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AB-1228 Supervised persons: release. (2021-2022)

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Date Published: 10/06/2021 09:00 PM

Assembly Bill No. 1228

CHAPTER 533

An act to amend Section 1203.2 of, and to add Section 1203.25 to, the Penal Code, relating to criminal procedure.

[Approved by Governor October 05, 2021. Filed with Secretary of State October 05, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1228, Lee. Supervised persons: release.

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 allows a court to order the release of a supervised person from custody under terms and conditions the court deems appropriate, unless the person is serving a period of flash incarceration.

This bill would require a court that elects to order the release of persons on probation pursuant to this provision to release persons on probation on their own recognizance pending a formal revocation hearing absent a finding by clear and convincing evidence that conditions of release are required by the individual circumstances of the case in order to reasonably protect the public and provide reasonable assurance of the person's future appearance in court. The bill would prohibit a court from imposing cash bail as a condition of release absent a showing by clear and convincing evidence that other reasonable conditions of release would be inadequate to encourage the person to attend court in compliance with the court's orders. The bill would require the court to consider the person's ability to pay cash bail and would require any bail order to be set at a level the person could reasonably afford. The bill would also prohibit the court from imposing the costs of any imposed conditions on the supervised person.

The bill would prohibit the court from denying release for a person on probation for felony conduct before the court holds a formal probation revocation hearing unless the court finds by clear and convincing evidence that there are no means reasonably available that would encourage the person to attend court as ordered. The bill would make related conforming changes. The bill would specify that these provisions do not limit the court's authority to hold, release, limit release, or impose conditions of release for new charges.

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. Unless the person on probation is otherwise serving a period of flash incarceration, whenever a person on probation 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 shall consider the release of a person on probation from custody in accordance with Section 1203.25. Notwithstanding Section 3056, and unless the supervised person is otherwise serving a period of flash incarceration, whenever any supervised person who is subject to this section and who is not on probation 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 the 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, 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.

SEC. 2. Section 1203.25 is added to the Penal Code, to read:

1203.25. (a) All persons released by a court at or after the initial hearing and prior to a formal probation violation hearing pursuant to subdivision (a) of Section 1203.2 shall 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.

(1) The court shall make an individualized determination of the factors that do or do not indicate that the person would be a danger to the public if released pending a formal revocation hearing. Any finding of danger to the public must be based on clear and convincing evidence.

(2) The court shall not require the use of any algorithm-based risk assessment tool in setting conditions of release.

(3) The court shall impose the least restrictive conditions of release necessary to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

(b) 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. The person shall not be required to bear the expense of any conditions of release ordered by the court.

(c) (1) Bail shall not be imposed unless the court finds by clear and convincing evidence that other reasonable conditions of release are not adequate to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

(2) "Bail" as used in this section is defined as cash bail. A bail bond or property bond is not bail. In determining the amount of bail, the court shall make an individualized determination based on the particular circumstances of the case, and it shall consider the person's ability to pay cash bail, not a bail bond or property bond. Bail shall be set at a level the person can reasonably afford.

(d) The court shall not deny release for a person on probation for misdemeanor conduct before the court holds a formal probation revocation hearing, unless the person fails to comply with an order of the court, including an order to appear in court in the underlying case, in which case subdivision (a) shall apply.

(e) The court shall not deny release for a person on probation for felony conduct before the court holds a formal probation revocation hearing unless the court finds by clear and convincing evidence that there are no means reasonably available to

provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

(f) All findings required to be made by clear and convincing evidence under this section shall, based on all evidence presented, including, but not limited to, any probation report, be made orally on the record by the court. The court also shall set forth the reason in an order entered upon the minutes if requested by either party in any case in which the proceedings are not being reported by a court reporter.

(g) If a new charge is the basis for a probation violation, nothing in this section shall be construed to limit the court's authority to hold, release, limit release, or impose conditions of release for that charge as permitted by applicable law.