

AMENDED IN SENATE JANUARY 8, 2014

AMENDED IN SENATE MAY 14, 2013

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 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. *eliminate the hourly rate applicable to community service in this instance and instead provide a new schedule for determining the hours of community service to be imposed based on the amount of the fine.* The bill would require the court to determine that paying all or a modified amount of the total fine is a hardship if the defendant receives any of certain categories of public benefits, as specified. The bill would authorize the court to delegate to the clerk of the court the authority to grant a defendant's request for community service based on receipt of those benefits, as specified. The bill would require the community service to be performed in the county in this state chosen by the defendant. *By increasing duties on local governments in connection with supervising defendants performing community service, this bill would impose a state-mandated local program.*~~

(3) Existing law authorizes the court, in addition to any other penalty in an infraction, misdemeanor, or felony 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, 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 as determined by the court.~~ The bill would authorize the court to determine that a defendant does not have the ability to pay the assessment if the defendant demonstrates that he or she receives any of certain categories of public benefits, as specified. 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 require the court to vacate the assessment if the defendant provides a sworn statement under penalty of perjury ~~court determines~~ that the notice was not received because the defendant is homeless or has no fixed address. 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 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 waive a civil assessment if the defendant meets the good cause standard for vacating a civil assessment. The bill would require the court to grant a defendant's request to vacate the civil assessment for good cause for the inability to pay if the defendant demonstrates that he or she receives any of certain categories of public benefits, as specified.

~~By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.~~

(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 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 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. The bill would authorize the court to give notice to the Department of Motor Vehicles if a person fails to pay an outstanding fine or fee in installments or to perform community service consistent with the terms of the signed agreement.~~

(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. 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 bill would authorize the court to conclusively presume that a defendant does not have the ability to pay the fine if the defendant demonstrates that he or she receives any of certain categories of public benefits, as specified. ~~The bill would authorize the court to give notice to the Department of Motor Vehicles if a person fails to pay~~

~~an outstanding fine or fee in installments or to perform community service consistent with the terms of the signed agreement.~~

~~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 with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

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

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 judge, or commissioner of the superior court for adjudication of
12 an infraction violation, the court, upon request of the defendant,
13 shall consider the defendant's ability to pay a fine or assessment
14 in accordance with subdivisions (c) and (d) of Section 42003 of
15 the Vehicle Code.

16 SEC. 2. ~~Section 1203 of the Penal Code is amended to read:~~

17 ~~1203. (a) As used in this code, "probation" means the~~
18 ~~suspension of the imposition or execution of a sentence and the~~
19 ~~order of conditional and revocable release in the community under~~
20 ~~the supervision of a probation officer. As used in this code,~~
21 ~~"conditional sentence" means the suspension of the imposition or~~
22 ~~execution of a sentence and the order of revocable release in the~~
23 ~~community subject to conditions established by the court without~~
24 ~~the supervision of a probation officer. It is the intent of the~~

1 ~~Legislature that both conditional sentence and probation are~~
2 ~~authorized whenever probation is authorized in any code as a~~
3 ~~sentencing option for infractions or misdemeanors.~~

4 ~~(b) (1) Except as provided in subdivision (j), if a person is~~
5 ~~convicted of a felony and is eligible for probation, before judgment~~
6 ~~is pronounced, the court shall immediately refer the matter to a~~
7 ~~probation officer to investigate and report to the court, at a specified~~
8 ~~time, upon the circumstances surrounding the crime and the prior~~
9 ~~history and record of the person, which may be considered either~~
10 ~~in aggravation or mitigation of the punishment.~~

11 ~~(2) (A) The probation officer shall immediately investigate and~~
12 ~~make a written report to the court of his or her findings and~~
13 ~~recommendations, including his or her recommendations as to the~~
14 ~~granting or denying of probation and the conditions of probation,~~
15 ~~if granted.~~

16 ~~(B) Pursuant to Section 828 of the Welfare and Institutions~~
17 ~~Code, the probation officer shall include in his or her report any~~
18 ~~information gathered by a law enforcement agency relating to the~~
19 ~~taking of the defendant into custody as a minor, which shall be~~
20 ~~considered for purposes of determining whether adjudications of~~
21 ~~commissions of crimes as a juvenile warrant a finding that there~~
22 ~~are circumstances in aggravation pursuant to Section 1170 or to~~
23 ~~deny probation.~~

24 ~~(C) If the person was convicted of an offense that requires him~~
25 ~~or her to register as a sex offender pursuant to Sections 290 to~~
26 ~~290.023, inclusive, or if the probation report recommends that~~
27 ~~registration be ordered at sentencing pursuant to Section 290.006,~~
28 ~~the probation officer's report shall include the results of the~~
29 ~~State-Authorized Risk Assessment Tool for Sex Offenders~~
30 ~~(SARATSO) administered pursuant to Sections 290.04 to 290.06,~~
31 ~~inclusive, if applicable.~~

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

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

36 ~~(ii) Whether the court shall require, as a condition of probation,~~
37 ~~restitution to the victim or to the Restitution Fund and the amount~~
38 ~~thereof.~~

39 ~~(E) The report shall be made available to the court and the~~
40 ~~prosecuting and defense attorneys at least five days, or upon request~~

1 of the defendant or prosecuting attorney nine days, prior to the
2 time fixed by the court for the hearing and determination of the
3 report, and shall be filed with the clerk of the court as a record in
4 the case at the time of the hearing. The time within which the report
5 shall be made available and filed may be waived by written
6 stipulation of the prosecuting and defense attorneys that is filed
7 with the court or an oral stipulation in open court that is made and
8 entered upon the minutes of the court.

9 (3) (A) At a time fixed by the court, the court shall hear and
10 determine the application, if one has been made, or, in any case,
11 the suitability of probation in the particular case. At the hearing,
12 the court shall consider any report of the probation officer,
13 including the results of the SARATSO, if applicable, and shall
14 make a statement that it has considered the report, which shall be
15 filed with the clerk of the court as a record in the case. If the court
16 determines that there are circumstances in mitigation of the
17 punishment prescribed by law or that the ends of justice would be
18 served by granting probation to the person, it may place the person
19 on probation. If probation is denied, the clerk of the court shall
20 immediately send a copy of the report to the Department of
21 Corrections and Rehabilitation at the prison or other institution to
22 which the person is delivered.

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

- 26 (i) The payment of all or part of a traffic fine.
- 27 (ii) The payment of all or part of a civil assessment imposed
28 under Section 1214.1.
- 29 (iii) Participation in court-ordered community service pursuant
30 to Section 1209.5 to satisfy a traffic fine or civil assessment
31 imposed under Section 1214.1.

32 (4) The preparation of the report or the consideration of the
33 report by the court may be waived only by a written stipulation of
34 the prosecuting and defense attorneys that is filed with the court
35 or an oral stipulation in open court that is made and entered upon
36 the minutes of the court, except that there shall be no waiver unless
37 the court consents thereto. However, if the defendant is ultimately
38 sentenced and committed to the state prison, a probation report
39 shall be completed pursuant to Section 1203c.

1 ~~(e) If a defendant is not represented by an attorney, the court~~
2 ~~shall order the probation officer who makes the probation report~~
3 ~~to discuss its contents with the defendant.~~

4 ~~(d) If a person is convicted of a misdemeanor, the court may~~
5 ~~either refer the matter to the probation officer for an investigation~~
6 ~~and a report or summarily pronounce a conditional sentence. If~~
7 ~~the person was convicted of an offense that requires him or her to~~
8 ~~register as a sex offender pursuant to Sections 290 to 290.023,~~
9 ~~inclusive, or if the probation officer recommends that the court,~~
10 ~~at sentencing, order the offender to register as a sex offender~~
11 ~~pursuant to Section 290.006, the court shall refer the matter to the~~
12 ~~probation officer for the purpose of obtaining a report on the results~~
13 ~~of the State-Authorized Risk Assessment Tool for Sex Offenders~~
14 ~~administered pursuant to Sections 290.04 to 290.06, inclusive, if~~
15 ~~applicable, which the court shall consider. If the case is not referred~~
16 ~~to the probation officer, in sentencing the person, the court may~~
17 ~~consider any information concerning the person that could have~~
18 ~~been included in a probation report. The court shall inform the~~
19 ~~person of the information to be considered and permit him or her~~
20 ~~to answer or controvert the information. For this purpose, upon~~
21 ~~the request of the person, the court shall grant a continuance before~~
22 ~~the judgment is pronounced.~~

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

26 ~~(1) Unless the person had a lawful right to carry a deadly~~
27 ~~weapon, other than a firearm, at the time of the perpetration of the~~
28 ~~crime or his or her arrest, any person who has been convicted of~~
29 ~~arson, robbery, carjacking, burglary, burglary with explosives,~~
30 ~~rape with force or violence, torture, aggravated mayhem, murder,~~
31 ~~attempt to commit murder, train wrecking, kidnapping, escape~~
32 ~~from the state prison, or a conspiracy to commit one or more of~~
33 ~~those crimes and who was armed with the weapon at either of those~~
34 ~~times.~~

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

38 ~~(3) Any person who willfully inflicted great bodily injury or~~
39 ~~torture in the perpetration of the crime of which he or she has been~~
40 ~~convicted.~~

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

4 ~~(5) Unless the person has never been previously convicted once~~
5 ~~in this state of a felony or in any other place of a public offense~~
6 ~~which, if committed in this state, would have been punishable as~~
7 ~~a felony, any person who has been convicted of burglary with~~
8 ~~explosives, rape with force or violence, torture, aggravated~~
9 ~~mayhem, murder, attempt to commit murder, train wrecking,~~
10 ~~extortion, kidnapping, escape from the state prison, a violation of~~
11 ~~Section 286, 288, 288a, or 288.5, or a conspiracy to commit one~~
12 ~~or more of those crimes.~~

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

17 ~~(A) Unless the person had a lawful right to carry a deadly~~
18 ~~weapon at the time of the perpetration of the previous crime or his~~
19 ~~or her arrest for the previous crime, he or she was armed with a~~
20 ~~weapon at either of those times.~~

21 ~~(B) The person used, or attempted to use, a deadly weapon upon~~
22 ~~a human being in connection with the perpetration of the previous~~
23 ~~crime.~~

24 ~~(C) The person willfully inflicted great bodily injury or torture~~
25 ~~in the perpetration of the previous crime.~~

26 ~~(7) Any public official or peace officer of this state or any city,~~
27 ~~county, or other political subdivision who, in the discharge of the~~
28 ~~duties of his or her public office or employment, accepted or gave~~
29 ~~or offered to accept or give any bribe, embezzled public money,~~
30 ~~or was guilty of extortion.~~

31 ~~(8) Any person who knowingly furnishes or gives away~~
32 ~~phenylelidine.~~

33 ~~(9) Any person who intentionally inflicted great bodily injury~~
34 ~~in the commission of arson under subdivision (a) of Section 451~~
35 ~~or who intentionally set fire to, burned, or caused the burning of,~~
36 ~~an inhabited structure or inhabited property in violation of~~
37 ~~subdivision (b) of Section 451.~~

38 ~~(10) Any person who, in the commission of a felony, inflicts~~
39 ~~great bodily injury or causes the death of a human being by the~~

1 discharge of a firearm from or at an occupied motor vehicle
2 proceeding on a public street or highway.

3 (11) Any person who possesses a short-barreled rifle or a
4 short-barreled shotgun under Section 33215, a machinegun under
5 Section 32625, or a silencer under Section 33410.

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

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

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

14 (g) If a person is not eligible for probation, the judge shall refer
15 the matter to the probation officer for an investigation of the facts
16 relevant to determination of the amount of a restitution fine
17 pursuant to subdivision (b) of Section 1202.4 in all cases where
18 the determination is applicable. The judge, in his or her discretion,
19 may direct the probation officer to investigate all facts relevant to
20 the sentencing of the person. Upon that referral, the probation
21 officer shall immediately investigate the circumstances surrounding
22 the crime and the prior record and history of the person and make
23 a written report to the court of his or her findings. The findings
24 shall include a recommendation of the amount of the restitution
25 fine as provided in subdivision (b) of Section 1202.4.

26 (h) If a defendant is convicted of a felony and a probation report
27 is prepared pursuant to subdivision (b) or (g), the probation officer
28 may obtain and include in the report a statement of the comments
29 of the victim concerning the offense. The court may direct the
30 probation officer not to obtain a statement if the victim has in fact
31 testified at any of the court proceedings concerning the offense.

32 (i) A probationer shall not be released to enter another state
33 unless his or her case has been referred to the Administrator of the
34 Interstate Probation and Parole Compacts, pursuant to the Uniform
35 Act for Out-of-State Probationer or Parolee Supervision (Article
36 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part
37 4) and the probationer has reimbursed the county that has
38 jurisdiction over his or her probation case the reasonable costs of
39 processing his or her request for interstate compact supervision.

1 The amount and method of reimbursement shall be in accordance
2 with Section 1203.1b.

3 ~~(j) In any court where a county financial evaluation officer is~~
4 ~~available, in addition to referring the matter to the probation officer,~~
5 ~~the court may order the defendant to appear before the county~~
6 ~~financial evaluation officer for a financial evaluation of the~~
7 ~~defendant's ability to pay restitution, in which case the county~~
8 ~~financial evaluation officer shall report his or her findings regarding~~
9 ~~restitution and other court-related costs to the probation officer on~~
10 ~~the question of the defendant's ability to pay those costs.~~

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

16 ~~(k) Probation shall not be granted to, nor shall the execution of,~~
17 ~~or imposition of sentence be suspended for, any person who is~~
18 ~~convicted of a violent felony, as defined in subdivision (e) of~~
19 ~~Section 667.5, or a serious felony, as defined in subdivision (e) of~~
20 ~~Section 1192.7, and who was on probation for a felony offense at~~
21 ~~the time of the commission of the new felony offense.~~

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

23 1203. (a) As used in this code, "probation" means the
24 suspension of the imposition or execution of a sentence and the
25 order of conditional and revocable release in the community under
26 the supervision of a probation officer. As used in this code,
27 "conditional sentence" means the suspension of the imposition or
28 execution of a sentence and the order of revocable release in the
29 community subject to conditions established by the court without
30 the supervision of a probation officer. It is the intent of the
31 Legislature that both conditional sentence and probation are
32 authorized whenever probation is authorized in any code as a
33 sentencing option for infractions or misdemeanors.

34 (b) (1) Except as provided in subdivision (j), if a person is
35 convicted of a felony and is eligible for probation, before judgment
36 is pronounced, the court shall immediately refer the matter to a
37 probation officer to investigate and report to the court, at a specified
38 time, upon the circumstances surrounding the crime and the prior
39 history and record of the person, which may be considered either
40 in aggravation or mitigation of the punishment.

1 (2) (A) The probation officer shall immediately investigate and
2 make a written report to the court of his or her findings and
3 recommendations, including his or her recommendations as to the
4 granting or denying of probation and the conditions of probation,
5 if granted.

6 (B) Pursuant to Section 828 of the Welfare and Institutions
7 Code, the probation officer shall include in his or her report any
8 information gathered by a law enforcement agency relating to the
9 taking of the defendant into custody as a minor, which shall be
10 considered for purposes of determining whether adjudications of
11 commissions of crimes as a juvenile warrant a finding that there
12 are circumstances in aggravation pursuant to Section 1170 or to
13 deny probation.

14 (C) If the person was convicted of an offense that requires him
15 or her to register as a sex offender pursuant to Sections 290 to
16 290.023, inclusive, or if the probation report recommends that
17 registration be ordered at sentencing pursuant to Section 290.006,
18 the probation officer's report shall include the results of the
19 State-Authorized Risk Assessment Tool for Sex Offenders
20 (SARATSO) administered pursuant to Sections 290.04 to 290.06,
21 inclusive, if applicable.

22 (D) The probation officer may also include in the report his or
23 her recommendation of both of the following:

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

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

29 (E) The report shall be made available to the court and the
30 prosecuting and defense attorneys at least five days, or upon request
31 of the defendant or prosecuting attorney nine days, prior to the
32 time fixed by the court for the hearing and determination of the
33 report, and shall be filed with the clerk of the court as a record in
34 the case at the time of the hearing. The time within which the report
35 shall be made available and filed may be waived by written
36 stipulation of the prosecuting and defense attorneys that is filed
37 with the court or an oral stipulation in open court that is made and
38 entered upon the minutes of the court.

39 (3) (A) At a time fixed by the court, the court shall hear and
40 determine the application, if one has been made, or, in any case,

1 the suitability of probation in the particular case. At the hearing,
2 the court shall consider any report of the probation officer,
3 including the results of the SARATSO, if applicable, and shall
4 make a statement that it has considered the report, which shall be
5 filed with the clerk of the court as a record in the case. If the court
6 determines that there are circumstances in mitigation of the
7 punishment prescribed by law or that the ends of justice would be
8 served by granting probation to the person, it may place the person
9 on probation. If probation is denied, the clerk of the court shall
10 immediately send a copy of the report to the Department of
11 Corrections and Rehabilitation at the prison or other institution to
12 which the person is delivered.

13 *(B) For purposes of subparagraph (A), circumstances in*
14 *mitigation of the punishment prescribed by law include, but are*
15 *not limited to, all of the following:*

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

17 *(ii) The payment of all or part of a civil assessment imposed*
18 *under Section 1214.1.*

19 *(iii) Participation in court-ordered community service pursuant*
20 *to Section 1209.5 to satisfy a traffic fine or civil assessment*
21 *imposed under Section 1214.1.*

22 (4) The preparation of the report or the consideration of the
23 report by the court may be waived only by a written stipulation of
24 the prosecuting and defense attorneys that is filed with the court
25 or an oral stipulation in open court that is made and entered upon
26 the minutes of the court, except that a waiver shall not be allowed
27 unless the court consents thereto. However, if the defendant is
28 ultimately sentenced and committed to the state prison, a probation
29 report shall be completed pursuant to Section 1203c.

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

33 (d) If a person is convicted of a misdemeanor, the court may
34 either refer the matter to the probation officer for an investigation
35 and a report or summarily pronounce a conditional sentence. If
36 the person was convicted of an offense that requires him or her to
37 register as a sex offender pursuant to Sections 290 to 290.023,
38 inclusive, or if the probation officer recommends that the court,
39 at sentencing, order the offender to register as a sex offender
40 pursuant to Section 290.006, the court shall refer the matter to the

1 probation officer for the purpose of obtaining a report on the results
2 of the State-Authorized Risk Assessment Tool for Sex Offenders
3 administered pursuant to Sections 290.04 to 290.06, inclusive, if
4 applicable, which the court shall consider. If the case is not referred
5 to the probation officer, in sentencing the person, the court may
6 consider any information concerning the person that could have
7 been included in a probation report. The court shall inform the
8 person of the information to be considered and permit him or her
9 to answer or controvert the information. For this purpose, upon
10 the request of the person, the court shall grant a continuance before
11 the judgment is pronounced.

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

15 (1) Unless the person had a lawful right to carry a deadly
16 weapon, other than a firearm, at the time of the perpetration of the
17 crime or his or her arrest, any person who has been convicted of
18 arson, robbery, carjacking, burglary, burglary with explosives,
19 rape with force or violence, torture, aggravated mayhem, murder,
20 attempt to commit murder, ~~trainwrecking~~ *train wrecking*,
21 kidnapping, escape from the state prison, or a conspiracy to commit
22 one or more of those crimes and who was armed with the weapon
23 at either of those times.

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

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

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

33 (5) Unless the person has never been previously convicted once
34 in this state of a felony or in any other place of a public offense
35 which, if committed in this state, would have been punishable as
36 a felony, any person who has been convicted of burglary with
37 explosives, rape with force or violence, torture, aggravated
38 mayhem, murder, attempt to commit murder, ~~trainwrecking~~ *train*
39 *wrecking*, extortion, kidnapping, escape from the state prison, a

1 violation of Section 286, 288, 288a, or 288.5, or a conspiracy to
2 commit one or more of those crimes.

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

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

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

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

16 (7) Any public official or peace officer of this state or any city,
17 county, or other political subdivision who, in the discharge of the
18 duties of his or her public office or employment, accepted or gave
19 or offered to accept or give any bribe, embezzled public money,
20 or was guilty of extortion.

21 (8) Any person who knowingly furnishes or gives away
22 phencyclidine.

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

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

32 (11) Any person who possesses a short-barreled rifle or a
33 short-barreled shotgun under Section 33215, a machinegun under
34 Section 32625, or a silencer under Section 33410.

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

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

39 (f) When probation is granted in a case which comes within
40 subdivision (e), the court shall specify on the record and shall enter

1 on the minutes the circumstances indicating that the interests of
2 justice would best be served by that disposition.

3 (g) If a person is not eligible for probation, the judge shall refer
4 the matter to the probation officer for an investigation of the facts
5 relevant to determination of the amount of a restitution fine
6 pursuant to subdivision (b) of Section 1202.4 in all cases where
7 the determination is applicable. The judge, in his or her discretion,
8 may direct the probation officer to investigate all facts relevant to
9 the sentencing of the person. Upon that referral, the probation
10 officer shall immediately investigate the circumstances surrounding
11 the crime and the prior record and history of the person and make
12 a written report to the court of his or her findings. The findings
13 shall include a recommendation of the amount of the restitution
14 fine as provided in subdivision (b) of Section 1202.4.

15 (h) If a defendant is convicted of a felony and a probation report
16 is prepared pursuant to subdivision (b) or (g), the probation officer
17 may obtain and include in the report a statement of the comments
18 of the victim concerning the offense. The court may direct the
19 probation officer not to obtain a statement if the victim has in fact
20 testified at any of the court proceedings concerning the offense.

21 (i) A probationer shall not be released to enter another state
22 unless his or her case has been referred to the Administrator of the
23 Interstate Probation and Parole Compacts, pursuant to the Uniform
24 Act for Out-of-State Probationer or Parolee Supervision (Article
25 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part
26 4) and the probationer has reimbursed the county that has
27 jurisdiction over his or her probation case the reasonable costs of
28 processing his or her request for interstate compact supervision.
29 The amount and method of reimbursement shall be in accordance
30 with Section 1203.1b.

31 (j) In any court where a county financial evaluation officer is
32 available, in addition to referring the matter to the probation officer,
33 the court may order the defendant to appear before the county
34 financial evaluation officer for a financial evaluation of the
35 defendant's ability to pay restitution, in which case the county
36 financial evaluation officer shall report his or her findings regarding
37 restitution and other court-related costs to the probation officer on
38 the question of the defendant's ability to pay those costs.

39 Any order made pursuant to this subdivision may be enforced
40 as a violation of the terms and conditions of probation upon willful

1 failure to pay and at the discretion of the court, may be enforced
2 in the same manner as a judgment in a civil action, if any balance
3 remains unpaid at the end of the defendant’s probationary period.

4 (k) Probation shall not be granted to, nor shall the execution of,
5 or imposition of sentence be suspended for, any person who is
6 convicted of a violent felony, as defined in subdivision (c) of
7 Section 667.5, or a serious felony, as defined in subdivision (c) of
8 Section 1192.7, and who was on probation for a felony offense at
9 the time of the commission of the new felony offense.

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

11 1209.5. (a) Notwithstanding any other law, a person ~~described~~
12 ~~in paragraph (1), (2), or (3) of subdivision (b)~~ *convicted of an*
13 *infraction* may, upon a showing that payment of the total ~~or~~
14 ~~modified~~ fine amount would pose a hardship on the defendant or
15 his or her family, be sentenced to perform community service in
16 lieu of the total ~~or modified~~ fine amount that would otherwise be
17 imposed. The defendant shall perform community service
18 according to the schedule set forth in subdivision ~~(d)~~ (c) in the
19 defendant’s county of choice.

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

- 22 ~~(1) Convicted of an infraction.~~
- 23 ~~(2) Convicted of a misdemeanor for a failure to appear or to~~
24 ~~pay bail pursuant to subdivision (a) or (b) of Section 40508 of the~~
25 ~~Vehicle Code or Section 853.7 of this code.~~
- 26 ~~(3) Upon whom a civil assessment has been imposed for a failure~~
27 ~~to appear in court or to pay a fine pursuant to Section 1214.1.~~

28 ~~(e)~~

29 (b) For the purposes of this section, the following shall apply:

30 (1) “Total fine” means the base fine and all assessments,
31 including civil assessments, penalties, and additional moneys to
32 be paid by the defendant.

33 (2) If the court orders the defendant to perform community
34 service pursuant to this section in lieu of part or all of the total fine
35 that would otherwise be imposed, the performance of that
36 community service work is in lieu of the total fine, or that
37 percentage of the total fine specified by the court. The court shall
38 not order the defendant to perform community service in lieu of
39 the base fine and still require the defendant to pay any assessments,
40 penalties, or additional moneys.

1 ~~(d)~~

2 (c) A defendant sentenced to perform community service
3 pursuant to this section shall perform the number of hours specified
4 as follows:

5 (1) For a total fine amount up to one thousand dollars (\$1,000),
6 four hours of community service.

7 (2) For a total fine amount of one thousand one dollars (\$1,001)
8 to five thousand dollars (\$5,000), eight hours of community service.

9 (3) For a total fine amount of five thousand one dollars (\$5,001)
10 or more, 15 hours of community service.

11 ~~(e)~~

12 (d) For purposes of this section, the court shall determine that
13 paying the total ~~or a modified~~ fine is a hardship if the defendant
14 falls within any of the categories described in subdivision (a) of
15 Section 68632 of the Government Code.

16 ~~(f) The court may delegate to the clerk the authority to grant a
17 defendant's request for community service under subdivision (d)
18 if the defendant meets the eligibility and application requirements
19 for a fee waiver under Section 68632 of the Government Code.
20 The court shall not delegate to the clerk the authority to deny an
21 application for community service. If the court delegates its
22 authority, the court shall follow the processing and determination
23 procedures for fee waivers set forth in Sections 68633 and 68634
24 of the Government Code in determining the defendant's eligibility
25 for community service.~~

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

27 1214.1. (a) (1) In addition to any other penalty in an infraction,
28 misdemeanor, or felony case, the court may waive or impose upon
29 a particular defendant a civil assessment of no less than ten dollars
30 (\$10), but no greater than three hundred dollars (\$300), if that
31 defendant fails, after notice and without good cause, to appear in
32 court for any proceeding authorized by law, fails to pay all or any
33 portion of a fine *within the time* ordered by the court, or fails to
34 pay an installment of bail as agreed to under Section 40510.5 of
35 the Vehicle Code. The amount of the assessment shall be based
36 on that defendant's ability to pay ~~and set according to a schedule
37 adopted by the Judicial Council as determined by the court.~~ This
38 assessment shall be deposited in the Trial Court Trust Fund, as
39 provided in Section 68085.1 of the Government Code. A civil

1 assessment shall not be imposed for an infraction violation in which
2 the defendant was not the driver of the vehicle.

3 (2) The court may determine that a defendant does not have the
4 ability to pay the assessment if the defendant demonstrates that he
5 or she falls within one of the categories described in subdivision
6 (a) of Section 68632 of the Government Code.

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

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

31 (d) The assessment imposed under subdivision (a) shall be
32 subject to the due process requirements governing defense and
33 collection of civil money judgments generally. ~~The court shall not~~
34 ~~limit the grounds for good cause for failure to appear. The court~~
35 ~~shall waive the civil assessment when the defendant meets the~~
36 ~~good cause standard for vacating a civil assessment.~~

37 (e) ~~The court shall grant a defendant's request to vacate the civil~~
38 ~~assessment for good cause for the inability to pay if the defendant~~
39 ~~meets the eligibility and application requirements for a fee waiver~~
40 ~~under subdivision (a) of Section 68632 of the Government Code~~

1 as determined under Sections 68633 and 68634 of the Government
2 Code.

3 (f)

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

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

15 40509. (a) Except as required under subdivision (c) of Section
16 40509.5, if any person has violated a written promise to appear or
17 a lawfully granted continuance of his or her promise to appear in
18 court or before the person authorized to receive a deposit of bail,
19 or violated an order to appear in court, including, but not limited
20 to, a written notice to appear issued in accordance with Section
21 40518, the magistrate or clerk of the court may give notice of the
22 failure to appear to the department for any violation of this code,
23 or any violation that can be heard by a juvenile traffic hearing
24 referee pursuant to Section 256 of the Welfare and Institutions
25 Code, or any violation of any other statute relating to the safe
26 operation of a vehicle, except violations not required to be reported
27 pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b)
28 of Section 1803. If thereafter the case in which the promise was
29 given is adjudicated or the person who has violated the court order
30 appears in court or otherwise satisfies the order of the court, the
31 magistrate or clerk of the court hearing the case shall sign and file
32 with the department a certificate to that effect.

33 (b) ~~(4)~~ If any person has willfully failed to pay a lawfully
34 imposed fine within the time authorized by the court or to pay a
35 fine pursuant to subdivision (a) of Section 42003, the magistrate
36 or clerk of the court may give notice of the fact to the department
37 for any violation, except violations not required to be reported
38 pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b)
39 of Section 1803. If thereafter the fine is fully paid, ~~an agreement~~
40 ~~is signed to pay the fine or fee in installments, or an agreement is~~

1 ~~signed to perform community service pursuant to Section 1209.5~~
2 ~~of the Penal Code, the magistrate or clerk of the court shall issue~~
3 ~~and file with the department a certificate showing that the fine has~~
4 ~~been paid or satisfied pursuant to Section 1209.5 of the Penal Code,~~
5 ~~or an agreement has been signed, and request that the license hold~~
6 ~~be lifted.~~ *paid.* The court shall not require the payment of bail, the
7 fine, or a civil assessment before the person may request that the
8 court vacate a civil assessment imposed under Section 1214.1.

9 ~~(2) If a person fails to pay an outstanding fine or fee in~~
10 ~~installments or to perform community service consistent with the~~
11 ~~terms of the signed agreement, the court may give notice of the~~
12 ~~fact to the department.~~

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

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

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

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

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

30 SEC. 6. Section 40509.5 of the Vehicle Code is amended to
31 read:

32 40509.5. (a) Except as required under subdivision (c), if, with
33 respect to an offense described in subdivision (e), a person has
34 violated his or her written promise to appear or a lawfully granted
35 continuance of his or her promise to appear in court or before the
36 person authorized to receive a deposit of bail, or violated an order
37 to appear in court, including, but not limited to, a written notice
38 to appear issued in accordance with Section 40518, the magistrate
39 or clerk of the court may give notice of the failure to appear to the
40 department for a violation of this code, a violation that can be

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

10 (b) ~~(4)~~ If, with respect to an offense described in subdivision
11 (e), a person has willfully failed to pay a lawfully imposed fine,
12 or bail in installments as agreed to under Section 40510.5, within
13 the time authorized by the court or to pay a fine pursuant to
14 subdivision (a) of Section 42003, the magistrate or clerk of the
15 court may give notice of the fact to the department for a violation,
16 except violations not required to be reported pursuant to paragraphs
17 (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If
18 thereafter, ~~(1) the fine or bail is fully paid, (2) an agreement is~~
19 ~~signed to pay the fine, fee, or bail in installments, or (3) an~~
20 ~~agreement is signed to perform community service pursuant to~~
21 ~~Section 1209.5 of the Penal Code,~~ the magistrate or clerk of the
22 court shall issue and file with the department a certificate showing
23 that the fine or bail has been paid, ~~or that it has been or will be~~
24 ~~satisfied by the performance of community service pursuant to~~
25 ~~Section 1209.5 of the Penal Code,~~ and request that the license hold
26 ~~be lifted.~~ *paid.* The court shall not require the payment of bail, or
27 the payment of the fine or civil assessment amount, before a person
28 may request the court to vacate a civil assessment imposed under
29 Section 1214.1.

30 ~~(2) If a person fails to pay an outstanding fine or fee in~~
31 ~~installments or to perform community service consistent with the~~
32 ~~terms of the signed agreement, the court may give notice of the~~
33 ~~fact to the department.~~

34 (c) If a person charged with a violation of Section 23152 or
35 23153, or Section 191.5 of the Penal Code, or subdivision (a) of
36 Section 192.5 of the Penal Code has violated a lawfully granted
37 continuance of his or her promise to appear in court or is released
38 from custody on his or her own recognizance and fails to appear
39 in court or before the person authorized to receive a deposit of
40 bail, or violated an order to appear in court, the magistrate or clerk

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

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

11 (e) If the court notifies the department of a failure to appear, or
12 pay a fine or bail, ~~or perform community service~~ pursuant to
13 subdivision (a) or (b), no arrest warrant shall be issued for an
14 alleged violation of subdivision (a) or (b) of Section 40508, unless
15 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. 7. Section 42003 of the Vehicle Code is amended to read:

38 42003. (a) A judgment that a person convicted of an infraction
39 be punished by a fine may also provide for the payment to be made
40 within a specified time or in specified installments. A judgment

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

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

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

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

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

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

18 (d) Notwithstanding paragraph (1) of subdivision (c), the court
19 may conclusively presume that a defendant does not have the
20 ability to pay the fine if the defendant demonstrates that he or she
21 falls within a category described in subdivision (a) of Section
22 68632 of the Government Code.

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

26 (f) The term “ability to pay” means the overall capability of the
27 defendant to reimburse the costs, or a portion of the costs, of
28 conducting the presentence investigation, preparing the presentence
29 report, and probation, and includes, but is not limited to, all of the
30 following regarding the defendant:

31 (1) Present financial position.

32 (2) Reasonably discernible future financial position. In no event
33 shall the court consider a period of more than six months from the
34 date of the hearing for purposes of determining reasonably
35 discernible future financial position.

36 (3) Likelihood that the defendant will be able to obtain
37 employment within the six-month period from the date of the
38 hearing.

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

1 (g) At any time during the pendency of the judgment rendered
2 according to the terms of this section, a defendant against whom
3 a judgment has been rendered may petition the rendering court to
4 modify or vacate its previous judgment on the grounds of a change
5 of circumstances with regard to the defendant’s ability to pay the
6 judgment. The court shall advise the defendant of this right at the
7 time of rendering of the judgment.

8 ~~SEC. 8. No reimbursement is required by this act pursuant to~~
9 ~~Section 6 of Article XIII B of the California Constitution for certain~~
10 ~~costs that may be incurred by a local agency or school district~~
11 ~~because, in that regard, this act creates a new crime or infraction,~~
12 ~~eliminates a crime or infraction, or changes the penalty for a crime~~
13 ~~or infraction, within the meaning of Section 17556 of the~~
14 ~~Government Code, or changes the definition of a crime within the~~
15 ~~meaning of Section 6 of Article XIII B of the California~~
16 ~~Constitution.~~

17 ~~However, if the Commission on State Mandates determines that~~
18 ~~this act contains other costs mandated by the state, reimbursement~~
19 ~~to local agencies and school districts for those costs shall be made~~
20 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
21 ~~4 of Title 2 of the Government Code.~~