

Senate Bill No. 514

Passed the Senate May 20, 2013

Secretary of the Senate

Passed the Assembly June 24, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 289.6, 781, 1203.097, 1203.47, 1233.1, 1305.4, 2900.5, 13522, and 13523 of, and to add Sections 13507.1 and 13526.3 to, the Penal Code, and to amend Section 726 of the Welfare and Institutions Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 514, 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 programs 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 to 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 requires that in all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, all specified days of custody of the defendant be credited upon his or her term of imprisonment, or credited to any fine on a proportional basis, including, but not limited to, base fines and restitution fines, which may be imposed, at the rate of not less than \$30 per day, or more, in the discretion of the court imposing the sentence. Existing law requires that in any case where the court has imposed both a prison or jail term and a fine, any days to be credited to the defendant first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, be applied to the fine, including, but not limited to, a base fine and a restitution fine, on a proportional basis.

This bill would delete restitution fines from the preceding provisions, thereby prohibiting a defendant from applying any credit earned for spending specified days in custody, jail, or prison toward restitution fines.

(8) Existing law requires any city, county, city and county, or district that desires to receive specified state aid to make application to the Commission on Peace Officer Standards and Training for the aid. That aid is paid out of the Peace Officers' Training Fund, a continuously appropriated fund. Under existing law, the public agencies comprising a joint powers agency may jointly exercise any power common to the public agencies.

This bill would specify that any joint powers agency that desires to receive specified state aid also make application to the commission for the aid. The bill would clarify that a joint powers agency may be paid directly from the fund, and the bill would also make conforming changes to those provisions.

(9) 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, including, that the minor has been tried on probation while in custody but has failed to reform.

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, that the court 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.

(10) 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.

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

SECTION 1. Section 289.6 of the Penal Code is amended to read:

289.6. (a) (1) An employee or officer of a public entity health facility, or an employee, officer, or agent of a private person or entity that provides a health facility or staff for a health facility under contract with a public entity, who engages in sexual activity with a consenting adult who is confined in a health facility is guilty of a public offense. As used in this paragraph, “health facility” means a health facility as defined in subdivisions (b), (e), (g), (h), and (j) of, and subparagraph (C) of paragraph (2) of subdivision (i) of, Section 1250 of the Health and Safety Code, in which the victim has been confined involuntarily.

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

(3) An employee with a department, board, or authority under the Department of Corrections and Rehabilitation or a facility

under contract with a department, board, or authority under the Department of Corrections and Rehabilitation, who, during the course of his or her employment directly provides treatment, care, control, or supervision of inmates, wards, or parolees, and who engages in sexual activity with a consenting adult who is an inmate, ward, or parolee, is guilty of a public offense.

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

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

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

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

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

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

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

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

(1) Sexual intercourse.

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

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

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

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

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

(f) This section does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit

that takes place pursuant to a court order or with the written approval of an authorized representative of the public entity that operates or contracts for the operation of the detention facility where the conjugal visit takes place, to physical contact or penetration made pursuant to a lawful search, or bona fide medical examinations or treatments, including clinical treatments.

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

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

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

(j) Anyone who is convicted of a felony violation of this section 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 (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code). Anyone who has been convicted of a felony violation of this section shall not be eligible to be hired or reinstated by a department, board, or authority within the Youth and Adult Correctional Agency.

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

781. Except as provided in Section 923, 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 two or more jurisdictional territories, the jurisdiction for the offense is in any competent court within either jurisdictional territory.

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

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

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

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

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

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

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

(B) Two-thirds of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to one-third of funds collected during the preceding month. Moneys deposited into these funds pursuant to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

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

(ii) Funds from the Domestic Violence Training and Education Fund shall support a statewide training and education program to increase public awareness of domestic violence and to improve

the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Public Health, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from

counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to, any violence by the defendant against the former or a new victim while on probation and noncompliance with any other specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

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

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

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

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

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

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

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

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

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

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

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

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as

well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of

corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

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

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

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

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

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

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

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

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

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

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

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

(iv) The payment of the approval fee.

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

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

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

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

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

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

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

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

1203.47. (a) A person who was found to be a person described in Section 602 of the Welfare and Institutions Code by reason of the commission of an offense described in subdivision (b) of Section 647 or in Section 653.22 may, upon reaching 18 years of age, petition the court to have his or her record sealed, as provided in Section 781 of the Welfare and Institutions Code, except that, as pertaining to any records regarding the commission of an offense described in subdivision (b) of Section 647 or in Section 653.22, it shall not be 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. Upon granting the petition, all records relating to the violation or violations of subdivision (b) of Section 647 or of Section 653.22, or both, shall be sealed pursuant to Section 781 of the Welfare and Institutions Code.

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

(c) This section applies to adjudications that occurred before, as well as those that occur after, the effective date of this section.

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

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

1233.1. After the conclusion of each calendar year following the enactment of this section, the Director of Finance, 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, shall calculate the following for that calendar year:

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

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

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

(d) An estimate of the number of adult felony probationers each county successfully prevented from being sent to prison. For each county, this estimate shall be calculated based on the reduction in the county's probation failure to prison rate as calculated annually pursuant to subdivision (c) of this section and the county's baseline probation failure rate as calculated pursuant to Section 1233. In making this estimate, the Director of Finance, 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, shall adjust the calculations to account for changes in each county's adult felony probation caseload in the most recent completed calendar year as compared to the county's adult felony probation population during the period 2006 to 2008, inclusive.

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

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

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

SEC. 7. Section 2900.5 of the Penal Code is amended to read:

2900.5. (a) In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, credited to the period of confinement pursuant to Section 4019, and days served in home detention pursuant to Section 1203.018, shall be credited upon his or her term of imprisonment, or credited to any fine, including, but not limited to, base fines, on a proportional basis, that may be imposed, at the rate of not less than thirty dollars (\$30) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine, including, but not limited to, base fines, on a proportional basis.

(b) For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of

custody attributable to multiple offenses for which a consecutive sentence is imposed.

(c) For the purposes of this section, “term of imprisonment” includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence, and also includes any term of imprisonment, including any period of imprisonment prior to release on parole and any period of imprisonment and parole, prior to discharge, whether established or fixed by statute, by any court, or by any duly authorized administrative agency.

(d) It shall be the duty of the court imposing the sentence to determine the date or dates of any admission to, and release from, custody prior to sentencing and the total number of days to be credited pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment provided for in Section 1213.

(e) It shall be the duty of any agency to which a person is committed to apply the credit provided for in this section for the period between the date of sentencing and the date the person is delivered to the agency.

(f) If a defendant serves time in a camp, work furlough facility, halfway house, rehabilitation facility, hospital, juvenile detention facility, similar residential facility, or home detention program pursuant to Section 1203.016, 1203.017, or 1203.018, in lieu of imprisonment in a county jail, and the statute under which the defendant is sentenced requires a mandatory minimum period of time in jail, the time spent in these facilities or programs shall qualify as mandatory time in jail.

(g) Notwithstanding any other provision of this code as it pertains to the sentencing of convicted offenders, nothing in this section is to be construed as authorizing the sentencing of convicted offenders to any of the facilities or programs mentioned herein.

SEC. 8. Section 13507.1 is added to the Penal Code, to read:

13507.1. As used in this chapter, “joint powers agency” means any agency, entity, or authority formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code.

SEC. 9. Section 13522 of the Penal Code is amended to read:

13522. Any city, county, city and county, district, or joint powers agency, that desires to receive state aid pursuant to this

chapter shall make application to the commission for the aid. The initial application shall be accompanied by a certified copy of an ordinance, or in the case of the University of California, the California State University, and agencies not authorized to act by ordinance, by a resolution, adopted by its governing body providing that while receiving any state aid pursuant to this chapter, the city, county, city and county, district, or joint powers agency will adhere to the standards for recruitment and training established by the commission. The application shall contain any information the commission may request.

SEC. 10. Section 13523 of the Penal Code is amended to read:

13523. (a) The commission shall annually allocate and the State Treasurer shall periodically pay from the Peace Officers' Training Fund, at intervals specified by the commission, to each city, county, district, or joint powers agency, that has applied and qualified for aid pursuant to this chapter an amount determined by the commission pursuant to standards set forth in its regulations. The commission shall grant aid only on a basis that is equally proportionate among cities, counties, districts, and joint powers agencies. State aid shall only be provided for training expenses of full-time regularly paid employees, as defined by the commission, of eligible agencies from cities, counties, districts, or joint powers agencies.

(b) In no event shall any allocation be made to any city, county, district, or joint power agency that is not adhering to the standards established by the commission as applicable to that city, county, district, or joint powers agency.

SEC. 11. Section 13526.3 is added to the Penal Code, to read:

13526.3. Notwithstanding Section 13526, for the purposes of this chapter, joint powers agencies formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code shall be entitled to receive funding from the Peace Officers' Training Fund. This section is declaratory of existing law.

SEC. 12. Section 726 of the Welfare and Institutions Code is amended to read:

726. (a) In all cases in which a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over the ward or dependent child by any parent or guardian and shall in its order, clearly and specifically set forth all

those limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of the following facts:

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

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

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

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

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

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

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

(4) A successor guardian or conservator is appointed.

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

(c) An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational decisions. The limitations applicable to conflicts of interest for educational rights holders shall also apply to authorized representatives for developmental

services decisions pursuant to subdivision (b) of Section 4701.6. For purposes of this section, “an individual who would have a conflict of interest,” means a person having any interests that might restrict or bias his or her ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys’ fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

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

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

(2) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child’s educational needs and whether those needs are being met, and shall, prior to each review hearing held under Article 10 (commencing with Section 360), provide information and recommendations concerning the child’s educational needs to the child’s social worker, make written recommendations to the

court, or attend the hearing and participate in those portions of the hearing that concern the child’s education.

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

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

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

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

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

If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the “maximum term of imprisonment” is the longest term of imprisonment prescribed by law.

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

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

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

Approved _____, 2013

Governor