SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No:	SB 1262	**Hearing Date:**	April 9, 2024
Author:	Archuleta		
Version:	February 15, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Crimes: supervised release***

HISTORY

Source: City of Whittier

Prior Legislation: AB 1744 (Levine), Ch. 756, Stats. 2022
Proposition 20, rejected by the voters on November 3, 2020
AB 597 (Levine), Ch. 44, Stats. 2019
AB 1408 (Calderon), vetoed 2017
SB 266 (Block), Ch. 706, Stats. 2016
SB 1023 (Comm. on Budget & Fiscal Rev.), Ch. 43, Stats. 2012
AB 109 (Comm. on Budget), Ch. 15, Stats. 2011

Support: California Contract Cities Association; California Police Chiefs Association; City of Downey; City of Huntington Park; City of Lakewood; City of Montebello; City of Santa Fe Springs; League of California Cities

Opposition: ACLU California Action; California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Coalition for Women Prisoners; Californians for Safety and Justice; California Public Defenders Association; Californians United for A Responsible Budget; Children's Defense Fund – CA; Communities United for Restorative Youth Justice; Ella Baker Center for Human Rights; Empowering Women Impacted by Incarceration; Essie Justice Group; Felony Murder Elimination Project; Freedom 4 Youth; Friends Committee on Legislation of California; Initiate Justice; Initiate Justice Action; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Legal Services for Prisoners With Children; MILPA Collective; Root & Rebound; Rubicon Programs; San Francisco Public Defender; Silicon Valley De-Bug; Smart Justice California; UnCommon Law; Youth Leadership Institute; 5 individuals

PURPOSE

The purpose of this bill is to: (1) limit the number of intermediate sanctions which the probation department may impose against a person on post-release community supervision (PRCS); (2) require probation offices to notify the court and specified government agencies when it employs flash incarceration; (3) require the Department of Corrections and Rehabilitation (CDCR) to share information with local law enforcement agencies regarding a

person's prior parole record; and (4) codify the Board of Parole Hearing's (BPH) existing practice of considering a person's entire criminal history when making a parole suitability determination.

Existing law requires the parole board to grant parole unless it determines that the gravity of the current offense or offenses, or the timing and gravity of current or past offense or offenses, is such that consideration of the public safety requires a lengthier period of incarceration for the individual. (Pen. Code, § 3041, subd. (b).)

Existing law provides that the following persons released from prison prior to, or on or after July 1, 2013, be subject to parole under the supervision of the CDCR:

- A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);
- A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);
- A person serving a Three-Strikes sentence;
- A high risk sex offender;
- A mentally disordered offender;
- A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which the person was sentenced to state prison; and,
- A person subject to lifetime parole at the time of the commission of the offense that resulted in a state prison sentence. (Pen. Code, § 3000.08, subds. (a) and (i).)

Existing law requires all other individuals released from prison to be placed on post-release community supervision (PRCS) provided by the probation department of the county to which the person is being released. (Pen. Code, §§ 3000.08, subd. (b), & 3451, subd. (a).)

Existing law requires all persons paroled from state prison before October 1, 2011 to remain under the supervision of the CDCR until jurisdiction is terminated by operation of law or until parole is discharged. (Pen. Code, § 3000.09, subd. (b).)

Existing law delineates conditions of PRCS, including obeying all laws, following the directives and instructions of the supervising county agency, reporting to the supervising county agency as directed by that agency, immediately informing the supervising county agency if the person is arrested or receives a citation, obtaining the permission of the supervising county agency to travel more than 50 miles from the person's place of residence, and participating in rehabilitation programming as recommended by the supervising county agency, among others. (Pen. Code, § 3453.)

Existing law authorizes intermediate sanctions, including flash incarceration, to be imposed on individuals released from prison and subject to parole. (Pen. Code, § 3000.08, subd. (d).)

Existing law authorizes intermediate sanctions, including flash incarceration, for violating the terms of PRCS. (Pen. Code, § 3454, subd. (b).)

Existing law defines "flash incarceration" as a period of detention in a city or county jail due to a violation of a person's conditions of parole or PRCS. Specifies the length of the detention period

can range between one and 10 consecutive days in a county jail. (Pen. Code, §§ 3000.08, subd. (e), and 3454, subd. (c).)

Existing law provides that intermediate sanctions include, but are not limited to, the following:

- Short-term "flash" incarceration in jail for a period of not more than 10 days.
- Intensive community supervision.
- Home detention with electronic monitoring or GPS monitoring.
- Mandatory community service.
- Restorative justice programs, such as mandatory victim restitution and victim-offender reconciliation.
- Work, training, or education in a furlough program.
- Work, in lieu of confinement, in a work release program.
- Day reporting.
- Mandatory residential or nonresidential substance abuse treatment programs.
- Mandatory random drug testing.
- Mother-infant care programs.
- Community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these and other interventions. (Pen. Code, § 3450, subd. (b)(8).)

Existing law requires the supervising parole agency to petition the court if it has determined, following application of its assessment processes, that intermediate sanctions up to and including flash incarceration are not appropriate. Provides that the supervising parole agency may petition either the court in the county in which the parolee is being supervised or the court in the county in which the alleged violation of supervision occurred, to revoke parole. Provides that upon a finding that the person has violated the conditions of parole, the court has authority to do any of the following:

- Return the person to parole supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail.
- Revoke parole and order the person to confinement in a county jail.
- Refer the person to a reentry court or other evidence-based program in the court's discretion.
  (Pen. Code, § 3000.08, subd. (f).)

Existing law requires the supervising county agency to petition the court to revoke, modify, or terminate PRCS if it has determined, following application of its assessment processes, that intermediate sanctions are not appropriate. Provides that upon a finding that the person has violated the conditions of PRCS, the revocation hearing officer has authority to do all of the following:

- Return the person to PRCS with modifications of conditions, if appropriate, including a period of incarceration in a county jail.
- Revoke and terminate PRCS and order the person to confinement in a county jail.
- Refer the person to a reentry court or other evidence-based program in the court's discretion.
  (Pen. Code, § 3455, subd. (a).)

Existing law specifies that if parole is revoked or modified and confinement is ordered, the person may be incarcerated in the county jail for a period not to exceed 180 days. (Pen. Code, § 3000.08, subd. (g).)

Existing law specifies that if PRCS is revoked or modified and confinement is ordered, the person may be incarcerated in the county jail for a period not to exceed 180 days for each custodial sanction. (Pen. Code, § 3455, subd. (d).)

Existing law requires CDCR to provide local law enforcement agencies with specified information about a person released on parole or PRCS. (Pen. Code, § 3003, subd. (e)(1).)

This bill specifies that the parole board must consider an individual's entire criminal history, including all current and past convictions, in determining whether to grant parole.

This bill requires CDCR to provide a local law enforcement agency with copies of a person's record of supervision during any period of parole.

This bill requires the supervising agency to petition the court to modify, revoke, or terminate PRCS if a person on PRCS has violated the terms of their release for a third time.

This bill permits a peace officer, including a probation officer, to arrest a person on PRCS if the person has failed to appear at a hearing to revoke, modify, or terminate PRCS.

This bill requires the probation department to notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.

COMMENTS

1. Need For This Bill

According to the author:

> One of the primary responsibilities of government is to ensure people feel safe in their communities – safe in their home, at the park, or walking to school. There is no question that monitoring repeat offenders will help make our community safer for residents and law enforcement. SB 1262 will help address the crimes being committed by repeat offenders and prevent future tragedies by holding these individuals accountable for their actions when they violate the terms of PRCS.

2. Changes to Parole Due to Realignment

Prior to Realignment in 2011, individuals released from prison were placed on parole and supervised in the community by parole agents working for CDCR's Division of Adult Parole Operations (DAPO). If it was alleged that a parolee had violated a condition of parole, a revocation hearing before the Board of Parole Hearings (BPH) would be held. If parole was revoked, the person would be returned to state prison for violating parole.

Realignment shifted the supervision of some individuals released from prison from CDCR parole agents to county probation departments. Parole for individuals released from the state's prisons

on or after October 1, 2011 is limited to those individuals whose term was for a serious or violent felony; who were serving a Three-Strikes sentence; who are classified as high-risk sex offenders; or who are required to undergo treatment as mentally disordered offenders. All other individuals released from prison are subject to up to three years of PRCS under local supervision.

Realignment also changed where an individual is incarcerated for violating the terms of supervision. Most individuals can no longer be returned to state prison for violating a term of supervision. Rather, these individuals serve the revocation term in county jail. The only individuals who are eligible for return to prison for violating parole are life-term inmates paroled pursuant to Penal Code section 3000.1 (e.g., those convicted of murder, specific life-term sex offenses, etc.).

Additionally, Realignment changed the process for revocation hearings, which was implemented in phases. Until July 1, 2013, individuals supervised on parole by state agents continued to have revocation hearings before the BPH. After July 1, 2013, trial courts assumed responsibility for holding all revocation hearings for those individuals who remain under CDCR's jurisdiction. In contrast, since the inception of Realignment, individuals placed on PRCS appear before the trial court for revocation hearings.

3. Flash Incarceration

Changes to the supervision of individuals released from prison included establishing a new sanction for a violation of supervised release known as flash incarceration. Flash incarceration is defined as "a period of detention in county jail due to a violation of a parolee's conditions of parole" that "can range between one and 10 consecutive days." (Pen. Code, §§ 3000.08, subd. (e), & 3455, subd. (c).)

With the creation of PRCS, the supervising agency was authorized to employ "flash incarceration" as an "intermediate sanction" for responding to both parole and PRCS violations. (See Pen. Code, §§ 3454, subd. (c), & 3000.08 (e).) The Legislative Analyst's Office explained the context and reasoning behind "flash incarceration" as part of realignment: "[T]he realignment legislation provided counties with some additional options for how to manage the realigned offenders. . . . [T]he legislation allows county probation officers to return offenders who violate the terms of their community supervision to jail for up to ten days, which is commonly referred to as "flash incarceration." The rationale for using flash incarceration is that short terms of incarceration when applied soon after the offense is identified can be more effective at deterring subsequent violations than the threat of longer terms following what can be lengthy criminal proceedings." (Legislative Analyst's Office, *The 2012–13 Budget: The 2011 Realignment of Adult Offenders—An Update* (Feb. 22, 2012), pp. 8-9, available at <https://lao.ca.gov/analysis/2021/crim_justice/2011-realignment-of-adult-offenders-022212.pdf>.)

The intent of intermediate sanctions, like flash incarceration, is to balance holding offenders accountable for violating the conditions of supervision while creating shorter disruptions from work, home, or programming which often results from longer-term revocations. Because flash incarceration has been used successfully by probation officers on persons supervised under PRCS, the Chief Probation Officers sponsored SB 266 (Block), Chapter 706, Statutes of 2016, to extend the use of flash incarceration to individuals granted probation or placed on mandatory supervision. The statute authorizing the use of flash incarceration contains a sunset provision which has been extended several times, most recently to January 1, 2028.

This bill limits the use of flash incarceration, and all intermediate sanctions, on individuals on PRCS. Specifically, the bill prohibits the use of any intermediate sanction if the person on PRCS has violated the terms of release for a third time. In that instance, the supervising agency must file a petition to revoke, modify, or terminate PRCS.

4. Parole Suitability

Incarcerated individuals who are indeterminately sentenced must be granted parole by BPH in order to be released from prison. The Penal Code provides that the parole board "shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." (Pen. Code, § 3041, subd. (b).) The fundamental consideration when making a determination about an individual's suitability for parole is whether the individual currently poses an unreasonable risk of danger to society if released from prison. (*In re Shaputis* (2008) 44 Cal.4th 1241.) The decision whether to grant parole is an inherently subjective determination. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 655.)

In deciding whether to grant parole, BPH must consider all relevant and reliable information available. (Cal. Code Regs., tit. 15, § 2281, subd. (b).) Factors the BPH must consider include the nature of the commitment offense, including the circumstances of the person's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the individual may safely be released to the community; and any other information which bears on the individual's suitability for release. (Cal. Code Regs., tit. 15, §§ 2281, subd. (b).) The regulations further state that "[c]ircumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability." (*Ibid*.)

Although the parole board is required to consider the circumstances of the offense, the California Supreme Court has held that the parole board may not rely solely on the commitment offense when deciding to grant parole unless the circumstances of the offense "continue to be predictive of current dangerousness." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1221.) The parole board is prohibited from requiring an admission of guilt to any crime for which an incarcerated person was committed to CDCR when considering whether to grant an inmate parole. (Pen. Code, § 5011, subd. (b).) However, "an implausible denial of guilt may support a finding of current dangerousness, without in any sense requiring the inmate to admit guilt as a condition of parole….it is not the failure to admit guilt that reflects a lack of insight, but the fact that the denial is factually unsupported or otherwise lacking in credibility." (*In re Shaputis* (2011) 53 Cal.4th 192, 216.) Although the term "insight" is not explicitly included in the regulations, the regulations "direct the Board to consider the inmate's 'past and present attitude toward the crime' and 'the presence of remorse,' expressly including indications that the inmate 'understands the nature and magnitude of the offense'…. fit[ting] comfortably within the descriptive category of 'insight.'" (*Id*. at 218 (citations omitted).)

Additional guidance for making parole suitability determinations is provided in the regulations which list circumstances tending to show suitability and those tending to show unsuitability.

(Cal. Code of Regs., tit. 15, § 2281, subds. (c), (d).) The circumstances which tend to show suitability and unsuitability for parole are set forth as general guidelines, and the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. (Cal. Code of Regs., tit. 15, § 2281, subds. (c) & (d).)

This bill requires BPH to consider an individual's entire criminal history, not just the most recent commitment offense, in determining whether the individual is suitable for parole. As noted above, BPH is already required to consider this information per regulations for individuals who were indeterminately sentenced. Proposition 57 regulations, which pertain to the non-violent parole process, also require BPH to consider an incarcerated individual's criminal history.

5. AB 1408 (Calderon)

This bill is substantially similar to AB 1408 (Calderon) which was vetoed by Governor Brown in 2017. In his veto, Governor Brown wrote:

> This bill—among other requirements placed on both the local and state correctional systems—would limit local probation departments' ability to use intermediate sanctions for individuals under post release community supervision.
>
> This bill was introduced as a response to the senseless and horrifying murder of a Whittier police officer, an event that shocked and saddened our entire state. Unfortunately—as history has taught us repeatedly—legislative responses to specific individual crimes often do not produce the intended results, and more often than not are found to be counterproductive once they are implemented.
>
> I believe this is such a bill, and while I appreciate the author's sincere attempt to respond to a truly terrible crime, I do not agree that a three-strikes and you're out approach is the correct solution. This measure would undermine the sound discretion of local probation authorities who, by training and sworn responsibility, are in the best position to make determinations on what type of sanctions or punishment should be imposed.

The provisions of AB 1408 were incorporated into Proposition 20 which was rejected by the voters in the November 2020 election.

6. Amendment

Root & Rebound opposes this bill unless it is amended. In its position letter, the organization states: "[T]he bill will needlessly incarcerate people on PRCS for conduct that is neither criminal nor harmful. Technical violations of supervision are violations that do not amount to a new crime. These violations are frequently for conduct as minor as having a low battery on one's GPS monitor, arriving 15 minutes late to a meeting with a probation officer, or arriving home after curfew…[C]lients commonly face incarceration for technical violations of supervision, and even short flash incarcerations are incredibly harmful and destabilizing." In order to address these concerns, Root & Rebound has suggested the following amendments:

Penal Code section 3455.

(a) If the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions as authorized in subdivision (b) of Section 3454 are not appropriate, ~~the~~ *or if the supervised person has violated the terms of their release for a third time* ***and has committed a new criminal offense****, the* supervising county agency shall petition the court pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision. At any point during the process initiated pursuant to this section, a person may waive, in writing, ~~his or her~~ *their* right to counsel, admit the violation of ~~his or her~~ *their* postrelease community supervision, waive a court hearing, and accept the proposed modification of ~~his or her~~ *their* postrelease community supervision. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of postrelease community supervision, the circumstances of the alleged underlying violation, the history and background of the violator, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports.

7. Argument in Support

The League of California Cities writes:

> [T]his bill would ensure law enforcement agencies have the necessary comprehensive information regarding those on parole and post-release community supervision in their counties. The California Department of Corrections and Rehabilitation would be mandated to provide locals with copies of an inmate's records of supervision during any period of parole.
>
> Further, this bill would require the Board of Parole Hearings to consider, during its deliberation about whether to grant an individual parole or supervised community custody, the entire criminal history of the individual. This is a critical provision due to the fact that existing policy only considers the offender's most recent commitment offense. SB 1262 requires the county supervising the release of individuals under community supervision to petition the court to revoke, modify, or terminate any person's post release community supervision after their third violation.
>
> … SB 1262 (Archuleta) prioritizes accountability to prevent repeat offenders on community supervision and needed oversight information to ensure the appropriate persons receive this type of release…

8. Argument in Opposition

According to the California Public Defenders Association:

> SB 1262 is superfluous. To the extent it requires the Board of Parole Hearings to consider an inmate's entire criminal history, that is already how parole consideration is done. The requirement that supervising authorities must seek revocation, modification or termination of Post Release Community Supervision (PRCS) upon a third violation undercuts the ability of local authorities, who can do this already without this new law.

As far as parole suitability goes … California Code of Regulations, Title 15, Section 2281, [] explicitly includes "past criminal history" as a factor that the Board shall consider. Penal Code §3041(b)(1), requires the Board to consider past criminality. Thus, this statute which states that an en banc Board "shall consider the entire criminal history of the inmate" adds nothing.

The amendment to Penal Code section 3455 is really just another version of "three strikes and you are out," except in the context of PRCS. Unlike the three strikes sentencing law, however, the change here doesn't really add anything except a reporting requirement that fails to consider the nature of PRCS and PRCS violations.

People who are on PRCS (and not parole) are there because their crimes are non-serious, non-violent, and non-sexual. Should there be serous PRCS violations, the supervising authority can petition the court to revoke supervision. On the other hand, many violations are non-substantive, such as being late to a supervision meeting or having a GPS battery die. The supervising agency is perfectly capable of deciding when a person should be reported to a court for a violation hearing.

In addition, persons who violate PRCS are subject to intermediate sanctions, such as modification or termination of PRCS and Flash Incarceration. If intermediate sanctions are ineffective, or the supervising agency determines not to impose those sanctions, then formal revocation proceedings may begin. In fact, if the supervising agency determines that intermediate sanctions are not appropriate, then the agency *must* petition the court to revoke supervision.

SB 1262, then, "requires" the supervision agency to do that which it either already can do or must do. … It does take away some up-front discretion, but ultimately nothing in this bill mandates any punishment – which is up to a court. As it should be.

-- END --