).)

This provision of Penal Code section 1203.2, subdivision (a), not only protects someone whose ability to pay was not considered at the time restitution was made a condition of probation, but a person who had the ability to pay at the time the condition was imposed but due to factors beyond his or her control is at some later time unable to comply with the condition of probation that he make restitution. Thus, although a condition of probation may be imposed that the defendant make restitution without an express finding of ability to pay, probation may not be revoked without such a finding. The period of

probation may not be extended for failure to make full restitution to the victim unless said failure is willful and the defendant has the ability to pay. The amount of the restitution which is unpaid at end of the defendant's probationary period may be enforced in the same manner as a civil action. (Pen. Code, § 1203, subd. (j).) Therefore, a defendant will not be incarcerated for failure to make restitution pursuant to a condition of probation when he does not have the financial ability to comply with such a condition of probation. (*People v. Ryan, supra*, 203 Cal.App.3d at p. 199.)

This bill would codify the same protection for probationers and other persons on supervised release with regards to payment of fines and fees imposed as a condition of probation.

3. Failure to Pay and Constitutional Considerations

Jailing a person for failure to pay a fine when the failure to pay stems from an inability to pay, rather than willfulness, implicates the constitutional rights to equal protection and due process.

In *In re Antazo* (1970) 3 Cal.3d 100, the California Supreme Court invalidated the practice of requiring convicted defendants to serve jail time if they were unable to pay a fines. (*Id.* at pp. 115-116.) The Court presented the question before it as follows:

We are confronted here with the question whether a convicted indigent defendant upon being sentenced or otherwise ordered to pay a fine and a penalty assessment can be required to serve them out in jail at a specified rate per day because he is unable to pay them. As we explain *infra*, such a defendant has no choice at all and in reality is being imprisoned for his poverty. Although a direction for confinement for default in payment of a fine may appear to apply equally to both the rich offender and the poor one, actually the former has the opportunity to escape his confinement while the right of the latter to pay what he cannot, is a hollow one. We cannot countenance such a difference in treatment and, absent any compelling state interest necessitating it, we conclude that it constitutes an invidious discrimination on the basis of wealth in violation of the equal protection clause of the Fourteenth Amendment. We will not permit this petitioner to be given such a Hobson's choice. (*Id.* at pp. 103-104.)

Citing *In re Antazo, supra*, 3 Cal.3d 100 with approval, the United States Supreme Court subsequently held that the federal Constitution prohibits the state from automatically revoking an indigent defendant's probation for failure to pay a fine and restitution. (See *Bearden v. Georgia* (1983) 461 U.S. 660 [76 L. Ed. 2d 221, 103 S. Ct. 2064].) "If the probationer has willfully refused to pay the fine or restitution when he has the means to pay, the State is perfectly justified in using imprisonment as a sanction to enforce collection. ... But if the probationer has made all reasonable efforts to pay the fine or restitution, and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available." (*Id.* at pp. 668-669, citations and footnotes omitted.)

Although Penal Code section 1205 gives the court power to enforce payment of fine in a criminal case by imprisonment, case law makes clear that imprisonment pending payment of a fine is unconstitutional as applied to a convicted indigent defendant if the failure to pay is due to indigence and not to willfulness. (*In re Antazo, supra*, 3 Cal.3d 100, 103-104.)

4. Argument in Support

According to the California Public Defenders Association:

Although under current law individuals on probation are not supposed to be re-arrested for failure to pay court ordered fines, fees or assessments that they do not have the ability to pay, not infrequently, no ability to pay determination is made or the ability to pay determination is completely unrealistic given the high cost of living in California's urban areas. In frustration, some individuals elect to spend additional time in jail when they are financially unable to pay, rather than go through repeated rearrests or face warrants for failing to pay.

Current practice is a total waste of scarce resources. Taxpayers are out almost an additional \$150 per day when an individual is jailed because they can't pay court ordered fines and fees since jailing a probationer costs approximately \$160 per day versus supervising them on probation at \$12.15 per day. (Fn. omitted.)

AB 1421 clarifies that an individual, who is on probation and lacks the ability to pay court ordered fines, fees, and assessments, will not have their probation revoked while providing the state significant savings. AB 1421 amends Penal Code section 1203.2 to provide that "[S]upervision shall not be revoked *solely* for failure of a person to make *restitution, or to pay fines, fees, or assessments*, imposed as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay.

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