

**ASSEMBLY BILL**

**No. 2898**

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**Introduced by Assembly Member Bowler**

February 22, 1996

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An act to amend Section 704.090 of the Code of Civil Procedure, to amend Sections 13960, 13962, 13963, 13965, 13966.01, 13967.2, 13967.5, 13968, 13969.3, and 13969.4 of the Government Code, to amend Section 4903 of the Labor Code, to amend Sections 166, 243, 262, 273.5, 273.6, 484.1, 1203.044, 1203.097, 1203.1, 1205, 1205.3, 1214, 1463.18, 1464, and 2900.5 of, and to repeal Section 1205.5 of, the Penal Code, to amend Section 42003 of the Vehicle Code, and to amend Sections 653.5, 654.3, 656, 729.7, 730.6, 1752.82, and 1766.1 of the Welfare and Institutions Code, relating to victims of crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2898, as introduced, Bowler. Victims of crime.

Existing law authorizes the State Board of Control to provide assistance to victims of crime for the pecuniary losses they suffer as a direct result of criminal acts.

This bill would revise the definition of the term "injury" and would define the term "medical related expenses" for these purposes. This bill would, among other things, require the applicant to establish by a preponderance of the evidence that his or her application meets the statutory requirements; revise certain practices of the State Board of Control with regard to these provisions; and make technical changes.

Existing law authorizes courts to issue bench warrants for the failure to pay a fine and allows for imprisonment until the fine is satisfied.

This bill would make various changes to existing law regarding restitution orders and fines. Among other changes, this bill would provide that when a bench warrant issued for the nonpayment of base fines, any outstanding restitution fines are to be included; restitution fines have an unlimited life; a separate hearing is not required by the court setting the amount of a restitution fine; and that the defendant bears the burden of demonstrating the lack of his or her ability to pay.

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

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

1 SECTION 1. Section 704.090 of the Code of Civil  
2 Procedure is amended to read:

3 704.090. The funds of a judgment debtor confined in  
4 a prison or facility under the jurisdiction of the  
5 Department of Corrections or the Department of the  
6 Youth Authority or confined in any county or city jail,  
7 road camp, industrial farm, or other local correctional  
8 facility, held in trust for or to the credit of the judgment  
9 debtor, in an inmate's trust account or similar account by  
10 the state, county, or city, or any agency thereof, are  
11 exempt, *with the exception of restitution fines or*  
12 *restitution orders imposed pursuant to subdivision (a) or*  
13 *(c) of Section 13967 of the Government Code, as*  
14 *operative on or before September 28, 1994, or Section*  
15 *1203.04 of the Penal Code, as operative on or before*  
16 *August 2, 1995, or Section 1202.4 of the Penal Code,*  
17 without making a claim in the amount of one thousand  
18 dollars (\$1,000). If the judgment debtor is married, each  
19 spouse is entitled to a separate exemption under this  
20 section or the spouses may combine their exemptions.

21 SEC. 2. Section 13960 of the Government Code is  
22 amended to read:

23 13960. As used in this article:



1 (a) (1) “Victim” means a resident of the State of  
2 California, a member of the military stationed in  
3 California, or a family member living with a member of  
4 the military stationed in California who sustains injury or  
5 death as a direct result of a crime.

6 (2) “Derivative victim” means a resident of California  
7 who is one of the following:

8 (A) At the time of the crime was the parent, sibling,  
9 spouse, or child of the victim.

10 (B) At the time of the crime was living in the  
11 household of the victim.

12 (C) A person who had previously lived in the  
13 household of the victim for a period of not less than two  
14 years in a relationship substantially similar to a  
15 relationship listed in subparagraph (A).

16 (D) Is another family member of the victim, including  
17 the victim’s fiance, and witnessed the crime.

18 (b) “Injury” includes physical or emotional injury, or  
19 both. However, this article does not apply to emotional  
20 injury unless that injury is incurred by a victim who also  
21 sustains physical injury or threat of physical injury. For  
22 purposes of this article, a victim of a crime committed in  
23 violation of Section 261, ~~270, 270a, 270e, 271, 272, 273a,~~  
24 ~~273b,~~ 273d, 285, 286, 288, ~~288.1,~~ 288a, or 289 of the Penal  
25 Code, who sustains emotional injury is presumed to have  
26 sustained physical injury. *For purposes of this article, a*  
27 *victim of a crime committed in violation of Section 270,*  
28 *271, or 273a of the Penal Code who sustains emotional*  
29 *injury is presumed to have sustained physical injury if*  
30 *criminal charges were filed by the prosecuting attorney.*

31 (c) “Crime” means a crime or public offense that  
32 would constitute a misdemeanor or a felony if committed  
33 in California by a competent adult which results in injury  
34 to a resident of this state, including a crime or public  
35 offense, wherever it may take place, when the resident is  
36 temporarily absent from the state. No act involving the  
37 operation of a motor vehicle, aircraft, or water vehicle  
38 which results in injury or death constitutes a crime for the  
39 purposes of this article, except that a crime shall include  
40 any of the following:

1 (1) Injury or death intentionally inflicted through the  
2 use of a motor vehicle, aircraft, or water vehicle.

3 (2) Injury or death caused by a driver in violation of  
4 Section 20001 of the Vehicle Code.

5 (3) Injury or death caused by a person who is under  
6 the influence of any alcoholic beverage or drug.

7 (4) Injury or death caused by a driver of a motor  
8 vehicle in the immediate act of fleeing the scene of a  
9 crime in which he or she knowingly and willingly  
10 participated.

11 For the purpose of the limitations imposed by this  
12 article, a crime shall mean one act or series of related acts  
13 arising from the same course of conduct with the same  
14 perpetrator or perpetrators.

15 (d) “Pecuniary loss” means the following expenses for  
16 which the victim or derivative victim has not been and  
17 will not be reimbursed from any other source:

18 (1) The amount of medical or medical-related  
19 expenses incurred by the victim, including in-patient  
20 psychological or psychiatric expenses, and including, but  
21 not limited to, eyeglasses, hearing aids, dentures, or any  
22 prosthetic device taken, lost, or destroyed during the  
23 commission of the crime, or the use of which became  
24 necessary as a direct result of the crime. *“Medical-related  
25 expenses” as used in this paragraph means those expenses  
26 incurred for goods or services that are prescribed by a  
27 licensed medical provider and that are of a kind primarily  
28 used to treat, alleviate, or accommodate a medical  
29 condition. Medical-related expenses shall include, but not  
30 be limited to, the purchase of eyeglasses, hearing aids,  
31 dentures, or any prosthetic device.*

32 (2) The amount of out-patient mental health  
33 counseling related expenses which became necessary as  
34 a direct result of the crime. These counseling services  
35 may *only* be reimbursed if provided by a person licensed  
36 *or registered* as a clinical social worker or a person  
37 licensed *or registered* as a marriage, family, and child  
38 counselor practicing within the scope of licensure *or  
39 registration*, or within the scope of his or her respective



1 practice acts, *pursuant to the laws of this state or of the*  
2 *state in which the services are provided.*

3 (3) The loss of income that the victim or the loss of  
4 support that the derivative victim has incurred or will  
5 incur as a direct result of an injury or death.

6 (4) Pecuniary loss also includes nonmedical remedial  
7 care and treatment rendered in accordance with a  
8 religious method of healing recognized by state law.

9 (5) The amount of family psychiatric, psychological, or  
10 mental health counseling expenses necessary as a direct  
11 result of the crime for the successful treatment of the  
12 victim, provided to family members of the victim in the  
13 presence of the victim, whether or not the family  
14 member relationship existed at the time of the crime.

15 (e) “Board” means the State Board of Control.

16 (f) “Victim centers” means those centers as specified  
17 in Section 13835.2 of the Penal Code.

18 (g) “Peer counselor” means a provider of mental  
19 health counseling services who has completed a  
20 specialized course in rape crisis counseling skills  
21 development, participates in continuing education in  
22 rape crisis counseling skills development, and provides  
23 rape crisis counseling in consultation with a mental health  
24 practitioner licensed within the State of California.

25 SEC. 3. Section 13962 of the Government Code is  
26 amended to read:

27 13962. (a) The staff of the board shall review all  
28 applications for assistance in order to ensure that they are  
29 complete. If an application is not complete, it shall be  
30 returned to the applicant with a brief statement of the  
31 additional information required. The applicant, within 30  
32 days of receipt thereof, may either supply the additional  
33 information or appeal the action to the board which shall  
34 review the application to determine whether or not it is  
35 complete.

36 (b) The board shall approve or deny applications  
37 accepted in accordance with subdivision (a) within an  
38 average of 90 calendar days. Each individual claim shall  
39 be approved or denied within 180 calendar days. These  
40 specified time periods shall operate from the date the



1 claim is accepted by the board or local contract agency,  
2 to the date of approval or denial of the claim. Any  
3 verification of the claim which is deemed necessary shall  
4 be performed during these specified time periods. The  
5 verification process shall include sending supplemental  
6 forms to all hospitals, physicians, law enforcement  
7 officials, and other interested parties involved, verifying  
8 the treatment of the victim or derivative victim,  
9 circumstances of the crime, amounts paid or received by  
10 or for the victim or derivative victim, and other pertinent  
11 information as may be deemed necessary by the board.  
12 Verification forms shall be provided by the board and  
13 shall be returned to the board within 10 business days. All  
14 of this information shall be provided at no cost to the  
15 applicant, the board, or local victim centers. Verification  
16 forms shall require sufficient information to clearly  
17 identify the victim or derivative victim. The board shall  
18 include on the verification forms a statement certifying  
19 that a signed authorization by the applicant is retained in  
20 the applicant's file and that this certification constitutes  
21 actual authorization for the release of information,  
22 notwithstanding any other provision of law. Each request  
23 from the board to a physician for a copy or summary of  
24 medical records shall include a copy of the signed  
25 authorization for the release of information. The board  
26 shall include on the verification forms reference to this  
27 section with respect to the prompt return of the  
28 verification forms. The board, thereupon, shall consider  
29 the application at a hearing at a time and place of its  
30 choosing. ~~The board shall notify all interested persons not  
31 less than five days prior to the date of the hearing.~~

32 (c) The victim and the applicant, if other than the  
33 victim, shall cooperate with the staff of the board or the  
34 local victim center in the verification of the information  
35 contained in the application. Failure to cooperate shall be  
36 reported to the board, which, in its discretion, may reject  
37 the application on this ground alone.

38 ~~(d) Hearings shall be held in various locations with the  
39 frequency necessary to provide for the speedy  
40 adjudication of the applications. If the applicant's~~



1 ~~presence is required at the hearing, the board shall~~  
2 ~~consider convenience to the applicant in scheduling the~~  
3 ~~locations. If necessary, the board shall delegate the~~  
4 ~~hearing of applications to hearing examiners.~~

5 ~~(e) The board may contract with local victim centers~~  
6 ~~to provide verification of claims processed by the centers~~  
7 ~~pursuant to conditions stated in subdivision (b).~~

8 SEC. 4. Section 13963 of the Government Code is  
9 amended to read:

10 13963. (a) The board shall grant an applicant for  
11 benefits a hearing to contest a staff recommendation to  
12 deny an application for benefits or to deny an application  
13 to submit a late claim.

14 ~~(b) At the hearing, the board shall:~~

15 ~~(1) Instruct its staff, prior to the start of the~~  
16 ~~proceedings, to brief those claimants present on the rules,~~  
17 ~~regulations, and any other procedures and guidelines~~  
18 ~~used by the board at these hearings.~~

19 ~~(2) Review the application for assistance and the~~  
20 ~~report prepared thereon and any other evidence~~  
21 ~~obtained as a result of the verification.~~

22 ~~(3) Receive any other evidence as the board finds~~  
23 ~~necessary or desirable properly to evaluate the~~  
24 ~~application.~~

25 ~~(e) If the applicant or the applicant's representative~~  
26 ~~chooses not to appear at the hearing, the board may act~~  
27 ~~solely upon the application for assistance, the staff's~~  
28 ~~report, and any other evidence as appears in the record.~~  
29 *The board shall notify all interested persons not less than*  
30 *five days prior to the date of the hearing.*

31 *(c) At the hearing, the applicant shall have the burden*  
32 *of establishing by a preponderance of the evidence that*  
33 *his or her application meets the requirements of this*  
34 *article and of any duly adopted regulations of the board.*

35 (d) The hearing shall be informal and need not be  
36 conducted according to the technical rules relating to  
37 evidence and witnesses. The board may rely on any  
38 relevant evidence if it is the sort of evidence on which  
39 responsible persons are accustomed to rely in the conduct  
40 of serious affairs, regardless of the existence of any



1 common law or statutory rule that might make improper  
2 the admission of the evidence over objection in a civil  
3 action.

4 *(e) The board may rely on written reports prepared*  
5 *for the board, or other information received, from the law*  
6 *enforcement agency or other governmental agency*  
7 *responsible for investigating the crime.*

8 *(f) If the applicant or the applicant's representative*  
9 *chooses not to appear at the hearing, the board may act*  
10 *solely upon the application for assistance, the staff's*  
11 *report, and other evidence that appears in the record.*

12 *(g) Hearings shall be held in various locations with the*  
13 *frequency necessary to provide for the speedy*  
14 *adjudication of the applications. If the applicant's*  
15 *presence is required at the hearing, the board shall*  
16 *schedule the applicant's hearing in as convenient a*  
17 *location as possible.*

18 *(h) At the hearing, the board shall:*

19 *(1) Provide those claimants present with information*  
20 *on the rules, regulations, and any other procedures and*  
21 *guidelines used by the board at these hearings.*

22 *(2) Review the application for assistance and the*  
23 *report prepared thereon and any other evidence*  
24 *obtained as a result of the verification.*

25 *(3) Receive any other evidence as the board finds*  
26 *necessary or desirable properly to evaluate the*  
27 *application.*

28 *(i) The board may delegate the hearings of*  
29 *applications to hearing examiners.*

30 SEC. 5. Section 13965 of the Government Code is  
31 amended to read:

32 13965. (a) If the application for assistance is  
33 approved, the board shall determine what type of state  
34 assistance will best aid the victim or derivative victim.  
35 The board may take any or all of the following actions:

36 (1) Reimburse the following persons for the expense  
37 of their out-patient mental health counseling when that  
38 mental health counseling is necessary as a direct result of  
39 the crime:



1 (A) A victim in an amount not to exceed ten thousand  
2 dollars (\$10,000).

3 (B) A derivative victim who is the surviving parent,  
4 sibling, child, spouse, or fiance of a victim of a crime  
5 which directly resulted in the death of the victim in an  
6 amount not to exceed ten thousand dollars (\$10,000).

7 (C) A derivative victim who is the primary caretaker  
8 of a minor victim of sexual or physical abuse whose claim  
9 is not denied or reduced pursuant to subdivision (b) or  
10 ~~(c)~~ (d) of Section 13964 in a total amount not to exceed  
11 ten thousand dollars (\$10,000) for not more than two  
12 derivative victims described in this subparagraph.

13 (D) A derivative victim not eligible for  
14 reimbursement pursuant to subparagraph (B) or (C) in  
15 an amount not to exceed three thousand dollars (\$3,000).

16 The board may authorize a direct cash payment to a  
17 provider of psychological or psychiatric treatment or  
18 mental health counseling services, including peer  
19 counseling services provided by a rape crisis center as  
20 defined by Section 13837 of the Penal Code or to either  
21 the victim or the derivative victim, equal to the  
22 pecuniary loss attributable to medical or medical-related  
23 expenses, including counseling, directly resulting from  
24 the injury. Reimbursement on the initial claim for any  
25 psychological, psychiatric, or mental health counseling  
26 services, including peer counseling services provided by  
27 a rape crisis center, shall, if the application has been  
28 approved, be paid by the board within 90 days of the date  
29 of receipt of the claim for payment, with subsequent  
30 payments to be made to the provider within one month  
31 of the receipt of a claim for payment. However, the board  
32 may not authorize without good cause a direct cash  
33 payment to a licensed health care provider or rape crisis  
34 center over the objection of the applicant.

35 When a public agency, including a court or district  
36 attorney or a police, county child protective services, or  
37 other state or local governmental agency, refers a victim  
38 of crime to a private nonprofit agency for treatment for  
39 that victim, the private nonprofit agency shall be  
40 reimbursed for those services at the level of the normal



1 and customary fee charged by the private nonprofit  
2 agency to clients with adequate means of payment for its  
3 services, except that this reimbursement shall not exceed  
4 the maximum reimbursement rates set by the board and  
5 may be made only to the extent that the victim otherwise  
6 qualifies for services under the victims of crime program  
7 and that other reimbursement or direct subsidies are not  
8 available to serve the victim.

9 Payments authorized pursuant to this paragraph for  
10 peer counseling services provided by a rape counseling  
11 center shall not exceed fifteen dollars (\$15) for each hour  
12 of services provided. Those services shall be limited to  
13 individual, in-person counseling on a face-to-face basis for  
14 a period not to exceed 10 weeks plus one series of  
15 facilitated support group counseling sessions.

16 (2) Authorize a cash payment to the victim equal to  
17 the pecuniary loss resulting from loss of wages directly  
18 resulting from the injury. Loss of wages shall not be paid  
19 by the board for more than two years following the crime.  
20 However, loss of wages may be extended for one  
21 additional year if the victim is either enrolled in a  
22 program of retraining or other rehabilitation approved  
23 by the board or has established to the satisfaction of the  
24 board that because of his or her disability arising from the  
25 crime he or she is unable to participate in any retraining  
26 or rehabilitation. If the board determines, after review of  
27 an application for assistance, including the evaluation of  
28 a qualified provider, that pecuniary loss for which  
29 payment may be made under this paragraph is expected  
30 to continue more than six months after the date of  
31 approval of the victim's application for assistance,  
32 disbursement shall commence and continue on a monthly  
33 basis for the period of time pecuniary loss is expected to  
34 continue.

35 (3) Authorize a cash payment to a derivative victim  
36 described in subparagraphs (A) and (B) of paragraph (2)  
37 of subdivision (a) of Section 13960 who was legally  
38 dependent on the victim at the time of the crime for the  
39 loss of support incurred by that person as a direct result  
40 of the crime.



1 (A) Loss of support shall not be paid by the board for  
2 income lost by an adult for a period of more than two  
3 years and shall not extend more than three years  
4 following the date of the crime.

5 (B) Loss of support shall not be paid by the board on  
6 behalf of a minor for a period beyond the child's attaining  
7 the age of 18 years.

8 (C) The total amount payable to all derivative victims  
9 for loss of support pursuant to this paragraph as the result  
10 of one crime shall not exceed forty-six thousand dollars  
11 (\$46,000).

12 (4) Authorize cash payments to or on behalf of the  
13 victim for job retraining or similar employment-oriented  
14 rehabilitative services.

15 (5) Obtain an independent examination and report  
16 from any provider of psychological or psychiatric  
17 treatment or mental health counseling services, if it  
18 believes there is a reasonable basis for requesting an  
19 additional evaluation. In cases where the crime involves  
20 sexual assault, the provider shall have expertise in the  
21 needs of sexual assault victims. In cases where the crime  
22 involves child abuse or molestation, the provider shall  
23 have expertise in the needs of victims of child abuse or  
24 molestation, as appropriate. When a reevaluation is  
25 obtained, payments shall not be discontinued prior to  
26 completion of the reevaluation.

27 (6) When a victim dies as a direct result of a crime, the  
28 board may reimburse any individual who voluntarily, and  
29 without anticipation of personal gain, pays or assumes the  
30 obligation to pay, the medical or burial expenses incurred  
31 as a direct result of the crime for the medical or burial  
32 expenses incurred in an amount not to exceed the rates  
33 or limitations established by the board.

34 (7) The total award to or on behalf of the victim or a  
35 derivative victim shall not exceed twenty-three thousand  
36 dollars (\$23,000), and may be increased only in  
37 accordance with this section.

38 (8) In the event that the victim requests that the board  
39 give priority to reimbursement of loss of wages, the board  
40 shall not pay medical expenses or mental health



1 counseling expenses except upon the request of the  
2 victim or after determining that payment of these  
3 expenses will not decrease the funds available to the  
4 victim for payment of loss of wages.

5 (9) *The board may authorize a direct cash payment to*  
6 *a provider of services that are reimbursable pursuant to*  
7 *this article. However, the board may not, without good*  
8 *cause, authorize a direct cash payment to a provider over*  
9 *the objection of the victim or applicant.*

10 (b) Assistance granted pursuant to this article shall not  
11 disqualify an otherwise eligible victim or derivative  
12 victim from participation in any other public assistance  
13 program.

14 (c) Cash payments made pursuant to this article may  
15 be on a one-time or periodic basis. If periodic, the board  
16 may increase, reduce, or terminate the amount of  
17 assistance according to the victim's or derivative victim's  
18 need, subject to the maximum limits provided in this  
19 section.

20 (d) The board shall pay attorney's fees representing  
21 the reasonable value of legal services rendered to the  
22 applicant, in an amount equal to 10 percent of the amount  
23 of the award, or five hundred dollars (\$500), whichever  
24 is less for each victim and each derivative victim. An  
25 attorney receiving fees from another source may waive  
26 the right to receive fees under this section. Payments  
27 under this section shall be in addition to any amount  
28 authorized or ordered under subdivision (d) of Section  
29 13969.1.

30 (e) No attorney shall charge, demand, receive, or  
31 collect any amount for services rendered in connection  
32 with any proceedings under this article except as  
33 awarded under this article.

34 (f) The maximum cash payments authorized in  
35 paragraph (7) of subdivision (a) shall be increased to  
36 forty-six thousand dollars (\$46,000) if federal funds for  
37 those increases are available.

38 (g) Notwithstanding subdivisions (a) and (f), a victim  
39 injured between January 1, 1985, and December 31, 1985,  
40 shall be entitled to receive a maximum cash payment of



1 forty-six thousand dollars (\$46,000) if federal funds for  
2 these increases are available, but only for costs in excess  
3 of limitations provided for in subdivision (a) which are  
4 attributable to medical or medical-related expenses,  
5 except for psychological or psychiatric treatment, or  
6 mental health counseling services.

7 (h) Notwithstanding any conflicting provision of this  
8 chapter, the board may make additional payments for  
9 purposes described in paragraph (1) of subdivision (a) to  
10 any victim who filed an application with the board on or  
11 after December 1, 1982, who was a victim of a crime  
12 involving sexual assault, and who is a minor at the time the  
13 additional payments pursuant to this subdivision are  
14 made. The payments authorized by this subdivision shall  
15 not exceed the limits imposed by subdivisions (a) and (j).

16 (i) Reimbursement for any medical or  
17 medical-related services shall, if the victim's application  
18 has been approved, be paid by the board within an  
19 average of 90 days from receipt of the claim for payment.  
20 Payments to a medical or mental health provider under  
21 this subdivision or paragraph (1) of subdivision (a) shall  
22 not be discontinued prior to completion of any  
23 reevaluation. Whether or not a reevaluation is obtained,  
24 if the board determines that payments to a provider shall  
25 be discontinued, the board shall notify the provider of  
26 their discontinuance within 30 days of its determination.

27 (j) The board may establish maximum rates and  
28 service limitations for reimbursement of medical and  
29 medical-related expenses, including counseling expenses,  
30 for which restitution is requested pursuant to this section.  
31 For mental health and counseling services, rates shall not  
32 exceed the statewide average. The adoption,  
33 amendment, and repeal of these maximum rates shall not  
34 be subject to the Administrative Procedure Act under  
35 Chapter 3.5 (commencing with Section 11340) of Part 1.  
36 An informational copy of the maximum rates shall be filed  
37 with the Secretary of State upon adoption by the board.  
38 A provider who accepts payment from the program for  
39 a service shall accept the program's rates as payment in  
40 full and shall not accept any payment on account of the



1 service from any other source if the total of payments  
2 accepted would exceed the maximum rate set by the  
3 board for that service.

4 To assure service limitations which are uniform and  
5 appropriate to the levels of treatment required by the  
6 victim or derivative victim, the board may review all  
7 claims for these services as necessary to ensure their  
8 medical necessity. The board may further require  
9 additional documentation, information, or medical  
10 review of cases of continuing treatment which are  
11 projected to exceed five thousand dollars (\$5,000) to  
12 determine the need to continue treatment in excess of  
13 that amount. The board may accept or reject claims for  
14 the amount in excess of five thousand dollars (\$5,000) by  
15 applying the same standards applicable to processing the  
16 initial claim or may approve a continuing treatment  
17 regimen for a specific interval or subject to periodic  
18 review as appropriate. All information requested of the  
19 treating therapist shall be provided at no cost to the  
20 applicant, the board, or to local victim centers, pursuant  
21 to subdivision (b) of Section 13962. Requests for  
22 additional information shall be made in a timely manner  
23 so as not to interfere with necessary treatment.

24 (k) The authority provided by this section shall not be  
25 construed to in any way diminish, enhance, or otherwise  
26 affect any authority which the board may have under  
27 current law except as explicitly provided in this section.

28 (l) The board, in its discretion, may make payments  
29 directly to providers prior to verification.

30 (m) Notwithstanding paragraph (1) of subdivision  
31 (a), the board may reimburse a victim or derivative  
32 victim for mental health counseling in excess of that  
33 authorized by that paragraph if the claim is based on dire  
34 or exceptional circumstances that require more extensive  
35 treatment, as approved by the board.

36 (n) Notwithstanding paragraph (1) of subdivision (a),  
37 if, as of December 31, 1993, a person has incurred mental  
38 health counseling expenses pursuant to this article in  
39 excess of one-half of the amount specified in that  
40 subdivision, the board may award, in addition to amounts



1 awarded for previously incurred expenses, an amount  
2 equal to not more than one-half of the applicable  
3 maximum amount specified in that paragraph or any  
4 additional amounts as the board determines is necessary.

5 (o) The limitations on the amounts which the board  
6 may reimburse for loss of support and loss of wages  
7 pursuant to paragraphs (2) and (3) of subdivision (a)  
8 shall not apply to victims or derivative victims whose  
9 claims for loss of wages and loss of support had been  
10 approved prior to January 1, 1994.

11 SEC. 6. Section 13966.01 of the Government Code is  
12 amended to read:

13 13966.01. (a) The State of California shall be  
14 subrogated to the rights of the victim to whom cash  
15 payments are granted to the extent of the cash payments  
16 granted. The subrogation rights shall be against the  
17 perpetrator of the crime or any person liable for the  
18 pecuniary loss, including a carrier held liable in  
19 accordance with the provision of a policy of insurance  
20 issued pursuant to Section 11580.2 of the Insurance Code.

21 (b) The state shall also be entitled to a lien on the  
22 judgment, award, or settlement in the amount of the cash  
23 payments on any recovery made by or on behalf of the  
24 victim. The state may recover this amount in a separate  
25 action, or may intervene in an action brought by or on  
26 behalf of the victim. If a claim is filed within one year of  
27 the date of recovery, the state shall pay 25 percent of the  
28 amount of the recovery that is subject to a lien on the  
29 judgment, award, or settlement, to the victim responsible  
30 for recovery thereof from the perpetrator of the crime,  
31 provided the total amount of the lien is recovered. The  
32 remaining 75 percent of the amount and any amount not  
33 claimed within one year pursuant to this section, shall be  
34 deposited in the Restitution Fund.

35 (c) The board may compromise or settle and release  
36 any lien pursuant to this article if it is found that the action  
37 is in the best interest of the state or the collection would  
38 cause undue hardship upon the victim. Repayment  
39 obligations to the Restitution Fund shall be enforceable  
40 as a summary judgment.



1 (d) No judgment, award, or settlement in any action  
2 or claim by a victim to recover damages for injuries,  
3 where the state has an interest, shall be satisfied without  
4 first giving the board notice and a reasonable opportunity  
5 to perfect and satisfy the lien. The notice shall be given  
6 to the board in Sacramento except in cases where the  
7 board specifies that the notice shall be given otherwise.  
8 The notice shall include the complete terms of the award,  
9 settlement, or judgment and the name and address of any  
10 carrier directly or indirectly providing for the  
11 satisfaction.

12 (e) In the event that the victim, his or her guardian,  
13 personal representative, estate, or survivors, or any of  
14 them, bring an action or assert a claim for damages  
15 against the person or persons liable for the injury or death  
16 giving rise to an award by the board under this article,  
17 notice of institution of legal proceedings, notice of  
18 settlement, and all other notices required to be given to  
19 the judgment debtor pursuant to Chapters 1  
20 (commencing with Section 681) and 2 (commencing  
21 with Section 714) of Title 9 of Part 2 of the Code of Civil  
22 Procedure, shall be given to the board in Sacramento  
23 except in cases where the board specifies that notice shall  
24 be given to the Attorney General. Notice of institution of  
25 legal proceedings shall be given to the board within 30  
26 days of filing the action. All notices shall be given by the  
27 attorney employed to bring the action for damages or by  
28 the victim, his or her guardian, personal representative,  
29 estate, or survivors, if no attorney is employed. Notice  
30 shall include: the names of all parties to the claim or  
31 action; the address of all parties to the claim or action  
32 except for those persons represented by attorneys and in  
33 that case the name of the party and the name and address  
34 of the attorney; the nature of the claim asserted or action  
35 brought; in the case of actions before courts or  
36 administrative agencies the full title of the case including  
37 the identity of the court or agency, the names of the  
38 parties, and the case or docket number. When the victim  
39 or his or her attorney has reason to believe that a person  
40 from whom damages are sought is receiving a defense



1 provided in whole or in part by a carrier, or is insured by  
2 a carrier for the injury caused to the victim, notice shall  
3 include statement of the fact and the name and address  
4 of the carrier. Upon request of the board a person  
5 obligated to provide notice shall provide the board with  
6 a copy of the current written claim or complaint.

7 (f) The state shall pay the county probation  
8 department or other county agency responsible for  
9 collection of funds owed to the Restitution Fund under  
10 Section 13967, as operative on or before September 28,  
11 1994, ~~or~~ Section 1202.4~~—or~~ of the Penal Code, Section  
12 1203.04, as operative on or before August 2, 1995, of the  
13 Penal Code, or Section 730.6 of the Welfare and  
14 Institutions Code, 10 percent of the funds so owed and  
15 collected by the county agency and deposited in the  
16 Restitution Fund. This payment shall be made only when  
17 the funds are deposited in the Restitution Fund within 45  
18 days of the end of the month in which the funds are  
19 collected. Receiving 10 percent of the moneys collected  
20 as being owed to the Restitution Fund shall be considered  
21 an incentive for collection efforts and shall be used for  
22 furthering these collection efforts. The 10 percent rebates  
23 shall be used to augment the budgets for the county  
24 agencies responsible for collection of funds owed to the  
25 Restitution Fund, as provided in Section 13967, as  
26 operative on or before September 28, 1994, ~~or~~ Section  
27 1202.4 ~~or~~ of the Penal Code, Section 1203.04, as operative  
28 on or before August 2, 1995, of the Penal Code, or Section  
29 730.6 of the Welfare and Institutions Code. The 10 percent  
30 rebates shall not be used to supplant county funding.

31 SEC. 7. Section 13967.2 of the Government Code is  
32 amended to read:

33 13967.2. Upon entry of a restitution order under  
34 subdivision (c) of Section 13967 ~~of this code~~, as operative  
35 on or before September 28, 1994, paragraph (3) of  
36 subdivision (a) of Section 1202.4 of the Penal Code, or  
37 Section 1203.04, as operative on or before August 2, 1995,  
38 of the Penal Code, the following shall apply:

39 (a) The court shall enter a separate order for income  
40 deduction upon determination of the defendant's ability



1 to pay, regardless of the probation status, in accordance  
2 with Section 1203 of the Penal Code. *Determination of a*  
3 *defendant's ability to pay may include his or her future*  
4 *earning capacity. A defendant shall bear the burden of*  
5 *demonstrating lack of his or her ability to pay. Express*  
6 *findings by the court as to the factors bearing on the*  
7 *amount of the fine shall not be required.*

8 (b) (1) In any case in which the court enters a  
9 separate order for income deduction under this section,  
10 the order shall be stayed until the agency in the county  
11 responsible for collection of restitution determines that  
12 the defendant has failed to meet his or her obligation  
13 under the restitution order and the defendant has not  
14 provided the agency with good cause for the failure in  
15 accordance with paragraph (2).

16 (2) If the agency responsible for collection of  
17 restitution receives information that the defendant has  
18 failed to meet his or her obligation under the restitution  
19 order, the agency shall request the defendant to provide  
20 evidence indicating that timely payments have been  
21 made or provide information establishing good cause for  
22 the failure. If the defendant fails to provide the agency  
23 with the evidence or fails to establish good cause within  
24 five days of the request, the agency shall immediately  
25 inform the defendant of that fact, and shall inform the  
26 clerk of the court in order that an income deduction order  
27 shall be served pursuant to subdivision (f) following a  
28 15-day appeal period. The defendant may apply for a  
29 hearing to contest the lifting of the stay pursuant to  
30 subdivision (f).

31 (c) The income deduction order shall direct a payer to  
32 deduct from all income due and payable to the defendant  
33 the amount required by the court to meet the defendant's  
34 obligation.

35 (d) The income deduction order shall be effective so  
36 long as the order for restitution upon which it is based is  
37 effective or until further order of the court.

38 (e) When the court orders the income deduction, the  
39 court shall furnish to the defendant a statement of his or



1 her rights, remedies, and duties in regard to the income  
2 deduction order. The statement shall state the following:

3 (1) All fees or interest ~~which~~ *that* shall be imposed.

4 (2) The total amount of income to be deducted for  
5 each pay period.

6 (3) That the income deduction order applies to  
7 current and subsequent payers and periods of  
8 employment.

9 (4) That a copy of the income deduction order will be  
10 served on the defendant's payer or payers.

11 (5) That enforcement of the income deduction order  
12 may only be contested on the ground of mistake of fact  
13 regarding the amount of restitution owed.

14 (6) That the defendant is required to notify the clerk  
15 of the court within seven days after changes in the  
16 defendant's address, payers, and the addresses of his or  
17 her payers.

18 (7) That the court order will be stayed in accordance  
19 with subdivision (b) and that a hearing is available in  
20 accordance with subdivision (f).

21 (f) (1) Upon receiving the notice described in  
22 paragraph (2) of subdivision (b), the clerk of the court or  
23 officer of the agency responsible for collection of  
24 restitution shall serve an income deduction order and the  
25 notice to payer on the defendant's payer unless the  
26 defendant has applied for a hearing to contest the  
27 enforcement of the income deduction order.

28 (2) (A) Service by or upon any person who is a party  
29 to a proceeding under this section shall be made in the  
30 manner prescribed for service upon parties in a civil  
31 action.

32 (B) Service upon the defendant's payer or successor  
33 payer under this section shall be made by prepaid  
34 certified mail, return receipt requested.

35 (3) The defendant, within 15 days after being  
36 informed that the order staying the income deduction  
37 order shall be lifted, may apply for a hearing to contest the  
38 enforcement of the income deduction order on the  
39 ground of mistake of fact regarding the amount of  
40 restitution owed or on the ground that the defendant has



1 established good cause for the nonpayment. The timely  
2 request for a hearing shall stay the service of an income  
3 deduction order on all payers of the defendant until a  
4 hearing is held and a determination is made as to whether  
5 the enforcement of the income deduction order is proper.

6 (4) The notice to payer shall contain only information  
7 necessary for the payer to comply with the income  
8 deduction order. The notice shall do all of the following:

9 (A) Require the payer to deduct from the defendant's  
10 income the amount specified in the income deduction  
11 order, and to pay that amount to the clerk of the court.

12 (B) Instruct the payer to implement the income  
13 deduction order no later than the first payment date  
14 ~~which~~ *that* occurs more than 14 days after the date the  
15 income deduction order was served on the payer.

16 (C) Instruct the payer to forward, within two days  
17 after each payment date, to the clerk of the court the  
18 amount deducted from the defendant's income and a  
19 statement as to whether the amount totally or partially  
20 satisfies the periodic amount specified in the income  
21 deduction order.

22 (D) Specify that if a payer fails to deduct the proper  
23 amount from the defendant's income, the payer is liable  
24 for the amount the payer should have deducted, plus  
25 costs, interest, and reasonable attorney's fees.

26 (E) Provide that the payer may collect up to five  
27 dollars (\$5) against the defendant's income to reimburse  
28 the payer for administrative costs for the first income  
29 deduction and up to one dollar (\$1) for each deduction  
30 thereafter.

31 (F) State that the income deduction order and the  
32 notice to payer are binding on the payer until further  
33 notice by the court or until the payer no longer provides  
34 income to the defendant.

35 (G) Instruct the payer that, when he or she no longer  
36 provides income to the defendant, he or she shall notify  
37 the clerk of the court and shall also provide the  
38 defendant's last known address and the name and address  
39 of the defendant's new payer, if known, and that, if the  
40 payer violates this provision, the payer is subject to a civil



1 penalty not to exceed two hundred fifty dollars (\$250) for  
2 the first violation or five hundred dollars (\$500) for any  
3 subsequent violation.

4 (H) State that the payer shall not discharge, refuse to  
5 employ, or take disciplinary action against the defendant  
6 because of an income deduction order and shall state that  
7 a violation of this provision subjects the payer to a civil  
8 penalty not to exceed two hundred fifty dollars (\$250) for  
9 the first violation or five hundred dollars (\$500) for any  
10 subsequent violation.

11 (I) Inform the payer that when he or she receives  
12 income deduction orders requiring that the income of  
13 two or more defendants be deducted and sent to the same  
14 clerk of a court, he or she may combine the amounts that  
15 are to be paid to the depository in a single payment as long  
16 as he or she identifies that portion of the payment  
17 attributable to each defendant.

18 (J) Inform the payer that if the payer receives more  
19 than one income deduction order against the same  
20 defendant, he or she shall contact the court for further  
21 instructions.

22 (5) The clerk of the court shall enforce income  
23 deduction orders against the defendant's successor payer  
24 who is located in this state in the same manner prescribed  
25 in this subdivision for the enforcement of an income  
26 deduction order against a payer.

27 (6) A person may not discharge, refuse to employ, or  
28 take disciplinary action against an employee because of  
29 the enforcement of an income deduction order. An  
30 employer who violates this provision is subject to a civil  
31 penalty not to exceed two hundred fifty dollars (\$250) for  
32 the first violation or five hundred dollars (\$500) for any  
33 subsequent violation.

34 (7) When a payer no longer provides income to a  
35 defendant, he or she shall notify the clerk of the court and  
36 shall provide the defendant's last known address and the  
37 name and address of the defendant's new payer, if known.  
38 A payer who violates this provision is subject to a civil  
39 penalty not to exceed two hundred fifty dollars (\$250) for



1 the first violation or five hundred dollars (\$500) for a  
2 subsequent violation.

3 (g) As used in this section, “good cause” for failure to  
4 meet an obligation or “good cause” for nonpayment  
5 means, but shall not be limited to, any of the following:

6 (1) That there has been a substantial change in the  
7 defendant’s economic circumstances, such as involuntary  
8 unemployment, involuntary cost-of-living increases, or  
9 costs incurred as the result of medical circumstances or  
10 a natural disaster.

11 (2) That the defendant reasonably believes there has  
12 been an administrative error with regard to his or her  
13 obligation for payment.

14 (3) Any other similar and justifiable reasons.

15 SEC. 8. Section 13967.5 of the Government Code is  
16 amended to read:

17 13967.5. (a) The restitution fine imposed pursuant to  
18 subdivision (a) of Section 13967, *as operative on or before*  
19 *September 28, 1994, subparagraph (B) of paragraph (2)*  
20 *of subdivision (a) of Section 1203.04, as operative on or*  
21 *before August 2, 1995, of the Penal Code, or Section 1202.4*  
22 *of the Penal Code* shall be payable to the clerk of the  
23 court, the probation officer, or any other person  
24 responsible for the collection of criminal fines. If the  
25 defendant is unable or otherwise fails to pay such fine in  
26 a felony case and there is an amount unpaid of one  
27 thousand dollars (\$1,000) or more within 60 days after the  
28 imposition of sentence, or in a case in which probation is  
29 granted, within the period of probation, the clerk of the  
30 court, probation officer, or other person to whom the fine  
31 is to be paid shall forward to the Controller the abstract  
32 of judgment along with such information which may be  
33 relevant to the present and future location of the  
34 defendant and his or her assets, if any, and any verifiable  
35 amount which the defendant may have paid to the victim  
36 as a result of the crime.

37 (b) A restitution fine shall be deemed a debt of the  
38 defendant owing to the state for the purposes of Sections  
39 12418 and 12419.5 of the Government Code, excepting  
40 any amounts the defendant has paid to the victim as a



1 result of the crime. Upon request by the Controller, the  
2 district attorney of a county or the Attorney General may  
3 take any necessary action to recover amounts owing on  
4 a restitution fine. The amount of the recovery shall be  
5 increased by a sum sufficient to cover any costs incurred  
6 by any state or local agency in the administration of this  
7 section. The remedies provided by this subdivision are in  
8 addition to any other remedies provided by law for the  
9 enforcement of a judgment.

10 SEC. 9. Section 13968 of the Government Code is  
11 amended to read:

12 13968. (a) The board is hereby authorized to make all  
13 needful rules and regulations for the purposes of carrying  
14 into effect this article. All rules and regulations adopted  
15 pursuant to this subdivision shall be adopted in  
16 accordance with Chapter 3.5 (commencing with Section  
17 11340) of Part 1 of Division 3.

18 (b) It shall be the duty of every hospital licensed under  
19 the laws of this state to display prominently in its  
20 emergency room posters giving notification of the  
21 existence and general provisions of this chapter, and the  
22 existence and locations of local victim centers. The board,  
23 in cooperation with local victim centers, shall set  
24 standards for the location of such a display and shall  
25 provide posters, application forms, and general  
26 information regarding the provisions of this chapter to  
27 each hospital and physician licensed to practice in the  
28 State of California.

29 (c) It shall be the duty of every local law enforcement  
30 agency to inform victims of crimes of the provisions of this  
31 chapter, of the existence of local victim centers, and in  
32 counties where no local victim center exists, to provide  
33 application forms to victims who desire to seek assistance  
34 pursuant to this article. The board shall provide  
35 application forms and all other documents which local  
36 law enforcement agencies and victim centers may  
37 require to comply with this section. The board, in  
38 cooperation with local victim centers shall set standards  
39 to be followed by local law enforcement agencies for this  
40 purpose and may require them to file with the board a



1 description of the procedures adopted by each agency to  
2 comply.

3 (d) Notwithstanding Section 827 of the Welfare and  
4 Institutions Code or any other provision of law, every law  
5 enforcement and social service agency in the state shall  
6 provide to the board or to the designated local victim  
7 centers, upon request, a copy of a petition filed in a  
8 juvenile court proceeding, reports of the probation  
9 officer, any other document made available to the  
10 probation officer or to the judge, referee, or other hearing  
11 officer, a complete copy of the report regarding the  
12 incident and any supplemental reports involving the  
13 crime, public offense, or incident giving rise to a claim, for  
14 the specific purpose of the submission of a claim or the  
15 determination of eligibility to submit a claim filed  
16 pursuant to this article. The board or designated local  
17 victim centers shall refuse to allow inspection of a  
18 document which personally identifies a minor by anyone  
19 other than the minor who is so identified, his or her  
20 custodial parent or guardian, the attorneys for those  
21 parties, and such other persons as may be designated by  
22 court order of the judge of the juvenile court. Any  
23 information received pursuant to this section shall be  
24 received in confidence for the limited purpose for which  
25 it was provided and shall not be further disseminated. A  
26 violation of this subdivision is a misdemeanor punishable  
27 by a fine not to exceed five hundred dollars (\$500).

28 (e) The law enforcement agency supplying the  
29 information may, at its discretion, withhold the names of  
30 witnesses or informants from the board, if the release of  
31 such names would be detrimental to the parties or to an  
32 investigation currently in progress.

33 (f) Notwithstanding any other provision of law, every  
34 state agency, department, division, board, or commission,  
35 upon receipt of a copy of a release signed in accordance  
36 with the Information Practices Act of 1977 by the  
37 applicant or other authorized representative, shall  
38 provide to the board or local victim center the  
39 information necessary to complete the verification of an  
40 application filed pursuant to this article.



1 (g) *The Department of Justice shall furnish, upon*  
2 *application of the board, all information necessary to*  
3 *verify the eligibility of any applicant for benefits pursuant*  
4 *to Section 13960.2, to recover any restitution fine or order*  
5 *obligations that are owed to the Restitution Fund or to*  
6 *any victim of crime, or to evaluate the status of any*  
7 *criminal disposition.*

8 SEC. 10. Section 13969.3 of the Government Code is  
9 amended to read:

10 13969.3. A person who has been overpaid or on whose  
11 behalf any provider or other person has been overpaid  
12 under this chapter is liable for that amount unless *both of*  
13 *the following facts exist:*

14 (a) The overpayment was not due to fraud,  
15 misrepresentation, or willful nondisclosure on the part of  
16 the recipient.

17 (b) The overpayment was received without fault on  
18 the part of the recipient, and its recovery would be  
19 against equity and good conscience.

20 For overpayments which are not in excess of two  
21 thousand dollars (\$2,000), the board may authorize the  
22 executive officer to establish limits for the administration  
23 of this section. For overpayments which are in excess of  
24 two thousand dollars (\$2,000), the board shall report to  
25 the Legislature in the manner prescribed by Section  
26 13928 and the relief from liability described above shall be  
27 subject to legislative approval.

28 SEC. 11. Section 13969.4 of the Government Code is  
29 amended to read:

30 13969.4. The executive officer or his or her designees,  
31 subject to this article, may do the following to recover  
32 moneys owed to the Restitution Fund:

33 (a) File a civil action against the liable person for the  
34 recovery of the amount of moneys owed. This action shall  
35 be filed within one year of either of the following events,  
36 or within three years of either of the following events if  
37 the liable person was overpaid benefits due to fraud,  
38 misrepresentation, or nondisclosure as described in  
39 Section 13969.3:



1 (1) The mailing or personal service of the notice of the  
2 moneys owed if the person affected does not file an  
3 appeal with the board or person designated by the board.

4 (2) The mailing of the decision of the board if the  
5 person affected does not initiate a further appeal.

6 (b) Initiate proceedings for a summary judgment  
7 against the liable person. ~~However, this subdivision~~  
8 ~~applies only where the executive officer has found,~~  
9 ~~pursuant to Section 13969.3, that the overpayment may~~  
10 ~~not be waived because it was due to fraud,~~  
11 ~~misrepresentation, or willful nondisclosure on the part of~~  
12 ~~the recipient.~~ The executive officer may, not later than  
13 three years after the overpayment became final, file with  
14 the clerk of the proper court in the county from which the  
15 overpayment of benefits was paid or in the county in  
16 which the claimant resides, a certificate containing all of  
17 the following:

18 (1) The amount due, plus interest from the date that  
19 the initial determination of the moneys owed was made.

20 (2) A statement that the executive officer has  
21 complied with all the provisions of this article prior to the  
22 filing of the certificate.

23 (3) A request that the judgment be entered against the  
24 liable person in the amount set forth in the certificate.

25 The clerk, immediately upon the filing of the  
26 certificate, shall enter a judgment for the state against the  
27 liable person in the amount set forth in the certificate.

28 SEC. 12. Section 4903 of the Labor Code is amended  
29 to read:

30 4903. The appeals board may determine, and allow as  
31 liens against any sum to be paid as compensation, any  
32 amount determined as hereinafter set forth in  
33 subdivisions (a) through (i). If more than one such lien  
34 be allowed, the appeals board may determine the  
35 priorities, if any, between the liens allowed. The liens  
36 which may be allowed hereunder are as follows:

37 (a) A reasonable attorney's fee for legal services  
38 pertaining to any claim for compensation either before  
39 the appeals board or before any of the appellate courts,  
40 and the reasonable disbursements in connection



1 therewith. No fee for legal services shall be awarded to  
2 any representative who is not an attorney, except with  
3 respect to those claims for compensation for which an  
4 application, pursuant to Section 5501, has been filed with  
5 the appeals board on or before December 31, 1991, or for  
6 which a disclosure form, pursuant to Section 4906, has  
7 been sent to the employer, or insurer or third-party  
8 administrator, if either is known, on or before December  
9 31, 1991.

10 (b) The reasonable expense incurred by or on behalf  
11 of the injured employee, as provided by Article 2  
12 (commencing with Section 4600) and, to the extent the  
13 employee is entitled to reimbursement under Section  
14 4621, medical-legal expenses as provided by Article 2.5  
15 (commencing with Section 4620) of Chapter 2 of Part 2.

16 (c) The reasonable value of the living expenses of an  
17 injured employee or of his or her dependents, subsequent  
18 to the injury.

19 (d) The reasonable burial expenses of the deceased  
20 employee, not to exceed the amount provided for by  
21 Section 4701.

22 (e) The reasonable living expenses of the spouse or  
23 minor children of the injured employee, or both,  
24 subsequent to the date of the injury, where the employee  
25 has deserted or is neglecting his or her family. These  
26 expenses shall be allowed in such proportion as the  
27 appeals board deems proper, under application of the  
28 spouse, guardian of the minor children, or the assignee,  
29 pursuant to subdivision (a) of Section 11477 of the  
30 Welfare and Institutions Code, of the spouse, a former  
31 spouse, or minor children. A collection received as a result  
32 of a lien against a workers' compensation award imposed  
33 pursuant to this subdivision for payment of child support  
34 ordered by a court shall be credited as provided in Section  
35 695.221 of the Code of Civil Procedure.

36 (f) The amount of unemployment compensation  
37 disability benefits which have been paid under or  
38 pursuant to the Unemployment Insurance Code in those  
39 cases where, pending a determination under this division  
40 there was uncertainty whether such benefits were



1 payable under the Unemployment Insurance Code or  
2 payable hereunder; provided, however, that any lien  
3 under this subdivision shall be allowed and paid as  
4 provided in Section 4904.

5 (g) The amount of unemployment compensation  
6 benefits and extended duration benefits paid to the  
7 injured employee for the same day or days for which he  
8 or she receives, or is entitled to receive, temporary total  
9 disability indemnity payments under this division;  
10 provided, however, that any lien under this subdivision  
11 shall be allowed and paid as provided in Section 4904.

12 (h) The amount of indemnification granted *by the*  
13 *California Victims of Crime Program* pursuant to Article  
14 1 (commencing with Section 13959) of Chapter 5 of Part  
15 4 of Division 3 of Title 2 of the Government Code.

16 (i) The amount of compensation, including expenses  
17 of medical treatment, and recoverable costs which have  
18 been paid by the Asbestos Workers' Account pursuant to  
19 the provisions of Chapter 11 (commencing with Section  
20 4401) of Part 1.

21 SEC. 13. Section 166 of the Penal Code is amended to  
22 read:

23 166. (a) Except as provided in subdivisions (b) and  
24 (c), every person guilty of any contempt of court, of any  
25 of the following kinds, is guilty of a misdemeanor:

26 (1) Disorderly, contemptuous, or insolent behavior  
27 committed during the sitting of any court of justice, in  
28 immediate view and presence of the court, and directly  
29 tending to interrupt its proceedings or to impair the  
30 respect due to its authority.

31 (2) Behavior as specified in paragraph (1) committed  
32 in the presence of any referee, while actually engaged in  
33 any trial or hearing, pursuant to the order of any court, or  
34 in the presence of any jury while actually sitting for the  
35 trial of a cause, or upon any inquest or other proceedings  
36 authorized by law.

37 (3) Any breach of the peace, noise, or other  
38 disturbance directly tending to interrupt the proceedings  
39 of any court.



1 (4) Willful disobedience of any process or order  
2 lawfully issued by any court.

3 (5) Resistance willfully offered by any person to the  
4 lawful order or process of any court.

5 (6) The contumacious and unlawful refusal of any  
6 person to be sworn as a witness; or, when so sworn, the like  
7 refusal to answer any material question.

8 (7) The publication of a false or grossly inaccurate  
9 report of the proceedings of any court.

10 (8) Presenting to any court having power to pass  
11 sentence upon any prisoner under conviction, or to any  
12 member of the court, any affidavit or testimony or  
13 representation of any kind, verbal or written, in  
14 aggravation or mitigation of the punishment to be  
15 imposed upon the prisoner, except as provided in this  
16 code.

17 (b) (1) Any person who is guilty of contempt of court  
18 under paragraph (4) of subdivision (a) by willfully  
19 contacting a victim by phone, mail, or directly and who  
20 has been previously convicted of a violation of Section  
21 646.9 shall be punished by imprisonment in a county jail  
22 for not more than one year, by a fine of five thousand  
23 dollars (\$5,000), or by both that fine and imprisonment.

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

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

30 (c) (1) Notwithstanding paragraph (4) of subdivision  
31 (a), any willful and knowing violation of any protective  
32 order or stay away court order issued pursuant to Section  
33 136.2, in a pending criminal proceeding involving  
34 domestic violence, as defined in Section 13700, or issued  
35 as a condition of probation after a conviction in a criminal  
36 proceeding involving domestic violence, as defined in  
37 Section 13700, which is an order described in paragraph  
38 (3), shall constitute contempt of court, a misdemeanor,  
39 punishable by imprisonment in a county jail for not more  
40 than one year, by a fine of not more than one thousand



1 dollars (\$1,000), or by both that imprisonment and the  
2 fine.

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

7 (3) Paragraphs (1) and (2) shall apply to the following  
8 court orders:

9 (A) An order enjoining any party from molesting,  
10 attacking, striking, threatening, sexually assaulting,  
11 battering, harassing, contacting repeatedly by mail with  
12 the intent to harass, or disturbing the peace of the other  
13 party, or other named family and household members.

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

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

19 (4) A second or subsequent conviction for a violation  
20 of any order described in paragraph (1) occurring within  
21 seven years of a prior conviction for a violation of any of  
22 those orders and involving an act of violence or “a  
23 credible threat” of violence, as provided in subdivisions  
24 (c) and (d) of Section 139, is punishable by imprisonment  
25 in a county jail not to exceed one year, or in the state  
26 prison for 16 months or two or three years.

27 (5) The prosecuting agency of each county shall have  
28 the primary responsibility for the enforcement of the  
29 orders described in paragraph (1).

30 (d) (1) If probation is granted upon conviction of a  
31 violation of subdivision (c), the court shall require  
32 participation in a batterer’s treatment program as a  
33 condition of probation, unless, considering all of the facts  
34 and circumstances, the court finds participating in a  
35 batterer’s treatment program inappropriate for the  
36 defendant.

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



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

4 (B) That the defendant provide restitution to  
5 reimburse the victim for reasonable costs of counseling  
6 and other reasonable expenses that the court finds are the  
7 direct result of the defendant's offense.

8 (3) For any order to pay a fine, make payments to a  
9 battered women's shelter, or pay restitution as a  
10 condition of probation under this subdivision or  
11 subdivision (c), the court shall make a determination of  
12 the defendant's ability to pay. In no event shall any order  
13 to make payments to a battered women's shelter be made  
14 if it would impair the ability of the defendant to pay direct  
15 restitution to the victim or court-ordered child support.

16 (4) Where the injury to a married person is caused in  
17 whole or part by the criminal acts of his or her spouse in  
18 violation of subdivision (c), the community property may  
19 not be used to discharge the liability of the offending  
20 spouse for restitution to the injured spouse, required by  
21 Section 1203.04, *as operative on or before August 2, 1995,*  
22 *or Section 1202.4,* or to a shelter for costs with regard to  
23 the injured spouse and dependents, required by this  
24 subdivision, until all separate property of the offending  
25 spouse is exhausted.

26 (5) Any person violating any order described in  
27 subdivision (c), may be punished for any substantive  
28 offenses described under Section 136.1 or 646.9. No  
29 finding of contempt shall be a bar to prosecution for a  
30 violation of Section 136.1 or 646.9. However, any person  
31 held in contempt for a violation of subdivision (c) shall be  
32 entitled to credit for any punishment imposed as a result  
33 of that violation against any sentence imposed upon  
34 conviction of an offense described in Section 136.1 or  
35 646.9. Any conviction or acquittal for any substantive  
36 offense under Section 136.1 or 646.9 shall be a bar to a  
37 subsequent punishment for contempt arising out of the  
38 same act.

39 SEC. 14. Section 243 of the Penal Code is amended to  
40 read:



1 243. (a) A battery is punishable by a fine of not  
2 exceeding two thousand dollars (\$2,000), or by  
3 imprisonment in a county jail not exceeding six months,  
4 or by both the fine and imprisonment.

5 (b) When a battery is committed against the person of  
6 a peace officer, custodial officer, firefighter, emergency  
7 medical technician, mobile intensive care paramedic,  
8 lifeguard, process server, traffic officer, or animal control  
9 officer engaged in the performance of his or her duties,  
10 whether on or off duty, including when the peace officer  
11 is in a police uniform and is concurrently performing the  
12 duties required of him or her as a peace officer while also  
13 employed in a private capacity as a part-time or casual  
14 private security guard or patrolman, or a physician or  
15 nurse engaged in rendering emergency medical care  
16 outside a hospital, clinic, or other health care facility, and  
17 the person committing the offense knows or reasonably  
18 should know that the victim is a peace officer, custodial  
19 officer, firefighter, emergency medical technician,  
20 mobile intensive care paramedic, lifeguard, process  
21 server, traffic officer, or animal control officer engaged in  
22 the performance of his or her duties, or a physician or  
23 nurse engaged in rendering emergency medical care, the  
24 battery is punishable by a fine not exceeding two  
25 thousand dollars (\$2,000), or by imprisonment in a county  
26 jail not exceeding one year, or by both the fine and  
27 imprisonment.

28 (c) When a battery is committed against a peace  
29 officer, custodial officer, firefighter, emergency medical  
30 technician, mobile intensive care paramedic, lifeguard,  
31 process server, traffic officer, or animal control officer  
32 engaged in the performance of his or her duties, whether  
33 on or off duty, including when the peace officer is in a  
34 police uniform and is concurrently performing the duties  
35 required of him or her as a peace officer while also  
36 employed in a private capacity as a part-time or casual  
37 private security guard or patrolman, or a physician or  
38 nurse engaged in rendering emergency medical care  
39 outside a hospital, clinic, or other health care facility, and  
40 the person committing the offense knows or reasonably



1 should know that the victim is a peace officer, custodial  
2 officer, firefighter, emergency medical technician,  
3 mobile intensive care paramedic, lifeguard, process  
4 server, traffic officer, or animal control officer engaged in  
5 the performance of his or her duties, or a physician or  
6 nurse engaged in rendering emergency medical care,  
7 and an injury is inflicted on that victim, the battery is  
8 punishable by imprisonment in a county jail for a period  
9 of not more than one year, or by a fine of not more than  
10 two thousand dollars (\$2,000), or by imprisonment in the  
11 state prison for 16 months, or two or three years.

12 (d) When a battery is committed against any person  
13 and serious bodily injury is inflicted on the person, the  
14 battery is punishable by imprisonment in a county jail for  
15 a period of not more than one year or imprisonment in  
16 the state prison for two, three, or four years.

17 (e) (1) When a battery is committed against a  
18 noncohabiting former spouse, fiancé, fiancée, or a person  
19 with whom the defendant currently has, or has previously  
20 had, a dating relationship, the battery is punishable by a  
21 fine not exceeding two thousand dollars (\$2,000), or by  
22 imprisonment in a county jail for a period of not more  
23 than one year, or by both. If probation is granted, or the  
24 execution or imposition of the sentence is suspended, it  
25 shall be a condition thereof that the defendant participate  
26 in, for no less than one year, and successfully complete, a  
27 batterer's treatment program, as defined in Section  
28 1203.097, or if none is available, another appropriate  
29 counseling program designated by the court. However,  
30 this provision shall not be construed as requiring a city, a  
31 county, or a city and county to provide a new program or  
32 higher level of service as contemplated by Section 6 of  
33 Article XIII B of the California Constitution.

34 (2) Upon conviction of a violation of this subdivision,  
35 if probation is granted, the conditions of probation may  
36 include, in lieu of a fine, one or both of the following  
37 requirements:

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



1 (B) That the defendant reimburse the victim for  
2 reasonable costs of counseling and other reasonable  
3 expenses that the court finds are the direct result of the  
4 defendant's offense.

5 For any order to pay a fine, make payments to a  
6 battered women's shelter, or pay restitution as a  
7 condition of probation under this subdivision, the court  
8 shall make a determination of the defendant's ability to  
9 pay. In no event shall any order to make payments to a  
10 battered women's shelter be made if it would impair the  
11 ability of the defendant to pay direct restitution to the  
12 victim or court-ordered child support. Where the injury  
13 to a married person is caused in whole or in part by the  
14 criminal acts of his or her spouse in violation of this  
15 section, the community property may not be used to  
16 discharge the liability of the offending spouse for  
17 restitution to the injured spouse, required by Section  
18 1203.04, *as operative on or before August 2, 1995, or*  
19 *Section 1202.4*, or to a shelter for costs with regard to the  
20 injured spouse and dependents, required by this section,  
21 until all separate property of the offending spouse is  
22 exhausted.

23 (3) Upon conviction of a violation of this subdivision,  
24 if probation is granted or the execution or imposition of  
25 the sentence is suspended and the person has been  
26 previously convicted of a violation of this subdivision and  
27 sentenced under paragraph (1), the person shall be  
28 imprisoned for not less than 48 hours in addition to the  
29 conditions in paragraph (1). However, the court, upon a  
30 showing of good cause, may elect not to impose the  
31 mandatory minimum imprisonment as required by this  
32 subdivision and may, under these circumstances, grant  
33 probation or order the suspension of the execution or  
34 imposition of the sentence.

35 The Legislature finds and declares that these specified  
36 crimes merit special consideration when imposing a  
37 sentence so as to display society's condemnation for these  
38 crimes of violence upon victims with whom a close  
39 relationship has been formed.

40 (f) As used in this section:



1 (1) “Peace officer” means any person defined in  
2 Chapter 4.5 (commencing with Section 830) of Title 3 of  
3 Part 2.

4 (2) “Emergency medical technician” means a person  
5 possessing a valid course completion certificate from a  
6 program approved by the State Department of Health  
7 Services for the medical training and education of  
8 ambulance personnel, and who meets the standards of  
9 Division 2.5 (commencing with Section 1797) of the  
10 Health and Safety Code.

11 (3) “Mobile intensive care paramedic” means any  
12 person who meets the standards set forth in Section  
13 1797.84 of, and Division 2.5 (commencing with Section  
14 1797) of, the Health and Safety Code.

15 (4) “Nurse” means a person who meets the standards  
16 of Division 2.5 (commencing with Section 1797) of the  
17 Health and Safety Code.

18 (5) “Serious bodily injury” means a serious  
19 impairment of physical condition, including, but not  
20 limited to, the following: loss of consciousness; concussion;  
21 bone fracture; protracted loss or impairment of function  
22 of any bodily member or organ; a wound requiring  
23 extensive suturing; and serious disfigurement.

24 (6) “Injury” means any physical injury which requires  
25 professional medical treatment.

26 (7) “Custodial officer” means any person who has the  
27 responsibilities and duties described in Section 831 and  
28 who is employed by a law enforcement agency of any city  
29 or county or who performs those duties as a volunteer.

30 (8) “Lifeguard” means a person defined in paragraph  
31 (5) of subdivision (c) of Section 241.

32 (9) “Traffic officer” means any person employed by a  
33 city, county, or city and county, to monitor and enforce  
34 state laws and local ordinances relating to parking and the  
35 operation of vehicles.

36 (10) “Animal control officer” means any person  
37 employed by a city, county, or city and county for  
38 purposes of enforcing animal control laws or regulations.

39 (11) “Dating relationship” means frequent, intimate  
40 associations primarily characterized by the expectation of



1 affectional or sexual involvement independent of  
2 financial considerations.

3 It is the intent of the Legislature by amendments to this  
4 section at the 1981–82 and 1983–84 Regular Sessions to  
5 abrogate the holdings in cases such as *People v. Corey*, 21  
6 Cal. 3d 738, and *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d  
7 579, and to reinstate prior judicial interpretations of this  
8 section as they relate to criminal sanctions for battery on  
9 peace officers who are employed, on a part-time or casual  
10 basis, while wearing a police uniform as private security  
11 guards or patrolmen and to allow the exercise of peace  
12 officer powers concurrently with that employment.

13 SEC. 15. Section 262 of the Penal Code is amended to  
14 read:

15 262. (a) Rape of a person who is the spouse of the  
16 perpetrator is an act of sexual intercourse accomplished  
17 under any of the following circumstances:

18 (1) Where it is accomplished against a person's will by  
19 means of force, violence, duress, menace, or fear of  
20 immediate and unlawful bodily injury on the person or  
21 another.

22 (2) Where a person is prevented from resisting by any  
23 intoxicating or anesthetic substance, or any controlled  
24 substance, and this condition was known, or reasonably  
25 should have been known, by the accused.

26 (3) Where a person is at the time unconscious of the  
27 nature of the act, and this is known to the accused. As used  
28 in this paragraph, "unconscious of the nature of the act"  
29 means incapable of resisting because the victim meets  
30 one of the following conditions:

31 (A) Was unconscious or asleep.

32 (B) Was not aware, knowing, perceiving, or cognizant  
33 that the act occurred.

34 (C) Was not aware, knowing, perceiving, or cognizant  
35 of the essential characteristics of the act due to the  
36 perpetrator's fraud in fact.

37 (4) Where the act is accomplished against the victim's  
38 will by threatening to retaliate in the future against the  
39 victim or any other person, and there is a reasonable  
40 possibility that the perpetrator will execute the threat. As



1 used in this paragraph, “threatening to retaliate” means  
2 a threat to kidnap or falsely imprison, or to inflict extreme  
3 pain, serious bodily injury, or death.

4 (5) Where the act is accomplished against the victim’s  
5 will by threatening to use the authority of a public official  
6 to incarcerate, arrest, or deport the victim or another, and  
7 the victim has a reasonable belief that the perpetrator is  
8 a public official. As used in this paragraph, “public  
9 official” means a person employed by a governmental  
10 agency who has the authority, as part of that position, to  
11 incarcerate, arrest, or deport another. The perpetrator  
12 does not actually have to be a public official.

13 (b) Section 800 shall apply to this section. However, no  
14 prosecution shall be commenced under this section  
15 unless the violation was reported to medical personnel, a  
16 member of the clergy, an attorney, a shelter  
17 representative, a counselor, a judicial officer, a rape crisis  
18 agency, a prosecuting agency, a law enforcement officer,  
19 or a firefighter within one year after the date of the  
20 violation. This reporting requirement shall not apply if  
21 the victim’s allegation of the offense is corroborated by  
22 independent evidence that would otherwise be  
23 admissible during trial.

24 (c) As used in this section, “duress” means a direct or  
25 implied threat of force, violence, danger, or retribution  
26 sufficient to coerce a reasonable person of ordinary  
27 susceptibilities to perform an act which otherwise would  
28 not have been performed, or acquiesce in an act to which  
29 one otherwise would not have submitted. The total  
30 circumstances, including the age of the victim, and his or  
31 her relationship to the defendant, are factors to consider  
32 in apprising the existence of duress.

33 (d) As used in this section, “menace” means any  
34 threat, declaration, or act that shows an intention to inflict  
35 an injury upon another.

36 (e) If probation is granted upon conviction of a  
37 violation of this section, the conditions of probation may  
38 include, in lieu of a fine, one or both of the following  
39 requirements:



1 (1) That the defendant make payments to a battered  
2 women's shelter, up to a maximum of one thousand  
3 dollars (\$1,000).

4 (2) That the defendant reimburse the victim for  
5 reasonable costs of counseling and other reasonable  
6 expenses that the court finds are the direct result of the  
7 defendant's offense.

8 For any order to pay a fine, make payments to a  
9 battered women's shelter, or pay restitution as a  
10 condition of probation under this subdivision, the court  
11 shall make a determination of the defendant's ability to  
12 pay. In no event shall any order to make payments to a  
13 battered women's shelter be made if it would impair the  
14 ability of the defendant to pay direct restitution to the  
15 victim or court-ordered child support. Where the injury  
16 to a married person is caused in whole or in part by the  
17 criminal acts of his or her spouse in violation of this  
18 section, the community property may not be used to  
19 discharge the liability of the offending spouse for  
20 restitution to the injured spouse, required by Section  
21 1203.04, *as operative on or before August 2, 1995, or*  
22 *Section 1202.4*, or to a shelter for costs with regard to the  
23 injured spouse and dependents, required by this section,  
24 until all separate property of the offending spouse is  
25 exhausted.

26 SEC. 16. Section 273.5 of the Penal Code is amended  
27 to read:

28 273.5. (a) Any person who willfully inflicts upon his  
29 or her spouse, or any person who willfully inflicts upon  
30 any person with whom he or she is cohabiting, or any  
31 person who willfully inflicts upon any person who is the  
32 mother or father of his or her child, corporal injury  
33 resulting in a traumatic condition, is guilty of a felony, and  
34 upon conviction thereof shall be punished by  
35 imprisonment in the state prison for two, three, or four  
36 years, or in a county jail for not more than one year, or by  
37 a fine of up to six thousand dollars (\$6,000) or by both.

38 (b) Holding oneself out to be the husband or wife of  
39 the person with whom one is cohabiting is not necessary



1 to constitute cohabitation as the term is used in this  
2 section.

3 (c) As used in this section, “traumatic condition”  
4 means a condition of the body, such as a wound or  
5 external or internal injury, whether of a minor or serious  
6 nature, caused by a physical force.

7 (d) For the purpose of this section, a person shall be  
8 considered the father or mother of another person’s child  
9 if the alleged male parent is presumed the natural father  
10 under Sections 7611 and 7612 of the Family Code.

11 (e) In any case in which a person is convicted of  
12 violating this section and probation is granted, the court  
13 shall require participation in a batterer’s treatment  
14 program as a condition of probation, as specified in  
15 Section 1203.097.

16 (f) If probation is granted, or the execution or  
17 imposition of a sentence is suspended, for any person  
18 convicted under subdivision (a) who previously has been  
19 convicted under subdivision (a) for an offense that  
20 occurred within seven years of the offense of the second  
21 conviction, it shall be a condition thereof that he or she  
22 be imprisoned in a county jail for not less than 96 hours  
23 and that he or she participate in for no less than one year,  
24 and successfully complete, a batterer’s treatment  
25 program, as designated by the court pursuant to Section  
26 1203.097. However, the court, upon a showing of good  
27 cause, may find that the mandatory minimum  
28 imprisonment, as required by this subdivision, shall not be  
29 imposed and grant probation or the suspension of the  
30 execution or imposition of a sentence.

31 (g) If probation is granted, or the execution or  
32 imposition of a sentence is suspended, for any person  
33 convicted under subdivision (a) who previously has been  
34 convicted of two or more violations of subdivision (a) for  
35 offenses that occurred within seven years of the most  
36 recent conviction, it shall be a condition thereof that he  
37 or she be imprisoned in a county jail for not less than 30  
38 days and that he or she participate in for no less than one  
39 year, and successfully complete, a batterer’s treatment  
40 program as designated by the court pursuant to Section



1 1203.097. However, the court, upon a showing of good  
2 cause, may find that the mandatory minimum  
3 imprisonment, as required by this subdivision, shall not be  
4 imposed and grant probation or the suspension of the  
5 execution or imposition of a sentence.

6 (h) If probation is granted upon conviction of a  
7 violation of subdivision (a), the conditions of probation  
8 may include, in lieu of a fine, one or both of the following  
9 requirements:

10 (1) That the defendant make payments to a battered  
11 women's shelter, up to a maximum of five thousand  
12 dollars (\$5,000), pursuant to Section 1203.097.

13 (2) That the defendant reimburse the victim for  
14 reasonable costs of counseling and other reasonable  
15 expenses that the court finds are the direct result of the  
16 defendant's offense.

17 For any order to pay a fine, make payments to a  
18 battered women's shelter, or pay restitution as a  
19 condition of probation under this subdivision, the court  
20 shall make a determination of the defendant's ability to  
21 pay. In no event shall any order to make payments to a  
22 battered women's shelter be made if it would impair the  
23 ability of the defendant to pay direct restitution to the  
24 victim or court-ordered child support. Where the injury  
25 to a married person is caused in whole or in part by the  
26 criminal acts of his or her spouse in violation of this  
27 section, the community property may not be used to  
28 discharge the liability of the offending spouse for  
29 restitution to the injured spouse, required by Section  
30 1203.04, *as operative on or before August 2, 1995, or*  
31 *Section 1202.4*, or to a shelter for costs with regard to the  
32 injured spouse and dependents, required by this section,  
33 until all separate property of the offending spouse is  
34 exhausted.

35 SEC. 17. Section 273.6 of the Penal Code is amended  
36 to read:

37 273.6. (a) Any intentional and knowing violation of a  
38 protective order, as defined in Section 6218 of the Family  
39 Code, or of an order issued pursuant to Section 527.6 or  
40 527.8 of the Code of Civil Procedure is a misdemeanor



1 punishable by a fine of not more than one thousand  
2 dollars (\$1,000), or by imprisonment in a county jail for  
3 not more than one year, or by both the fine and  
4 imprisonment.

5 (b) In the event of a violation of subdivision (a) which  
6 results in physical injury, the person shall be punished by  
7 a fine of not more than two thousand dollars (\$2,000), or  
8 by imprisonment in a county jail for not less than 30 days  
9 nor more than one year, or by both the fine and  
10 imprisonment. However, if the person is imprisoned in a  
11 county jail for at least 48 hours, the court may, in the  
12 interests of justice and for reasons stated on the record,  
13 reduce or eliminate the 30-day minimum imprisonment  
14 required by this subdivision. In determining whether to  
15 reduce or eliminate the minimum imprisonment  
16 pursuant to this subdivision, the court shall consider the  
17 seriousness of the facts before the court, whether there  
18 are additional allegations of a violation of the order during  
19 the pendency of the case before the court, the probability  
20 of future violations, the safety of the victim, and whether  
21 the defendant has successfully completed or is making  
22 progress with counseling.

23 (c) Subdivisions (a) and (b) shall apply to the  
24 following court orders:

25 (1) An order enjoining any party from molesting,  
26 attacking, striking, threatening, sexually assaulting,  
27 battering, harassing, contacting repeatedly by mail with  
28 the intent to harass, or disturbing the peace of the other  
29 party, or other named family and household members.

30 (2) An order excluding one party from the family  
31 dwelling or from the dwelling of the other.

32 (3) An order enjoining a party from specified behavior  
33 which the court determined was necessary to effectuate  
34 the order under subdivision (a).

35 (d) A subsequent conviction for a violation of an order  
36 described in subdivision (a), occurring within seven  
37 years of a prior conviction for a violation of an order  
38 described in subdivision (a) and involving an act of  
39 violence or “a credible threat” of violence, as defined in  
40 subdivision (c) of Section 139, is punishable by



1 imprisonment in a county jail not to exceed one year, or  
2 in the state prison.

3 (e) In the event of a subsequent conviction for a  
4 violation of an order described in subdivision (a) for an  
5 act occurring within one year of a prior conviction for a  
6 violation of an order described in subdivision (a) which  
7 results in physical injury to the same victim, the person  
8 shall be punished by a fine of not more than two thousand  
9 dollars (\$2,000), or by imprisonment in a county jail for  
10 not less than six months nor more than one year, by both  
11 that fine and imprisonment, or by imprisonment in the  
12 state prison. However, if the person is imprisoned in a  
13 county jail for at least 30 days, the court may, in the  
14 interests of justice and for reasons stated in the record,  
15 reduce or eliminate the six-month minimum  
16 imprisonment required by this subdivision. In  
17 determining whether to reduce or eliminate the  
18 minimum imprisonment pursuant to this subdivision, the  
19 court shall consider the seriousness of the facts before the  
20 court, whether there are additional allegations of a  
21 violation of the order during the pendency of the case  
22 before the court, the probability of future violations, the  
23 safety of the victim, and whether the defendant has  
24 successfully completed or is making progress with  
25 counseling.

26 (f) The prosecuting agency of each county shall have  
27 the primary responsibility for the enforcement of orders  
28 issued pursuant to subdivisions (a), (b), (d), and (e).

29 (g) The court may order a person convicted under this  
30 section to undergo counseling, and, if appropriate, to  
31 complete a batterer's treatment program.

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

36 (1) That the defendant make payments to a battered  
37 women's shelter, up to a maximum of five thousand  
38 dollars (\$5,000), pursuant to Section 1203.097.

39 (2) That the defendant reimburse the victim for  
40 reasonable costs of counseling and other reasonable



1 expenses that the court finds are the direct result of the  
2 defendant's offense.

3 (i) For any order to pay a fine, make payments to a  
4 battered women's shelter, or pay restitution as a  
5 condition of probation under subdivision (e), the court  
6 shall make a determination of the defendant's ability to  
7 pay. In no event shall any order to make payments to a  
8 battered women's shelter be made if it would impair the  
9 ability of the defendant to pay direct restitution to the  
10 victim or court ordered child support. Where the injury  
11 to a married person is caused in whole or in part by the  
12 criminal acts of his or her spouse in violation of this  
13 section, the community property may not be used to  
14 discharge the liability of the offending spouse for  
15 restitution to the injured spouse, required by Section  
16 1203.04, *as operative on or before August 2, 1995, or*  
17 *Section 1202.4*, or to a shelter for costs with regard to the  
18 injured spouse and dependents, required by this section,  
19 until all separate property of the offending spouse is  
20 exhausted.

21 SEC. 18. Section 484.1 of the Penal Code is amended  
22 to read:

23 484.1. (a) Any person who knowingly gives false  
24 information or provides false verification as to the  
25 person's true identity or as to the person's ownership  
26 interest in property or the person's authority to sell  
27 property in order to receive money or other valuable  
28 consideration from a pawnbroker or secondhand dealer  
29 and who receives money or other valuable consideration  
30 from the pawnbroker or secondhand dealer is guilty of  
31 theft.

32 (b) Upon conviction of the offense described in  
33 subdivision (a), the court may require, in addition to any  
34 sentence or fine imposed, that the defendant make  
35 restitution to the pawnbroker or secondhand dealer in an  
36 amount not exceeding the actual losses sustained  
37 pursuant to the provisions of subdivision (c) of Section  
38 13967, *as operative on or before September 28, 1994*, of the  
39 Government Code, if the defendant is denied probation,  
40 or Section 1203.04 ~~of the Penal Code~~, *as operative on or*



1 *before August 2, 1995, if the defendant is granted*  
2 *probation or Section 1202.4.*

3 SEC. 19. Section 1203.044 of the Penal Code is  
4 amended to read:

5 1203.044. (a) This section shall apply only to a  
6 defendant convicted of a felony for theft of an amount  
7 exceeding fifty thousand dollars (\$50,000) in a single  
8 transaction or occurrence. This section shall not apply  
9 unless the fact that the crime involved the theft of an  
10 amount exceeding fifty thousand dollars (\$50,000) in a  
11 single transaction or occurrence is charged in the  
12 accusatory pleading and either admitted by the  
13 defendant in open court or found to be true by the trier  
14 of fact. Aggregate losses from more than one criminal act  
15 shall not be considered in determining if this section  
16 applies.

17 (b) Notwithstanding any other law, probation shall not  
18 be granted to a defendant convicted of a crime to which  
19 subdivision (a) applies if the defendant was previously  
20 convicted of an offense for which an enhancement  
21 pursuant to Section 12022.6 was found true even if that  
22 enhancement was not imposed by the sentencing court.  
23 The prior conviction shall be alleged in the accusatory  
24 pleading and either admitted by the defendant in open  
25 court or found to be true by the trier of fact.

26 (c) In deciding whether to grant probation to a  
27 defendant convicted of a crime to which subdivision (a)  
28 applies, the court shall consider all relevant information,  
29 including the extent to which the defendant has  
30 attempted to pay restitution to the victim between the  
31 date upon which the defendant was convicted and the  
32 date of sentencing. A defendant claiming inability to pay  
33 restitution before the date of sentencing shall provide a  
34 statement of assets, income, and liabilities, as set forth in  
35 subdivision (j) to the court, the probation department,  
36 and the prosecution.

37 (d) In addition to the restrictions on probation  
38 imposed by subdivisions (b) and (c), probation shall not  
39 be granted to any person convicted of theft in an amount  
40 exceeding one hundred thousand dollars (\$100,000) in a



1 single transaction or occurrence, except in unusual cases  
2 if the interests of justice would best be served if the  
3 person is granted probation. The fact that the theft was  
4 of an amount exceeding one hundred thousand dollars  
5 (\$100,000) in a single transaction or occurrence, shall be  
6 alleged in the accusatory pleading and either admitted by  
7 the defendant in open court or found to be true by the  
8 trier of fact. This subdivision shall not authorize a grant  
9 of probation otherwise prohibited under subdivision (b)  
10 or (c). If probation is granted pursuant to this subdivision,  
11 the court shall specify on the record and shall enter on the  
12 minutes the circumstances indicating that the interests of  
13 justice would best be served by that disposition.  
14 Aggregate losses from more than one criminal act shall  
15 not be considered in determining whether this  
16 subdivision applies.

17 (e) Subject to subdivision (f), if a defendant is  
18 convicted of a crime to which subdivision (a) applies and  
19 the court grants probation, a court shall impose at least a  
20 90-day sentence in a county jail as a condition of  
21 probation. If the defendant was convicted of a crime to  
22 which subdivision (d) applies, and the court grants  
23 probation, the court shall impose at least a 180-day  
24 sentence in a county jail as a condition of probation.

25 (f) The court shall designate a portion of any sentence  
26 imposed pursuant to subdivision (e) as a mandatory  
27 in-custody term. For the purpose of this section only,  
28 “mandatory in-custody term” means that the defendant  
29 shall serve that term, notwithstanding credits pursuant to  
30 Section 4019, in custody in the county jail. The defendant  
31 shall not be allowed release on any program during that  
32 term, including work furlough, work release, public  
33 service program, or electronic monitoring. The court  
34 shall designate the mandatory in-custody term as follows:

35 (1) If the defendant was convicted of a crime to which  
36 subdivision (a) applies the mandatory in-custody term  
37 shall be no less than 30 days. If the person serves a  
38 mandatory in-custody term of at least 30 days, the court  
39 may, in the interests of justice, and for reasons stated in



1 the record, reduce the mandatory minimum 90-day  
2 sentence required by subdivision (e).

3 (2) If the defendant was convicted of a crime to which  
4 subdivision (d) applies, the mandatory in-custody term  
5 shall be no less than 60 days. If the person serves a  
6 mandatory in-custody term of at least 60 days, the court  
7 may, in the interests of justice, and for reasons stated in  
8 the record, reduce the mandatory minimum 180-day  
9 sentence required by subdivision (e).

10 (g) If a defendant is convicted of a crime to which  
11 subdivision (a) applies, and the court grants probation,  
12 the court shall require the defendant as a condition of  
13 probation to pay restitution to the victim and to pay a  
14 surcharge to the county in the amount of 20 percent of the  
15 restitution ordered by the court, as follows:

16 (1) The surcharge is not subject to any assessments  
17 otherwise imposed by Section 1464. The surcharge shall  
18 be paid into the county treasury and placed in the general  
19 fund to be used exclusively for the investigation and  
20 prosecution of white collar crime offenses and to pay the  
21 expenses incurred by the county in administering this  
22 section, including increased costs incurred as a result of  
23 offenders serving mandatory in-custody terms pursuant  
24 to this section.

25 (2) The court shall also enter an income deduction  
26 order as provided in Section 13967.2 of the Government  
27 Code to secure payment of the surcharge. That order may  
28 be enforced to secure payment of the surcharge as  
29 provided by those provisions.

30 (3) The county board of supervisors shall not charge  
31 the fee provided for by Section 1203.1 ~~of this code~~,  
32 *subdivision (l) of Section 1202.4*, or subdivision (d) of  
33 Section 13967, *as operative on or before September 28,*  
34 *1994*, of the Government Code for the collection of  
35 restitution or any restitution fine.

36 (4) The defendant shall not be required to pay the  
37 costs of probation as otherwise required by subdivision  
38 (b) of Section 1203.1.

39 (h) Notwithstanding any other law, if a defendant is  
40 convicted of a crime to which subdivision (a) applies and



1 the court grants probation, as a condition of probation,  
2 within 30 court days after being granted probation, and  
3 annually thereafter, the defendant shall provide the  
4 county financial officer with all of the following  
5 documents and records:

6 (1) True and correct copies of all income tax and  
7 personal property tax returns for the previous tax year,  
8 including W-2 forms filed on the defendant's behalf with  
9 any state tax agency. If the defendant is unable to supply  
10 a copy of a state tax return, the defendant shall provide  
11 a true and correct copy of all income tax returns for the  
12 previous tax year filed on his or her behalf with the  
13 federal government. The defendant is not required to  
14 provide any particular document if to do so would violate  
15 federal law or the law of the state in which the document  
16 was filed. However, this section shall supersede all other  
17 laws in this state concerning the right to privacy with  
18 respect to tax returns filed with this state. If, during the  
19 term of probation, the defendant intentionally fails to  
20 provide the county financial officer with any document  
21 that he or she knows is required to be provided under this  
22 subdivision, that failure shall constitute a violation of  
23 probation.

24 (2) A statement of income, assets, and liabilities as  
25 defined in subdivision (j).

26 (i) The submission by the defendant of any tax  
27 document pursuant to paragraph (1) of subdivision (h)  
28 that the defendant knows does not accurately state the  
29 defendant's income, or if required, the defendant's  
30 personal property, if the inaccuracy is material,  
31 constitutes a violation of probation.

32 (j) A statement of income, assets, and liabilities form,  
33 that is consistent with the disclosure requirements of this  
34 section, may be established by the financial officer of each  
35 county. That statement shall require the defendant to  
36 furnish relevant financial information identifying the  
37 defendant's income, assets, possessions, or liabilities,  
38 actual or contingent. The statement may include the  
39 following:



- 1 (1) All real property in which the defendant has any  
2 interest.
- 3 (2) Any item of personal property worth more than  
4 three thousand dollars (\$3,000) in which the defendant  
5 has any interest, including, but not limited to, vehicles,  
6 airplanes, boats, computers, and consumer electronics.  
7 Any collection of jewelry, coins, silver, china, artwork,  
8 antiques, or other collectibles in which the defendant has  
9 any interest, if that collection is worth more than three  
10 thousand dollars (\$3,000).
- 11 (3) All domestic and foreign assets in the defendant's  
12 name, or in the name of the defendant's spouse or minor  
13 children, of a value over three thousand dollars (\$3,000)  
14 and in whatever form, including, but not limited to, bank  
15 accounts, securities, stock options, bonds, mutual funds,  
16 money market funds, certificates of deposits, annuities,  
17 commodities, precious metals, deferred compensation  
18 accounts, individual retirement accounts, and related or  
19 analogous accounts.
- 20 (4) All insurance policies in which the defendant or  
21 the defendant's spouse or minor children retain a cash  
22 value.
- 23 (5) All pension funds in which the defendant has a  
24 vested right.
- 25 (6) All insurance policies of which the defendant is a  
26 beneficiary.
- 27 (7) All contracts, agreements, judgments, awards, or  
28 prizes granting the defendant the right to receive money  
29 or real or personal property in the future, including  
30 alimony and child support.
- 31 (8) All trusts of which the defendant is a beneficiary.
- 32 (9) All unrevoked wills of a decedent if the defendant  
33 or defendant's spouse or minor child is a beneficiary.
- 34 (10) All lawsuits currently maintained by the  
35 defendant or by or against a corporation in which the  
36 defendant owns more than a 25 percent interest if the suit  
37 includes a prayer for damages.
- 38 (11) All corporations of which the defendant is an  
39 officer. If the defendant is an officer in a corporation sole,  
40 subchapter S corporation, or closely held corporation, and



1 controls more equity of that corporation than any other  
2 individual, the county financial officer shall have  
3 authority to request other records of the corporation.

4 (12) All debts in excess of three thousand dollars  
5 (\$3,000) owed by the defendant to any person or entity.

6 (13) Copies of all applications for loans made by the  
7 defendant during the last year.

8 (14) All encumbrances on any real and personal  
9 property in which the defendant has any interest.

10 (15) All sales, transfers, assignments, quitclaims,  
11 conveyances, or encumbrances of any interest in real or  
12 personal property of a value exceeding three thousand  
13 dollars (\$3,000) made by the defendant during the period  
14 beginning one year before charges were filed to the  
15 present, including the identity of the recipient of same,  
16 and relationship, if any, to the defendant.

17 (k) The information contained in the statement of  
18 income, assets, and liabilities shall not be available to the  
19 public. Information received pursuant to this subdivision  
20 shall not be disclosed to any member of the public. Any  
21 disclosure in violation of this section shall be a contempt  
22 of court punishable by a fine not exceeding one thousand  
23 dollars (\$1,000), and shall also create a civil cause of action  
24 for damages.

25 (l) After providing the statement of income, assets,  
26 and liabilities, the defendants shall provide the county  
27 financial officer with copies of any documents  
28 representing or reflecting the financial information set  
29 forth in subdivision (j) as requested by that officer.

30 (m) The defendant shall sign the statement of income,  
31 assets, and liabilities under penalty of perjury. The  
32 provision of information known to be false, or the  
33 intentional failure to provide material information  
34 knowing that it was required to have been provided, shall  
35 constitute a violation of probation.

36 (n) The Franchise Tax Board and the Employment  
37 Development Department shall release copies of income  
38 tax returns filed by the defendant and other information  
39 concerning the defendant's current income and place of  
40 employment to the county financial officer upon request.



1 That information shall be kept confidential and shall not  
2 be made available to any member of the public. Any  
3 unauthorized release shall be subject to subdivision (k).  
4 The county shall reimburse the reasonable administrative  
5 expenses incurred by those agencies in providing this  
6 information.

7 (o) During the term of probation, the defendant shall  
8 notify the county financial officer in writing within 30  
9 days, after receipt from any source of any money or real  
10 or personal property that has a value of over five thousand  
11 dollars (\$5,000), apart from the salary from the  
12 defendant's and the defendant's spouse's regular  
13 employment. The defendant shall report the source and  
14 value of the money or real or personal property received.  
15 This information shall not be made available to the public  
16 or the victim. Any unauthorized release shall be subject  
17 to subdivision (k).

18 (p) The term of probation in all cases shall be 10 years.  
19 However, after the defendant has served five years of  
20 probation, the defendant shall be released from all terms  
21 and conditions of probation except those terms and  
22 conditions included within this section. A court may not  
23 revoke or otherwise terminate probation within 10 years  
24 unless and until the defendant has satisfied both the  
25 restitution judgment and the surcharge, or the defendant  
26 is imprisoned for a violation of probation. Upon satisfying  
27 the restitution judgment, the defendant is entitled to a  
28 court order vacating that judgment and removing it from  
29 the public record. Amounts owing on the surcharge are  
30 forgiven upon completion of the term of probation.

31 (q) The county financial officer shall establish a  
32 suggested payment schedule each year to ensure that the  
33 defendant remits amounts to make restitution to the  
34 victim and pay the surcharge. The county financial officer  
35 shall evaluate the defendant's current earnings, *future*  
36 earning capacity, assets (including assets that are in trust  
37 or in accounts where penalties may be incurred upon  
38 premature withdrawal of funds), and liabilities, and set  
39 payments to the county based upon the defendant's  
40 ability to pay. *The defendant shall bear the burden of*



1 *demonstrating the lack of his or her ability to pay.* If the  
2 defendant objects to the suggested payment schedule,  
3 the court shall set the schedule. *Express findings by the*  
4 *court as to the factors bearing on the payment schedule*  
5 *shall not be required.* After the payment schedule is set,  
6 a defendant may request a change in the schedule upon  
7 a change of circumstances. The restitution schedule shall  
8 set a reasonable payment amount and shall not set  
9 payments in an amount that is likely to cause severe  
10 financial hardship to the defendant or his or her family.

11 (r) The willful failure to pay the amounts required by  
12 the payment schedule or to comply with the  
13 requirements of the county financial officer or the  
14 probation department pursuant to this section, if the  
15 defendant is able to pay or comply, is a violation of  
16 probation.

17 (s) In determining the defendant's ability to pay, the  
18 court shall consider whether the annual payment  
19 required, including any money or property seized to  
20 satisfy the restitution judgment, exceeds 15 percent of the  
21 defendant's taxable income for the previous year as  
22 identified on the defendant's tax return for the  
23 defendant's state of residence or on the defendant's  
24 federal tax return. If the defendant has filed a joint return,  
25 the defendant's income for purposes of this section shall  
26 be presumed to be the total of all wages earned by the  
27 defendant, plus one-half of all other nonsalary income  
28 listed on the tax return and accompanying schedules,  
29 unless the defendant demonstrates otherwise. The court  
30 shall also consider the defendant's current income *and*  
31 *future earning capacity.* *A defendant shall bear the*  
32 *burden of demonstrating lack of his or her ability to pay.*  
33 *Express findings by the court as to the factors bearing on*  
34 *the payment schedule shall not be required.*

35 (t) The defendant shall personally appear at any  
36 hearing held pursuant to any provision of this section  
37 unless the defendant is incarcerated or otherwise excused  
38 by the court, in which case the defendant may appear  
39 through counsel.



1 (u) Notwithstanding subdivision (d) of Section 1203.1,  
2 the county financial officer shall distribute proceeds  
3 collected by the county pursuant to this section as follows:

4 (1) If the restitution judgment has been satisfied, but  
5 the surcharge remains outstanding, all amounts paid by  
6 the defendant shall be kept by the county and applied to  
7 the surcharge.

8 (2) If the surcharge has been satisfied, but the  
9 restitution judgment has not been satisfied, all amounts  
10 submitted to the county shall be remitted to the victim.

11 (3) If neither judgment has been satisfied, the county  
12 shall remit 70 percent of the amounts collected to the  
13 victim. Those amounts shall be credited to the restitution  
14 judgment. The remaining 30 percent shall be retained by  
15 the county and credited toward the surcharge.

16 (v) Neither this section, nor the amendments to  
17 Section 12022.6 of the Penal Code enacted pursuant to  
18 Chapter 104 of the Statutes of 1992, are intended to lessen  
19 or otherwise mitigate sentences that could otherwise be  
20 imposed under any law in effect when the offense was  
21 committed.

22 (w) For the purpose of this section, a county may  
23 designate an appropriate employee of the county  
24 probation department, the department revenue, or any  
25 other analogous county department to act as the county  
26 financial officer pursuant to this section.

27 (x) This act shall be known as the Economic Crime Act  
28 of 1992.

29 SEC. 20. Section 1203.097 of the Penal Code is  
30 amended to read:

31 1203.097. (a) If a person is granted probation for a  
32 crime in which the victim is a person defined in Section  
33 6211 of the Family Code, the terms of probation shall  
34 include all of the following:

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

38 (2) A criminal court protective order protecting the  
39 victim from further acts of violence, threats, stalking,



1 sexual abuse, and harassment, and, if appropriate,  
2 containing residence exclusion or stay-away conditions.

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

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

6 (5) The defendant shall pay a minimum of a  
7 two-hundred-dollar (\$200) payment to be disbursed as  
8 specified in this paragraph. If, after a hearing in court on  
9 the record, the court finds that the defendant does not  
10 have the ability to pay, the court may reduce or waive this  
11 fee.

12 Out of moneys deposited with the county treasurer  
13 pursuant to this section, one-third shall be retained by  
14 counties and deposited in the domestic violence  
15 programs special fund created pursuant to Section 18305  
16 of the Welfare and Institutions Code to be expended for  
17 the purposes of Chapter 5 (commencing with Section  
18 18290) of Part 6 of Division 9 of the Welfare and  
19 Institutions Code. The remainder shall be transferred,  
20 once a month, to the Controller for deposit in the  
21 Domestic Violence Fund, which is hereby created, in an  
22 amount equal to two-thirds of funds collected during the  
23 preceding month. Moneys deposited in the Domestic  
24 Violence Fund pursuant to this section shall be available  
25 upon appropriation by the Legislature, and shall be  
26 distributed as follows:

27 (A) One-half shall be distributed to the counties, based  
28 on the number of restraining orders issued and registered  
29 in the state domestic violence restraining order registry  
30 maintained by the Department of Justice, for the  
31 development and maintenance of the domestic violence  
32 restraining order data bank system.

33 (B) One-half shall support the development of a  
34 statewide training and education program to increase  
35 public awareness of domestic violence and to improve the  
36 scope and quality of services provided to the victims of  
37 domestic violence. Grants to support this program shall  
38 be awarded on a competitive basis and be administered  
39 by the State Department of Health Services, in  
40 consultation with the statewide domestic violence



1 coalition, which is eligible to receive funding under this  
2 section.

3 (6) Successful completion of a batterer's program, as  
4 defined in subdivision (c), or if none is available, another  
5 appropriate counseling program designated by the court,  
6 for a period not less than one year with periodic progress  
7 reports by the program to the court every three months  
8 or less and weekly sessions of a minimum of two hours  
9 classtime duration.

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

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

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

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

34 (10) (A) Upon recommendation of the program, a  
35 court shall require a defendant to participate in  
36 additional sessions throughout the probationary period,  
37 unless it finds that it is not in the interests of justice to do  
38 so, states its reasons on the record, and enters them into  
39 the minutes. In deciding whether the defendant would



1 benefit from more sessions, the court shall consider  
2 whether any of the following conditions exist:

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

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

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

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

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

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

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

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

26 (B) The program shall immediately report any  
27 violation of the terms of the protective order, including  
28 any new acts of violence or failure to comply with the  
29 program requirements, to the court, the prosecutor, and,  
30 if formal probation has been ordered, to the probation  
31 department. The probationer shall file proof of  
32 enrollment in a batterer's program with the court within  
33 30 days of conviction.

34 (C) Concurrent with other requirements under this  
35 section, in addition to, and not in lieu of, the batterer's  
36 program, and unless prohibited by the referring court,  
37 the probation department or the court may make  
38 provisions for a defendant to use his or her resources to  
39 enroll in a chemical dependency program or to enter  
40 voluntarily a licensed chemical dependency recovery



1 hospital or residential treatment program that has a valid  
2 license issued by the state to provide alcohol or drug  
3 services to receive program participation credit, as  
4 determined by the court. The probation department shall  
5 document evidence of this hospital or residential  
6 treatment participation in the defendant's program file.

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

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

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

17 For any order to pay a fine, to make payments to a  
18 battered women's shelter, or to pay restitution as a  
19 condition of probation under this subdivision, the court  
20 shall make a determination of the defendant's ability to  
21 pay. *Determination of a defendant's ability to pay may*  
22 *include his or her future earning capacity. A defendant*  
23 *shall bear the burden of demonstrating lack of his or her*  
24 *ability to pay. Express findings by the court as to the*  
25 *factors bearing on the amount of the fine shall not be*  
26 *required.* In no event shall any order to make payments  
27 to a battered women's shelter be made if it would impair  
28 the ability of the defendant to pay direct restitution to the  
29 victim or court-ordered child support. Where the injury  
30 to a married person is caused in whole or in part by the  
31 criminal acts of his or her spouse in violation of this  
32 section, the community property shall not be used to  
33 discharge the liability of the offending spouse for  
34 restitution to the injured spouse, as required by Section  
35 1203.04, *as operative on or before August 2, 1995, or*  
36 *Section 1202.4*, or to a shelter for costs with regard to the  
37 injured spouse, until all separate property of the  
38 offending spouse is exhausted.

39 (12) If it appears to the prosecuting attorney, the  
40 court, or the probation department that the defendant is



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

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

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

35 (2) The court shall advise the defendant that the  
36 failure to report to the probation department for the  
37 initial investigation, as directed by the court, or the failure  
38 to enroll in a specified program, as directed by the court  
39 or the probation department, shall result in possible  
40 further incarceration. The court, in the interests of



1 justice, may relieve the defendant from the prohibition  
2 set forth in this subdivision based upon the defendant's  
3 mistake or excusable neglect. Application for this relief  
4 shall be filed within 20 court days of the missed deadline.  
5 This time limitation may not be extended. A copy of any  
6 application for relief shall be served on the office of the  
7 prosecuting attorney.

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

12 (A) Social, economic, and family background.

13 (B) Education.

14 (C) Vocational achievements.

15 (D) Criminal history.

16 (E) Medical history.

17 (F) Substance abuse history.

18 (G) Consultation with the probation officer.

19 (H) Verbal consultation with the victim, only if the  
20 victim desires to participate.

21 (I) Assessment of the future probability of the  
22 defendant committing murder.

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

30 (iii) Final evaluation that includes the program's  
31 evaluation of the defendant's progress, using the criteria  
32 set forth in paragraph (4) of subdivision (a) and  
33 recommendation for either successful or unsuccessful  
34 termination or continuation in the program.

35 (P) A sliding fee schedule based on the defendant's  
36 ability to pay. The batterer's program shall develop and  
37 utilize a sliding fee scale that recognizes both the  
38 defendant's ability to pay and the necessity of programs  
39 to meet overhead expenses. An indigent defendant may  
40 negotiate a deferred payment schedule, but shall pay a



1 nominal fee, if the defendant has the ability to pay the  
2 nominal fee. Upon a hearing and a finding by the court  
3 that the defendant does not have the financial ability to  
4 pay the nominal fee, the court shall waive this fee. The  
5 payment of the fee shall be made a condition of probation  
6 if the court determines the defendant has the present  
7 ability to pay the fee. The fee shall be paid during the  
8 term of probation unless the program sets other  
9 conditions. The acceptance policies shall be in  
10 accordance with the scaled fee system.

11 (2) The court shall refer persons only to batterer  
12 programs that have been approved by the probation  
13 department pursuant to paragraph (5). The probation  
14 department shall do all of the following:

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

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

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



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

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

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

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

22 (4) In making referrals of indigent defendants to  
23 approved batterer programs, the probation department  
24 shall apportion these referrals evenly among the  
25 approved programs.

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

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

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

35 (ii) The demonstration by the program that it  
36 possesses adequate administrative and operational  
37 capability to operate a batterer's treatment program. The  
38 program shall provide documentation to prove that the  
39 program has conducted batterer's programs for at least  
40 one year prior to application. This requirement may be



1 waived under subparagraph (A) of paragraph (2), if  
2 there is no existing batterer's program in the city, county,  
3 or city and county.

4 (iii) The on-site review of the program, including  
5 monitoring of a session to determine that the program  
6 adheres to applicable statutes and regulations.

7 (iv) The payment of the approval fee.

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

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

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

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

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

38 (7) The program shall conduct an exit conference that  
39 reflects the defendant's progress during the defendant's  
40 participation in the batterer's program.



1 SEC. 21. Section 1203.1 of the Penal Code is amended  
2 to read:

3 1203.1. (a) The court, or judge thereof, in the order  
4 granting probation, may suspend the imposing, or the  
5 execution, of the sentence and may direct that the  
6 suspension may continue for a period of time not  
7 exceeding the maximum possible term of the sentence,  
8 except as hereinafter set forth, and upon those terms and  
9 conditions as it shall determine. The court, or judge  
10 thereof, in the order granting probation and as a  
11 condition thereof, may imprison the defendant in a  
12 county jail for a period not exceeding the maximum time  
13 fixed by law in the case.

14 However, where the maximum possible term of the  
15 sentence is five years or less, then the period of suspension  
16 of imposition or execution of sentence may, in the  
17 discretion of the court, continue for not over five years.  
18 The following shall apply to this subdivision:

19 (1) The court may fine the defendant in a sum not to  
20 exceed the maximum fine provided by law in the case.

21 (2) The court may, in connection with granting  
22 probation, impose either imprisonment in a county jail or  
23 a fine, both, or neither.

24 (3) The court shall provide for restitution in proper  
25 cases.

26 (4) The court may require bonds for the faithful  
27 observance and performance of any or all of the  
28 conditions of probation.

29 (b) The court shall consider whether the defendant as  
30 a condition of probation shall make restitution to the  
31 victim or the Restitution Fund. Any restitution payment  
32 received by a probation department in the form of cash  
33 or money order shall be forwarded to the victim within  
34 30 days from the date the payment is received by the  
35 department. Any restitution payment received by a  
36 probation department in the form of a check or draft shall  
37 be forwarded to the victim within 45 days from the date  
38 the payment is received by the department, provided,  
39 that payment need not be forwarded to a victim until 180  
40 days from the date the first payment is received, if the



1 restitution payments for that victim received by the  
2 probation department total less than fifty dollars (\$50). In  
3 cases where the court has ordered the defendant to pay  
4 restitution to multiple victims and where the  
5 administrative cost of disbursing restitution payments to  
6 multiple victims involves a significant cost, any  
7 restitution payment received by a probation department  
8 shall be forwarded to multiple victims when it is cost  
9 effective to do so, but in no event shall restitution  
10 disbursements be delayed beyond 180 days from the date  
11 the payment is received by the probation department.

12 (c) In counties or cities and counties where road  
13 camps, farms, or other public work is available the court  
14 may place the probationer in the road camp, farm, or  
15 other public work instead of in jail. In this case, Section  
16 25359 of the Government Code shall apply to probation  
17 and the court shall have the same power to require adult  
18 probationers to work, as prisoners confined in the county  
19 jail are required to work, at public work. Each county  
20 board of supervisors may fix the scale of compensation of  
21 the adult probationers in that county.

22 (d) In all cases of probation the court may require as  
23 a condition of probation that the probationer go to work  
24 and earn money for the support of his or her dependents  
25 or to pay any fine imposed or reparation condition, to  
26 keep an account of his or her earnings, to report them to  
27 the probation officer and apply those earnings as directed  
28 by the court.

29 (e) The court shall also consider whether the  
30 defendant as a condition of probation shall make  
31 restitution to a public agency for the costs of an  
32 emergency response pursuant to Article 8 (commencing  
33 with Section 53150) of Chapter 1 of Part 1 of Division 2 of  
34 the Government Code.

35 (f) In all cases in which, as a condition of probation, a  
36 judge of the superior court sitting by authority of law  
37 elsewhere than at the county seat requires a convicted  
38 person to serve his or her sentence at intermittent periods  
39 the sentence may be served on the order of the judge at  
40 the city jail nearest to the place at which the court is



1 sitting, and the cost of his or her maintenance shall be a  
2 county charge.

3 (g) (1) The court and prosecuting attorney shall  
4 consider whether any defendant who has been convicted  
5 of a nonviolent or nonserious offense and ordered to  
6 participate in community service as a condition of  
7 probation shall be required to engage in the removal of  
8 graffiti in the performance of the community service. For  
9 the purpose of this subdivision, a nonserious offense shall  
10 not include the following:

11 (A) Offenses in violation of the Dangerous Weapons'  
12 Control Law (Chapter 1 (commencing with Section  
13 12000) of Title 2 of Part 4).

14 (B) Offenses involving the use of a dangerous or  
15 deadly weapon, including all violations of Section 417.

16 (C) Offenses involving the use or attempted use of  
17 violence against the person of another or involving injury  
18 to a victim.

19 (D) Offenses involving annoying or molesting  
20 children.

21 (2) Notwithstanding subparagraph (A) of paragraph  
22 (1), any person who violates Section 12101 shall be  
23 ordered to perform not less than 100 hours and not more  
24 than 500 hours of community service as a condition of  
25 probation.

26 (3) The court and the prosecuting attorney need not  
27 consider a defendant pursuant to paragraph (1) if the  
28 following circumstances exist:

29 (A) The defendant was convicted of any offense set  
30 forth in subdivision (c) of Section 667.5 or subdivision (c)  
31 of Section 1192.7.

32 (B) The judge believes that the public safety may be  
33 endangered if the person is ordered to do community  
34 service or the judge believes that the facts or  
35 circumstances or facts and circumstances call for  
36 imposition of a more substantial penalty.

37 (h) The probation officer or his or her designated  
38 representative shall consider whether any defendant  
39 who has been convicted of a nonviolent and nonserious  
40 offense and ordered to participate in community service



1 as a condition of probation shall be required to engage in  
2 the performance of house repairs or yard services for  
3 senior citizens and the performance of repairs to senior  
4 centers through contact with local senior service  
5 organizations in the performance of the community  
6 service.

7 (i) Upon conviction of any offense involving child  
8 abuse or neglect, the court may require, in addition to any  
9 or all of the above-mentioned terms of imprisonment,  
10 fine, and other reasonable conditions, that the defendant  
11 shall participate in counseling or education programs, or  
12 both, including, but not limited to, parent education or  
13 parenting programs operated by community colleges,  
14 school districts, other public agencies, or private  
15 agencies.

16 (j) The court may impose and require any or all of the  
17 above-mentioned terms of imprisonment, fine, and  
18 conditions, and other reasonable conditions, as it may  
19 determine are fitting and proper to the end that justice  
20 may be done, that amends may be made to society for the  
21 breach of the law, for any injury done to any person  
22 resulting from that breach, and generally and specifically  
23 for the reformation and rehabilitation of the probationer,  
24 and that should the probationer violate any of the terms  
25 or conditions imposed by the court in the matter, it shall  
26 have authority to modify and change any and all the  
27 terms and conditions and to reimprison the probationer  
28 in the county jail within the limitations of the penalty of  
29 the public offense involved. Upon the defendant being  
30 released from the county jail under the terms of  
31 probation as originally granted or any modification  
32 subsequently made, and in all cases where confinement  
33 in a county jail has not been a condition of the grant of  
34 probation, the court shall place the defendant or  
35 probationer in and under the charge of the probation  
36 officer of the court, for the period or term fixed for  
37 probation. However, upon the payment of any fine  
38 imposed and the fulfillment of all conditions of probation,  
39 probation shall cease at the end of the term of probation,  
40 or sooner, in the event of modification. In counties and



1 cities and counties in which there are facilities for taking  
2 fingerprints, those of each probationer shall be taken and  
3 a record of them kept and preserved.

4 (k) Notwithstanding any other provisions of law to the  
5 contrary, except as provided in ~~Sections~~ *Section 13967, as*  
6 *operative on or before September 28, 1994, of the*  
7 *Government Code* and *Section 13967.5* of the  
8 Government Code and Sections 1202.4, ~~1203.04~~, 1463.16,  
9 paragraph (1) of subdivision (a) of Section 1463.18, and  
10 Section 1464, and *Section 1203.04, as operative on or*  
11 *before August 2, 1995*, all fines collected by a county  
12 probation officer in any of the courts of this state, as a  
13 condition of the granting of probation or as a part of the  
14 terms of probation, shall be paid into the county treasury  
15 and placed in the general fund for the use and benefit of  
16 the county.

17 (l) If the court orders restitution to be made to the  
18 victim, the board of supervisors may add a fee to cover the  
19 actual administrative cost of collecting restitution but not  
20 to exceed 10 percent of the total amount ordered to be  
21 paid. The fees shall be paid into the general fund of the  
22 county treasury for the use and benefit of the county.

23 SEC. 22. Section 1205 of the Penal Code is amended  
24 to read:

25 1205. (a) A judgment that the defendant pay a fine,  
26 with or without other punishment, may also direct that he  
27 or she be imprisoned until the fine is satisfied and may  
28 further direct that the imprisonment begin at and  
29 continue after the expiration of any imprisonment  
30 imposed as a part of the punishment or of any other  
31 imprisonment to which he or she may theretofore have  
32 been sentenced. Each of these judgments shall specify the  
33 extent of the imprisonment for nonpayment of the fine,  
34 which shall not be more than one day for each thirty  
35 dollars (\$30) of the fine, nor exceed in any case the term  
36 for which the defendant might be sentenced to  
37 imprisonment for the offense of which he or she has been  
38 convicted. A defendant held in custody for nonpayment  
39 of a fine shall be entitled to credit on the fine for each day  
40 he or she is so held in custody, at the rate specified in the



1 judgment. When the defendant has been convicted of a  
2 misdemeanor, a judgment that the defendant pay a fine  
3 may also direct that he or she pay the fine within a limited  
4 time or in installments on specified dates and that in  
5 default of payment as therein stipulated he or she be  
6 imprisoned in the discretion of the court either until the  
7 defaulted installment is satisfied or until the fine is  
8 satisfied in full; but unless the direction is given in the  
9 judgment, the fine shall be payable forthwith.

10 (b) Except as otherwise provided in case of fines  
11 imposed, *including restitution fines or restitution orders*,  
12 as conditions of probation, the defendant shall pay the  
13 fine to the clerk of the court, or to the judge thereof if  
14 there is no clerk, unless the defendant is taken into  
15 custody for nonpayment of the fine, in which event  
16 payments made while he or she is in custody shall be  
17 made to the officer who holds him or her in custody and  
18 all amounts so paid shall be forthwith paid over by the  
19 officer to the court which rendered the judgment. The  
20 clerk shall report to the court every default in payment  
21 of a fine or any part thereof, or if there is no clerk, the  
22 court shall take notice of the default. If time has been  
23 given for payment of a fine or it has been made payable  
24 in installments, the court shall, upon any default in  
25 payment, immediately order the arrest of the defendant  
26 and order him or her to show cause why he or she should  
27 not be imprisoned until the fine or installment thereof, as  
28 the case may be, is satisfied in full. If the fine, *restitution*  
29 *fine, restitution order*, or installment, is payable forthwith  
30 and it is not so paid, the court shall without further  
31 proceedings, immediately commit the defendant to the  
32 custody of the proper officer to be held in custody until  
33 the fine or installment thereof, as the case may be, is  
34 satisfied in full. *This subdivision shall only apply to*  
35 *restitution fines and restitution orders if the defendant*  
36 *has defaulted on the payment of other fines.*

37 (c) This section applies to any violation of any of the  
38 codes or statutes of this state punishable by a fine or by a  
39 fine and imprisonment.



1 Nothing in this section shall be construed to prohibit  
2 the clerk of the court, or the judge thereof if there is no  
3 clerk, from turning these accounts over to another county  
4 department or a collecting agency for processing and  
5 collection.

6 (d) The defendant shall pay to the clerk of the court  
7 or the collecting agency a fee for the processing of  
8 installment accounts. This fee shall equal the  
9 administrative and clerical costs, as determined by the  
10 board of supervisors, except that the fee shall not exceed  
11 thirty-five dollars (\$35). The Legislature hereby  
12 authorizes the establishment of the following program  
13 described in this section, to be implemented in any  
14 county, upon the adoption of a resolution by the board of  
15 supervisors authorizing it. The board of supervisors in any  
16 county may establish a fee for the processing of accounts  
17 receivable that are not to be paid in installments. The  
18 defendant shall pay to the clerk of the court or the  
19 collecting agency the fee established for the processing of  
20 the accounts. The fee shall equal the administrative and  
21 clerical costs, as determined by the board of supervisors,  
22 except that the fee shall not exceed thirty dollars (\$30).

23 SEC. 23. Section 1205.3 of the Penal Code is amended  
24 to read:

25 1205.3. In any case in which a defendant is convicted  
26 of an offense and granted probation, and the court orders  
27 the defendant either to pay a fine or to perform specified  
28 community service work as a condition of probation, *the*  
29 *court shall specify that if community service work is*  
30 *performed, it shall be performed in place of the payment*  
31 *of all fines and restitution fines on a proportional basis,*  
32 *and the court shall specify in its order the amount of the*  
33 *fine and restitution fine and the number of hours of*  
34 *community service work that shall be performed as an*  
35 *alternative to payment of the fine.*

36 SEC. 24. Section 1205.5 of the Penal Code is repealed.

37 ~~1205.5. The provisions of Section 1205 shall not apply~~  
38 ~~to restitution fines ordered in felony cases.~~

39 SEC. 25. Section 1214 of the Penal Code is amended  
40 to read:



1 1214. (a) If the judgment is for a fine, including a  
2 restitution fine ordered pursuant to Section 1202.4 or  
3 *Section 1203.04, as operative on or before August 2, 1995,*  
4 *or Section 13967 of the Government Code,* as operative on  
5 or before September 28, 1994, *of the Government Code,*  
6 with or without imprisonment, the judgment may be  
7 enforced in the manner provided for the enforcement of  
8 money judgments generally.

9 (b) In any case in which a defendant is ordered to pay  
10 restitution, the order to pay restitution is deemed a  
11 money judgment if the defendant was informed of his or  
12 her right to have a judicial determination of the amount  
13 and was provided with a hearing, waived a hearing, or  
14 stipulated to the amount of the restitution ordered, and  
15 shall constitute a civil judgment enforceable in the same  
16 manner as is provided for the enforcement of any other  
17 money judgment. Upon the victim's request, the court  
18 shall provide the victim in whose favor the order of  
19 restitution is entered with a certified copy of that order.  
20 In addition, upon request, the court shall provide the  
21 State Board of Control with a certified copy of any order  
22 imposing a restitution fine or order.

23 (c) Chapter 3 (commencing with Section 683.010) of  
24 Division 1 of Title 9 of Part 2 of the Code of Civil  
25 Procedure shall not apply to a judgment for any fine *or*  
26 *restitution* ordered pursuant to Section 1202.4 or *Section*  
27 *1203.04, as operative on or before August 2, 1995,* or  
28 *Section 13967 of the Government Code,* as operative on  
29 or before September 28, 1994.

30 SEC. 26. Section 1463.18 of the Penal Code is  
31 amended to read:

32 1463.18. (a) Notwithstanding the provisions of  
33 Section 1463, moneys which are collected for a conviction  
34 of a violation of Section 23152 or 23153 of the Vehicle Code  
35 and which are required to be deposited with the county  
36 treasurer pursuant to Section 1463 shall be allocated as  
37 follows:

38 (1) The first twenty dollars (\$20) of any amount  
39 collected for a conviction shall be transferred to the  
40 Restitution Fund. This amount shall be aggregated by the



1 county treasurer and transferred to the State Treasury  
2 once per month for deposit in the Restitution Fund.

3 (2) The balance of the amount collected, if any, shall  
4 be deposited by the county treasurer pursuant to Section  
5 1463.

6 (b) The amount transferred to the Restitution Fund  
7 pursuant to this section shall be in addition to any amount  
8 of any additional fine or assessment imposed pursuant to  
9 *Section 1202.4, Section 1203.04, as operative on or before*  
10 *August 3, 1995, or Section 13967, as operative on or before*  
11 *September 28, 1994,* of the Government Code. The  
12 amount deposited to the Restitution Fund pursuant to  
13 this section shall be used for the purpose of  
14 indemnification of victims pursuant to Section 13965 of  
15 the Government Code, with priority given to victims of  
16 alcohol-related traffic offenses.

17 SEC. 27. Section 1464 of the Penal Code is amended  
18 to read:

19 1464. (a) Subject to Chapter 12 (commencing with  
20 Section 76000) of Title 8 of the Government Code, there  
21 shall be levied a state penalty, in an amount equal to ten  
22 dollars (\$10) for every ten dollars (\$10) or fraction  
23 thereof, upon every fine, penalty, or forfeiture imposed  
24 and collected by the courts for criminal offenses,  
25 including all offenses, except parking offenses as defined  
26 in subdivision (i) of Section 1463, involving a violation of  
27 a section of the Vehicle Code or any local ordinance  
28 adopted pursuant to the Vehicle Code. Any bail schedule  
29 adopted pursuant to Section 1269b may include the  
30 necessary amount to pay the state penalties established  
31 by this section and Chapter 12 (commencing with Section  
32 76000) of Title 8 of the Government Code for all matters  
33 where a personal appearance is not mandatory and the  
34 bail is posted primarily to guarantee payment of the fine.

35 (b) Where multiple offenses are involved, the state  
36 penalty shall be based upon the total fine or bail for each  
37 case. When a fine is suspended, in whole or in part, the  
38 state penalty shall be reduced in proportion to the  
39 suspension.



1 (c) When any deposited bail is made for an offense to  
2 which this section applies, and for which a court  
3 appearance is not mandatory, the person making the  
4 deposit shall also deposit a sufficient amount to include  
5 the state penalty prescribed by this section for forfeited  
6 bail. If bail is returned, the state penalty paid thereon  
7 pursuant to this section shall also be returned.

8 (d) In any case where a person convicted of any  
9 offense, to which this section applies, is in prison until the  
10 fine is satisfied, the judge may waive all or any part of the  
11 state penalty, the payment of which would work a  
12 hardship on the person convicted or his or her immediate  
13 family.

14 (e) After a determination by the court of the amount  
15 due, the clerk of the court shall collect the penalty and  
16 transmit it to the county treasury. The portion thereof  
17 attributable to Chapter 12 (commencing with Section  
18 76000) of Title 8 of the Government Code shall be  
19 deposited in the appropriate county fund and the balance  
20 shall then be transmitted to the State Treasury, with 70  
21 percent to be deposited in the State Penalty Fund, which  
22 is hereby created, and 30 percent to remain on deposit in  
23 the General Fund. The transmission to the State Treasury  
24 shall be carried out in the same manner as fines collected  
25 for the state by a county.

26 (f) The moneys so deposited in the State Penalty Fund  
27 shall be distributed as follows:

28 (1) Once a month there shall be transferred into the  
29 Fish and Game Preservation Fund an amount equal to  
30 0.33 percent of the state penalty funds deposited in the  
31 State Penalty Fund during the preceding month, except  
32 that the total amount shall not be less than the state  
33 penalty levied on fines or forfeitures for violation of state  
34 laws relating to the protection or propagation of fish and  
35 game. These moneys shall be used for the education or  
36 training of department employees which fulfills a need  
37 consistent with the objectives of the Department of Fish  
38 and Game.

39 (2) Once a month there shall be transferred into the  
40 Restitution Fund an amount equal to 32.02 percent of the



1 state penalty funds deposited in the State Penalty Fund  
2 during the preceding month. Those funds shall be made  
3 available in accordance with ~~subdivision (b)~~ of Section  
4 13967 of the Government Code.

5 (3) Once a month there shall be transferred into the  
6 Peace Officers' Training Fund an amount equal to 23.99  
7 percent of the state penalty funds deposited in the State  
8 Penalty Fund during the preceding month.

9 (4) Once a month there shall be transferred into the  
10 Driver Training Penalty Assessment Fund an amount  
11 equal to 25.70 percent of the state penalty funds deposited  
12 in the State Penalty Fund during the preceding month.

13 (5) Once a month there shall be transferred into the  
14 Corrections Training Fund an amount equal to 7.88  
15 percent of the state penalty funds deposited in the State  
16 Penalty Fund during the preceding month. Money in the  
17 Corrections Training Fund is not continuously  
18 appropriated and shall be appropriated in the Budget  
19 Act.

20 (6) Once a month there shall be transferred into the  
21 Local Public Prosecutors and Public Defenders Training  
22 Fund established pursuant to Section 11503 an amount  
23 equal to 0.78 percent of the state penalty funds deposited  
24 in the State Penalty Fund during the preceding month.  
25 The amount so transferred shall not exceed the sum of  
26 eight hundred fifty thousand dollars (\$850,000) in any  
27 fiscal year. The remainder in excess of eight hundred fifty  
28 thousand dollars (\$850,000) shall be transferred to the  
29 Restitution Fund.

30 (7) Once a month there shall be transferred into the  
31 Victim-Witness Assistance Fund an amount equal to 8.64  
32 percent of the state penalty funds deposited in the State  
33 Penalty Fund during the preceding month.

34 (8) (A) Once a month there shall be transferred into  
35 the Traumatic Brain Injury Fund, created pursuant to  
36 Section 4358 of the Welfare and Institutions Code, an  
37 amount equal to 0.66 percent of the state penalty funds  
38 deposited into the State Penalty Fund during the  
39 preceding month, until the amount deposited in the  
40 Traumatic Brain Injury Fund, as determined by the



1 Department of Finance, for any fiscal year equals five  
2 hundred thousand dollars (\$500,000). All moneys in  
3 excess of that amount shall be distributed pro rata  
4 pursuant to paragraphs (1) to (7), inclusive, and utilized  
5 in accordance with this subdivision.

6 (B) Any moneys deposited in the State Penalty Fund  
7 attributable to the assessments made pursuant to  
8 subdivision (i) of Section 27315 of the Vehicle Code on or  
9 after the date that Chapter 6.6 (commencing with  
10 Section 5564) of Part 1 of Division 5 of the Welfare and  
11 Institutions Code is repealed shall be utilized in  
12 accordance with paragraphs (1) to (8), inclusive, of this  
13 subdivision.

14 SEC. 28. Section 2900.5 of the Penal Code, as  
15 amended by Section 7 of Chapter 770 of the Statutes of  
16 1994, is amended to read:

17 2900.5. (a) In all felony and misdemeanor  
18 convictions, either by plea or by verdict, when the  
19 defendant has been in custody, including but not limited  
20 to any time spent in a jail, camp, work furlough facility,  
21 halfway house, rehabilitation facility, hospital, prison,  
22 juvenile detention facility, or similar residential  
23 institution, all days of custody of the defendant, including  
24 days served as a condition of probation in compliance  
25 with a court order, and including days credited to the  
26 period of confinement pursuant to Section 4019, shall be  
27 credited upon his or her term of imprisonment, or  
28 credited to any fine *on a proportional basis, including, but*  
29 *not limited to, base fines and restitution fines*, which may  
30 be imposed, at the rate of not less than thirty dollars (\$30)  
31 per day, or more, in the discretion of the court imposing  
32 the sentence. If the total number of days in custody  
33 exceeds the number of days of the term of imprisonment  
34 to be imposed, the entire term of imprisonment shall be  
35 deemed to have been served. In any case where the court  
36 has imposed both a prison or jail term of imprisonment  
37 and a fine, any days to be credited to the defendant shall  
38 first be applied to the term of imprisonment imposed, and  
39 thereafter the remaining days, if any, shall be applied to



1 the fine *on a proportional basis, including, but not limited*  
2 *to, base fines and restitution fines.*

3 (b) For the purposes of this section, credit shall be  
4 given only where the custody to be credited is  
5 attributable to proceedings related to the same conduct  
6 for which the defendant has been convicted. Credit shall  
7 be given only once for a single period of custody  
8 attributable to multiple offenses for which a consecutive  
9 sentence is imposed.

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

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

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

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

36 (g) This section shall become operative on January 1,  
37 1999.

38 SEC. 28.5. Section 2900.5 of the Penal Code, as  
39 amended by Section 6 of Chapter 770 of the Statutes of  
40 1994, is amended to read:



1 2900.5. (a) In all felony and misdemeanor  
2 convictions, either by plea or by verdict, when the  
3 defendant has been in custody, including, but not limited  
4 to, any time spent in a jail, camp, work furlough facility,  
5 halfway house, rehabilitation facility, hospital, prison,  
6 juvenile detention facility, similar residential institution,  
7 or home detention program, all days of custody of the  
8 defendant, including days served as a condition of  
9 probation in compliance with a court order, and  
10 including days credited to the period of confinement  
11 pursuant to Section 4019, shall be credited upon his or her  
12 term of imprisonment, or credited to any fine *on a*  
13 *proportional basis, including, but not limited to, base fines*  
14 *and restitution fines*, which may be imposed, at the rate  
15 of not less than thirty dollars (\$30) per day, or more, in the  
16 discretion of the court imposing the sentence. If the total  
17 number of days in custody exceeds the number of days of  
18 the term of imprisonment to be imposed, the entire term  
19 of imprisonment shall be deemed to have been served. In  
20 any case where the court has imposed both a prison or jail  
21 term of imprisonment and a fine, any days to be credited  
22 to the defendant shall first be applied to the term of  
23 imprisonment imposed, and thereafter the remaining  
24 days, if any, shall be applied to the fine *on a proportional*  
25 *basis, including, but not limited to, base fines and*  
26 *restitution fines*.

27 (b) For the purposes of this section, credit shall be  
28 given only where the custody to be credited is  
29 attributable to proceedings related to the same conduct  
30 for which the defendant has been convicted. Credit shall  
31 be given only once for a single period of custody  
32 attributable to multiple offenses for which a consecutive  
33 sentence is imposed.

34 (c) For the purposes of this section, “term of  
35 imprisonment” includes any period of imprisonment  
36 imposed as a condition of probation or otherwise ordered  
37 by a court in imposing or suspending the imposition of  
38 any sentence, and also includes any term of  
39 imprisonment, including any period of imprisonment  
40 prior to release on parole and any period of imprisonment



1 and parole, prior to discharge, whether established or  
2 fixed by statute, by any court, or by any duly authorized  
3 administrative agency.

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

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

15 (f) If a defendant serves time in a camp, work furlough  
16 facility, halfway house, rehabilitation facility, hospital,  
17 juvenile detention facility, similar residential facility, or  
18 home detention program in lieu of imprisonment in  
19 county jail, and the statute under which the defendant is  
20 sentenced requires a mandatory minimum period of time  
21 in jail, the time spent in these facilities or programs shall  
22 qualify as mandatory time in jail.

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

28 (h) This section shall remain operative until January 1,  
29 1999, and as of that date is repealed.

30 SEC. 29. Section 42003 of the Vehicle Code is  
31 amended to read:

32 42003. (a) A judgment that a person convicted of an  
33 infraction be punished by a fine may also provide for the  
34 payment to be made within a specified time or in  
35 specified installments. A judgment granting a defendant  
36 time to pay the fine shall order that if the defendant fails  
37 to pay the fine or any installment thereof on the date that  
38 it is due, he or she shall appear in court on that date for  
39 further proceedings. Willful violation of the order is  
40 punishable as contempt.



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

10 (c) In any case when a person appears before a traffic  
11 referee or judge of the municipal court or superior court  
12 for adjudication of a violation of this code, the court, upon  
13 request of the defendant, shall ~~take into account any~~  
14 ~~amount that the defendant is ordered to pay in fines,~~  
15 ~~assessments, and restitution, and shall make a~~  
16 ~~determination of the ability of the defendant to pay all or~~  
17 ~~a portion of the reasonable cost of probation, fines, and~~  
18 ~~restitution, or any combination thereof, and of~~  
19 ~~conducting the presentence investigation and preparing~~  
20 ~~the presentence report made pursuant to Section 1203, if~~  
21 ~~applicable~~ *consider the defendant's ability to pay.*  
22 *Consideration of a defendant's ability to pay may include*  
23 *his or her future earning capacity. A defendant shall bear*  
24 *the burden of demonstrating lack of his or her ability to*  
25 *pay. Express findings by the court as to the factors bearing*  
26 *on the amount of the fine shall not be required.* The  
27 reasonable cost of these services and of probation shall not  
28 exceed the amount determined to be the actual average  
29 cost thereof. The court shall order the defendant to  
30 appear before a county officer designated by the court to  
31 make an inquiry into the ability of the defendant to pay  
32 all or a portion of those costs or the court or traffic referee  
33 may make this determination at a hearing. At that  
34 hearing, the defendant shall be entitled to have, but shall  
35 not be limited to, the opportunity to be heard in person,  
36 to present witnesses and other documentary evidence, to  
37 confront and cross-examine adverse witnesses, to  
38 disclosure of the evidence against him or her, and to a  
39 written statement of the findings of the court or the  
40 county officer. If the court determines that the defendant



1 has the ability to pay all or part of the costs, the court shall  
2 set the amount to be reimbursed and order the defendant  
3 to pay that sum to the county in the manner in which the  
4 court believes reasonable and compatible with the  
5 defendant's financial ability; or, with the consent of a  
6 defendant who is placed on probation, the court shall  
7 order the probation officer to set the amount of payment,  
8 which shall not exceed the maximum amount set by the  
9 court, and the manner in which the payment shall be  
10 made to the county. In making a determination of  
11 whether a defendant has the ability to pay, the court shall  
12 take into account the amount of any fine imposed upon  
13 the defendant and any amount the defendant has been  
14 ordered to pay in restitution.

15 The court may hold additional hearings during the  
16 probationary period. If practicable, the court or the  
17 probation officer shall order payments to be made on a  
18 monthly basis. Execution may be issued on the order in  
19 the same manner as a judgment in a civil action. The  
20 order to pay all or part of the costs shall not be enforced  
21 by contempt.

22 A payment schedule for reimbursement of the costs of  
23 presentence investigation based on income shall be  
24 developed by the probation department of each county  
25 and approved by the presiding judges of the municipal  
26 and superior courts.

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

33 (1) Present financial position.

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



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

4 (4) Any other factors that may bear upon the  
5 defendant's financial capability to reimburse the county  
6 for the costs.

7 (e) At any time during the pendency of the judgment  
8 rendered according to the terms of this section, a  
9 defendant against whom a judgment has been rendered  
10 may petition the rendering court to modify or vacate its  
11 previous judgment on the grounds of a change of  
12 circumstances with regard to the defendant's ability to  
13 pay the judgment. The court shall advise the defendant  
14 of this right at the time of rendering of the judgment.

15 SEC. 30. Section 653.5 of the Welfare and Institutions  
16 Code is amended to read:

17 653.5. (a) Whenever any person applies to the  
18 probation officer to commence proceedings in the  
19 juvenile court, the application shall be in the form of an  
20 affidavit alleging that there was or is within the county,  
21 or residing therein, a minor within the provisions of  
22 Section 602, or that a minor committed an offense  
23 described in Section 602 within the county, and setting  
24 forth facts in support thereof. The probation officer shall  
25 immediately make any investigation he or she deems  
26 necessary to determine whether proceedings in the  
27 juvenile court shall be commenced.

28 (b) Except as provided in subdivision (c), if the  
29 probation officer determines that proceedings pursuant  
30 to Section 650 should be commenced to declare a person  
31 to be a ward of the juvenile court on the basis that he or  
32 she is a person described in Section 602, the probation  
33 officer shall cause the affidavit to be taken to the  
34 prosecuting attorney.

35 (c) Notwithstanding subdivision (b), the probation  
36 officer shall cause the affidavit to be taken within 48 hours  
37 to the prosecuting attorney in all of the following cases:

38 (1) If it appears to the probation officer that the minor  
39 has been referred to the probation officer for any



1 violation of an offense listed in subdivision (b), paragraph  
2 (2) of subdivision (d), or subdivision (e) of Section 707.

3 (2) If it appears to the probation officer that the minor  
4 is under 14 years of age at the date of the offense and that  
5 the offense constitutes a second felony referral to the  
6 probation officer.

7 (3) If it appears to the probation officer that the minor  
8 was 14 years of age or older at the date of the offense and  
9 that the offense constitutes a felony referral to the  
10 probation officer.

11 (4) If it appears to the probation officer that the minor  
12 has been referred to the probation officer for the sale or  
13 possession for sale of a controlled substance as defined in  
14 Chapter 2 (commencing with Section 11053) of Division  
15 10 of the Health and Safety Code.

16 (5) If it appears to the probation officer that the minor  
17 has been referred to the probation officer for a violation  
18 of Section 11350 or 11377 of the Health and Safety Code  
19 where the violation takes place at a public or private  
20 elementary, vocational, junior high school, or high school,  
21 or a violation of Section 245.5, 626.9, or 626.10 of the Penal  
22 Code.

23 (6) If it appears to the probation officer that the minor  
24 has been referred to the probation officer for a violation  
25 of Section 186.22 of the Penal Code.

26 (7) If it appears to the probation officer that the minor  
27 has previously been placed in a program of informal  
28 probation pursuant to Section 654.

29 (8) If it appears to the probation officer that the minor  
30 has committed an offense in which the restitution owed  
31 to the victim exceeds one thousand dollars (\$1,000). For  
32 purposes of this paragraph, the definition of “victim” in  
33 paragraph (1) of subdivision (a) of Section ~~729.6~~ 730.6 and  
34 “restitution” in subdivision ~~(d)~~ (h) of Section ~~729.6~~ 730.6  
35 shall apply.

36 Except for offenses listed in paragraph (5), the  
37 provisions of subdivision (c) shall not apply to a narcotics  
38 and drug offense set forth in Section 1000 of the Penal  
39 Code.



1 The prosecuting attorney shall within his or her  
2 discretionary power institute proceedings in accordance  
3 with his or her role as public prosecutor pursuant to  
4 subdivision (b) of Section 650 and Section 26500 of the  
5 Government Code. However, if it appears to the  
6 prosecuting attorney that the affidavit was not properly  
7 referred, that the offense for which the minor was  
8 referred should be charged as a misdemeanor, or that the  
9 minor may benefit from a program of informal  
10 supervision, he or she shall refer the matter to the  
11 probation officer for whatever action the probation  
12 officer may deem appropriate.

13 (d) In all matters where the minor is not in custody  
14 and is already a ward of the court or a probationer under  
15 Section 602, the prosecuting attorney, within five judicial  
16 days of receipt of the affidavit from the probation officer,  
17 shall institute proceedings in accordance with his or her  
18 role as public prosecutor pursuant to subdivision (b) of  
19 Section 650 of this code and Section 26500 of the  
20 Government Code, unless it appears to the prosecuting  
21 attorney that the affidavit was not properly referred or  
22 that the offense for which the minor was referred  
23 requires additional substantiating information, in which  
24 case he or she shall immediately notify the probation  
25 officer of what further action he or she is taking.

26 (e) This section shall become operative on January 1,  
27 1997.

28 SEC. 31. Section 654.3 of the Welfare and Institutions  
29 Code is amended to read:

30 654.3. No minor shall be eligible for the program of  
31 supervision set forth in Section 654 or 654.2 in the  
32 following cases, except in an unusual case where the  
33 interests of justice would best be served and the court  
34 specifies on the record the reasons for its decision:

35 (a) A petition alleges that the minor has violated an  
36 offense listed in subdivision (b) or (e) or paragraph (2)  
37 of subdivision (d) of Section 707.

38 (b) A petition alleges that the minor has sold or  
39 possessed for sale a controlled substance as defined in



1 Chapter 2 (commencing with Section 11053) of Division  
2 10 of the Health and Safety Code.

3 (c) A petition alleges that the minor has violated  
4 Section 11350 or 11377 of the Health and Safety Code  
5 where the violation takes place at a public or private  
6 elementary, vocational, junior high school, or high school,  
7 or a violation of Section 245.5, 626.9, or 626.10 of the Penal  
8 Code.

9 (d) A petition alleges that the minor has violated  
10 Section 186.22 of the Penal Code.

11 (e) The minor has previously participated in a  
12 program of supervision pursuant to Section 654.

13 (f) The minor has previously been adjudged a ward of  
14 the court pursuant to Section 602.

15 (g) A petition alleges that the minor has violated an  
16 offense in which the restitution owed to the victim  
17 exceeds one thousand dollars (\$1,000). For purposes of  
18 this ~~paragraph~~ subdivision, the definition of “victim” in  
19 paragraph (1) of subdivision (a) of Section ~~729.6~~ 730.6 and  
20 “restitution” in subdivision ~~(d)~~ (h) of Section ~~729.6~~ 730.6  
21 shall apply.

22 SEC. 32. Section 656 of the Welfare and Institutions  
23 Code is amended to read:

24 656. A petition to commence proceedings in the  
25 juvenile court to declare a minor a ward of the court shall  
26 be verified and shall contain all of the following:

27 (a) The name of the court to which it is addressed.

28 (b) The title of the proceeding.

29 (c) The code section and subdivision under which the  
30 proceedings are instituted.

31 (d) The name, age, and address, if any, of the minor  
32 upon whose behalf the petition is brought.

33 (e) The names and residence addresses, if known to  
34 petitioner, of both of the parents and any guardian of the  
35 minor. If there is no parent or guardian residing within  
36 the state, or if his or her place of residence is not known  
37 to petitioner, the petition shall also contain the name and  
38 residence address, if known, of any adult relative residing  
39 within the county, or, if there are none, the adult relative  
40 residing nearest to the location of the court.



1 (f) A concise statement of facts, separately stated, to  
2 support the conclusion that the minor upon whose behalf  
3 the petition is being brought is a person within the  
4 definition of each of the sections and subdivisions under  
5 which the proceedings are being instituted.

6 (g) The fact that the minor upon whose behalf the  
7 petition is brought is detained in custody or is not  
8 detained in custody, and if he or she is detained in  
9 custody, the date and the precise time the minor was  
10 taken into custody.

11 (h) A notice to the father, mother, spouse, or other  
12 person liable for support of the minor child, that: (1)  
13 Section 903 may make that person, the estate of that  
14 person, and the estate of the minor child, liable for the  
15 cost of the care, support, and maintenance of the minor  
16 child in any county institution or any other place in which  
17 the child is placed, detained, or committed pursuant to an  
18 order of the juvenile court; (2) Section 903.1 may make  
19 that person, the estate of that person, and the estate of the  
20 minor child, liable for the cost to the county of legal  
21 services rendered to the minor by a private attorney or  
22 a public defender appointed pursuant to the order of the  
23 juvenile court; (3) Section 903.2 may make that person,  
24 the estate of that person, and the estate of the minor child,  
25 liable for the cost to the county of the probation  
26 supervision of the minor child by the probation officer  
27 pursuant to the order of the juvenile court; and (4) the  
28 liabilities established by these sections are joint and  
29 several.

30 (i) In a proceeding alleging that the minor comes  
31 within Section 601, notice to the parent, guardian, or  
32 other person having control or charge of the minor that  
33 failure to comply with the compulsory school attendance  
34 laws is an infraction, which may be charged and  
35 prosecuted before the juvenile court judge sitting as a  
36 municipal court judge. In those cases, the petition shall  
37 also include notice that the parent, guardian, or other  
38 person having control or charge of the minor has the right  
39 to a hearing on the infraction before a judge different  
40 than the judge who has heard or is to hear the proceeding



1 pursuant to Section 601. The notice shall explain the  
2 provisions of Section 170.6 of the Code of Civil Procedure.

3 (j) If a proceeding is pending against a minor child for  
4 a violation of Section 594.2, 640.5, 640.6, or 640.7 of the  
5 Penal Code, a notice to the parent or legal guardian of the  
6 minor that if the minor is found to have violated either or  
7 both of these provisions that (1) any community service  
8 which may be required of the minor may be performed  
9 in the presence, and under the direct supervision, of the  
10 parent or legal guardian pursuant to either or both of  
11 these provisions; and (2) if the minor is personally unable  
12 to pay any fine levied for the violation of either or both  
13 of these provisions, that the parent or legal guardian of  
14 the minor shall be liable for payment of the fine pursuant  
15 to those sections.

16 (k) A notice to the parent or guardian of the minor  
17 that if the minor is ordered to make restitution to the  
18 victim pursuant to Section 729.6, *as operative on or before*  
19 *August 2, 1995, Section 731.1, as operative on or before*  
20 *August 2, 1995, or Section 730.6, or to pay fines or penalty*  
21 *assessments, the parent or guardian may be liable for the*  
22 *payment of restitution, fines, or penalty assessments.*

23 SEC. 33. Section 729.7 of the Welfare and Institutions  
24 Code is amended to read:

25 729.7. At the request of the victim, the probation  
26 officer shall assist in mediating a service contract between  
27 the victim and the minor under which the amount of  
28 restitution owed to the victim by the minor pursuant to  
29 Section 729.6, *as operative on or before August 2, 1995, or*  
30 *Section 730.6* may be paid by performance of specified  
31 services. If the court approves of the contract, the court  
32 may make performance of services under the terms of the  
33 contract a condition of probation. Successful  
34 performance of service shall be credited as payment of  
35 restitution in accordance with the terms of the contract  
36 approved by the court.

37 SEC. 34. Section 730.6 of the Welfare and Institutions  
38 Code is amended to read:

39 730.6. (a) (1) It is the intent of the Legislature that  
40 a victim of conduct for which a minor is found to be a



1 person described in Section 602 who incurs any economic  
2 loss as a result of the minor's conduct shall receive  
3 restitution directly from that minor.

4 (2) Upon a minor being found to be a person described  
5 in Section 602, the court shall consider levying a fine in  
6 accordance with Section 730.5. In addition, the court shall  
7 order the minor to pay, in addition to any other penalty  
8 provided or imposed under the law, both of the following:

9 (A) A restitution fine in accordance with subdivision  
10 (b).

11 (B) Restitution to the victim or victims, if any, in  
12 accordance with subdivision (h).

13 (b) In every case where a minor is found to be a person  
14 described in Section 602, the court shall impose a separate  
15 and additional restitution fine. The restitution fine shall  
16 be set at the discretion of the court and commensurate  
17 with the seriousness of the offense as follows:

18 (1) If the minor is found to be a person described in  
19 Section 602 by reason of the commission of one or more  
20 felony offenses, the restitution fine shall not be less than  
21 one hundred dollars (\$100) and not more than one  
22 thousand dollars (\$1,000). *A separate hearing for the fine*  
23 *shall not be required.*

24 (2) If the minor is found to be a person described in  
25 Section 602 by reason of the commission of one or more  
26 misdemeanor offenses, the restitution fine shall not  
27 exceed one hundred dollars (\$100). *A separate hearing*  
28 *for the fine shall not be required.*

29 (c) The restitution fine shall be in addition to any other  
30 disposition or fine imposed and shall be imposed  
31 regardless of the minor's present ability to pay. This fine  
32 shall be deposited in the Restitution Fund, the proceeds  
33 of which shall be distributed pursuant to Section 13967 of  
34 the Government Code.

35 (d) (1) In setting the amount of the fine pursuant to  
36 subparagraph (A) of paragraph (2) of subdivision (a), the  
37 court shall consider any relevant factors including, but  
38 not limited to, the minor's ability to pay, the seriousness  
39 and gravity of the offense and the circumstances of its  
40 commission, any economic gain derived by the minor as



1 a result of the offense, and the extent to which others  
2 suffered losses as a result of the offense. The losses may  
3 include pecuniary losses to the victim or his or her  
4 dependents as well as intangible losses such as  
5 psychological harm caused by the offense.

6 (2) The consideration of a minor's ability to pay may  
7 include his or her future earning capacity. A minor shall  
8 bear the burden of demonstrating a lack of his or her  
9 ability to pay.

10 (e) Express findings of the court as to the factors  
11 bearing on the amount of the fine shall not be required.

12 (f) Except as provided in subdivision (g), under no  
13 circumstances shall the court fail to impose the separate  
14 and additional restitution fine required by subparagraph  
15 (A) of paragraph (2) of subdivision (a). This fine shall not  
16 be subject to penalty assessments pursuant to Section  
17 1464 of the Penal Code.

18 (g) In a case in which the minor is a person described  
19 in Section 602 by reason of having committed a felony  
20 offense, if the court finds that there are compelling and  
21 extraordinary reasons, the court may waive imposition of  
22 the restitution fine required by subparagraph (A) of  
23 paragraph (2) of subdivision (a). When a waiver is  
24 granted, the court shall state on the record all reasons  
25 supporting the waiver.

26 (h) Restitution ordered pursuant to subparagraph (B)  
27 of paragraph (2) of subdivision (a) shall be imposed in the  
28 amount of the losses, as determined. The court shall order  
29 full restitution unless it finds clear and compelling reasons  
30 for not doing so, and states them on the record. A  
31 restitution order pursuant to subparagraph (B) of  
32 paragraph (2) of subdivision (a), to the extent possible,  
33 shall be of a dollar amount sufficient to fully reimburse  
34 the victim or victims for all determined economic losses  
35 incurred as the result of the minor's conduct for which the  
36 minor was found to be a person described in Section 602,  
37 including all of the following:

38 (1) Full or partial payment for the value of stolen or  
39 damaged property. The value of stolen or damaged  
40 property shall be the replacement cost of like property,



1 or the actual cost of repairing the property when repair  
2 is possible.

3 (2) Medical expenses.

4 (3) Wages or profits lost due to injury incurred by the  
5 victim, and if the victim is a minor, wages or profits lost  
6 by the minor's parent, parents, guardian, or guardians,  
7 while caring for the injured minor.

8 (4) Wages or profits lost by the victim, and if the victim  
9 is a minor, wages or profits lost by the minor's parent,  
10 parents, guardian, or guardians, due to time spent as a  
11 witness or in assisting the police or prosecution.

12 (i) A restitution order imposed pursuant to  
13 subparagraph (B) of paragraph (2) of subdivision (a)  
14 shall identify the losses to which it pertains, and shall be  
15 enforceable as a civil judgment. The making of a  
16 restitution order pursuant to this subdivision shall not  
17 affect the right of a victim to recovery from the  
18 Restitution Fund in the manner provided elsewhere,  
19 except to the extent that restitution is actually collected  
20 pursuant to the order. Restitution collected pursuant to  
21 this subdivision shall be credited to any other judgments  
22 for the same losses obtained against the minor arising out  
23 of the offense for which the minor was found to be a  
24 person described in Section 602.

25 (j) For purposes of this section, "victim" shall include  
26 the immediate surviving family of the actual victim.

27 (k) Nothing in this section shall prevent a court from  
28 ordering restitution to any corporation, business trust,  
29 estate, trust, partnership, association, joint venture,  
30 government, governmental subdivision, agency, or  
31 instrumentality, or any other legal or commercial entity  
32 when that entity is a direct victim of an offense.

33 (l) Upon a minor being found to be a person described  
34 in Section 602, the court shall require as a condition of  
35 probation the payment of restitution fines and orders  
36 imposed under this section.

37 (m) Probation shall not be revoked for failure of a  
38 person to make restitution pursuant to this section as a  
39 condition of probation unless the court determines that  
40 the person has willfully failed to pay or failed to make



1 sufficient bona fide efforts to legally acquire the resources  
2 to pay.

3 (n) If the court finds and states on the record  
4 compelling and extraordinary reasons why restitution  
5 should not be required as provided in paragraph (2) of  
6 subdivision (a), the court shall order, as a condition of  
7 probation, that the minor perform specified community  
8 service.

9 (o) The court may avoid ordering community service  
10 as a condition of probation only if it finds and states on the  
11 record compelling and extraordinary reasons not to order  
12 community service in addition to the finding that  
13 restitution pursuant to paragraph (2) of subdivision (a)  
14 should not be required.

15 (p) When a minor is committed to the Department of  
16 the Youth Authority, the court shall order restitution to  
17 be paid to the victim or victims, if any. Payment of  
18 restitution to the victim or victims pursuant to this  
19 subdivision shall take priority in time over payment of  
20 any other restitution fine imposed pursuant to this  
21 section.

22 (q) At its discretion, the board of supervisors of any  
23 county may impose a fee to cover the actual  
24 administrative cost of collecting the restitution fine, not  
25 to exceed 10 percent of the amount ordered to be paid,  
26 to be added to the restitution fine and included in the  
27 order of the court, the proceeds of which shall be  
28 deposited in the general fund of the county.

29 SEC. 35. Section 1752.82 of the Welfare and  
30 Institutions Code is amended to read:

31 1752.82. (a) Whenever an adult or minor is  
32 committed to or housed in a Youth Authority facility and  
33 he or she owes restitution to a victim or a restitution fine  
34 imposed pursuant to *Section 13967, as operative on or*  
35 *before September 28, 1994, of the Government Code, or*  
36 *Section 1202.4 of the Penal Code, or Section 1203.04, as*  
37 *operative on or before August 2, 1994, of the Penal Code,*  
38 *or pursuant to Section 729.6, as operative on or before*  
39 *August 2, 1995, Section 730.6, or Section 731.1 of this code,*  
40 *as operative on or before August 2, 1995,* the director may



1 deduct a reasonable amount not to exceed 50 percent  
2 from the wages of that adult or minor and the amount so  
3 deducted, exclusive of the costs of administering this  
4 section, which shall be retained by the director, shall be  
5 transferred to the State Board of Control for deposit in the  
6 Restitution Fund in the State Treasury in the case of a  
7 restitution fine, or, in the case of a restitution order, and  
8 upon the request of the victim, shall be paid directly to  
9 the victim. Any amount so deducted shall be credited  
10 against the amount owing on the fine or to the victim. The  
11 committing court shall be provided a record of any  
12 payments.

13 (b) A victim who has requested that restitution  
14 payments be paid directly to him or her pursuant to  
15 subdivision (a) shall provide a current address to the  
16 Youth Authority to enable the Youth Authority to send  
17 restitution payments collected on the victim's behalf to  
18 the victim.

19 (c) In the case of a restitution order, whenever the  
20 victim has died, cannot be located, or has not requested  
21 the restitution payment, the director may deduct a  
22 reasonable amount not to exceed 50 percent of the wages  
23 of that adult or minor and the amount so deducted,  
24 exclusive of the costs of administering this section, which  
25 shall be retained by the director, shall be transferred to  
26 the State Board of Control, pursuant to subdivision (d),  
27 after one year has elapsed from the time the ward is  
28 discharged by the Youthful Offender Parole Board. Any  
29 amount so deducted shall be credited against the amount  
30 owing to the victim. The funds so transferred shall be  
31 deposited in the Restitution Fund.

32 (d) Where the Youth Authority has collected  
33 restitution payments on behalf of a victim, the victim shall  
34 request those payments no later than one year after the  
35 ward has been discharged by the Youthful Offender  
36 Parole Board. Any victim who fails to request those  
37 payments within that time period shall have relinquished  
38 all rights to the payments, unless he or she can show  
39 reasonable cause for failure to request those payments  
40 within that time period.



1 (e) The director shall transfer to the State Board of  
2 Control all restitution payments collected prior to the  
3 effective date of this section on behalf of victims who have  
4 died, cannot be located, or have not requested restitution  
5 payments. The State Board of Control shall deposit these  
6 amounts in the Restitution Fund.

7 (f) For purposes of this section, "victim" includes a  
8 victim's immediate surviving family member, on whose  
9 behalf restitution has been ordered.

10 SEC. 36. Section 1766.1 of the Welfare and Institutions  
11 Code is amended to read:

12 1766.1. When permitting an adult or minor  
13 committed to the Youth Authority his or her liberty  
14 pursuant to subdivision (a) of Section 1766, the Youthful  
15 Offender Parole Board shall impose as a condition thereof  
16 that the adult or minor pay in full any restitution fine or  
17 restitution order imposed pursuant to Section 13967, *as*  
18 *operative on or before September 28, 1994*, of the  
19 Government Code, *or Section 1202.4 of the Penal Code,*  
20 *or Section 1203.4, as operative on or before August 2, 1994,*  
21 *of the Penal Code, or Section 730.6, or Section 731.1 of this*  
22 *code, as operative on or before August 2, 1995.* Payment  
23 shall be in installments set in an amount consistent with  
24 the adult's or minor's ability to pay.

