
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 484 **Hearing Date:** June 4, 2019
Author: Jones-Sawyer
Version: February 12, 2019
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Crimes: Probation*

HISTORY

Source: Author

Prior Legislation: SB 1393 (Mitchell), Ch. 1013, Stats. 2018
SB 1010 (Mitchell), Ch. 749, Stats. 2014
AB 2515 (Donnelly), failed passage on the Assembly Floor in 2014
AB 2492 (Jones-Sawyer), Ch. 819, Stats. 2014
AB 2418 (Clute), Ch. 1244, Stats. 1988

Support: ACLU of California; Anti-Recidivism Coalition; California Attorneys for Criminal Justice; California Civil Liberties Advocacy; California Public Defenders Association; Drug Policy Alliance; National Association of Social Workers, California Chapter; San Francisco Public Defender's Office

Opposition: California Police Chiefs Association; California State Sheriffs' Association; Peace Officers' Research Association of California

Assembly Floor Vote: 45 - 28

PURPOSE

The purpose of this bill is to make the imposition of the 180-day confinement condition that is currently required when a defendant is granted probation after being convicted of furnishing or transporting specified controlled substances permissive rather than mandatory.

Existing law requires any person convicted of a specified controlled substance offense relating to the sale of cocaine, cocaine hydrochloride, or heroin, or to the sale or transportation of phencyclidine (PCP), who is eligible for probation and who is granted probation to be confined in the county jail for at least 180 days. Provides that the court may, in an unusual case where the interests of justice would best be served, absolve a person from spending the 180-day sentence in the county jail if the court specifies on the record and enters into the minutes, the circumstances indicating that the interests of justice would best be served by that disposition. (Pen. Code, § 1203.076.)

Existing law makes it a felony to transport, import, sell, furnish, administer, or give away, or offer to transport, import, sell, furnish, administer, or give away, or attempt to import or transport specified controlled substances, including cocaine and heroin. Provides that these offenses are punishable by imprisonment pursuant to 1170(h) for 3, 4, or 5 years. (Health & Saf. Code, § 11352.)

Existing law makes it a felony to transport, import, sell, furnish, administer, or give away, or offer to transport, import, sell, furnish, administer, or give away, or attempt to import or transport PCP or any of its analogs or precursors unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state. Provides that these offenses are punishable by imprisonment pursuant to 1170(h) for 3, 6, or 9 years. (Health & Saf. Code, § 11379.5.)

Existing law prohibits the granting of probation to any person who is convicted of specified drug offenses, including:

- Selling or offering to sell 14.25 grams or more of a substance containing heroin;
- Selling or offering to sell heroin with one or more prior convictions for possession for sale, selling, or offering for sale heroin;
- Transporting for sale, importing for sale, or administering, or offering to transport for sale, import for sale, or administer, or attempting to import for sale or transport for sale, PCP or any of its analogs or precursors;
- Selling or offering to sell PCP or any of its analogs or precursors;
- Manufacturing PCP or any of its analogs or precursors, as specified;
- Using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture or sell any specified controlled substance;
- Using a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor be in possession of PCP for sale, sells, distributes, or transports PCP, or manufactures PCP or any of its analogs or precursors; and
- Selling or offering to sell cocaine, cocaine base, or methamphetamine, with one or more prior convictions for possession for sale, sale, or offering for sale cocaine, cocaine base, or methamphetamine. (Pen. Code, § 1203.07, subd. (a).)

This bill eliminates the 180-day mandatory confinement period for a sentence of probation on convictions relating to the sale of cocaine, cocaine hydrochloride, or heroin.

This bill eliminates the 180-day mandatory confinement period for a sentence of probation on convictions for transporting, importing, selling, furnishing, administering, or giving away, or offering to transport, import, sell, furnish, administer, or give away, or attempting to import or transport, PCP.

COMMENTS

1. Need for This Bill

According to the author:

For crimes related to the sale of powder cocaine, cocaine base (crack), heroin, and PCP, California law requires judges to order 180-days in jail as a condition of a person's probation. These mandatory minimum sentences ignore the circumstances surrounding a case and severely limit a judge's discretion.

In the 1980s, Congress and numerous state legislatures implemented mandatory minimum sentences as a tool to combat the war on drugs. These policies, among them, the Anti-Drug Abuse Act of 1986, set an overly punitive and inflexible framework for sentencing decisions in drug-related crimes without consideration of the nature of the offense or the background of the individual. As a result, prison systems across the country, including California's, became increasingly overcrowded, disproportionately affected poor and people of color communities, and expensive to maintain.

[S]ustaining an outdated system costs the state billions of dollars that are better spent on effective, evidence-based rehabilitation programs through community organizations. Studies have found that treatment of drug users was more cost-effective than mandatory sentencing in reducing drug use, sales, and other drug-related crimes. . . .

The rigidity of mandatory minimum sentences comes at a cost to both individuals and the state. Any period of incarceration, irrespective of how long, can affect a person's ability to maintain steady employment, find housing, and fulfill family obligations. AB 484 does not eliminate a judge's authority to sentence the 180 days jail time. Instead, it gives judges the discretion they need to operate in the interest of justice and public safety so that the sentences are proportionate to the crime.

2. Effect of This Bill

Penal Code section 1203.076 is one of many mandatory minimum sentences that was established during the 1980s and 1990s. Enacted by AB 2418 (Clute), Chapter 1244, Statutes of 1988, Penal Code section 1203.076 requires a judge to impose six months in the county jail for anyone who is sentenced to probation for certain controlled substance offenses. Specifically, six months of jail must be imposed for anyone who is convicted of selling, attempting to sell, or offering to sell cocaine or heroin, and who is granted probation. Additionally, six months of jail must be imposed for anyone who is convicted of transporting, importing, selling, furnishing, administering, or giving away PCP, or offering or attempting to do any of those things, and who is granted probation.

Under existing law, a person convicted of one of the offenses listed above would be subject to three, four, or five years in county jail for a cocaine- or heroin-related offense, and three, six, or nine years in county jail for a PCP-related offense. However, a judge is authorized to grant probation for these convictions instead of imposing a multiple-year jail term. But, when probation is granted, Penal Code section 1203.076 requires the judge to simultaneously impose six months in jail. This bill would remove the requirement that the judge impose six months in jail, and instead permit the judge to do so in his or her discretion.

Notably, in many cases, defendants convicted of these offenses are ineligible for probation under Penal Code section 1203.07. Therefore, probation is most likely to be granted in less serious cases.

3. Argument in Support

The ACLU of California writes:

...AB 484 will reduce unnecessary incarceration and racial disparities in our jail population.

Sentences with limited discretion are ineffective at preventing crime – people who commit crimes often are not aware of potential penalties, and even when they are, are more deterred by the certainty of consequences than they severity. But while these periods of incarceration do not serve a public benefit, they result in extreme harms to the people subjected to them, impacting their inability to support their families, maintain steady employment and housing, and access community-based treatment programs.

AB 484 gives courts the discretion they need to tailor probation conditions to an individual's risks and needs, ensuring that sentences best serve the interest of justice.

4. Argument in Opposition

According to the Peace Officers' Research Association of California:

The California Legislature has rightfully recognized the national opioid and fentanyl epidemic and has worked hard over the past couple of years to implement programs to control the problem. A major reason for the epidemic is due to the access of these opioids on the street by drug dealers who are obtaining the drugs through theft or unethical physicians. To introduce a measure that would lessen the impact on these catalysts to an epidemic is unconscionable when lives are being lost hourly.

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