

AMENDED IN ASSEMBLY MARCH 24, 2009

AMENDED IN ASSEMBLY MARCH 11, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 131

Introduced by Assembly Member Evans

January 20, 2009

An act to amend Section 68085.1 of the Government Code, and to amend Sections 317, 903.1, and 903.45 of the Welfare and Institutions Code, relating to juvenile court costs.

LEGISLATIVE COUNSEL'S DIGEST

AB 131, as amended, Evans. Juvenile proceedings: costs.

Existing law provides for the appointment of counsel to represent a parent or guardian of a child, or the child, in juvenile court proceedings if the parent or guardian is unable to afford counsel. Existing law also provides that the father, mother, spouse, or other person liable for the support of the minor shall be liable to the county for those costs, except as specified, and, more generally, for specified other costs, including the reasonable costs of support of the minor while the minor is placed, detained in, or committed to, any institution pursuant to an order of the juvenile court or pursuant to the authority of a peace officer to take a minor into temporary custody.

Existing law authorizes the board of supervisors to designate a county financial evaluation officer to make financial evaluations of liability for reimbursement of the costs described above, as specified, and authorizes that officer to petition the court for an order requiring the person who is determined to be financially responsible to pay the costs.

This bill would expand the provisions described above to specifically provide that the persons who are liable for the support of the minor shall also be liable for the cost to the county or the court for the cost of legal services rendered to the minor, except under specified circumstances. The bill would additionally authorize the court to designate a financial evaluation officer who would have the same authority described above.

The bill would require the Judicial Council to establish a cost recovery program, *including a specified statewide standard for determining the ability to pay*, to collect reimbursements for counsel appointed by the court to represent parents or minors, as specified. The bill would also make related and technical changes.

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 68085.1 of the Government Code is
2 amended to read:
3 68085.1. (a) This section applies to all fees and fines that are
4 collected on or after January 1, 2006, under all of the following:
5 (1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150,
6 704.750, 708.160, 724.100, 1134, 1161.2, 1218, and 1993.2 of,
7 subdivision (g) of Section 411.20 and subdivisions (c) and (g) of
8 Section 411.21 of, and Chapter 5.5 (commencing with Section
9 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.
10 (2) Section 3112 of the Family Code.
11 (3) Section 31622 of the Food and Agricultural Code.
12 (4) Subdivision (d) of Section 6103.5, Sections 68086 and
13 68086.1, Article 6 (commencing with Section 68630) of Chapter
14 2, Sections 68926.1 and 69953.5, and Chapter 5.8 (commencing
15 with Section 70600).
16 (5) Section 103470 of the Health and Safety Code.
17 (6) Subdivisions (b) and (c) of Section 166 and Section 1214.1
18 of the Penal Code.
19 (7) Sections 1835, 1851.5, 7660, and 13201 of the Probate Code.
20 (8) Sections 14607.6 and 16373 of the Vehicle Code.
21 (9) Section 71386 of this code, Sections 304, 7851.5, and 9002
22 of the Family Code, Section 1513.1 of the Probate Code, and

1 Section 903.1 of the Welfare and Institutions Code, if the
2 reimbursement is for expenses incurred by the court.

3 (10) Section 3153 of the Family Code, if the amount is paid to
4 the court for the cost of counsel appointed by the court to represent
5 a child.

6 (b) On and after January 1, 2006, each superior court shall
7 deposit all fees and fines listed in subdivision (a), as soon as
8 practicable after collection and on a regular basis, into a bank
9 account established for this purpose by the Administrative Office
10 of the Courts. Upon direction of the Administrative Office of the
11 Courts, the county shall deposit civil assessments under Section
12 1214.1 of the Penal Code and any other money it collects under
13 the sections listed in subdivision (a) as soon as practicable after
14 collection and on a regular basis into the bank account established
15 for this purpose and specified by the Administrative Office of the
16 Courts. The deposits shall be made as required by rules adopted
17 by, and financial policies and procedures authorized by, the Judicial
18 Council under subdivision (a) of Section 77206. Within 15 days
19 after the end of the month in which the fees and fines are collected,
20 each court, and each county that collects any fines or fees under
21 subdivision (a), shall provide the Administrative Office of the
22 Courts with a report of the fees by category as specified by the
23 Administrative Office of the Courts. The Administrative Office
24 of the Courts and any court may agree upon a time period greater
25 than 15 days, but in no case more than 30 days after the end of the
26 month in which the fees and fines are collected. The fees and fines
27 listed in subdivision (a) shall be distributed as provided in this
28 section.

29 (c) (1) Within 45 calendar days after the end of the month in
30 which the fees and fines listed in subdivision (a) are collected, the
31 Administrative Office of the Courts shall make the following
32 distributions:

33 (A) To the small claims advisory services, as described in
34 subdivision (f) of Section 116.230 of the Code of Civil Procedure.

35 (B) To dispute resolution programs, as described in subdivision
36 (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

37 (C) To the county law library funds, as described in Sections
38 116.230 and 116.760 of the Code of Civil Procedure, subdivision
39 (b) of Section 68085.3, subdivision (b) of Section 68085.4, and

1 Section 70621 of this code, and Section 14607.6 of the Vehicle
2 Code.

3 (D) To the courthouse construction funds in the Counties of
4 Riverside, San Bernardino, and San Francisco, as described in
5 Sections 70622, 70624, and 70625.

6 (2) If any distribution under this subdivision is delinquent, the
7 Administrative Office of the Courts shall add a penalty to the
8 distribution as specified in subdivision (i).

9 (d) Within 45 calendar days after the end of the month in which
10 the fees and fines listed in subdivision (a) are collected, the
11 amounts remaining after the distributions in subdivision (c) shall
12 be transmitted to the State Treasury for deposit in the Trial Court
13 Trust Fund and other funds as required by law. This remittance
14 shall be accompanied by a remittance advice identifying the
15 collection month and the appropriate account in the Trial Court
16 Trust Fund or other fund to which it is to be deposited. Upon the
17 receipt of any delinquent payment required under this subdivision,
18 the Controller shall calculate a penalty as provided under
19 subdivision (i).

20 (e) From the money transmitted to the State Treasury under
21 subdivision (d), the Controller shall make deposits as follows:

22 (1) Into the State Court Facilities Construction Fund, the Judges'
23 Retirement Fund, and the Equal Access Fund, as described in
24 subdivision (c) of Section 68085.3 and subdivision (c) of Section
25 68085.4.

26 (2) Into the Health Statistics Special Fund, as described in
27 subdivision (b) of Section 70670 of this code and Section 103730
28 of the Health and Safety Code.

29 (3) Into the Family Law Trust Fund, as described in Section
30 70674.

31 (4) Into the Immediate and Critical Needs Account of the State
32 Court Facilities Construction Fund, established in Section 70371.5,
33 as described in Sections 68085.3, 68085.4, and 70657.5, and
34 subdivision (e) of Section 70617.

35 (5) The remainder of the money shall be deposited into the Trial
36 Court Trust Fund.

37 (f) The amounts collected by each superior court under Section
38 116.232, subdivision (g) of Section 411.20, and subdivision (g) of
39 Section 411.21 of the Code of Civil Procedure, Sections 304, 3112,
40 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of

1 Section 6103.5, Article 6 (commencing with Section 68630) of
2 Chapter 2, and Sections 68926.1, 69953.5, 70627, 70631, 70640,
3 70661, 70678, and 71386 of this code, and Sections 1513.1, 1835,
4 and 1851.5 of the Probate Code shall be added to the monthly
5 apportionment for that court under subdivision (a) of Section
6 68085.

7 (g) If any of the fees provided in subdivision (a) are partially
8 waived by court order or otherwise reduced, and the fee is to be
9 divided between the Trial Court Trust Fund and any other fund or
10 account, the amount of the reduction shall be deducted from the
11 amount to be distributed to each fund in the same proportion as
12 the amount of each distribution bears to the total amount of the
13 fee. If the fee is paid by installment payments, the amount
14 distributed to each fund or account from each installment shall
15 bear the same proportion to the installment payment as the full
16 distribution to that fund or account does to the full fee. If a court
17 collects a fee that was incurred before January 1, 2006, under a
18 provision that was the predecessor to one of the paragraphs
19 contained in subdivision (a), the fee may be deposited as if it were
20 collected under the paragraph of subdivision (a) that corresponds
21 to the predecessor of that paragraph and distributed in prorated
22 amounts to each fund or account to which the fee in subdivision
23 (a) must be distributed.

24 (h) Except as provided in Sections 470.5 and 6322.1 of the
25 Business and Professions Code, and Sections 70622, 70624, and
26 70625 of this code, no agency may take action to change the
27 amounts allocated to any of the funds described in subdivision (c),
28 (d), or (e).

29 (i) The amount of the penalty on any delinquent payment under
30 subdivision (c) or (d) shall be calculated by multiplying the amount
31 of the delinquent payment at a daily rate equivalent to 1 ½ percent
32 per month for the number of days the payment is delinquent. The
33 penalty shall be paid from the Trial Court Trust Fund. Penalties
34 on delinquent payments under subdivision (d) shall be calculated
35 only on the amounts to be distributed to the Trial Court Trust Fund
36 and the State Court Facilities Construction Fund, and each penalty
37 shall be distributed proportionately to the funds to which the
38 delinquent payment was to be distributed.

39 (j) If a delinquent payment under subdivision (c) or (d) results
40 from a delinquency by a superior court under subdivision (b), the

1 court shall reimburse the Trial Court Trust Fund for the amount
2 of the penalty. Notwithstanding Section 77009, any penalty on a
3 delinquent payment that a court is required to reimburse pursuant
4 to this section shall be paid from the court operations fund for that
5 court. The penalty shall be paid by the court to the Trial Court
6 Trust Fund no later than 45 days after the end of the month in
7 which the penalty was calculated. If the penalty is not paid within
8 the specified time, the Administrative Office of the Courts may
9 reduce the amount of a subsequent monthly allocation to the court
10 by the amount of the penalty on the delinquent payment.

11 (k) If a delinquent payment under subdivision (c) or (d) results
12 from a delinquency by a county in transmitting fees and fines listed
13 in subdivision (a) to the bank account established for this purpose,
14 as described in subdivision (b), the county shall reimburse the Trial
15 Court Trust Fund for the amount of the penalty. The penalty shall
16 be paid by the county to the Trial Court Trust Fund no later than
17 45 days after the end of the month in which the penalty was
18 calculated.

19 SEC. 2. Section 317 of the Welfare and Institutions Code is
20 amended to read:

21 317. (a) (1) When it appears to the court that a parent or
22 guardian of the child desires counsel but is presently financially
23 unable to afford and cannot for that reason employ counsel, the
24 court may appoint counsel as provided in this section.

25 (2) When it appears to the court that a parent or Indian custodian
26 in an Indian child custody proceeding desires counsel but is
27 presently unable to afford and cannot for that reason employ
28 counsel, the provisions of subsection (b) of Section 1912 of the
29 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section
30 23.13 of Title 25 of the Code of Federal Regulations are applicable.

31 (b) When it appears to the court that a parent or guardian of the
32 child is presently financially unable to afford and cannot for that
33 reason employ counsel, and the child has been placed in
34 out-of-home care, or the petitioning agency is recommending that
35 the child be placed in out-of-home care, the court shall appoint
36 counsel for the parent or guardian, unless the court finds that the
37 parent or guardian has made a knowing and intelligent waiver of
38 counsel as provided in this section.

39 (c) If a child is not represented by counsel, the court shall
40 appoint counsel for the child unless the court finds that the child

1 would not benefit from the appointment of counsel. The court shall
2 state on the record its reasons for that finding. A primary
3 responsibility of any counsel appointed to represent a child
4 pursuant to this section shall be to advocate for the protection,
5 safety, and physical and emotional well-being of the child. Counsel
6 for the child may be a district attorney, public defender, or other
7 member of the bar, provided that the counsel does not represent
8 another party or county agency whose interests conflict with the
9 child's interests. The fact that the district attorney represents the
10 child in a proceeding pursuant to Section 300 as well as conducts
11 a criminal investigation or files a criminal complaint or information
12 arising from the same or reasonably related set of facts as the
13 proceeding pursuant to Section 300 is not in and of itself a conflict
14 of interest. The court may fix the compensation for the services
15 of appointed counsel. The appointed counsel shall have a caseload
16 and training that ensures adequate representation of the child. The
17 Judicial Council shall promulgate rules of court that establish
18 caseload standards, training requirements, and guidelines for
19 appointed counsel for children and shall adopt rules as required
20 by Section 326.5 no later than July 1, 2001.

21 (d) The counsel appointed by the court shall represent the parent,
22 guardian, or child at the detention hearing and at all subsequent
23 proceedings before the juvenile court. Counsel shall continue to
24 represent the parent, guardian, or child unless relieved by the court
25 upon the substitution of other counsel or for cause. The
26 representation shall include representing the parent, guardian, or
27 the child in termination proceedings and in those proceedings
28 relating to the institution or setting aside of a legal guardianship.

29 (e) The counsel for the child shall be charged in general with
30 the representation of the child's interests. To that end, the counsel
31 shall make or cause to have made any further investigations that
32 he or she deems in good faith to be reasonably necessary to
33 ascertain the facts, including the interviewing of witnesses, and
34 he or she shall examine and cross-examine witnesses in both the
35 adjudicatory and dispositional hearings. He or she may also
36 introduce and examine his or her own witnesses, make
37 recommendations to the court concerning the child's welfare, and
38 participate further in the proceedings to the degree necessary to
39 adequately represent the child. In any case in which the child is
40 four years of age or older, counsel shall interview the child to

1 determine the child's wishes and to assess the child's well-being,
2 and shall advise the court of the child's wishes. Counsel for the
3 child shall not advocate for the return of the child if, to the best of
4 his or her knowledge, that return conflicts with the protection and
5 safety of the child. In addition, counsel shall investigate the
6 interests of the child beyond the scope of the juvenile proceeding
7 and report to the court other interests of the child that may need
8 to be protected by the institution of other administrative or judicial
9 proceedings. The attorney representing a child in a dependency
10 proceeding is not required to assume the responsibilities of a social
11 worker and is not expected to provide nonlegal services to the
12 child. The court shall take whatever appropriate action is necessary
13 to fully protect the interests of the child.

14 (f) Either the child or the counsel for the child, with the informed
15 consent of the child if the child is found by the court to be of
16 sufficient age and maturity to so consent, which shall be presumed,
17 subject to rebuttal by clear and convincing evidence, if the child
18 is over 12 years of age, may invoke the psychotherapist-client
19 privilege, physician-patient privilege, and clergyman-penitent
20 privilege; and if the child invokes the privilege, counsel may not
21 waive it, but if counsel invokes the privilege, the child may waive
22 it. Counsel shall be holder of these privileges if the child is found
23 by the court not to be of sufficient age and maturity to so consent.
24 For the sole purpose of fulfilling his or her obligation to provide
25 legal representation of the child, counsel for a child shall have
26 access to all records with regard to the child maintained by a health
27 care facility, as defined in Section 1545 of the Penal Code, health
28 care providers, as defined in Section 6146 of the Business and
29 Professions Code, a physician and surgeon or other health
30 practitioner, as defined in former Section 11165.8 of the Penal
31 Code, as that section read on January 1, 2000, or a child care
32 custodian, as defined in former Section 11165.7 of the Penal Code,
33 as that section read on January 1, 2000. Notwithstanding any other
34 law, counsel shall be given access to all records relevant to the
35 case which are maintained by state or local public agencies. All
36 information requested from a child protective agency regarding a
37 child who is in protective custody, or from a child's guardian ad
38 litem, shall be provided to the child's counsel within 30 days of
39 the request.

1 (g) In a county of the third class, if counsel is to be provided to
2 a child at county expense other than by counsel for the agency,
3 the court shall first utilize the services of the public defender prior
4 to appointing private counsel, to provide legal counsel. Nothing
5 in this subdivision shall be construed to require the appointment
6 of the public defender in any case in which the public defender
7 has a conflict of interest. In the interest of justice, a court may
8 depart from that portion of the procedure requiring appointment
9 of the public defender after making a finding of good cause and
10 stating the reasons therefor on the record.

11 (h) In a county of the third class, if counsel is to be appointed
12 for a parent or guardian at county expense, the court shall first
13 utilize the services of the alternate public defender, prior to
14 appointing private counsel, to provide legal counsel. Nothing in
15 this subdivision shall be construed to require the appointment of
16 the alternate public defender in any case in which the public
17 defender has a conflict of interest. In the interest of justice, a court
18 may depart from that portion of the procedure requiring
19 appointment of the alternate public defender after making a finding
20 of good cause and stating the reasons therefor on the record.

21 (i) The Judicial Council shall establish a cost recovery program
22 to collect reimbursements for counsel appointed by the court
23 *pursuant to this section* to represent parents or minors as authorized
24 by Section 903.1. *As part of the cost recovery program, the Judicial*
25 *Council shall develop a statewide standard for determining the*
26 *ability to pay reimbursements for counsel, which shall at a*
27 *minimum include the family's income, their necessary obligations,*
28 *the number of individuals dependent on this income, and the*
29 *cost-effectiveness of the collection.* All funds recovered by this
30 program shall be utilized to reduce caseloads, for attorneys
31 appointed by the court, to the caseload standard approved by the
32 Judicial Council. Priority shall be given to those courts with the
33 highest attorney caseloads that also demonstrate the ability to
34 immediately improve outcomes for parents and children as a result
35 of lower attorney caseloads.

36 SEC. 3. Section 903.1 of the Welfare and Institutions Code is
37 amended to read:

38 903.1. (a) The father, mother, spouse, or other person liable
39 for the support of a minor, the estate of that person, and the estate
40 of the minor, shall be liable for the cost to the county or the court,

1 whichever entity incurred the expenses, of legal services rendered
2 to the minor by an attorney pursuant to an order of the juvenile
3 court. The father, mother, spouse, or other person liable for the
4 support of a minor and the estate of that person shall also be liable
5 for any cost to the county or the court of legal services rendered
6 directly to the father, mother, or spouse, of the minor or any other
7 person liable for the support of the minor, in a dependency
8 proceeding by an attorney appointed pursuant to an order of the
9 juvenile court. The liability of those persons (in this article called
10 relatives) and estates shall be a joint and several liability.

11 (b) Notwithstanding subdivision (a), the father, mother, spouse,
12 or other person liable for the support of the minor, the estate of
13 that person, or the estate of the minor, shall not be liable for the
14 costs of any of the legal services provided to any person described
15 in this section if a petition to declare the minor a dependent child
16 of the court pursuant to Section 300 is dismissed at or before the
17 jurisdictional hearing.

18 SEC. 4. Section 903.45 of the Welfare and Institutions Code
19 is amended to read:

20 903.45. (a) The board of supervisors or the court may designate
21 a financial evaluation officer pursuant to Section 27750 of the
22 Government Code to make financial evaluations of liability for
23 reimbursement pursuant to Sections 207.2, 903, 903.1, 903.2,
24 903.25, 903.3, and 903.5, and other reimbursable costs allowed
25 by law, as set forth in this section.

26 (b) In any county where a board of supervisors or the court has
27 designated a financial evaluation officer, the juvenile court shall,
28 at the close of the disposition hearing, order any person liable for
29 the cost of support, pursuant to Section 903, the cost of legal
30 services as provided for in Section 903.1, probation costs as
31 provided for in Section 903.2, or any other reimbursable costs
32 allowed under this code, to appear before the financial evaluation
33 officer for a financial evaluation of his or her ability to pay those
34 costs; and if the responsible person is not present at the disposition
35 hearing, the court shall cite him or her to appear for such a financial
36 evaluation. In the case of a parent, guardian, or other person
37 assessed for the costs of transport, food, shelter, or care of a minor
38 under Section 207.2 or 903.25, the juvenile court shall, upon
39 request of the county probation department, order the appearance
40 of the parent, guardian, or other person before the financial

1 evaluation officer for a financial evaluation of his or her ability to
2 pay the costs assessed.

3 If the financial evaluation officer determines that a person so
4 responsible has the ability to pay all or part of the costs, the
5 financial evaluation officer shall petition the court for an order
6 requiring the person to pay that sum to the county or court. If the
7 parent or guardian is liable for costs for legal services pursuant to
8 Section 903.1, the parent or guardian has been reunified with the
9 child pursuant to a court order, and the court or financial officer
10 determines that repayment of the costs would harm the ability of
11 the parent or guardian to support the child, then the financial officer
12 shall not petition the court for an order of repayment, and the court
13 shall not make that order. In addition, if the parent or guardian is
14 currently receiving reunification services, and the court finds that
15 repayment by the parent or guardian will pose a barrier to
16 reunification with the child because it will limit the ability of the
17 parent or guardian to comply with the requirements of the
18 reunification plan or compromise the parent's or guardian's current
19 or future ability to meet the financial needs of the child, the court
20 shall not order repayment by the parent or guardian. In evaluating
21 a person's ability to pay under this section, the financial evaluation
22 officer and the court shall take into consideration the family's
23 income, the necessary obligations of the family, and the number
24 of persons dependent upon this income. Any person appearing for
25 a financial evaluation shall have the right to dispute the financial
26 evaluation officer's determination, in which case he or she shall
27 be entitled to a hearing before the juvenile court. The financial
28 evaluation officer at the time of the financial evaluation shall advise
29 such a person of his or her right to a hearing and of his or her rights
30 pursuant to subdivision (c).

31 At the hearing, any person so responsible for costs shall be
32 entitled to have, but shall not be limited to, the opportunity to be
33 heard in person, to present witnesses and other documentary
34 evidence, to confront and cross-examine adverse witnesses, to
35 disclosure of the evidence against him or her, and to receive a
36 written statement of the findings of the court. The person shall
37 have the right to be represented by counsel, and, when the person
38 is unable to afford counsel, the right to appointed counsel. If the
39 court determines that the person has the ability to pay all or part
40 of the costs, including the costs of any counsel appointed to

1 represent the person at the hearing, the court shall set the amount
2 to be reimbursed and order him or her to pay that sum to the county
3 in a manner in which the court believes reasonable and compatible
4 with the person's financial ability.

5 If the person or persons, after having been ordered to appear
6 before the financial evaluation officer, have been given proper
7 notice and fail to appear as ordered, the financial evaluation officer
8 shall recommend to the court that he, she, or they be ordered to
9 pay the full amount of the costs. Proper notice to him, her, or them
10 shall contain all of the following:

11 (1) That he, she, or they have a right to a statement of the costs
12 as soon as it is available.

13 (2) His, her, or their procedural rights under Section 27755 of
14 the Government Code.

15 (3) The time limit within which his, her, or their appearance is
16 required.

17 (4) A warning that if he, she, or they fail to appear before the
18 financial evaluation officer, the officer will recommend that the
19 court order him, her, or them to pay the costs in full.

20 If the financial evaluation officer determines that the person or
21 persons have the ability to pay all or a portion of these costs, with
22 or without terms, and he, she, or they concur in this determination
23 and agree to the terms of payments, the financial evaluation officer,
24 upon his or her written evaluation and the person's or persons'
25 written agreement, shall petition the court for an order requiring
26 him, her, or them to pay that sum to the county or the court in a
27 manner which is reasonable and compatible with his, her, or their
28 financial ability. This order may be granted without further notice
29 to the person or persons, provided a copy of the order is served on
30 him, her, or them by mail.

31 However, if the financial evaluation officer cannot reach an
32 agreement with the person or persons with respect to either the
33 liability for the costs, the amount of the costs, his, her, or their
34 ability to pay the same, or the terms of payment, the matter shall
35 be deemed in dispute and referred by the financial evaluation
36 officer back to the court for a hearing.

37 (c) At any time prior to the satisfaction of a judgment entered
38 pursuant to this section, a person against whom the judgment was
39 entered may petition the rendering court to modify or vacate the

- 1 judgment on the basis of a change in circumstances relating to his
- 2 or her ability to pay the judgment.
- 3 (d) Execution may be issued on the order in the same manner
- 4 as on a judgment in a civil action, including any balance remaining
- 5 unpaid at the termination of the court's jurisdiction over the minor.

O