

Date of Hearing: April 19, 2022

Chief Counsel: Sandy Uribe

**ASSEMBLY COMMITTEE ON PUBLIC SAFETY**

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1827 (Cooper) – As Amended March 24, 2022

**SUMMARY:** Requires all “high-risk parolees,” as newly defined, to be subject to electronic monitoring if they are homeless or become homeless. Specifically, **this bill**:

- 1) Defines a “high-risk parolee” as a person on parole who is subject to sex offender registration, or who has been convicted of a violent felony, as specified, or a serious felony, as specified.
- 2) Requires a parole officer or a peace officer to arrest a high-risk parolee that the officer has probable cause to believe has violated a term or condition of their parole supervision.
- 3) Allows a parole officer or a peace officer to arrest any other parolee that the officer has probable cause to believe has violated a term or condition of their parole supervision.
- 4) Allows the court to release a parolee, including a high-risk parolee, who has been arrested for violating conditions of parole, under any terms and conditions that the court deems appropriate.
- 5) Makes it a misdemeanor for a high-risk parolee to knowingly fail to report to the parole authority and punishes the violation by no more than 180 days in the county jail.
- 6) Mandates a high-risk parolee be subject to electronic monitoring as a condition of parole if the parolee fails to provide their residence, or if the parolee is homeless, or becomes homeless.
- 7) Requires the Division of Adult Parole Operations (DAPO) to remove the condition of electronic monitoring if the high risk parolee subsequently provides a residence which is confirmed by DAPO.
- 8) Prohibits the parole officer from eavesdropping or recording any conversation via the electronic monitoring device, except as specified.
- 9) Contains legislative findings and declarations.
- 10) Names these provisions The Kate Tibbitts Act.

**EXISTING LAW:**

- 1) Requires the following persons released from prison prior to, on or after July 1, 2013, be subject to parole under the supervision of the California Department of Corrections and Rehabilitation (CDCR):
  - a) A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);
  - b) A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);
  - c) A person serving a Three-Strikes sentence;
  - d) A high risk sex offender;
  - e) A mentally disordered offender;
  - f) A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being released; and,
  - g) A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released. (Pen. Code, § 3000.08, subs. (a) & (i).)
- 2) Requires all other offenders released from prison to be placed on PRCS under the supervision of a county agency, such as a probation department. (Pen. Code, §§ 3000.08, subd. (b), & 3451.)
- 3) Subjects a parolee to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause. (Pen. Code, § 3067, subd. (b)(3).)
- 4) Specifies that if parole is revoked, the offender may be incarcerated in the county jail for a period not to exceed 180 days for each custodial sanction. (Pen. Code, §§ 3000.08, subd. (g) & 3056, subd. (a).)
- 5) Authorizes the California Department of Corrections and Rehabilitations (CDCR) to use continuous electronic monitoring to monitor the whereabouts of persons on parole, as specified. (Pen. Code 3010.)
- 6) Requires a person who is required to register as a sex offender as a condition of parole to report to their parole officer within one working day following release from custody, or as instructed by a parole officer to have an electronic, global positioning system (GPS), or other monitoring device affixed to their person. (Pen. Code, § 3010.10, subd. (a).)
- 7) Allows the incarceration of a parolee who violates any law or any parole condition. (Pen. Code, § 3067, subd. (b)(2).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “The Kate Tibbitts Act will require all high-risk parolees who declare they are transient to wear a location-monitoring device until an address for the parolee is confirmed. Additionally, it will create a misdemeanor offense when a high-risk parolee knowingly refuses to report to their parole agent and will make the violation subject to up to 6 months in County Jail (not State Prison) upon conviction. Furthermore, AB 1827 grants authority to the courts to not sentence a parolee to county jail but to instead revisit the stipulations of their parole.”
- 2) **Changes to Parole As a Result of Criminal Justice Realignment:** Prior to realignment, individuals released from prison were placed on parole and supervised in the community by CDCR parole agents. If it was alleged that a parolee had violated a condition of parole, he or she would have a revocation proceeding before the Board of Parole Hearings (BPH). If parole was revoked, the offender would be returned to state prison for violating parole.

Realignment shifted the supervision of some released prison inmates from CDCR parole agents to local probation departments. Parole under the jurisdiction of CDCR for inmates released from prison on or after October 1, 2011 is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. All other inmates released from prison are subject to up to three years of PRCS under local supervision.

Realignment also changed where an offender is incarcerated for violating parole or PRCS. Most individuals can no longer be returned to state prison for violating a term of supervision; offenders serve the revocation term in county jail. The only offenders who are eligible for return to prison for violating parole are life-term inmates paroled pursuant to Penal Code section 3000.1 (e.g., murderers, specific life term sex offenses).

Additionally, realignment changed the process for revocation hearings, but this change was implemented in phases. Until July 1, 2013, individuals supervised on parole by state agents continued to have revocation hearings before the BPH. After July 1, 2013, trial courts assumed responsibility for holding all revocation hearings for those individuals who remain under CDCR's jurisdiction. In contrast, since the inception of realignment, individuals placed on PRCS stopped appearing before the BPH for revocation hearings; their revocation hearings were handled by the trial court.

DAPO has informed this committee that as of March 31, 2022, there are 52,019 persons on parole.

- 3) **High Risk Parolees:** When Criminal Justice Realignment shifted the supervision of some people released from prison to local supervision by probation departments, the Legislature arguably made the determination that those remaining under the supervision of CDCR's DAPO were higher risk offenders.

Currently, parolees required to register as sex offenders or those who have a California Static

Risk Assessment score of five are designated as meeting the highest risk classifications. (See CDCR 2022 Department Operations Manual, § 81010.13, available at [California Department of Corrections and Rehabilitation Operations Manual 2022](#).)

This bill would define “high-risk parolees” as any person on parole who is required to register as a sex offender, or who has been convicted of a violent felony or a serious felony, as specified. DAPO has informed this committee that as of March 31, 2022, there are 14,451 persons on parole for a serious felony, and 20,188 persons on parole for a violent felony. So, while persons required to register as sex offenders are already considered high risk, this bill would significantly expand the number of parolees to be classified as high risk.

- 4) **Electronic Monitoring:** Electronic monitoring is used in the criminal and juvenile justice systems as a form of detention for both pre-trial or pre-adjudication detainees, and as a form of post-conviction or post-adjudication supervision.

There are two different types of electronic monitoring devices: radio frequency and global positioning system (GPS). With radio frequency, a home monitoring unit is set to detect a bracelet via radio waves within a specified range and then sends confirmation to a monitoring center. This is primarily used for curfew monitoring. GPS technology uses radio signals to communicate with satellites orbiting the earth. GPS technology locates a device by measuring the distance between multiple satellites and the device to determine the person’s location. GPS tracking can be active - where the transmitter monitors a person using satellites and reports location information in real time at set intervals, or passive - where the transmitter tracks a person's activity and stores location information for download at a later time. “GPS monitoring generates a precise, comprehensive record of a person’s public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations.” (*U.S. v. Jones* (2012) 565 US 400, 415.)

Currently, DAPO uses both GPS monitoring and electronic in home detention (EID) monitoring. While GPS monitoring tracks movement in the community in real time, EID tracks when the parolee enters and exits the home. DAPO has informed this committee that as of April 4, 2022, there are 7,525 parolees subject to electronic monitoring. Of those, about 500 are on EID and the rest are subject to GPS monitoring. According to the CDCR website, GPS monitoring is used for sex offenders, high risk gang offenders, and special circumstances cases. (<https://www.cdcr.ca.gov/parole/electronic-monitoring/>)

This bill would require any “high-risk” parolee, as specified, who does not give a residence, who is homeless, or who becomes homeless, to be subject to electronic monitoring.

DAPO considers a “Shelter Transient” parolee as an offender residing in a homeless shelter and a “Transient-Homeless” parolee as an offender who is homeless or otherwise has no residence. When determining a parolee’s transient and residence status, a parole agent will adhere to Title 15, Article 6.5. Section 3590 as follows:

- (a) [...] a parolee who spends one day or one night in a shelter or structure that can be located by a street address, including but not limited to houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles, may be determined to have established a residence if other circumstances are present. These circumstances include, but are not limited to:

- (1) The parolee resides one day or night at the same address every week, for multiple consecutive weeks, thus establishing a pattern of residency.
- (2) The parolee resides two or more consecutive days or nights at the same address, or two or more days or nights at the same address in a period that would appear to establish a pattern of residency.
- (3) The parolee is in possession of a key to an address where he or she is located and there is evidence of a pattern of residency.

CDCR has informed this committee that as of March 31, 2022, there are 2,622 “Transient-Homeless” persons and 122 “Shelter-Transient” persons on parole for a violent felony. Additionally, there are 3,226 “Transient-Homeless” persons and 116 “Shelter-Transient” persons on parole for a serious felony.

Based on DAPO’s policy in determining a parolee’s transient and residence status, arguably this bill would require GPS monitoring of those “high-risk parolees” who are “Transient-Homeless, but not necessarily all “Shelter Transient” parolees because some of the latter can provide an address for a residence. Even so, this bill would significantly increase the number of individuals to be placed on monitoring.

- 5) **Due Process Concerns:** The Due Process Clause of the Fourteenth Amendment to the Constitution prohibits infringement on fundamental liberty interests unless they are narrowly tailored to serve a compelling state interest. Because parolees are on conditional release from state prison and remain under the supervision of CDCR, they have less liberty interest and enjoy fewer constitutional rights than do ordinary citizens. (See e.g. *Morrissey v. Brewer* (1972) 408 U.S. 471, 482.) However, parolees retain basic constitutional protections against arbitrary and oppressive official action. (*In re Stevens* (2004) 119 Cal.App.4th 1228, 1234.)

With these principles in mind, in the case of *In re Taylor* (2015) 60 Cal.4th 1019, the California Supreme Court held that blanket application of residency restrictions to all paroled sex offenders in San Diego County “bears no rational relationship to advancing the state’s legitimate goal of protecting children from sexual predators, and has infringed the affected parolees’ basic constitutional right to be free of official action that is unreasonable, arbitrary, and oppressive.” (*Id.* at p. 1038.) The court held that CDCR could apply residency restrictions as a condition of parole “as long as they are based on, and supported by, the particularized circumstances of each parolee.” (*Id.* at p. 1042.)

As in *Taylor, supra*, this bill imposes a blanket restriction on homeless parolees: electronic monitoring. It should be noted that under existing law CDCR has the discretion to decide which persons shall be supervised using electronic monitoring. (Pen. Code, §§3004, 3010, & 3010.5) As noted above, CDCR currently uses GPS monitoring for high risk sex offenders, high risk gang offenders, those on medical parole, and for special circumstances related to high control offenders. Therefore, in the appropriate case, CDCR can already impose this condition without running afoul of due process concerns.

Whether or not this mandate rises to the level of a due process violation, applying this condition across the board to all homeless parolees could lead to other legal challenges based on reasonableness of the parole condition. The validity and reasonableness of parole conditions is analyzed under the same standard as that developed for probation conditions. (*In re Hudson* (2006) 143 Cal.App.4th 1, 9; *In re Stevens* (2004) 119 Cal.App.4th 1228, 1233

[“[t]he criteria for assessing the constitutionality of conditions of probation also applies to conditions of parole”).] “A condition of [parole] will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.’” (*People v. Lent* (1975) 15 Cal.3d 481, 486) Requiring GPS monitoring on every homeless parolee may not have enough of a connection to the crime or be reasonably related to future criminality to be valid.

- 6) **Office of Inspector General Assessment of Electronic Monitoring:** In 2014, the Office of the Inspector General (OIG) issued a report assessing GPS monitoring of sex offenders on parole. Among the various issues the report address was whether there are any tangible indicators of GPS function and effectiveness to deter or prevent crime. ([OIG Special Review Electronic Monitoring of Sex Offenders on Parole and Impact of Residency Restrictions November 2014.pdf](#)> [as of April 14, 2022].) The report found that while there are some advantages to electronic monitors such as the ability to locate parolees to conduct unannounced inspections, access historical location and movement data to either identify or eliminate a parolee as a suspect in criminal activity, and the ability to monitor and enforce special conditions of parole such as prohibitions against entering specific locations, these advantages come at the expense of creating tasks that divert agents from direct in-person supervision of parolees. Agents are required to review GPS tracks for each working day for all GPS-monitored offenders, log their tracking reviews daily, and respond to after-hours alerts from the GPS monitoring center. (*Id.* at p. 7.)

The additional workload and burden on both the parole officer and parolee may not be justified considering the reported incidents of the unreliability of GPS monitoring devices which can lead to false alerts and inaccurate location data:

Unfortunately, with the proliferation of electronic devices comes increased reports of their failing. In 2011, California officials conducted tests on the monitoring devices worn by 4,000 high-risk sex offenders and gang members, and according to the LA Times, found that “batteries died early, cases, cracked, tampering alerts failed, and reported locations were off by as much as three miles.” Parolees were able to thwart the devices by covering them in tinfoil or going indoors. Parole officers were inundated with as many as a thousand alerts per day, and meaningless alerts led officers to worry that they were missing actual instances of fleeing parolees.

Trouble with monitoring devices is not limited to California. An audit in Tennessee found that 80 percent of alerts from offender monitoring devices were not checked by officers. Similar issues came to light in Colorado and New York when officers missed or ignored repeated alerts of device failure and then several parolees committed violent crimes. Officers in Florida were so overwhelmed with alerts that they stopped all real-time notifications, save those relating to device removal, and as a result, did not notice when one parolee broke his curfew 53 times in one month before killing three people.

(Karsten and West, *Decades later, electronic monitoring of offenders still prone to failure*, *Brookings Institution* (Sept. 21, 2017) <https://www.brookings.edu/blog/techtank/2017/09/21/decades-later-electronic-monitoring->

[of-offenders-is-still-prone-to-failure/](#) [as of Apr. 14, 2022].)

- 7) **Practical Concerns:** This bill might have an unintended consequence of adversely affecting public safety. Because this bill does not come with funding for additional parole agents any advantage of GPS monitoring for homeless parolees come at the expense of diverting agents from supervising more serious offenders, such as sex offenders, and from direct in-person supervision of high risk parolees in general.

In addition, the proposed GPS requirement might adversely affect rehabilitative efforts. Having a parolee wear a GPS device will affect their ability to reintegrate into society. Specifically, while formerly incarcerated persons already face challenges in obtaining employment, a prospective employer is arguably even less likely to hire an individual with a GPS monitor.

- 8) **New Misdemeanor Crime:** This bill would make it a misdemeanor punishable by a maximum sentence of 180 days for a high-risk parolee to knowingly fail to report to the parole authority as required by the terms of release.

Under existing law, if a parole agent has probable cause to believe that the parolee is violating any term or condition of parole, and that intermediate sanctions are not appropriate, the agent may petition to revoke parole. If the court determines that the parolee has violated the conditions of parole, the court may modify the conditions of parole and, if appropriate, include a period of incarceration in county jail, or alternatively revoke parole. In either case, the court has discretion to impose incarceration for up to 180 days in the county jail. (See Pen. Code, 3000.08, subds. (c), (f) & (g).)

From a practical standpoint, it is not clear why one would choose to prosecute this conduct as a new crime, if the maximum punishment is the same. Unlike criminal charges, which must be proved beyond a reasonable doubt, the burden of proving a charged parole violation is only a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437.)

- 9) **Argument in Support:** According to the *California Association of Highway Patrolmen*, “Current law allows a probation officer, parole officer, or peace officer to arrest a person without warrant or other process during the period that a person is subject to revocation of parole supervision, if the officer has probable cause to believe that the supervised person is violating the terms of their supervision. Current law also authorizes a parolee to be housed in a county jail for a maximum of 180 days per revocation. AB 1827 would require a parole officer or peace officer to arrest a person who is a ‘high-risk parolee’ that the officer has probable cause to believe has violated a term or condition of their supervision. The bill would define a high-risk parolee to include a person subject to registration as a sex offender and convicted of a violent or serious felony, as described.

“We thank you for authoring this resolution and we look forward to its successful passage.”

- 10) **Argument in Opposition:** According to *ACLU California Action*, “While it is certainly problematic that many parolees fall into homelessness, the solution is not to require that they wear electronic monitoring devices if they are labelled high risk, nor is it to create another crime for their failure to comply with a condition of probation. The solution is to provide

them with appropriate services including housing and programming to enable their success as they transition back into the community. Instead, AB 1827 would set up parolees for failure, defeating the purpose of parole.

“Given that GPS monitoring imposes a significant restriction on one’s liberty and privacy, it is critical that it be used only when necessary to justify these intrusions. A blanket requirement that all people who are at risk of homelessness submit to GPS monitoring absent a showing that such monitoring is necessary raises constitutional concerns.

“Mandatory GPS monitoring will also expand the disparities that already plague our criminal justice system. Given that people of color are policed, arrested, convicted, and sentenced to prison at greater rates than white people, communities of color will be subject to monitoring and restricted liberty under the bill at greater rates as well.

“In addition, this bill requires a parole officer or peace officer that has probable cause to believe that a high-risk parolee is violating any term or condition of their supervision, to arrest the person without a warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring them before the court or the court. These provisions are especially problematic for a number of reasons, including potential violation of the Fourth Amendment in light of the highly subjective nature of determining whether a person may have violated a term or condition of parole.

“This bill also creates a misdemeanor when a person on parole fails to report to their parole authority. Currently in California, a parole officer may consider the reasons why an individual did not report [sic] their parole officer. There are any number of reasons why a person may have missed their required report, such as unforeseen emergencies or compulsory work obligations. This bill removes the discretion of the parole officer to consider the situation. Individuals on parole already face the possibility of being remanded back to prison for violations of parole. This bill is unnecessarily punitive and reflects much of the harsh political rhetoric that contributed to extensive and inhumane prison overcrowding in California.”

#### **11) Related Legislation:**

- a) AB 1641 (Maienschein), requires a sexually violent predator (SVP) on conditional release or outpatient status to be monitored by a global positioning system (GPS) until the person is unconditionally discharged. AB 1641 is pending on the Assembly Floor.
- b) AB 2658 (Bauer-Kahan), awards custody credits off a ward’s maximum time of confinement for time spent on electronic monitoring, and prohibits eavesdropping or recording the juvenile via the electronic monitor. AB 2658 is pending in the Assembly Appropriations Committee.

#### **12) Prior Legislation:**

- a) SB 1266 (Portantino), of the 2017-2018 Legislative Session, would have established a pilot program requiring parolees convicted of first-degree burglary who are released to Los Angeles County to be subject to global positioning system (GPS) monitoring as a condition of parole. The hearing on SB 1266 in this Committee was cancelled at the



request of the author.

- b) SB 57 (Lieu), Chapter 776, Statutes of 2013, requires imposition of a mandatory 180 day period of incarceration if a parolee who is required to register as a sex offender removes his or her GPS device.
- c) AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, in pertinent part, made various changes to the state parole system, including who was supervised on parole.
- d) AB 2016 (Gorell), of the 2011-2012 Legislative Session, would have made it a felony for any person required to wear an electronic-monitoring device to remove or disable that device. The hearing on AB 2016 in this committee was cancelled at the request of the author.
- e) AB 179 (Gorell), of the 2011-2012 Legislative Session, would have made it a felony for any person required to wear an electronic-monitoring device to remove or disable that device. The hearing on AB 179 in this committee was cancelled at the request of the author.
- f) SB 566 (Hollingsworth), of the 2009- 2010 Legislative session, would have established a penalty scheme for persons who have been lawfully ordered to submit to a GPS or electronic monitoring device, and willfully interfered with the device, with penalties ranging from misdemeanors to felonies depending upon the offense underlying the GPS sanction. SB 566 failed passage in the Senate Public Safety Committee.
- g) SB 619 (Speier), Chapter 484, Statutes of 2005, authorized the use of GPS technology to supervise persons on probation and parole.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Association of Highway Patrolmen  
Peace Officers Research Association of California (PORAC)

### **Opposition**

ACLU California Action  
California Attorneys for Criminal Justice  
California Public Defenders Association  
Californians for Safety and Justice  
Ella Baker Center for Human Rights  
Insight Garden Program  
The Young Women's Freedom Center

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