

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 366

Introduced by Senator Wright

February 20, 2013

An act to amend Sections 19.6, 1203, 1209.5, and 1214.1 of the Penal Code, and to amend Sections 40509, 40509.5, and 42003 of the Vehicle Code, relating to fines.

LEGISLATIVE COUNSEL'S DIGEST

SB 366, as amended, Wright. Traffic fines: ability to pay.

(1) Existing law requires the court to hear and determine the suitability of probation in a particular case. At the hearing, the court is required to consider any report of the probation officer, and, if the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, the court may place the person on probation.

This bill would provide, for purposes of these provisions, that circumstances in mitigation include, but are not limited to, the payment of all or part of a traffic fine or a civil assessment imposed for the failure to appear in court or to pay a fine in an infraction, misdemeanor, or felony case, and participation in court ordered community service to satisfy a traffic fine or that civil assessment.

(2) Existing law authorizes the court to sentence a person who has been convicted of an infraction, upon showing that payment of the total fine, *as defined*, would pose a hardship on the person or his or her family, to perform community service in lieu of the total fine that would otherwise be imposed. *Existing law requires the hourly rate applicable to community service work by criminal defendants to be determined by*

dividing the total fine by the number of hours to be performed in lieu of the total fine.

This bill would additionally authorize the court to sentence a person who has been convicted of a misdemeanor for a failure to appear or to pay bail pursuant to ~~a specified provision of the Vehicle Code specified provisions~~, or upon whom a civil assessment has been imposed for the failure to appear in court or to pay a fine in an infraction, misdemeanor, or felony case, upon a showing that payment of part or all of the total fine or civil assessment would pose a hardship on the person or his or her family, to perform community service in lieu of part or all of the total fine or civil assessment that would otherwise be imposed. The bill would require the community service to be performed in the person's county of residence *or another county in this state chosen by the defendant. The bill would require the hourly rate applicable to community service work to be determined by dividing the base fine by the number of hours to be performed in lieu of the total fine, and would require that the hourly rate be at least 150% of the applicable minimum wage.*

(3) Existing law authorizes the court, in addition to any other penalty in *an* infraction, misdemeanor, or felony ~~cases~~ case, to impose a civil assessment of up to \$300 against any defendant who fails, after notice and without good cause, to appear in court for any proceeding authorized by law, or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail, as specified. Existing law provides that the assessment shall not become effective until at least 10 calendar days after the court mails a warning notice to the defendant, and requires the court, if the defendant appears within the time specified in the notice and shows good cause for the failure to appear or for the failure to pay a fine or installment of bail, to vacate the assessment.

This bill would authorize the court, in its discretion, to waive or impose on a particular defendant, a civil assessment of not less than \$10, and not more than \$300, if that defendant fails, after notice and without good cause, to appear in court for any proceeding authorized by law, ~~or who~~ fails to pay all or any portion of a fine ordered by the court, or *fails* to pay an installment of bail, as specified. The bill would require the amount of the assessment to be based on the defendant's ability to pay *and set according to a schedule adopted by the Judicial Council*. The bill would provide that the assessment shall not become effective until at least 30 calendar days after the court mails a warning notice to the defendant, and would require the court, if the defendant

appears within the time specified in the notice, or beyond the time specified in the notice if there is evidence that the notice was not in fact received, and shows good cause for the failure to appear or for the failure to pay a fine or installment of bail, to vacate the assessment. The bill would provide that ability to post bail *or to pay the fine or civil assessment* is not a prerequisite to filing a request that the court vacate the assessment. The bill would ~~prohibit the court from limiting the grounds for~~ *require the court to provide a process for a defendant to appear to show* good cause for failure to appear, and would require the court to ~~exercise its authority to waive civil assessments if the defendant meets the standards~~ *waive a civil assessment if the defendant meets the good cause standard* for vacating a civil assessment.

(4) Existing law authorizes a court to give notice to the Department of Motor Vehicles if any person has willfully failed to pay a lawfully imposed fine, or bail in installments, within the time authorized by the court, except as specified. Existing law requires the court to mail a courtesy warning notice to the defendant at least 10 days before sending a notice to the department for specified violations of the Vehicle Code. If thereafter the fine is fully paid, the court is required to issue and file with the department a certificate showing that the fine has been paid.

This bill would require the court, if the fine is fully paid, or an agreement is signed to pay the fine, *fee*, or bail in installments, or *an agreement is signed to perform* community service ~~is performed~~ pursuant to the provisions described in (2) above, to issue and file with the department a certificate showing that the fine has been paid or satisfied, or an agreement has been signed, and request that the license hold be lifted. The bill would prohibit the court from requiring the payment of bail, *the fine, or a civil assessment* before a person may request the court to vacate a civil assessment. ~~The bill would require the court to issue a certificate to the department to lift the hold on a driver's license if the person satisfies the order of the court.~~ The bill also would require the court to mail the courtesy warning notice to the defendant at least 30 days before sending a notice to the department for specified violations of the Vehicle Code.

(5) Existing law requires the court, in any case when a person appears before a traffic referee or judge for adjudication of a Vehicle Code violation, upon request of the defendant, to consider the defendant's ability to pay. *Among other things, the court is required to order the defendant to appear before a county officer to make an inquiry into the ability of the defendant to pay specified costs or the court may make*

this determination. Existing law defines the defendant's ability to pay as the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the presentence report, and probation. A defendant's ability to pay includes, but is not limited to, the defendant's present financial position, reasonably discernible future financial position, and any other factors that may bear upon the defendant's financial capability to reimburse the county for costs.

This bill would require the court to consider the defendant's ability to pay when a defendant appears for adjudication of any infraction. By increasing the duties of county officers, this bill would impose a state-mandated local program. The bill would authorize the court to conclusively presume that a defendant does not have the ability to pay if the defendant demonstrates that he or she is receiving public benefits under specified programs, including, among others, the Supplemental Nutrition Assistance Program and Medi-Cal. This bill would also require the court to advise the defendant of the right to a determination of the ability to pay at the time of rendering judgment.

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 no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 19.6 of the Penal Code is amended to
- 2 read:
- 3 19.6. (a) An infraction is not punishable by imprisonment. A
- 4 person charged with an infraction shall not be entitled to a trial by
- 5 jury. A person charged with an infraction shall not be entitled to
- 6 have the public defender or other counsel appointed at public
- 7 expense to represent him or her unless he or she is arrested and
- 8 not released on his or her written promise to appear, his or her own
- 9 recognizance, or a deposit of bail.
- 10 (b) In any case when a person appears before a traffic referee
- 11 or judge of the superior court for adjudication of an infraction

1 *violation, the court, upon request of the defendant, shall consider*
2 *the defendant's ability to pay in accordance with subdivision (c)*
3 *of Section 42003 of the Vehicle Code.*

4 **SECTION 1.**

5 **SEC. 2.** Section 1203 of the Penal Code is amended to read:

6 1203. (a) As used in this code, "probation" means the
7 suspension of the imposition or execution of a sentence and the
8 order of conditional and revocable release in the community under
9 the supervision of a probation officer. As used in this code,
10 "conditional sentence" means the suspension of the imposition or
11 execution of a sentence and the order of revocable release in the
12 community subject to conditions established by the court without
13 the supervision of a probation officer. It is the intent of the
14 Legislature that both conditional sentence and probation are
15 authorized whenever probation is authorized in any code as a
16 sentencing option for infractions or misdemeanors.

17 (b) (1) Except as provided in subdivision (j), if a person is
18 convicted of a felony and is eligible for probation, before judgment
19 is pronounced, the court shall immediately refer the matter to a
20 probation officer to investigate and report to the court, at a specified
21 time, upon the circumstances surrounding the crime and the prior
22 history and record of the person, which may be considered either
23 in aggravation or mitigation of the punishment.

24 (2) (A) The probation officer shall immediately investigate and
25 make a written report to the court of his or her findings and
26 recommendations, including his or her recommendations as to the
27 granting or denying of probation and the conditions of probation,
28 if granted.

29 (B) Pursuant to Section 828 of the Welfare and Institutions
30 Code, the probation officer shall include in his or her report any
31 information gathered by a law enforcement agency relating to the
32 taking of the defendant into custody as a minor, which shall be
33 considered for purposes of determining whether adjudications of
34 commissions of crimes as a juvenile warrant a finding that there
35 are circumstances in aggravation pursuant to Section 1170 or to
36 deny probation.

37 (C) If the person was convicted of an offense that requires him
38 or her to register as a sex offender pursuant to Sections 290 to
39 290.023, inclusive, or if the probation report recommends that
40 registration be ordered at sentencing pursuant to Section 290.006,

1 the probation officer's report shall include the results of the
2 State-Authorized Risk Assessment Tool for Sex Offenders
3 (SARATSO) administered pursuant to Sections 290.04 to 290.06,
4 inclusive, if applicable.

5 (D) The probation officer shall also include in the report his or
6 her recommendation of both of the following:

7 (i) The amount the defendant should be required to pay as a
8 restitution fine pursuant to subdivision (b) of Section 1202.4.

9 (ii) Whether the court shall require, as a condition of probation,
10 restitution to the victim or to the Restitution Fund and the amount
11 thereof.

12 (E) The report shall be made available to the court and the
13 prosecuting and defense attorneys at least five days, or upon request
14 of the defendant or prosecuting attorney nine days, prior to the
15 time fixed by the court for the hearing and determination of the
16 report, and shall be filed with the clerk of the court as a record in
17 the case at the time of the hearing. The time within which the report
18 shall be made available and filed may be waived by written
19 stipulation of the prosecuting and defense attorneys that is filed
20 with the court or an oral stipulation in open court that is made and
21 entered upon the minutes of the court.

22 (3) (A) At a time fixed by the court, the court shall hear and
23 determine the application, if one has been made, or, in any case,
24 the suitability of probation in the particular case. At the hearing,
25 the court shall consider any report of the probation officer,
26 including the results of the SARATSO, if applicable, and shall
27 make a statement that it has considered the report, which shall be
28 filed with the clerk of the court as a record in the case. If the court
29 determines that there are circumstances in mitigation of the
30 punishment prescribed by law or that the ends of justice would be
31 served by granting probation to the person, it may place the person
32 on probation. If probation is denied, the clerk of the court shall
33 immediately send a copy of the report to the Department of
34 Corrections and Rehabilitation at the prison or other institution to
35 which the person is delivered.

36 (B) For purposes of subparagraph (A), circumstances in
37 mitigation of the punishment prescribed by law include, but are
38 not limited to, all of the following:

39 (i) The payment of all or part of a traffic fine.

1 (ii) The payment of all or part of a civil assessment imposed
2 under Section 1214.1.

3 (iii) Participation in court-ordered community service pursuant
4 to Section 1209.5 to satisfy a traffic fine or civil assessment
5 imposed under Section 1214.1.

6 (4) The preparation of the report or the consideration of the
7 report by the court may be waived only by a written stipulation of
8 the prosecuting and defense attorneys that is filed with the court
9 or an oral stipulation in open court that is made and entered upon
10 the minutes of the court, except that there shall be no waiver unless
11 the court consents thereto. However, if the defendant is ultimately
12 sentenced and committed to the state prison, a probation report
13 shall be completed pursuant to Section 1203c.

14 (c) If a defendant is not represented by an attorney, the court
15 shall order the probation officer who makes the probation report
16 to discuss its contents with the defendant.

17 (d) If a person is convicted of a misdemeanor, the court may
18 either refer the matter to the probation officer for an investigation
19 and a report or summarily pronounce a conditional sentence. If
20 the person was convicted of an offense that requires him or her to
21 register as a sex offender pursuant to Sections 290 to 290.023,
22 inclusive, or if the probation officer recommends that the court,
23 at sentencing, order the offender to register as a sex offender
24 pursuant to Section 290.006, the court shall refer the matter to the
25 probation officer for the purpose of obtaining a report on the results
26 of the State-Authorized Risk Assessment Tool for Sex Offenders
27 administered pursuant to Sections 290.04 to 290.06, inclusive, if
28 applicable, which the court shall consider. If the case is not referred
29 to the probation officer, in sentencing the person, the court may
30 consider any information concerning the person that could have
31 been included in a probation report. The court shall inform the
32 person of the information to be considered and permit him or her
33 to answer or controvert the information. For this purpose, upon
34 the request of the person, the court shall grant a continuance before
35 the judgment is pronounced.

36 (e) Except in unusual cases where the interests of justice would
37 best be served if the person is granted probation, probation shall
38 not be granted to any of the following persons:

39 (1) Unless the person had a lawful right to carry a deadly
40 weapon, other than a firearm, at the time of the perpetration of the

1 crime or his or her arrest, any person who has been convicted of
2 arson, robbery, carjacking, burglary, burglary with explosives,
3 rape with force or violence, torture, aggravated mayhem, murder,
4 attempt to commit murder, train wrecking, kidnapping, escape
5 from the state prison, or a conspiracy to commit one or more of
6 those crimes and who was armed with the weapon at either of those
7 times.

8 (2) Any person who used, or attempted to use, a deadly weapon
9 upon a human being in connection with the perpetration of the
10 crime of which he or she has been convicted.

11 (3) Any person who willfully inflicted great bodily injury or
12 torture in the perpetration of the crime of which he or she has been
13 convicted.

14 (4) Any person who has been previously convicted twice in this
15 state of a felony or in any other place of a public offense which,
16 if committed in this state, would have been punishable as a felony.

17 (5) Unless the person has never been previously convicted once
18 in this state of a felony or in any other place of a public offense
19 which, if committed in this state, would have been punishable as
20 a felony, any person who has been convicted of burglary with
21 explosives, rape with force or violence, torture, aggravated
22 mayhem, murder, attempt to commit murder, train wrecking,
23 extortion, kidnapping, escape from the state prison, a violation of
24 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one
25 or more of those crimes.

26 (6) Any person who has been previously convicted once in this
27 state of a felony or in any other place of a public offense which,
28 if committed in this state, would have been punishable as a felony,
29 if he or she committed any of the following acts:

30 (A) Unless the person had a lawful right to carry a deadly
31 weapon at the time of the perpetration of the previous crime or his
32 or her arrest for the previous crime, he or she was armed with a
33 weapon at either of those times.

34 (B) The person used, or attempted to use, a deadly weapon upon
35 a human being in connection with the perpetration of the previous
36 crime.

37 (C) The person willfully inflicted great bodily injury or torture
38 in the perpetration of the previous crime.

39 (7) Any public official or peace officer of this state or any city,
40 county, or other political subdivision who, in the discharge of the

1 duties of his or her public office or employment, accepted or gave
2 or offered to accept or give any bribe, embezzled public money,
3 or was guilty of extortion.

4 (8) Any person who knowingly furnishes or gives away
5 phencyclidine.

6 (9) Any person who intentionally inflicted great bodily injury
7 in the commission of arson under subdivision (a) of Section 451
8 or who intentionally set fire to, burned, or caused the burning of,
9 an inhabited structure or inhabited property in violation of
10 subdivision (b) of Section 451.

11 (10) Any person who, in the commission of a felony, inflicts
12 great bodily injury or causes the death of a human being by the
13 discharge of a firearm from or at an occupied motor vehicle
14 proceeding on a public street or highway.

15 (11) Any person who possesses a short-barreled rifle or a
16 short-barreled shotgun under Section 33215, a machinegun under
17 Section 32625, or a silencer under Section 33410.

18 (12) Any person who is convicted of violating Section 8101 of
19 the Welfare and Institutions Code.

20 (13) Any person who is described in subdivision (b) or (c) of
21 Section 27590.

22 (f) When probation is granted in a case which comes within
23 subdivision (e), the court shall specify on the record and shall enter
24 on the minutes the circumstances indicating that the interests of
25 justice would best be served by that disposition.

26 (g) If a person is not eligible for probation, the judge shall refer
27 the matter to the probation officer for an investigation of the facts
28 relevant to determination of the amount of a restitution fine
29 pursuant to subdivision (b) of Section 1202.4 in all cases where
30 the determination is applicable. The judge, in his or her discretion,
31 may direct the probation officer to investigate all facts relevant to
32 the sentencing of the person. Upon that referral, the probation
33 officer shall immediately investigate the circumstances surrounding
34 the crime and the prior record and history of the person and make
35 a written report to the court of his or her findings. The findings
36 shall include a recommendation of the amount of the restitution
37 fine as provided in subdivision (b) of Section 1202.4.

38 (h) If a defendant is convicted of a felony and a probation report
39 is prepared pursuant to subdivision (b) or (g), the probation officer
40 may obtain and include in the report a statement of the comments

1 of the victim concerning the offense. The court may direct the
2 probation officer not to obtain a statement if the victim has in fact
3 testified at any of the court proceedings concerning the offense.

4 (i) A probationer shall not be released to enter another state
5 unless his or her case has been referred to the Administrator of the
6 Interstate Probation and Parole Compacts, pursuant to the Uniform
7 Act for Out-of-State Probationer or Parolee Supervision (Article
8 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part
9 4) and the probationer has reimbursed the county that has
10 jurisdiction over his or her probation case the reasonable costs of
11 processing his or her request for interstate compact supervision.
12 The amount and method of reimbursement shall be in accordance
13 with Section 1203.1b.

14 (j) In any court where a county financial evaluation officer is
15 available, in addition to referring the matter to the probation officer,
16 the court may order the defendant to appear before the county
17 financial evaluation officer for a financial evaluation of the
18 defendant's ability to pay restitution, in which case the county
19 financial evaluation officer shall report his or her findings regarding
20 restitution and other court-related costs to the probation officer on
21 the question of the defendant's ability to pay those costs.

22 Any order made pursuant to this subdivision may be enforced
23 as a violation of the terms and conditions of probation upon willful
24 failure to pay and at the discretion of the court, may be enforced
25 in the same manner as a judgment in a civil action, if any balance
26 remains unpaid at the end of the defendant's probationary period.

27 (k) Probation shall not be granted to, nor shall the execution of,
28 or imposition of sentence be suspended for, any person who is
29 convicted of a violent felony, as defined in subdivision (c) of
30 Section 667.5, or a serious felony, as defined in subdivision (c) of
31 Section 1192.7, and who was on probation for a felony offense at
32 the time of the commission of the new felony offense.

33 ~~SEC. 2.~~

34 *SEC. 3.* Section 1209.5 of the Penal Code is amended to read:

35 1209.5. (a) Notwithstanding any other law, a person described
36 in paragraph (1), (2), or (3) of subdivision (b) may, upon a showing
37 that payment of part or all of the total fine or civil assessment
38 would pose a hardship on the defendant or his or her family, be
39 sentenced to perform community service in lieu of part or all of
40 the total fine or civil assessment that would otherwise be imposed.

The defendant shall perform community service in the defendant's county of residence, *or another county in this state chosen by the defendant*, at the hourly rate applicable to community service work performed by criminal defendants.

(b) Subdivision (a) shall apply to a person described by any of the following:

(1) Convicted of an infraction.

(2) Convicted of a misdemeanor for a failure to appear or to pay bail pursuant to subdivision (a) or (b) of Section 40508 of the Vehicle Code *or Section 853.7 of this code*.

(3) Upon whom a civil assessment has been imposed for a failure to appear in court or to pay a fine pursuant to Section 1214.1.

(c) For the purposes of this section, both of the following shall apply:

(1) "Total fine" means the base fine and all assessments, penalties, and additional moneys to be paid by the defendant.

(2) The hourly rate applicable to community service work by criminal defendants shall be determined by dividing the ~~total~~ base fine by the number of hours of community service ordered by the court to be performed in lieu of the total fine. *The hourly rate shall be at least 150 percent of the state minimum wage or any other applicable city or county minimum wage.*

(3) *If the court orders the defendant to perform community service pursuant to this section in lieu of part or all of the total fine or civil assessment that would otherwise be imposed, the performance of that community service work is in lieu of the total fine, or that percentage of the total fine specified by the court. The court shall not order the defendant to perform community service in lieu of the base fine and still require the defendant to pay any assessments, penalties, or additional moneys.*

~~SEC. 3.~~

SEC. 4. Section 1214.1 of the Penal Code is amended to read:

1214.1. (a) In addition to any other penalty in ~~an~~ infraction, misdemeanor, or felony ~~cases~~ case, the court may, in its discretion, waive or impose upon a particular defendant a civil assessment of no less than ten dollars (\$10), but no greater than three hundred dollars (\$300), if that defendant (1) fails, after notice and without good cause, to appear in court for any proceeding authorized by law ~~or who~~, (2) fails to pay all or any portion of a fine ordered by the court ~~or~~, or (3) fails to pay an installment of bail as agreed to

1 under Section 40510.5 of the Vehicle Code. The amount ~~set of the~~
2 ~~assessment~~ shall be based on that defendant's ability to pay *and*
3 *set according to a schedule adopted by the Judicial Council*. This
4 assessment shall be deposited in the Trial Court Trust Fund, as
5 provided in Section 68085.1 of the Government Code. A *civil*
6 *assessment shall not be imposed for an infraction violation of the*
7 *Vehicle Code in which the defendant was not the driver of the*
8 *vehicle*.

9 (b) The assessment imposed under subdivision (a) shall not
10 become effective until at least 30 calendar days after the court
11 mails a warning notice to the defendant by first-class mail to the
12 address shown on the notice to appear or to the defendant's last
13 known address. ~~If~~ *The court shall vacate the assessment if the*
14 *defendant appears within the time specified in the notice, or beyond*
15 ~~the time specified in the notice if there is evidence that the notice~~
16 ~~was not in fact received, and shows good cause for the failure to~~
17 ~~appear or for the failure to pay a fine or installment of bail, the~~
18 ~~court shall vacate the assessment. Ability to post bail. The court~~
19 *also shall vacate the assessment if the defendant appears beyond*
20 *the time specified in the notice and there is evidence that the notice*
21 *was not in fact received, including evidence that the defendant is*
22 *homeless or does not have a fixed address. Ability to post bail or*
23 *to pay the fine or civil assessment is not a prerequisite to filing a*
24 *request that the court vacate the assessment. Imposition of a civil*
25 *assessment shall not preclude a defendant from scheduling a court*
26 *hearing on the underlying charge if the defendant is otherwise*
27 *entitled to the hearing*.

28 (c) If a civil assessment is imposed under this section, a bench
29 warrant or warrant of arrest shall not be issued with respect to the
30 failure to appear at the proceeding for which the assessment is
31 imposed or the failure to pay the fine or installment of bail. An
32 outstanding, unserved bench warrant or warrant of arrest for a
33 failure to appear or for a failure to pay a fine or installment of bail
34 shall be recalled prior to the subsequent imposition of a civil
35 assessment.

36 (d) The assessment imposed under subdivision (a) shall be
37 subject to the due process requirements governing defense and
38 collection of civil money judgments generally. The court shall ~~not~~
39 ~~limit the grounds for good cause for failure to appear, and shall~~
40 ~~exercise its authority to waive civil assessments if the defendant~~

~~meets the standards~~ *provide a process for a defendant to appear before a judge to show good cause for failure to appear and shall not limit the grounds for good cause for failure to appear. The court shall waive the civil assessment when the defendant meets the good cause standard for vacating a civil assessment.*

(e) Each court and county shall maintain the collection program that was in effect on July 1, 2005, unless otherwise agreed to by the court and county. If a court and a county do not agree on a plan for the collection of civil assessments imposed pursuant to this section, or any other collections under Section 1463.010, after the implementation of Sections 68085.6 and 68085.7 of the Government Code, the court or the county may request arbitration by a third party mutually agreed upon by the Administrative Director of the Courts and the California State Association of Counties.

~~SEC. 4.~~

SEC. 5. Section 40509 of the Vehicle Code is amended to read:

40509. (a) Except as required under subdivision (c) of Section 40509.5, if any person has violated a written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, or any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If any person has willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant

1 to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section
2 1803. If thereafter (1) the fine is fully paid, (2) an agreement is
3 signed to pay the fine or ~~bail fee~~ in installments, or ~~community~~
4 ~~service is performed~~ (3) *an agreement is signed to perform*
5 *community service* pursuant to Section 1209.5 of the Penal Code,
6 the magistrate or clerk of the court shall issue and file with the
7 department a certificate showing that the fine has been paid or
8 satisfied pursuant to Section 1209.5 of the Penal Code, or an
9 agreement has been signed, and request that the license hold be
10 lifted. The court shall not require the payment of bail ~~before a, the~~
11 ~~fine, or a civil assessment before the~~ person may request the court
12 to vacate a civil assessment imposed under Section 1214.1. ~~The~~
13 ~~court shall issue a certificate to the department to lift the hold on~~
14 ~~a driver's license if the person satisfies the order of the court.~~

15 (c) (1) Notwithstanding subdivisions (a) and (b), the court may
16 notify the department of the total amount of bail, fines,
17 assessments, and fees authorized or required by this code, including
18 Section 40508.5, which are unpaid by any person.

19 (2) Once a court has established the amount of bail, fines,
20 assessments, and fees, and notified the department, the court shall
21 not further enhance or modify that amount.

22 (3) This subdivision applies only to violations of this code that
23 do not require a mandatory court appearance, are not contested by
24 the defendant, and do not require proof of correction certified by
25 the court.

26 (d) With respect to a violation of this code, this section is
27 applicable to any court which has not elected to be subject to the
28 notice requirements of subdivision (b) of Section 40509.5.

29 (e) Any violation subject to Section 40001, which is the
30 responsibility of the owner of the vehicle, shall not be reported
31 under this section.

32 ~~SEC. 5.~~

33 *SEC. 6.* Section 40509.5 of the Vehicle Code is amended to
34 read:

35 40509.5. (a) Except as required under subdivision (c), if, with
36 respect to an offense described in subdivision (e), a person has
37 violated his or her written promise to appear or a lawfully granted
38 continuance of his or her promise to appear in court or before the
39 person authorized to receive a deposit of bail, or violated an order
40 to appear in court, including, but not limited to, a written notice

to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for a violation of this code, a violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or a violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), a person has willfully failed to pay a lawfully imposed fine, or bail in installments as agreed to under Section 40510.5, within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for a violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter, (1) the fine or bail is fully paid, (2) an agreement is signed to pay the fine, *fee*, or bail in installments, or (3) *an agreement is signed to perform community service is performed* pursuant to Section 1209.5 of the Penal Code, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine or bail has been paid ~~or satisfied~~, *or that it has been or will be satisfied by the performance of community service* pursuant to Section 1209.5 of the Penal Code, ~~or an agreement has been signed~~, and request that the license hold be lifted. The court shall not require the payment of bail, *or the payment of the fine or civil assessment amount*, before a person may request the court to vacate a civil assessment imposed under Section 1214.1. ~~The court shall issue a certificate to the Department of Motor Vehicles to lift the hold on a driver's license if the person satisfies the order of the court.~~

(c) If a person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or subdivision (a) of Section 192.5 of ~~that code~~ *the Penal Code* has violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit

1 of bail, or violated an order to appear in court, the magistrate or
2 clerk of the court shall give notice to the department of the failure
3 to appear. If thereafter the case in which the notice was given is
4 adjudicated or the person who has violated the court order appears
5 in court or otherwise satisfies the order of the court, the magistrate
6 or clerk of the court hearing the case shall prepare and forward to
7 the department a certificate to that effect.

8 (d) Except as required under subdivision (c), the court shall mail
9 a courtesy warning notice to the defendant by first-class mail at
10 the address shown on the notice to appear, at least 30 days before
11 sending a notice to the department under this section.

12 (e) If the court notifies the department of a failure to appear or
13 pay a fine or bail pursuant to subdivision (a) or (b), no arrest
14 warrant shall be issued for an alleged violation of subdivision (a)
15 or (b) of Section 40508, unless one of the following criteria is met:

16 (1) The alleged underlying offense is a misdemeanor or felony.

17 (2) The alleged underlying offense is a violation of any provision
18 of Division 12 (commencing with Section 24000), Division 13
19 (commencing with Section 29000), or Division 15 (commencing
20 with Section 35000), required to be reported pursuant to Section
21 1803.

22 (3) The driver's record does not show that the defendant has a
23 valid California driver's license.

24 (4) The driver's record shows an unresolved charge that the
25 defendant is in violation of his or her written promise to appear
26 for one or more other alleged violations of the law.

27 (f) Except as required under subdivision (c), in addition to the
28 proceedings described in this section, the court may elect to notify
29 the department pursuant to subdivision (c) of Section 40509.

30 (g) This section is applicable to courts that have elected to
31 provide notice pursuant to subdivision (b). The method of
32 commencing or terminating an election to proceed under this
33 section shall be prescribed by the department.

34 (h) A violation subject to Section 40001, that is the
35 responsibility of the owner of the vehicle, shall not be reported
36 under this section.

37 ~~SEC. 6.~~

38 *SEC. 7.* Section 42003 of the Vehicle Code is amended to read:

39 42003. (a) A judgment that a person convicted of an infraction
40 be punished by a fine may also provide for the payment to be made

1 within a specified time or in specified installments. A judgment
2 granting a defendant time to pay the fine shall order that if the
3 defendant fails to pay the fine or any installment thereof on the
4 date that it is due, he or she shall appear in court on that date for
5 further proceedings. Willful violation of the order is punishable
6 as contempt.

7 (b) A judgment that a person convicted of any other violation
8 of this code be punished by a fine may also order, adjudge, and
9 decree that the person be imprisoned until the fine is satisfied. In
10 all of these cases, the judgment shall specify the extent of the
11 imprisonment which shall not exceed one day for every thirty
12 dollars (\$30) of the fine, nor extend in this case beyond the term
13 for which the defendant might be sentenced to imprisonment for
14 the offense of which he or she was convicted.

15 (c) (1) In any case when a person appears before a traffic referee
16 or judge of the superior court for adjudication of a violation of this
17 code *or any other infraction violation*, the court, upon request of
18 the defendant, shall consider the defendant's ability to pay.
19 Consideration of a defendant's ability to pay may include his or
20 her future earning capacity. A defendant shall bear the burden of
21 demonstrating lack of his or her ability to pay. Express findings
22 by the court as to the factors bearing on the amount of the fine
23 shall not be required. The reasonable cost of these services and of
24 probation shall not exceed the amount determined to be the actual
25 average cost thereof. The court shall order the defendant to appear
26 before a county officer designated by the court to make an inquiry
27 into the ability of the defendant to pay all or a portion of those
28 costs or the court or traffic referee may make this determination
29 at a hearing. At that hearing, the defendant shall be entitled to
30 have, but shall not be limited to, the opportunity to be heard in
31 person, to present witnesses and other documentary evidence, to
32 confront and cross-examine adverse witnesses, to disclosure of
33 the evidence against him or her, and to a written statement of the
34 findings of the court or the county officer. If the court determines
35 that the defendant has the ability to pay all or part of the costs, the
36 court shall set the amount to be reimbursed and order the defendant
37 to pay that sum to the county in the manner in which the court
38 believes reasonable and compatible with the defendant's financial
39 ability; or, with the consent of a defendant who is placed on
40 probation, the court shall order the probation officer to set the

1 amount of payment, which shall not exceed the maximum amount
2 set by the court, and the manner in which the payment shall be
3 made to the county. In making a determination of whether a
4 defendant has the ability to pay, the court shall take into account
5 the amount of any fine imposed upon the defendant and any amount
6 the defendant has been ordered to pay in restitution.

7 (2) The court may hold additional hearings during the
8 probationary period. If practicable, the court or the probation officer
9 shall order payments to be made on a monthly basis. Execution
10 may be issued on the order in the same manner as a judgment in
11 a civil action. The order to pay all or part of the costs shall not be
12 enforced by contempt.

13 (3) A payment schedule for reimbursement of the costs of
14 presentence investigation based on income shall be developed by
15 the probation department of each county and approved by the
16 presiding judge of the superior court.

17 (d) The court may *conclusively* presume that any defendant who
18 demonstrates that he or she is receiving public benefits under one
19 or more of the following programs does not have the ability to
20 pay:

21 (1) Supplemental Security Income (SSI) and State
22 Supplementary Payment (SSP) (Article 5 (commencing with
23 Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare
24 and Institutions Code).

25 (2) California Work Opportunity and Responsibility to Kids
26 Act (CalWORKs) (Chapter 2 (commencing with Section 11200)
27 of Part 3 of Division 9 of the Welfare and Institutions Code) or a
28 federal Tribal Temporary Assistance for Needy Families (Tribal
29 TANF) grant program (Section 10553.25 of the Welfare and
30 Institutions Code).

31 (3) Supplemental Nutrition Assistance Program (Chapter 51
32 (commencing with Section 2011) of Title 7 of the United States
33 Code) or the California Food Assistance Program (Chapter 10.1
34 (commencing with Section 18930) of Part 6 of Division 9 of the
35 Welfare and Institutions Code).

36 (4) County Relief, General Relief (GR), or General Assistance
37 (GA) (Part 5 (commencing with Section 17000) of Division 9 of
38 the Welfare and Institutions Code).

39 (5) Cash Assistance Program for Aged, Blind, and Disabled
40 Legal Immigrants (CAPI) (Chapter 10.3 (commencing with Section

1 18937) of Part 6 of Division 9 of the Welfare and Institutions
2 Code).

3 (6) In-Home Supportive Services (IHSS) (Article 7
4 (commencing with Section 12300) of Chapter 3 of Part 3 of
5 Division 9 of the Welfare and Institutions Code).

6 (7) Medi-Cal (Chapter 7 (commencing with Section 14000) of
7 Part 3 of Division 9 of the Welfare and Institutions Code).

8 (e) The court shall advise the defendant of the right to a
9 determination of the ability to pay pursuant to subdivision (c) or
10 (d) at the time of rendering judgment.

11 (f) The term “ability to pay” means the overall capability of the
12 defendant to reimburse the costs, or a portion of the costs, of
13 conducting the presentence investigation, preparing the presentence
14 report, and probation, and includes, but is not limited to, all of the
15 following regarding the defendant:

16 (1) Present financial position.

17 (2) Reasonably discernible future financial position. In no event
18 shall the court consider a period of more than six months from the
19 date of the hearing for purposes of determining reasonably
20 discernible future financial position.

21 (3) Likelihood that the defendant will be able to obtain
22 employment within the six-month period from the date of the
23 hearing.

24 (4) Any other factors that may bear upon the defendant’s
25 financial capability to reimburse the county for the costs.

26 (g) At any time during the pendency of the judgment rendered
27 according to the terms of this section, a defendant against whom
28 a judgment has been rendered may petition the rendering court to
29 modify or vacate its previous judgment on the grounds of a change
30 of circumstances with regard to the defendant’s ability to pay the
31 judgment. The court shall advise the defendant of this right at the
32 time of rendering of the judgment.

33 *SEC. 8. No reimbursement is required by this act pursuant to*
34 *Section 6 of Article XIII B of the California Constitution because*
35 *the only costs that may be incurred by a local agency or school*
36 *district will be incurred because this act creates a new crime or*
37 *infraction, eliminates a crime or infraction, or changes the penalty*
38 *for a crime or infraction, within the meaning of Section 17556 of*
39 *the Government Code, or changes the definition of a crime within*

- 1 *the meaning of Section 6 of Article XIII B of the California*
- 2 *Constitution.*

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