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AB-433 Probation: notice to victim. (2019-2020)

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Assembly Bill No. 433

CHAPTER 573

An act to amend Section 1203.3 of the Penal Code, relating to probation.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 433, Ramos. Probation: notice to victim.

Existing law allows a court to revoke, modify, or change its order of suspension of imposition or execution of sentence at any time during a term of probation and, when the ends of justice will be subverted, and the good conduct and reform of the person held on probation warrants it, to terminate the period of probation and discharge the person.

This bill would require that the prosecuting attorney be given 2 days' written notice prior to a hearing to terminate probation early. The bill would require the prosecuting attorney to notify the victim if the victim requested to be notified about the progress of the case, and to request a continuance of the hearing if the victim advises the prosecuting attorney that there is an outstanding restitution order or restitution fine. By imposing new duties on a prosecuting attorney, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

SECTION 1. Section 1203.3 of the Penal Code is amended to read:

1203.3. (a) The court has the authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence. The court may at any time when the ends of justice will be subverted thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person held. The court also has the authority at any time during the term of mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170 to revoke, modify, or change the conditions of the court's order suspending the execution of the concluding portion of the supervised person's term.

(b) The exercise of the court's authority in subdivision (a) to revoke, modify, or change probation or mandatory supervision, or to terminate probation, is subject to the following:

(1) Before any sentence or term or condition of probation or condition of mandatory supervision is modified, a hearing shall be held in open court before the judge. The prosecuting attorney shall be given a two-day written notice and an opportunity to be heard on the matter, except that, as to modifying or terminating a protective order in a case involving domestic violence, as defined in Section 6211 of the Family Code, the prosecuting attorney shall be given a five-day written notice and an opportunity to be heard.

(A) If the sentence or term or condition of probation or the term or any condition of mandatory supervision is modified pursuant to this section, the judge shall state the reasons for that modification on the record.

(B) As used in this section, modification of sentence shall include reducing a felony to a misdemeanor.

(2) (A) An order shall not be made without written notice first given by the court or the clerk thereof to the proper probation officer of the intention to revoke, modify, or change its order.

(B) Before an order terminating probation early may be made, a hearing shall be held in open court before the judge. The prosecuting attorney shall be given a two-day written notice and an opportunity to be heard on the matter. The prosecuting attorney shall provide notice to the victim if the victim has requested to be notified about the progress of the case. If the victim advises the prosecuting attorney that there is an outstanding restitution order or restitution fine, as specified in Section 1202.4, the prosecuting attorney shall request a continuance of the hearing.

(3) In all probation cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall at the end of the term of probation or any extension thereof, be discharged by the court subject to the provisions of these sections.

(4) The court may modify the time and manner of the term of probation for purposes of measuring the timely payment of restitution obligations or the good conduct and reform of the defendant while on probation. The court shall not modify the dollar amount of the restitution obligations due to the good conduct and reform of the defendant, absent compelling and extraordinary reasons, nor shall the court limit the ability of payees to enforce the obligations in the manner of judgments in civil actions.

(5) This section does not prohibit the court from modifying the dollar amount of a restitution order pursuant to subdivision (f) of Section 1202.4 at any time during the term of the probation.

(6) The court may limit or terminate a protective order that is a condition of probation or mandatory supervision in a case involving domestic violence, as defined in Section 6211 of the Family Code. In determining whether to limit or terminate the protective order, the court shall consider if there has been any material change in circumstances since the crime for which the order was issued, and any issue that relates to whether there exists good cause for the change, including, but not limited to, consideration of all of the following:

(A) Whether the probationer or supervised person has accepted responsibility for the abusive behavior perpetrated against the victim.

(B) Whether the probationer or supervised person is currently attending and actively participating in counseling sessions.

(C) Whether the probationer or supervised person has completed parenting counseling, or attended alcoholics or narcotics counseling.

(D) Whether the probationer or supervised person has moved from the state, or is incarcerated.

(E) Whether the probationer or supervised person is still cohabiting, or intends to cohabit, with any subject of the order.

(F) Whether the defendant has performed well on probation or mandatory supervision, including consideration of any progress reports.

(G) Whether the victim desires the change, and if so, the victim's reasons, whether the victim has consulted a victim advocate, and whether the victim has prepared a safety plan and has access to local resources.

(H) Whether the change will impact any children involved, including consideration of any child protective services information.

(I) Whether the ends of justice would be served by limiting or terminating the order.

(c) If a probationer is ordered to serve time in jail, and the probationer escapes while serving that time, the probation is revoked as a matter of law on the day of the escape.

(d) If probation is revoked pursuant to subdivision (c), upon taking the probationer into custody, the probationer shall be accorded a hearing or hearings consistent with the holding in the case of *People v. Vickers* (1972) 8 Cal.3d 451. The purpose of that hearing or hearings is not to revoke probation, as the revocation has occurred as a matter of law in accordance with subdivision (c), but rather to afford the defendant an opportunity to require the prosecution to establish that the alleged violation did in fact occur and to justify the revocation.

(e) This section does not apply to cases covered by Section 1203.2.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.