

ASSEMBLY BILL

No. 2011

Introduced by Assembly Member Arambula

February 17, 2010

An act to amend Section 1203.097 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2011, as introduced, Arambula. Domestic violence probationer: minimum payment.

Existing law provides that if a person is granted probation for a domestic violence crime, the terms of probation shall include a minimum payment by the defendant of \$200, to be disbursed to local domestic violence programs and to the state Domestic Violence Restraining Order Reimbursement Fund and the state Domestic Violence Training and Education Fund, as specified.

This bill would increase the minimum payment to be paid by a domestic violence probationer to \$400.

Existing law provides that grants from the state Domestic Violence Training and Education Fund shall be awarded on a competitive basis and be administered by the State Department of Public Health in consultation with the statewide domestic violence coalition, as specified.

This bill would provide that the California Emergency Management Agency, instead of the State Department of Public Health, shall award and administer grants from the state Domestic Violence Training and Education Fund, 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:

SECTION 1. Section 1203.097 of the Penal Code is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) A minimum payment by the defendant of ~~two hundred dollars (\$200)~~ *four hundred dollars (\$400)* to be disbursed as specified in this paragraph. If, after a hearing in court on the record, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee.

One-third of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to two-thirds of funds collected during the preceding month. Moneys deposited into these funds pursuant to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

(A) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 6380 of the Family Code, based on the annual

1 notification from the Department of Justice of the number of
2 restraining orders issued and registered in the state domestic
3 violence restraining order registry maintained by the Department
4 of Justice, for the development and maintenance of the domestic
5 violence restraining order databank system.

6 (B) Funds from the Domestic Violence Training and Education
7 Fund shall support a statewide training and education program to
8 increase public awareness of domestic violence and to improve
9 the scope and quality of services provided to the victims of
10 domestic violence. Grants to support this program shall be awarded
11 on a competitive basis and be administered by the ~~State Department~~
12 ~~of Public Health~~ *California Emergency Management Agency*, in
13 consultation with the statewide domestic violence coalition, which
14 is eligible to receive funding under this section.

15 (6) Successful completion of a batterer's program, as defined
16 in subdivision (c), or if none is available, another appropriate
17 counseling program designated by the court, for a period not less
18 than one year with periodic progress reports by the program to the
19 court every three months or less and weekly sessions of a minimum
20 of two hours class time duration. The defendant shall attend
21 consecutive weekly sessions, unless granted an excused absence
22 for good cause by the program for no more than three individual
23 sessions during the entire program, and shall complete the program
24 within 18 months, unless, after a hearing, the court finds good
25 cause to modify the requirements of consecutive attendance or
26 completion within 18 months.

27 (7) (A) (i) The court shall order the defendant to comply with
28 all probation requirements, including the requirements to attend
29 counseling, keep all program appointments, and pay program fees
30 based upon the ability to pay.

31 (ii) The terms of probation for offenders shall not be lifted until
32 all reasonable fees due to the counseling program have been paid
33 in full, but in no case shall probation be extended beyond the term
34 provided in subdivision (a) of Section 1203.1. If the court finds
35 that the defendant does not have the ability to pay the fees based
36 on the defendant's changed circumstances, the court may reduce
37 or waive the fees.

38 (B) Upon request by the batterer's program, the court shall
39 provide the defendant's arrest report, prior incidents of violence,
40 and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exist:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

1 (B) The program shall immediately report any violation of the
2 terms of the protective order, including any new acts of violence
3 or failure to comply with the program requirements, to the court,
4 the prosecutor, and, if formal probation has been ordered, to the
5 probation department. The probationer shall file proof of
6 enrollment in a batterer's program with the court within 30 days
7 of conviction.

8 (C) Concurrent with other requirements under this section, in
9 addition to, and not in lieu of, the batterer's program, and unless
10 prohibited by the referring court, the probation department or the
11 court may make provisions for a defendant to use his or her
12 resources to enroll in a chemical dependency program or to enter
13 voluntarily a licensed chemical dependency recovery hospital or
14 residential treatment program that has a valid license issued by the
15 state to provide alcohol or drug services to receive program
16 participation credit, as determined by the court. The probation
17 department shall document evidence of this hospital or residential
18 treatment participation in the defendant's program file.

19 (11) The conditions of probation may include, in lieu of a fine,
20 but not in lieu of the fund payment required under paragraph (5),
21 one or more of the following requirements:

22 (A) That the defendant make payments to a battered women's
23 shelter, up to a maximum of five thousand dollars (\$5,000).

24 (B) That the defendant reimburse the victim for reasonable
25 expenses that the court finds are the direct result of the defendant's
26 offense.

27 For any order to pay a fine, to make payments to a battered
28 women's shelter, or to pay restitution as a condition of probation
29 under this subdivision, the court shall make a determination of the
30 defendant's ability to pay. Determination of a defendant's ability
31 to pay may include his or her future earning capacity. A defendant
32 shall bear the burden of demonstrating lack of his or her ability to
33 pay. Express findings by the court as to the factors bearing on the
34 amount of the fine shall not be required. In no event shall any order
35 to make payments to a battered women's shelter be made if it
36 would impair the ability of the defendant to pay direct restitution
37 to the victim or court-ordered child support. When the injury to a
38 married person is caused, in whole or in part, by the criminal acts
39 of his or her spouse in violation of this section, the community
40 property shall not be used to discharge the liability of the offending

1 spouse for restitution to the injured spouse, as required by Section
2 1203.04, as operative on or before August 2, 1995, or Section
3 1202.4, or to a shelter for costs with regard to the injured spouse,
4 until all separate property of the offending spouse is exhausted.

5 (12) If it appears to the prosecuting attorney, the court, or the
6 probation department that the defendant is performing
7 unsatisfactorily in the assigned program, is not benefiting from
8 counseling, or has engaged in criminal conduct, upon request of
9 the probation officer, the prosecuting attorney, or on its own
10 motion, the court, as a priority calendar item, shall hold a hearing
11 to determine whether further sentencing should proceed. The court
12 may consider factors, including, but not limited to, any violence
13 by the defendant against the former or a new victim while on
14 probation and noncompliance with any other specific condition of
15 probation. If the court finds that the defendant is not performing
16 satisfactorily in the assigned program, is not benefiting from the
17 program, has not complied with a condition of probation, or has
18 engaged in criminal conduct, the court shall terminate the
19 defendant's participation in the program and shall proceed with
20 further sentencing.

21 (b) If a person is granted formal probation for a crime in which
22 the victim is a person defined in Section 6211 of the Family Code,
23 in addition to the terms specified in subdivision (a), all of the
24 following shall apply:

25 (1) The probation department shall make an investigation and
26 take into consideration the defendant's age, medical history,
27 employment and service records, educational background,
28 community and family ties, prior incidents of violence, police
29 report, treatment history, if any, demonstrable motivation, and
30 other mitigating factors in determining which batterer's program
31 would be appropriate for the defendant. This information shall be
32 provided to the batterer's program if it is requested. The probation
33 department shall also determine which community programs the
34 defendant would benefit from and which of those programs would
35 accept the defendant. The probation department shall report its
36 findings and recommendations to the court.

37 (2) The court shall advise the defendant that the failure to report
38 to the probation department for the initial investigation, as directed
39 by the court, or the failure to enroll in a specified program, as
40 directed by the court or the probation department, shall result in

1 possible further incarceration. The court, in the interests of justice,
2 may relieve the defendant from the prohibition set forth in this
3 subdivision based upon the defendant's mistake or excusable
4 neglect. Application for this relief shall be filed within 20 court
5 days of the missed deadline. This time limitation may not be
6 extended. A copy of any application for relief shall be served on
7 the office of the prosecuting attorney.

8 (3) After the court orders the defendant to a batterer's program,
9 the probation department shall conduct an initial assessment of
10 the defendant, including, but not limited to, all of the following:

- 11 (A) Social, economic, and family background.
- 12 (B) Education.
- 13 (C) Vocational achievements.
- 14 (D) Criminal history.
- 15 (E) Medical history.
- 16 (F) Substance abuse history.
- 17 (G) Consultation with the probation officer.
- 18 (H) Verbal consultation with the victim, only if the victim
19 desires to participate.
- 20 (I) Assessment of the future probability of the defendant
21 committing murder.

22 (4) The probation department shall attempt to notify the victim
23 regarding the requirements for the defendant's participation in the
24 batterer's program, as well as regarding available victim resources.
25 The victim also shall be informed that attendance in any program
26 does not guarantee that an abuser will not be violent.

27 (c) The court or the probation department shall refer defendants
28 only to batterer's programs that follow standards outlined in
29 paragraph (1), which may include, but are not limited to, lectures,
30 classes, group discussions, and counseling. The probation
31 department shall design and implement an approval and renewal
32 process for batterer's programs and shall solicit input from criminal
33 justice agencies and domestic violence victim advocacy programs.

34 (1) The goal of a batterer's program under this section shall be
35 to stop domestic violence. A batterer's program shall consist of
36 the following components:

37 (A) Strategies to hold the defendant accountable for the violence
38 in a relationship, including, but not limited to, providing the
39 defendant with a written statement that the defendant shall be held
40 accountable for acts or threats of domestic violence.

1 (B) A requirement that the defendant participate in ongoing
2 same-gender group sessions.

3 (C) An initial intake that provides written definitions to the
4 defendant of physical, emotional, sexual, economic, and verbal
5 abuse, and the techniques for stopping these types of abuse.

6 (D) Procedures to inform the victim regarding the requirements
7 for the defendant's participation in the intervention program as
8 well as regarding available victim resources. The victim also shall
9 be informed that attendance in any program does not guarantee
10 that an abuser will not be violent.

11 (E) A requirement that the defendant attend group sessions free
12 of chemical influence.

13 (F) Educational programming that examines, at a minimum,
14 gender roles, socialization, the nature of violence, the dynamics
15 of power and control, and the effects of abuse on children and
16 others.

17 (G) A requirement that excludes any couple counseling or family
18 counseling, or both.

19 (H) Procedures that give the program the right to assess whether
20 or not the defendant would benefit from the program and to refuse
21 to enroll the defendant if it is determined that the defendant would
22 not benefit from the program, so long as the refusal is not because
23 of the defendant's inability to pay. If possible, the program shall
24 suggest an appropriate alternative program.

25 (I) Program staff who, to the extent possible, have specific
26 knowledge regarding, but not limited to, spousal abuse, child abuse,
27 sexual abuse, substance abuse, the dynamics of violence and abuse,
28 the law, and procedures of the legal system.

29 (J) Program staff who are encouraged to utilize the expertise,
30 training, and assistance of local domestic violence centers.

31 (K) A requirement that the defendant enter into a written
32 agreement with the program, which shall include an outline of the
33 contents of the program, the attendance requirements, the
34 requirement to attend group sessions free of chemical influence,
35 and a statement that the defendant may be removed from the
36 program if it is determined that the defendant is not benefiting
37 from the program or is disruptive to the program.

38 (L) A requirement that the defendant sign a confidentiality
39 statement prohibiting disclosure of any information obtained

1 through participating in the program or during group sessions
2 regarding other participants in the program.

3 (M) Program content that provides cultural and ethnic
4 sensitivity.

5 (N) A requirement of a written referral from the court or
6 probation department prior to permitting the defendant to enroll
7 in the program. The written referral shall state the number of
8 minimum sessions required by the court.

9 (O) Procedures for submitting to the probation department all
10 of the following uniform written responses:

11 (i) Proof of enrollment, to be submitted to the court and the
12 probation department and to include the fee determined to be
13 charged to the defendant, based upon the ability to pay, for each
14 session.

15 (ii) Periodic progress reports that include attendance, fee
16 payment history, and program compliance.

17 (iii) Final evaluation that includes the program's evaluation of
18 the defendant's progress, using the criteria set forth in paragraph
19 (4) of subdivision (a) and recommendation for either successful
20 or unsuccessful termination or continuation in the program.

21 (P) A sliding fee schedule based on the defendant's ability to
22 pay. The batterer's program shall develop and utilize a sliding fee
23 scale that recognizes both the defendant's ability to pay and the
24 necessity of programs to meet overhead expenses. An indigent
25 defendant may negotiate a deferred payment schedule, but shall
26 pay a nominal fee, if the defendant has the ability to pay the
27 nominal fee. Upon a hearing and a finding by the court that the
28 defendant does not have the financial ability to pay the nominal
29 fee, the court shall waive this fee. The payment of the fee shall be
30 made a condition of probation if the court determines the defendant
31 has the present ability to pay the fee. The fee shall be paid during
32 the term of probation unless the program sets other conditions.
33 The acceptance policies shall be in accordance with the scaled fee
34 system.

35 (2) The court shall refer persons only to batterer's programs
36 that have been approved by the probation department pursuant to
37 paragraph (5). The probation department shall do both of the
38 following:

39 (A) Provide for the issuance of a provisional approval, provided
40 that the applicant is in substantial compliance with applicable laws

1 and regulations and an urgent need for approval exists. A
2 provisional approval shall be considered an authorization to provide
3 services and shall not be considered a vested right.

4 (B) If the probation department determines that a program is
5 not in compliance with standards set by the department, the
6 department shall provide written notice of the noncompliant areas
7 to the program. The program shall submit a written plan of
8 corrections within 14 days from the date of the written notice on
9 noncompliance. A plan of correction shall include, but not be
10 limited to, a description of each corrective action and timeframe
11 for implementation. The department shall review and approve all
12 or any part of the plan of correction and notify the program of
13 approval or disapproval in writing. If the program fails to submit
14 a plan of correction or fails to implement the approved plan of
15 correction, the department shall consider whether to revoke or
16 suspend approval and, upon revoking or suspending approval, shall
17 have the option to cease referrals of defendants under this section.

18 (3) No program, regardless of its source of funding, shall be
19 approved unless it meets all of the following standards:

20 (A) The establishment of guidelines and criteria for education
21 services, including standards of services that may include lectures,
22 classes, and group discussions.

23 (B) Supervision of the defendant for the purpose of evaluating
24 the person's progress in the program.

25 (C) Adequate reporting requirements to ensure that all persons
26 who, after being ordered to attend and complete a program, may
27 be identified for either failure to enroll in, or failure to successfully
28 complete, the program or for the successful completion of the
29 program as ordered. The program shall notify the court and the
30 probation department, in writing, within the period of time and in
31 the manner specified by the court of any person who fails to
32 complete the program. Notification shall be given if the program
33 determines that the defendant is performing unsatisfactorily or if
34 the defendant is not benefiting from the education, treatment, or
35 counseling.

36 (D) No victim shall be compelled to participate in a program
37 or counseling, and no program may condition a defendant's
38 enrollment on participation by the victim.

1 (4) In making referrals of indigent defendants to approved
2 batterer's programs, the probation department shall apportion these
3 referrals evenly among the approved programs.

4 (5) The probation department shall have the sole authority to
5 approve a batterer's program for probation. The program shall be
6 required to obtain only one approval but shall renew that approval
7 annually.

8 (A) The procedure for the approval of a new or existing program
9 shall include all of the following:

10 (i) The completion of a written application containing necessary
11 and pertinent information describing the applicant program.

12 (ii) The demonstration by the program that it possesses adequate
13 administrative and operational capability to operate a batterer's
14 treatment program. The program shall provide documentation to
15 prove that the program has conducted batterer's programs for at
16 least one year prior to application. This requirement may be waived
17 under subparagraph (A) of paragraph (2) if there is no existing
18 batterer's program in the city, county, or city and county.

19 (iii) The onsite review of the program, including monitoring of
20 a session to determine that the program adheres to applicable
21 statutes and regulations.

22 (iv) The payment of the approval fee.

23 (B) The probation department shall fix a fee for approval not
24 to exceed two hundred fifty dollars (\$250) and for approval renewal
25 not to exceed two hundred fifty dollars (\$250) every year in an
26 amount sufficient to cover its costs in administering the approval
27 process under this section. No fee shall be charged for the approval
28 of local governmental entities.

29 (C) The probation department has the sole authority to approve
30 the issuance, denial, suspension, or revocation of approval and to
31 cease new enrollments or referrals to a batterer's program under
32 this section. The probation department shall review information
33 relative to a program's performance or failure to adhere to
34 standards, or both. The probation department may suspend or
35 revoke any approval issued under this subdivision or deny an
36 application to renew an approval or to modify the terms and
37 conditions of approval, based on grounds established by probation,
38 including, but not limited to, either of the following:

39 (i) Violation of this section by any person holding approval or
40 by a program employee in a program under this section.

- 1 (ii) Misrepresentation of any material fact in obtaining the
2 approval.
- 3 (6) For defendants who are chronic users or serious abusers of
4 drugs or alcohol, standard components in the program shall include
5 concurrent counseling for substance abuse and violent behavior,
6 and in appropriate cases, detoxification and abstinence from the
7 abused substance.
- 8 (7) The program shall conduct an exit conference that assesses
9 the defendant's progress during his or her participation in the
10 batterer's program.
- 11 (d) This section shall become operative on January 1, 2010.