

**Senate Bill No. 871**

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Passed the Senate August 4, 1997

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*Secretary of the Senate*

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Passed the Assembly July 21, 1997

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1997, at \_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_

An act to amend Section 13960 of the Government Code, and to amend Sections 243.5, 836.5, 1001.15, 1001.16, 1001.90, 1465.5, and 11167 of the Penal Code, relating to crimes.

## LEGISLATIVE COUNSEL'S DIGEST

SB 871, Committee on Public Safety. Crimes.

(1) Existing law provides for crime victims to obtain restitution through compensation from the Restitution Fund.

This bill would correct a cross-reference for purposes of these provisions.

(2) Existing law authorizes (a) a peace officer to arrest a person without a warrant when the person commits an assault or battery on school property during hours when school activities are being conducted, as specified, and (b) a public officer or employee, when authorized by ordinance, to arrest a person without a warrant whenever the officer or employee has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the presence of the officer or employee that is a violation of a statute or ordinance that the officer or employee has the duty to enforce. Existing law also authorizes counties to impose an assessment of \$2 for every \$10, or fraction thereof, of fines, forfeitures, and penalties collected for the unauthorized use of parking spaces designated for disabled persons. Existing law further requires specified persons to report known or suspected instances of child abuse to a child protective agency.

This bill would correct cross-references and make other nonsubstantive, technical changes in these provisions.

(3) Existing law provides for the payment of an administrative fee by a defendant accused of a felony or misdemeanor controlled substance offense at the time of enrollment in a diversion program. Existing law also provides for the payment of a diversion restitution fee by



a defendant charged with a felony or misdemeanor whose case is diverted.

This bill would define diversion for the purposes of the above provisions to also mean deferred entry of judgment, as specified.

(4) This bill would provide that the changes in Section 13960 of the Government Code proposed by the bill shall not become operative if AB 535 is enacted and becomes effective on or before January 1, 1998, and also amends Section 13960 of the Government Code.

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

SECTION 1. Section 13960 of the Government Code is amended to read:

13960. As used in this article:

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

(2) "Derivative victim" means a resident of California who is one of the following:

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

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

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

(D) Is another family member of the victim, including the victim's fiancé, and witnessed the crime.

(b) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section



311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed or a prosecuting attorney expresses the opinion that the child is a victim of that section.

(c) “Crime” means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. “Crime” includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

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

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

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

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

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

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



(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses which became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.



(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

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

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

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

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

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

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

SEC. 2. Section 243.5 of the Penal Code is amended to read:

243.5. (a) When a person commits an assault or battery on school property during hours when school activities are being conducted, a peace officer may, without a warrant, notwithstanding paragraph (2) or (3) of subdivision (a) of Section 836, arrest the person who commits the assault or battery:

(1) Whenever the person has committed the assault or battery, although not in the peace officer’s presence.

(2) Whenever the peace officer has reasonable cause to believe that the person to be arrested has committed



the assault or battery, whether or not it has in fact been committed.

(b) “School,” as used in this section, means any elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, technical school, or community college.

SEC. 3. Section 836.5 of the Penal Code is amended to read:

836.5. (a) A public officer or employee, when authorized by ordinance, may arrest a person without a warrant whenever the officer or employee has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the presence of the officer or employee that is a violation of a statute or ordinance that the officer or employee has the duty to enforce.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any public officer or employee acting pursuant to subdivision (a) and within the scope of his or her authority for false arrest or false imprisonment arising out of any arrest that is lawful or that the public officer or employee, at the time of the arrest, had reasonable cause to believe was lawful. No officer or employee shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance.

(c) In any case in which a person is arrested pursuant to subdivision (a) and the person arrested does not demand to be taken before a magistrate, the public officer or employee making the arrest shall prepare a written notice to appear and release the person on his or her promise to appear, as prescribed by Chapter 5C (commencing with Section 853.5). The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a written notice to appear pursuant to this authority.

(d) The governing body of a local agency, by ordinance, may authorize its officers and employees who



have the duty to enforce a statute or ordinance to arrest persons for violations of the statute or ordinance as provided in subdivision (a).

(e) For purposes of this section, “ordinance” includes an order, rule, or regulation of any air pollution control district.

(f) For purposes of this section, a “public officer or employee” includes an officer or employee of a nonprofit transit corporation wholly owned by a local agency and formed to carry out the purposes of the local agency.

SEC. 4. Section 1001.15 of the Penal Code is amended to read:

1001.15. (a) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of a felony to cover the actual cost of any criminalistics laboratory analysis, the actual cost of processing a request or application for diversion, and the actual cost of supervising the divertee pursuant to Chapter 2.5 (commencing with Section 1000), not to exceed five hundred dollars (\$500). The fee shall be payable at the time of enrollment in the diversion program. The court shall take into consideration the defendant’s ability to pay, and no defendant shall be denied diversion because of his or her inability to pay.

(b) As used in this section, “criminalistics laboratory” means a laboratory operated by, or under contract with a city, county, or other public agency, including a criminalistics laboratory of the Department of Justice, which has not less than one regularly employed forensic scientist engaged in the analysis of solid dose material and body fluids for controlled substances, and which is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for the processing of all scheduled controlled substances.

(c) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in



a diversion program, by a defendant accused of an act charged as, or reduced to, a misdemeanor to cover the actual cost of processing a request or application for diversion pursuant to Chapter 2.6 (commencing with Section 1000.6), the actual costs of reporting to the court on a defendant's eligibility and suitability for diversion, the actual cost of supervising the divertee, and for the actual costs of performing any duties required pursuant to Section 1000.9, not to exceed three hundred dollars (\$300). The fee shall be payable at the time of enrollment in the diversion program. The fee shall be determined on a sliding scale according to the defendant's ability to pay, and no defendant shall be denied diversion because of his or her inability to pay.

(d) The fee established pursuant to this section may not exceed the actual costs required for the programs authorized to be reimbursed by this fee. All proceeds from the fee established pursuant to this section shall be allocated only for the programs authorized to be reimbursed by this fee.

(e) As used in this section, "diversion" also means deferred entry of judgment pursuant to Chapter 2.5 (commencing with Section 1000).

SEC. 5. Section 1001.16 of the Penal Code is amended to read:

1001.16. (a) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of a misdemeanor to cover the actual cost of any criminalistics laboratory analysis in a case involving a violation of the California Uniform Controlled Substances Act under Division 10 (commencing with Section 11000) of the Health and Safety Code, the actual cost of processing a request or application for diversion, and the actual cost of supervising the divertee, not to exceed three hundred dollars (\$300). The fee shall be payable at the time of enrollment in the diversion program. The court shall take into consideration the defendant's ability



to pay, and no defendant shall be denied diversion because of his or her inability to pay.

(b) As used in this section, “criminalistics laboratory” means a laboratory operated by, or under contract with, a city, county, or other public agency, including a criminalistics laboratory of the Department of Justice, which has not less than one regularly employed forensic scientist engaged in the analysis of solid dose material and body fluids for controlled substances and which is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for the processing of all scheduled controlled substances.

(c) This section shall apply to all deferred entry of judgment and misdemeanor pretrial diversion programs established pursuant to this title.

(d) The fee established pursuant to this section may not exceed the actual costs required for the programs authorized to be reimbursed by this fee. All proceeds from the fee established pursuant to this section shall be allocated only for the programs authorized to be reimbursed by this fee.

(e) As used in this section, “diversion” also means deferred entry of judgment pursuant to Chapter 2.5 (commencing with Section 1000).

SEC. 6. Section 1001.90 of the Penal Code is amended to read:

1001.90. (a) For all persons charged with a felony or misdemeanor whose case is diverted by the court pursuant to this title, the court shall impose on the defendant a diversion restitution fee in addition to any other administrative fee provided or imposed under the law. This fee shall not be imposed upon persons whose case is diverted by the court pursuant to Chapter 2.8 (commencing with Section 1001.20).

(b) The diversion restitution fee imposed pursuant to this section shall be set at the discretion of the court and shall be commensurate with the seriousness of the offense, but shall not be less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000).



(c) The diversion restitution fee shall be ordered regardless of the defendant's present ability to pay. However, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the fee. When the waiver is granted, the court shall state on the record all reasons supporting the waiver. Except as provided in this subdivision, the court shall impose the separate and additional diversion restitution fee required by this section.

(d) In setting the amount of the diversion restitution fee in excess of the one hundred dollar (\$100) minimum, the court shall consider any relevant factors, including, but not limited to, the defendant's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, and the extent to which any other person suffered any losses as a result of the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating the lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fee shall not be required. A separate hearing for the diversion restitution fee shall not be required.

(e) The court shall not limit the ability of the state to enforce the fee imposed by this section in the manner of a judgment in a civil action. The court shall not modify the amount of this fee except to correct an error in the setting of the amount of the fee imposed.

(f) The fee imposed pursuant to this section shall be immediately deposited in the Restitution Fund for use pursuant to Section 13967 of the Government Code.

(g) The board of supervisors of any county may impose a fee at its discretion to cover the actual administrative costs of collection of the restitution fee, not to exceed 10 percent of the amount ordered to be paid. Any fee



imposed pursuant to this subdivision shall be deposited in the general fund of the county.

(h) The state shall pay the county agency responsible for collecting the diversion restitution fee owed to the Restitution Fund under this section, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10 percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund as provided in this section. The 10 percent rebates shall not be used to supplant county funding.

(i) As used in this section, “diversion” also means deferred entry of judgment pursuant to Chapter 2.5 (commencing with Section 1000).

SEC. 7. Section 1465.5 of the Penal Code is amended to read:

1465.5. An assessment of two dollars (\$2) for every ten dollars (\$10) or fraction thereof, for every fine, forfeiture, or parking penalty imposed and collected pursuant to Section 42001.5 of the Vehicle Code for violation of Section 22507.8 of the Vehicle Code, may be imposed by each county upon the adoption of a resolution by the board of supervisors. An assessment imposed by this section shall be collected and disbursed as provided in Section 9545 of the Welfare and Institutions Code.

SEC. 8. Section 11167 of the Penal Code is amended to read:

11167. (a) A telephone report of a known or suspected instance of child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including



information that led that person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse.

(c) Information relevant to the incident of child abuse may be given to the licensing agency when it is investigating a known or suspected case of child abuse, including the investigation report, and other pertinent materials.

(d) The identity of all persons who report under this article shall be confidential and disclosed only between child protective agencies, or to counsel representing a child protective agency, or to the district attorney in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or district attorney in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Persons who may report pursuant to subdivision (f) of Section 11166 are not required to include their names.

SEC. 9. Section 1 of this act, which amends Section 13960 of the Government Code, shall not become operative if Assembly Bill 535 of the 1997-98 Regular Session is enacted and becomes effective on or before January 1, 1998, and amends Section 13960 of the Government Code.



Approved \_\_\_\_\_, 1997

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*Governor*

