

AMENDED IN SENATE APRIL 9, 2012

**SENATE BILL**

**No. 1124**

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**Introduced by Senator Cannella**

February 17, 2012

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An act to amend Section 1203.1m of the Penal Code, relating to ~~prisons~~ *incarceration*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1124, as amended, Cannella. ~~Prisons: cost~~ *Cost of incarceration: reimbursement.*

Existing law authorizes the court in a criminal case to make a determination of a defendant's ability to pay all or a portion of the reasonable costs of imprisonment if the defendant is convicted of an offense and ordered to serve a period of imprisonment in the state prison. Existing law authorizes the court, in its discretion before any hearing, to order the defendant to file a statement setting forth his or her assets, liability, and income under penalty of perjury. If the court determines that the defendant has the ability to pay all or a portion of the costs, existing law requires the court to set the amount to be reimbursed and order the defendant to pay that sum to the Department of Corrections and Rehabilitation in the manner in which the court believes reasonable and compatible with the defendant's financial ability, *for deposit in the General Fund in the State Treasury*.

This bill would require the court to make a determination of the ability of ~~the~~ *a* defendant to pay all or a portion of the reasonable costs of imprisonment *in a state prison or a county jail*, and would require the court to order the defendant to file a statement setting forth his or her assets, liability, and income before a hearing on the matter. *The bill would further require a person sentenced to a county jail to pay the*

*reasonable cost of imprisonment in the county jail, not to exceed the amount determined by the board of supervisors to be the actual average cost of imprisonment in the county jail, and would require payments for local incarceration costs to be made to the sheriff for deposit in the county general fund.*

*By imposing additional duties on county prosecutors, the 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.*

*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.*

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 1203.1m of the Penal Code is amended
- 2 to read:
- 3 1203.1m. (a) If a defendant is convicted of an offense and
- 4 ordered to serve a period of imprisonment in the state prison *or a*
- 5 *county jail*, the court shall, after a hearing, make a determination
- 6 of the ability of the defendant to pay all or a portion of the
- 7 reasonable costs of the imprisonment. The reasonable costs of
- 8 imprisonment *in the state prison* shall not exceed the amount
- 9 determined by the Secretary of the Department of Corrections and
- 10 Rehabilitation to be the actual average cost of imprisonment in the
- 11 state prison on a per-day basis. *The reasonable cost of*
- 12 *imprisonment in a county jail shall not exceed the amount*
- 13 *determined by the board of supervisors to be the actual average*
- 14 *cost of imprisonment in the county jail on a per-day basis.*
- 15 (b) The court shall, before any hearing, order the defendant to
- 16 file a statement setting forth his or her assets, liability, and income,
- 17 under penalty of perjury. At the hearing, the defendant shall have
- 18 the opportunity to be heard in person or through counsel, to present
- 19 witnesses and other evidence, and to confront and cross-examine
- 20 adverse witnesses. A defendant who is represented by counsel

1 appointed by the court in the criminal proceedings shall be entitled  
2 to representation at any hearing held pursuant to this section. If  
3 the court determines that the defendant has the ability to pay all  
4 or a part of the costs, the court shall set the amount to be  
5 reimbursed, and order the defendant to pay that sum to the  
6 Department of Corrections and Rehabilitation for deposit in the  
7 General Fund, *or to the sheriff for deposit in the county general*  
8 *fund*, in the manner in which the court believes reasonable and  
9 compatible with the defendant's financial ability. Execution may  
10 be issued on the order in the same manner as on a judgment in a  
11 civil action. The order to pay all or part of the costs shall not be  
12 enforced by contempt.

13 (c) At any time during the pendency of an order made under  
14 this section, a person against whom the order has been made may  
15 petition the court to modify or vacate its previous order on the  
16 grounds of a change of circumstances with regard to the person's  
17 ability to pay. The court shall advise the person of this right at the  
18 time of making the order.

19 (d) If the amount paid by the defendant for imprisonment  
20 exceeds the actual average cost of the term of imprisonment  
21 actually served by the defendant, the amount paid by the defendant  
22 in excess of the actual average cost shall be returned to the  
23 defendant within 60 days of his or her release from the state prison  
24 *or county jail*.

25 (e) For the purposes of this section, in determining a defendant's  
26 ability to pay, the court shall consider the overall ability of the  
27 defendant to reimburse all or a portion of the costs of imprisonment  
28 in light of the defendant's present and foreseeable financial  
29 obligations, including family support obligations, restitution to the  
30 victim, and fines, penalties, and other obligations to the court, all  
31 of which shall take precedence over a reimbursement order made  
32 pursuant to this section.

33 (f) For the purposes of this section, in determining a defendant's  
34 ability to pay, the court shall not consider the following:

35 (1) The personal residence of the defendant, if any, up to a  
36 maximum amount of the median home sales price in the county  
37 in which the residence is located.

38 (2) The personal motor vehicle of the defendant, if any, up to  
39 a maximum amount of ten thousand dollars (\$10,000).

1 (3) Any other assets of the defendant up to a maximum amount  
2 of the median annual income in California.

3 *SEC. 2. If the Commission on State Mandates determines that*  
4 *this act contains costs mandated by the state, reimbursement to*  
5 *local agencies and school districts for those costs shall be made*  
6 *pursuant to Part 7 (commencing with Section 17500) of Division*  
7 *4 of Title 2 of the Government Code.*

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