

AMENDED IN SENATE JANUARY 3, 2000

AMENDED IN SENATE MARCH 22, 1999

SENATE BILL

No. 255

Introduced by Senator Lewis

January 28, 1999

An act to ~~amend Section 1203.1b of~~ *add Section 3100 to the Penal Code, relating to probation punishment.*

LEGISLATIVE COUNSEL'S DIGEST

SB 255, as amended, Lewis. ~~Probation: ability to pay Parole: drug use: alternative options.~~

Existing law provides that the Department of Corrections shall develop and report to the Legislature by December 31, 2000, a plan that would ensure by January 1, 2005, that all prisoners and parolees who are substance abusers receive appropriate treatment, including a range of options. Existing law also provides for the use of alternative punishment options for specified offender populations.

This bill would provide, in addition, that any person who violates his or her parole due to drug use only shall be eligible to participate in one or more alternative punishment options, as specified, at the discretion and under the administration of either the violator's parole officer or of the Board of Prison Terms, and that a parole officer or the board shall have the discretion to reincarcerate, or permit the participation in alternative punishment options under this section of, any person who violates his or her parole due to drug use only.

~~Existing law requires that in any case where a defendant is convicted of a criminal offense and is the subject of a preplea or presentence investigation, the probation department must make a determination of the defendant's ability to pay all or a portion of the reasonable costs of specified administrative services. The probation department is required to develop a payment schedule for the reimbursement of the costs and that determination must be approved by the presiding judge of the court.~~

~~This bill would amend the above provisions by requiring that a county that incurs the above mentioned administrative costs be fully reimbursed for those costs, and that the probation department make a determination of the defendant's ability to pay all of the reasonable costs of those services. In addition, the bill would delete the requirement that the probation department develop a payment schedule and instead would require that whenever possible, payment be made to the county during the term of probation or conditional sentence and continued beyond that period until payment in full is made.~~

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 1203.1b of the Penal Code is~~
2 *SECTION 1. Section 3100 is added to the Penal Code,*
3 *to read:*
4 *3100. (a) For the purposes of this section, the*
5 *following terms have the following meanings:*
6 *(1) "Board" means the Board of Prison Terms.*
7 *(2) "Alternative punishment options" means parole*
8 *options and sanctions other than simple incarceration in*
9 *prison or jail or traditional routine parole supervision.*
10 *"Alternative punishment options" may be provided by*
11 *correctional agencies directly or through*
12 *community-based public or private correctional service*
13 *providers, and include, but are not limited to, the*
14 *following:*



- 1 (A) Short-term “shock” incarceration in either jail or
2 prison, for a period of not more than 60 days.
- 3 (B) Incarceration in a “boot camp” facility.
- 4 (C) Intensive supervision.
- 5 (D) Home detection with electronic monitoring.
- 6 (E) Mandatory community service.
- 7 (F) Restorative justice programs such as mandatory
8 victim restitution and victim-offender reconciliation.
- 9 (G) Work, training, or education in a furlough
10 program pursuant to Section 1208.
- 11 (H) Work, in lieu of confinement, in work release
12 program pursuant to Section 4024.2.
- 13 (I) Day reporting.
- 14 (J) Mandatory residential or nonresidential substance
15 abuse treatment programs established pursuant to
16 Chapter 9.4 (commencing with Section 6240) of Title 7.
- 17 (K) Mandatory random drug testing.
- 18 (L) Mother-infant care programs.
- 19 (M) Community-based residential programs offering
20 structure, supervision, drug treatment, alcohol
21 treatment, literacy programming, employment
22 counseling, psychological counseling, or any combination
23 of these and other interventions.
- 24 (b) Any person who violates his or her parole due to
25 drug use only shall be eligible to participate in one or
26 more alternative punishment options specified in
27 paragraph (2) of subdivision (a), at the discretion and
28 under the administration of either the violator’s parole
29 officer or of the board.
- 30 (c) A parole officer or the board shall have the
31 discretion to reincarcerate, or permit the participation in
32 alternative punishment options under this section of, any
33 person who violates his or her parole due to drug use only.
- 34 (d) Notwithstanding any other provision, a parole
35 officer shall have no duty to report a person who violates
36 his or her parole due to drug use only who will be
37 participating in an alternative punishment option
38 specified in paragraph (2) of subdivision (a).
- 39 ~~amended to read:~~



1 ~~1203.1b. (a) In any case in which a defendant is~~
2 ~~convicted of an offense and is the subject of any preplea~~
3 ~~or presentence investigation and report, whether or not~~
4 ~~probation supervision is ordered by the court, and in any~~
5 ~~case in which a defendant is granted probation or given~~
6 ~~a conditional sentence, the probation officer, or his or her~~
7 ~~authorized representative, taking into account any~~
8 ~~amount that the defendant is ordered to pay in fines,~~
9 ~~assessments, and restitution, shall make a determination~~
10 ~~of the ability of the defendant to pay all of the reasonable~~
11 ~~cost of any probation supervision or a conditional~~
12 ~~sentence, of conducting any preplea investigation and~~
13 ~~preparing any preplea report pursuant to Section 131.3 of~~
14 ~~the Code of Civil Procedure, of conducting any~~
15 ~~presentence investigation and preparing any~~
16 ~~presentence report made pursuant to Section 1203, and~~
17 ~~of processing a jurisdictional transfer pursuant to Section~~
18 ~~1203.9 or of processing a request for interstate compact~~
19 ~~supervision pursuant to Sections 11175 to 11179, inclusive,~~
20 ~~whichever applies. The reasonable cost of all these~~
21 ~~services shall not exceed the amount determined to be~~
22 ~~the actual average cost of all of those services. The court~~
23 ~~shall order the defendant to appear before the probation~~
24 ~~officer, or his or her authorized representative, to make~~
25 ~~an inquiry into the ability of the defendant to pay all of~~
26 ~~these costs. The probation officer, or his or her authorized~~
27 ~~representative, shall determine the amount of payment~~
28 ~~and the manner in which the payments shall be made to~~
29 ~~the county, based upon the defendant's ability to pay.~~
30 ~~Whenever possible, the defendant shall be ordered to pay~~
31 ~~the amount determined to be the actual average cost of~~
32 ~~all the services. The probation officer shall inform the~~
33 ~~defendant that the defendant is entitled to a hearing, that~~
34 ~~includes the right to counsel, in which the court shall~~
35 ~~make a determination of the defendant's ability to pay~~
36 ~~and the payment amount. The defendant must waive the~~
37 ~~right to a determination by the court of his or her ability~~
38 ~~to pay and the payment amount by a knowing and~~
39 ~~intelligent waiver.~~



1 ~~(b) When the defendant fails to waive the right~~
2 ~~provided in subdivision (a) to a determination by the~~
3 ~~court of his or her ability to pay and the payment amount,~~
4 ~~the probation officer shall refer the matter to the court for~~
5 ~~the scheduling of a hearing to determine the amount of~~
6 ~~payment and the manner in which the payments shall be~~
7 ~~made. The court shall order the defendant to pay the~~
8 ~~reasonable costs if it determines that the defendant has~~
9 ~~the ability to pay those costs based on the report of the~~
10 ~~probation officer, or his or her authorized representative.~~
11 ~~The following shall apply to a hearing conducted~~
12 ~~pursuant to this subdivision:~~

13 ~~(1) At the hearing, the defendant shall be entitled to~~
14 ~~have, but shall not be limited to, the opportunity to be~~
15 ~~heard in person, to present witnesses and other~~
16 ~~documentary evidence, and to confront and~~
17 ~~cross-examine adverse witnesses, and to disclosure of the~~
18 ~~evidence against the defendant, and a written statement~~
19 ~~of the findings of the court or the probation officer, or his~~
20 ~~or her authorized representative.~~

21 ~~(2) At the hearing, if the court determines that the~~
22 ~~defendant has the ability to pay all of the costs, the court~~
23 ~~shall set the amount to be reimbursed and order the~~
24 ~~defendant to pay all of the costs to the county in the~~
25 ~~manner in which the court believes reasonable and~~
26 ~~compatible with the defendant's financial ability.~~

27 ~~(3) At the hearing, in making a determination of~~
28 ~~whether a defendant has the ability to pay, the court shall~~
29 ~~take into account the amount of any fine imposed upon~~
30 ~~the defendant and any amount the defendant has been~~
31 ~~ordered to pay in restitution. Whenever possible, the~~
32 ~~amount to be reimbursed shall equal the amount~~
33 ~~determined to be the actual average cost.~~

34 ~~(4) When the court determines that the defendant's~~
35 ~~ability to pay is different from the determination of the~~
36 ~~probation officer, the court shall state on the record the~~
37 ~~reason for its order.~~

38 ~~(c) The court may hold additional hearings during the~~
39 ~~probationary or conditional sentence period to review~~
40 ~~the defendant's financial ability to pay the amount, and~~



1 in the manner, as set by the probation officer, or his or her
2 authorized representative, or as set by the court pursuant
3 to this section.

4 (d) A county that incurs costs provided in subdivision
5 (a) as a result of a defendant's commission of a crime shall,
6 whenever possible, be fully reimbursed for those costs.

7 (1) If practicable, the court shall order or the
8 probation officer shall set payments pursuant to
9 subdivisions (a) and (b) to be made on a monthly basis.

10 (2) Whenever possible, payments shall be made to the
11 county during the term of probation and shall continue
12 to be paid beyond the period of probation or conditional
13 sentence until payment in full has been made for the
14 actual average cost of all of the services provided.

15 (3) Execution may be issued on the order issued
16 pursuant to this section in the same manner as a judgment
17 in a civil action. The order to pay shall not be enforced by
18 contempt.

19 (e) The term "ability to pay" means the overall
20 capability of the defendant to reimburse the costs of
21 conducting the presentence investigation, preparing the
22 preplea or presentence report, processing a jurisdictional
23 transfer pursuant to Section 1203.9, processing requests
24 for interstate compact supervision pursuant to Sections
25 11175 to 11179, inclusive, and probation supervision or
26 conditional sentence, and shall include, but shall not be
27 limited to, the defendant's:

28 (1) Present financial position.

29 (2) Reasonably discernible future financial position. In
30 no event shall the court consider a period of more than
31 one year from the date of the hearing for purposes of
32 determining reasonably discernible future financial
33 position.

34 (3) Likelihood that the defendant shall be able to
35 obtain employment within the one-year period from the
36 date of the hearing.

37 (4) Any other factor or factors that may bear upon the
38 defendant's financial capability to reimburse the county
39 for the costs.



1 ~~(f) At any time during the pendency of the judgment~~
2 ~~rendered according to the terms of this section, a~~
3 ~~defendant against whom a judgment has been rendered~~
4 ~~may petition the probation officer for a review of the~~
5 ~~defendant's financial ability to pay or the rendering court~~
6 ~~to modify or vacate its previous judgment on the grounds~~
7 ~~of a change of circumstances with regard to the~~
8 ~~defendant's ability to pay the judgment. The probation~~
9 ~~officer and the court shall advise the defendant of this~~
10 ~~right at the time of rendering of the terms of probation~~
11 ~~or the judgment.~~

12 ~~(g) All sums paid by a defendant pursuant to this~~
13 ~~section shall be allocated for the operating expenses of the~~
14 ~~county probation department.~~

15 ~~(h) The board of supervisors in any county, by~~
16 ~~resolution, may establish a fee for the processing of~~
17 ~~payments made in installments to the probation~~
18 ~~department pursuant to this section, not to exceed the~~
19 ~~administrative and clerical costs of the collection of those~~
20 ~~installment payments as determined by the board of~~
21 ~~supervisors, except that the fee shall not exceed fifty~~
22 ~~dollars (\$50).~~

23 ~~(i) This section shall be operative in a county upon the~~
24 ~~adoption of an ordinance to that effect by the board of~~
25 ~~supervisors.~~

