



LAW OFFICES OF
CHRISTOPHER W. MILLER
ATTORNEY AT LAW

PROTECTING THOSE WHO PROTECT AND SERVE

LABOR LAW • DISCIPLINE DEFENSE • EMPLOYMENT LITIGATION • CONTRACT NEGOTIATIONS • TRAINING

CLIENT BULLETIN

AB 1950 & PROBATION "REFORM"

January 14, 2021

On September 30, 2020 Governor Gavin Newsom signed into law Assembly Bill 1950, aimed by its sponsors at "changing mass supervision laws" by limiting misdemeanor probation to one year and probation for most felonies to two years. The new law took effect January 1, 2021, but some superior courts and probation departments already have begun extending the law retroactively to shorten existing terms of probation.

What Does the Legislation Do?

AB 1950 amended Penal Code section 1203a to limit misdemeanor probation periods to not more than a year. The **one-year** limit does not apply to any misdemeanor offense that has a specific probation term, such as driving under the influence (3-5 years).

For felony probation, the legislation amended Penal Code section 1203.1(a) to fix **two years** as the maximum term. The two-year limit does not apply to felony offenses with specific probation terms or to the violent felonies listed in Penal Code section 667.5(c), such as murder or other capital offenses, manslaughter, rape, and certain sex offenses. Probation for felonies involving theft of property worth more than \$25,000 is capped at three years.

Whose Idea Was This?

The author of the bill, Los Angeles-area Assemblymember Sydney Kamlager, asserts probation is "caste-based" and "a pipeline for re-entry into the carceral system" instead of a means of reducing recidivism and encouraging rehabilitation. Judges have the authority under existing law to reduce probation terms, but the author sought to minimize violations of probation by mandating shorter probation terms. Sponsored by a self-proclaimed "justice reform coalition" called Reform Alliance and other groups that want to

Cont'd on next page

SACRAMENTO: 8950 CAL CENTER DRIVE, SUITE 108 • SACRAMENTO, CA 95826

BAY AREA: 825 WEBSTER STREET, SUITE A • FAIRFIELD, CA 94533

(916) 382-4980 (O) • (916) 956-6361 (M) • (916) 368-5820 (F)

CMILLER@CHRISMILLERLAW.NET • WWW.CHRISMILLERLAW.NET

drastically **reduce or eliminate probation and parole outright**, the bill passed with the stated goal of “reducing police interference in the lives of the people of the State of California”.

Joining SCOPO and other probation organizations in opposition to AB 1950, both the California District Attorneys Association and the Judicial Council of California, which represents California’s judges, argued against the legislation because of its possible **adverse impact on rehabilitation, SB 678 funding, and recidivism**. Shortening terms of probation means offenders who have not complied with programming or restitution requirements will fail treatment programs and shortchange victims without any consequences. The reduction in the number of persons on probation also could cut per-probationer funding available under SB 678.

Is the Legislation Retroactive and Automatic?

There is no language in AB 1950 making its provisions effective before January 1, 2021. Statutes generally must contain language expressing an intent to make a new law retroactive; however, the California Supreme Court previously has ruled statutes that *reduce* the punishment for a crime apply retroactively to open cases if the statute does not have a “savings clause” saying otherwise. This so-called “***Estrada rule***” means new statutes that reduce the sentence for a crime can be applied both to new cases and to cases where the judgment was not yet final at the time the new law went into effect.

This is likely to be the same reasoning applied by judges and chief probation officers who are ready to apply AB 1950 retroactively. A term of probation is a conditional suspended sentence whose terms must be completed by the defendant as part of the penalty imposed for a crime. The Legislature has now decided probation must be capped at one year or two years, thereby reducing a defendant’s overall sentence. Under the *Estrada* rule, this is a reduction in punishment that applies retroactively to all cases where a final judgment has not been entered.

A judgment is not final when a term of probation has been imposed. The court retains jurisdiction over the defendant to revoke, modify or change its probation orders. (Pen. Code § 1203.3(a).) Thus, **terms of probation in current cases that are not excluded from the statute can be reduced by court order to the caps imposed by AB 1950**. The reduction is **not automatic** but would have to be determined on a case-by-case basis.

What Do We Do Now?

Retroactive application of AB 1950 will vary from county to county and court to court. As with most other statutes affecting crime and punishment in California, there is sure to be a ruling published in the next months by an appellate court affirming that AB 1950 is to be applied retrospectively. In the meantime, it is likely public defenders and criminal defense attorneys will petition for reductions in their clients’ probation terms.

The potential impact of the **anti-probation philosophy** embodied in AB 1950 on probation department funding, and therefore on probation line staff wages and other conditions of employment, cannot be underestimated. The state's SB 678 funding formula is based on the total number of individuals successfully supervised on local probation instead of being returned to prison. A county's annual SB 678 allocation funds the probation department's evidence-based treatment, cognitive behavioral therapy and implementation of sanctions, among other things. By **arbitrarily reducing** the number of persons on probation using a hard cap instead of the evidence-based factors already in use, AB 1950 could slash SB 678 funding without providing a new funding source.

In his 2021-22 proposed budget, Governor Newsom has proposed to mitigate the impact of AB 1950 on probation funding with a one-time \$50 million General Fund allocation to probation departments and an ongoing (annual) \$122.9 million expenditure. The budget must be approved by the Legislature before these funds would be available.

The courts have long said, "The chief purpose of probation is to rehabilitate and reintegrate a defendant into the community." (*People v. Hicks* (2019) 40 Cal.App.5th 320, 327.) But AB 1950's author and sponsors, along with many public defenders and the defense bar, **see probation as just another punishment** disproportionately inflicted on certain classes and races rather than as a means of restoration, treatment and reconciliation. This philosophy leaves no place for crime victims or successful probationers. The fight is on for the future of probation in California.

© 2021 Law Offices of Christopher W. Miller