

No. S276303

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

SCOTLANE MCCUNE,
Defendant and Appellant.

First Appellate District, Division Five, Case No. A163579
Napa County Superior Court, Case No. CR183930
The Honorable Mark S. Boessenecker, Judge

ATTACHMENT TO MOTION FOR JUDICIAL NOTICE

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April 3, 2023

CHRONOLOGICAL INDEX

<u>Attachment</u>		<u>Pages</u>
1	Department of General Services Analysis of S.B. 1126, as amended June 16, 1999	5-7
2	Senate Floor Analysis of S.B. 1126, as amended Sept. 2, 1999	9-15
3	Department of Corrections, Enrolled Bill Report on S.B. 1126	17-21
4	Assembly Committee on Public Safety Analysis of A.B. 1950, as amended May 6, 2020	23-31
5	Assembly Committee on Appropriations Analysis of A.B. 1950, as amended May 21, 2020	33-34
6	Assembly Floor Analysis of A.B. 1950, as amended May 21, 2020	36-38
7	Assembly Floor Analysis of A.B. 1950, as amended June 10, 2020	40-42
8	Senate Committee on Public Safety Analysis of A.B. 1950, version June 10, 2020	44-51
9	Senate Rules Committee Analysis of A.B. 1950, as amended June 10, 2020	53-61

ALPHABETICAL INDEX

<u>Attachment</u>		<u>Pages</u>
5	Assembly Committee on Appropriations Analysis of A.B. 1950, as amended May 21, 2020	33-34
4	Assembly Committee on Public Safety Analysis of A.B. 1950, as amended May 6, 2020	23-31
6	Assembly Floor Analysis of A.B. 1950, as amended May 21, 2020	36-38
7	Assembly Floor Analysis of A.B. 1950, as amended June 10, 2020	40-42
3	Department of Corrections, Enrolled Bill Report on S.B. 1126	17-21
1	Department of General Services Analysis of S.B. 1126, as amended June 16, 1999	5-7
8	Senate Committee on Public Safety Analysis of A.B. 1950, version June 10, 2020	44-51
2	Senate Floor Analysis of S.B. 1126, as amended Sept. 2, 1999	9-15
9	Senate Rules Committee Analysis of A.B. 1950, as amended June 10, 2020	53-61

People v. McCune
No. S276303
Supreme Court of the State of California

Attachment No. 1

Department of General Services Analysis of S.B. 1126, as
amended June 16, 1999

pages 5-7

SUMMARY ANALYSIS OF AMENDED BILL

Department: General Services	Author: Costa	Bill Number: SB 1126
Sponsor: Department of Corrections YACA 99-14	Related Bills: SB 840 (Ch. 367, Statutes of 1995); SB 2021 (Ch. 451, Statutes of 1998)	Amended Date: June 16, 1999
Analyst: Gary Longholm	Telephone: 322-4991	

Subject: Criminal procedure: arraignment: audiovideo

- DEPARTMENT'S AMENDMENTS ACCEPTED. Amendments reflect suggestions of analysis for the Introduced version.
- AMENDMENTS HAVE A FISCAL IMPACT. A new fiscal analysis is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the analysis for the _____ version.
- MORE AMENDMENTS NECESSARY- See comments below.
- DEPARTMENT RECOMMENDS POSITION BE CHANGED TO SUPPORT
- REMAINDER OF ANALYSIS FOR Original VERSION STILL APPLIES.
- OTHER - See comments below.

SUMMARY:

This bill would eliminate the pilot project status of the Department of Corrections'(CDC) program to conduct initial court hearings and arraignments via video conference technology for incarcerated defendants, thereby allowing the CDC to operate the program indefinitely and expand it to all state prisons.

The June 16, 1999 amendments to this bill would allow the state Board of Control (Board) to arrange inmates' restitution hearings to be conducted via CDC's video conference technology. These amendments would also clarify that a sentencing court retains jurisdiction over offenders' restitution obligations even after they are sent to state prisons.

The Department of General Services (DGS) recommends a change in position from **Support** if **Amended to Support**. The bill, as amended, would further the intent of the Board's restitution pilot project by providing a viable and cost-effective way to impose or amend inmates' restitution orders.

DEPARTMENTS THAT MAY BE AFFECTED:

State Mandate

Governor's Appointment

Department Director Position:

- S O
- SA OUA
- N NP
- NIA NAR

DEFER TO _____

Agency Secretary Position:

- S O
- SA OUA
- N NP
- NIA NAR

DEFER TO _____ ORIGINAL SIGNED BY HAPPY CHASTAIN

Governor's Office Use

- Position Approved _____
- Position Disapproved _____
- Position Noted _____

By: _____ Date: _____

Department Director Date

Karen Newbold 7-2-99

Agency Secretary Date

AUG 09 1999
DEPUTY SECRETARY LEGISLATION

SPECIFIC FINDINGS:

Senate Bill (SB) 1126, as amended June 16, 1999, incorporates the DGS' amendments proposed in our original analysis of this bill. The bill as currently written contains technical revisions to our suggested amendments. These technical revisions were developed jointly by the CDC and the Board and accomplish the following:

- clarification that the Board would not be required to make a formal cost-effectiveness determination for requesting a restitution hearing be conducted via audio/video communication technology, which would be redundant;
- clarification that audio/video restitution hearings would be conducted at the request of the Board, rather than with the Board's cooperation, which is consistent with the nature of the restitution pilot program;
- elimination of a reference to the three counties participating in the restitution pilot program, which was redundant in its particular context;
- clarification that nothing in this bill would require counties to purchase the courtroom audio/video equipment needed to complement CDC's equipment; and
- clarification that the existence of the Board's restitution pilot program authorized by Penal Code Section 1202.41 does not preclude any individual from independently pursuing the imposition or amendment of a restitution order.

In addition to these technical revisions, the June 16, 1999 amendments add a substantive provision not discussed in the previous DGS analysis. This provision would clarify that a court retains jurisdiction over offenders' restitution orders when they are sent to CDC facilities to serve their sentence. Clearly establishing the courts' jurisdiction in these cases is necessary for amending restitution orders for inmates, both in person and via video conference technology as proposed by this bill.

Penal Code Section 1170 limits the courts' jurisdiction over modifying offenders' sentences to 120 days after their commitment to the CDC. This section does not expressly limit the courts' ability to impose or modify a restitution order. However, judges have frequently interpreted it as doing so despite case law to the contrary. As a result, judges often determine they have no power to amend inmates' restitution orders past 120 days after commitment, regardless of whether the victims' total crime-related losses have been calculated. In these scenarios, victims must resort to civil suits to recover their crime-related losses from offenders. This situation infringes on their right to receive restitution under the criminal justice system as guaranteed by the California Constitution.

When judges interpret Penal Code Section 1170 as leaving them powerless to amend inmates' restitution orders after 120 days, both the CDC and the Board are denied important tools to collect revenue in the form of restitution payments from inmates. The CDC has a successful restitution collection program in place to garnish inmates' prison wages to pay restitution to their victims. These payments are vital to victims' healing process. The Restitution Fund, which helps fund the Victims of Crime (VOC) Program, receives these payments to the extent the VOC Program has made payments to a victim. The Board's statutory subrogation rights to these payments helps ensure that VOC Program funds are available to assist as many eligible victims as possible.

Many victims incur losses resulting from a crime that cannot be totaled until long after their offenders have been incarcerated. Victims' mental health counseling and rehabilitation costs in particular tend to accrue over a long period of time. In order to cover such costs adequately, restitution orders often must be amended long after their initial imposition, which requires additional court action. Judges may order restitution in an amount "to be determined" when the exact amount of the victim's losses cannot be determined at sentencing. However, even these orders require follow-up attention by the courts. The June 16, 1999, amendments to this bill would clarify that the courts maintain the explicit jurisdiction to carry out such proceedings.

FISCAL IMPACT:

As amended, this bill would increase both the number of new restitution orders imposed on inmates and the number of amendments to inmates' existing restitution orders. To the extent that victims have received assistance from the VOC Program, deposits into the Restitution Fund would also increase by means of the VOC Program's subrogation rights to restitution payments. The amount of these increases cannot be determined at this time.

SUPPORT AND OPPOSITION:

SPONSOR: Department of Corrections (YACA 99-14)

SUPPORT: California Correctional Peace Officers Association
California State Association of Counties

OPPOSITION: California Attorneys for Criminal Justice

KAREN NEUWALD
Assistant Director-Legislation

GARY LONGHOLM
322-4991

People v. McCune

No. S276303

Supreme Court of the State of California

Attachment No. 2

Senate Floor Analysis of S.B. 1126, as amended Sept. 2, 1999

pages 9-15


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|SENATE RULES COMMITTEE           | SB 1126|
|Office of Senate Floor Analyses  |        |
|1020 N Street, Suite 524         |        |
|(916) 445-6614                   |        |
|                               Fax: (916) |        |
|327-4478                          |        |
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UNFINISHED BUSINESS

Bill No: SB 1126
 Author: Costa (D)
 Amended: 9/2/99
 Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 5-0, 4/6/99
 AYES: Vasconcellos, Johnston, McPherson, Polanco, Rainey
 NOT VOTING: Burton

SENATE APPROPRIATIONS COMMITTEE : 13-0, 4/19/99
 AYES: Johnston, Alpert, Bowen, Burton, Escutia, Johnson,
 Karnette, Kelley, Leslie, McPherson, Mountjoy, Perata,
 Vasconcellos

SENATE FLOOR : 38-0, 5/10/99
 AYES: Alarcon, Alpert, Baca, Bowen, Brulte, Burton,
 Chesbro, Costa, Dunn, Escutia, Figueroa, Hayden, Haynes,
 Hughes, Johannessen, Johnson, Karnette, Kelley, Knight,
 Leslie, Lewis, McPherson, Monteith, Mountjoy, Murray,
 O'Connell, Ortiz, Peace, Perata, Polanco, Poochigian,
 Rainey, Schiff, Sher, Solis, Speier, Vasconcellos, Wright
 NOT VOTING: Johnston, Morrow

ASSEMBLY FLOOR : 67-0, 9/3/99 - See last page for vote

SUBJECT : Criminal procedure: arraignment: audiovideo

SOURCE : Department of Corrections

DIGEST : This bill deletes the pilot project aspect of a
 provision in the law that allows the Department of

CONTINUED-

SB 1126

2

Page

Corrections to arrange for the initial court appearance and arraignment in municipal or superior court to be conducted by a two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. This bill also removes the reporting requirement; the limit on the number of institutions included; and the sunset clause on that provision.

Assembly Amendments (1) add language to clarify procedures relative to restitution orders in the program; (2) add a \$1,748,429 to the Department of Corrections to be allocated to the City of Coalinga to provide equity regarding community correctional facility contract issues; and (3) reappropriate \$8.8 million for eight previously authorized state prison construction projects inadvertently omitted from the 199 Budget Act.

ANALYSIS : Existing law provides that the Department of Corrections (CDC) may establish a three-year pilot project which provides that in any case where a defendant, currently incarcerated in state prison, is charged with a misdemeanor or felony, CDC may arrange for the initial court appearance and arraignment to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of physical presence of the defendant in the courtroom. (Penal Code section 977.2)

This bill removes the pilot project aspect of that program.

Existing law provides that the above pilot project can take place in five institutions.

This bill removes that limit.

Existing law requires CDC to submit a report to the Legislature on or before June 30, 1999 on the use of electronic audiovideo arraignment.

This bill removes that requirement.

Existing law provides that the provision on the use of electronic audiovideo arraignment by CDC shall be in effect only until January 1, 2000.

SB 1126

Page

3

This bill sunsets that provision.

Existing law establishes a pilot program to enable collaboration between the State Board of Control and judges in the counties in the program in connection with amending restitution orders. Under the program, among other things, if the hearing has not been waived, the State Board of Control determines if the cost of holding the hearing is justified.

This bill would in addition, in the case of a defendant who is incarcerated, authorize the above-described hearings to be held via 2-way audiovideo communication between the defendant and the court, as specified.

This bill also would specify that these provisions shall not be construed to prohibit an individual or district attorney's office from independently pursuing the imposition or amendment of a restitution order that may result in a hearing, regardless of whether the victim has received assistance.

The bill further would require the court to retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution until such time as the losses may be determined when the economic losses of a victim cannot be ascertained at the time of sentencing.

Existing law provides for local assistance to community correctional programs.

This bill would appropriate \$1,748,429 to Department of Corrections to be allocated to the City of Coalinga to provide equity regarding community correctional facility contract issues.

Existing law makes various appropriations to the Department of Corrections for various purposes related to the operation of the department and the maintenance of facilities and equipment under the control of the department.

SB 1126

Page

4

This bill would make reappropriations from the General Fund and from the 1986 Prison Construction Fund to the department for specified purposes related to prison construction. Reappropriates \$8.8 million for eight previously authorized state prison construction projects inadvertently omitted from the 1999 Budget Act.

Background

According to CDC:

[I]n May of 1995, in accordance with Penal Code section 977, a video arraignment pilot project was conducted at California Institution for Men (CIM), California State Prison-Corcoran (COR), and Pelican Bay State Prison (PBSP). The intent of this pilot project was to determine the feasibility of effecting change to Penal Code section 977. The primary focus of the pilot project was directed at any criminal cases filed by the District Attorney for the prosecution of inmates who committed crimes while in custody. A secondary aspect of the pilot project was to ascertain the appropriateness of utilizing this process for Penal Code section 1381 cases.

The initial pilot project proved to be a more efficient use of the court's time by reducing the number of inmates appearing before the court. . . The one draw back to this pilot project was that the inmates had the ability to opt for either a video arraignment or a personal appearance arraignment.

On January 1, 1996, in accordance with Penal Code section 977.2, the California Department of Corrections was authorized to establish the video arraignment pilot project. Penal Code section 977.2 authorized the CDC to select not more than five institutions, which were to include one maximum-security institution, one institution housing females, and one institution located in Imperial County.

The five sites chosen were as follows: Calipatria State Prison, Central California Women's Facility,

SB 1126

Page

5

COR, PBSP, and CIM.

Under this pilot project the inmates did not have the option of being arraigned in person.

Cost Savings

According to the report by CDC, which is required under Penal Code section 977.2:

In evaluating the equipment cost associated with video arraignment versus person appearances in

court, the CDC saved approximately \$120,000 a year.

If this annual savings were to be applied to the initial purchase of the equipment, the CDC would break even in five years. Furthermore, if the CDC were to gain approval to continue or expand the project, the CDC's costs for equipment would be less than the pilot project. This is due to the cost reductions in the market place as technology advances.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

Fiscal Impact (in thousands)

<u>Major Provisions</u>		<u>1999-2000</u>
<u>2000-01</u>	<u>2001-02</u>	<u>Fund</u>
Audiovideo program one-time	General/ Special*	Potential unknown increased costs for equipment partially offset by unknown transportation and personnel cost savings to CDC annually
*Trial Court Trust Fund		

SUPPORT : (Verified 9/7/99)

Department of Corrections (source)
California Correctional Peace Officers Association
California State Association of Counties

SB 1126
Page

6

ARGUMENTS IN SUPPORT : According to the author:

This bill removes the January 1, 2000 sunset date of the pilot program, and would allow the audiovideo arraignment project to be expanded statewide. The California Department of Corrections found the pilot project to be a success and stated the following in the October 1998 Report to the Legislature:

- 1.A reduction in potential escapes, assaults, and introduction of contraband/weapons.
- 2.An enhancement of safety for surrounding communities (by reducing the number of inmates being removed from the institution.)
- 3.Reduced costs for the CDC, courts, and county jails.

- 4.A reduction in the reimbursement to the county for the court and other associated costs in accordance with Penal Code section 4750.
- 5.A reduction by two-thirds the time of an actual court appearance, which reduced the court's calendar, and provides the judge more time to attend to other court matters.
- 6.Enhanced county jail bed availability and increased court/jail security.
- 7.Alleviation of court and county jail congestion (by reducing the number of inmates appearing personally in court).

The Department of Corrections states that, "The pilot project has been beneficial for both CDC and county court and law enforcement personnel. As the arraignment process takes a fraction of the time via videoconferencing as it would if the inmate was physically transported to and from court, staff in all agencies are much more efficiently utilized. Additionally, the safety of both CDC personnel, court personnel and the community are well-served by the inmate's continued location in the prison facility.

SB 1126

Page

7

The risk of escape is greatest during the inmate's transportation, and the time housed in county jail or court holding facilities provides opportunities for gang communication, recruitment, or the passing of contraband.

"SB 1126 would eliminate the January 1, 2000 sunset date for the existing videoconferencing project, thus allowing its continued operation. The bill would also eliminate the provisions limiting the project to five institutions, allowing CDC to expand the program to other prisons. The costs of the additional sites would be funded through the budget process in future years."

ASSEMBLY FLOOR : 67-0, 9/3/99

AYES: Ackerman, Alquist, Aroner, Ashburn, Bates, Battin, Baugh, Bock, Briggs, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Floyd, Frusetta, Gallegos, Granlund, Havice, Hertzberg, Honda, House, Jackson, Keeley, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Maddox, Maldonado, Margett,

Mazzoni, Migden, Nakano, Olberg, Oller, Robert Pacheco,
Rod Pacheco, Papan, Pescetti, Reyes, Romero, Soto,
Steinberg, Strickland, Strom-Martin, Thomson, Torlakson,
Vincent, Washington, Wayne, Wesson, Wiggins, Wildman,
Wright

NOT VOTING: Aanestad, Baldwin, Brewer, Kaloogian, Knox,
Machado, McClintock, Runner, Scott, Shelley, Thompson,
Zettel, Villaraigosa

RJG:jk 9/7/99 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

People v. McCune
No. S276303
Supreme Court of the State of California

Attachment No. 3

Department of Corrections, Enrolled Bill Report on S.B. 1126

pages 17-21

ENROLLED BILL REPORT

STATE OF CALIFORNIA

<small>AGENCY</small> YOUTH AND ADULT CORRECTIONAL AGENCY	<small>BILL NUMBER</small> SENATE BILL 1126
<small>DEPARTMENT BOARD OF COMMISSION</small> CORRECTIONS	<small>AUTHOR</small> COSTA

SUMMARY

Senate Bill 1126 would eliminate the sunset date from an existing video-arraignment pilot project and authorize the California Department of Corrections (CDC) to expand this project statewide. This bill would also authorize the Board of Control (BOC) to utilize videoconferencing technology for an existing restitution pilot project; reappropriate capital outlay funding (unrelated to the pilot project) that had been omitted from the State Budget; and appropriate specific funding for the City of Coalinga.

HISTORY, SPONSORSHIP, AND RELATED BILLS

The provisions of this bill relating to the video arraignment pilot project are sponsored by CDC and were contained in legislative proposal YACA 99-14. CDC is also the sponsor of the capital outlay reappropriations. BOC is the sponsor of the provisions related to the restitution pilot project, and the author is the sponsor of the appropriation for the City of Coalinga.

This bill was unanimously approved by the Legislature.


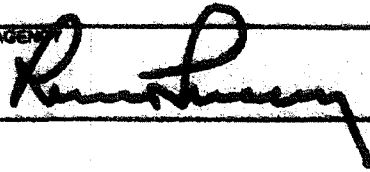
IMPACT ANALYSIS

Existing Penal Code (PC) Section 977.2, as enacted by SB 840 (Chapter 367/95) authorizes CDC to establish at not more than five institutions a 3-year pilot program that would permit the initial court appearance and arraignment by 2-way electronic audiovideo communication (videoconferencing) in all cases where the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison. The video-arraignment pilot project is operating at the following five sites: Calipatria State Prison in Imperial County, Central California Women's Facility in Madera County, California State Prison-Corcoran in Kings County, Pelican Bay State Prison in Del Norte County, and the California Institution for Men in San Bernardino County. The provisions of PC Section 977.2 will sunset as of January 1, 2000.

CDC was required to complete a report to the Legislature on the program's effectiveness. As recently approved by Governor Davis, this report identifies that the project was both cost-effective and provided a variety of other, non-quantifiable benefits. The report found that the staff time and transportation cost saved by not transporting these inmates to court for preliminary hearings pays for

RECOMMENDATION

Sign the Bill

<small>LEGISLATIVE LIAISON</small> 	<small>DATE</small> 9-15-99	<small>AGENCY</small> 	<small>DATE</small> 9-15-99
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CDC 853 B (9/88)

Senate Bill 1126 (Costa)
ENROLLED BILL REPORT
Page 2

the initial purchase cost of the equipment within five years. Additionally, by keeping staff at the prison rather than in-transit to and from the courthouse, it provides for a much more efficient use of CDC correctional officers. The public safety benefits of retaining the inmate within prison rather than transporting him or her to the courthouse is self-evident. The county court systems involved in this project have been very supportive of the project, as it reduces the congestion of their courts and eliminates the introduction of inmates into their jails or courthouses.

SB 1126 would eliminate the sunset date from PC Section 977.2 and remove the term "pilot project" from its provisions. This will allow CDC to continue operating the program at the original five sites, and to expand it to additional sites. Funding for the equipment needed for expansion will be requested by CDC in subsequent Budget Acts.

Existing PC Section 1202.41 authorizes the BOC to operate a pilot program to amend restitution orders in cases where the victim's restitution needs are not identified until after the offender has been sent to prison. SB 1126 would authorize the use of CDC's videoconferencing equipment, if available at the prison and the appropriate court, for the purpose of amending restitution orders pursuant to the BOC pilot program. SB 1126 also adds PC Section 1202.46 to clarify that a sentencing judge retains jurisdiction over a felon for the purpose of amending their restitution order.

In general, a capital outlay appropriation is available for the encumbrance of funds for a three-year period. However, if certain design and contracting milestones are not met during the first year of this three-year period, the appropriation will expire unless specifically reappropriated by the Legislature. As these delays often occur, each year's Budget Act contains a wide variety of capital outlay reappropriations.

SB 1126 will reappropriate funding for 8 CDC capital outlay projects that were mistakenly omitted from the 1999-2000 State Budget due to mis-communication with the Legislative Analyst. These reappropriations include projects for security, health care facilities and infrastructure. SB 1126 will not increase the amount of funding provided for each project, or the scope of work. This bill will allow design and construction work on these critical projects to continue.

This bill also contains a local assistance appropriation to CDC of \$1,748,429 that is to be allocated to the City of Coalinga "to provide equity with regard to community correctional facility contract issues." The issue is related to the City of Adelanto, et al. v. Department of Corrections lawsuit in which several cities that operated community correctional facilities were awarded damages related to contract disputes with CDC. While the City of Coalinga had at one time been a plaintiff in this lawsuit, they had withdrawn prior to the court's decision.

Earlier this year, CDC and the City of Coalinga met to negotiate a resolution to several outstanding contract issues related to the findings of a State Controller's Office audit. The City requested that CDC determine the amount of damages that Coalinga would have likely received had they remained in the Adelanto lawsuit. The amount calculated by CDC is \$1,748,429.

It is important to note that in calculating this figure for the City of Coalinga, CDC did not stipulate that the city's claim for damages related to the Adelanto lawsuit was meritorious. CDC did not make any claim regarding whether we would support, oppose, or be neutral on their efforts to seek an appropriation for this amount from the Legislature. CDC also stated that any legislative appropriation would have to provide CDC with clear legal authority to allocate funding to the City of Coalinga.

An appropriation for this amount was originally included in the 1999-2000 Budget approved by the Legislature, but was vetoed by Governor Davis. The veto message stated that: "This funding is reflective of monies that the city might have received if it had continued as a plaintiff in litigation against the State. The provision of such funding would set an undesirable precedent with regard to other plaintiffs involved in litigation with the State."

CDC will be unable to legally allocate the funding provided in SB 1126 to the City of Coalinga. The language of the appropriation speaks only to equity on contract issues. However, the statute of limitation for considering a payment of this type of claim has passed, and CDC has no authority to waive these deadlines. The Legislature must formally waive the statute of limitations in the appropriation, which then allows CDC to evaluate the equity of the claim and, upon approval, allocate the funding.

CDC has provided specific appropriation language to the City of Coalinga that would have legalized the allocation of funds, but that language was not used. Without this, the payment of funds in this appropriation to the City of Coalinga would be considered an illegal gift of public funds. Clean-up legislation will be needed in 2000 in order to rectify the shortcoming of the appropriation language.

Not true per Finance

FISCAL IMPACT

SB 1126 will authorize CDC to utilize videoconferencing equipment for arraignments at all prison facilities. The estimated cost to install equipment at 27 additional prisons and 16 court facilities is \$1.6 million. The number of counties is less than the number of prisons because many counties contain more than one prison. A number of permanent staff positions will be needed to maintain this equipment, at an approximate cost of \$250,000 to \$500,000 annually.

This bill also reappropriates \$3.8 million in capital outlay projects funded by the General Fund, and appropriates \$1,748,429 from the General Fund for the City of Coalinga.

ARGUMENTS PRO AND CON

PRO: The pilot project has been beneficial for both CDC and county court and law enforcement personnel. As the arraignment process takes a fraction of the time via videoconferencing as it would if the inmate was physically transported to and from court, staff in all agencies are much more efficiently utilized. Additionally, the safety of CDC personnel, court personnel and the community are well served by the inmate's continued location in the prison facility. The risk of escape is greatest during the inmate's transportation, and the time housed in county jail or court holding facilities provides opportunities for gang communication, recruitment, or the passing of contraband.

CON: None indicated.

RECOMMENDATION

Sign the bill.

PROPOSED SIGNING MESSAGE

SENATE BILL 1126 (COSTA)

To the Members of the Senate:

I am signing Senate Bill 1126, authorizing the continued use of videoconferencing technology for the arraignment of persons who are charged with committing crimes while incarcerated in State prison.

The pilot program authorized in 1995 by SB 840 (Beverly) has been very successful and cost-effective for the Department of Corrections, and very well received by the counties that participated. Many other counties have expressed an interest in utilizing this method of arraignment for these cases. This bill will allow for the expansion of the program, upon appropriation of funding, to include all counties containing state prisons.

SB 1126 also provides the Department of Corrections with funding which could be allocated to the City of Coalinga in consideration of equity on specific contract issues. It has come to my attention that in order to consider this action, the Legislature must specifically authorize the waiving of existing statutes of limitation for the consideration of these issues.

I have signed the bill on the merits of the video arraignment program. While the aforementioned appropriation is unusable in its current form, urgency legislation can be considered in January 2000 to provide the authority needed to legally consider the equity issues for the City of Coalinga.

Sincerely,

GRAY DAVIS

People v. McCune
No. S276303
Supreme Court of the State of California

Attachment No. 4

Assembly Committee on Public Safety Analysis of A.B. 1950, as
amended May 6, 2020

pages 23-31

Date of Hearing: May 19, 2020
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1950 (Kamlager) – As Amended May 6, 2020

As Proposed to be Amended in Committee

SUMMARY: Specifies that a court may not impose a term of probation longer than two years for a felony conviction and one year for a misdemeanor conviction.

EXISTING LAW:

- 1) States that no person shall be confined to county jail on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of a crime that specifies a felony punishment pursuant to realignment or a conviction of more than one offense when consecutive sentences have been imposed, be committed for a period in excess of one year. (Pen. Code, § 19.2.)
- 2) 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).)
- 3) 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).)
- 4) States that courts shall have the power on misdemeanor convictions to refer cases to the probation department, demand probation reports and to do and require all things necessary to carry out the purposes of the law authorizing the imposition of probation on misdemeanor cases. (Pen. Code, § 1203a.)
- 5) Provides that a court has the power to suspend the imposition or the execution of the sentence, and to make and enforce the terms of probation for a period not to exceed three years; provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period during which sentence may be suspended and terms of probation enforced may be for a longer period than three years, but in such instance, not to exceed the maximum time for which sentence of imprisonment might be pronounced. (Pen. Code, § 1203a.)
- 6) Specifies that the court may grant probation for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1, subd. (a).)

- 7) States that the court, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case. (Pen. Code, § 1203.1, subd. (a).)
- 8) States that where the maximum possible term of the sentence is five years or less, then the period of probation may not exceed five years. (Pen. Code, § 1203.1, subd. (a).)
- 9) Provides that the court may in connection with imposing probation, do the following acts:
 - a) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case;
 - b) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither;
 - c) The court shall provide for restitution in proper cases. The restitution order shall be fully enforceable as a civil judgment forthwith and as otherwise specified; and,
 - d) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation. (Pen. Code, § 1203.1, subd. (a)(1-4).)
- 10) Requires the court to consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. (Pen. Code, § 1203.1, subd. (b).)
- 11) Specifies that if a person is convicted driving under the influence and is granted probation, the terms and conditions of probation shall include a period of probation not less than three nor more than five years; provided, however, that if the maximum sentence provided for the offense may exceed five years in the state prison, the period during which the sentence may be suspended and terms of probation enforced may be for a longer period than three years but may not exceed the maximum time for which sentence of imprisonment may be pronounced. (Veh. Code, § 23600, subd. (b)(1).)
- 12) Requires a person who is granted probation for a domestic violence crime, as specified to be placed on a minimum period of probation of 36 months, which may include a period of summary probation as appropriate. (Pen. Code, § 1203.097, subd. (a)(1).)
- 13) States that, except as specified, if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. (Pen. Code, S 1203, subd. (b).)
- 14) Provides that unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence on a realigned, shall suspend execution of a concluding portion of the term for a period mandatory supervision selected at the court's discretion. (Pen. Code, § 1170, subd. (h)(5)(A).)

- 15) States that during the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. (Pen. Code, § 1170, subd. (h)(5)(B)).)
- 16) The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. (Pen. Code, 1202.7.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "California's adult supervised probation population is around 548,000 – the largest of any state in the nation, more than twice the size of the state's prison population, almost four times larger than its jail population and about six times larger than its parole population.

“A 2018 Justice Center of the Council of State Governments study found that a large portion of people violate probation and end up incarcerated as a result. The study revealed that 20 percent of prison admissions in California are the result of supervised probation violations, accounting for the estimated \$2 billion spent annually by the state to incarcerate people for supervision violations. Eight percent of people incarcerated in a California prison are behind bars for supervised probation violations. Most violations are ‘technical’ and minor in nature, such as missing a drug rehab appointment or socializing with a friend who has a criminal record.

“Probation - originally meant to reduce recidivism - has instead become a pipeline for re-entry into the carceral system.

“Research by the California Budget & Policy Center shows that probation services, such as mental healthcare and addiction treatment, are most effective during the first 18 months of supervision. Research also indicates that providing increased supervision and services earlier reduces an individual's likelihood to recidivate. A shorter term of probation, allowing for an increased emphasis on services, should lead to improved outcomes for both people on misdemeanor and felony probation while reducing the number of people on probation returning to incarceration.

“AB 1950 would restrict the period of adult probation for a misdemeanor to no longer than one year, and no longer than two years for a felony. In doing so, AB 1950 allows for the reinvestment of funding into supportive services for people on misdemeanor and felony probation rather than keeping this population on supervision for extended periods.”

- 2) **Probation:** Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be “formal” or “informal.” “Formal” probation is under the direction and supervision of a probation officer. Under “Informal” probation, a defendant is not supervised by a probation officer but instead reports to the court. Sometimes a defendant on formal probation is moved to a “banked” caseload at the discretion of the probation officer if the probation officer concludes that the defendant presents a low risk. A defendant on a “banked” caseload has a lower level of contact with a probation officer than a defendant on regular supervision under formal probation. As a general proposition, the level of probation supervision will be linked to the level of risk the probationer presents to the community.

Probation can include a sentence in county jail before the conditional release to the community. Defendants convicted of misdemeanors, and most felonies, are eligible for probation based on the discretion of the court.

When considering the imposition of probation, the court evaluates the safety of the public, the nature of the offense the interests of justice, the loss to the victim, and the needs of the defendant. (Pen. Code, § 1202.7.)

When a defendant is convicted of a felony, the court may impose a term of probation for up to five years, or no longer than the prison term that can be imposed if the maximum prison term exceeds five years. (Pen. Code, § 1203.1.) In misdemeanor cases, the court may impose a term of probation for up to three years, or no longer than the maximum term of imprisonment if more than three years. (Pen. Code, § 1203a.) A probation term for a conviction of misdemeanor driving under the influence (DUI) can be as long as five years. (Veh. Code, § 23600, subd. (b)(1).)

The court has broad discretion to impose conditions that foster the defendant’s rehabilitation and protect the public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120. A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. *Id.* at 1121.

This bill would limit felony probation to two years and misdemeanor probation to one year, regardless of the maximum term of imprisonment. This bill does not amend code sections such as Veh. Code 23600 (allowing probation up to five years for a DUI) or Pen. Code 1203.097 (requiring a minimum probation of three years for domestic violence offenses) which specify probation lengths for specific crimes. It is not clear if this bill would limit the application of those sections.

- 3) **Probation Supervision:** Probation officers provide supervision of defendants on formal probation. Probation supervision is intended to facilitate rehabilitation and ensure defendant accountability. Shortening the period of probation presents the possibility to provide more effective supervision of high risk offenders due to a more effective use of resources. Shorter probationary periods have the potential to result in more manageable caseloads and more effective supervision.

The American Probation and Parole Association (APPA) suggests a caseload of 50 probationers per probation officer for general (non-intensive) supervision of moderate and high risk offenders, and caseloads of 20 to 1 for intensive supervision.

(https://lao.ca.gov/2009/crim/Probation/probation_052909.pdf)

Due to limited resources and a growing population under supervision, probation departments have been forced to prioritize the allocation of supervision services. As stated above, most counties have implemented risk and needs assessments to assist in determining the level of supervision. However, since limited financial resources are an additional factor that influences the level of supervision counties are able to provide, probation chiefs must establish criteria to ensure that the most serious offenders are supervised. As of June 2013, nearly 50 percent of all offenders are high or medium risk, implying a need for higher level of supervision. However, the ratio of officers varies substantially between counties such that offenders who have been 0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100% PRCS MS Probation Figure 2: Risk to Recidivate as of June 2013, by Supervision Type High Risk Medium Risk Low Risk Other 5 “realigned”, such as mandatory supervision and PRCS, are often on lower caseload sizes. Over their probation supervision period, an offender can move either direction on the supervision and risk level continuum, though the goal of probation interventions are to reduce risk. (https://www.cpoc.org/sites/main/files/file-attachments/updated_cpoc_adult_probation_business_model_final.pdf?1501699521)

- 4) **Paradox of Probation:** A paper called *Paradox of Probation: Community Supervision in the Age of Mass Incarceration* discussed potential concerns that more and higher levels of probation supervision can lead increased involvement in the criminal justice system for the individuals being supervised on probation. (Michelle Phelps, March, 2013. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780417/>)

“... the critical scholarly literature on probation, which initially emerged in response to the push for probation in the 1960s, argues that while probation might be intended as a more rehabilitative diversion from prison, in practice it often has the opposite effects. Rather than shifting borderline cases *down* from incarceration to probation, sociologists argued that expanding “alternative” sanctions like probation induced court actors to shift cases on the margin between sanctions with no supervisory component (such as community service, fines, or a warning) *up* to probation supervision—thus “widening the net” of carceral control. These studies found that diversion programs were used in those cases where prosecutors were unwilling or unable to secure a conviction for imprisonment and that incarceration rates increased when community corrections programs expanded.” (Id.)

“This tradition goes on to argue that rather than being rehabilitative, the experience of probation can actually increase the probability of future incarceration—a phenomenon labeled ‘back-end net-widening’ Scholars argue that the enhanced restrictions and monitoring of probation set probationers up to fail, with mandatory meetings, home visits, regular drug testing, and program compliance incompatible with the instability of probationers’ everyday lives. In addition, the enhanced monitoring by probation officers (and in some cases, law enforcement as well) makes the detection of minor violations and offenses more likely.”

If the fact that an individual is on probation can increase the likelihood that they will be taken back into custody for a probation violation that does not necessarily involve new criminal conduct, then shortening the period of supervision is a potential avenue to decrease individuals’ involvement in the criminal justice system for minor infractions. However, it is

also possible that shortening the maximum probationary period might affect other aspects of how judges impose sentence. If judges do not have the ability to place an individual on probation for length of time they feel is necessary from a public safety and rehabilitative standpoint, it is possible that judges will be more likely sentence the defendant to a longer period of incarceration.

- 5) **Time Length of Probation:** Under the provisions of this bill, probation would be limited to two years for a felony and one year for a misdemeanor. That is true whether the individual is subject to formal supervision or informal supervision. Is one or two years a sufficient amount of time to meet the objectives of probation? Probation can include conditions which require the defendant to complete certain requirements such as drug, alcohol, or mental health treatment. Defendants might be required to complete domestic violence or other counseling.

Probation supervision can serve to connect defendants to community based organizations and resources which can provide support and assistance. Probation can help defendants connect to resources to assist with needs like housing and job training.

A two year period of supervision would likely provide a length of time that would be sufficient for a probationer to complete any counseling or treatment that is directed by a sentencing court. To the extent that a probationer is not complying with the treatment or counseling directed by the court during a probationary period, the court can revoke the defendant's probation until the defendant is back in compliance. The period while probation is revoked tolls the running of time towards the end point of the probationary period. That tolling process would effectively extend the probationary period for individuals that are not in compliance with the conditions of their probation.

A one year period of probation provides a very tight window for court supervision of many treatment options. Defendants convicted of domestic violence are required to complete 52 weeks of domestic violence counseling.(Pen. Code 1203.097.) Under AB 372 (), 2018, individuals convicted of domestic violence in specified counties can participate in alternative domestic violence counseling. Individuals are allowed three unexcused absences and have 18 months to complete the counseling. A one year period of misdemeanor probation would have some conflict with the existing probation requirements for a domestic violence conviction. Courts could potentially manage this by providing a gap between entry of a guilty plea and then sentencing date to provide a defendant time to start the domestic violence course prior to the time the defendant was actually placed on probation, it that is an awkward workaround.

Many probationers are not supervised and are on informal probation. Those individuals are not receiving any supervision from a probation officer and a lengthy period of probation can provide another basis for incarceration in the event of a new criminal offense, but otherwise provides no productive support or supervision for the probationer.

- 6) **Mandatory Supervision:** AB 109 (Committee on Budget) Chapter 15, Statutes of 2011 (Public Safety Realignment), reclassified many non-violent, non-serious felonies from having terms of custody in state prison to terms in the county jail. When a defendant is convicted on a realigned felony a court can sentence the defendant to a county jail sentence

up to one year impose probation. A judge also can impose a sentence up to the maximum allowed by the controlling statute and decide to split the time of the sentence between a period of county jail and a period of “mandatory supervision.” Effectively, mandatory supervision functions like probation. A judge can impose conditions of mandatory supervision in the same way a judge could impose conditions of probation. Mandatory supervision is the responsibility of the county probation department. Violations of mandatory probation can be punished by further imprisonment in county jail. Most realigned felonies carry a maximum term of three years in the state prison, although there are some which can be punished for a longer period of time. Under existing law a judge can impose a period of mandatory supervision up to the maximum period of confinement for a realigned felony offense or felony offenses if a defendant is convicted of more than one realigned felony.

This bill does not affect the length of time a judge can impose for mandatory supervision.

- 7) **Governor’s January Budget Proposal and May Revise:** The Governor’s budget initially included a proposal to limit the length of time that defendant may be placed on probation. The proposal would have generally limited probation to two years and would have provided a new path to early termination of probation after a one year period. The proposal would have mandated probation supervision for a number of misdemeanor convictions currently only subject to probation supervision based on the discretion of the court. That would have increased the level of supervision for those misdemeanors, but they would still have been subject to the shortened time period for probation otherwise contained in the Governor’s proposal.

The May Revise of the Governor’s Budget Proposal was submitted on May 14, 2020. The Budget Proposal no longer includes limitations on the length of time for probation.

- 8) **Argument in Support:** According to the *California Public Defenders Association*, “Current law allows judges to impose a term of probation for up to three years on most misdemeanors, and for a period that exceeds three years for designated misdemeanors. Assembly Bill 1950 will amend California Penal Code sections 1203a and 1203.1 so that misdemeanor probation grants cannot exceed one year.

“According to California Penal code section 1203.4, individuals may only move to have their criminal conviction expunged if they are no longer on probation. An expungement pursuant to California Penal Code section 1203.4 results in a retroactive dismissal of the case. In this way, expungement is an important part of rehabilitation because it can help individuals pursue opportunities such as: 1) employment; 2) better-paying employment; 3) special licensing; and 4) higher education. Shortening the probation period will also decrease the amount of time that an individual must suffer for a prior misdeed, which has the added benefit of incentivizing compliance.”

- 9) **Argument in Opposition:** According to the *California District Attorneys Association*, “A one-size-fits-all-approach to the length of probation takes away the judicial discretion and flexibility that is necessary to fashion an appropriate sentence. It also destroys proportionality in sentencing. A defendant who is convicted of multiple counts of armed robbery or attempted murder or sexual assault or vehicular manslaughter or a gang shooting or assault with a deadly weapon or battery with serious bodily injury but is granted probation

due to mitigating factors would have the same limit on probation as would a defendant convicted of one count of misdemeanor petty theft.

“Limiting probation hurts crime victims. A major part of rehabilitation is making amends through the payment of restitution, which is a constitutional right. In cases where a probationer owes thousands of dollars in restitution, in some cases millions of dollars, it is vital that probation be long enough in order to increase the likelihood that a crime victim is paid in full. In a number of cases, an offender is ordered to stay away from a particular person or place as a condition of probation. Crime victims depend on these orders. When probation terminates, these stay-away orders also terminate. Shortening probation periods shortens the protection of crime victims.”

10) **Prior Legislation:**

- a) SB 194 (Anderson), Legislative Session of 2017-2018, would have authorized a court to place the person on probation for a new period of probation that exceeds the statutory maximum when the order setting aside the judgment, the revocation of probation, or both was made before the expiration of the probationary period. AB 194 was held on the Senate Appropriation’s Suspense File.
- b) AB 2205 (Dodd), Legislative Session of 2015-2016, would have overturned a Supreme Court case holding that a court lacks jurisdiction to adjudicate violations of probation occurring after the original term of probation ends. AB 2205 was never heard in the Assembly Public Safety Committee.
- c) AB 2477 (Patterson), Legislative Session of 2015-2016, would have overturned case law holding that a court lacks jurisdiction to modify a restitution order after the defendant’s probation expires, thereby extending jurisdiction for restitution indefinitely. AB 2477 failed passage in the Assembly Public Safety Committee.
- d) AB 2339 (Quirk), Legislative Session of 2013-2014, would have required that all terms and conditions of supervision shall remain in effect during the time period that the running of the period of supervision is tolled. AB 2339 was never heard in the Assembly Public Safety Committee

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
 California Attorneys for Criminal Justice
 California Public Defenders Association
 Ella Baker Center for Human Rights
 National Association of Social Workers, California Chapter
 San Francisco Public Defender
 Smart Justice California

Oppose

California District Attorneys Association
Chief Probation Officers of California
Los Angeles County Probation Officers Union, Afscme Local 685
Sacramento County Probation Association
State Coalition of Probation Organizations

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

People v. McCune
No. S276303
Supreme Court of the State of California

Attachment No. 5

Assembly Committee on Appropriations Analysis of A.B. 1950, as
amended May 21, 2020

pages 33-34

Date of Hearing: June 2, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1950 (Kamlager) – As Amended May 21, 2020

Policy Committee: Public Safety

Vote: 5 - 3

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill provides a court may not impose a term of probation longer than two years for a felony conviction and one year for a misdemeanor conviction.

FISCAL EFFECT:

Cost savings (GF/local funds), possibly in the hundreds of thousands of dollars to low millions of dollars annually, to counties in reduced incarceration rates. There are approximately 500,000 people currently on either misdemeanor or felony probation. The average length of probation for a misdemeanor is three years. If a person violates a grant of probation, they may face a violation of probation (VOP) – even where the violation does not constitute a new crime – and may be sentenced to a term of incarceration in the county jail. Reducing the amount of time people spend on probation will likely reduce the number of people returned to county jail on a VOP. The average cost per year to house a person in a county jail is approximately \$32,000. If the limits on the lengths of probationary terms proposed by this bill reduces the number of misdemeanor and felony VOPs by even 100 cases statewide with an average term of incarceration for each VOP of six months, the cost savings to the counties is approximately \$1.6 million dollars.

Although counties are not reimbursed for increased incarceration costs pursuant to Proposition 30 (2012), counties have received hundreds of millions of dollars since the enactment of the 2011 Realignment Act to incarcerate inmates in the county jails. If this bill reduces the number of county jail commitments, it may alleviate cost pressures on the GF to allocate additional resources to counties to build more jail space.

COMMENTS:

1) **Purpose.** According to the author:

AB 1950 would restrict the period of adult probation for a misdemeanor to no longer than one year, and no longer than two years for a felony. In doing so, AB 1950 allows for the reinvestment of funding into supportive services for people on misdemeanor and felony probation rather than keeping this population on supervision for extended periods

2) **Probation.** According to a report prepared by the Public Policy Institute of California in 2014, probation is the least costly form of supervision. However, defendants who remain on probation for extended periods of time are less likely to be successful because even minor or technical violations of the law may result in a violation of probation resulting in more fines

and longer terms of probation. Misdemeanors are usually subject to three years of summary or informal probation and felony convictions result in a five-year grant of probation.

- 3) **Proposed 2020-21 Budget.** The Governor's proposed January 2020-21 budget included reducing probation to two years while adding greater programming and services for people on summary probation in order to reduce recidivism. However, this proposal was removed from the May revise.

- 4) **Arguments in Support.** According to the California Public Defenders Association:

Current law allows judges to impose a term of probation for up to three years on most misdemeanors, and for a period that exceeds three years for designated misdemeanors. Shortening the probation period will ... decrease the amount of time that an individual must suffer for a prior misdeed, which has the added benefit of incentivizing compliance.

- 5) **Arguments in Opposition.** According to the California District Attorneys Association:

A major part of rehabilitation is making amends through the payment of restitution, which is a constitutional right. In cases where a probationer owes thousands of dollars in restitution, in some cases millions of dollars, it is vital that probation be long enough in order to increase the likelihood that a crime victim is paid in full.

Analysis Prepared by: Kimberly Horiuchi / APPR. / (916) 319-2081

People v. McCune
No. S276303
Supreme Court of the State of California

Attachment No. 6

Assembly Floor Analysis of A.B. 1950, as amended May 21, 2020

pages 36-38

ASSEMBLY THIRD READING

AB 1950 (Kamlager)

As Amended May 21, 2020

Majority vote

SUMMARY:

Specifies that a court may not impose a term of probation longer than two years for a felony conviction and one year for a misdemeanor conviction.

Major Provisions**COMMENTS:****According to the Author:**

"California's adult supervised probation population is around 548,000 – the largest of any state in the nation, more than twice the size of the state's prison population, almost four times larger than its jail population and about six times larger than its parole population.

"A 2018 Justice Center of the Council of State Governments study (<https://csjusticecenter.org/publications/confined-costly/?state=CA#primary>) found that a large portion of people violate probation and end up incarcerated as a result. The study revealed that 20% of prison admissions in California are the result of supervised probation violations, accounting for the estimated \$2 billion spent annually by the state to incarcerate people for supervision violations. Eight percent of people incarcerated in a California prison are behind bars for supervised probation violations. Most violations are 'technical' and minor in nature, such as missing a drug rehab appointment or socializing with a friend who has a criminal record.

"Probation - originally meant to reduce recidivism - has instead become a pipeline for re-entry into the carceral system.

"Research (<https://calbudgetcenter.org/resources/sentencing-in-california-moving-toward-a-smarter-more-cost-effective-approach/>) by the California Budget & Policy Center shows that probation services, such as mental healthcare and addiction treatment, are most effective during the first 18 months of supervision. Research also indicates that providing increased supervision and services earlier reduces an individual's likelihood to recidivate. A shorter term of probation, allowing for an increased emphasis on services, should lead to improved outcomes for both people on misdemeanor and felony probation while reducing the number of people on probation returning to incarceration.

"AB 1950 would restrict the period of adult probation for a misdemeanor to no longer than one year, and no longer than two years for a felony. In doing so, AB 1950 allows for the reinvestment of funding into supportive services for people on misdemeanor and felony probation rather than keeping this population on supervision for extended periods."

Arguments in Support:

According to the *California Public Defenders Association*, "Current law allows judges to impose a term of probation for up to three years on most misdemeanors, and for a period that exceeds three years for designated misdemeanors. Assembly Bill 1950 will amend California Penal Code sections 1203a and 1203.1 so that misdemeanor probation grants cannot exceed one year.

"According to California Penal code section 1203.4, individuals may only move to have their criminal conviction expunged if they are no longer on probation. An expungement pursuant to California Penal Code section 1203.4 results in a retroactive dismissal of the case. In this way, expungement is an important part of rehabilitation because it can help individuals pursue opportunities such as: 1) employment; 2) better-paying employment; 3) special licensing; and 4) higher education. Shortening the probation period will also decrease the amount of time that an individual must suffer for a prior misdeed, which has the added benefit of incentivizing compliance."

Arguments in Opposition:

According to the *California District Attorneys Association*, "A one-size-fits-all-approach to the length of probation takes away the judicial discretion and flexibility that is necessary to fashion an appropriate sentence. It also destroys proportionality in sentencing. A defendant who is convicted of multiple counts of armed robbery or attempted murder or sexual assault or vehicular manslaughter or a gang shooting or assault with a deadly weapon or battery with serious bodily injury but is granted probation due to mitigating factors would have the same limit on probation as would a defendant convicted of one count of misdemeanor petty theft.

"Limiting probation hurts crime victims. A major part of rehabilitation is making amends through the payment of restitution, which is a constitutional right. In cases where a probationer owes thousands of dollars in restitution, in some cases millions of dollars, it is vital that probation be long enough in order to increase the likelihood that a crime victim is paid in full. In a number of cases, an offender is ordered to stay away from a particular person or place as a condition of probation. Crime victims depend on these orders. When probation terminates, these stay-away orders also terminate. Shortening probation periods shortens the protection of crime victims."

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, "Cost savings (GF/local funds), possibly in the hundreds of thousands of dollars to low millions of dollars annually, to counties in reduced incarceration rates. There are approximately 500,000 people currently on either misdemeanor or felony probation. The average length of probation for a misdemeanor is three years. If a person violates a grant of probation, they may face a violation of probation (VOP) – even where the violation does not constitute a new crime – and may be sentenced to a term of incarceration in the county jail. Reducing the amount of time people spend on probation will likely reduce the number of people returned to county jail on a VOP. The average cost per year to house a person in a county jail is approximately \$32,000. If the limits on the lengths of probationary terms proposed by this bill reduces the number of misdemeanor and felony VOPs by even 100 cases statewide with an average term of incarceration for each VOP of six months, the cost savings to the counties is approximately \$1.6 million dollars.

"Although counties are not reimbursed for increased incarceration costs pursuant to Proposition 30 (2012), counties have received hundreds of millions of dollars since the enactment of the

2011 Realignment Act to incarcerate inmates in the county jails. If this bill reduces the number of county jail commitments, it may alleviate cost pressures on the GF to allocate additional resources to counties to build more jail space."

VOTES:

ASM PUBLIC SAFETY: 5-3-0

YES: Jones-Sawyer, Kamlager, Carrillo, Santiago, Wicks

NO: Lackey, Bauer-Kahan, Diep

ASM APPROPRIATIONS: 10-7-1

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Eggman, Gabriel, Eduardo Garcia, McCarty, Robert Rivas

NO: Bigelow, Bauer-Kahan, Megan Dahle, Diep, Fong, Petrie-Norris, Voepel

ABS, ABST OR NV: Chau

UPDATED:

VERSION: May 21, 2020

CONSULTANT: David Billingsley / PUB. S. / (916) 319-3744

FN: 0002838

People v. McCune

No. S276303

Supreme Court of the State of California

Attachment No. 7

Assembly Floor Analysis of A.B. 1950, as amended June 10, 2020

pages 40-42

ASSEMBLY THIRD READING

AB 1950 (Kamlager)

As Amended June 10, 2020

Majority vote

SUMMARY:

Specifies that a court may not impose a term of probation longer than two years for a felony conviction and one year for a misdemeanor conviction, except as specified.

Major Provisions**COMMENTS:****According to the Author:**

"California's adult supervised probation population is around 548,000 – the largest of any state in the nation, more than twice the size of the state's prison population, almost four times larger than its jail population and about six times larger than its parole population.

"A 2018 Justice Center of the Council of State Governments study (<https://csjusticecenter.org/publications/confined-costly/?state=CA#primary>) found that a large portion of people violate probation and end up incarcerated as a result. The study revealed that 20% of prison admissions in California are the result of supervised probation violations, accounting for the estimated \$2 billion spent annually by the state to incarcerate people for supervision violations. Eight percent of people incarcerated in a California prison are behind bars for supervised probation violations. Most violations are 'technical' and minor in nature, such as missing a drug rehab appointment or socializing with a friend who has a criminal record.

"Probation - originally meant to reduce recidivism - has instead become a pipeline for re-entry into the carceral system.

"Research (<https://calbudgetcenter.org/resources/sentencing-in-california-moving-toward-a-smarter-more-cost-effective-approach/>) by the California Budget & Policy Center shows that probation services, such as mental healthcare and addiction treatment, are most effective during the first 18 months of supervision. Research also indicates that providing increased supervision and services earlier reduces an individual's likelihood to recidivate. A shorter term of probation, allowing for an increased emphasis on services, should lead to improved outcomes for both people on misdemeanor and felony probation while reducing the number of people on probation returning to incarceration.

"AB 1950 would restrict the period of adult probation for a misdemeanor to no longer than one year, and no longer than two years for a felony. In doing so, AB 1950 allows for the reinvestment of funding into supportive services for people on misdemeanor and felony probation rather than keeping this population on supervision for extended periods.

Arguments in Support:

According to the *California Public Defenders Association*, "Current law allows judges to impose a term of probation for up to three years on most misdemeanors, and for a period that exceeds three years for designated misdemeanors. Assembly Bill 1950 will amend California Penal Code sections 1203a and 1203.1 so that misdemeanor probation grants cannot exceed one year.

"According to California Penal code section 1203.4, individuals may only move to have their criminal conviction expunged if they are no longer on probation. An expungement pursuant to California Penal Code section 1203.4 results in a retroactive dismissal of the case. In this way, expungement is an important part of rehabilitation because it can help individuals pursue opportunities such as: 1) employment; 2) better-paying employment; 3) special licensing; and 4) higher education. Shortening the probation period will also decrease the amount of time that an individual must suffer for a prior misdeed, which has the added benefit of incentivizing compliance."

Arguments in Opposition:

According to the *California District Attorneys Association*, "A one-size-fits-all-approach to the length of probation takes away the judicial discretion and flexibility that is necessary to fashion an appropriate sentence. It also destroys proportionality in sentencing. A defendant who is convicted of multiple counts of armed robbery or attempted murder or sexual assault or vehicular manslaughter or a gang shooting or assault with a deadly weapon or battery with serious bodily injury but is granted probation due to mitigating factors would have the same limit on probation as would a defendant convicted of one count of misdemeanor petty theft.

"Limiting probation hurts crime victims. A major part of rehabilitation is making amends through the payment of restitution, which is a constitutional right. In cases where a probationer owes thousands of dollars in restitution, in some cases millions of dollars, it is vital that probation be long enough in order to increase the likelihood that a crime victim is paid in full. In a number of cases, an offender is ordered to stay away from a particular person or place as a condition of probation. Crime victims depend on these orders. When probation terminates, these stay-away orders also terminate. Shortening probation periods shortens the protection of crime victims."

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, "Cost savings (General Fund (GF)/local funds), possibly in the hundreds of thousands of dollars to low millions of dollars annually, to counties in reduced incarceration rates. There are approximately 500,000 people currently on either misdemeanor or felony probation. The average length of probation for a misdemeanor is three years. If a person violates a grant of probation, they may face a violation of probation (VOP) – even where the violation does not constitute a new crime – and may be sentenced to a term of incarceration in the county jail. Reducing the amount of time people spend on probation will likely reduce the number of people returned to county jail on a VOP. The average cost per year to house a person in a county jail is approximately \$32,000. If the limits on the lengths of probationary terms proposed by this bill reduces the number of misdemeanor and felony VOPs by even 100 cases statewide with an average term of incarceration for each VOP of six months, the cost savings to the counties is approximately \$1.6 million dollars.

"Although counties are not reimbursed for increased incarceration costs pursuant to Proposition 30 (2012), counties have received hundreds of millions of dollars since the enactment of the

2011 Realignment Act to incarcerate inmates in the county jails. If this bill reduces the number of county jail commitments, it may alleviate cost pressures on the GF to allocate additional resources to counties to build more jail space."

VOTES:

ASM PUBLIC SAFETY: 5-3-0

YES: Jones-Sawyer, Kamlager, Carrillo, Santiago, Wicks

NO: Lackey, Bauer-Kahan, Diep

ASM APPROPRIATIONS: 10-7-1

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Eggman, Gabriel, Eduardo Garcia, McCarty, Robert Rivas

NO: Bigelow, Bauer-Kahan, Megan Dahle, Diep, Fong, Petrie-Norris, Voepel

ABS, ABST OR NV: Chau

UPDATED:

VERSION: June 10, 2020

CONSULTANT: David Billingsley / PUB. S. / (916) 319-3744

FN: 0003061

People v. McCune
No. S276303
Supreme Court of the State of California

Attachment No. 8

Senate Committee on Public Safety Analysis of A.B. 1950, version
June 10, 2020

pages 44-51

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1950 **Hearing Date:** July 31, 2020
Author: Kamlager
Version: June 10, 2020
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Probation: Length of Terms*

HISTORY

Source: Author

Prior Legislation: None

Support: All of Us or None; Alliance for Boys and Men of Color; Alliance of Californians for Community Empowerment; ACLU of California; Asian Americans Advancing Justice- California; Asian Pacific Islander Re-entry and Inclusion Through Support and Empowerment; Asian Prisoner Support Committee; Aypal; California Attorneys for Criminal Justice; California Catholic Conference; California Immigrant Policy Center; California Nurses Association; California Public Defenders Association; Californians for Safety and Justice; Center for Empowering Refugees and Immigrants; City of Los Angeles; City of Oakland; Consumer Attorneys of California; #cut 50; Democratic Party of San Fernando Valley; Disability Rights California; Drug Policy Alliance; Ella Baker Center for Human Rights; Jewish Public Affairs Committee; John Burton Advocates for Youth; Law Enforcement Action Partnership; Legal Services with Prisoners with Children; Momentum United; National Association of Social Workers, California Chapter; Reform Alliance; San Francisco Public Defender's Office; Santa Barbara Women's Political Committee; Sierra Club California; Smart Justice California; The Family Project; Transgender Advocacy Group; Voices for Progress; Young Women's Freedom Center

Opposition: Association of Orange County Deputy Sheriffs; California District Attorneys Association; California Fraternal Order of Police; Chief Probation Officers of California; Long Beach Police Officers Association; Los Angeles County Probation Officers Union, AFSCME Local 685; Riverside Sheriffs' Association; Sacramento County Deputy Sheriffs' Association; Sacramento County Probation Association; San Joaquin County Probation Officers Association; San Luis Obispo County Probation Peace Officers Association; Silicon Valley Fraternal Order of Police, Lodge 52; State Coalition of Probation Organizations; Yolo County Probation Association

Assembly Floor Vote:

48 - 22

PURPOSE

The purpose of this bill is to limit the term of probation to no longer than two years for a felony conviction and one year for a misdemeanor conviction, except as specified.

Existing law provides that no person shall be confined to county jail on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of a crime that specifies a felony punishment pursuant to realignment or a conviction of more than one offense when consecutive sentences have been imposed, for a period in excess of one year. (Pen. Code, § 19.2.)

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 authorizes a courts to have the power to refer cases to the probation department, demand probation reports and to do and require all things necessary to carry out the purposes of the law authorizing the imposition of probation in misdemeanor cases. (Pen. Code, § 1203a.)

Existing law authorizes a court, in misdemeanor cases, to suspend the imposition or the execution of the sentence, and to make and enforce the terms of probation for a period not to exceed three years; provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period during which sentence may be suspended and terms of probation enforced may be for a longer period than three years, but in such instance, not to exceed the maximum time for which sentence of imprisonment might be pronounced. (Pen. Code, § 1203a.)

Existing law provides that the court may grant probation for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1, subd. (a).)

Existing law provides that the court, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case. (Pen. Code, § 1203.1, subd. (a).)

Existing law provides that where the maximum possible term of the sentence is five years or less, then the period of probation may not exceed five years. (Pen. Code, § 1203.1, subd. (a).)

Existing law provides that the court may in connection with imposing probation, do the following acts:

- The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case;
- The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither;

- The court shall provide for restitution in proper cases. Provides that the restitution order is fully enforceable as a civil judgment forthwith and as otherwise specified; and,
- The court may require bonds for the faithful observance and performance of any or all of the conditions of probation. (Pen. Code, § 1203.1, subd. (a)(1)-(4).)

Existing law requires the court to consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. (Pen. Code, § 1203.1, subd. (b).)

Existing law provides that, except as specified, if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. (Pen. Code, § 1203, subd. (b)(1).)

Existing law provides that unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence on a realigned felony, shall suspend execution of a concluding portion of the term for a period selected at the court's discretion. (Pen. Code, § 1170, subd. (h)(5)(A).)

Existing law provides that the portion of a defendant's sentenced term that is suspended is known as mandatory supervision, and unless otherwise ordered by the court, mandatory supervision begins upon release from physical custody or an alternative custody program whichever is later. Requires that during the period of mandatory supervision, the defendant be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. (Pen. Code, § 1170, subd. (h)(5)(B).)

Existing law provides that the following are the primary considerations in granting probation: the safety of the public, which is a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant. (Pen. Code, § 1202.7.)

This bill limits the probation term to one year for misdemeanor offenses. Does not apply to any offense that includes a specific probation term in statute.

This bill limits the probation term to two years for a felony offenses.

This bill provides that the two-year probation limit does not apply to offenses defined by law as violent felonies, or to an offense that includes a specific probation term within its provisions. Provides that for these offenses, the court, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence and under conditions as it shall determine.

This bill provides that the two-year probation limit does not apply to a felony conviction for grand theft from an employer, embezzlement, or theft by false pretenses, if the total value of property taken exceeds \$25,000. Provides that for these offenses, the court, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the

suspension may continue for a period of time not exceeding three years, and upon those terms and conditions as it shall determine.

COMMENTS

1. Need for This Bill

According to the author:

The Prison Policy Institute has found that like incarceration, probation affects already marginalized populations in troubling ways. Black Americans make up 13% of the U.S. adult population, but 30% of those under community supervision. Additionally, probation fees are an enormous burden on the poor.

A 2018 Justice Center of the Council of State Governments study found that a large portion of people violate probation and end up incarcerated as a result. The study revealed that 20 percent of prison admissions in California are the result of probation violations, accounting for the estimated \$2 billion spent annually by the state to incarcerate people for supervision violations. Eight percent of people incarcerated in a California prison are behind bars for probation violations. Close to half of those violations are technical and minor in nature, such as missing a drug rehab appointment or socializing with a friend who has a criminal record. And yet despite the fact that these technical violations (non-crimes) do not threaten our communities, they cost taxpayers at least \$235 million per year.

Research by the California Budget Center shows that probation services, such as mental health care and addiction treatment, are most effective during the first 18 months of supervision. Research also indicates that providing increased supervision and services earlier reduces an individual's likelihood to recidivate.

AB 1950 amends the California State Penal Code to limit adult probation to a maximum of one year for misdemeanor offenses and two years for felony offenses. This does not include offenses falling under section 667.5 of the State Penal Code, crimes committed against monetary property (i.e., "white-collar crimes") valued at over \$25,000 nor any specific crimes with probation term lengths identified by statute

AB 1950 creates reasonable and evidence-based limits on probation terms, while lowering costs to taxpayers, allowing for the possible investment of savings in effective measures proven to reduce recidivism and increasing public safety for all Californians. The bill also supports probation officers in completing the duties of their job more effectively, by making their caseloads more manageable.

2. Probation

Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be "formal" or "informal." Formal probation is under the direction and supervision of a probation officer. Under informal probation, a defendant is not supervised by a probation officer but instead reports to the court. In general, the level of probation supervision will be linked to the level of risk the probationer presents to the community.

Probation can include a sentence in county jail before the conditional release to the community. Defendants convicted of misdemeanors, and most felonies, are eligible for probation based on the discretion of the court. When considering the imposition of probation, the court must evaluate the safety of the public, the nature of the offense the interests of justice, the loss to the victim, and the needs of the defendant. (Pen. Code, § 1202.7.)

Currently, the court may impose a term of probation for up to five years, or no longer than the prison term that can be imposed if the maximum prison term exceeds five years, when a defendant is convicted of a felony. (Pen. Code, § 1203.1.) In misdemeanor cases, the court may impose a term of probation for up to three years, or no longer than the maximum term of imprisonment if more than three years. (Pen. Code, § 1203a.)

The court has broad discretion to impose conditions that foster the defendant's rehabilitation and protect the public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*Id.* at p. 1121.)

3. Probation Supervision

Probation officers provide supervision of defendants on formal probation which is intended to facilitate rehabilitation and ensure defendant accountability. Due to limited resources and a growing population under supervision, probation departments have been forced to prioritize the allocation of supervision services.

This bill generally limits the probation term to one year for misdemeanor offenses and two years for felony offenses. This bill does not apply to offenses with a specified probation term in statute. This bill additionally excludes specified violent felonies and specified theft-related offenses in which the value of the stolen property exceeds \$25,000.

Proponents of reducing the length of probation terms argue that probation supervision is most beneficial in the early part of a probation term. In addition, advocates argue that increased levels of supervision can lead to increased involvement with the criminal justice system due to the likelihood that minor violations will be detected. The proponents of probation reform further contend that reducing the length of probation terms would enable probation officers to more effectively manage their caseloads by focusing resources on those most at risk of reoffending.

Opponents of this bill assert that a case-by-case approach is needed rather than an across the board decrease in the length of probation terms. Additionally, some argue that the bill is unnecessary given that the courts currently enjoy some discretion with respect to the length of the probation period it may order as well as the authority to terminate probation early.

4. Governor's January Budget Proposal and May Revision

The Governor's 2020-2021 budget initially included a probation reform proposal which would have reduced felony and misdemeanor probation terms to two years, and allowed for earned discharge. This proposal relied on "research that suggests that the maximum time needed to engage probationers in behavior change and reduce the likelihood of reoffending is no more than two years, while also creating incentives for individuals to engage in treatment and services early on." (Dept. of Finance, *Governor's Budget Summary 2020-21*, p. 141

<<http://www.ebudget.ca.gov/2020-21/pdf/BudgetSummary/PublicSafety.pdf>>.) The proposal would have also mandated probation supervision for a number of misdemeanor convictions currently only subject to probation supervision based on the discretion of the court. Additionally, the Governor's January proposal would have provided additional funding to stabilize SB 678 funding provided to the counties. As described in the budget summary:

“SB 678 established a performance-based funding methodology to award counties that reduce the number of adult felony probationers they send to state prison by sharing a percentage of the savings the state accrues from not housing revoked offenders. However, the current funding methodology can result in significant year-to-year fluctuations and drive uncertainty in county probation spending. The Budget includes a stable ongoing amount to counties at a level consistent with their highest payment received from the state over the last three years, in addition to continued accountability measures.” (*Ibid.*)

The May Revision removed the probation reform proposal.

5. Arguments in Support

According to the California Public Defenders Association:

Current law allows judges to impose a term of probation for up to three years on most misdemeanors, and for a period that exceeds three years for designated misdemeanors. Assembly Bill 1950 will amend California Penal Code sections 1203a and 1203.1 so that misdemeanor probation grants cannot exceed one year.

Assembly Bill 1950 also reduces the period of probation for some felony offenses to two years. Notably, felonies that are listed in California Penal Code section 667.5, subdivision (c) – often referred to as violent felonies – are excluded. In addition, AB 1950 leaves, intact, the probationary terms that are specifically defined within particular offenses.

...

Individuals in the criminal justice system often struggle with family violence at home, addiction issues, and mental health issues. Each day can be a challenge, and three years can seem like an eternity. Shortening the probationary period to two years can foster a sense of hope for individuals who are attempting to exit the criminal justice.

Drug Policy Alliance writes:

The purpose of the bill is to end wasteful spending, to focus limited rehabilitative and supervisory resources on persons in their first 12 to 24 months of probation, and reduce the length of time that a person might be subject to arbitrary or technical violations that result in re-incarceration. A robust body of literature demonstrates that probation services, such as mental healthcare and substance use disorder treatment, are most effective during the first six to eighteen months of supervision. A shorter probation term, allowing for an increased emphasis on

rehabilitative services, would lead to improved outcomes for people on probation and their families.

Furthermore, this bill does not take the “teeth” out of probation or the courts. If a person on probation fails to comply with treatment or other conditions set by the court during a probationary period, the court may revoke the person’s probation until the person is back in compliance. The period during which the probation is revoked does not count toward release from probation, thereby extending the period of supervision. Additionally, this bill does not change the power of the court to order a period of incarceration in addition to probation supervision and conditions, nor does the bill change the probation periods for any offense in which the length of probation is mandatory or specified in the relevant statute.

There is an urgent need to reinvest limited resources in community health and well-being. This bill is important part of the process of ending wasteful spending and reducing police interference in the lives of the people of the State of California.

6. Arguments in Opposition

According to the Chief Probation Officers of California:

CPOC recognizes and supports research that shows working with individuals using evidence-based supervision, services and supports within the first two years of their probation term is the best way to change their behavior and reduce re-offense. It is important to highlight that it is the services and supports within those first two years that is critical to our clients’ success. Therefore any modification of probation terms must be aligned within a comprehensive approach to enhance services and programs to best serve probation clients in achieving healthier pathways.

SB 678, passed in 2009, provided performance-based funding for local probation departments to build up the infrastructure for services and supports while following evidence-based supervision strategies to lessen our system’s reliance on incarceration and to keep people out of prison. ... With SB 678 funding, county probation departments adopted evidence-based practices, increased reentry and support services, and emphasized community supervision practices that address client needs to reduce recidivism and improve public safety. In the last decade, we have successfully accomplished that effort. ...

Probation recognizes, based on the success of SB 678, that investing in evidence-based practices on the front-end and aligning supervision and services with a person’s risk and needs, rather than simply their offense, will improve public safety and give people a better chance of staying successful in our communities for the long-term. However, the ability to invest early and quickly in those first two years is dependent upon the capacity of probation, along with our local and community partners, to provide key services and programs. The changes to probation terms changes the formula baseline calculations which is important to the incentive-based component of SB 678. Therefore, we would suggest freezing the formula until the full implementation and impacts of the policy change can

take effect in order to retain the focus on incentive-based performance measures which serve to keep clients out of custody.

The California District Attorneys Association writes:

This bill drastically shortens the probation term for almost all misdemeanor and felony cases. A one-size-fits-all probation scheme does not work. Such a scheme treats dissimilar defendants similarly. A defendant convicted of multiple crimes, misdemeanor or felony, and who has hurt multiple victims, is treated exactly the same as a defendant who is convicted of only one crime.

This bill is in search of a problem that does not exist; If a judge feels that only two years of probation is appropriate, the judge can order that length of probation under current law. Current law also permits judges to terminate probation early. Pursuant to existing Penal Code Section 1203.3, a probationer who completes court-ordered programming and pays restitution to a crime victim can always ask the court to terminate probation early. Judges routinely grant these types of termination motions.

...

It is precisely because we believe in rehabilitation that we oppose [this] measure. Offenders working toward rehabilitation and engaging in programming, crime victims, and public safety are best served when judges have the flexibility to grant a probation period that is appropriate and proportional for each individual case.

-- END --

People v. McCune
No. S276303
Supreme Court of the State of California

Attachment No. 9

Senate Rules Committee Analysis of A.B. 1950,
as amended June 10, 2020

pages 53-61

THIRD READING

Bill No: AB 1950
Author: Kamlager (D), et al.
Amended: 6/10/20 in Assembly
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 7/31/20
AYES: Skinner, Bradford, Jackson, Mitchell, Wiener
NOES: Moorlach, Morrell

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 48-22, 6/15/20 - See last page for vote

SUBJECT: Probation: length of terms

SOURCE: Author

DIGEST: This bill limits the term of probation to no longer than two years for a felony conviction and one year for a misdemeanor conviction, except as specified.

ANALYSIS:

Existing law:

- 1) Provides that no person shall be confined to county jail on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of a crime that specifies a felony punishment pursuant to realignment or a conviction of more than one offense when consecutive sentences have been imposed, for a period in excess of one year. (Pen. Code, § 19.2.)
- 2) 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).)

- 3) 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).)
- 4) Authorizes a court to have the power to refer cases to the probation department, demand probation reports and to do and require all things necessary to carry out the purposes of the law authorizing the imposition of probation in misdemeanor cases. (Pen. Code, § 1203a.)
- 5) Authorizes a court, in misdemeanor cases, to suspend the imposition or the execution of the sentence, and to make and enforce the terms of probation for a period not to exceed three years; provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period during which sentence may be suspended and terms of probation enforced may be for a longer period than three years, but in such instance, not to exceed the maximum time for which sentence of imprisonment might be pronounced. (Pen. Code, § 1203a.)
- 6) Provides that the court may grant probation for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1, subd. (a).)
- 7) Provides that the court, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case. (Pen. Code, § 1203.1, subd. (a).)
- 8) Provides that where the maximum possible term of the sentence is five years or less, then the period of probation may not exceed five years. (Pen. Code, § 1203.1, subd. (a).)
- 9) Provides that the court may in connection with imposing probation, do the following acts:
 - a) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case;
 - b) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither;

- c) The court shall provide for restitution in proper cases. Provides that the restitution order is fully enforceable as a civil judgment forthwith and as otherwise specified; and,
 - d) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation. (Pen. Code, § 1203.1, subd. (a)(1)-(4).)
- 10) Requires the court to consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. (Pen. Code, § 1203.1, subd. (b).)
- 11) Provides that, except as specified, if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. (Pen. Code, § 1203, subd. (b)(1).)
- 12) Provides that unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence on a realigned felony, shall suspend execution of a concluding portion of the term for a period selected at the court's discretion. (Pen. Code, § 1170, subd. (h)(5)(A).)
- 13) Provides that the portion of a defendant's sentenced term that is suspended is known as mandatory supervision, and unless otherwise ordered by the court, mandatory supervision begins upon release from physical custody or an alternative custody program whichever is later. Requires that during the period of mandatory supervision, the defendant be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. (Pen. Code, § 1170, subd. (h)(5)(B).)
- 14) Provides that the following are the primary considerations in granting probation: the safety of the public, which is a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant. (Pen. Code, § 1202.7.)

This bill:

- 1) Limits the probation term to one year for misdemeanor offenses. Does not apply to any offense that includes a specific probation term in statute.
- 2) Limits the probation term to two years for a felony offenses.
- 3) Provides that the two-year probation limit does not apply to offenses defined by law as violent felonies, or to an offense that includes a specific probation term within its provisions. Provides that for these offenses, the court, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence and under conditions as it shall determine.
- 4) Provides that the two-year probation limit does not apply to a felony conviction for grand theft from an employer, embezzlement, or theft by false pretenses, if the total value of property taken exceeds \$25,000. Provides that for these offenses, the court, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding three years, and upon those terms and conditions as it shall determine.

Background

Probation Generally

Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be “formal” or “informal.” Formal probation is under the direction and supervision of a probation officer. Under informal probation, a defendant is not supervised by a probation officer but instead reports to the court. In general, the level of probation supervision will be linked to the level of risk the probationer presents to the community.

Probation can include a sentence in county jail before the conditional release to the community. Defendants convicted of misdemeanors, and most felonies, are eligible for probation based on the discretion of the court. When considering the imposition of probation, the court must evaluate the safety of the public, the nature of the offense the interests of justice, the loss to the victim, and the needs of the defendant. (Pen. Code, § 1202.7.)

Currently, the court may impose a term of probation for up to five years, or no longer than the prison term that can be imposed if the maximum prison term

exceeds five years, when a defendant is convicted of a felony. (Pen. Code, § 1203.1.) In misdemeanor cases, the court may impose a term of probation for up to three years, or no longer than the maximum term of imprisonment if more than three years. (Pen. Code, § 1203a.)

The court has broad discretion to impose conditions that foster the defendant's rehabilitation and protect the public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*Id.* at p. 1121.)

Probation Supervision

Probation officers provide supervision of defendants on formal probation which is intended to facilitate rehabilitation and ensure defendant accountability. Due to limited resources and a growing population under supervision, probation departments have been forced to prioritize the allocation of supervision services.

This bill generally limits the probation term to one year for misdemeanor offenses and two years for felony offenses. This bill does not apply to offenses with a specified probation term in statute. This bill additionally excludes specified violent felonies and specified theft-related offenses in which the value of the stolen property exceeds \$25,000.

Proponents of reducing the length of probation terms argue that probation supervision is most beneficial in the early part of a probation term. In addition, advocates argue that increased levels of supervision can lead to increased involvement with the criminal justice system due to the likelihood that minor violations will be detected. The proponents of probation reform further contend that reducing the length of probation terms would enable probation officers to more effectively manage their caseloads by focusing resources on those most at risk of reoffending.

Opponents of this bill assert that a case-by-case approach is needed rather than an across the board decrease in the length of probation terms. Additionally, some argue that this bill is unnecessary given that the courts currently enjoy some discretion with respect to the length of the probation period it may order as well as the authority to terminate probation early.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/12/20)

#cut 50

ACLU of California
All of Us or None
Alliance for Boys and Men of Color
Alliance of Californians for Community Empowerment
Asian Americans Advancing Justice - California
Asian Pacific Islander Re-entry and Inclusion Through Support and Empowerment
Asian Prisoner Support Committee
Aypal
California Attorneys for Criminal Justice
California Catholic Conference
California Immigrant Policy Center
California Nurses Association
California Public Defenders Association
Californians for Safety and Justice
Center for Empowering Refugees and Immigrants
City of Los Angeles
City of Oakland
Consumer Attorneys of California
Democratic Party of the San Fernando Valley
Disability Rights California
Drug Policy Alliance
Ella Baker Center for Human Rights
Equal Justice Society
Friends Committee on Legislation of California
Fund Her
Jewish Public Affairs Committee
John Burton Advocates for Youth
Law Enforcement Action Partnership
Legal Services with Prisoners with Children
Los Angeles Regional Reentry Partnership
Momentum United
National Association of Social Workers, California Chapter
Reform Alliance
San Francisco Public Defender's Office
Santa Barbara Women's Political Committee
Sierra Club California
Smart Justice California
The Family Project
Transgender Advocacy Group
Voices for Progress

Young Women's Freedom Center

OPPOSITION: (Verified 8/12/20)

Association of Orange County Deputy Sheriffs
California District Attorneys Association
California Fraternal Order of Police
California State Sheriff's Association
Chief Probation Officers of California
Long Beach Police Officers Association
Los Angeles County Probation Officers Union, AFSCME Local 685
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs' Association
Sacramento County Probation Association
San Joaquin County Probation Officers Association
San Luis Obispo County Probation Peace Officers Association
Silicon Valley Fraternal Order of Police, Lodge 52
State Coalition of Probation Organizations
Ventura County Professional Peace Officers Association
Yolo County Probation Association

ARGUMENT IN SUPPORT: The Drug Policy Alliance writes:

The purpose of the bill is to end wasteful spending, to focus limited rehabilitative and supervisory resources on persons in their first 12 to 24 months of probation, and reduce the length of time that a person might be subject to arbitrary or technical violations that result in re-incarceration. A robust body of literature demonstrates that probation services, such as mental healthcare and substance use disorder treatment, are most effective during the first six to eighteen months of supervision. A shorter probation term, allowing for an increased emphasis on rehabilitative services, would lead to improved outcomes for people on probation and their families.

Furthermore, this bill does not take the "teeth" out of probation or the courts. If a person on probation fails to comply with treatment or other conditions set by the court during a probationary period, the court may revoke the person's probation until the person is back in compliance. The period during which the probation is revoked does not count toward release from probation, thereby extending the period of supervision. Additionally, this bill does not change the power of the court to order a period of incarceration in addition to probation supervision and conditions, nor does the bill change the probation periods for

any offense in which the length of probation is mandatory or specified in the relevant statute.

There is an urgent need to reinvest limited resources in community health and well-being. This bill is important part of the process of ending wasteful spending and reducing police interference in the lives of the people of the State of California.

ARGUMENT IN OPPOSITION: The California District Attorneys Association writes:

This bill drastically shortens the probation term for almost all misdemeanor and felony cases. A one-size-fits-all probation scheme does not work. Such a scheme treats dissimilar defendants similarly. A defendant convicted of multiple crimes, misdemeanor or felony, and who has hurt multiple victims, is treated exactly the same as a defendant who is convicted of only one crime.

This bill is in search of a problem that does not exist; If a judge feels that only two years of probation is appropriate, the judge can order that length of probation under current law. Current law also permits judges to terminate probation early. Pursuant to existing Penal Code Section 1203.3, a probationer who completes court-ordered programming and pays restitution to a crime victim can always ask the court to terminate probation early. Judges routinely grant these types of termination motions.

...

It is precisely because we believe in rehabilitation that we oppose [this] measure. Offenders working toward rehabilitation and engaging in programming, crime victims, and public safety are best served when judges have the flexibility to grant a probation period that is appropriate and proportional for each individual case.

ASSEMBLY FLOOR: 48-22, 6/15/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Bonta, Burke, Calderon, Carrillo, Chau, Chiu, Chu, Eggman, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, O'Donnell, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Mark Stone, Ting, Waldron, Weber, Wicks, Wood, Rendon

NOES: Bigelow, Brough, Cervantes, Chen, Choi, Cooley, Cunningham, Megan
Dahle, Diep, Flora, Fong, Frazier, Gallagher, Kiley, Lackey, Mathis,
Muratsuchi, Obernolte, Patterson, Petrie-Norris, Salas, Voepel

NO VOTE RECORDED: Boerner Horvath, Cooper, Daly, Gray, Irwin, Mayes,
Ramos, Rodriguez, Smith

Prepared by: Stephanie Jordan / PUB. S. /

8/14/20 12:31:11

**** END ****

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.
McCUNE**

Case Number: **S276303**

Lower Court Case Number: **A163579**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **amanda.loyd@doj.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Answer Brief on the Merits
REQUEST FOR JUDICIAL NOTICE	Respondent's Motion for Judicial Notice, Proposed Order
EXHIBITS	Attachment to Motion for Judicial Notice

Service Recipients:

Person Served	Email Address	Type	Date / Time
Kaiya Pirolo Attorney at Law 280393	kaiya@pirololaw.com	e-Serve	4/3/2023 3:18:49 PM
Amanda Lloyd Office of the Attorney General 239682	amanda.loyd@doj.ca.gov	e-Serve	4/3/2023 3:18:49 PM
Almeatra Morrison	almeatra.morrison@doj.ca.gov	e-Serve	4/3/2023 3:18:49 PM
District Attorney, Napa	DArecords@countyofnapa.org	e-Serve	4/3/2023 3:18:49 PM
Napa County District Attorney	district_attorney-offices@co.napa.ca.us	e-Serve	4/3/2023 3:18:49 PM
Superior Court, Napa County	1111 Third Street Napa, CA 94559	Mail	4/3/2023 3:18:49 PM
First Appellate District - Div. 5, Court of Appeal	350 McAllister Street San Francisco, CA 94102	Mail	4/3/2023 3:18:49 PM
First District Appellate Project	eservice@fdap.org	e-Serve	4/3/2023 3:18:49 PM
Attorney General Office - San Diego	sdag.docketing@doj.ca.gov	e-Serve	4/3/2023 3:18:49 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/3/2023

Date

/s/Almeatra Morrison

Signature

Lloyd, Amanda (239682)

Last Name, First Name (PNum)

Department of Justice, Office of the Attorney General-San Diego

Law Firm