

ASSEMBLY BILL

No. 139

Introduced by Assembly Member Holden

January 17, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 139, as introduced, Holden. Domestic violence: fees.

Existing law imposes a fee of \$500 on every person who is granted probation for a crime of domestic violence. Two-thirds of the fee is deposited in the county's domestic violence programs special fund to be expended in support of domestic violence shelter programs, as specified. Existing law authorizes fines to be reduced, as specified, for time served.

This bill would clarify that the \$500 payment is a fee, not a fine, and that the fee is not subject to reduction for time served. The bill would also authorize 8% of the moneys deposited in the county domestic violence programs special fund to be used for administrative costs and would authorize the collection of the fee by the collecting agency or the agency's designee after the termination of the period of probation, whether probation is terminated by revocation or by completion of the term.

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

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

1 SECTION 1. Section 1203.097 of the Penal Code, as amended
2 by Section 1.5 of Chapter 628 of the Statutes of 2012, is amended
3 to read:

4 1203.097. (a) If a person is granted probation for a crime in
5 which the victim is a person defined in Section 6211 of the Family
6 Code, the terms of probation shall include all of the following:

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

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

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

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

16 (5) (A) ~~A minimum payment~~ *Payment* by the defendant of a
17 *fee* of five hundred dollars (\$500) to be disbursed as specified in
18 this paragraph. If, after a hearing in open court, the court finds that
19 the defendant does not have the ability to pay, the court may reduce
20 or waive this fee. If the court exercises its discretion to reduce or
21 waive the fee, it shall state the reason on the record.

22 (B) Two-thirds of the moneys deposited with the county
23 treasurer pursuant to this section shall be retained by counties and
24 deposited in the domestic violence programs special fund created
25 pursuant to Section 18305 of the Welfare and Institutions Code,
26 to be expended for the purposes of Chapter 5 (commencing with
27 Section 18290) of Part 6 of Division 9 of the Welfare and
28 Institutions Code. ~~The remainder shall~~ *Of the moneys deposited*
29 *in the domestic violence programs special fund, no more than 8*
30 *percent may be used for administrative costs, as specified in*
31 *Section 18305 of the Welfare and Institutions Code.*

32 (C) *The remaining one-third of the moneys shall* be transferred,
33 once a month, to the Controller for deposit in equal amounts in
34 the Domestic Violence Restraining Order Reimbursement Fund
35 and in the Domestic Violence Training and Education Fund, which
36 are hereby created, in an amount equal to one-third of funds
37 collected during the preceding month. Moneys deposited into these
38 funds pursuant to this section shall be available upon appropriation

1 by the Legislature and shall be distributed each fiscal year as
2 follows:

3 (i) Funds from the Domestic Violence Restraining Order
4 Reimbursement Fund shall be distributed to local law enforcement
5 or other criminal justice agencies for state-mandated local costs
6 resulting from the notification requirements set forth in subdivision
7 (b) of Section 6380 of the Family Code, based on the annual
8 notification from the Department of Justice of the number of
9 restraining orders issued and registered in the state domestic
10 violence restraining order registry maintained by the Department
11 of Justice, for the development and maintenance of the domestic
12 violence restraining order databank system.

13 (ii) Funds from the Domestic Violence Training and Education
14 Fund shall support a statewide training and education program to
15 increase public awareness of domestic violence and to improve
16 the scope and quality of services provided to the victims of
17 domestic violence. Grants to support this program shall be awarded
18 on a competitive basis and be administered by the State Department
19 of Public Health, in consultation with the statewide domestic
20 violence coalition, which is eligible to receive funding under this
21 section.

22 *(D) The fee imposed by this paragraph shall be treated as a fee,*
23 *not as a fine, and shall not be subject to reduction for time served*
24 *as provided pursuant to Section 1205 or 2900.5.*

25 *(E) The fee imposed by this paragraph may be collected by the*
26 *collecting agency, or the agency's designee, after the termination*
27 *of the period of probation, whether probation is terminated by*
28 *revocation or by completion of the term.*

29 (6) Successful completion of a batterer's program, as defined
30 in subdivision (c), or if none is available, another appropriate
31 counseling program designated by the court, for a period not less
32 than one year with periodic progress reports by the program to the
33 court every three months or less and weekly sessions of a minimum
34 of two hours class time duration. The defendant shall attend
35 consecutive weekly sessions, unless granted an excused absence
36 for good cause by the program for no more than three individual
37 sessions during the entire program, and shall complete the program
38 within 18 months, unless, after a hearing, the court finds good
39 cause to modify the requirements of consecutive attendance or
40 completion within 18 months.

1 (7) (A) (i) The court shall order the defendant to comply with
2 all probation requirements, including the requirements to attend
3 counseling, keep all program appointments, and pay program fees
4 based upon the ability to pay.

5 (ii) The terms of probation for offenders shall not be lifted until
6 all reasonable fees due to the counseling program have been paid
7 in full, but in no case shall probation be extended beyond the term
8 provided in subdivision (a) of Section 1203.1. If the court finds
9 that the defendant does not have the ability to pay the fees based
10 on the defendant’s changed circumstances, the court may reduce
11 or waive the fees.

12 (B) Upon request by the batterer’s program, the court shall
13 provide the defendant’s arrest report, prior incidents of violence,
14 and treatment history to the program.

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

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

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

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

37 (ii) The defendant has cooperated and participated in the
38 batterer’s program.

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

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

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

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

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

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

15 (B) The program shall immediately report any violation of the
16 terms of the protective order, including any new acts of violence
17 or failure to comply with the program requirements, to the court,
18 the prosecutor, and, if formal probation has been ordered, to the
19 probation department. The probationer shall file proof of
20 enrollment in a batterer’s program with the court within 30 days
21 of conviction.

22 (C) Concurrent with other requirements under this section, in
23 addition to, and not in lieu of, the batterer’s program, and unless
24 prohibited by the referring court, the probation department or the
25 court may make provisions for a defendant to use his or her
26 resources to enroll in a chemical dependency program or to enter
27 voluntarily a licensed chemical dependency recovery hospital or
28 residential treatment program that has a valid license issued by the
29 state to provide alcohol or drug services to receive program
30 participation credit, as determined by the court. The probation
31 department shall document evidence of this hospital or residential
32 treatment participation in the defendant’s program file.

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

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

38 (B) That the defendant reimburse the victim for reasonable
39 expenses that the court finds are the direct result of the defendant’s
40 offense.

1 For any order to pay a fine, to make payments to a battered
2 women's shelter, or to pay restitution as a condition of probation
3 under this subdivision, the court shall make a determination of the
4 defendant's ability to pay. Determination of a defendant's ability
5 to pay may include his or her future earning capacity. A defendant
6 shall bear the burden of demonstrating lack of his or her ability to
7 pay. Express findings by the court as to the factors bearing on the
8 amount of the fine shall not be required. In no event shall any order
9 to make payments to a battered women's shelter be made if it
10 would impair the ability of the defendant to pay direct restitution
11 to the victim or court-ordered child support. When the injury to a
12 married person is caused, in whole or in part, by the criminal acts
13 of his or her spouse in violation of this section, the community
14 property shall not be used to discharge the liability of the offending
15 spouse for restitution to the injured spouse, as required by Section
16 1203.04, as operative on or before August 2, 1995, or Section
17 1202.4, or to a shelter for costs with regard to the injured spouse,
18 until all separate property of the offending spouse is exhausted.

19 (12) If it appears to the prosecuting attorney, the court, or the
20 probation department that the defendant is performing
21 unsatisfactorily in the assigned program, is not benefiting from
22 counseling, or has engaged in criminal conduct, upon request of
23 the probation officer, the prosecuting attorney, or on its own
24 motion, the court, as a priority calendar item, shall hold a hearing
25 to determine whether further sentencing should proceed. The court
26 may consider factors, including, but not limited to, any violence
27 by the defendant against the former or a new victim while on
28 probation and noncompliance with any other specific condition of
29 probation. If the court finds that the defendant is not performing
30 satisfactorily in the assigned program, is not benefiting from the
31 program, has not complied with a condition of probation, or has
32 engaged in criminal conduct, the court shall terminate the
33 defendant's participation in the program and shall proceed with
34 further sentencing.

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

39 (1) The probation department shall make an investigation and
40 take into consideration the defendant's age, medical history,

1 employment and service records, educational background,
2 community and family ties, prior incidents of violence, police
3 report, treatment history, if any, demonstrable motivation, and
4 other mitigating factors in determining which batterer's program
5 would be appropriate for the defendant. This information shall be
6 provided to the batterer's program if it is requested. The probation
7 department shall also determine which community programs the
8 defendant would benefit from and which of those programs would
9 accept the defendant. The probation department shall report its
10 findings and recommendations to the court.

11 (2) The court shall advise the defendant that the failure to report
12 to the probation department for the initial investigation, as directed
13 by the court, or the failure to enroll in a specified program, as
14 directed by the court or the probation department, shall result in
15 possible further incarceration. The court, in the interests of justice,
16 may relieve the defendant from the prohibition set forth in this
17 subdivision based upon the defendant's mistake or excusable
18 neglect. Application for this relief shall be filed within 20 court
19 days of the missed deadline. This time limitation may not be
20 extended. A copy of any application for relief shall be served on
21 the office of the prosecuting attorney.

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

- 25 (A) Social, economic, and family background.
- 26 (B) Education.
- 27 (C) Vocational achievements.
- 28 (D) Criminal history.
- 29 (E) Medical history.
- 30 (F) Substance abuse history.
- 31 (G) Consultation with the probation officer.
- 32 (H) Verbal consultation with the victim, only if the victim
33 desires to participate.
- 34 (I) Assessment of the future probability of the defendant
35 committing murder.

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

1 (c) The court or the probation department shall refer defendants
2 only to batterer’s programs that follow standards outlined in
3 paragraph (1), which may include, but are not limited to, lectures,
4 classes, group discussions, and counseling. The probation
5 department shall design and implement an approval and renewal
6 process for batterer’s programs and shall solicit input from criminal
7 justice agencies and domestic violence victim advocacy programs.

8 (1) The goal of a batterer’s program under this section shall be
9 to stop domestic violence. A batterer’s program shall consist of
10 the following components:

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

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

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

20 (D) Procedures to inform the victim regarding the requirements
21 for the defendant’s participation in the intervention program as
22 well as regarding available victim resources. The victim also shall
23 be informed that attendance in any program does not guarantee
24 that an abuser will not be violent.

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

27 (F) Educational programming that examines, at a minimum,
28 gender roles, socialization, the nature of violence, the dynamics
29 of power and control, and the effects of abuse on children and
30 others.

31 (G) A requirement that excludes any couple counseling or family
32 counseling, or both.

33 (H) Procedures that give the program the right to assess whether
34 or not the defendant would benefit from the program and to refuse
35 to enroll the defendant if it is determined that the defendant would
36 not benefit from the program, so long as the refusal is not because
37 of the defendant’s inability to pay. If possible, the program shall
38 suggest an appropriate alternative program.

39 (I) Program staff who, to the extent possible, have specific
40 knowledge regarding, but not limited to, spousal abuse, child abuse,

1 sexual abuse, substance abuse, the dynamics of violence and abuse,
2 the law, and procedures of the legal system.

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

5 (K) A requirement that the defendant enter into a written
6 agreement with the program, which shall include an outline of the
7 contents of the program, the attendance requirements, the
8 requirement to attend group sessions free of chemical influence,
9 and a statement that the defendant may be removed from the
10 program if it is determined that the defendant is not benefiting
11 from the program or is disruptive to the program.

12 (L) A requirement that the defendant sign a confidentiality
13 statement prohibiting disclosure of any information obtained
14 through participating in the program or during group sessions
15 regarding other participants in the program.

16 (M) Program content that provides cultural and ethnic
17 sensitivity.

18 (N) A requirement of a written referral from the court or
19 probation department prior to permitting the defendant to enroll
20 in the program. The written referral shall state the number of
21 minimum sessions required by the court.

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

24 (i) Proof of enrollment, to be submitted to the court and the
25 probation department and to include the fee determined to be
26 charged to the defendant, based upon the ability to pay, for each
27 session.

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

30 (iii) Final evaluation that includes the program's evaluation of
31 the defendant's progress, using the criteria set forth in subparagraph
32 (A) of paragraph (10) of subdivision (a) and recommendation for
33 either successful or unsuccessful termination or continuation in
34 the program.

35 (P) A sliding fee schedule based on the defendant's ability to
36 pay. The batterer's program shall develop and utilize a sliding fee
37 scale that recognizes both the defendant's ability to pay and the
38 necessity of programs to meet overhead expenses. An indigent
39 defendant may negotiate a deferred payment schedule, but shall
40 pay a nominal fee, if the defendant has the ability to pay the

1 nominal fee. Upon a hearing and a finding by the court that the
2 defendant does not have the financial ability to pay the nominal
3 fee, the court shall waive this fee. The payment of the fee shall be
4 made a condition of probation if the court determines the defendant
5 has the present ability to pay the fee. The fee shall be paid during
6 the term of probation unless the program sets other conditions.
7 The acceptance policies shall be in accordance with the scaled fee
8 system.

9 (2) The court shall refer persons only to batterer’s programs
10 that have been approved by the probation department pursuant to
11 paragraph (5). The probation department shall do both of the
12 following:

13 (A) Provide for the issuance of a provisional approval, provided
14 that the applicant is in substantial compliance with applicable laws
15 and regulations and an urgent need for approval exists. A
16 provisional approval shall be considered an authorization to provide
17 services and shall not be considered a vested right.

18 (B) If the probation department determines that a program is
19 not in compliance with standards set by the department, the
20 department shall provide written notice of the noncompliant areas
21 to the program. The program shall submit a written plan of
22 corrections within 14 days from the date of the written notice on
23 noncompliance. A plan of correction shall include, but not be
24 limited to, a description of each corrective action and timeframe
25 for implementation. The department shall review and approve all
26 or any part of the plan of correction and notify the program of
27 approval or disapproval in writing. If the program fails to submit
28 a plan of correction or fails to implement the approved plan of
29 correction, the department shall consider whether to revoke or
30 suspend approval and, upon revoking or suspending approval, shall
31 have the option to cease referrals of defendants under this section.

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

34 (A) The establishment of guidelines and criteria for education
35 services, including standards of services that may include lectures,
36 classes, and group discussions.

37 (B) Supervision of the defendant for the purpose of evaluating
38 the person’s progress in the program.

39 (C) Adequate reporting requirements to ensure that all persons
40 who, after being ordered to attend and complete a program, may

1 be identified for either failure to enroll in, or failure to successfully
2 complete, the program or for the successful completion of the
3 program as ordered. The program shall notify the court and the
4 probation department, in writing, within the period of time and in
5 the manner specified by the court of any person who fails to
6 complete the program. Notification shall be given if the program
7 determines that the defendant is performing unsatisfactorily or if
8 the defendant is not benefiting from the education, treatment, or
9 counseling.

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

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

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

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

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

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

31 (iii) The onsite review of the program, including monitoring of
32 a session to determine that the program adheres to applicable
33 statutes and regulations.

34 (iv) The payment of the approval fee.

35 (B) The probation department shall fix a fee for approval not
36 to exceed two hundred fifty dollars (\$250) and for approval renewal
37 not to exceed two hundred fifty dollars (\$250) every year in an
38 amount sufficient to cover its costs in administering the approval
39 process under this section. No fee shall be charged for the approval
40 of local governmental entities.

1 (C) The probation department has the sole authority to approve
2 the issuance, denial, suspension, or revocation of approval and to
3 cease new enrollments or referrals to a batterer’s program under
4 this section. The probation department shall review information
5 relative to a program’s performance or failure to adhere to
6 standards, or both. The probation department may suspend or
7 revoke an approval issued under this subdivision or deny an
8 application to renew an approval or to modify the terms and
9 conditions of approval, based on grounds established by probation,
10 including, but not limited to, either of the following:

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

13 (ii) Misrepresentation of any material fact in obtaining the
14 approval.

15 (6) For defendants who are chronic users or serious abusers of
16 drugs or alcohol, standard components in the program shall include
17 concurrent counseling for substance abuse and violent behavior,
18 and in appropriate cases, detoxification and abstinence from the
19 abused substance.

20 (7) The program shall conduct an exit conference that assesses
21 the defendant’s progress during his or her participation in the
22 batterer’s program.

23 (d) An act or omission relating to the approval of a batterer’s
24 treatment programs under paragraph (5) of subdivision (c) is a
25 discretionary act pursuant to Section 820.2 of the Government
26 Code.