

**Introduced by Senator Alarcon**

February 21, 2001

---

---

An act to amend Section ~~1000.3~~ *1203.1b* of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 378, as amended, Alarcon. Criminal procedure.

*Under existing law, if a defendant is convicted and is the subject of a preplea or presentence investigation or report, or if a defendant is granted probation or a conditional sentence, the probation officer is required to determine the ability of the defendant to pay for all or a portion of the costs of supervision in connection with probation or a conditional sentence, of conducting any preplea or presentence investigation and preparing any preplea or presentence report, and of processing the intrastate or interstate transfer of a probationer. Under existing law, a defendant can be ordered to pay these costs in specified circumstances.*

*This bill would require the probation officer to determine the ability of a defendant to pay for the costs of any investigation or report conducted or prepared by the probation officer, and would allow the court to order a defendant to pay for these costs in specified circumstances.*

*By increasing the duties of probation officers, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that*

reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Existing law provides procedures for deferred entry of judgment for qualified defendants charged with specified drug offenses who agree to participate in treatment programs. Under existing law, participating defendants are required to reimburse the probation department for the reasonable cost of any program investigation or progress report filed with the court, as specified.

This bill would require a defendant charged with a specified drug-related offense who participates in a deferred entry of judgment program to reimburse the probation department for the cost of all services rendered in connection with the defendant's case.

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

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

1 SECTION 1. Section ~~4000.3~~ 1203.1b of the Penal Code is  
2 amended to ~~read:~~  
3 ~~4000.3.—~~ If it appears to the prosecuting attorney, the court, or  
4 the probation department that the defendant is performing  
5 unsatisfactorily in the assigned program, or that the defendant is  
6 not benefiting from education, treatment, or rehabilitation, or that  
7 the defendant is convicted of a misdemeanor that reflects the  
8 defendant's propensity for violence, or the defendant is convicted  
9 of a felony, or the defendant has engaged in criminal conduct  
10 rendering him or her unsuitable for deferred entry of judgment, the  
11 prosecuting attorney, the court on its own, or the probation  
12 department may make a motion for entry of judgment.  
13 After notice to the defendant, the court shall hold a hearing to  
14 determine whether judgment should be entered.  
15 If the court finds that the defendant is not performing  
16 satisfactorily in the assigned program, or that the defendant is not  
17 benefiting from education, treatment, or rehabilitation, or the



1 ~~court finds that the defendant has been convicted of a crime as~~  
2 ~~indicated above, or that the defendant has engaged in criminal~~  
3 ~~conduct rendering him or her unsuitable for deferred entry of~~  
4 ~~judgment, the court shall render a finding of guilt to the charge or~~  
5 ~~charges pled, enter judgment, and schedule a sentencing hearing~~  
6 ~~as otherwise provided in this code.~~

7 ~~If the defendant has performed satisfactorily during the period~~  
8 ~~in which deferred entry of judgment was granted, at the end of that~~  
9 ~~period, the criminal charge or charges shall be dismissed.~~

10 ~~Prior to dismissing the charge or charges or rendering a finding~~  
11 ~~of guilt and entering judgment, the court shall consider the~~  
12 ~~defendant's ability to pay and whether the defendant has paid a~~  
13 ~~diversion restitution fee pursuant to Section 1001.90, if ordered,~~  
14 ~~and has met his or her financial obligation to the program, if any.~~  
15 ~~As provided in Section 1203.1b, the defendant shall reimburse the~~  
16 ~~probation department for the reasonable cost of any program~~  
17 ~~investigation or progress report filed with the court as directed~~  
18 ~~pursuant to Sections 1000.1 and 1000.2. The defendant shall~~  
19 ~~reimburse the probation department for the cost of probation~~  
20 ~~services, including, but not limited to, the cost of investigations,~~  
21 ~~reports, monitoring, and supervision.~~

22 *read:*

23 1203.1b. (a) In any case in which a defendant is convicted of  
24 an offense and is the subject of any ~~preplea or presentence~~  
25 investigation and report *conducted or prepared by a probation*  
26 *officer or his or her representative*, whether or not probation  
27 supervision is ordered by the court, and in any case in which a  
28 defendant is granted probation or given a conditional sentence, the  
29 probation officer, or his or her authorized representative, taking  
30 into account any amount that the defendant is ordered to pay in  
31 fines, assessments, and restitution, shall make a determination of  
32 the ability of the defendant to pay all or a portion of the reasonable  
33 cost of any ~~probation~~ supervision *provided by the probation officer*  
34 *or his or her representative* or a conditional sentence, of  
35 conducting any ~~preplea~~ investigation and preparing any ~~preplea~~  
36 report ~~pursuant to Section 131.3 of the Code of Civil Procedure,~~  
37 ~~of conducting any presentence investigation and preparing any~~  
38 ~~presentence report made pursuant to Section 1203 by the probation~~  
39 ~~officer, or his or her representative, for which the defendant is the~~  
40 *subject*, and of processing a jurisdictional transfer pursuant to



1 Section 1203.9 or of processing a request for interstate compact  
2 supervision pursuant to Sections 11175 to 11179, inclusive,  
3 whichever applies. The reasonable cost of these services and of  
4 ~~probation~~ supervision or a conditional sentence shall not exceed  
5 the amount determined to be the actual average cost thereof. A  
6 payment schedule for the reimbursement of the costs of ~~preplea or~~  
7 ~~presentence~~ *conducting investigations and preparing reports*  
8 based on income shall be developed by the probation department  
9 of each county and approved by the presiding judges of the  
10 municipal and superior courts. The court shall order the defendant  
11 to appear before the probation officer, or his or her authorized  
12 representative, to make an inquiry into the ability of the defendant  
13 to pay all or a portion of these costs. The probation officer, or his  
14 or her authorized representative, shall determine the amount of  
15 payment and the manner in which the payments shall be made to  
16 the county, based upon the defendant's ability to pay. The  
17 probation officer shall inform the defendant that the defendant is  
18 entitled to a hearing, that includes the right to counsel, in which the  
19 court shall make a determination of the defendant's ability to pay  
20 and the payment amount. The defendant must waive the right to  
21 a determination by the court of his or her ability to pay and the  
22 payment amount by a knowing and intelligent waiver.

23 (b) When the defendant fails to waive the right provided in  
24 subdivision (a) to a determination by the court of his or her ability  
25 to pay and the payment amount, the probation officer shall refer  
26 the matter to the court for the scheduling of a hearing to determine  
27 the amount of payment and the manner in which the payments  
28 shall be made. The court shall order the defendant to pay the  
29 reasonable costs if it determines that the defendant has the ability  
30 to pay those costs based on the report of the probation officer, or  
31 his or her authorized representative. The following shall apply to  
32 a hearing conducted pursuant to this subdivision:

33 (1) At the hearing, the defendant shall be entitled to have, but  
34 shall not be limited to, the opportunity to be heard in person, to  
35 present witnesses and other documentary evidence, and to  
36 confront and cross-examine adverse witnesses, and to disclosure  
37 of the evidence against the defendant, and a written statement of  
38 the findings of the court or the probation officer, or his or her  
39 authorized representative.



1 (2) At the hearing, if the court determines that the defendant has  
2 the ability to pay all or part of the costs, the court shall set the  
3 amount to be reimbursed and order the defendant to pay that sum  
4 to the county in the manner in which the court believes reasonable  
5 and compatible with the defendant's financial ability.

6 (3) At the hearing, in making a determination of whether a  
7 defendant has the ability to pay, the court shall take into account  
8 the amount of any fine imposed upon the defendant and any  
9 amount the defendant has been ordered to pay in restitution.

10 (4) When the court determines that the defendant's ability to  
11 pay is different from the determination of the probation officer, the  
12 court shall state on the record the reason for its order.

13 (c) The court may hold additional hearings during the  
14 probationary or conditional sentence period to review the  
15 defendant's financial ability to pay the amount, and in the manner,  
16 as set by the probation officer, or his or her authorized  
17 representative, or as set by the court pursuant to this section.

18 (d) If practicable, the court shall order or the probation officer  
19 shall set payments pursuant to subdivisions (a) and (b) to be made  
20 on a monthly basis. Execution may be issued on the order issued  
21 pursuant to this section in the same manner as a judgment in a civil  
22 action. The order to pay all or part of the costs shall not be enforced  
23 by contempt.

24 (e) The term "ability to pay" means the overall capability of  
25 the defendant to reimburse the costs, or a portion of the costs, of  
26 conducting the ~~presentence~~ investigation, preparing the ~~preplea or~~  
27 ~~presentence~~ report, processing a jurisdictional transfer pursuant to  
28 Section 1203.9, processing requests for interstate compact  
29 supervision pursuant to Sections 11175 to 11179, inclusive, and  
30 probation supervision or conditional sentence, and shall include,  
31 but shall not be limited to, the defendant's:

32 (1) Present financial position.

33 (2) Reasonably discernible future financial position. In no  
34 event shall the court consider a period of more than one year from  
35 the date of the hearing for purposes of determining reasonably  
36 discernible future financial position.

37 (3) Likelihood that the defendant shall be able to obtain  
38 employment within the one-year period from the date of the  
39 hearing.



1 (4) Any other factor or factors that may bear upon the  
2 defendant’s financial capability to reimburse the county for the  
3 costs.

4 (f) At any time during the pendency of the judgment rendered  
5 according to the terms of this section, a defendant against whom  
6 a judgment has been rendered may petition the probation officer  
7 for a review of the defendant’s financial ability to pay or the  
8 rendering court to modify or vacate its previous judgment on the  
9 grounds of a change of circumstances with regard to the  
10 defendant’s ability to pay the judgment. The probation officer and  
11 the court shall advise the defendant of this right at the time of  
12 rendering of the terms of probation or the judgment.

13 (g) All sums paid by a defendant pursuant to this section shall  
14 be allocated for the operating expenses of the county probation  
15 department.

16 (h) The board of supervisors in any county, by resolution, may  
17 establish a fee for the processing of payments made in installments  
18 to the probation department pursuant to this section, not to exceed  
19 the administrative and clerical costs of the collection of those  
20 installment payments as determined by the board of supervisors,  
21 except that the fee shall not exceed fifty dollars (\$50).

22 (i) This section shall be operative in a county upon the adoption  
23 of an ordinance to that effect by the board of supervisors.

24 *SEC. 2. Notwithstanding Section 17610 of the Government*  
25 *Code, if the Commission on State Mandates determines that this*  
26 *act contains costs mandated by the state, reimbursement to local*  
27 *agencies and school districts for those costs shall be made*  
28 *pursuant to Part 7 (commencing with Section 17500) of Division*  
29 *4 of Title 2 of the Government Code. If the statewide cost of the*  
30 *claim for reimbursement does not exceed one million dollars*  
31 *(\$1,000,000), reimbursement shall be made from the State*  
32 *Mandates Claims Fund.*

