

RESOLUTION 08-05-2015 (as amended and adopted)

DIGEST

Criminal Law: Conditional Sentence and Probation for a Felony Pursuant to Mutual Agreement
Amends Penal Code section 1203 to allow a conditional sentence and probation for a felony with the consent of prosecution and defendant, or by order of the court.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Penal Code section 1203 to read as follows:

§1203

1 (a) As used in this code, "probation" means the suspension of the imposition or execution
2 of a sentence and the order of conditional and revocable release in the community under the
3 supervision of a probation officer. As used in this code, "conditional sentence" means the
4 suspension of the imposition or execution of a sentence and the order of revocable release in the
5 community subject to conditions established by the court without the supervision of a probation
6 officer. It is the intent of the Legislature that both conditional sentence and probation are
7 authorized whenever probation is authorized in any code as a sentencing option for infractions or
8 misdemeanors, or felonies with the consent of the defendant and the prosecuting attorney, or by
9 order of the court.

10 (b) (1) Except as provided in subdivision (j), if a person is convicted of a felony and is
11 eligible for probation, before judgment is pronounced, the court shall immediately refer the
12 matter to a probation officer to investigate and report to the court, at a specified time, upon the
13 circumstances surrounding the crime and the prior history and record of the person, which may
14 be considered either in aggravation or mitigation of the punishment.

15 (2) (A) The probation officer shall immediately investigate and make a written report to
16 the court of his or her findings and recommendations, including his or her recommendations as to
17 the granting or denying of probation and the conditions of probation, if granted.

18 (B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer
19 shall include in his or her report any information gathered by a law enforcement agency relating
20 to the taking of the defendant into custody as a minor, which shall be considered for purposes of
21 determining whether adjudications of commissions of crimes as a juvenile warrant a finding that
22 there are circumstances in aggravation pursuant to Section 1170 or to deny probation.

23 (C) If the person was convicted of an offense that requires him or her to register as a sex
24 offender pursuant to Sections 290 to 290.023, inclusive, or if the probation report recommends
25 that registration be ordered at sentencing pursuant to Section 290.006, the probation officer's
26 report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders
27 (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

28 (D) The probation officer may also include in the report his or her recommendation of
29 both of the following:

30 (i) The amount the defendant should be required to pay as a restitution fine pursuant to
31 subdivision (b) of Section 1202.4.

32 (ii) Whether the court shall require, as a condition of probation, restitution to the victim
33 or to the Restitution Fund and the amount thereof.

34 (E) The report shall be made available to the court and the prosecuting and defense
35 attorneys at least five days, or upon request of the defendant or prosecuting attorney nine days,
36 prior to the time fixed by the court for the hearing and determination of the report, and shall be
37 filed with the clerk of the court as a record in the case at the time of the hearing. The time within
38 which the report shall be made available and filed may be waived by written stipulation of the
39 prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court
40 that is made and entered upon the minutes of the court.

41 (3) At a time fixed by the court, the court shall hear and determine the application, if one
42 has been made, or, in any case, the suitability of probation in the particular case. At the hearing,
43 the court shall consider any report of the probation officer, including the results of the
44 SARATSO, if applicable, and shall make a statement that it has considered the report, which
45 shall be filed with the clerk of the court as a record in the case. If the court determines that there
46 are circumstances in mitigation of the punishment prescribed by law or that the ends of justice
47 would be served by granting probation to the person, it may place the person on probation. If
48 probation is denied, the clerk of the court shall immediately send a copy of the report to the
49 Department of Corrections and Rehabilitation at the prison or other institution to which the
50 person is delivered.

51 (4) The preparation of the report or the consideration of the report by the court may be
52 waived only by a written stipulation of the prosecuting and defense attorneys that is filed with
53 the court or an oral stipulation in open court that is made and entered upon the minutes of the
54 court, except that a waiver shall not be allowed unless the court consents thereto. However, if the
55 defendant is ultimately sentenced and committed to the state prison, a probation report shall be
56 completed pursuant to Section 1203c.

57 (c) If a defendant is not represented by an attorney, the court shall order the probation
58 officer who makes the probation report to discuss its contents with the defendant.

59 (d) If a person is convicted of a misdemeanor, the court may either refer the matter to the
60 probation officer for an investigation and a report or summarily pronounce a conditional
61 sentence. If the person was convicted of an offense that requires him or her to register as a sex
62 offender pursuant to Sections 290 to 290.023, inclusive, or if the probation officer recommends
63 that the court, at sentencing, order the offender to register as a sex offender pursuant to Section
64 290.006, the court shall refer the matter to the probation officer for the purpose of obtaining a
65 report on the results of the State-Authorized Risk Assessment Tool for Sex Offenders
66 administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable, which the court shall
67 consider. If the case is not referred to the probation officer, in sentencing the person, the court
68 may consider any information concerning the person that could have been included in a
69 probation report. The court shall inform the person of the information to be considered and
70 permit him or her to answer or controvert the information. For this purpose, upon the request of
71 the person, the court shall grant a continuance before the judgment is pronounced.

72 (e) Except in unusual cases where the interests of justice would best be served if the
73 person is granted probation, probation shall not be granted to any of the following persons:

74 (1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at
75 the time of the perpetration of the crime or his or her arrest, any person who has been convicted
76 of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence,
77 torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping,
78 escape from the state prison, or a conspiracy to commit one or more of those crimes and who
79 was armed with the weapon at either of those times.

80 (2) Any person who used, or attempted to use, a deadly weapon upon a human being in
81 connection with the perpetration of the crime of which he or she has been convicted.

82 (3) Any person who willfully inflicted great bodily injury or torture in the perpetration of
83 the crime of which he or she has been convicted.

84 (4) Any person who has been previously convicted twice in this state of a felony or in any
85 other place of a public offense which, if committed in this state, would have been punishable as a
86 felony.

87 (5) Unless the person has never been previously convicted once in this state of a felony or
88 in any other place of a public offense which, if committed in this state, would have been
89 punishable as a felony, any person who has been convicted of burglary with explosives, rape
90 with force or violence, torture, aggravated mayhem, murder, attempt to commit murder,
91 trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286,
92 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

93 (6) Any person who has been previously convicted once in this state of a felony or in any
94 other place of a public offense which, if committed in this state, would have been punishable as a
95 felony, if he or she committed any of the following acts:

96 (A) Unless the person had a lawful right to carry a deadly weapon at the time of the
97 perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed
98 with a weapon at either of those times.

99 (B) The person used, or attempted to use, a deadly weapon upon a human being in
100 connection with the perpetration of the previous crime.

101 (C) The person willfully inflicted great bodily injury or torture in the perpetration of the
102 previous crime.

103 (7) Any public official or peace officer of this state or any city, county, or other political
104 subdivision who, in the discharge of the duties of his or her public office or employment,
105 accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty
106 of extortion.

107 (8) Any person who knowingly furnishes or gives away phencyclidine.

108 (9) Any person who intentionally inflicted great bodily injury in the commission of arson
109 under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the
110 burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section
111 451.

112 (10) Any person who, in the commission of a felony, inflicts great bodily injury or causes
113 the death of a human being by the discharge of a firearm from or at an occupied motor vehicle
114 proceeding on a public street or highway.

115 (11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under
116 Section 33215, a machinegun under Section 32625, or a silencer under Section 33410.

117 (12) Any person who is convicted of violating Section 8101 of the Welfare and
118 Institutions Code.

119 (13) Any person who is described in subdivision (b) or (c) of Section 27590.

120 (f) When probation is granted in a case which comes within subdivision (e), the court
121 shall specify on the record and shall enter on the minutes the circumstances indicating that the
122 interests of justice would best be served by that disposition.

123 (g) If a person is not eligible for probation, the judge shall refer the matter to the
124 probation officer for an investigation of the facts relevant to determination of the amount of a
125 restitution fine pursuant to subdivision (b) of Section 1202.4 in all cases where the determination

126 is applicable. The judge, in his or her discretion, may direct the probation officer to investigate
127 all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall
128 immediately investigate the circumstances surrounding the crime and the prior record and history
129 of the person and make a written report to the court of his or her findings. The findings shall
130 include a recommendation of the amount of the restitution fine as provided in subdivision (b) of
131 Section 1202.4.

132 (h) If a defendant is convicted of a felony and a probation report is prepared pursuant to
133 subdivision (b) or (g), the probation officer may obtain and include in the report a statement of
134 the comments of the victim concerning the offense. The court may direct the probation officer
135 not to obtain a statement if the victim has in fact testified at any of the court proceedings
136 concerning the offense.

137 (i) A probationer shall not be released to enter another state unless his or her case has
138 been referred to the Administrator of the Interstate Probation and Parole Compacts, pursuant to
139 the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing
140 with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the
141 county that has jurisdiction over his or her probation case the reasonable costs of processing his
142 or her request for interstate compact supervision. The amount and method of reimbursement
143 shall be in accordance with Section 1203.1b.

144 (j) In any court where a county financial evaluation officer is available, in addition to
145 referring the matter to the probation officer, the court may order the defendant to appear before
146 the county financial evaluation officer for a financial evaluation of the defendant's ability to pay
147 restitution, in which case the county financial evaluation officer shall report his or her findings
148 regarding restitution and other court-related costs to the probation officer on the question of the
149 defendant's ability to pay those costs. Any order made pursuant to this subdivision may be
150 enforced as a violation of the terms and conditions of probation upon willful failure to pay and at
151 the discretion of the court, may be enforced in the same manner as a judgment in a civil action, if
152 any balance remains unpaid at the end of the defendant's probationary period.

153 (k) Probation shall not be granted to, nor shall the execution of, or imposition of sentence
154 be suspended for, any person who is convicted of a violent felony, as defined in subdivision (c)
155 of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, and who
156 was on probation for a felony offense at the time of the commission of the new felony offense.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: In all felony cases in which “probation” is granted, existing law requires the defendant to be placed under the supervision of a probation officer. A “conditional sentence,” where a defendant is placed under the supervision of the court without a probation officer (i.e., ‘informal’ or ‘summary’ probation), is authorized only for infractions and misdemeanors. However, depending on the unique circumstances of the crime and the defendant, a convicted felon may not require Probation Department supervision. (*See, e.g., People v. Willis* (2013) 222 Cal. App. 4th 141, 148 (concurrence by Justice Suzukawa).) When both sides agree that court

supervision is adequate, there is no need to expend the limited resources of the Probation Department and burden the defendant with the cost of unnecessary probation services.

The Solution: If a convicted felon is eligible for probation and both sides agree, the court may place the defendant on summary probation.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Michael Fern

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolution found.

Reasons:

This resolution amends Penal Code section 1203 to allow a conditional sentence and probation for a felony with the consent of prosecution and defendant, or by order of the court. This resolution should be approved in principle because not every convicted felon requires standard probation and allowing conditional probations pursuant to the parties' mutual agreement will help preserve judicial resources.

Misdemeanor convictions already allow the court to impose either formal or informal probation. (*People v. Willis* (2013) 222 Cal.App.4th 141.) This resolution would extend that possibility to a convicted felon if both the defendant and the prosecuting attorney agree. The court would not be bound by the agreement; but, the Court would be unlikely decline the agreement unless there were additional factors that weighed against it.