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AB-1421 Supervised release: revocation. (2019-2020)

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Assembly Bill No. 1421

CHAPTER 111

An act to amend Section 1203.2 of the Penal Code, relating to supervised release.

[Approved by Governor July 12, 2019. Filed with Secretary of State July 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1421, Bauer-Kahan. Supervised release: revocation.

Existing law authorizes a probation officer, parole officer, or peace officer to rearrest 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 their supervision. Existing law authorizes the court to revoke and terminate the supervision of the person under specified conditions.

Existing law prohibits the revocation of supervision 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.

This bill would also prohibit the revocation of supervision for failure of a person to pay fines, fees, or assessments, unless the court makes the same determinations.

Vote: majority Appropriation: no Fiscal Committee: yes 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 the person's 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 them before the court or the court may, in its discretion, issue a warrant for their 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 their supervision, has become abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless of whether the person has been prosecuted for those offenses. However, the court shall not terminate parole pursuant to this section. Supervision shall not be revoked solely for failure of a person to make restitution, or to pay fines, fees, or assessments, 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 their petition to the supervised person, the supervised person's 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 their 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 their 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 their right to consult with counsel, and if indigent the right to secure court appointed counsel. If the supervised person waives their 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 their 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 the person 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) The person is released on probation subject to the supervision of a probation officer.

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

(C) The person is subject to mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170.

(D) The person is subject to revocation of postrelease community supervision pursuant to Section 3455.

(E) The person 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 Title 2.05 (commencing with Section 3450) of Part 3.