
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: AB 1950 **Hearing Date:** July 31, 2020
Author: Kamlager
Version: June 10, 2020
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Probation: Length of Terms*

HISTORY

Source: Author

Prior Legislation: None

Support: All of Us or None; Alliance for Boys and Men of Color; Alliance of Californians for Community Empowerment; ACLU of California; Asian Americans Advancing Justice- California; Asian Pacific Islander Re-entry and Inclusion Through Support and Empowerment; Asian Prisoner Support Committee; Aypal; California Attorneys for Criminal Justice; California Catholic Conference; California Immigrant Policy Center; California Nurses Association; California Public Defenders Association; Californians for Safety and Justice; Center for Empowering Refugees and Immigrants; City of Los Angeles; City of Oakland; Consumer Attorneys of California; #cut 50; Democratic Party of San Fernando Valley; Disability Rights California; Drug Policy Alliance; Ella Baker Center for Human Rights; Jewish Public Affairs Committee; John Burton Advocates for Youth; Law Enforcement Action Partnership; Legal Services with Prisoners with Children; Momentum United; National Association of Social Workers, California Chapter; Reform Alliance; San Francisco Public Defender's Office; Santa Barbara Women's Political Committee; Sierra Club California; Smart Justice California; The Family Project; Transgender Advocacy Group; Voices for Progress; Young Women's Freedom Center

Opposition: Association of Orange County Deputy Sheriffs; California District Attorneys Association; California Fraternal Order of Police; Chief Probation Officers of California; Long Beach Police Officers Association; Los Angeles County Probation Officers Union, AFSCME Local 685; Riverside Sheriffs' Association; Sacramento County Deputy Sheriffs' Association; Sacramento County Probation Association; San Joaquin County Probation Officers Association; San Luis Obispo County Probation Peace Officers Association; Silicon Valley Fraternal Order of Police, Lodge 52; State Coalition of Probation Organizations; Yolo County Probation Association

Assembly Floor Vote:

48 - 22

PURPOSE

The purpose of this bill is to limit the term of probation to no longer than two years for a felony conviction and one year for a misdemeanor conviction, except as specified.

Existing law provides that no person shall be confined to county jail on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of a crime that specifies a felony punishment pursuant to realignment or a conviction of more than one offense when consecutive sentences have been imposed, for a period in excess of one year. (Pen. Code, § 19.2.)

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.” (Pen. Code, § 1203, subd. (a).)

Existing law defines “conditional sentence” as “the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer.” (Pen. Code, § 1203, subd. (a).)

Existing law authorizes a courts to have the power to refer cases to the probation department, demand probation reports and to do and require all things necessary to carry out the purposes of the law authorizing the imposition of probation in misdemeanor cases. (Pen. Code, § 1203a.)

Existing law authorizes a court, in misdemeanor cases, to suspend the imposition or the execution of the sentence, and to make and enforce the terms of probation for a period not to exceed three years; provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period during which sentence may be suspended and terms of probation enforced may be for a longer period than three years, but in such instance, not to exceed the maximum time for which sentence of imprisonment might be pronounced. (Pen. Code, § 1203a.)

Existing law provides that the court may grant probation for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1, subd. (a).)

Existing law provides that the court, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case. (Pen. Code, § 1203.1, subd. (a).)

Existing law provides that where the maximum possible term of the sentence is five years or less, then the period of probation may not exceed five years. (Pen. Code, § 1203.1, subd. (a).)

Existing law provides that the court may in connection with imposing probation, do the following acts:

- The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case;
- The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither;

- The court shall provide for restitution in proper cases. Provides that the restitution order is fully enforceable as a civil judgment forthwith and as otherwise specified; and,
- The court may require bonds for the faithful observance and performance of any or all of the conditions of probation. (Pen. Code, § 1203.1, subd. (a)(1)-(4).)

Existing law requires the court to consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. (Pen. Code, § 1203.1, subd. (b).)

Existing law provides that, except as specified, if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon 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. (Pen. Code, § 1203, subd. (b)(1).)

Existing law provides that unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence on a realigned felony, shall suspend execution of a concluding portion of the term for a period selected at the court's discretion. (Pen. Code, § 1170, subd. (h)(5)(A).)

Existing law provides that the portion of a defendant's sentenced term that is suspended is known as mandatory supervision, and unless otherwise ordered by the court, mandatory supervision begins upon release from physical custody or an alternative custody program whichever is later. Requires that during the period of mandatory supervision, the defendant be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. (Pen. Code, § 1170, subd. (h)(5)(B).)

Existing law provides that the following are the primary considerations in granting probation: the safety of the public, which is a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant. (Pen. Code, § 1202.7.)

This bill limits the probation term to one year for misdemeanor offenses. Does not apply to any offense that includes a specific probation term in statute.

This bill limits the probation term to two years for a felony offenses.

This bill provides that the two-year probation limit does not apply to offenses defined by law as violent felonies, or to an offense that includes a specific probation term within its provisions. Provides that for these offenses, the court, in the order 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 and under conditions as it shall determine.

This bill provides that the two-year probation limit does not apply to a felony conviction for grand theft from an employer, embezzlement, or theft by false pretenses, if the total value of property taken exceeds \$25,000. Provides that for these offenses, the court, in the order 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 three years, and upon those terms and conditions as it shall determine.

COMMENTS

1. Need for This Bill

According to the author:

The Prison Policy Institute has found that like incarceration, probation affects already marginalized populations in troubling ways. Black Americans make up 13% of the U.S. adult population, but 30% of those under community supervision. Additionally, probation fees are an enormous burden on the poor.

A 2018 Justice Center of the Council of State Governments study found that a large portion of people violate probation and end up incarcerated as a result. The study revealed that 20 percent of prison admissions in California are the result of probation violations, accounting for the estimated \$2 billion spent annually by the state to incarcerate people for supervision violations. Eight percent of people incarcerated in a California prison are behind bars for probation violations. Close to half of those violations are technical and minor in nature, such as missing a drug rehab appointment or socializing with a friend who has a criminal record. And yet despite the fact that these technical violations (non-crimes) do not threaten our communities, they cost taxpayers at least \$235 million per year.

Research by the California Budget Center shows that probation services, such as mental health care and addiction treatment, are most effective during the first 18 months of supervision. Research also indicates that providing increased supervision and services earlier reduces an individual's likelihood to recidivate.

AB 1950 amends the California State Penal Code to limit adult probation to a maximum of one year for misdemeanor offenses and two years for felony offenses. This does not include offenses falling under section 667.5 of the State Penal Code, crimes committed against monetary property (i.e., "white-collar crimes") valued at over \$25,000 nor any specific crimes with probation term lengths identified by statute

AB 1950 creates reasonable and evidence-based limits on probation terms, while lowering costs to taxpayers, allowing for the possible investment of savings in effective measures proven to reduce recidivism and increasing public safety for all Californians. The bill also supports probation officers in completing the duties of their job more effectively, by making their caseloads more manageable.

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.)

Currently, the court may 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, when a defendant is convicted of a felony. (Pen. Code, § 1203.1.) In misdemeanor cases, the court may 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.)

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.)

3. Probation Supervision

Probation officers provide supervision of defendants on formal probation which is intended to facilitate rehabilitation and ensure defendant accountability. Due to limited resources and a growing population under supervision, probation departments have been forced to prioritize the allocation of supervision services.

This bill generally limits the probation term to one year for misdemeanor offenses and two years for felony offenses. This bill does not apply to offenses with a specified probation term in statute. This bill additionally excludes specified violent felonies and specified theft-related offenses in which the value of the stolen property exceeds \$25,000.

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.

4. Governor's January Budget Proposal and May Revision

The Governor's 2020-2021 budget initially included a probation reform proposal which would have reduced felony and misdemeanor probation terms to two years, and allowed for earned discharge. This proposal relied on "research that suggests that the maximum time needed to engage probationers in behavior change and reduce the likelihood of reoffending is no more than two years, while also creating incentives for individuals to engage in treatment and services early on." (Dept. of Finance, *Governor's Budget Summary 2020-21*, p. 141)

<<http://www.ebudget.ca.gov/2020-21/pdf/BudgetSummary/PublicSafety.pdf>>.) The proposal would have also mandated probation supervision for a number of misdemeanor convictions currently only subject to probation supervision based on the discretion of the court. Additionally, the Governor's January proposal would have provided additional funding to stabilize SB 678 funding provided to the counties. As described in the budget summary:

“SB 678 established a performance-based funding methodology to award counties that reduce the number of adult felony probationers they send to state prison by sharing a percentage of the savings the state accrues from not housing revoked offenders. However, the current funding methodology can result in significant year-to-year fluctuations and drive uncertainty in county probation spending. The Budget includes a stable ongoing amount to counties at a level consistent with their highest payment received from the state over the last three years, in addition to continued accountability measures.” (*Ibid.*)

The May Revision removed the probation reform proposal.

5. Arguments in Support

According to the California Public Defenders Association:

Current law allows judges to impose a term of probation for up to three years on most misdemeanors, and for a period that exceeds three years for designated misdemeanors. Assembly Bill 1950 will amend California Penal Code sections 1203a and 1203.1 so that misdemeanor probation grants cannot exceed one year.

Assembly Bill 1950 also reduces the period of probation for some felony offenses to two years. Notably, felonies that are listed in California Penal Code section 667.5, subdivision (c) – often referred to as violent felonies – are excluded. In addition, AB 1950 leaves, intact, the probationary terms that are specifically defined within particular offenses.

...

Individuals in the criminal justice system often struggle with family violence at home, addiction issues, and mental health issues. Each day can be a challenge, and three years can seem like an eternity. Shortening the probationary period to two years can foster a sense of hope for individuals who are attempting to exit the criminal justice.

Drug Policy Alliance writes:

The purpose of the bill is to end wasteful spending, to focus limited rehabilitative and supervisory resources on persons in their first 12 to 24 months of probation, and reduce the length of time that a person might be subject to arbitrary or technical violations that result in re-incarceration. A robust body of literature demonstrates that probation services, such as mental healthcare and substance use disorder treatment, are most effective during the first six to eighteen months of supervision. A shorter probation term, allowing for an increased emphasis on

rehabilitative services, would lead to improved outcomes for people on probation and their families.

Furthermore, this bill does not take the “teeth” out of probation or the courts. If a person on probation fails to comply with treatment or other conditions set by the court during a probationary period, the court may revoke the person’s probation until the person is back in compliance. The period during which the probation is revoked does not count toward release from probation, thereby extending the period of supervision. Additionally, this bill does not change the power of the court to order a period of incarceration in addition to probation supervision and conditions, nor does the bill change the probation periods for any offense in which the length of probation is mandatory or specified in the relevant statute.

There is an urgent need to reinvest limited resources in community health and well-being. This bill is important part of the process of ending wasteful spending and reducing police interference in the lives of the people of the State of California.

6. Arguments in Opposition

According to the Chief Probation Officers of California:

CPOC recognizes and supports research that shows working with individuals using evidence-based supervision, services and supports within the first two years of their probation term is the best way to change their behavior and reduce re-offense. It is important to highlight that it is the services and supports within those first two years that is critical to our clients’ success. Therefore any modification of probation terms must be aligned within a comprehensive approach to enhance services and programs to best serve probation clients in achieving healthier pathways.

SB 678, passed in 2009, provided performance-based funding for local probation departments to build up the infrastructure for services and supports while following evidence-based supervision strategies to lessen our system’s reliance on incarceration and to keep people out of prison. ... With SB 678 funding, county probation departments adopted evidence-based practices, increased reentry and support services, and emphasized community supervision practices that address client needs to reduce recidivism and improve public safety. In the last decade, we have successfully accomplished that effort. ...

Probation recognizes, based on the success of SB 678, that investing in evidence-based practices on the front-end and aligning supervision and services with a person’s risk and needs, rather than simply their offense, will improve public safety and give people a better chance of staying successful in our communities for the long-term. However, the ability to invest early and quickly in those first two years is dependent upon the capacity of probation, along with our local and community partners, to provide key services and programs. The changes to probation terms changes the formula baseline calculations which is important to the incentive-based component of SB 678. Therefore, we would suggest freezing the formula until the full implementation and impacts of the policy change can

take effect in order to retain the focus on incentive-based performance measures which serve to keep clients out of custody.

The California District Attorneys Association writes:

This bill drastically shortens the probation term for almost all misdemeanor and felony cases. A one-size-fits-all probation scheme does not work. Such a scheme treats dissimilar defendants similarly. A defendant convicted of multiple crimes, misdemeanor or felony, and who has hurt multiple victims, is treated exactly the same as a defendant who is convicted of only one crime.

This bill is in search of a problem that does not exist; If a judge feels that only two years of probation is appropriate, the judge can order that length of probation under current law. Current law also permits judges to terminate probation early. Pursuant to existing Penal Code Section 1203.3, a probationer who completes court-ordered programming and pays restitution to a crime victim can always ask the court to terminate probation early. Judges routinely grant these types of termination motions.

...

It is precisely because we believe in rehabilitation that we oppose [this] measure. Offenders working toward rehabilitation and engaging in programming, crime victims, and public safety are best served when judges have the flexibility to grant a probation period that is appropriate and proportional for each individual case.

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