

AMENDED IN ASSEMBLY MARCH 6, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 139

Introduced by Assembly Member Holden
*(Coauthors: Assembly Members Brown, Chávez, Lowenthal,
Maienschein, and Ting)*
(Coauthors: Senators Liu and Padilla)

January 17, 2013

An act to amend Section 1203.097 of the Penal Code, *and to amend Section 18305 of the Welfare and Institutions Code*, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 139, as amended, 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. *The bill would provide that a county board of supervisors may*

request, on not more than a quarterly basis, an accounting of the special fund, as specified.

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) ~~Payment~~ *A minimum payment* by the defendant of a fee
17 of five hundred dollars (\$500) to be disbursed as specified in this
18 paragraph. If, after a hearing in open court, the court finds that the
19 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. Of the moneys deposited in the domestic
29 violence programs special fund, no more than 8 percent may be
30 used for administrative costs, as specified in Section 18305 of the
31 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

1 the Domestic Violence Restraining Order Reimbursement Fund
2 and in the Domestic Violence Training and Education Fund, which
3 are hereby created, in an amount equal to one-third of funds
4 collected during the preceding month. Moneys deposited into these
5 funds pursuant to this section shall be available upon appropriation
6 by the Legislature and shall be distributed each fiscal year as
7 follows:

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

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

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

30 (E) The fee imposed by this paragraph may be collected by the
31 collecting agency, or the agency's designee, after the termination
32 of the period of probation, whether probation is terminated by
33 revocation or by completion of the term.

34 (6) Successful completion of a batterer's program, as defined
35 in subdivision (c), or if none is available, another appropriate
36 counseling program designated by the court, for a period not less
37 than one year with periodic progress reports by the program to the
38 court every three months or less and weekly sessions of a minimum
39 of two hours class time duration. The defendant shall attend
40 consecutive weekly sessions, unless granted an excused absence

1 for good cause by the program for no more than three individual
2 sessions during the entire program, and shall complete the program
3 within 18 months, unless, after a hearing, the court finds good
4 cause to modify the requirements of consecutive attendance or
5 completion within 18 months.

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

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

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

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

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

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

- 1 (i) The defendant has been violence free for a minimum of six
2 months.
- 3 (ii) The defendant has cooperated and participated in the
4 batterer’s program.
- 5 (iii) The defendant demonstrates an understanding of and
6 practices positive conflict resolution skills.
- 7 (iv) The defendant blames, degrades, or has committed acts that
8 dehumanize the victim or puts at risk the victim’s safety, including,
9 but not limited to, molesting, stalking, striking, attacking,
10 threatening, sexually assaulting, or battering the victim.
- 11 (v) The defendant demonstrates an understanding that the use
12 of coercion or violent behavior to maintain dominance is
13 unacceptable in an intimate relationship.
- 14 (vi) The defendant has made threats to harm anyone in any
15 manner.
- 16 (vii) The defendant has complied with applicable requirements
17 under paragraph (6) of subdivision (c) or subparagraph (C) to
18 receive alcohol counseling, drug counseling, or both.
- 19 (viii) The defendant demonstrates acceptance of responsibility
20 for the abusive behavior perpetrated against the victim.
- 21 (B) The program shall immediately report any violation of the
22 terms of the protective order, including any new acts of violence
23 or failure to comply with the program requirements, to the court,
24 the prosecutor, and, if formal probation has been ordered, to the
25 probation department. The probationer shall file proof of
26 enrollment in a batterer’s program with the court within 30 days
27 of conviction.
- 28 (C) Concurrent with other requirements under this section, in
29 addition to, and not in lieu of, the batterer’s program, and unless
30 prohibited by the referring court, the probation department or the
31 court may make provisions for a defendant to use his or her
32 resources to enroll in a chemical dependency program or to enter
33 voluntarily a licensed chemical dependency recovery hospital or
34 residential treatment program that has a valid license issued by the
35 state to provide alcohol or drug services to receive program
36 participation credit, as determined by the court. The probation
37 department shall document evidence of this hospital or residential
38 treatment participation in the defendant’s program file.

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

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

6 (B) That the defendant reimburse the victim for reasonable
7 expenses that the court finds are the direct result of the defendant's
8 offense.

9 For any order to pay a fine, to make payments to a battered
10 women's shelter, or to pay restitution as a condition of probation
11 under this subdivision, the court shall make a determination of the
12 defendant's ability to pay. Determination of a defendant's ability
13 to pay may include his or her future earning capacity. A defendant
14 shall bear the burden of demonstrating lack of his or her ability to
15 pay. Express findings by the court as to the factors bearing on the
16 amount of the fine shall not be required. In no event shall any order
17 to make payments to a battered women's shelter be made if it
18 would impair the ability of the defendant to pay direct restitution
19 to the victim or court-ordered child support. When the injury to a
20 married person is caused, in whole or in part, by the criminal acts
21 of his or her spouse in violation of this section, the community
22 property shall not be used to discharge the liability of the offending
23 spouse for restitution to the injured spouse, as required by Section
24 1203.04, as operative on or before August 2, 1995, or Section
25 1202.4, or to a shelter for costs with regard to the injured spouse,
26 until all separate property of the offending spouse is exhausted.

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

1 defendant's participation in the program and shall proceed with
2 further sentencing.

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

7 (1) The probation department shall make an investigation and
8 take into consideration the defendant's age, medical history,
9 employment and service records, educational background,
10 community and family ties, prior incidents of violence, police
11 report, treatment history, if any, demonstrable motivation, and
12 other mitigating factors in determining which batterer's program
13 would be appropriate for the defendant. This information shall be
14 provided to the batterer's program if it is requested. The probation
15 department shall also determine which community programs the
16 defendant would benefit from and which of those programs would
17 accept the defendant. The probation department shall report its
18 findings and recommendations to the court.

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

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

- 33 (A) Social, economic, and family background.
- 34 (B) Education.
- 35 (C) Vocational achievements.
- 36 (D) Criminal history.
- 37 (E) Medical history.
- 38 (F) Substance abuse history.
- 39 (G) Consultation with the probation officer.

1 (H) Verbal consultation with the victim, only if the victim
2 desires to participate.

3 (I) Assessment of the future probability of the defendant
4 committing murder.

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

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

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

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

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

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

29 (D) Procedures to inform the victim regarding the requirements
30 for the defendant's participation in the intervention program as
31 well as regarding available victim resources. The victim also shall
32 be informed that attendance in any program does not guarantee
33 that an abuser will not be violent.

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

36 (F) Educational programming that examines, at a minimum,
37 gender roles, socialization, the nature of violence, the dynamics
38 of power and control, and the effects of abuse on children and
39 others.

1 (G) A requirement that excludes any couple counseling or family
2 counseling, or both.

3 (H) Procedures that give the program the right to assess whether
4 or not the defendant would benefit from the program and to refuse
5 to enroll the defendant if it is determined that the defendant would
6 not benefit from the program, so long as the refusal is not because
7 of the defendant's inability to pay. If possible, the program shall
8 suggest an appropriate alternative program.

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

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

15 (K) A requirement that the defendant enter into a written
16 agreement with the program, which shall include an outline of the
17 contents of the program, the attendance requirements, the
18 requirement to attend group sessions free of chemical influence,
19 and a statement that the defendant may be removed from the
20 program if it is determined that the defendant is not benefiting
21 from the program or is disruptive to the program.

22 (L) A requirement that the defendant sign a confidentiality
23 statement prohibiting disclosure of any information obtained
24 through participating in the program or during group sessions
25 regarding other participants in the program.

26 (M) Program content that provides cultural and ethnic
27 sensitivity.

28 (N) A requirement of a written referral from the court or
29 probation department prior to permitting the defendant to enroll
30 in the program. The written referral shall state the number of
31 minimum sessions required by the court.

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

34 (i) Proof of enrollment, to be submitted to the court and the
35 probation department and to include the fee determined to be
36 charged to the defendant, based upon the ability to pay, for each
37 session.

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

1 (iii) Final evaluation that includes the program's evaluation of
2 the defendant's progress, using the criteria set forth in subparagraph
3 (A) of paragraph (10) of subdivision (a) and recommendation for
4 either successful or unsuccessful termination or continuation in
5 the program.

6 (P) A sliding fee schedule based on the defendant's ability to
7 pay. The batterer's program shall develop and utilize a sliding fee
8 scale that recognizes both the defendant's ability to pay and the
9 necessity of programs to meet overhead expenses. An indigent
10 defendant may negotiate a deferred payment schedule, but shall
11 pay a nominal fee, if the defendant has the ability to pay the
12 nominal fee. Upon a hearing and a finding by the court that the
13 defendant does not have the financial ability to pay the nominal
14 fee, the court shall waive this fee. The payment of the fee shall be
15 made a condition of probation if the court determines the defendant
16 has the present ability to pay the fee. The fee shall be paid during
17 the term of probation unless the program sets other conditions.
18 The acceptance policies shall be in accordance with the scaled fee
19 system.

20 (2) The court shall refer persons only to batterer's programs
21 that have been approved by the probation department pursuant to
22 paragraph (5). The probation department shall do both of the
23 following:

24 (A) Provide for the issuance of a provisional approval, provided
25 that the applicant is in substantial compliance with applicable laws
26 and regulations and an urgent need for approval exists. A
27 provisional approval shall be considered an authorization to provide
28 services and shall not be considered a vested right.

29 (B) If the probation department determines that a program is
30 not in compliance with standards set by the department, the
31 department shall provide written notice of the noncompliant areas
32 to the program. The program shall submit a written plan of
33 corrections within 14 days from the date of the written notice on
34 noncompliance. A plan of correction shall include, but not be
35 limited to, a description of each corrective action and timeframe
36 for implementation. The department shall review and approve all
37 or any part of the plan of correction and notify the program of
38 approval or disapproval in writing. If the program fails to submit
39 a plan of correction or fails to implement the approved plan of
40 correction, the department shall consider whether to revoke or

1 suspend approval and, upon revoking or suspending approval, shall
2 have the option to cease referrals of defendants under this section.

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

5 (A) The establishment of guidelines and criteria for education
6 services, including standards of services that may include lectures,
7 classes, and group discussions.

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

10 (C) Adequate reporting requirements to ensure that all persons
11 who, after being ordered to attend and complete a program, may
12 be identified for either failure to enroll in, or failure to successfully
13 complete, the program or for the successful completion of the
14 program as ordered. The program shall notify the court and the
15 probation department, in writing, within the period of time and in
16 the manner specified by the court of any person who fails to
17 complete the program. Notification shall be given if the program
18 determines that the defendant is performing unsatisfactorily or if
19 the defendant is not benefiting from the education, treatment, or
20 counseling.

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

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

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

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

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

35 (ii) The demonstration by the program that it possesses adequate
36 administrative and operational capability to operate a batterer's
37 treatment program. The program shall provide documentation to
38 prove that the program has conducted batterer's programs for at
39 least one year prior to application. This requirement may be waived

1 under subparagraph (A) of paragraph (2) if there is no existing
2 batterer’s program in the city, county, or city and county.

3 (iii) The onsite review of the program, including monitoring of
4 a session to determine that the program adheres to applicable
5 statutes and regulations.

6 (iv) The payment of the approval fee.

7 (B) The probation department shall fix a fee for approval not
8 to exceed two hundred fifty dollars (\$250) and for approval renewal
9 not to exceed two hundred fifty dollars (\$250) every year in an
10 amount sufficient to cover its costs in administering the approval
11 process under this section. No fee shall be charged for the approval
12 of local governmental entities.

13 (C) The probation department has the sole authority to approve
14 the issuance, denial, suspension, or revocation of approval and to
15 cease new enrollments or referrals to a batterer’s program under
16 this section. The probation department shall review information
17 relative to a program’s performance or failure to adhere to
18 standards, or both. The probation department may suspend or
19 revoke an approval issued under this subdivision or deny an
20 application to renew an approval or to modify the terms and
21 conditions of approval, based on grounds established by probation,
22 including, but not limited to, either of the following:

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

25 (ii) Misrepresentation of any material fact in obtaining the
26 approval.

27 (6) For defendants who are chronic users or serious abusers of
28 drugs or alcohol, standard components in the program shall include
29 concurrent counseling for substance abuse and violent behavior,
30 and in appropriate cases, detoxification and abstinence from the
31 abused substance.

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

35 (d) An act or omission relating to the approval of a batterer’s
36 treatment programs under paragraph (5) of subdivision (c) is a
37 discretionary act pursuant to Section 820.2 of the Government
38 Code.

39 *SEC. 2. Section 18305 of the Welfare and Institutions Code is*
40 *amended to read:*

1 18305. (a) At the time of issuance of a marriage license
2 pursuant to Section 26840 of the Government Code, twenty-three
3 dollars (\$23) of each fee paid shall be collected by the county clerk
4 for deposit into the county domestic violence shelter-based
5 programs special fund. The fees collected in this special fund shall
6 be disbursed to approved domestic violence shelter-based programs
7 on a yearly or more frequent basis commencing July 1, 1980. The
8 funds shall be disbursed using a request for qualification (RFQ)
9 process.

10 (b) The board of supervisors shall direct the county clerk to
11 deposit twenty-three dollars (\$23) of each fee into the county
12 domestic violence shelter-based programs special fund. The county
13 domestic violence shelter-based programs special fund shall fund
14 domestic violence shelter-based programs established pursuant to
15 Section 18304. Four dollars (\$4) of each twenty-three dollars (\$23)
16 deposited into the county domestic violence shelter-based programs
17 special fund shall be used, to the extent feasible, to support or
18 expand domestic violence shelter-based programs to target
19 underserved areas and populations. No more than 8 percent of the
20 funds shall be expended for the administrative costs associated
21 with the collection and segregation of the additional marriage
22 license fees, administration of the county domestic violence
23 shelter-based programs special fund, monitoring of the domestic
24 violence shelter-based programs, and meeting the other
25 administrative requirements imposed by this chapter. Counties
26 that do not participate in the establishing or funding of domestic
27 violence shelter-based programs pursuant to this chapter shall be
28 entitled to retain up to 4 percent of the funds for the administrative
29 costs associated with the collection and segregation of the
30 additional marriage license fees and the deposit of these fees in
31 the county domestic violence shelter-based programs special fund.

32 (c) *The board of supervisors of a county may request, on not*
33 *more than a quarterly basis, an accounting of the special fund,*
34 *which shall include all of the following:*

35 (1) *The balance of the special fund at the beginning of the*
36 *request period.*

37 (2) *Deposits into the special fund in the request period, including*
38 *a clear breakdown of funds deposited as a result of marriage*
39 *license fees, funds deposited as a result of the collection of domestic*
40 *violence probation fees, and funds deposited from other sources.*

- 1 (3) *Disbursements from the fund during the request period.*
- 2 (4) *The fund balance at the end of the request period.*

O