
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 597 **Hearing Date:** June 4, 2019
Author: Levine
Version: March 21, 2019
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Probation and Mandatory Supervision: Flash Incarceration*

HISTORY

Source: Chief Probation Officers of California

Prior Legislation: SB 266 (Block), Ch. 706, Stats. 2016
AB 63 (Patterson), failed passage in Assembly Public Safety 2014
AB 986 (Bradford), Ch. 788, Stats. 2013
AB 109 (Com. on Budget), Ch. 15, Stats. 2011

Support: AFSCME; California District Attorneys Association; California State Association of Counties; California State Sheriffs' Association; Judicial Council of California; Marin County Public Defender's Office

Opposition: None known

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to extend authorization for the use of flash incarceration for individuals on probation or mandatory supervision until January 1, 2023.

Existing law defines "flash incarceration" as a period of detention in a county jail due to a violation of an offender's conditions of parole, post-release community supervision (PRCS), probation, or mandatory supervision. Provides that the length of the detention period may range between one and 10 consecutive days. Specifies in cases where there are multiple violations in a single incident, only one flash incarceration booking is authorized and may range between one and 10 consecutive days. (Pen. Code, §§ 1203.35, subd. (b), 3000.08, subd. (e), 3454, subd. (c).)

Existing law provides that in any case where the court grants probation or imposes a sentence that includes mandatory supervision, the county probation department is authorized to use flash incarceration for any violation of the conditions of probation or mandatory supervision if, at the time of granting probation or ordering mandatory supervision, the court obtains from the defendant a waiver to a court hearing prior to the imposition of a period of flash incarceration. Prohibits the denial of probation based on a refusal to sign a waiver for flash incarceration. (Pen. Code, § 1203.35, subd. (a)(1).)

Existing law requires each county probation department to develop a response matrix that establishes protocols for the imposition of graduated sanctions for violations of the conditions of probation to determine appropriate interventions to include the use of flash incarceration. (Pen. Code, § 1203.35, subd. (a)(2).)

Existing law requires a supervisor to approve the term of flash incarceration prior to the imposition of flash incarceration. (Pen. Code, § 1203.35, subd. (a)(3).)

Existing law requires the probation department, upon a decision to impose a period of flash incarceration, to notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration. (Pen. Code, § 1203.35, subd. (a)(4).)

Existing law provides that if the person on probation or mandatory supervision does not agree to accept a recommended period of flash incarceration, upon a determination that there has been a violation, the probation officer is authorized to address the alleged violation by filing a declaration or revocation request with the court. (Pen. Code, § 1203.35, subd. (a)(5).)

Existing law provides that flash incarceration is not applicable to anyone put on probation for nonviolent drug possession, as specified. (Pen. Code, § 1203.35, subd. (c).)

Existing law provides that the provisions related to flash incarceration for probationers and those on mandatory supervision sunsets on January 1, 2021. (Pen. Code, § 1203.35, subd. (d).)

Existing law authorizes, as a general matter, the court to suspend a felony sentence and order the conditional and revocable release of the defendant in the community to probation supervision. (Pen. Code, § 1203.)

Existing law provides if any probation officer, parole officer, or peace officer has probable cause to believe that a supervised person is violating any term or condition of his/her supervision, the officer may, without a warrant and at any time until the final disposition of the case, rearrest the supervised person and bring the person before the court for further disposition such as modification, revocation or termination of the person's supervision, as specified. (Pen. Code, § 1203.2.)

Existing law gives the sentencing judge discretion to impose two types of sentences to county jail. Provides the court may commit the defendant for the entire term allowed by law, or the court may impose a "split sentence" in which part of the term is served in custody and the remaining part of the term is comprised of a period of mandatory supervision. Provides that the presumption is that the defendant shall receive a split sentence, unless the court finds that, in the interests of justice, it is not appropriate in a particular case. (Pen. Code, § 1170, subd. (h)(5).)

Existing law provides that the traditional procedures used to modify probation as well as those used for violations of probation are applicable to mandatory supervision. (Pen. Code, § 1170, subd. (h)(5)(B).)

This bill extends authorization for the use of flash incarceration for people on probation or mandatory supervision until January 1, 2023.

COMMENTS

1. Need for This Bill

According to the author:

As part of 2011 Public Safety Realignment (AB 109), probation was given the authority to use intermediate sanctions such as flash incarceration to address violations of conditions of supervision for Post-Release Community Supervision (PRCS) offenders. Additionally, SB 266 (Block, Statutes of 2015, Chapter 706) established the authority to also allow for flash incarceration as an evidence-based approach to violations of supervision for people on traditional felony probation and Mandatory Supervision. SB 266 included a sunset of January 1, 2021.

Flash incarceration is a period of detention in county jail triggered by a violation of a condition of probation. The length of the detention period can range from one to ten consecutive days. Intermediate sanctions, like flash, balance the need to hold offenders accountable for violations of their conditions of supervision while focusing on shorter disruptions from work, home, or programing which can result from longer term formal revocations.

Absent flash incarceration as an intermediate response to violations, the existing mechanism to address violations of probation is to initiate formal revocation court proceedings which is a much lengthier process and can result in custody time up to 180 days.

This bill would extend the sunset to January 1, 2023 and would continue to incorporate the following requirements:

- 1) Allows a defendant to decline flash at any time and instead go through the court revocation proceedings and hearings
- 2) Clarifies and prohibits that a defendant cannot be denied probation for refusal to sign the waiver
- 3) Upon the imposition of flash, probation will notify the court, public defender, district attorney, and sheriff.

2. Flash Incarceration

AB 109 (Com. on Budget), Chapter 15, Statutes of 2011, realigned responsibility of some offenders from the state to the counties. Specifically, offenders convicted of non-violent and non-serious felonies were rehoused in the state's county jails. Additionally, supervision of this population was transferred from CDCR's Division of Adult Parole Operations to county probation departments and was named post-release community supervision. As part of their duty to supervise the PRCS population, probation departments were authorized to impose newly created intermediate sanctions, including flash incarceration, for violations of supervised release. Flash incarceration is defined as a period of detention in a county jail due to a violation of an offender's conditions of parole, PRCS, probation, or mandatory supervision that may range between one and 10 consecutive days. (Pen. Code, §§ 3000.08, subd. (e), 1203.35, subd. (b), 3455, subd. (c).)

The Legislative Analyst's Office explained the context and reasoning behind flash incarceration as part of realignment:

[T]he realignment legislation provided counties with some additional options for how to manage the realigned offenders. . . . [T]he legislation allows county probation officers to return offenders who violate the terms of their community supervision to jail for up to ten days, which is commonly referred to as "flash incarceration." The rationale for using flash incarceration is that short terms of incarceration when applied soon after the offense is identified can be more effective at deterring subsequent violations than the threat of longer terms following what can be lengthy criminal proceedings.

(Legislative Analyst's Office, *The 2012-13 Budget: The 2011 Realignment of Adult Offenders—An Update* (Feb. 22, 2012), pp. 8-9.)

The intent of intermediate sanctions, such as flash incarceration, is to hold offenders accountable for violating the conditions of supervision while creating shorter disruptions from work, home, or programming which often result from longer term revocations. Because flash incarceration had been used successfully by probation departments on the PRCS population, SB 266 (Block), Chapter 706, Statutes of 2016, extended the use of flash incarceration to individuals granted probation or placed on mandatory supervision. At the time of its enactment, SB 266 drew opposition based on concerns that there would be a lack of due process afforded to individuals on probation or mandatory supervision with respect to the use of flash incarceration. Proponents of the bill argued that the sanction is less punitive than initiating a formal revocation proceeding which takes weeks or months, and during which time the probationer or supervisee is incarcerated in jail.

SB 266 sought to address the due process concerns in several ways. First, an offender has to agree to the use of flash incarceration as a condition of probation or mandatory supervision at the time probation is granted or mandatory supervision is ordered. Additionally, a defendant may refuse the imposition of flash incarceration at the time a condition of release is violated, and instead request a revocation hearing in front of a judge. Finally, the bill specifically stated that a refusal to sign a waiver cannot be used as a reason to deny probation.

The existing code section that authorizes the use of flash incarceration for individuals on probation or mandatory supervision sunsets on January 1, 2021. This bill seeks to extend the sunset until January 1, 2023.

3. Argument in Support

The Marin County Public Defender's Office writes:

In Marin County, flash incarceration is an evidence-based approach whose results have worked to create a quick, fair, and accountable system that is respected by our clients and which results in shorter disruptions from work, home, or programming for our clients. Further, intermediate sanctions like flash promote court and criminal justice system efficiencies by avoiding unduly delayed violation hearings and instead allow clients and probation officers to solidify an accountability bond that results in better outcomes for our clients. . . .

To date, not a single client has declined to take advantage of this voluntary condition. This speaks to the fairness in which it is administered in our county and the confidence our office has with how flash incarcerations are administered. . . .

...We believe in a holistic defense philosophy and having a fair flash incarceration process available to our clients is a valuable tool in ultimately returning them to a life of freedom.

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