



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #235

Modification of Probation Terms for Misdemeanor Offenses (DOC -- Adult Corrections)

[LFB 2005-07 Budget Summary: Page 131, #20]

CURRENT LAW

Under current law, the lengths of terms of misdemeanor probation are as follows:

1. For one misdemeanor at any one time, not less than six months nor more than two years.
2. For not less than two nor more than four misdemeanors at the same time, the maximum original term of probation may be increased by one year.
3. For five or more misdemeanors at the same time, the maximum original term of probation may be increased by two years.

The terms of probation are not based on the classifications of the misdemeanor.

GOVERNOR

Modify current law to provide that, if a person is convicted of a misdemeanor, the following terms of probation would apply for a single offense: (a) for a Class A misdemeanor, a term of not less than six months or more than one year; and (b) for all other misdemeanors, a term of not more than six months, with no minimum requirement. However, if one of the following applies, the maximum term of probation would remain at the current law maximum of two years: (a) the person committed a misdemeanor while possessing a firearm; (b) the misdemeanor is an act of domestic violence; (c) the misdemeanor was a Class A fourth degree sexual assault; or (d) a violation of Chapter 948 of the statutes (Crimes Against Children).

DISCUSSION POINTS

1. Under current law, if a person is convicted of a crime, a court may grant probation, either by withholding a sentence or by imposing a sentence and staying its execution. The person is then placed on probation under the supervision of the Department of Corrections. The court may impose any conditions on the probationer that appear to be reasonable and appropriate. Corrections may also impose rules and regulations on the offender. The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously. The court may not, however, provide consecutive probationary periods. No offender convicted of any of the following may be placed on probation: (a) an offense punishable by life imprisonment; (b) repeat serious sexual offenses; (c) repeat serious violent crimes (felony murder and second-degree intentional homicide); and (d) operating a vehicle under the influence of an intoxicant or other drug for a first, second and third offense.

2. The table below identifies probation terms under current law probation and under Assembly Bill 100.

<u>Current Law</u>		<u>Assembly Bill 100</u>	
One misdemeanor, Class A, B or C, or unclassified	Not less than six months nor more than two years probation	Misdemeanor involving domestic abuse, firearm possession, 4th degree sexual assault or crimes against children	Not less than six months nor more than two years probation
		One misdemeanor, Class A	Not less than six months nor more than one year probation
		One misdemeanor, Class B or C, or unclassified	Not more than six months probation
Not less than two nor more than four misdemeanors, at the same time	Maximum of an additional one year of probation	Not less than two nor more than four misdemeanors, at the same time	Maximum of an additional one year of probation
Five or more misdemeanors, at the same time	Maximum of an additional two years of probation	Five or more misdemeanors, at the same time	Maximum of an additional two years of probation

3. It should be noted that in a March 9, 2005, memorandum to the Joint Committee on Finance Co-Chairs, the Department of Administration indicated that the intoxicated use of a motor vehicle should have been among the offenses where the maximum term of probation would remain at the current law maximum of two years. In addition, DOA indicates that statutory language changes under the bill should have been placed under the probation statutes rather than the statutes associated with increased penalties for certain domestic abuse offenses. This paper assumes these modifications are included in the bill.

4. Current law provisions related to increased terms of probation for multiple offenses committed at the same time would continue to apply to the modified probation terms under AB 100.

Therefore, for example, if an individual was placed on probation for two Class B misdemeanors, the maximum term of supervision would be one and a half years (a six month maximum for the Class B offenses and an additional one year because two offenses occurred at the same time). The current law maximum would be three years (a two-year maximum for the Class B offenses and an additional one year because two offenses occurred at the same time).

5. The following table identifies the number of individuals admitted to probation for misdemeanors in fiscal years 2001-02, 2002-03, and 2003-04. Unclassified misdemeanor probation cases are criminal violations outside of the Criminal Code (Chapters 939 to 951 of the Statutes).

<u>Misdemeanor Type</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>
Class A	12,563	12,318	12,073
Class B	4,160	3,867	3,557
Class C	10	3	9
Unclassified	<u>3,426</u>	<u>3,462</u>	<u>3,670</u>
Total	20,159	19,650	19,309

6. Based on 2003-04 misdemeanor probation admissions data, the 19,309 admissions were for 158 different offenses. In that year, the most frequent Class A misdemeanor probation admissions were for battery (2,979), theft of movable property under \$2,500 (1,809), criminal damage to property (1,197), resisting or obstructing an officer (958), misdemeanor bail jumping (729), issuing worthless checks under \$2,500 (617) and retail theft under \$2,500 (481); the most frequent Class B offense was disorderly conduct (3,497); for Class C, contributing to truancy (4); and for unclassified misdemeanors, possession of marijuana (1,192), operating while intoxicated (689), possession of cocaine (424), and hit and run (228).

7. Under current law, if an offender is placed on probation for two to four misdemeanors occurring at the same time, the maximum term of probation may be increased by one year; for five or more misdemeanor offenses, the term of probation may be increased by two years. These terms may be given along with other felony or misdemeanor sentences. The above data identifies the most significant misdemeanor for which an offender is supervised. Therefore, for example, an offender with a Class B and Class C misdemeanor term is identified as a Class B offender. Based on the data, the average term for probation for Class A misdemeanor for persons admitted to probation in 2003-04 was 22.7 months; for Class B, 16.4 months; for Class C, 16 months; and for unclassified, 23.4 months. It is not known how many of these offenders had terms of probation imposed for multiple offenses occurring at the same time, and whether the terms given in addition to a sentence on a different charge.

8. The Department currently has 1,205.03 community corrections agent positions for its regional offices for probation and parole, the enhanced supervision program, and the absconder unit. The Department of Corrections utilizes a case classification and staff deployment (CC/SD) model to evaluate probation and parole staffing requirements. The CC/SD model uses projected probation and parole populations to determine the number of agents required based on the risk classification of offenders and an agent workload study.

9. Based on actual monthly community corrections population growth since July, 2003, and recent trends, the population for offenders on probation, parole and extended supervision is estimated to be 68,358 in 2004-05, 71,238 in 2005-06 and 74,158 in 2006-07. The estimate does not include 800 offenders in the enhanced supervision programs, but does include increased caseload associated with prison population management initiatives previously enacted into law and expanded under the bill.

10. Under Corrections' current employment contract for probation, parole and extended supervision agents, the CC/SD model was modified to include a point system for calculating an agent's workload. A memorandum of understanding included with the contract specifies that 215 points is an agent's maximum workload. (It should be noted, however, that the 215-point workload assumes the maximum caseload for an agent with no sick leave or other unplanned absences.) Under the modified model, total workload points generated for all risk classifications of offenders are divided by the 215 points to determine the number of agents needed for community supervision. Based on the estimated 2005-07 community corrections population and total workload points for all offenders, community corrections would require an additional \$189,800 GPR and 3.25 positions (1.25 probation and parole agent and 2.0 field supervisors) in 2005-06 and \$3,143,200 GPR and 71.25 GPR positions (49.25 agents, 6.0 field supervisors, 2.0 program assistants and 14.0 program support supervisors) in 2006-07. On an annualized basis, total cost for the 71.25 GPR positions would be \$4.3 million GPR.

11. Assembly Bill 100 is intended to reduce community corrections populations by modifying current law to provide that, if a person is convicted of a misdemeanor, the following terms of probation would apply for a single offense: (a) for a Class A misdemeanor, a term of not less than six months or more than one year; and (b) for all other misdemeanors, a term of not more than six months, with no minimum requirement. However, if one of the following applies, the maximum term of probation would remain at the current law maximum of two years: (a) the person committed a misdemeanor while possessing a firearm; (b) the misdemeanor is an act of domestic violence; (c) the misdemeanor was a Class A fourth degree sexual assault; (d) a violation of Chapter 948 of the statutes (Crimes Against Children); or (e) the intoxicated use of a motor vehicle.

12. Under the statutory modifications in AB 100, and based on 2003-04 probation admissions, the community corrections population is estimated to decrease by 3,620 offenders in 2006-07. As a result, the number of additional staff would be reduced from what would otherwise have been estimated. While the CC/SD model indicates a small increase in necessary staffing (a total of 2.5 positions in 2006-07), no additional positions are provided in the bill. The Department has indicated that it would address estimated community corrections caseload using current staffing levels.

13. As an alternative to the modifications made under AB 100, the Committee may wish to modify the Governor's recommendation such that for all misdemeanors, other than Class A misdemeanors, a maximum term of not more than twelve months, rather six months, would be specified. This alternative would give judges a greater amount of discretion when meting out probation terms than under provisions of the bill. Under the alternative for example, an individual

convicted of two Class B misdemeanors occurring at the same time could be placed on probation for a maximum of two years (one year for the misdemeanor offenses and an additional year because the offenses occurred at the same time). The following table identifies how AB 100 would be modified under this alternative.

<u>Current Law</u>		<u>Assembly Bill 100</u>	<u>Alternative</u>
One misdemeanor, Class A, B or C, or unclassified	Not less than six months nor more than two years probation	Misdemeanor involving domestic abuse, firearm possession, 4th degree sexual assault or crimes against children	Not less than six months nor more than two years probation
		One misdemeanor, Class A	Not less than six months nor more than one year probation
		One misdemeanor, Class B or C, or unclassified	Not more than six months probation
			Same as AB 100
			Same as AB 100
			Not more than 12 months probation

14. Under the alternative, the estimated reductions in the community corrections population would be 2,474 offenders in 2006-07. Under the Department's staffing model and with the workload modifications, Corrections would need \$763,800 GPR and the following 14.25 positions: 9.0 probation and parole agents, 2.25 community field supervisor, 0.5 program assistant supervisor, and 2.5 program assistants. As under AB 100, Corrections has indicated that no additional funding and positions would be needed in 2005-06. On an annualized basis, total cost for the 14.25 GPR positions would be \$865,700 GPR.

15. If the modifications to the terms of probation are deleted, the Department is estimated to need \$3,143,200 GPR and 71.25 positions in 2006-07 to address the increased caseload. If no additional funding is provided, Corrections would either be required to reallocate resources or request legislative action providing funding and staff.

16. It should be noted that, in other provisions of AB 100, increased funding for community purchase of services is provided. This issue is addressed in Paper #234. In the previous paper, funding for community purchases of services was calculated based on the estimated community corrections population, but did not include the estimated reduction as a result of the misdemeanor probation term modifications. Depending on the per offender funding level selected by the Committee for overall purchase of services funding in Paper #234, purchase of services funding could be modified.

17. The following table identifies the alternatives in the previous paper on a per offender basis, and the alternatives regarding the terms of probation. Based on the various alternatives from the papers, and since population reductions are estimated to occur beginning in 2006-07, the table identifies the potential reduction in 2006-07 to purchase of services funding.

<u>Per Offender Purchase of Service Funding</u>	<u>Governor's Recommended Modifications to Terms of Probation</u>	<u>One-Year Maximum Term of Probation for Class B and C and Unclassified Misdemeanors</u>
\$259	-\$937,600	-\$640,800
260	-941,200	-643,200
270	-977,400	-668,000
280	-1,013,600	-692,700
290	-1,049,800	-717,500
298	-1,078,800	-737,300
300	-1,086,000	-742,200
301	-1,089,600	-744,700
310	-1,122,200	-766,900
320	-1,158,400	-791,700
330	-1,194,600	-816,400

ALTERNATIVES

1. Approve the Governor's recommendation to modify current law to provide that, if a person is convicted of a misdemeanor, the following terms of probation would apply: (a) for a Class A misdemeanor, a term of not less than six months or more than one year; and (b) for all other misdemeanors, a term of not more than six months, with no minimum requirement. However, if one of the following applies, the maximum term of probation would remain at the current law maximum of two years: (a) the person committed a misdemeanor while possessing a firearm; (b) the misdemeanor is an act of domestic violence; (c) the misdemeanor was a Class A fourth degree sexual assault; (d) a violation of Chapter 948 of the statutes (Crimes Against Children); or (e) the intoxicated use of a motor vehicle.

2. Modify the Governor's recommendation to specify that for all misdemeanors other than Class A, a maximum term of not more than 12 months would apply. In addition, provide \$763,800 GPR and 14.25 GPR positions in 2006-07 to address the anticipated increased community corrections workload.

<u>Alternative 2</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	\$763,800
2006-07 POSITIONS (Change to Bill)	14.25

3. If Alternative 1 or Alternative 2 is adopted, reduce purchase of services funding by one of the following amounts, based on previous Committee action regarding the overall per offender purchase of services funding level.

	<u>Per Offender Purchase of Service Funding</u>	<u>Governor's Recommended Modifications to Terms of Probation</u>	<u>One-Year Maximum Term of Probation for Class B and C and Unclassified Misdemeanors</u>
a.	\$259	-\$937,600	-\$640,800
b.	260	-941,200	-643,200
c.	270	-977,400	-668,000
d.	280	-1,013,600	-692,700
e.	290	-1,049,800	-717,500
f.	298	-1,078,800	-737,300
g.	300	-1,086,000	-742,200
h.	301	-1,089,600	-744,700
i.	310	-1,122,200	-766,900
j.	320	-1,158,400	-791,700
k.	330	-1,194,600	-816,400

4. Delete provision. Provide \$3,143,200 GPR and 71.25 positions in 2006-07 for increased community corrections caseload.

<u>Alternative 4</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	\$3,143,200
2006-07 POSITIONS (Change to Bill)	71.25

5. Delete provision.

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