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SB-517 Supervised persons: release. (2015-2016)

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Senate Bill No. 517

CHAPTER 61

An act to amend Sections 1203.2, 3000.08, 3056, and 3455 of the Penal Code, relating to supervised persons.

[Approved by Governor July 06, 2015. Filed with Secretary of State July 06, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 517, Monning. Supervised persons: release.

Existing law allows a probation officer, parole officer, or peace officer to arrest a person without warrant or other process during the period that a person is released on probation, conditional sentence or summary probation, or mandatory supervision, or when the person is subject to revocation of postrelease community supervision or parole supervision, if the officer has probable cause to believe that the supervised person is violating the terms of his or her supervision.

This bill would allow a court to order the release of a supervised person from custody under any terms and conditions the court deems appropriate whenever a supervised person is arrested, with or without a warrant or the filing of a petition for revocation of supervision, unless the supervised person is otherwise serving a period of flash incarceration. The bill would make conforming changes to other provisions of existing law dealing with the arrest of supervised persons.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1203.2 of the Penal Code is amended to read:

1203.2. (a) At any time during the period of supervision of a person (1) released on probation under the care of a probation officer pursuant to this chapter, (2) released on conditional sentence or summary probation not under the care of a probation officer, (3) placed on mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, (4) subject to revocation of postrelease community supervision pursuant to Section 3455, or (5) subject to revocation of parole supervision pursuant to Section 3000.08, if any probation officer, parole officer, or peace officer has probable cause to believe that the supervised person is violating any term or condition of his or her supervision, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring him or her before the court or the court may, in its discretion, issue a warrant for his or her rearrest. Notwithstanding Section 3056, and unless the supervised person is otherwise serving a period of flash incarceration, whenever a supervised person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation as described in subdivision (b), the court may order the release of a supervised person from custody under any terms and conditions the court deems appropriate. Upon rearrest, or upon the issuance of a warrant for rearrest, the court may revoke and terminate the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that

the person has violated any of the conditions of his or her supervision, has become abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless of whether he or she has been prosecuted for those offenses. However, the court shall not terminate parole pursuant to this section. Supervision shall not be revoked for failure of a person to make restitution imposed as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be consistent with a person's ability to pay. The revocation, summary or otherwise, shall serve to toll the running of the period of supervision.

(b) (1) Upon its own motion or upon the petition of the supervised person, the probation or parole officer, or the district attorney, the court may modify, revoke, or terminate supervision of the person pursuant to this subdivision, except that the court shall not terminate parole pursuant to this section. The court in the county in which the person is supervised has jurisdiction to hear the motion or petition, or for those on parole, either the court in the county of supervision or the court in the county in which the alleged violation of supervision occurred. A person supervised on parole or postrelease community supervision pursuant to Section 3455 may not petition the court pursuant to this section for early release from supervision, and a petition under this section shall not be filed solely for the purpose of modifying parole. This section does not prohibit the court in the county in which the person is supervised or in which the alleged violation of supervision occurred from modifying a person's parole when acting on the court's own motion or a petition to revoke parole. The court shall give notice of its motion, and the probation or parole officer or the district attorney shall give notice of his or her petition to the supervised person, his or her attorney of record, and the district attorney or the probation or parole officer, as the case may be. The supervised person shall give notice of his or her petition to the probation or parole officer and notice of any motion or petition shall be given to the district attorney in all cases. The court shall refer its motion or the petition to the probation or parole officer. After the receipt of a written report from the probation or parole officer, the court shall read and consider the report and either its motion or the petition and may modify, revoke, or terminate the supervision of the supervised person upon the grounds set forth in subdivision (a) if the interests of justice so require.

(2) The notice required by this subdivision may be given to the supervised person upon his or her first court appearance in the proceeding. Upon the agreement by the supervised person in writing to the specific terms of a modification or termination of a specific term of supervision, any requirement that the supervised person make a personal appearance in court for the purpose of a modification or termination shall be waived. Prior to the modification or termination and waiver of appearance, the supervised person shall be informed of his or her right to consult with counsel, and if indigent the right to secure court appointed counsel. If the supervised person waives his or her right to counsel a written waiver shall be required. If the supervised person consults with counsel and thereafter agrees to a modification, revocation, or termination of the term of supervision and waiver of personal appearance, the agreement shall be signed by counsel showing approval for the modification or termination and waiver.

(c) Upon any revocation and termination of probation the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced. However, if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke the suspension and order that the judgment shall be in full force and effect. In either case, the person shall be delivered over to the proper officer to serve his or her sentence, less any credits herein provided for.

(d) In any case of revocation and termination of probation, including, but not limited to, cases in which the judgment has been pronounced and the execution thereof has been suspended, upon the revocation and termination, the court may, in lieu of any other sentence, commit the person to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities if he or she is otherwise eligible for that commitment.

(e) If probation has been revoked before the judgment has been pronounced, the order revoking probation may be set aside for good cause upon motion made before pronouncement of judgment. If probation has been revoked after the judgment has been pronounced, the judgment and the order which revoked the probation may be set aside for good cause within 30 days after the court has notice that the execution of the sentence has commenced. If an order setting aside the judgment, the revocation of probation, or both is made after the expiration of the probationary period, the court may again place the person on probation for that period and with those terms and conditions as it could have done immediately following conviction.

(f) As used in this section, the following definitions shall apply:

(1) "Court" means a judge, magistrate, or revocation hearing officer described in Section 71622.5 of the Government Code.

(2) "Probation officer" means a probation officer as described in Section 1203 or an officer of the agency designated by the board of supervisors of a county to implement postrelease community supervision pursuant to Section 3451.

(3) "Supervised person" means a person who satisfies any of the following:

(A) He or she is released on probation subject to the supervision of a probation officer.

(B) He or she is released on conditional sentence or summary probation not under the care of a probation officer.

(C) He or she is subject to mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170.

(D) He or she is subject to revocation of postrelease community supervision pursuant to Section 3455.

(E) He or she is subject to revocation of parole pursuant to Section 3000.08.

(g) This section does not affect the authority of the supervising agency to impose intermediate sanctions, including flash incarceration, to persons supervised on parole pursuant to Section 3000.8 or postrelease community supervision pursuant to Part 3 (commencing with Section 3450) of Title 2.05.

SEC. 2. Section 3000.08 of the Penal Code is amended to read:

3000.08. (a) A person released from state prison prior to or on or after July 1, 2013, after serving a prison term, or whose sentence has been deemed served pursuant to Section 2900.5, for any of the following crimes is subject to parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county in which the parolee is released, resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody:

(1) A serious felony as described in subdivision (c) of Section 1192.7.

(2) A violent felony as described in subdivision (c) of Section 667.5.

(3) A crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12.

(4) Any crime for which the person is classified as a high-risk sex offender.

(5) Any crime for which the person is required, as a condition of parole, to undergo treatment by the State Department of State Hospitals pursuant to Section 2962.

(b) Notwithstanding any other law, all other offenders released from prison shall be placed on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450).

(c) At any time during the period of parole of a person subject to this section, if any parole agent or peace officer has probable cause to believe that the parolee is violating any term or condition of his or her parole, the agent or officer may, without warrant or other process and at any time until the final disposition of the case, arrest the person and bring him or her before the court, or the court may, in its discretion, issue a warrant for that person's arrest pursuant to Section 1203.2. Notwithstanding Section 3056, and unless the parolee is otherwise serving a period of flash incarceration, whenever a supervised person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation as described in subdivision (f), the court may order the release of the parolee from custody under any terms and conditions the court deems appropriate.

(d) Upon review of the alleged violation and a finding of good cause that the parolee has committed a violation of law or violated his or her conditions of parole, the supervising parole agency may impose additional and appropriate conditions of supervision, including rehabilitation and treatment services and appropriate incentives for compliance, and impose immediate, structured, and intermediate sanctions for parole violations, including flash incarceration in a city or a county jail. Periods of "flash incarceration," as defined in subdivision (e) are encouraged as one method of punishment for violations of a parolee's conditions of parole. This section does not preclude referrals to a reentry court pursuant to Section 3015.

(e) "Flash incarceration" is a period of detention in a city or a county jail due to a violation of a parolee's conditions of parole. The length of the detention period can range between one and 10 consecutive days. Shorter, but if necessary more frequent, periods of detention for violations of a parolee's conditions of parole shall appropriately punish a parolee while preventing the disruption in a work or home establishment that typically arises from longer periods of detention.

(f) If the supervising parole agency has determined, following application of its assessment processes, that intermediate sanctions up to and including flash incarceration are not appropriate, the supervising parole agency shall, pursuant to Section 1203.2, 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. At any point during the process initiated pursuant to this section, a parolee may waive, in writing, his or her right to counsel, admit the parole violation, waive a court hearing, and accept the proposed parole modification or revocation. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of parole, the circumstances of the alleged underlying violation, the history and background of the parolee, 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. Upon a finding that the person has violated the conditions of parole, the court shall have authority to do any of the following:

- (1) Return the person to parole supervision with modifications of conditions, if appropriate, including a period of incarceration in county jail.
- (2) Revoke parole and order the person to confinement in the county jail.
- (3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.

(g) Confinement pursuant to paragraphs (1) and (2) of subdivision (f) shall not exceed a period of 180 days in the county jail.

(h) Notwithstanding any other law, if Section 3000.1 or paragraph (4) of subdivision (b) of Section 3000 applies to a person who is on parole and the court determines that the person has committed a violation of law or violated his or her conditions of parole, the person on parole shall be remanded to the custody of the Department of Corrections and Rehabilitation and the jurisdiction of the Board of Parole Hearings for the purpose of future parole consideration.

(i) Notwithstanding subdivision (a), any of the following persons released from state prison shall be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation for a period of parole up to three years or the parole term the person was subject to at the time of the commission of the offense, whichever is greater:

(1) The person is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, and was subject to a period of parole exceeding three years at the time he or she committed a felony for which they were convicted and subsequently sentenced to state prison.

(2) The person was subject to parole for life pursuant to Section 3000.1 at the time of the commission of the offense that resulted in a conviction and state prison sentence.

(j) Parolees subject to this section who have a pending adjudication for a parole violation on July 1, 2013, are subject to the jurisdiction of the Board of Parole Hearings. Parole revocation proceedings conducted by the Board of Parole Hearings prior to July 1, 2013, if reopened on or after July 1, 2013, are subject to the jurisdiction of the Board of Parole Hearings.

(k) Except as described in subdivision (c), any person who is convicted of a felony that requires community supervision and who still has a period of state parole to serve shall discharge from state parole at the time of release to community supervision.

(l) Any person released to parole supervision pursuant to subdivision (a) shall, regardless of any subsequent determination that the person should have been released pursuant to subdivision (b), remain subject to subdivision (a) after having served 60 days under supervision pursuant to subdivision (a).

SEC. 3. Section 3056 of the Penal Code is amended to read:

3056. (a) Prisoners on parole shall remain under the supervision of the department but shall not be returned to prison except as provided in subdivision (b) or as provided by subdivision (c) of Section 3000.09. A parolee awaiting a parole revocation hearing may be housed in a county jail while awaiting revocation proceedings. If a parolee is housed in a county jail, he or she shall be housed in the county in which he or she was arrested or the county in which a petition to revoke parole has been filed or, if there is no county jail in that county, in the housing facility with which that county has contracted to house jail inmates. Additionally, except as provided by subdivision (c) of Section 3000.09, upon revocation of parole, a parolee may be housed in a county jail for a maximum of 180 days per revocation. When housed in county facilities, parolees shall be under the sole legal custody and jurisdiction of local county facilities. A parolee shall remain under the sole legal custody and jurisdiction of the local county or local correctional administrator, even if placed in an alternative custody program in lieu of incarceration, including, but not limited to, work furlough and electronic home detention. When a parolee is under the legal custody and jurisdiction of a county facility awaiting parole revocation proceedings or upon revocation, he or she shall not be under the parole supervision or jurisdiction of the department. Unless otherwise serving a period of flash incarceration, whenever a parolee who is subject to this section has been arrested, with or without a warrant or the filing of a petition for revocation with the court, the court may order the release of the parolee from custody under any terms and conditions the court deems appropriate. When released from the county facility or county alternative custody program following a period of custody for revocation of parole or because no violation of parole is found, the parolee shall be returned to the parole supervision of the department for the duration of parole.

(b) Inmates paroled pursuant to Section 3000.1 may be returned to prison following the revocation of parole by the Board of Parole Hearings until July 1, 2013, and thereafter by a court pursuant to Section 3000.08.

(c) A parolee who is subject to subdivision (a) but who is under 18 years of age may be housed in a facility of the Division of Juvenile Facilities.

SEC. 4. Section 3455 of the Penal Code is amended to read:

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 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 right to counsel, admit the violation of his or her postrelease community supervision, waive a court hearing, and accept the proposed modification of his or her 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. Upon a finding that the person has violated the conditions of postrelease community supervision, the revocation hearing officer shall have authority to do all of the following:

- (1) Return the person to postrelease community supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail.
- (2) Revoke and terminate postrelease community supervision and order the person to confinement in a county jail.
- (3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.

(b) (1) At any time during the period of postrelease community supervision, if a peace officer has probable cause to believe a person subject to postrelease community supervision is violating any term or condition of his or her release, the officer may, without a warrant or other process, arrest the person and bring him or her before the supervising county agency established by the county board of supervisors pursuant to subdivision (a) of Section 3451. Additionally, an officer employed by the supervising county agency may seek a warrant and a court or its designated hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the authority to issue a warrant for that person's arrest.

(2) The court or its designated hearing officer shall have the authority to issue a warrant for a person who is the subject of a petition filed under this section who has failed to appear for a hearing on the petition or for any reason in the interests of justice, or to remand to custody a person who does appear at a hearing on the petition for any reason in the interests of justice.

(3) Unless a person subject to postrelease community supervision is otherwise serving a period of flash incarceration, whenever a person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation, the court may order the release of the person under supervision from custody under any terms and conditions the court deems appropriate.

(c) The revocation hearing shall be held within a reasonable time after the filing of the revocation petition. Except as provided in paragraph (3) of subdivision (b), based upon a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or that the person may not appear if released from custody, or for any reason in the interests of justice, the supervising county agency shall have the authority to make a determination whether the person should remain in custody pending the first court appearance on a petition to revoke postrelease community supervision, and upon that determination, may order the person confined pending his or her first court appearance.

(d) Confinement pursuant to paragraphs (1) and (2) of subdivision (a) shall not exceed a period of 180 days in a county jail for each custodial sanction.

(e) A person shall not remain under supervision or in custody pursuant to this title on or after three years from the date of the person's initial entry onto postrelease community supervision, except when his or her supervision is tolled pursuant to Section 1203.2 or subdivision (b) of Section 3456.