

AMENDED IN ASSEMBLY APRIL 6, 2017
AMENDED IN ASSEMBLY MARCH 22, 2017
AMENDED IN ASSEMBLY MARCH 6, 2017
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1408

Introduced by Assembly Member Calderon
(Coauthors: Assembly Members Cooper, Dababneh, and Lackey)
(Coauthor: Senator Mendoza)

February 17, 2017

An act to amend Sections 3003, 3041, 3454, and 3455 of the Penal Code, relating to supervised release.

LEGISLATIVE COUNSEL'S DIGEST

AB 1408, as amended, Calderon. Crimes: supervised release.

(1) Existing law requires the Department of Corrections and Rehabilitation to provide specified information to local law enforcement agencies regarding an inmate released by the department to the agency's jurisdiction on parole or postrelease community supervision, including a record of the offense for which the inmate was convicted that resulted in parole or postrelease community supervision.

This bill would require the department to also provide the local law enforcement agency with copies of the record of supervision during any prior period of parole.

(2) Existing law requires the department to be the agency primarily responsible for the Law Enforcement Automated Data System and requires county agencies supervising inmates released from prison on postrelease community supervision to provide any information requested by the department to ensure the availability of accurate information

regarding inmates released from state prison. Under existing law, this information may include the issuance of warrants, revocations, or the termination of postrelease community supervision.

This bill would require the county to provide the department, upon request, with all records of supervision. By imposing additional duties on county agencies administering postrelease community supervision, this bill would impose a state-mandated local program.

(3) Existing law provides the procedure by which the Board of Parole Hearings considers an indeterminately sentenced inmate's suitability for parole and generally requires a panel of the board, or the board, sitting en banc, to grant parole on the inmate's minimum eligible parole date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration.

This bill would require the panel or board, sitting en banc, to consider the entire criminal history of the inmate, including all current or past convicted offenses, in making this determination.

(4) Existing law requires the county agency supervising the release of a person on postrelease community supervision to petition a court to revoke, modify, or terminate postrelease community supervision if the agency determines, following application of its assessment processes, that intermediate sanctions are not appropriate.

This bill would require the county agency supervising the release of a person on postrelease community supervision to also petition a court to revoke, modify, or terminate postrelease community supervision if the person has violated the terms of his or her release for a third time. The bill would allow a peace officer to arrest a person without warrant who fails to appear at a hearing to revoke, modify, or terminate postrelease community supervision. By imposing additional duties on county agencies administering postrelease community supervision, this bill would impose a state-mandated local program.

(5) Existing law allows each county agency responsible for postrelease supervision to determine appropriate responses to alleged violations, which can include a one to 10 consecutive day period of flash incarceration.

This bill would require the probation department to notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration. By imposing additional duties on county agencies

administering postrelease community supervision, this bill would impose a state-mandated local program.

(5)

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3003 of the Penal Code is amended to
2 read:

3 3003. (a) Except as otherwise provided in this section, an
4 inmate who is released on parole or postrelease supervision as
5 provided by Title 2.05 (commencing with Section 3450) shall be
6 returned to the county that was the last legal residence of the inmate
7 prior to his or her incarceration. For purposes of this subdivision,
8 “last legal residence” shall not be construed to mean the county
9 wherein the inmate committed an offense while confined in a state
10 prison or local jail facility or while confined for treatment in a
11 state hospital.

12 (b) Notwithstanding subdivision (a), an inmate may be returned
13 to another county if that would be in the best interests of the public.
14 If the Board of Parole Hearings setting the conditions of parole
15 for inmates sentenced pursuant to subdivision (b) of Section 1168,
16 as determined by the parole consideration panel, or the Department
17 of Corrections and Rehabilitation setting the conditions of parole
18 for inmates sentenced pursuant to Section 1170, decides on a return
19 to another county, it shall place its reasons in writing in the
20 parolee’s permanent record and include these reasons in the notice
21 to the sheriff or chief of police pursuant to Section 3058.6. In
22 making its decision, the paroling authority shall consider, among
23 others, the following factors, giving the greatest weight to the
24 protection of the victim and the safety of the community:

25 (1) The need to protect the life or safety of a victim, the parolee,
26 a witness, or any other person.

1 (2) Public concern that would reduce the chance that the
2 inmate's parole would be successfully completed.

3 (3) The verified existence of a work offer, or an educational or
4 vocational training program.

5 (4) The existence of family in another county with whom the
6 inmate has maintained strong ties and whose support would
7 increase the chance that the inmate's parole would be successfully
8 completed.

9 (5) The lack of necessary outpatient treatment programs for
10 parolees receiving treatment pursuant to Section 2960.

11 (c) The Department of Corrections and Rehabilitation, in
12 determining an out-of-county commitment, shall give priority to
13 the safety of the community and any witnesses and victims.

14 (d) In making its decision about an inmate who participated in
15 a joint venture program pursuant to Article 1.5 (commencing with
16 Section 2717.1) of Chapter 5, the paroling authority shall give
17 serious consideration to releasing him or her to the county where
18 the joint venture program employer is located if that employer
19 states to the paroling authority that he or she intends to employ
20 the inmate upon release.

21 (e) (1) The following information, if available, shall be released
22 by the Department of Corrections and Rehabilitation to local law
23 enforcement agencies regarding a paroled inmate or inmate placed
24 on postrelease community supervision pursuant to Title 2.05
25 (commencing with Section 3450) who is released in their
26 jurisdictions:

27 (A) Last, first, and middle names.

28 (B) Birth date.

29 (C) Sex, race, height, weight, and hair and eye color.

30 (D) Date of parole or placement on postrelease community
31 supervision and discharge.

32 (E) Registration status, if the inmate is required to register as a
33 result of a controlled substance, sex, or arson offense.

34 (F) California Criminal Information Number, FBI number, social
35 security number, and driver's license number.

36 (G) County of commitment.

37 (H) A description of scars, marks, and tattoos on the inmate.

38 (I) Offense or offenses for which the inmate was convicted that
39 resulted in parole or postrelease community supervision in this
40 instance.

1 (J) Address, including all of the following information:

2 (i) Street name and number. Post office box numbers are not
3 acceptable for purposes of this subparagraph.

4 (ii) City and ZIP Code.

5 (iii) Date that the address provided pursuant to this subparagraph
6 was proposed to be effective.

7 (K) Contact officer and unit, including all of the following
8 information:

9 (i) Name and telephone number of each contact officer.

10 (ii) Contact unit type of each contact officer such as units
11 responsible for parole, registration, or county probation.

12 (L) A digitized image of the photograph and at least a single
13 digit fingerprint of the parolee.

14 (M) A geographic coordinate for the inmate's residence location
15 for use with a Geographical Information System (GIS) or
16 comparable computer program.

17 (N) Copies of the record of supervision during any prior period
18 of parole.

19 (2) Unless the information is unavailable, the Department of
20 Corrections and Rehabilitation shall electronically transmit to the
21 county agency identified in subdivision (a) of Section 3451 the
22 inmate's tuberculosis status, specific medical, mental health, and
23 outpatient clinic needs, and any medical concerns or disabilities
24 for the county to consider as the offender transitions onto
25 postrelease community supervision pursuant to Section 3450, for
26 the purpose of identifying the medical and mental health needs of
27 the individual. All transmissions to the county agency shall be in
28 compliance with applicable provisions of the federal Health
29 Insurance Portability and Accountability Act of 1996 (HIPAA)
30 (Public Law 104-191), the federal Health Information Technology
31 for Clinical Health Act (HITECH) (Public Law 111-005), and the
32 implementing of privacy and security regulations in Parts 160 and
33 164 of Title 45 of the Code of Federal Regulations. This paragraph
34 shall not take effect until the Secretary of the United States
35 Department of Health and Human Services, or his or her designee,
36 determines that this provision is not preempted by HIPAA.

37 (3) Except for the information required by paragraph (2), the
38 information required by this subdivision shall come from the
39 statewide parolee database. The information obtained from each
40 source shall be based on the same timeframe.

1 (4) All of the information required by this subdivision shall be
2 provided utilizing a computer-to-computer transfer in a format
3 usable by a desktop computer system. The transfer of this
4 information shall be continually available to local law enforcement
5 agencies upon request.

6 (5) The unauthorized release or receipt of the information
7 described in this subdivision is a violation of Section 11143.

8 (f) Notwithstanding any other law, an inmate who is released
9 on parole shall not be returned to a location within 35 miles of the
10 actual residence of a victim of, or a witness to, a violent felony as
11 defined in paragraphs (1) to (7), inclusive, and paragraph (16) of
12 subdivision (c) of Section 667.5 or a felony in which the defendant
13 inflicts great bodily injury on a person other than an accomplice
14 that has been charged and proved as provided for in Section
15 12022.53, 12022.7, or 12022.9, if the victim or witness has
16 requested additional distance in the placement of the inmate on
17 parole, and if the Board of Parole Hearings or the Department of
18 Corrections and Rehabilitation finds that there is a need to protect
19 the life, safety, or well-being of a victim or witness.

20 (g) Notwithstanding any other law, an inmate who is released
21 on parole for a violation of Section 288 or 288.5 whom the
22 Department of Corrections and Rehabilitation determines poses a
23 high risk to the public shall not be placed or reside, for the duration
24 of his or her parole, within one-half mile of a public or private
25 school including any or all of kindergarten and grades 1 to 12,
26 inclusive.

27 (h) Notwithstanding any other law, an inmate who is released
28 on parole or postrelease community supervision for a stalking
29 offense shall not be returned to a location within 35 miles of the
30 victim's actual residence or place of employment if the victim or
31 witness has requested additional distance in the placement of the
32 inmate on parole or postrelease community supervision, and if the
33 Board of Parole Hearings or the Department of Corrections and
34 Rehabilitation, or the supervising county agency, as applicable,
35 finds that there is a need to protect the life, safety, or well-being
36 of the victim. If an inmate who is released on postrelease
37 community supervision cannot be placed in his or her county of
38 last legal residence in compliance with this subdivision, the
39 supervising county agency may transfer the inmate to another
40 county upon approval of the receiving county.

1 (i) The authority shall give consideration to the equitable
2 distribution of parolees and the proportion of out-of-county
3 commitments from a county compared to the number of
4 commitments from that county when making parole decisions.

5 (j) An inmate may be paroled to another state pursuant to any
6 other law. The Department of Corrections and Rehabilitation shall
7 coordinate with local entities regarding the placement of inmates
8 placed out of state on postrelease community supervision pursuant
9 to Title 2.05 (commencing with Section 3450).

10 (k) (1) Except as provided in paragraph (2), the Department of
11 Corrections and Rehabilitation shall be the agency primarily
12 responsible for, and shall have control over, the program, resources,
13 and staff implementing the Law Enforcement Automated Data
14 System (LEADS) in conformance with subdivision (e). County
15 agencies supervising inmates released to postrelease community
16 supervision pursuant to Title 2.05 (commencing with Section 3450)
17 shall provide any information requested by the department to
18 ensure the availability of accurate information regarding inmates
19 released from state prison. This information may include all records
20 of supervision, the issuance of warrants, revocations, or the
21 termination of postrelease community supervision. On or before
22 August 1, 2011, county agencies designated to supervise inmates
23 released to postrelease community supervision shall notify the
24 department that the county agencies have been designated as the
25 local entity responsible for providing that supervision.

26 (2) Notwithstanding paragraph (1), the Department of Justice
27 shall be the agency primarily responsible for the proper release of
28 information under LEADS that relates to fingerprint cards.

29 (l) In addition to the requirements under subdivision (k), the
30 Department of Corrections and Rehabilitation shall submit to the
31 Department of Justice data to be included in the supervised release
32 file of the California Law Enforcement Telecommunications
33 System (CLETS) so that law enforcement can be advised through
34 CLETS of all persons on postrelease community supervision and
35 the county agency designated to provide supervision. The data
36 required by this subdivision shall be provided via electronic
37 transfer.

38 SEC. 2. Section 3041 of the Penal Code is amended to read:

39 3041. (a) (1) In the case of any inmate sentenced pursuant to
40 any law, other than Chapter 4.5 (commencing with Section 1170)

1 of Title 7 of Part 2, the Board of Parole Hearings shall meet with
2 each inmate during the sixth year before the inmate's minimum
3 eligible parole date for the purposes of reviewing and documenting
4 the inmate's activities and conduct pertinent to parole eligibility.
5 During this consultation, the board shall provide the inmate
6 information about the parole hearing process, legal factors relevant
7 to his or her suitability or unsuitability for parole, and
8 individualized recommendations for the inmate regarding his or
9 her work assignments, rehabilitative programs, and institutional
10 behavior. Within 30 days following the consultation, the board
11 shall issue its positive and negative findings and recommendations
12 to the inmate in writing.

13 (2) One year before the inmate's minimum eligible parole date
14 a panel of two or more commissioners or deputy commissioners
15 shall again meet with the inmate and shall normally grant parole
16 as provided in Section 3041.5. No more than one member of the
17 panel shall be a deputy commissioner.

18 (3) In the event of a tie vote, the matter shall be referred for an
19 en banc review of the record that was before the panel that rendered
20 the tie vote. Upon en banc review, the board shall vote to either
21 grant or deny parole and render a statement of decision. The en
22 banc review shall be conducted pursuant to subdivision (e).

23 (4) Upon a grant of parole, the inmate shall be released subject
24 to all applicable review periods. However, an inmate shall not be
25 released before reaching his or her minimum eligible parole date
26 as set pursuant to Section 3046 unless the inmate is eligible for
27 earlier release pursuant to his or her youth offender parole
28 eligibility date.

29 (5) At least one commissioner of the panel shall have been
30 present at the last preceding meeting, unless it is not feasible to
31 do so or where the last preceding meeting was the initial meeting.
32 Any person on the hearing panel may request review of any
33 decision regarding parole for an en banc hearing by the board. In
34 case of a review, a majority vote in favor of parole by the board
35 members participating in an en banc review is required to grant
36 parole to any inmate.

37 (b) (1) The panel or the board, sitting en banc, shall grant parole
38 to an inmate unless it determines that the gravity of the current
39 convicted offense or offenses, or the timing and gravity of current
40 or past convicted offense or offenses, is such that consideration of

1 the public safety requires a more lengthy period of incarceration
2 for this individual. The panel or the board, sitting en banc, shall
3 consider the entire criminal history of the inmate, including all
4 current or past convicted offenses, in making this determination.

5 (2) After July 30, 2001, any decision of the parole panel finding
6 an inmate suitable for parole shall become final within 120 days
7 of the date of the hearing. During that period, the board may review
8 the panel's decision. The panel's decision shall become final
9 pursuant to this subdivision unless the board finds that the panel
10 made an error of law, or that the panel's decision was based on an
11 error of fact, or that new information should be presented to the
12 board, any of which when corrected or considered by the board
13 has a substantial likelihood of resulting in a substantially different
14 decision upon a rehearing. In making this determination, the board
15 shall consult with the commissioners who conducted the parole
16 consideration hearing.

17 (3) A decision of a panel shall not be disapproved and referred
18 for rehearing except by a majority vote of the board, sitting en
19 banc, following a public meeting.

20 (c) For the purpose of reviewing the suitability for parole of
21 those inmates eligible for parole under prior law at a date earlier
22 than that calculated under Section 1170.2, the board shall appoint
23 panels of at least two persons to meet annually with each inmate
24 until the time the person is released pursuant to proceedings or
25 reaches the expiration of his or her term as calculated under Section
26 1170.2.

27 (d) It is the intent of the Legislature that, during times when
28 there is no backlog of inmates awaiting parole hearings, life parole
29 consideration hearings, or life rescission hearings, hearings will
30 be conducted by a panel of three or more members, the majority
31 of whom shall be commissioners. The board shall report monthly
32 on the number of cases where an inmate has not received a
33 completed initial or subsequent parole consideration hearing within
34 30 days of the hearing date required by subdivision (a) of Section
35 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless
36 the inmate has waived the right to those timeframes. That report
37 shall be considered the backlog of cases for purposes of this
38 section, and shall include information on the progress toward
39 eliminating the backlog, and on the number of inmates who have
40 waived their right to the above timeframes. The report shall be

1 made public at a regularly scheduled meeting of the board and a
2 written report shall be made available to the public and transmitted
3 to the Legislature quarterly.

4 (e) For purposes of this section, an en banc review by the board
5 means a review conducted by a majority of commissioners holding
6 office on the date the matter is heard by the board. An en banc
7 review shall be conducted in compliance with the following:

8 (1) The commissioners conducting the review shall consider
9 the entire record of the hearing that resulted in the tie vote.

10 (2) The review shall be limited to the record of the hearing. The
11 record shall consist of the transcript or audiotape of the hearing,
12 written or electronically recorded statements actually considered
13 by the panel that produced the tie vote, and any other material
14 actually considered by the panel. New evidence or comments shall
15 not be considered in the en banc proceeding.

16 (3) The board shall separately state reasons for its decision to
17 grant or deny parole.

18 (4) A commissioner who was involved in the tie vote shall be
19 recused from consideration of the matter in the en banc review.

20 *SEC. 3. Section 3454 of the Penal Code is amended to read:*

21 3454. (a) Each supervising county agency, as established by
22 the county board of supervisors pursuant to subdivision (a) of
23 Section 3451, shall establish a review process for assessing and
24 refining a person's program of postrelease supervision. Any
25 additional postrelease supervision conditions shall be reasonably
26 related to the underlying offense for which the offender spent time
27 in prison, or to the offender's risk of recidivism, and the offender's
28 criminal history, and be otherwise consistent with law.

29 (b) Each county agency responsible for postrelease supervision,
30 as established by the county board of supervisors pursuant to
31 subdivision (a) of Section 3451, may determine additional
32 appropriate conditions of supervision listed in Section 3453
33 consistent with public safety, including the use of continuous
34 electronic monitoring as defined in Section 1210.7, order the
35 provision of appropriate rehabilitation and treatment services,
36 determine appropriate incentives, and determine and order
37 appropriate responses to alleged violations, which can include, but
38 shall not be limited to, immediate, structured, and intermediate
39 sanctions up to and including referral to a reentry court pursuant
40 to Section 3015, or flash incarceration in a city or county jail.

1 Periods of flash incarceration are encouraged as one method of
2 punishment for violations of an offender's condition of postrelease
3 supervision.

4 (c) As used in this title, "flash incarceration" is a period of
5 detention in a city or county jail due to a violation of an offender's
6 conditions of postrelease supervision. The length of the detention
7 period can range between one and 10 consecutive days. Flash
8 incarceration is a tool that may be used by each county agency
9 responsible for postrelease supervision. Shorter, but if necessary
10 more frequent, periods of detention for violations of an offender's
11 postrelease supervision conditions shall appropriately punish an
12 offender while preventing the disruption in a work or home
13 establishment that typically arises from longer term revocations.

14 (d) *Upon a decision to impose a period of flash incarceration,*
15 *the probation department shall notify the court, public defender,*
16 *district attorney, and sheriff of each imposition of flash*
17 *incarceration.*

18 ~~SEC. 3.~~

19 SEC. 4. Section 3455 of the Penal Code is amended to read:

20 3455. (a) If the supervising county agency has determined,
21 following application of its assessment processes, that intermediate
22 sanctions as authorized in subdivision (b) of Section 3454 are not
23 appropriate, or if the supervised person has violated the terms of
24 his or her release for a third time, the supervising county agency
25 shall petition the court pursuant to Section 1203.2 to revoke,
26 modify, or terminate postrelease community supervision. At any
27 point during the process initiated pursuant to this section, a person
28 may waive, in writing, his or her right to counsel, admit the
29 violation of his or her postrelease community supervision, waive
30 a court hearing, and accept the proposed modification of his or her
31 postrelease community supervision. The petition shall include a
32 written report that contains additional information regarding the
33 petition, including the relevant terms and conditions of postrelease
34 community supervision, the circumstances of the alleged
35 underlying violation, the history and background of the violator,
36 and any recommendations. The Judicial Council shall adopt forms
37 and rules of court to establish uniform statewide procedures to
38 implement this subdivision, including the minimum contents of
39 supervision agency reports. Upon a finding that the person has
40 violated the conditions of postrelease community supervision, the

1 revocation hearing officer shall have authority to do all of the
2 following:

3 (1) Return the person to postrelease community supervision
4 with modifications of conditions, if appropriate, including a period
5 of incarceration in a county jail.

6 (2) Revoke and terminate postrelease community supervision
7 and order the person to confinement in a county jail.

8 (3) Refer the person to a reentry court pursuant to Section 3015
9 or other evidence-based program in the court's discretion.

10 (b) (1) At any time during the period of postrelease community
11 supervision, if a peace officer, including a probation officer, has
12 probable cause to believe a person subject to postrelease
13 community supervision is violating any term or condition of his
14 or her release, or has failed to appear at a hearing pursuant to
15 Section 1203.2 to revoke, modify, or terminate postrelease
16 community supervision, the officer may, without a warrant or other
17 process, arrest the person and bring him or her before the
18 supervising county agency established by the county board of
19 supervisors pursuant to subdivision (a) of Section 3451.
20 Additionally, an officer employed by the supervising county agency
21 may seek a warrant and a court or its designated hearing officer
22 appointed pursuant to Section 71622.5 of the Government Code
23 shall have the authority to issue a warrant for that person's arrest.

24 (2) The court or its designated hearing officer shall have the
25 authority to issue a warrant for a person who is the subject of a
26 petition filed under this section who has failed to appear for a
27 hearing on the petition or for any reason in the interests of justice,
28 or to remand to custody a person who does appear at a hearing on
29 the petition for any reason in the interests of justice.

30 (3) Unless a person subject to postrelease community
31 supervision is otherwise serving a period of flash incarceration,
32 whenever a person who is subject to this section is arrested, with
33 or without a warrant or the filing of a petition for revocation, the
34 court may order the release of the person under supervision from
35 custody under any terms and conditions the court deems
36 appropriate.

37 (c) The revocation hearing shall be held within a reasonable
38 time after the filing of the revocation petition. Except as provided
39 in paragraph (3) of subdivision (b), based upon a showing of a
40 preponderance of the evidence that a person under supervision

1 poses an unreasonable risk to public safety, or that the person may
2 not appear if released from custody, or for any reason in the
3 interests of justice, the supervising county agency shall have the
4 authority to make a determination whether the person should
5 remain in custody pending the first court appearance on a petition
6 to revoke postrelease community supervision, and upon that
7 determination, may order the person confined pending his or her
8 first court appearance.

9 (d) Confinement pursuant to paragraphs (1) and (2) of
10 subdivision (a) shall not exceed a period of 180 days in a county
11 jail for each custodial sanction.

12 (e) A person shall not remain under supervision or in custody
13 pursuant to this title on or after three years from the date of the
14 person's initial entry onto postrelease community supervision,
15 except when his or her supervision is tolled pursuant to Section
16 1203.2 or subdivision (b) of Section 3456.

17 ~~SEC. 4.~~

18 *SEC. 5.* To the extent that this act has an overall effect of
19 increasing the costs already borne by a local agency for programs
20 or levels of service mandated by the 2011 Realignment Legislation
21 within the meaning of Section 36 of Article XIII of the California
22 Constitution, it shall apply to local agencies only to the extent that
23 the state provides annual funding for the cost increase. Any new
24 program or higher level of service provided by a local agency
25 pursuant to this act above the level for which funding has been
26 provided shall not require a subvention of funds by the state or
27 otherwise be subject to Section 6 of Article XIII B of the California
28 Constitution.

29
30
31 **REVISIONS:**

32 **Heading—Line 2.**
33