

**Introduced by Committee on Public Safety (Senators Hancock  
(Chair), Anderson, Block, De León, Knight, Liu, and Steinberg)**

February 21, 2013

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An act to amend Sections 289.6, 781, 1203.097, 1203.47, 1233.1, and 1305.4 of the Penal Code, and to amend Section 726 of the Welfare and Institutions Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 514, as introduced, Committee on Public Safety. Crimes.

(1) Existing law provides that anyone who is convicted of a felony violation of specified crimes who is employed by a department, board, or authority within the Department of Corrections and Rehabilitation shall be terminated in accordance with the State Civil Service Act. Existing law also provides that anyone who has been convicted of a felony violation of specified crimes shall not be eligible to be hired or reinstated by a department, board, or authority within the department.

This bill would make technical, nonsubstantive changes to this provision.

(2) Except as specified, when a public offense is committed in part in one jurisdictional territory and in part in another, jurisdictional territory or the acts or effects thereof constituting or requisite to the consummation of the offense occur in 2 or more jurisdictional territories, the jurisdiction for the offense is in any competent court within either jurisdictional territory.

This bill would make technical, nonsubstantive changes to that provision.

(3) Existing law requires that if a person is granted probation for a crime in which the victim is a specified person, the terms of probation must include, but are not limited to, a minimum period of probation of

36 months, which may include a period of summary probation as appropriate, and successful completion of a batterer's program, as defined, or if none is available, another appropriate counseling program designated by the court, as specified. Existing law requires the court or the probation department to refer defendants only to batterer's program that follow specified standards, which may include, but are not limited to, lectures, classes, group discussions, and counseling. Existing law confers upon the probation department sole authority to approve a batterer's program for probation, and the program must obtain only one approval but must renew that approval annually. Existing law makes an act or omission relating to the approval of a batterer's treatment program a discretionary act.

This bill would make a technical, nonsubstantive change to the latter provision.

(4) Existing law permits a specified person, upon reaching 18 years of age and by reason of the commission of a specified offense, to petition the court to have his or her record sealed, except that, as pertaining to any records regarding the commission of a specified offense, it is not a requirement in granting the petition for the person to show that he or she has not been convicted of a felony or of any misdemeanor involving moral turpitude, or that rehabilitation has been attained to the satisfaction of the court. Existing law requires that upon granting the petition, all records relating to specified violations be sealed. Existing law makes this relief inapplicable to a person convicted of specified offenses.

This bill would make technical, nonsubstantive changes to these provisions.

(5) Existing law requires the Director of Finance to, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, after the conclusion of each calendar year following the enactment of this section, make specified calculations for that calendar year. Under existing law, these calculations include, but are not limited to, the cost to the state to incarcerate in prison and supervise on parole a probationer sent to prison, and the statewide probation to prison rate, as specified.

This bill would make a technical, nonsubstantive change to the latter provision.

(6) Existing law permits the surety insurer, the bail agent, the surety, or the depositor to file a motion, based upon good cause, for an order to extend the 180-day period following forfeiture of the undertaking of

bail or the money or property deposited as bail, as specified. Existing law permits the court, upon a hearing and a showing of good cause, to order the period extended to a time not exceeding 180 days from its order. Existing law permits a motion to be filed and calendared, as specified.

This bill would make a technical, nonsubstantive change to the latter provision.

(7) Existing law permits the court, in all cases in which a minor is adjudged a ward or dependent child of the court, to limit the control to be exercised over the ward or dependent child by any parent or guardian. Existing law requires the court to, in its order, clearly and specifically set forth all those limitations, but prohibits a ward or dependent child from being taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of specified facts. Existing law also requires that whenever the court specifically limits the right of the parent or guardian to make educational or developmental services decisions for the minor, the court must at the same time appoint a responsible adult to make educational or developmental services decisions for the child until one of specified events occurs, including, but not limited to, if the minor reaches 18 years of age, except as specified, or is deemed by the court to be incompetent.

This bill would make technical, nonsubstantive changes to the latter provision.

(8) This bill would provide that any section of any act enacted by the Legislature during the 2013 calendar year that takes effect on or before January 1, 2014, and affects any section of this act, would prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

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

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

- 1 SECTION 1. Section 289.6 of the Penal Code is amended to
- 2 read:
- 3 289.6. (a) (1) An employee or officer of a public entity health
- 4 facility, or an employee, officer, or agent of a private person or
- 5 entity that provides a health facility or staff for a health facility
- 6 under contract with a public entity, who engages in sexual activity
- 7 with a consenting adult who is confined in a health facility is guilty

1 of a public offense. As used in this paragraph, “health facility”  
2 means a health facility as defined in subdivisions (b), (e), (g), (h),  
3 and (j) of, and subparagraph (C) of paragraph (2) of subdivision  
4 (i) of, Section 1250 of the Health and Safety Code, in which the  
5 victim has been confined involuntarily.

6 (2) An employee or officer of a public entity detention facility,  
7 or an employee, officer, agent of a private person or entity that  
8 provides a detention facility or staff for a detention facility, a  
9 person or agent of a public or private entity under contract with a  
10 detention facility, a volunteer of a private or public entity detention  
11 facility, or a peace officer who engages in sexual activity with a  
12 consenting adult who is confined in a detention facility is guilty  
13 of a public offense.

14 (3) An employee with a department, board, or authority under  
15 the ~~California~~ Department of Corrections and Rehabilitation or a  
16 facility under contract with a department, board, or authority under  
17 the ~~California~~ Department of Corrections and Rehabilitation, who,  
18 during the course of his or her employment directly provides  
19 treatment, care, control, or supervision of inmates, wards, or  
20 parolees, and who engages in sexual activity with a consenting  
21 adult who is an inmate, ward, or parolee, is guilty of a public  
22 offense.

23 (b) As used in this section, the term “public entity” means the  
24 state, federal government, a city, a county, a city and county, a  
25 joint county jail district, or any entity created as a result of a joint  
26 powers agreement between two or more public entities.

27 (c) As used in this section, the term “detention facility” means:

28 (1) A prison, jail, camp, or other correctional facility used for  
29 the confinement of adults or both adults and minors.

30 (2) A building or facility used for the confinement of adults or  
31 adults and minors pursuant to a contract with a public entity.

32 (3) A room that is used for holding persons for interviews,  
33 interrogations, or investigations and that is separate from a jail or  
34 located in the administrative area of a law enforcement facility.

35 (4) A vehicle used to transport confined persons during their  
36 period of confinement, including transporting a person after he or  
37 she has been arrested but has not been booked.

38 (5) A court holding facility located within or adjacent to a court  
39 building that is used for the confinement of persons for the purpose  
40 of court appearances.

1 (d) As used in this section, “sexual activity” means:

2 (1) Sexual intercourse.

3 (2) Sodomy, as defined in subdivision (a) of Section 286.

4 (3) Oral copulation, as defined in subdivision (a) of Section  
5 288a.

6 (4) Sexual penetration, as defined in subdivision (k) of Section  
7 289.

8 (5) The rubbing or touching of the breasts or sexual organs of  
9 another, or of oneself in the presence of and with knowledge of  
10 another, with the intent of arousing, appealing to, or gratifying the  
11 lust, passions, or sexual desires of oneself or another.

12 (e) Consent by a confined person or parolee to sexual activity  
13 proscribed by this section is not a defense to a criminal prosecution  
14 for violation of this section.

15 (f) This section does not apply to sexual activity between  
16 consenting adults that occurs during an overnight conjugal visit  
17 that takes place pursuant to a court order or with the written  
18 approval of an authorized representative of the public entity that  
19 operates or contracts for the operation of the detention facility  
20 where the conjugal visit takes place, to physical contact or  
21 penetration made pursuant to a lawful search, or bona fide medical  
22 examinations or treatments, including clinical treatments.

23 (g) Any violation of paragraph (1) of subdivision (a), or a  
24 violation of paragraph (2) or (3) of subdivision (a) as described in  
25 paragraph (5) of subdivision (d), is a misdemeanor.

26 (h) Any violation of paragraph (2) or (3) of subdivision (a), as  
27 described in paragraph (1), (2), (3), or (4) of subdivision (d), shall  
28 be punished by imprisonment in a county jail not exceeding one  
29 year, or in the state prison, or by a fine of not more than ten  
30 thousand dollars (\$10,000) or by both that fine and imprisonment.

31 (i) Any person previously convicted of a violation of this section  
32 shall, upon a subsequent violation, be guilty of a felony.

33 (j) Anyone who is convicted of a felony violation of this section  
34 who is employed by a department, board, or authority within the  
35 ~~Youth and Adult Correctional Agency~~ *Department of Corrections*  
36 *and Rehabilitation* shall be terminated in accordance with the State  
37 Civil Service Act (Part 2 (commencing with Section 18500) of  
38 Division 5 of Title 2 of the Government Code). Anyone who has  
39 been convicted of a felony violation of this section shall not be

1 eligible to be hired or reinstated by a department, board, or  
2 authority within the Youth and Adult Correctional Agency.

3 SEC. 2. Section 781 of the Penal Code is amended to read:

4 781. Except as provided in Section 923, when a public offense  
5 is committed in part in one jurisdictional territory and in part in  
6 ~~another~~, *another* jurisdictional-~~territory~~ *territory*, or the acts or  
7 effects thereof constituting or requisite to the consummation of  
8 the offense occur in two or more jurisdictional territories, the  
9 jurisdiction for the offense is in any competent court within either  
10 jurisdictional territory.

11 SEC. 3. Section 1203.097 of the Penal Code is amended to  
12 read:

13 1203.097. (a) If a person is granted probation for a crime in  
14 which the victim is a person defined in Section 6211 of the Family  
15 Code, the terms of probation shall include all of the following:

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

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

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

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

25 (5) (A) A minimum payment by the defendant of five hundred  
26 dollars (\$500) to be disbursed as specified in this paragraph. If,  
27 after a hearing in open court, the court finds that the defendant  
28 does not have the ability to pay, the court may reduce or waive  
29 this fee. If the court exercises its discretion to reduce or waive the  
30 fee, it shall state the reason on the record.

31 (B) Two-thirds of the moneys deposited with the county  
32 treasurer pursuant to this section shall be retained by counties and  
33 deposited in the domestic violence programs special fund created  
34 pursuant to Section 18305 of the Welfare and Institutions Code,  
35 to be expended for the purposes of Chapter 5 (commencing with  
36 Section 18290) of Part 6 of Division 9 of the Welfare and  
37 Institutions Code. The remainder shall be transferred, once a month,  
38 to the Controller for deposit in equal amounts in the Domestic  
39 Violence Restraining Order Reimbursement Fund and in the  
40 Domestic Violence Training and Education Fund, which are hereby

1 created, in an amount equal to one-third of funds collected during  
2 the preceding month. Moneys deposited into these funds pursuant  
3 to this section shall be available upon appropriation by the  
4 Legislature and shall be distributed each fiscal year as follows:

5 (i) Funds from the Domestic Violence Restraining Order  
6 Reimbursement Fund shall be distributed to local law enforcement  
7 or other criminal justice agencies for state-mandated local costs  
8 resulting from the notification requirements set forth in subdivision

9 (b) of Section 6380 of the Family Code, based on the annual  
10 notification from the Department of Justice of the number of  
11 restraining orders issued and registered in the state domestic  
12 violence restraining order registry maintained by the Department  
13 of Justice, for the development and maintenance of the domestic  
14 violence restraining order databank system.

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

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

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

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

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

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

19 (9) If the program finds that the defendant is unsuitable, the  
20 program shall immediately contact the probation department or  
21 the court. The probation department or court shall either recalendar  
22 the case for hearing or refer the defendant to an appropriate  
23 alternative batterer's program.

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

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

33 (ii) The defendant has cooperated and participated in the  
34 batterer's program.

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

37 (iv) The defendant blames, degrades, or has committed acts that  
38 dehumanize the victim or puts at risk the victim's safety, including,  
39 but not limited to, molesting, stalking, striking, attacking,  
40 threatening, sexually assaulting, or battering the victim.

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

4 (vi) The defendant has made threats to harm anyone in any  
5 manner.

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

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

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

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

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

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

34 (B) That the defendant reimburse the victim for reasonable  
35 expenses that the court finds are the direct result of the defendant's  
36 offense.

37 For any order to pay a fine, to make payments to a battered  
38 women's shelter, or to pay restitution as a condition of probation  
39 under this subdivision, the court shall make a determination of the  
40 defendant's ability to pay. Determination of a defendant's ability

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

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

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

35 (1) The probation department shall make an investigation and  
36 take into consideration the defendant's age, medical history,  
37 employment and service records, educational background,  
38 community and family ties, prior incidents of violence, police  
39 report, treatment history, if any, demonstrable motivation, and  
40 other mitigating factors in determining which batterer's program

1 would be appropriate for the defendant. This information shall be  
2 provided to the batterer’s program if it is requested. The probation  
3 department shall also determine which community programs the  
4 defendant would benefit from and which of those programs would  
5 accept the defendant. The probation department shall report its  
6 findings and recommendations to the court.

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

18 (3) After the court orders the defendant to a batterer’s program,  
19 the probation department shall conduct an initial assessment of  
20 the defendant, including, but not limited to, all of the following:

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

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

37 (c) The court or the probation department shall refer defendants  
38 only to batterer’s programs that follow standards outlined in  
39 paragraph (1), which may include, but are not limited to, lectures,  
40 classes, group discussions, and counseling. The probation

1 department shall design and implement an approval and renewal  
2 process for batterer's programs and shall solicit input from criminal  
3 justice agencies and domestic violence victim advocacy programs.

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

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

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

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

16 (D) Procedures to inform the victim regarding the requirements  
17 for the defendant's participation in the intervention program as  
18 well as regarding available victim resources. The victim also shall  
19 be informed that attendance in any program does not guarantee  
20 that an abuser will not be violent.

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

23 (F) Educational programming that examines, at a minimum,  
24 gender roles, socialization, the nature of violence, the dynamics  
25 of power and control, and the effects of abuse on children and  
26 others.

27 (G) A requirement that excludes any couple counseling or family  
28 counseling, or both.

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

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

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

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

8 (L) A requirement that the defendant sign a confidentiality  
9 statement prohibiting disclosure of any information obtained  
10 through participating in the program or during group sessions  
11 regarding other participants in the program.

12 (M) Program content that provides cultural and ethnic  
13 sensitivity.

14 (N) A requirement of a written referral from the court or  
15 probation department prior to permitting the defendant to enroll  
16 in the program. The written referral shall state the number of  
17 minimum sessions required by the court.

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

20 (i) Proof of enrollment, to be submitted to the court and the  
21 probation department and to include the fee determined to be  
22 charged to the defendant, based upon the ability to pay, for each  
23 session.

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

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

31 (P) A sliding fee schedule based on the defendant's ability to  
32 pay. The batterer's program shall develop and utilize a sliding fee  
33 scale that recognizes both the defendant's ability to pay and the  
34 necessity of programs to meet overhead expenses. An indigent  
35 defendant may negotiate a deferred payment schedule, but shall  
36 pay a nominal fee, if the defendant has the ability to pay the  
37 nominal fee. Upon a hearing and a finding by the court that the  
38 defendant does not have the financial ability to pay the nominal  
39 fee, the court shall waive this fee. The payment of the fee shall be  
40 made a condition of probation if the court determines the defendant

1 has the present ability to pay the fee. The fee shall be paid during  
2 the term of probation unless the program sets other conditions.  
3 The acceptance policies shall be in accordance with the scaled fee  
4 system.

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

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

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

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

30 (A) The establishment of guidelines and criteria for education  
31 services, including standards of services that may include lectures,  
32 classes, and group discussions.

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

35 (C) Adequate reporting requirements to ensure that all persons  
36 who, after being ordered to attend and complete a program, may  
37 be identified for either failure to enroll in, or failure to successfully  
38 complete, the program or for the successful completion of the  
39 program as ordered. The program shall notify the court and the  
40 probation department, in writing, within the period of time and in

1 the manner specified by the court of any person who fails to  
2 complete the program. Notification shall be given if the program  
3 determines that the defendant is performing unsatisfactorily or if  
4 the defendant is not benefiting from the education, treatment, or  
5 counseling.

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

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

12 (5) The probation department shall have the sole authority to  
13 approve a batterer's program for probation. The program shall be  
14 required to obtain only one approval but shall renew that approval  
15 annually.

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

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

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

27 (iii) The onsite review of the program, including monitoring of  
28 a session to determine that the program adheres to applicable  
29 statutes and regulations.

30 (iv) The payment of the approval fee.

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

37 (C) The probation department has the sole authority to approve  
38 the issuance, denial, suspension, or revocation of approval and to  
39 cease new enrollments or referrals to a batterer's program under  
40 this section. The probation department shall review information

1 relative to a program's performance or failure to adhere to  
2 standards, or both. The probation department may suspend or  
3 revoke an approval issued under this subdivision or deny an  
4 application to renew an approval or to modify the terms and  
5 conditions of approval, based on grounds established by probation,  
6 including, but not limited to, either of the following:

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

9 (ii) Misrepresentation of any material fact in obtaining the  
10 approval.

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

16 (7) The program shall conduct an exit conference that assesses  
17 the defendant's progress during his or her participation in the  
18 batterer's program.

19 (d) An act or omission relating to the approval of a batterer's  
20 treatment ~~programs~~ *program* under paragraph (5) of subdivision  
21 (c) is a discretionary act pursuant to Section 820.2 of the  
22 Government Code.

23 SEC. 4. Section 1203.47 of the Penal Code is amended to read:

24 1203.47. (a) A person who was found to be a person described  
25 in Section 602 of the Welfare and Institutions Code by reason of  
26 the commission of an offense described in subdivision (b) of  
27 Section 647 or in Section 653.22 may, upon reaching 18 years of  
28 age, petition the court to have his or her record sealed, as provided  
29 in Section 781 of the Welfare and Institutions Code, except that,  
30 as pertaining to any records regarding the commission of an offense  
31 described in subdivision (b) of Section 647 or in Section 653.22,  
32 it shall not be a requirement in granting the petition for the person  
33 to show that he or she has not been convicted of a felony or of any  
34 misdemeanor involving moral turpitude, or that rehabilitation has  
35 been attained to the satisfaction of the court. Upon granting the  
36 petition, all records relating to the violation or violations of  
37 subdivision (b) of Section 647 or of Section 653.22, or both, shall  
38 be sealed pursuant to Section 781 of the Welfare and Institutions  
39 Code.

1 (b) The relief provided by this section does not apply to a person  
2 ~~convicted~~ *adjudicated* pursuant to subdivision (b) of Section 647  
3 or of Section 653.22 who paid money or any other valuable thing,  
4 or attempted to pay money or any other valuable thing, to any  
5 person for the purpose of prostitution as defined in subdivision (b)  
6 of Section 647.

7 (c) This section applies to ~~convictions and~~ adjudications that  
8 occurred before, as well as those that occur after, the effective date  
9 of this section.

10 (d) A petition granted pursuant to this section does not authorize  
11 the sealing of any part of a person's record that is unrelated to a  
12 violation of subdivision (b) of Section 647, Section 653.22, or  
13 both.

14 SEC. 5. Section 1233.1 of the Penal Code is amended to read:

15 1233.1. After the conclusion of each calendar year following  
16 the enactment of this section, the Director of Finance, in  
17 consultation with the Department of Corrections and Rehabilitation,  
18 the Joint Legislative Budget Committee, the Chief Probation  
19 Officers of California, and the Administrative Office of the Courts,  
20 shall calculate the following for that calendar year:

21 (a) The cost to the state to incarcerate in prison and supervise  
22 on parole a probationer sent to prison. This calculation shall take  
23 into consideration factors, including, but not limited to, the average  
24 length of stay in prison and on parole for probationers, as well as  
25 the associated parole revocation rates, and revocation costs.

26 (b) The statewide probation *failure* to prison rate. The statewide  
27 probation failure to prison rate shall be calculated as the total  
28 number of adult felony probationers statewide sent to prison in the  
29 previous year as a percentage of the average statewide adult felony  
30 probation population for that year.

31 (c) A probation failure to prison rate for each county. Each  
32 county's probation failure to prison rate shall be calculated as the  
33 number of adult felony probationers sent to prison from that county  
34 in the previous year as a percentage of the county's average adult  
35 felony probation population for that year.

36 (d) An estimate of the number of adult felony probationers each  
37 county successfully prevented from being sent to prison. For each  
38 county, this estimate shall be calculated based on the reduction in  
39 the county's probation failure to prison rate as calculated annually  
40 pursuant to subdivision (c) of this section and the county's baseline

1 probation failure rate as calculated pursuant to Section 1233. In  
2 making this estimate, the Director of Finance, in consultation with  
3 the Department of Corrections and Rehabilitation, the Joint  
4 Legislative Budget Committee, the Chief Probation Officers of  
5 California, and the Administrative Office of the Courts, shall adjust  
6 the calculations to account for changes in each county's adult  
7 felony probation caseload in the most recent completed calendar  
8 year as compared to the county's adult felony probation population  
9 during the period 2006 to 2008, inclusive.

10 (e) In calculating probation failure to prison rates for the state  
11 and individual counties, the number of adult felony probationers  
12 sent to prison shall include those adult felony probationers sent to  
13 state prison for a revocation of probation, as well as adult felony  
14 probationers sent to state prison for a conviction of a new felony  
15 offense. The calculation shall also include adult felony probationers  
16 who are sent to prison for conviction of a new crime and who  
17 simultaneously have their probation terms terminated.

18 SEC. 6. Section 1305.4 of the Penal Code is amended to read:

19 1305.4. Notwithstanding Section 1305, the surety insurer, the  
20 bail agent, the surety, or the depositor may file a motion, based  
21 upon good cause, for an order extending the 180-day period  
22 provided in that section. The motion shall include a declaration or  
23 affidavit that states the reasons showing good cause to extend that  
24 period. The court, upon a hearing and a showing of good cause,  
25 may order the period extended to a time not exceeding 180 days  
26 from its order. A motion may be filed and calendared as provided  
27 in subdivision ~~(i)~~ (j) of Section 1305. In addition to any other notice  
28 required by law, the moving party shall give the prosecuting agency  
29 a written notice at least 10 court days before a hearing held  
30 pursuant to this section as a condition precedent to granting the  
31 motion.

32 SEC. 7. Section 726 of the Welfare and Institutions Code is  
33 amended to read:

34 726. (a) In all cases in which a minor is adjudged a ward or  
35 dependent child of the court, the court may limit the control to be  
36 exercised over the ward or dependent child by any parent or  
37 guardian and shall in its order, clearly and specifically set forth all  
38 those limitations, but no ward or dependent child shall be taken  
39 from the physical custody of a parent or guardian, unless upon the  
40 hearing the court finds one of the following facts:

1 (1) That the parent or guardian is incapable of providing or has  
2 failed or neglected to provide proper maintenance, training, and  
3 education for the minor.

4 (2) That the minor has been tried on probation while in custody  
5 and has failed to reform.

6 (3) That the welfare of the minor requires that custody be taken  
7 from the minor’s parent or guardian.

8 (b) Whenever the court specifically limits the right of the parent  
9 or guardian to make educational or developmental services  
10 decisions for the minor, the court shall at the same time appoint a  
11 responsible adult to make educational or developmental services  
12 decisions for the child until one of the following occurs:

13 (1) The minor reaches 18 years of age, unless the child chooses  
14 not to make educational or developmental services decisions for  
15 himself or herself, or is deemed by the court to be incompetent.

16 (2) Another responsible adult is appointed to make educational  
17 or developmental services decisions for the minor pursuant to this  
18 section.

19 (3) The right of the parent or guardian to make educational or  
20 developmental services decisions for the minor is fully restored.

21 (4) A successor guardian or conservator is appointed.

22 (5) The child is placed into a planned permanent living  
23 arrangement pursuant to paragraph (5) or (6) of subdivision (b) of  
24 Section 727.3, at which time, for educational decisionmaking, the  
25 foster parent, relative caretaker, or nonrelative extended family  
26 member as defined in Section 362.7 has the right to represent the  
27 child in educational matters pursuant to Section 56055 of the  
28 Education Code, and for decisions relating to developmental  
29 services, unless the court specifies otherwise, the foster parent,  
30 relative caregiver, or nonrelative extended family member of the  
31 planned permanent living arrangement has the right to represent  
32 the child in matters related to developmental services.

33 (c) An individual who would have a conflict of interest in  
34 representing the child, as specified under federal regulations, may  
35 not be appointed to make educational decisions. The limitations  
36 applicable to conflicts of interest for educational rights holders  
37 shall also apply to authorized representatives for developmental  
38 services decisions pursuant to subdivision (b) of Section 4701.6.  
39 For purposes of this section, “an individual who would have a  
40 conflict of interest,” means a person having any interests that might

1 restrict or bias his or her ability to make educational or  
2 developmental services decisions, including, but not limited to,  
3 those conflicts of interest prohibited by Section 1126 of the  
4 Government Code, and the receipt of compensation or attorneys'  
5 fees for the provision of services pursuant to this section. A foster  
6 parent may not be deemed to have a conflict of interest solely  
7 because he or she receives compensation for the provision of  
8 services pursuant to this section.

9 (1) If the court limits the parent's educational rights pursuant  
10 to subdivision (a), the court shall determine whether there is a  
11 responsible adult who is a relative, nonrelative extended family  
12 member, or other adult known to the child and who is available  
13 and willing to serve as the child's educational representative before  
14 appointing an educational representative or surrogate who is not  
15 known to the child.

16 If the court cannot identify a responsible adult who is known to  
17 the child and available to make educational decisions for the child  
18 and ~~subparagraphs (A) to (E), inclusive, paragraphs (1) to (5),~~  
19 *inclusive, of subdivision (b)* do not apply, and the child has either  
20 been referred to the local educational agency for special education  
21 and related services, or has a valid individualized education  
22 program, the court shall refer the child to the local educational  
23 agency for appointment of a surrogate parent pursuant to Section  
24 7579.5 of the Government Code.

25 (2) All educational and school placement decisions shall seek  
26 to ensure that the child is in the least restrictive educational  
27 programs and has access to the academic resources, services, and  
28 extracurricular and enrichment activities that are available to all  
29 pupils. In all instances, educational and school placement decisions  
30 shall be based on the best interests of the child. If an educational  
31 representative or surrogate is appointed for the child, the  
32 representative or surrogate shall meet with the child, shall  
33 investigate the child's educational needs and whether those needs  
34 are being met, and shall, prior to each review hearing held under  
35 Article 10 (commencing with Section 360), provide information  
36 and recommendations concerning the child's educational needs to  
37 the child's social worker, make written recommendations to the  
38 court, or attend the hearing and participate in those portions of the  
39 hearing that concern the child's education.

1 (3) Nothing in this section in any way removes the obligation  
2 to appoint surrogate parents for students with disabilities who are  
3 without parental representation in special education procedures as  
4 required by state and federal law, including Section 1415(b)(2) of  
5 Title 20 of the United States Code, Section 56050 of the Education  
6 Code, Section 7579.5 of the Government Code, and Rule 5.650  
7 of the California Rules of Court.

8 If the court appoints a developmental services decisionmaker  
9 pursuant to this section, he or she shall have the authority to access  
10 the child’s information and records pursuant to subdivision (u) of  
11 Section 4514 and subdivision (y) of Section 5328, and to act on  
12 the child’s behalf for the purposes of the individual program plan  
13 process pursuant to Sections 4646, 4646.5, and 4648 and the fair  
14 hearing process pursuant to Chapter 7 (commencing with Section  
15 4700) of Division 4.5, and as set forth in the court order.

16 (d) If the minor is removed from the physical custody of his or  
17 her parent or guardian as the result of an order of wardship made  
18 pursuant to Section 602, the order shall specify that the minor may  
19 not be held in physical confinement for a period in excess of the  
20 maximum term of imprisonment which could be imposed upon an  
21 adult convicted of the offense or offenses which brought or  
22 continued the minor under the jurisdiction of the juvenile court.

23 As used in this section and in Section 731, “maximum term of  
24 imprisonment” means the longest of the three time periods set  
25 forth in paragraph (2) of subdivision (a) of Section 1170 of the  
26 Penal Code, but without the need to follow the provisions of  
27 subdivision (b) of Section 1170 of the Penal Code or to consider  
28 time for good behavior or participation pursuant to Sections 2930,  
29 2931, and 2932 of the Penal Code, plus enhancements which must  
30 be proven if pled.

31 If the court elects to aggregate the period of physical confinement  
32 on multiple counts or multiple petitions, including previously  
33 sustained petitions adjudging the minor a ward within Section 602,  
34 the “maximum term of imprisonment” shall be the aggregate term  
35 of imprisonment specified in subdivision (a) of Section 1170.1 of  
36 the Penal Code, which includes any additional term imposed  
37 pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal  
38 Code, and Section 11370.2 of the Health and Safety Code.

39 If the charged offense is a misdemeanor or a felony not included  
40 within the scope of Section 1170 of the Penal Code, the “maximum

1 term of imprisonment” is the longest term of imprisonment  
2 prescribed by law.

3 “Physical confinement” means placement in a juvenile hall,  
4 ranch, camp, forestry camp or secure juvenile home pursuant to  
5 Section 730, or in any institution operated by the Youth Authority.

6 This section does not limit the power of the court to retain  
7 jurisdiction over a minor and to make appropriate orders pursuant  
8 to Section 727 for the period permitted by Section 607.

9 SEC. 8. Any section of any act enacted by the Legislature  
10 during the 2013 calendar year that takes effect on or before January  
11 1, 2014, and that amends, amends and renumbers, adds, repeals  
12 and adds, or repeals a section that is amended, amended and  
13 renumbered, added, repealed and added, or repealed by this act,  
14 shall prevail over this act, whether that act is enacted prior to, or  
15 subsequent to, the enactment of this act. The repeal, or repeal and  
16 addition, of any article, chapter, part, title, or division of any code  
17 by this act shall not become operative if any section of any other  
18 act that is enacted by the Legislature during the 2013 calendar year  
19 and takes effect on or before January 1, 2014, amends, amends  
20 and renumbers, adds, repeals and adds, or repeals any section  
21 contained in that article, chapter, part, title, or division.