SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No:	SB 852	**Hearing Date:**	April 25, 2023
Author:	Rubio		
Version:	March 21, 2023		
Urgency:	No	**Fiscal:**	No
Consultant:	SJ		

Subject: ***Searches: supervised persons***

HISTORY

Source: ACLU California Action

Prior Legislation: AB 1440 (Kalra), Ch. 116, Stats. 2017

Support: California Immigrant Policy Center; California Public Defenders Association; California Rural Legal Assistance Foundation; Coalition for Humane Immigrant Rights; Immigrant Defenders Law Center

Opposition: None known

PURPOSE

The purpose of this bill is to: 1) clarify that a person who is granted probation is subject to search or seizure as part of their terms and conditions only by a probation officer or other peace officer; and 2) clarify that only a probation officer or peace officer may be designated by a correctional administrator to conduct searches of the residences of individuals participating in home detention programs or electronic monitoring programs.

Existing law declares specific persons to be peace officers. (Pen. Code, §§ 830-830.55.)

Existing law clarifies that U.S. Immigration and Customs Enforcement officers and U.S. Customs and Border Protection officers are not California peace officers. (Pen. Code § 830.85.)

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 provides, notwithstanding any other law, that the board of supervisors of any county may authorize the correctional administrator, as defined, to offer a program under which the incarcerated individuals committed to a county jail or other county correctional facility or granted probation, or incarcerated individuals participating in a work furlough program, may voluntarily participate or involuntarily be placed in a home detention program during their

sentence in lieu of confinement in a county jail or other county correctional facility or program under the auspices of the probation officer. (Pen. Code, § 1203.016, subd. (a).)

Existing law defines "correctional administrator" to mean the sheriff, probation officer, or director of the county department of corrections. (Pen. Code, § 1203.016, subd. (g).)

Existing law authorizes the board of supervisors, in consultation with the correctional administrator, to prescribe reasonable rules and regulations under which a home detention program may operate. Requires the incarcerated individual to give consent in writing to participate in the home detention program as a condition of participation in the program, and to agree in writing to comply or, for involuntary participation, requires the incarcerated individual to be informed in writing that the individual must comply, with the rules and regulations of the program, including, that the participant must admit any person or agent designated by the correctional administrator into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the detention. (Pen. Code, § 1203.016, subd. (b).)

Existing law provides, notwithstanding any other provision of law, upon determination by the correctional administrator that conditions in a jail facility warrant the necessity of releasing incarcerated individuals sentenced for misdemeanors prior to them serving the full amount of a given sentence due to lack of jail space, the board of supervisors of any county may authorize the correctional administrator to offer a program under which incarcerated individuals committed to a county jail or other county correctional facility or granted probation, or incarcerated individuals participating in a work furlough program, may be required to participate in an involuntary home detention program, which shall include electronic monitoring, during their sentence in lieu of confinement in the county jail or other county correctional facility or program under the auspices of the probation officer. (Pen. Code, § 1203.017, subd. (a).)

Existing law authorizes the board of supervisors to prescribe reasonable rules and regulations under which an involuntary home detention program may operate. Requires the incarcerated person to be informed in writing that he or she must comply with the rules and regulations of the program, including, that the participant must admit any peace officer designated by the correctional administrator into his or her residence at any time for purposes of verifying the participant's compliance with the conditions of his or her detention. (Pen. Code, § 1203.017, subd. (b).)

Existing law provides, notwithstanding any other law, the board of supervisors of any county may authorize the correctional administrator, as defined, to offer a program under which incarcerated individuals being held in lieu of bail in a county jail or other county correctional facility may participate in an electronic monitoring program if specified conditions are met. (Pen. Code, § 1203.018, subd. (b).)

Existing law authorizes the board of supervisors, after consulting with the sheriff and district attorney, to prescribe reasonable rules and regulations under which an electronic monitoring program may operate. Requires the participant to give consent in writing to participate as a condition of participation in the electronic monitoring program and to agree in writing to comply with the rules and regulations of the program, including, that the participant must admit any person or agent designated by the correctional administrator into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the detention. (Pen. Code, § 1203.018, subd. (d).)

Existing law requires all persons released by a court at or after the initial hearing and prior to a formal probation violation hearing, as specified, be released on their own recognizance unless the court finds, by clear and convincing evidence, that the particular circumstances of the case require the imposition of an order to provide reasonable protection to the public and reasonable assurance of the person's future appearance in court. (Pen. Code, § 1203.25, subd. (a).)

Existing law provides that reasonable conditions of release may include, but are not limited to, reporting telephonically to a probation officer, protective orders, a global positioning system (GPS) monitoring device or other electronic monitoring, or an alcohol use detection device. (Pen. Code, § 1203.25, subd. (b).)

Existing law requires that any incarcerated individual who is eligible for release on parole or postrelease community supervision be given notice that he or she is subject to terms and conditions of his or her release from prison. Requires the notice to include several things, including an advisement that he or she is subject to search or seizure by a probation or parole officer or other peace officer at any time of the day or night, with or without a search warrant or with or without cause. (Pen. Code, § 3067, subds. (a), (b).)

This bill provides that a person who is granted probation is subject to search or seizure as part of their terms and conditions only by a probation officer or other peace officer.

This bill clarifies that a participant of a home detention program must admit any probation officer or peace officer designated by the correctional administrator into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the participant's detention.

This bill specifies that reasonable conditions of release for a person released by a court on their own recognizance includes search and seizure by a probation officer or other peace officer.

This bill includes several legislative findings and declarations.

COMMENTS

1. Need For This Bill

According to the author:

> California's courageous law enforcement professionals have worked hard to build trust with local communities in order to provide for the public's safety. That trust is jeopardized when ICE agents impersonate probation officers as a tactic to compel and coerce people into cooperating with them.
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> SB 852 – also known as the Prohibiting Rogue Officers Tricks and Ensuring Community Trust (PROTECT) Act – will safeguard and protect the public's trust in law enforcement by prohibiting ICE agents from falsely identifying themselves as probation officers. This will limit ICE officers' ability to use unlawful ruse tactics that abuse the rights of probationers when conducing home enforcement operations. Although ICE officers are not likely authorized to exploit probation, given that the existing definition of "peace officer" should apply to all probation

> sentences, they nevertheless exploit the ambiguity between law enforcement officer and peace officer. In this way, ICE officers arrest probationers using methods that would be unconstitutional if used on non-probationers. The community as a whole, but particularly the Latino community, has or may be impacted by ICE's unlawful ruse tactics, including the use of probation ruses.
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> By specifying that probation searches can only be conducted by California probation officers or peace officers, the PROTECT Act will put an end to these tactics and reassure all community members that they can interact with state and local law enforcement without fear of deportation.

2. Background

Several provisions of law declare specific persons to be peace officers. (Pen. Code, §§ 830-830.55.) As a result of aggressive immigration enforcement, Penal Code section 830.85 was enacted in 2017 to clarify that U.S. ICE and U.S. Customs and Border Protection officers are not California peace officers. The supporters of this bill assert that ICE officers have posed as probation officers in order to gain access to individuals on probation who are subject to home searches. This bill provides that a person who is granted probation is subject to search or seizure as part of their terms and conditions only by a probation officer or other peace officer. This bill also seeks to amend several code sections related to probation when the person is a participant in a home detention or electronic monitoring program to clarify that a search of the person's residence must be performed only by a probation officer or other peace officer. Finally, this bill specifies that reasonable conditions of release for a person released by a court on their own recognizance includes search and seizure by a probation officer or other peace officer.

3. Argument in Support

The Coalition for Humane Immigrant Rights writes:

> SB 852 … would eliminate ambiguities in the terms and conditions of probation under California law, which does not currently limit searches to probation officers or peace officers. These conditions have been exploited by U.S. Immigration and Customs Enforcement (ICE) officers when conducting home enforcement operations. The changes made by SB 852 will prohibit ICE officers from relying on and exploiting a person's probation status when conducting home enforcement operations.
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> This proposal follows previous, similar reforms. In 2017, the California Legislature clarified that ICE officers are not California peace officers. See Cal. Pen. Code § 830.85. However, California Penal Code Section 1203, governing the rules of probation, does not similarly limit searches to probation officers or peace officers. California Penal Code Section 3067, which discusses the terms and conditions of parole, limits "searches and seizures" to be conducted "by a probation or parole officer *or other* peace officer." Cal. Pen. Code § 3067(b)(3) (emphasis added).
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> In practice, the absence of this limitation, has allowed ICE officers to target individuals on probation for enforcement operations. In conducting enforcement operations, particularly at the home, ICE officers commonly employ a "probation

ruse" – e.g., ICE represents themselves as probation officers, claim they are conducting a probation check, or after knocking on the person's door, ICE (without identifying themselves as such) ask to confirm that the person is on probation and ask them to either step outside of their home or grant officers consent to enter their home. Individuals who are on probation typically have no choice but to comply with officers' requests because the terms of their probation require them to permit probation officers to access their homes and persons. Under current law, ICE officers likely are not authorized to exploit probation in this manner (because the existing definition of "peace officer" should apply to all probation sentences). Yet, ICE regularly exploits the ambiguity between "law enforcement" and "peace officer" in regard to probation in order to arrest probationers using methods that would be unconstitutional if used on non-probationers.

In the Los Angeles area of responsibility alone, ICE has conducted at least 19,000 "at-large" arrests from 2014 to 2021. A sizable number of these arrests occur at residences. In April 2020, the ACLU of Southern California filed *Kidd v. Mayorkas*, a lawsuit challenging, among other things, probation ruses.

By limiting probation searches and seizures to be conducted by probation officers or peace officers, SB 852 would not allow ICE officers to rely on, and exploit, a person's probation status when conducting home enforcement operations.

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