

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

GEORGE DEUKMEJIAN  
Attorney General

---

OPINION  
  
of  
  
GEORGE DEUKMEJIAN  
Attorney General  
  
Jack. R. Winkler  
Assistant Attorney General

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

No. 81-1108  
  
DECEMBER 29, 1981

---

THE HONORABLE ALFRED E. ALQUIST, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

Does the word “probation” as used in chapter 940, Statutes of 1981, include informal as well as formal probation?

CONCLUSION

The word “probation” as used in chapter 940, Statutes of 1981, includes informal as well as formal probation.

ANALYSIS

Chapter 940, Statutes of 1981 (Assembly Bill No. 341), amended several statutes relating to driving vehicles while under the influence of alcohol or other drugs

generally increasing the penalties for such conduct. A number of the provisions of chapter 940 use the word “probation” but that word is not defined in the statute. We are asked to provide an opinion on the meaning of “probation” as that word is used in chapter 940 and more particularly to indicate whether it includes informal as well as formal probation. The opinion request indicates that formal probation refers to those cases referred to the probation officer for investigation and report.

Probation is an alternative to the penalties prescribed by law for a person convicted of a public offense. Probation is an act of grace and clemency on the part of the court and no person convicted of a public offense has a right to probation. (*People v. Hainline* (1933) 219 Cal. 532, 334.) Probation has no constitutional basis, but exists by reason of the statutes creating it. (*In re Oxidean* (1961) 195 Cal. App. 2d 814, 817.)

Penal Code section 1203 is the principal statute which authorizes probation. The first sentence of that section reads:

“As used in this code, ‘probation’ shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community.”

(This definition of “probation” was enacted by chapter 1175, Stats. 1979.) The key sentence of section 1203<sup>1</sup> reads:

“If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be subserved by granting probation to the person, it may place him on probation.” (§ 1203(b).)

A multitude of statutory provisions qualify this statutory grant of broad power to the court. Yet it is this power in the court to grant a special status to a convicted defendant as an alternative to the punishment prescribed by law which is the essence of probation.

In felony cases when the defendant is eligible for probation the court must refer the case to the probation officer for investigation and report before determining whether to grant or deny probation. (§ 1203(b).)

“In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation

---

<sup>1</sup>Section references are to the Penal Code unless otherwise indicated.

and a report or summarily grant or deny probation.” (§ 1203(d).)

When the case is referred to the probation officer for investigation and report the process is often referred to as “formal” probation. When there is no referral to the probation officer for investigation and report in misdemeanor cases the process is often referred to as “summary” or “informal” probation.

Chapter 940, Statutes of 1981, uses the word probation many times in its amendments and additions to the Vehicle Code. (See Veh. Code, §§ 13352.5, 14601, 14601.2, 23205, 23161, 23166, 23167, 23168, 23171, 23181, 23186, 23187, 23191, 23200, 23202, 23206, 23207 as numbered by ch. 940.) The word probation is not defined in chapter 940, nor is it defined in division 1 of the Vehicle Code which defines numerous words and phrases used in that code.

The Vehicle Code contains no provisions which independently authorize a court to grant probation. Instead the references to probation in the Vehicle Code assume that a court has the power to grant probation for offenses defined by the Vehicle Code in the same manner as in other criminal cases. Thus in the case of a person convicted for the first time of drunk driving, chapter 940 adds Vehicle Code section 23160 prescribing penalties for such offense and also adds Vehicle Code section 23161 providing: “If the court grants probation to any person punished under section 23160” certain conditions of probation involving program participation and jail or license suspension are required. The probation referred to in the latter section must refer to that authorized by Penal Code section 1203 since there is no Vehicle Code section authorizing probation in such cases. Cases interpreting the Vehicle Code similarly assume that the probation referred to in the Vehicle Code is that authorized by the probation statutes in the Penal Code. (See *Sherry v. Ingels* (1939) 34 Cal. App. 2d 632, 634; and *Ellis v. Dept. of Motor Vehicles* (1942) 51 Cal. App. 2d 753, 757.)

We conclude that when the Legislature used the word “probation” in chapter 940, Statutes of 1981, it referred to probation authorized in the Penal Code. The probation authorized in the Penal Code is defined in section 1203 as the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community. No reference to investigation and report by the probation officer is made in this definition. Thus the definition embraces “informal” or “summary” probation as well as “formal” probation.

\*\*\*\*\*