

**Introduced by Senator Roth**

January 15, 2016

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An act to amend Section ~~1203.097~~ 166 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 883, as amended, Roth. Domestic violence: ~~probation~~. *protective orders*.

*Existing law generally punishes the willful disobedience of a court order as contempt of court by imprisonment in a county jail for a term not exceeding 6 months, a fine not exceeding \$1,000, or both that imprisonment and fine. Existing law makes the willful and knowing violation of specified protective orders or stay-away court orders punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than \$1,000, or by both that imprisonment and fine for a first offense, and makes a 2nd or subsequent conviction for a violation of these specified protective orders or stay-away court orders occurring within 7 years of a prior conviction and involving an act of violence or credible threat of violence punishable as either a misdemeanor or a felony. If probation is granted upon conviction of a willful and knowing violation of these specified protective orders or stay-away court orders, existing law requires the court to impose a minimum period of probation of 36 months, a criminal protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, a minimum fine of \$500, successful completion of a batterer's program, and a specified amount of appropriate community service, among other requirements.*

*Under existing law, any person who willfully inflicts corporal injury resulting in a traumatic condition upon a spouse or former spouse, cohabitant or former cohabitant, fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, or the mother or father of the offender's child, is guilty of a felony or a misdemeanor. Upon a conviction under that provision, existing law authorizes the sentencing court to issue an order restraining the defendant from any contact with the victim for up to 10 years.*

*Under existing law, any person who willfully, maliciously, or repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking, punishable as a felony or a misdemeanor. Upon conviction under that provision, existing law authorizes the sentencing court to issue an order restraining the defendant from any contact with the victim for up to 10 years.*

*This bill would make a willful and knowing violation of the above protective orders issued for the conviction of inflicting a corporal injury resulting in a traumatic condition or stalking punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$1,000, or by both that imprisonment and fine. The bill would make a 2nd or subsequent violation occurring within 7 years involving an act of violence or a credible threat of violence punishable as a felony or a misdemeanor. If probation is granted for a violation of these protective orders, the bill would require the court to impose a minimum period of probation of 36 months, a criminal protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, a minimum fine of \$500, successful completion of a batterer's program, and a specified amount of appropriate community service, among other requirements. By increasing the punishment for a crime, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~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~~yes.  
State-mandated local program: ~~no~~yes.

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

1 SECTION 1. Section 166 of the Penal Code is amended to  
2 read:

3 166. (a) Except as provided in subdivisions (b), (c), and (d),  
4 a person guilty of any of the following contempts of court is guilty  
5 of a misdemeanor:

6 (1) Disorderly, contemptuous, or insolent behavior committed  
7 during the sitting of a court of justice, in the immediate view and  
8 presence of the court, and directly tending to interrupt its  
9 proceedings or to impair the respect due to its authority.

10 (2) Behavior specified in paragraph (1) that is committed in the  
11 presence of a referee, while actually engaged in a trial or hearing,  
12 pursuant to the order of a court, or in the presence of any jury while  
13 actually sitting for the trial of a cause, or upon an inquest or other  
14 proceeding authorized by law.

15 (3) A breach of the peace, noise, or other disturbance directly  
16 tending to interrupt the proceedings of the court.

17 (4) Willful disobedience of the terms as written of any process  
18 or court order or out-of-state court order, lawfully issued by a  
19 court, including orders pending trial.

20 (5) Resistance willfully offered by any person to the lawful  
21 order or process of a court.

22 (6) The contumacious and unlawful refusal of a person to be  
23 sworn as a witness or, when so sworn, the like refusal to answer  
24 a material question.

25 (7) The publication of a false or grossly inaccurate report of the  
26 proceedings of a court.

27 (8) Presenting to a court having power to pass sentence upon a  
28 prisoner under conviction, or to a member of the court, an affidavit,

1 testimony, or representation of any kind, verbal or written, in  
2 aggravation or mitigation of the punishment to be imposed upon  
3 the prisoner, except as provided in this code.

4 (9) Willful disobedience of the terms of an injunction that  
5 restrains the activities of a criminal street gang or any of its  
6 members, lawfully issued by a court, including an order pending  
7 trial.

8 (b) (1) A person who is guilty of contempt of court under  
9 paragraph (4) of subdivision (a) by willfully contacting a victim  
10 by telephone or mail, or directly, and who has been previously  
11 convicted of a violation of Section 646.9 shall be punished by  
12 imprisonment in a county jail for not more than one year, by a fine  
13 of five thousand dollars (\$5,000), or by both that fine and  
14 imprisonment.

15 (2) For the purposes of sentencing under this subdivision, each  
16 contact shall constitute a separate violation of this subdivision.

17 (3) The present incarceration of a person who makes contact  
18 with a victim in violation of paragraph (1) is not a defense to a  
19 violation of this subdivision.

20 (c) (1) Notwithstanding paragraph (4) of subdivision (a), a  
21 willful and knowing violation of a protective order or stay-away  
22 court order described as follows shall constitute contempt of court,  
23 a misdemeanor, punishable by imprisonment in a county jail for  
24 not more than one year, by a fine of not more than one thousand  
25 dollars (\$1,000), or by both that imprisonment and fine:

26 (A) An order issued pursuant to Section 136.2.

27 (B) An order issued pursuant to paragraph (2) of subdivision  
28 (a) of Section 1203.097.

29 (C) An order issued after a conviction in a criminal proceeding  
30 involving elder or dependent adult abuse, as defined in Section  
31 368.

32 (D) An order issued pursuant to Section 1201.3.

33 (E) An order described in paragraph (3).

34 (F) *An order issued pursuant to subdivision (j) of Section 273.5.*

35 (G) *An order issued pursuant to subdivision (k) of Section 646.9.*

36 (2) If a violation of paragraph (1) results in a physical injury,  
37 the person shall be imprisoned in a county jail for at least 48 hours,  
38 whether a fine or imprisonment is imposed, or the sentence is  
39 suspended.

40 (3) Paragraphs (1) and (2) apply to the following court orders:

1 (A) An order issued pursuant to Section 6320 or 6389 of the  
2 Family Code.

3 (B) An order excluding one party from the family dwelling or  
4 from the dwelling of the other.

5 (C) An order enjoining a party from specified behavior that the  
6 court determined was necessary to effectuate the orders described  
7 in paragraph (1).

8 (4) A second or subsequent conviction for a violation of an order  
9 described in paragraph (1) occurring within seven years of a prior  
10 conviction for a violation of any of those orders and involving an  
11 act of violence or “a credible threat” of violence, as provided in  
12 subdivision (c) of Section 139, is punishable by imprisonment in  
13 a county jail not to exceed one year, or in the state prison for 16  
14 months or two or three years.

15 (5) The prosecuting agency of each county shall have the  
16 primary responsibility for the enforcement of the orders described  
17 in paragraph (1).

18 (d) (1) A person who owns, possesses, purchases, or receives  
19 a firearm knowing he or she is prohibited from doing so by the  
20 provisions of a protective order as defined in Section 136.2 of this  
21 code, Section 6218 of the Family Code, or Section 527.6 or 527.8  
22 of the Code of Civil Procedure, shall be punished under Section  
23 29825.

24 (2) A person subject to a protective order described in paragraph  
25 (1) shall not be prosecuted under this section for owning,  
26 possessing, purchasing, or receiving a firearm to the extent that  
27 firearm is granted an exemption pursuant to subdivision (h) of  
28 Section 6389 of the Family Code.

29 (e) (1) If probation is granted upon conviction of a violation of  
30 subdivision (c), the court shall impose probation consistent with  
31 Section 1203.097.

32 (2) If probation is granted upon conviction of a violation of  
33 subdivision (c), the conditions of probation may include, in lieu  
34 of a fine, one or both of the following requirements:

35 (A) That the defendant make payments to a battered women’s  
36 shelter, up to a maximum of one thousand dollars (\$1,000).

37 (B) That the defendant provide restitution to reimburse the  
38 victim for reasonable costs of counseling and other reasonable  
39 expenses that the court finds are the direct result of the defendant’s  
40 offense.

1 (3) For an order to pay a fine, make payments to a battered  
2 women's shelter, or pay restitution as a condition of probation  
3 under this subdivision or subdivision (c), the court shall make a  
4 determination of the defendant's ability to pay. In no event shall  
5 an order to make payments to a battered women's shelter be made  
6 if it would impair the ability of the defendant to pay direct  
7 restitution to the victim or court-ordered child support.

8 (4) If the injury to a married person is caused in whole, or in  
9 part, by the criminal acts of his or her spouse in violation of  
10 subdivision (c), the community property shall not be used to  
11 discharge the liability of the offending spouse for restitution to the  
12 injured spouse required by Section 1203.04, as operative on or  
13 before August 2, 1995, or Section 1202.4, or to a shelter for costs  
14 with regard to the injured spouse and dependents required by this  
15 subdivision, until all separate property of the offending spouse is  
16 exhausted.

17 (5) A person violating an order described in subdivision (c) may  
18 be punished for any substantive offenses described under Section  
19 136.1 or 646.9. A finding of contempt shall not be a bar to  
20 prosecution for a violation of Section 136.1 or 646.9. However, a  
21 person held in contempt for a violation of subdivision (c) shall be  
22 entitled to credit for any punishment imposed as a result of that  
23 violation against any sentence imposed upon conviction of an  
24 offense described in Section 136.1 or 646.9. A conviction or  
25 acquittal for a substantive offense under Section 136.1 or 646.9  
26 shall be a bar to a subsequent punishment for contempt arising out  
27 of the same act.

28 *SEC. 2. No reimbursement is required by this act pursuant to*  
29 *Section 6 of Article XIII B of the California Constitution because*  
30 *the only costs that may be incurred by a local agency or school*  
31 *district will be incurred because this act creates a new crime or*  
32 *infraction, eliminates a crime or infraction, or changes the penalty*  
33 *for a crime or infraction, within the meaning of Section 17556 of*  
34 *the Government Code, or changes the definition of a crime within*  
35 *the meaning of Section 6 of Article XIII B of the California*  
36 *Constitution.*

37 ~~SECTION 1. Section 1203.097 of the Penal Code is amended~~  
38 ~~to read:~~

1 1203.097.— (a) If a person is granted probation for a crime in  
2 which the victim is a person defined in Section 6211 of the Family  
3 Code, the terms of probation shall include all of the following:

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

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

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

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

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

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

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

38 (i) Funds from the Domestic Violence Restraining Order  
39 Reimbursement Fund shall be distributed to local law enforcement  
40 or other criminal justice agencies for state-mandated local costs

1 resulting from the notification requirements set forth in subdivision  
2 (b) of Section 6380 of the Family Code, based on the annual  
3 notification from the Department of Justice of the number of  
4 restraining orders issued and registered in the state domestic  
5 violence restraining order registry maintained by the Department  
6 of Justice, for the development and maintenance of the domestic  
7 violence restraining order databank system.

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

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

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

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 (e) 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 sealed 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 program under paragraph (5) of subdivision (c) is a~~  
21 ~~discretionary act pursuant to Section 820.2 of the Government~~  
22 ~~Code.~~