

AMENDED IN ASSEMBLY AUGUST 31, 2007

AMENDED IN ASSEMBLY JUNE 28, 2007

AMENDED IN SENATE JUNE 4, 2007

AMENDED IN SENATE MAY 2, 2007

AMENDED IN SENATE APRIL 16, 2007

SENATE BILL

No. 391

Introduced by Senator Ducheny

(Principal coauthor: Assembly Member Leno)

**(Coauthor: Senator Romero Coauthors: Senators Alquist and
Romero)**

February 21, 2007

An act to add Sections 3060.9, 3069, and 3069.5 to the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 391, as amended, Ducheny. Corrections.

Existing law gives the Board of Parole Hearings the power upon granting parole to any prisoner to impose on the parole any conditions that it may deem proper. Existing law gives the Board of Parole Hearings power to suspend or revoke any parole and to order returned to prison any prisoner upon parole.

This bill would ~~establish a Community Corrections Program~~ *authorize the Department of Corrections and Rehabilitation to expand the use of parole programs or services.* It would allow the *department or the Board of Parole Hearings to assign, with respect to a parolee who violates a condition of parole and who meets specified criteria, to the program* ~~assign the parolee to a parole program or service,~~ in lieu of

~~revocation of~~ *revoking his or her* parole. This bill would allow the Board of Parole Hearings, as an alternative to ordering a parolee returned to custody upon revocation of parole, to suspend the period of revocation pending the parolee's successful completion of the ~~program~~ *specified parole program or service*.

This bill would impose various requirements in connection with the ~~program~~ *parole programs or services*.

This bill would require the Department of Corrections and Rehabilitation, in consultation with ~~the Board of Parole Hearings and the Legislative Analyst's Office,~~ ~~to contract with an independent consultant~~ to evaluate the effect of ~~the program~~ *the expansion of parole programs or services* on several factors and report the results to the Legislature ~~on or before January 1, 2011~~ *3 years after funding is provided, as specified*. Until that date, the Department of Corrections and Rehabilitation and the Board of Parole Hearings would be required to annually report to the Legislature, beginning ~~December 1, 2008~~ *January 1, 2009*, regarding the status of ~~implementation of the program~~ *the expansion of parole programs or services* and the number of offenders assigned and participating in ~~the programs~~ *parole programs or services* in the preceding fiscal year.

This bill would ~~establish~~ *authorize the department to create a* Parole Violation Intermediate Sanctions program ~~within the Department of Corrections and Rehabilitation~~. The bill would authorize certain *eligible* parolees who would otherwise be referred to the Board of Parole Hearings for revocation of parole and returned to prison for a violation of parole to be admitted to the program in lieu of revocation, as specified. The program would be modeled after a collaborative court system, including a hearing officer, frequent appearances in the program by the parolee, requirements that the parolee attend treatment or rehabilitation programs, coordination between the hearing officer, parole agents, and representatives from the treatment and rehabilitation programs, and sanctions for the parolee upon failure in the program.

This bill would require the department, in consultation with ~~the Board of Parole Hearings and the Legislative Analyst's Office,~~ to report to the Legislature on the effectiveness of the Parole Violation Intermediate Sanctions program, as specified.

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

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

1 SECTION 1. Section 3060.9 is added to the Penal Code, to
2 read:

3 3060.9. (a) ~~There is hereby created within the~~ *The Department*
4 *of Corrections and Rehabilitation—a Community Corrections*
5 ~~Program. The purpose of the program is~~ *is hereby authorized to*
6 *expand the use of parole programs or services to improve the*
7 *rehabilitation of parolees, reduce recidivism, reduce prison*
8 *overcrowding, and improve public safety through the following:*

9 (1) ~~The use of intermediate sanctions for low-level offenders~~
10 ~~who violate parole with an emphasis on short-term commitments~~
11 *commit a violation of parole.*

12 (2) *The use of parole programs or services, in addition to*
13 *supervision, for any offender who is in need of services to reduce*
14 *the parolee’s likelihood to reoffend.*

15 (b) For purposes of this section, ~~the Community Corrections~~
16 ~~Program includes, but is not~~ *expansion of parole programs or*
17 *services may include, but shall not be limited to, the following:*

18 (1) Counseling.

19 (2) Electronic monitoring.

20 (3) Halfway house services.

21 (4) Home detention.

22 (5) Intensive supervision.

23 (6) Mandatory community service assignments.

24 (7) Increased drug testing.

25 (8) Participation in one or more components of the Preventing
26 Parolee Crime Program pursuant to Section 3068.

27 (9) Rehabilitation programs, such as substance abuse treatment.

28 (10) Restitution.

29 (c) As used in this section:

30 (1) “Department” means the Department of Corrections and
31 Rehabilitation.

32 (2) “Parole authority” means the Board of Parole Hearings.

33 (d) ~~The department and or the parole authority may assign to~~
34 ~~the Community Corrections Program those lower-risk offenders~~
35 ~~who would otherwise be returned to custody for a parole violation.~~
36 *This the programs or services specified in subdivision (b) to*
37 *offenders who meet the criteria of paragraph (1) or (2). This*
38 *section shall not alter the existing discretion of the parole authority*

1 regarding the reporting by the department of parole violations or
2 conditions of parole. In exercising its authority pursuant to
3 paragraphs (2) and (3) of subdivision (e) and subdivision (f), the
4 parole authority ~~and~~ or the department in exercising its authority
5 pursuant to paragraph (1) of subdivision (e) may determine an
6 individual parolee's eligibility for ~~the Community Corrections~~
7 ~~Program~~ *parole programs or services* by considering the totality
8 of the circumstances including, but not limited to, the instant
9 violation offense, the history of parole adjustment, current
10 commitment offense, the risk needs assessment of the offender,
11 and prior criminal history, with public safety and offender
12 accountability as primary considerations.

13 (e) (1) Subject to the provisions of this section, the parole
14 authority, in the absence of a new conviction and commitment of
15 the parolee to the state prison under other provisions of law, may
16 assign a parolee who violates a condition of his or her parole to
17 ~~the Community Corrections Program~~ *parole programs or services*
18 in lieu of revocation of parole.

19 (2) In addition to the alternatives provided in this section, the
20 parole authority may, as an alternative to ordering a revoked
21 parolee returned to custody, suspend the period of revocation
22 pending the parolee's successful completion of ~~the Community~~
23 ~~Corrections Program~~ *parole programs or services* assigned by the
24 parole authority.

25 ~~(3) The parole authority or the department shall not assign a~~
26 ~~parolee who has been classified by the department as included~~
27 ~~within the highest control or risk classification to the Community~~
28 ~~Corrections Program in lieu of revocation of parole.~~

29 ~~(4) The parole authority shall not assign a parolee to the~~
30 ~~Community Corrections Program in lieu of revocation of parole~~
31 ~~when the parole authority has determined that the violation of the~~
32 ~~condition of parole involves commission of a serious felony, as~~
33 ~~defined in subdivision (c) of Section 1192.7, or a violent felony,~~
34 ~~as defined in subdivision (c) of Section 667.5, or involves the~~
35 ~~control of, access to, or use of a weapon.~~

36 ~~(5)~~

37 (3) The department shall not establish a special condition of
38 parole, assigning a parolee to ~~the Community Corrections Program~~
39 *parole programs or services* in lieu of initiating revocation
40 proceedings, if the department reasonably believes that the

1 violation of the condition of parole involves commission of a
2 serious felony, as defined in subdivision (c) of Section 1192.7, or
3 a violent felony, as defined in subdivision (c) of Section 667.5, or
4 involves the control of, access to, or use of a weapon, or if
5 regulations adopted by the parole authority require the reporting
6 of the parole violation to the parole authority. *of a firearm.*

7 (f) A special condition of parole imposed pursuant to this section
8 to participate in the Community Corrections Program consisting
9 of a live-in program, home detention, electronic monitoring, or
10 half-way house services to participate in residential programs
11 shall not be established without a hearing by the parole authority
12 in accordance with Sections 3004 and Section 3068 and regulations
13 of the parole authority. A special condition of parole providing an
14 assignment to the Community Corrections Program a parole
15 program or service that does not consist of a live-in residential
16 component may be established without a hearing.

17 (g) ~~Implementation of Expansion of parole programs or services~~
18 *pursuant to this section by the department is subject to the*
19 *appropriation of funding for this purpose as provided in the Budget*
20 *Act of 2007, and subsequent budget acts.*

21 (h) The department, in consultation with the parole authority
22 and the Legislative Analyst's Office, shall, contingent upon
23 funding, ~~contract with an independent consultant to conduct an~~
24 *evaluation regarding the effect of the Community Corrections*
25 *Program parole programs or services on public safety, parolee*
26 *recidivism, and prison and parole costs and report the results to*
27 *the Legislature on or before January 1, 2011 three years after*
28 *funding is provided pursuant to subdivision (g).* Until that date,
29 the department and parole authority shall jointly report annually
30 to the Legislature, beginning December 1, 2008, regarding the
31 status of implementation of the Community Corrections Program
32 January 1, 2009, regarding the status of the expansion of parole
33 programs or services and the number of offenders assigned and
34 participating in the program parole programs or services in the
35 preceding fiscal year.

36 SEC. 2. Section 3069 is added to the Penal Code, to read:

37 3069. (a) ~~There is hereby created within the The Department~~
38 *of Corrections and Rehabilitation, under the Board of Parole*
39 *Hearings, is hereby authorized to create the Parole Violation*
40 *Intermediate Sanctions (PVIS) program. The purpose of the*

1 program ~~is~~ *shall be* to improve the rehabilitation of parolees, reduce
 2 recidivism, reduce prison overcrowding, and improve public safety
 3 through the use of intermediate sanctions for ~~low-level~~ offenders
 4 who violate parole. The PVIS program will allow the department
 5 to provide parole agents an early opportunity to intervene with
 6 parolees who are not in compliance with the conditions of parole
 7 and facing return to prison. The program will include key
 8 components used by drug and collaborative courts under a highly
 9 structured model, including close supervision and monitoring by
 10 a hearing officer, dedicated calendars, nonadversarial proceedings,
 11 frequent appearances before the hearing officer, utilization of
 12 incentives and sanctions, frequent drug and alcohol testing,
 13 immediate entry into treatment and rehabilitation programs, and
 14 close collaboration between the program, parole, and treatment to
 15 improve offender outcomes. The program ~~is~~ *shall be* local and
 16 community based.

17 (b) As used in this section:

18 (1) “Department” means the Department of Corrections and
 19 Rehabilitation.

20 (2) “Parole authority” means the Board of Parole Hearings.

21 (3) “Program” means the Parole Violation Intermediate
 22 Sanctions program.

23 (c) (1) A parolee who ~~was classified~~ *is deemed eligible* by the
 24 department ~~as a low-risk offender to participate in this program,~~
 25 *and* who would otherwise be referred to the parole authority to
 26 have his or her parole revoked ~~with an indicated incarceration~~
 27 ~~period of one year or less~~ for a parole violation shall be referred
 28 by his or her parole officer for participation in the program in lieu
 29 of parole revocation.

30 (2) ~~A parolee who has been classified by the department as~~
 31 ~~included within the highest control or risk classification shall not~~
 32 ~~be eligible for referral to the program in lieu of revocation of~~
 33 ~~parole.~~

34 (3)

35 (2) If the alleged violation of parole involves the commission
 36 of a serious felony, as defined in subdivision (c) of Section 1192.7,
 37 or a violent felony, as defined in subdivision (c) of Section 667.5,
 38 or involves the control of, access to, or use of a ~~weapon~~ *firearm*,
 39 the parolee shall not be eligible for referral to the program in lieu
 40 of revocation of parole.

1 ~~(4) If the person was committed to prison and is on parole for~~
2 ~~the violation of an offense classified as a serious felony, as defined~~
3 ~~in subdivision (c) of Section 1192.7 or a violent felony, as defined~~
4 ~~in subdivision (e) of Section 667.5, or for an offense for which~~
5 ~~registration is required pursuant to Section 290, he or she is not~~
6 ~~eligible for referral to the program in lieu of revocation of parole.~~

7 (d) The department ~~shall~~ *is authorized to* establish local PVIS
8 programs ~~within six geographically designated parole areas~~. Each
9 local program ~~shall have may have, but shall not be limited to~~, the
10 following characteristics:

11 (1) An assigned hearing officer who is a retired superior court
12 judge or commissioner and who is experienced in using the drug
13 court model and collaborative court model.

14 (2) The use of a dedicated calendar.

15 (3) Close coordination between the hearing officer, ~~parole~~
16 ~~authority~~ *department*, counsel, community treatment and
17 rehabilitation programs participating in the program and adherence
18 to a team approach in working with parolees.

19 (4) Enhanced accountability through the use of frequent program
20 appearances by parolees in the program, at least one per month,
21 with more frequent appearances in the time period immediately
22 following the initial referral to the program and thereafter in the
23 discretion of the hearing officer.

24 (5) Reviews of progress by the parolee as to his or her treatment
25 and rehabilitation plan and abstinence from the use of drugs and
26 alcohol through progress reports provided by the parole agent as
27 well as all treatment and rehabilitation providers.

28 (6) Mandatory frequent drug and alcohol testing.

29 (7) ~~Limited jail~~ *Graduated in-custody* sanctions *may be* imposed
30 after a hearing in which it is found the parolee failed treatment and
31 rehabilitation programs or continued in the use of drugs or alcohol
32 while in the program, as follows: ~~two days incarceration in a county~~
33 ~~jail for the first violation, four days for the second violation, six~~
34 ~~days for the third violation and 12 days for the fourth violation.~~
35 ~~Upon the fifth violation a parolee will be referred to the parole~~
36 ~~authority for parole revocation.~~

37 (8) A problemsolving focus and team approach to
38 decisionmaking.

39 (9) Direct interaction between the parolee and the hearing
40 officer.

1 (10) Accessibility of the hearing officer to parole agents and
2 parole employees as well as treatment and rehabilitation providers.

3 ~~(H)~~

4 (e) Upon successful completion of the program, the parolee
5 shall continue on parole, or be granted other relief as shall be
6 determined in the sole discretion of the ~~parole authority~~ *department*
7 *or as authorized by law.*

8 ~~(e) For purposes of this section, the local programs shall be~~
9 ~~developed as follows:~~

10 ~~(H)~~

11 (f) *The department is authorized to develop the programs.* The
12 parole authority is directed to convene in each county where the
13 programs are selected to be established, all local stakeholders,
14 including, but not limited to, a retired superior court judge or
15 commissioner, designated by the Administrative Office of the
16 Courts, who shall be compensated by the department at the present
17 rate of pay for retired judges and commissioners, local parole
18 agents and other parole employees, the district attorney, the public
19 defender, an attorney actively representing parolees in the county
20 and a private defense attorney designated by the public defenders
21 association, the county director of alcohol and drug services,
22 behavioral health, mental health, and any other local stakeholders
23 deemed appropriate. Specifically, persons directly involved in the
24 areas of substance abuse treatment, cognitive skills development,
25 education, life skills, vocational training and support, victim impact
26 awareness, anger management, family reunification, counseling,
27 residential care, placement in affordable housing, employment
28 development and placement are encouraged to be included in the
29 meeting.

30 ~~(2) The county stakeholders will~~

31 (g) *The department, in consultation with local stakeholders,*
32 *shall develop a plan that is consistent with this section. The plan*
33 *shall address at a minimum the following components:*

34 ~~(A)~~

35 (1) The method by which each parolee eligible for the program
36 shall be referred to the program.

37 ~~(B)~~

38 (2) The method by which each parolee is to be individually
39 assessed as to his or her treatment and rehabilitative needs and
40 level of community and court monitoring required, participation

1 of counsel, and the development of a treatment and rehabilitation
2 plan for each parolee.

3 ~~(C)~~

4 (3) The specific treatment and rehabilitation programs that will
5 be made available to the parolees and the process to ~~assure~~ *ensure*
6 that they receive the appropriate level of treatment and
7 rehabilitative services.

8 ~~(D)~~

9 (4) The criteria for continuing participation in, and successful
10 completion of, the program, as well as the criteria for termination
11 from the program and return to the parole revocation process.

12 ~~(E)~~

13 (5) The development of a program team, as well as a plan for
14 ongoing training in utilizing the drug court and collaborative court
15 nonadversarial model.

16 ~~(F)~~

17 (h) (1) If a parolee is referred to the program by his or her parole
18 agent, as specified in this section, the hearing officer in charge of
19 the local program to which the parolee is referred shall determine
20 whether the parolee will be admitted to the program.

21 (2) A parolee may be excluded from admission to the program
22 if the hearing officer determines that the parolee poses a risk to
23 the community or would not benefit from the program. The hearing
24 officer may consider the history of the offender, the nature of the
25 committing offense, and the nature of the violation. The hearing
26 officer shall state its findings, and the reasons for those findings,
27 on the record.

28 (3) If the hearing officer agrees to admit the parolee into the
29 program, any pending parole revocation proceedings shall be
30 suspended contingent upon successful completion of the program
31 as determined by the program hearing officer.

32 ~~(4) Participation in the program will not be construed to in any
33 way affect the parolee's term of parole.~~

34 ~~(g)~~

35 (i) A special condition of parole imposed as a condition of
36 admission into the program consisting of a ~~live-in program, home
37 detention, electronic monitoring, or half-way house services~~
38 *residential program* shall not be established without a hearing in
39 front of the hearing officer in accordance with ~~Sections 3004 and
40 Section 3068~~ and regulations of the parole authority. A special

1 condition of parole providing an admission to the program that
 2 does not consist of a ~~live-in~~ *residential* component may be
 3 established without a hearing.

4 (h)

5 (j) Implementation of this section by the department is subject
 6 to the appropriation of funding for this purpose as provided in the
 7 Budget Act of 2008, and subsequent budget acts.

8 SEC. 3. Section 3069.5 is added to the Penal Code, to read:

9 3069.5. (a) The department, in consultation with ~~the parole~~
 10 ~~authority and the Legislative Analyst's Office~~ *shall, shall,*
 11 *contingent upon funding,* conduct an evaluation of the PVIS
 12 program.

13 (b) ~~The department shall sample several parole units in which~~
 14 ~~the program has been added to examine the program's impact upon~~
 15 ~~the supervision, control, and sanction of parolees under the~~
 16 ~~jurisdiction of the sampled parole units. These results shall be~~
 17 ~~compared with a control group of comparable parole populations~~
 18 ~~that do not have PVIS program services.~~

19 (c) ~~The department shall compare parolees who participated in~~
 20 ~~the program with similar parolees who did not receive PVIS~~
 21 ~~program services as measured by employment, drug use based on~~
 22 ~~positive tests, and recidivism.~~

23 (d) ~~The cost-effectiveness of the PVIS program shall also be~~
 24 ~~evaluated as measured by prison and jail bed days saved as a result~~
 25 ~~of the program as compared with parolees who did not receive~~
 26 ~~program services.~~

27 (e) ~~The report shall assess the impact of an expansion of the~~
 28 ~~PVIS program to additional parole units on public safety, parolee~~
 29 ~~recidivism, and prison and parole costs, and make~~
 30 ~~recommendations as to improve parolee outcomes.~~

31 (f)

32 (b) A final report shall be due to the Legislature ~~on or before~~
 33 ~~January 1, 2012~~ *three years after funding is provided pursuant to*
 34 *subdivision (h) of Section 3069.* Until that date, the department
 35 ~~and parole authority shall jointly~~ *shall* report annually to the
 36 Legislature, beginning ~~December~~ *January* 1, 2009, regarding the
 37 status of implementation of the PVIS program and the number of

1 offenders assigned and participating in the program in the
2 preceding fiscal year.

O