

**Introduced by Senator Roth**

January 15, 2016

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An act to amend Section 1203.097 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 883, as introduced, Roth. Domestic violence: probation.

Existing law specifies that the terms of probation granted to a person who has been convicted of domestic violence, are required to include, among other things, a minimum period of probation of 36 months, notice to the victim of the disposition of the case, and successful completion of a batterer's program, as defined, or, if such a program is not available, another appropriate counseling program designated by the court, for a period of not less than one year. Existing law provides for the approval of batterers' programs by the probation department.

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

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

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

- 1 SECTION 1. Section 1203.097 of the Penal Code is amended
- 2 to read:
- 3 1203.097. (a) If a person is granted probation for a crime in
- 4 which the victim is a person defined in Section 6211 of the Family
- 5 Code, the terms of probation shall include all of the following:
- 6 (1) A minimum period of probation of 36 months, which may
- 7 include a period of summary probation as appropriate.

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

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

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

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

14 (B) Two-thirds of the moneys deposited with the county  
15 treasurer pursuant to this section shall be retained by counties and  
16 deposited in the domestic violence programs special fund created  
17 pursuant to Section 18305 of the Welfare and Institutions Code,  
18 to be expended for the purposes of Chapter 5 (commencing with  
19 Section 18290) of Part 6 of Division 9 of the Welfare and  
20 Institutions Code. Of the moneys deposited in the domestic  
21 violence programs special fund, no more than 8 percent may be  
22 used for administrative costs, as specified in Section 18305 of the  
23 Welfare and Institutions Code.

24 (C) The remaining one-third of the moneys shall be transferred,  
25 once a month, to the Controller for deposit in equal amounts in  
26 the Domestic Violence Restraining Order Reimbursement Fund  
27 and in the Domestic Violence Training and Education Fund, which  
28 are hereby created, in an amount equal to one-third of funds  
29 collected during the preceding month. Moneys deposited into these  
30 funds pursuant to this section shall be available upon appropriation  
31 by the Legislature and shall be distributed each fiscal year as  
32 follows:

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

1 of Justice, for the development and maintenance of the domestic  
2 violence restraining order databank system.

3 (ii) Funds from the Domestic Violence Training and Education  
4 Fund shall support a statewide training and education program to  
5 increase public awareness of domestic violence and to improve  
6 the scope and quality of services provided to the victims of  
7 domestic violence. Grants to support this program shall be awarded  
8 on a competitive basis and be administered by the State Department  
9 of Public Health, in consultation with the statewide domestic  
10 violence coalition, which is eligible to receive funding under this  
11 section.

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

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

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

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

35 (ii) The terms of probation for offenders shall not be lifted until  
36 all reasonable fees due to the counseling program have been paid  
37 in full, but in no case shall probation be extended beyond the term  
38 provided in subdivision (a) of Section 1203.1. If the court finds  
39 that the defendant does not have the ability to pay the fees based

1 on the defendant's changed circumstances, the court may reduce  
2 or waive the fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 For any order to pay a fine, to make payments to a battered  
33 women's shelter, or to pay restitution as a condition of probation  
34 under this subdivision, the court shall make a determination of the  
35 defendant's ability to pay. Determination of a defendant's ability  
36 to pay may include his or her future earning capacity. A defendant  
37 shall bear the burden of demonstrating lack of his or her ability to  
38 pay. Express findings by the court as to the factors bearing on the  
39 amount of the fine shall not be required. In no event shall any order  
40 to make payments to a battered women's shelter be made if it

1 would impair the ability of the defendant to pay direct restitution  
2 to the victim or court-ordered child support. When the injury to a  
3 married person is caused, in whole or in part, by the criminal acts  
4 of his or her spouse in violation of this section, the community  
5 property shall not be used to discharge the liability of the offending  
6 spouse for restitution to the injured spouse, as required by Section  
7 1203.04, as operative on or before August 2, 1995, or Section  
8 1202.4, or to a shelter for costs with regard to the injured spouse,  
9 until all separate property of the offending spouse is exhausted.

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

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

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

1 accept the defendant. The probation department shall report its  
2 findings and recommendations to the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (K) A requirement that the defendant enter into a written  
39 agreement with the program, which shall include an outline of the  
40 contents of the program, the attendance requirements, the

1 requirement to attend group sessions free of chemical influence,  
2 and a statement that the defendant may be removed from the  
3 program if it is determined that the defendant is not benefiting  
4 from the program or is disruptive to the program.

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

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

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

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

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

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

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

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

1 The acceptance policies shall be in accordance with the scaled fee  
2 system.

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

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

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

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

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

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

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

1 determines that the defendant is performing unsatisfactorily or if  
2 the defendant is not benefiting from the education, treatment, or  
3 counseling.

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

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

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

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

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

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

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

28 (iv) The payment of the approval fee.

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

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

1 revoke an approval issued under this subdivision or deny an  
2 application to renew an approval or to modify the terms and  
3 conditions of approval, based on grounds established by probation,  
4 including, but not limited to, either of the following:  
5 (i) Violation of this section by any person holding approval or  
6 by a program employee in a program under this section.  
7 (ii) Misrepresentation of any material fact in obtaining the  
8 approval.  
9 (6) For defendants who are chronic users or serious abusers of  
10 drugs or alcohol, standard components in the program shall include  
11 concurrent counseling for substance abuse and violent behavior,  
12 and in appropriate cases, detoxification and abstinence from the  
13 abused substance.  
14 (7) The program shall conduct an exit conference that assesses  
15 the defendant's progress during his or her participation in the  
16 batterer's program.  
17 (d) An act or omission relating to the approval of a batterer's  
18 ~~treatment-program~~ *program* under paragraph (5) of subdivision  
19 (c) is a discretionary act pursuant to Section 820.2 of the  
20 Government Code.