No. S271057

In the Supreme Court of the State of California

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

v.

RICKY PRUDHOLME,
Defendant and Appellant.

Fourth Appellate District, Division Two, Case No. E076007
San Bernardino County Superior Court, Case No. FWV18004340
The Honorable Kyle S. Brodie, Judge

RESPONDENT'S MOTION FOR JUDICIAL NOTICE

ROB BONTA (SBN 202668)
Attorney General of California
LANCE E. WINTERS (SBN 162357)
Chief Assistant Attorney General
CHARLES C. RAGLAND (SBN 204928)
Senior Assistant Attorney General
ARLENE A. SEVIDAL (SBN 188317)
Supervising Deputy Attorney General
STEVE OETTING (SBN 142868)
Supervising Deputy Attorney General
*ELIZABETH M. KUCHAR (SBN 285518)
Deputy Attorney General
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9109
Fax: (619) 645-2044
Elizabeth.Kuchar@doj.ca.gov
Attorneys for Plaintiff and Respondent

July 20, 2022

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Respondent respectfully moves this Court, pursuant to Evidence Code sections 452 and 459 and California Rules of Court, rule 8.252, to take judicial notice of the Senate Rules Committee, Third Reading of AB 1950, as amended June 10, 2020 (Exhibit 1); the Assembly Floor Analysis, Third Reading of AB 1950, as amended May 21, 2020 (Exhibit 2); the Assembly Floor Analysis, Third Reading of AB 1950, as amended June 10, 2020 (Exhibit 3); the Senate Committee on Public Safety, Analysis of AB 1950, as amended June 10, 2020 (Exhibit 4); the Assembly Committee on Appropriations, Analysis of AB 1950, as amended May 21, 2020 (Exhibit 5); the Assembly Committee on Public Safety, Analysis of AB 1950, as amended May 6, 2020 (Exhibit 6); and the Senate Committee on Public Safety, Analysis of AB 1618, July 2, 2019 hearing (Exhibit 7), which are appended to this motion.

These documents are a relevant part of the legislative history behind AB 1950's recent amendments to Penal Code sections 1203a and 1203.1, and AB 1618's enactment of Penal Code section 1016.8. It is appropriate to take judicial notice of committee analyses and reports. (*People v. Snyder* (2000) 22 Cal.4th 304, 309 [judicial notice of senate analysis]; *People v. Ledesma* (1997) 16 Cal.4th 90, 98 [judicial notice of assembly bill analysis]; *People v. Eubanks* (1997) 14 Cal.4th 580, 591, fn. 3 [judicial notice of committee reports].)

The legislative history materials attached herein as Exhibits 1–6 are relevant to the questions of statutory construction presented in this case—i.e., whether the *Estrada* presumption and the *Stamps* remedy applies to AB 1950—because they demonstrate the reasons that motivated the Legislature to enact the bill. For example, since section 1203.1 contains no express retroactivity provision, this Court must "consider whether it is 'very clear from extrinsic sources' [citation], or whether such sources support the ""clear and unavoidable implication"" [citation]," that the Legislature intended the amendment to operate retroactively." (*People v. Brown* (2012) 54 Cal.4th 314, 320.) These extrinsic aids also provide circumstantial evidence (or lack thereof in this case) of the Legislature's intent to override existing law that a court cannot unilaterally modify a plea-bargained probationary sentence by reducing it to two years pursuant to AB 1950. (*People v. Stamps* (2020) 9 Cal.5th 685, 701–705.) The legislative document attached herein as Exhibit 7, which pertains to a different measure (AB 1618), is relevant to illustrate when the Legislature has in fact intended for a new law to affect existing plea bargains.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that the Court take judicial notice of the Senate Rules Committee, Third Reading of AB 1950, as amended June 10, 2020; the Assembly Floor Analysis, Third Reading of AB 1950, as amended May 21, 2020; the Assembly Floor Analysis, Third Reading of AB 1950, as amended June 10, 2020; the Senate

Committee on Public Safety, Analysis of AB 1950, as amended June 10, 2020; the Assembly Committee on Appropriations, Analysis of AB 1950, as amended May 21, 2020; the Assembly Committee on Public Safety, Analysis of AB 1950, as amended May 6, 2020; and the Senate Committee on Public Safety, Analysis of AB 1618, July 2, 2019 hearing.

Respectfully submitted,

ROB BONTA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
CHARLES C. RAGLAND
Senior Assistant Attorney General
ARLENE A. SEVIDAL
Supervising Deputy Attorney General
STEVE OETTING
Supervising Deputy Attorney General

/s/ Elizabeth M. Kuchar
ELIZABETH M. KUCHAR
Deputy Attorney General
Attorneys for Plaintiff and Respondent

July 20, 2022

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CHRONOLOGICAL INDEX

ALPHABETICAL INDEX

Exhibit 1

Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

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 a 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 ******

Exhibit 2

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://csgjusticecenter.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

Exhibit 3

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:

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"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:

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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

Exhibit 4

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 on 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 a 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 --

Exhibit 5

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

Exhibit 6

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 under 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 if 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

Exhibit 7

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No:	AB 1618	**Hearing Date:**	July 2, 2019
Author:	Jones-Sawyer		
Version:	June 13, 2019		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SC		

Subject: ***Plea Bargaining: Benefits of Later Enactments***

HISTORY

Source: Author

Prior Legislation: AB 1343 (Thurmond), Ch. 705, Stats. 2015
AB 267 (Jones-Sawyer), vetoed, 2015

Support: California Public Defenders Association

Opposition: None known

Assembly Floor Vote: Not relevant

This analysis reflect the bill as proposed to be amended.

PURPOSE

The purpose of this bill is to clarify that a plea bargain that requires a defendant to generally waive unknown future potential benefits of legislative enactments, initiatives, judicial decisions, or other changes in the law that may occur after the date of the plea is not knowing and intelligent, and thus void as against public policy.

Existing law defines "plea bargaining" to mean "any bargaining, negotiation, or discussion between a criminal defendant, or their counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant." (Pen. Code, § 1192.7, subd. (b).)

Existing law states that if the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask whether they plead guilty or not guilty to the offenses charged and to a previous conviction or convictions if charged. (Pen. Code, § 859a, subd. (a).)

Existing law provides that while the charge remains pending before the magistrate and when the defendant is present, the defendant may plead guilty to the offense charged, or with the consent of the magistrate and the prosecuting attorney, plead nolo contendere to the offense charged, or to any other offense that is necessarily included in the charged offense, or to an attempt to commit the charged offense, or to any previous convictions charged. (*Ibid*.)

Existing law provides that if the defendant subsequently files a written motion to withdraw the plea, the motion shall be heard and determined by the court before which the plea was entered. (*Ibid*.)

Existing law states that every plea must be made in open court, and may be oral or in writing, shall be entered upon the minutes of the court, and shall be taken down in shorthand by the official reporter if one is present. All pleas of guilty or nolo contendere to misdemeanors or felonies shall be oral or in writing. (Pen. Code, § 1017.)

Existing law states that unless otherwise provided by law, every plea shall be entered or withdrawn by the defendant personally in open court. (Pen. Code, § 1018.)

Existing law provides that on application of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, the court may, and in case of a defendant who appeared without counsel at the time of the plea the court shall, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. (*Ibid*.)

Existing law states that where the plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant, except as provided, cannot be sentenced on the plea to a punishment more severe than that specified in the plea and the court may not proceed as to the plea other than as specified in the plea. (Pen. Code, § 1192.5.)

Existing law provides that if the court approves of the plea, it shall inform the defendant prior to the making of the plea that (1) its approval is not binding, (2) it may, a the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so. The court shall also cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea. (*Id*.)

This bill states that the Legislature finds and declares all of the following:

1) The California Supreme Court held in *Doe v. Harris* (2013) 57 Cal. 4th 64 that, as a general rule, plea agreements are deemed to incorporate the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy. That the parties enter into a plea agreement does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them.

2) In *Boykin v. Alabama* (1969) 395 U.S. 238, the United States Supreme Court held that because of the significant constitutional rights at stake in entering a guilty plea, due process requires that a defendant's guilty plea be knowing, intelligent, and voluntary.

3) Waiver is the voluntary, intelligent, and intentional relinquishment of a known right or privilege (*Estelle v. Smith* (1981) 451 U.S. 454, 471, fn. 16, quoting *Johnson v. Zerbst* (1938) 304 U.S. 458, 464). Waiver

requires knowledge that the right exists (*Taylor v. U.S.* (1973) 414 U.S. 17, 19).

4) A plea bargain that requires a defendant to generally waive unknown future potential benefits of legislative enactments, initiatives, judicial decisions, or other changes in the law that may occur after the date of the plea is not knowing and intelligent.

This bill provides that a provision of a plea bargain that requires a defendant to generally waive future potential benefits of legislative enactments, initiatives, appellate decisions, or other changes in the law that may retroactively apply after the date of the plea is void as against public policy.

This bill defines "plea bargain" as defined in Penal Code section 1192.7, subdivision (b).

COMMENTS

1. Need for This Bill

According to the author of this bill:

> After the Prison Law Office in Berkeley brought forward a case against the California Department of Corrections and Rehabilitation (CDCR), a three judge court ruled that California had to reduce its prison population to 137.5% of capacity to abide by the constitutional rights of prisoners. The court made many findings in their ruling, including that overcrowding led to inadequate medical services, which violated their 8th amendment rights by not providing proper adequate care, and that reducing the prison population could be done without endangering public safety.
>
> In 2011, the U.S. Supreme Court reaffirmed the decision in *Brown v. Plata*, ordering California to reduce its prison population to 137.5% capacity. In order to comply, California passed various legislation including, "The Public Safety Realignment Act" in 2011. Realignment, which created a shift in public policy on criminal justice reform, shifted the supervision of certain convictions from state prison to county jails.
>
> In continuing criminal justice reform and to further reduce the prison population, a number of policy changes have been enacted via legislation and voter initiatives in recent years. Recognizing the need to reduce penalties for non-serious and non-violent property and drug crime the Legislature placed Proposition 47 on the ballot in 2014 and it passed with about 60% of the vote. In 2016 the Legislature placed Prop 57, which passed with 64% of the vote, on the ballot to provide increased parole opportunities for individuals serving sentences for non-violent crimes and authorized sentence credits for rehabilitation, good behavior, and education. As the Legislature and voters have made clear the need and desire to shift our justice system's focus to rehabilitation, recent reports have noted that prosecutors have

begun to force defendants to sign away their rights from any future changes in law when entering a plea bargain.

Various court cases have made clear that plea bargains are subject to changes in state law, and must be entered in a knowing, voluntary, and intelligent manner by all parties. In Doe v. Harris the California Supreme Court ruled that "[p]lea agreements are deemed to incorporate the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy. That the parties enter into a plea agreement does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them." This ruling makes clear that plea bargains are still subject to the power of the state to make changes affecting sentencing standards. Furthermore, in *Brooklyn v. Alabama* the US Supreme Court held that holding "[s]ignificant constitutional rights [are] at stake in entering a guilty plea, due process requires that a defendant's guilty plea be knowing, intelligent, and voluntary."

Prosecutors that decide to have defendants sign away all future potential benefits from changes in state law circumvents the Legislative process and the will of the voters. When changes in state law resulted in increased penalties for individuals after they entered plea agreements prosecutors did not feel the need to pre-empt future legislation, and only appear willing to do so now that voters and the Legislature have begun to focus on reforming our criminal justice system. The Legislature is tasked with making changes in state law that affect all individuals equally, to have pockets of the state where future laws would have no impact because of the decision of local prosecutors is neither fair nor just.

2. **Relevant Case Law**

The issue of whether a plea agreement can bar a defendant from invoking a post-judgment change in law was recently considered in two cases.

In *People v. Wright*, (2019) 31 Cal.App.5th 749, the defendant pled guilty to transporting a controlled substance and admitted a prior conviction which triggered a three-year enhancement pursuant to Health & Safety Code section 11370.2. In the written plea agreement, the defendant waived his right to appeal, including among other things, "any sentence stipulated herein." Following his conviction, SB 180 (Mitchell), Ch. 677, Stats. 2017 was signed into law so that effective January 1, 2018 the three-year enhancement under Health & Safety Code section 11370.2 no longer applied to the crime for which the defendant had plead guilty. Another appellate court ruled held that the changes made by SB 180 applies retroactively to actions in which the judgement of conviction is not final. The defendant then appealed contending that the court should vacate the now inapplicable three-year enhancement from his sentence. (*People v. Wright*, supra, 31 Cal.App.5th at p. 753.)

The Fourth District Court of Appeal in *People v. Wright* concluded that Wright had not waived his right to appeal future sentencing error based on a change of the law which he was unaware of at the time he entered his plea. The court reasoned that while a plea bargain may include the waiver of the right to

appeal, "the valid waiver of a right presupposes an actual and demonstrable knowledge of the very right being waived." (*People v. Wright*, 31 Cal.App.5th at p. 754.) The court, relying on *Doe v. Harris* (2013) 57 Cal.4th 64, also stated that "the general rule in California is that a plea agreement is '"deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy."'" (*Id*. at pp. 755, citing *Doe v. Harris*, supra 57 Cal.4th at p. 73.)

The court found that "Wright's waiver of his right to appeal his stipulated sentence cannot be construed as applying to a sentencing error of which he had no notice when he signed the plea agreement. Nothing in the record suggests that the parties considered or addressed the possibility that future legislation might abolish the required three-year enhancement for Wright's prior felony drug conviction. (*People. v. Wright*, supra, Cal.App.5th at 756.) The case was remanded to the trial court with directions to strike the three year enhancement from his sentence.

In *People v. Barton*, (2019) 32 Cal. App. 5th 1088, the Fifth District Court of Appeal disagreed with the *Wright* decision. In *Barton*, the defendant pleaded guilty to two drug-related counts and admitted two prior convictions which added two three-year sentence enhancements to her sentence pursuant to Health & Safety Code section 11370.2. As part of her plea agreement, the defendant signed a written waiver stating, in pertinent part, "I understand that I will be waiving my right to appeal and I will not be able to appeal from this Court's sentence based on the plea that I enter into in this matter." (*Id*. at p. 1093.) After defendant was sentenced, SB 180 (Mitchell), Ch. 677, Stats. 2017 was signed into law making the three-year enhancement inapplicable to the drug-related offenses that the defendant was convicted of. Defendant appealed seeking to have the two three-year sentence enhancements vacated from her sentence stating that there was nothing in the record to suggest that she knew of SB 180 when she entered into her plea.

The *Barton* court, relying on *Doe v. Harris*, supra, 57 Cal.4th 64 and *People v. Panizzon* (1996) 13 Cal.4th 68) which were also discussed in the *Wright* case, concluded that Barton's right to appeal was knowingly and intelligently waived. (*People v. Barton*, supra, 32 Cal. App. 5th at 1096.) In summarizing *Doe v. Harris*, the court stated that "parties to a plea agreement '"are deemed to know and understand that the state ... may enact laws that will affect the consequences attending the conviction entered upon the plea."' (Citation omitted.) However, the parties can affirmatively agree, or reach an implied understanding, that '"the consequences of a plea will remain fixed despite amendments to the relevant law."' (Citation omitted.) '"Whether such an understanding exists presents factual issues that generally require an analysis of the representations made and other circumstances specific to the individual case."' (*Id*. at p. 1094.)

The court stated that "the dispositive inquiry is not whether or why subsequent events have transformed a prison term into an unauthorized sentence, but whether (1) the parties' plea agreement specified a particular sentence and (2) the waiver of appellate rights '"specifically extended to any right to appeal such sentence."' (*People v. Panizzon*, supra, 13 Cal.4th at p.

86.) The court found that the Barton's plea agreement included a stipulated term of incarceration and the waiver of her right to appeal the sentence. The court concluded that because the sentence imposed by the court was neither unforeseen or unknown at the time Barton executed the waiver and plea agreement, she knowingly and intelligently executed an enforceable waiver of the right to challenge her sentence on appeal. (*People v. Barton* , supra, 32 Cal.App.5th at p. 1098.)

The *Barton* court noted that their analysis conflicts with *People v. Wright* , supra, 31 Cal.App.5th 749, and reasoned that in the court's view, *Wright's* holding conflicts with controlling and dispositive case law, referring to *People v. Panizzon* , supra, 13 Cal.4th 68. (*People v. Barton* , supra, 32 Cal.App.5th at p. 1091.)

The California Supreme Court has granted review in *People v. Barton* . (Review granted 6/19/19.)

3. **Impetus for this Bill**

This bill appears to be in response to an article in the San Diego Union Tribune regarding a new provision that had been offered as part of a plea agreement in two separate cases prosecuted by the San Diego District Attorney's Office:

> The waiver has been offered in at least two cases, both murder cases. In one case in North County the plea deal with the waiver was rejected. In a second case in South Bay a jury deadlocked on murder charges against Victor Sanchez in early March. Then on April 10 he pleaded guilty to the lesser charge of voluntary manslaughter with an 11 year sentence — and the waiver.
>
> The wording of the waiver offered in the North County case is sweeping. "This agreement waives all future potential benefits of any legislative actions or judicial decisions or other changes in the law that may occur after the date of this plea, whether or not such future changes are specifically designed to provide pre- or post-conviction relief to any convicted defendants, and whether or not they are intended to be retroactive," it reads.
>
> Under the law, plea agreements are considered binding contracts among all parties. They usually contain a general waiver — the legal term where someone voluntarily gives up their rights — to appeal a ruling or sentence in a case.
>
> The state Supreme Court has ruled that when agreeing to a plea deal, all sides are deemed to understand that the law can change in the future, and that the parties to the plea deal aren't protected from those changes. The decision came in the case of a registered sex offender, who said amendments to the law after he registered that allowed for publication of some personal information violated his plea deal.
>
> That principle was upheld in January in a decision by the 4th District Court of Appeal in San Diego, where defendant Justin Wright agreed to an 11-year sentence for selling drugs. But when the Legislature passed a law in 2017 that eliminated a three-year sentencing enhancement for

prior drug convictions, Wright went to court and argued the law was retroactive and he should now get the three years removed from his sentence.

The court ruled for Wright. But in the decision, Associate Justice Gil Nares indicated that a waiver like the one San Diego prosecutors are using, would be workable.

"If parties to a plea agreement want to insulate the agreement from future changes in the law, they should specify that the consequences of the plea will remain fixed despite amendments to the relevant law," he wrote.

(Moran, *After waves of criminal justice reforms, prosecutors now want to lock in pleas, ask defendants to give up future rights* , San Diego Tribune (Apr. 17, 2019) <https://www.sandiegouniontribune.com/news/courts/story/2019-04-17/after-waves-of-criminal-justice-reforms-prosecutors-now-want-to-lock-in-pleas-ask-defendants-to-give-up-future-rights> [as of June 17, 2019].)

This bill would make such provisions in a plea bargain void as against public policy on the basis that a guilty plea must knowing, intelligent, and voluntary and any waiver of rights within a plea agreement shall accordingly be a voluntary, intelligent, and intentional relinquishment of a known right or privilege. Any waiver of unknown future potential benefits is not knowing, and intelligent.

4. **Amendment**

The author intends make a technical amendment to subdivision (b) of Penal Code section 1016.8 in the bill as follows:

(b) A provision of a plea bargain that requires a defendant to generally waive future potential benefits of legislative enactments, initiatives, ~~judicial~~ ***appellate*** decisions, or other changes in the law that may retroactively apply after the date of the plea is void as against public policy.

-- END –

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. PRUDHOLME**
Case Number: **S271057**
Lower Court Case Number: **E076007**

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: **Elizabeth.Kuchar@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
MOTION	Respondent's Motion for Judicial Notice

Service Recipients:

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Erica Gambale Attorney at Law 214501	egambale@cox.net	e-Serve	7/20/2022 1:41:34 PM
Elizabeth M. Kuchar Department of Justice, Office of the Attorney General-San Diego 285518	Elizabeth.Kuchar@doj.ca.gov	e-Serve	7/20/2022 1:41:34 PM
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/20/2022
Date

/s/Tammy Larson
Signature

Kuchar, Elizabeth M. (285518)
Last Name, First Name (PNum)

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

Law Firm