
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 508 **Hearing Date:** July 11, 2023
Author: Petrie-Norris
Version: March 7, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Probation: environmental crimes*

HISTORY

Source: California District Attorneys Association
Orange County District Attorney

Prior Legislation: AB 1950 (Kamlager), Ch. 328, Stats. 2020

Support: California District Attorneys Association, Orange County District Attorney

Opposition: None known

Assembly Floor Vote: 80 - 0

PURPOSE

The purpose of this bill is extend the maximum allowable period of probation for specified environmental crimes when they are committed by an entity with more than 10 employees.

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 limits the period of probation for a misdemeanor to no longer than one year, unless the offense includes specific probation lengths within its provisions. (Pen. Code, § 1203a.)

Existing law sets limits period of probation for a felony to no longer than two years, except as specified. (Pen. Code, § 1203.1, subs. (a) & (l).)

Existing law authorizes the court to impose and require any or all reasonable conditions of probation as it may determine are fitting and proper to the end that justice may be done, that amends may be done to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer. (Pen. Code, § 1203.1, subd. (j).)

Existing law authorizes the court to revoke, modify, or terminate its order of probation. (Pen. Code, §§ 1203.2 & 1203.3.)

Existing law requires a court which grants probation to make payment of victim restitution a condition of probation. Provides that any unsatisfied amount of restitution after a defendant is no longer on probation is enforceable as a civil judgment. (Pen. Code, § 1202.4, subd. (1).)

Existing law authorizes the court to modify the dollar amount of restitution at any time during the term of probation. (Pen. Code, § 1203.3, subd. (b)(5).)

Existing law requires the court to consider whether, as a condition of probation, the defendant shall make restitution to a public agency for the costs of an emergency response, as specified. (Pen. Code, § 1203.1, subd. (e).)

This bill includes codified legislative findings and declarations that environmental crimes are public welfare offenses resulting from violations of statutes designed to safeguard against threats or injury to the health and safety of the public and California's environment and precious natural resources.

This bill authorizes a term of probation not to exceed five years if an entity is granted probation upon conviction of an environmental crime.

This bill specifies that environmental crimes means violations of any crimes in the following sections:

- Specified provisions of the Fish and Game Code related to the unlawful taking of birds, mammals, fish, reptiles, or amphibians; the sale, purchase or capture of desert tortoises; the unlawful use of explosives in state waters inhabited by fish; and discharge of specified substances into the waters of the State;
- Specified provisions of the Food and Agriculture Code related to pesticides;
- Specified provision of the Harbors and Navigation Code related to discharging cargo overboard from a vessel, and discharging oil upon navigable waters;
- Specified provisions of the Health and Safety Code known as the Medical Waste Management Act, and the Aboveground Petroleum Storage Act.
- Specified provisions of the Health and Safety Code relating to non-vehicular air pollution control, hazardous waste control, underground storage of hazardous substances, and hazardous materials release;
- Specified provisions of the Government Code known as the Lempert–Keene–Seastrand Oil Spill Prevention and Response Act;
- Specified provisions of the Penal Code related to malicious discharge of any substance capable of causing substantial damage or harm to the operation of a public sewer system; illegal dumping; grease waste hauling violations; depositing hazardous substances; animal cruelty; importation, possession for sale, or sale of endangered species; and possession or sale of a dead seal;
- Vehicular transportation of hazardous material, and hazardous material transportation in violation of regulations of the Department of the California Highway Patrol; and,
- Specified provisions of the Water Code mandating compliance with the Federal Clean Water Act.

This bill requires that an entity, including a trust, firm, partnership, joint stock company, joint venture, association, limited liability company, corporation, or other legal entity, employ more than ten individuals in order for the extended probation term for environmental crimes to be authorized.

COMMENTS

1. Need For This Bill

According to the author:

AB 508 will help ensure corporations and other business entities who violate California environmental laws and are placed on probation complete the corresponding terms and conditions by expanding the probation time limit to a maximum of five years. This will ensure that corporate violators complete the requirements of their probation, including changing policies, training, and updating their industrial processes.

The need for extended regulatory oversight was exemplified in the 2022 oil spill case in Orange County, where the defendants (two corporations and an LLC) pled no contest to the criminal charges of failing to immediately report a discharge of oil into waters of the state, water pollution, and killing of protected wildlife. The defendant was ordered to pay state criminal fines totaling \$4.9 million dollars and was placed on probation. The probation terms included significant training requirements, updating internal procedures, submitting new contingency plans, revising inspection timeframes, amongst other requirements. A one-year probation term does not allow nearly enough time for the appropriate regulatory oversight to ensure the defendant has made the necessary changes to ensure such a violation does not occur again. AB 508 is needed to protect our communities from serious environmental hazards.

2. Corporate Criminal Liability

Corporations can be subject to criminal liability. The Penal Code defines “person” to include a corporation as well as a natural person. (Pen. Code, § 7.) However, unlike a natural person, a corporation cannot be incarcerated as a form of punishment after being convicted of a crime.

An example of a corporation being found criminally liable for its actions is PG&E’s convictions stemming from the 2010 San Bruno natural gas pipeline explosion. In 2016, a federal jury found PG&E guilty of obstruction and five counts of pipeline safety violations after the pipeline blast sent a plume of fire into the air, killing eight people and destroying 38 homes. PG&E employees were not individually charged, so no one faced incarceration due to the criminal conduct. (Associated Press, *PG&E is Found Guilty of Obstructing Investigators After Deadly 2010 Pipeline Blast* (Aug. 9, 2016) available at <<https://www.latimes.com/business/la-fi-pge-san-bruno-pipeline-blast-20160809-snap-story.html>>.)

3. Probation Supervision

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. Probation supervision is intended to facilitate rehabilitation and ensure defendant accountability. 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.)

In 2020, AB 1950 (Kamlager, Chapter 328) was enacted. It reduced the maximum length of probation for both misdemeanor and felony cases (in most cases). For felonies, the term of probation was reduced from five years—where the punishment did not exceed five years—to two years. (Pen. Code, § 1203.1.) For misdemeanors the term of probation was reduced from three years to one year. (Pen. Code, § 1203a.) In both types of cases, there was an exception made if a specific probation length was already dictated in statute for a particular offense. (*Ibid.*)

Proponents of this bill argue that because many environmental crimes are classified as misdemeanors, the reduced period of probation is insufficient to hold corporate wrongdoers accountable. This bill extends the possible probationary term for specified environmental crimes committed by a business entity, as defined, to a maximum of five years.

4. Argument in Support

The Orange County District Attorney's Office, the bill's sponsor writes:

As background, most environmental defendants are placed on informal probation and do not report to the probation department. The terms and conditions of this informal probation are narrowly tailored to the specific regulatory crime that was violated with the goal of preventing its recurrence and abating the harm caused. The need for extended regulatory oversight was exemplified by the 2022 oil spill in Orange County, where the defendant pled no contest to the criminal charges of failing to report a discharge of oil into waters of the state, water pollution, and killing of protected wildlife. The defendant was ordered to pay state criminal fines totaling \$4.9 million dollars and was placed on probation. The probation terms included vast training requirements, updating internal procedures, submitting updated contingency plans, revising inspection timeframes, amongst other requirements. A one-year probation term does not allow enough time for the appropriate regulatory oversight to endure the defendant has made the necessary changes to ensure such an egregious violation does not occur again.

AB 508 is needed to ensure corporations and other business entities who violate California environmental laws and are placed on probation will be required to follow those terms and conditions of probation longer than just one year. It often takes environmental violators a period of time to revise and alter their policies, procedures, training programs, and update their industrial processes. AB 508 is needed to help protect the health and safety of the people of California and our environment.