

AMENDED IN ASSEMBLY JANUARY 4, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 789

Introduced by Assembly Member Lieber

February 18, 2005

An act to add Title 9 (commencing with Section 14100) to Part 4 of the Penal Code, relating to disabled persons; amend Section 1203.097 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 789, as amended, Lieber. ~~Crimes against individuals with disabilities.~~ Domestic violence.

Existing law provides that if a person is granted probation for an offense of domestic violence certain probation terms and conditions apply, including a minimum period of probation, issuance of a protective order, notice to the victim of the disposition of the case, booking of the defendant, payment of fees to special domestic violence funds, completion of a batterer's program, and other various probation conditions. Existing law further defines the roles, duties, powers, and goals of, as well as the procedures to be used by, the courts, probation departments, and batterer's programs identified in this section.

This bill would add a \$150 dollar payment to be made by a defendant to a specified domestic violence fund and would direct the money be distributed as grants, to be awarded to programs that would educate youth in an effort to break the cycle of domestic violence.

Because this bill would require county treasurers to account for the allocation of this money to specific purposes, it would impose a state-mandated local program.

~~Existing law requires each sheriff or police chief executive to furnish specified information regarding crimes to the Department of Justice.~~

~~This bill would require each law enforcement agency, during the next substantive revision of the local forms used to collect and report criminal statistics to the department, but in no event later than January 1, 2009, to modify the local forms to allow identification of whether or not the victim of the crime has a disability and, if so, whether the disability is psychiatric, cognitive, or physical. It would require each law enforcement agency to develop a protocol during criminal investigations to note in crime reports whether or not the officer or officers investigating the criminal activity identified the victim as disabled. By imposing new requirements on local officials, the bill would impose a state-mandated local program.~~

~~The bill would require the Attorney General to include specified information regarding crime victims with disabilities in his or her annual "Crime in California" report.~~

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. Section 1203.097 of the Penal Code, as
- 2 amended by Section 1 of Chapter 431 of the Statutes of 2003, is
- 3 amended to read:
- 4 1203.097. (a) If a person is granted probation for a crime in
- 5 which the victim is a person defined in Section 6211 of the
- 6 Family Code, the terms of probation shall include all of the
- 7 following:
- 8 (1) A minimum period of probation of 36 months, which may
- 9 include a period of summary probation as appropriate.

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

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

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

8 (5) A minimum payment by the defendant of four hundred
9 dollars (\$400) to be disbursed as specified in this paragraph. If,
10 after a hearing in court on the record, the court finds that the
11 defendant does not have the ability to pay, the court may reduce
12 or waive this fee.

13 Two-thirds of the moneys deposited with the county treasurer
14 pursuant to this section shall be retained by counties and
15 deposited in the domestic violence programs special fund created
16 pursuant to Section 18305 of the Welfare and Institutions Code,
17 to be expended for the purposes of Chapter 5 (commencing with
18 Section 18290) of Part 6 of Division 9 of the Welfare and
19 Institutions Code. The remainder shall be transferred, once a
20 month, to the Controller for deposit in equal amounts in the
21 Domestic Violence Restraining Order Reimbursement Fund and
22 in the Domestic Violence Training and Education Fund, which
23 are hereby created, in an amount equal to one-third of funds
24 collected during the preceding month. In no event may the funds
25 transferred to the Controller be less than one hundred thirty-three
26 dollars (\$133) for each defendant. However, if the court orders
27 the defendant to pay less than two hundred dollars (\$200)
28 because of his or her inability to pay, the state shall receive
29 two-thirds of the payment. Moneys deposited into these funds
30 pursuant to this section shall be available upon appropriation by
31 the Legislature and shall be distributed each fiscal year as
32 follows:

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

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

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

12 *(6) A payment of one hundred-fifty dollars (\$150) to be*
13 *deposited in the Domestic Violence Training and Education*
14 *Fund which shall be used to develop programs to educate youth,*
15 *with the goal of breaking the intergenerational cycle of domestic*
16 *violence. Grants to support this program shall be awarded on a*
17 *competitive basis and be administered by the State Department of*
18 *Health Services, in consultation with the statewide domestic*
19 *violence coalition. If, after a hearing in court on the record, the*
20 *court finds that the defendant does not have the ability to pay, the*
21 *court may reduce or waive this fee.*

22 ~~(6)~~

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

35 ~~(7)~~

36 (8) (A) (i) The court shall order the defendant to comply with
37 all probation requirements, including the requirements to attend
38 counseling, keep all program appointments, and pay program
39 fees based upon the ability to pay.

1 (ii) The terms of probation for offenders shall not be lifted
2 until all reasonable fees due to the counseling program have been
3 paid in full, but in no case shall probation be extended beyond
4 the term provided in subdivision (a) of Section 1203.1. If the
5 court finds that the defendant does not have the ability to pay the
6 fees based on the defendant's changed circumstances, the court
7 may reduce or waive the fees.

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

11 ~~(8)~~

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

20 ~~(9)~~

21 (10) If the program finds that the defendant is unsuitable, the
22 program shall immediately contact the probation department or
23 the court. The probation department or court shall either
24 recalendar the case for hearing or refer the defendant to an
25 appropriate alternative batterer's program.

26 ~~(10)~~

27 (11) (A) Upon recommendation of the program, a court shall
28 require a defendant to participate in additional sessions
29 throughout the probationary period, unless it finds that it is not in
30 the interests of justice to do so, states its reasons on the record,
31 and enters them into the minutes. In deciding whether the
32 defendant would benefit from more sessions, the court shall
33 consider whether any of the following conditions exist:

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

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

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

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

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

9 (vi) The defendant has made threats to harm anyone in any
10 manner.

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

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

16 (B) The program shall immediately report any violation of the
17 terms of the protective order, including any new acts of violence
18 or failure to comply with the program requirements, to the court,
19 the prosecutor, and, if formal probation has been ordered, to the
20 probation department. The probationer shall file proof of
21 enrollment in a batterer's program with the court within 30 days
22 of conviction.

23 (C) Concurrent with other requirements under this section, in
24 addition to, and not in lieu of, the batterer's program, and unless
25 prohibited by the referring court, the probation department or the
26 court may make provisions for a defendant to use his or her
27 resources to enroll in a chemical dependency program or to enter
28 voluntarily a licensed chemical dependency recovery hospital or
29 residential treatment program that has a valid license issued by
30 the state to provide alcohol or drug services to receive program
31 participation credit, as determined by the court. The probation
32 department shall document evidence of this hospital or
33 residential treatment participation in the defendant's program
34 file.

35 ~~(11)~~

36 (12) The conditions of probation may include, in lieu of a fine,
37 but not in lieu of the fund payment required under paragraph (5),
38 one or more of the following requirements:

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

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

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

23 ~~(12)~~

24 (13) If it appears to the prosecuting attorney, the court, or the
25 probation department that the defendant is performing
26 unsatisfactorily in the assigned program, is not benefiting from
27 counseling, or has engaged in criminal conduct, upon request of
28 the probation officer, the prosecuting attorney, or on its own
29 motion, the court, as a priority calendar item, shall hold a hearing
30 to determine whether further sentencing should proceed. The
31 court may consider factors, including, but not limited to, any
32 violence by the defendant against the former or a new victim
33 while on probation and noncompliance with any other specific
34 condition of probation. If the court finds that the defendant is not
35 performing satisfactorily in the assigned program, is not
36 benefiting from the program, has not complied with a condition
37 of probation, or has engaged in criminal conduct, the court shall
38 terminate the defendant's participation in the program and shall
39 proceed with further sentencing.

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

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

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

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

- (A) Social, economic, and family background.
- (B) Education.
- (C) Vocational achievements.
- (D) Criminal history.
- (E) Medical history.
- (F) Substance abuse history.
- (G) Consultation with the probation officer.

1 (H) Verbal consultation with the victim, only if the victim
2 desires to participate.

3 (I) Assessment of the future probability of the defendant
4 committing murder.

5 (4) The probation department shall attempt to notify the victim
6 regarding the requirements for the defendant's participation in
7 the batterer's program, as well as regarding available victim
8 resources. The victim also shall be informed that attendance in
9 any program does not guarantee that an abuser will not be
10 violent.

11 (c) The court or the probation department shall refer
12 defendants only to batterer's programs that follow standards
13 outlined in paragraph (1), which may include, but are not limited
14 to, lectures, classes, group discussions, and counseling. The
15 probation department shall design and implement an approval
16 and renewal process for batterer's programs and shall solicit
17 input from criminal justice agencies and domestic violence
18 victim advocacy programs.

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

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

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

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

31 (D) Procedures to inform the victim regarding the
32 requirements for the defendant's participation in the intervention
33 program as well as regarding available victim resources. The
34 victim also shall be informed that attendance in any program
35 does not guarantee that an abuser will not be violent.

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

38 (F) Educational programming that examines, at a minimum,
39 gender roles, socialization, the nature of violence, the dynamics

1 of power and control, and the effects of abuse on children and
2 others.

3 (G) A requirement that excludes any couple counseling or
4 family counseling, or both.

5 (H) Procedures that give the program the right to assess
6 whether or not the defendant would benefit from the program and
7 to refuse to enroll the defendant if it is determined that the
8 defendant would not benefit from the program, so long as the
9 refusal is not because of the defendant's inability to pay. If
10 possible, the program shall suggest an appropriate alternative
11 program.

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

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

18 (K) A requirement that the defendant enter into a written
19 agreement with the program, which shall include an outline of
20 the contents of the program, the attendance requirements, the
21 requirement to attend group sessions free of chemical influence,
22 and a statement that the defendant may be removed from the
23 program if it is determined that the defendant is not benefiting
24 from the program or is disruptive to the program.

25 (L) A requirement that the defendant sign a confidentiality
26 statement prohibiting disclosure of any information obtained
27 through participating in the program or during group sessions
28 regarding other participants in the program.

29 (M) Program content that provides cultural and ethnic
30 sensitivity.

31 (N) A requirement of a written referral from the court or
32 probation department prior to permitting the defendant to enroll
33 in the program. The written referral shall state the number of
34 minimum sessions required by the court.

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

37 (i) Proof of enrollment, to be submitted to the court and the
38 probation department and to include the fee determined to be
39 charged to the defendant, based upon the ability to pay, for each
40 session.

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

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

7 (P) A sliding fee schedule based on the defendant's ability to
8 pay. The batterer's program shall develop and utilize a sliding fee
9 scale that recognizes both the defendant's ability to pay and the
10 necessity of programs to meet overhead expenses. An indigent
11 defendant may negotiate a deferred payment schedule, but shall
12 pay a nominal fee, if the defendant has the ability to pay the
13 nominal fee. Upon a hearing and a finding by the court that the
14 defendant does not have the financial ability to pay the nominal
15 fee, the court shall waive this fee. The payment of the fee shall be
16 made a condition of probation if the court determines the
17 defendant has the present ability to pay the fee. The fee shall be
18 paid during the term of probation unless the program sets other
19 conditions. The acceptance policies shall be in accordance with
20 the scaled fee system.

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

25 (A) Provide for the issuance of a provisional approval,
26 provided that the applicant is in substantial compliance with
27 applicable laws and regulations and an urgent need for approval
28 exists. A provisional approval shall be considered an
29 authorization to provide services and shall not be considered a
30 vested right.

31 (B) If the probation department determines that a program is
32 not in compliance with standards set by the department, the
33 department shall provide written notice of the noncompliant
34 areas to the program. The program shall submit a written plan of
35 corrections within 14 days from the date of the written notice on
36 noncompliance. A plan of correction shall include, but not be
37 limited to, a description of each corrective action and timeframe
38 for implementation. The department shall review and approve all
39 or any part of the plan of correction and notify the program of
40 approval or disapproval in writing. If the program fails to submit

1 a plan of correction or fails to implement the approved plan of
2 correction, the department shall consider whether to revoke or
3 suspend approval and, upon revoking or suspending approval,
4 shall have the option to cease referrals of defendants under this
5 section.

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

8 (A) The establishment of guidelines and criteria for education
9 services, including standards of services that may include
10 lectures, classes, and group discussions.

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

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

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

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

30 (5) The probation department shall have the sole authority to
31 approve a batterer's program for probation. The program shall be
32 required to obtain only one approval but shall renew that
33 approval annually.

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

36 (i) The completion of a written application containing
37 necessary and pertinent information describing the applicant
38 program.

39 (ii) The demonstration by the program that it possesses
40 adequate administrative and operational capability to operate a

1 batterer's treatment program. The program shall provide
2 documentation to prove that the program has conducted
3 batterer's programs for at least one year prior to application. This
4 requirement may be waived under subparagraph (A) of paragraph
5 (2) if there is no existing batterer's program in the city, county,
6 or city and county.

7 (iii) The onsite review of the program, including monitoring of
8 a session to determine that the program adheres to applicable
9 statutes and regulations.

10 (iv) The payment of the approval fee.

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

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

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

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

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

36 (7) The program shall conduct an exit conference that assesses
37 the defendant's progress during his or her participation in the
38 batterer's program.

39 (d) This section shall remain in effect only until January 1,
40 2007, and as of that date is repealed, unless a later enacted

1 statute, that is enacted before January 1, 2007, deletes or extends
2 that date.

3 *SEC. 2. Section 1203.097 of the Penal Code, as added by*
4 *Section 2 of Chapter 431 of the Statutes of 2003, is amended to*
5 *read:*

6 1203.097. (a) If a person is granted probation for a crime in
7 which the victim is a person defined in Section 6211 of the
8 Family Code, the terms of probation shall include all of the
9 following:

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

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

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

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

19 (5) A minimum payment by the defendant of two hundred
20 dollars (\$200) to be disbursed as specified in this paragraph. If,
21 after a hearing in court on the record, the court finds that the
22 defendant does not have the ability to pay, the court may reduce
23 or waive this fee.

24 One-third of the moneys deposited with the county treasurer
25 pursuant to this section shall be retained by counties and
26 deposited in the domestic violence programs special fund created
27 pursuant to Section 18305 of the Welfare and Institutions Code,
28 to be expended for the purposes of Chapter 5 (commencing with
29 Section 18290) of Part 6 of Division 9 of the Welfare and
30 Institutions Code. The remainder shall be transferred, once a
31 month, to the Controller for deposit in equal amounts in the
32 Domestic Violence Restraining Order Reimbursement Fund and
33 in the Domestic Violence Training and Education Fund, which
34 are hereby created, in an amount equal to two-thirds of funds
35 collected during the preceding month. Moneys deposited into
36 these funds pursuant to this section shall be available upon
37 appropriation by the Legislature and shall be distributed each
38 fiscal year as follows:

39 (A) Funds from the Domestic Violence Restraining Order
40 Reimbursement Fund shall be distributed to local law

enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 6380 of the Family Code, based on the annual notification from the Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order databank system.

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

~~(6)~~

(6) A payment of one hundred-fifty dollars (\$150) to be deposited in the Domestic Violence Training and Education Fund which shall be used to develop programs to educate youth, with the goal of breaking the intergenerational cycle of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Health Services, in consultation with the statewide domestic violence coalition. If, after a hearing in court on the record, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee.

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

1 ~~(7)~~

2 (8) (A) (i) The court shall order the defendant to comply with
3 all probation requirements, including the requirements to attend
4 counseling, keep all program appointments, and pay program
5 fees based upon the ability to pay.

6 (ii) The terms of probation for offenders shall not be lifted
7 until all reasonable fees due to the counseling program have been
8 paid in full, but in no case shall probation be extended beyond
9 the term provided in subdivision (a) of Section 1203.1. If the
10 court finds that the defendant does not have the ability to pay the
11 fees based on the defendant's changed circumstances, the court
12 may reduce or waive the fees.

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

16 ~~(8)~~

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

25 ~~(9)~~

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

31 ~~(10)~~

32 (11) (A) Upon recommendation of the program, a court shall
33 require a defendant to participate in additional sessions
34 throughout the probationary period, unless it finds that it is not in
35 the interests of justice to do so, states its reasons on the record,
36 and enters them into the minutes. In deciding whether the
37 defendant would benefit from more sessions, the court shall
38 consider whether any of the following conditions exist:

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

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

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

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

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

13 (vi) The defendant has made threats to harm anyone in any
14 manner.

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

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

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

27 (C) Concurrent with other requirements under this section, in
28 addition to, and not in lieu of, the batterer's program, and unless
29 prohibited by the referring court, the probation department or the
30 court may make provisions for a defendant to use his or her
31 resources to enroll in a chemical dependency program or to enter
32 voluntarily a licensed chemical dependency recovery hospital or
33 residential treatment program that has a valid license issued by
34 the state to provide alcohol or drug services to receive program
35 participation credit, as determined by the court. The probation
36 department shall document evidence of this hospital or
37 residential treatment participation in the defendant's program
38 file.

39 ~~(H)~~

1 (12) The conditions of probation may include, in lieu of a fine,
2 but not in lieu of the fund payment required under paragraph (5),
3 one or more of the following requirements:

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

6 (B) That the defendant reimburse the victim for reasonable
7 expenses that the court finds are the direct result of the
8 defendant's offense.

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

28 ~~(12)~~

29 (13) If it appears to the prosecuting attorney, the court, or the
30 probation department that the defendant is performing
31 unsatisfactorily in the assigned program, is not benefiting from
32 counseling, or has engaged in criminal conduct, upon request of
33 the probation officer, the prosecuting attorney, or on its own
34 motion, the court, as a priority calendar item, shall hold a hearing
35 to determine whether further sentencing should proceed. The
36 court may consider factors, including, but not limited to, any
37 violence by the defendant against the former or a new victim
38 while on probation and noncompliance with any other specific
39 condition of probation. If the court finds that the defendant is not
40 performing satisfactorily in the assigned program, is not

1 benefiting from the program, has not complied with a condition
2 of probation, or has engaged in criminal conduct, the court shall
3 terminate the defendant's participation in the program and shall
4 proceed with further sentencing.

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

9 (1) The probation department shall make an investigation and
10 take into consideration the defendant's age, medical history,
11 employment and service records, educational background,
12 community and family ties, prior incidents of violence, police
13 report, treatment history, if any, demonstrable motivation, and
14 other mitigating factors in determining which batterer's program
15 would be appropriate for the defendant. This information shall be
16 provided to the batterer's program if it is requested. The
17 probation department shall also determine which community
18 programs the defendant would benefit from and which of those
19 programs would accept the defendant. The probation department
20 shall report its findings and recommendations to the court.

21 (2) The court shall advise the defendant that the failure to
22 report to the probation department for the initial investigation, as
23 directed by the court, or the failure to enroll in a specified
24 program, as directed by the court or the probation department,
25 shall result in possible further incarceration. The court, in the
26 interests of justice, may relieve the defendant from the
27 prohibition set forth in this subdivision based upon the
28 defendant's mistake or excusable neglect. Application for this
29 relief shall be filed within 20 court days of the missed deadline.
30 This time limitation may not be extended. A copy of any
31 application for relief shall be served on the office of the
32 prosecuting attorney.

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

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

38 (B) Education.

39 (C) Vocational achievements.

40 (D) Criminal history.

1 (E) Medical history.

2 (F) Substance abuse history.

3 (G) Consultation with the probation officer.

4 (H) Verbal consultation with the victim, only if the victim
5 desires to participate.

6 (I) Assessment of the future probability of the defendant
7 committing murder.

8 (4) The probation department shall attempt to notify the victim
9 regarding the requirements for the defendant's participation in
10 the batterer's program, as well as regarding available victim
11 resources. The victim also shall be informed that attendance in
12 any program does not guarantee that an abuser will not be
13 violent.

14 (c) The court or the probation department shall refer
15 defendants only to batterer's programs that follow standards
16 outlined in paragraph (1), which may include, but are not limited
17 to, lectures, classes, group discussions, and counseling. The
18 probation department shall design and implement an approval
19 and renewal process for batterer's programs and shall solicit
20 input from criminal justice agencies and domestic violence
21 victim advocacy programs.

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

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

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

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

34 (D) Procedures to inform the victim regarding the
35 requirements for the defendant's participation in the intervention
36 program as well as regarding available victim resources. The
37 victim also shall be informed that attendance in any program
38 does not guarantee that an abuser will not be violent.

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

1 (F) Educational programming that examines, at a minimum,
2 gender roles, socialization, the nature of violence, the dynamics
3 of power and control, and the effects of abuse on children and
4 others.

5 (G) A requirement that excludes any couple counseling or
6 family counseling, or both.

7 (H) Procedures that give the program the right to assess
8 whether or not the defendant would benefit from the program and
9 to refuse to enroll the defendant if it is determined that the
10 defendant would not benefit from the program, so long as the
11 refusal is not because of the defendant's inability to pay. If
12 possible, the program shall suggest an appropriate alternative
13 program.

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

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

20 (K) A requirement that the defendant enter into a written
21 agreement with the program, which shall include an outline of
22 the contents of the program, the attendance requirements, the
23 requirement to attend group sessions free of chemical influence,
24 and a statement that the defendant may be removed from the
25 program if it is determined that the defendant is not benefiting
26 from the program or is disruptive to the program.

27 (L) A requirement that the defendant sign a confidentiality
28 statement prohibiting disclosure of any information obtained
29 through participating in the program or during group sessions
30 regarding other participants in the program.

31 (M) Program content that provides cultural and ethnic
32 sensitivity.

33 (N) A requirement of a written referral from the court or
34 probation department prior to permitting the defendant to enroll
35 in the program. The written referral shall state the number of
36 minimum sessions required by the court.

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

39 (i) Proof of enrollment, to be submitted to the court and the
40 probation department and to include the fee determined to be

1 charged to the defendant, based upon the ability to pay, for each
2 session.

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

5 (iii) Final evaluation that includes the program's evaluation of
6 the defendant's progress, using the criteria set forth in paragraph
7 (4) of subdivision (a) and recommendation for either successful
8 or unsuccessful termination or continuation in the program.

9 (P) A sliding fee schedule based on the defendant's ability to
10 pay. The batterer's program shall develop and utilize a sliding fee
11 scale that recognizes both the defendant's ability to pay and the
12 necessity of programs to meet overhead expenses. An indigent
13 defendant may negotiate a deferred payment schedule, but shall
14 pay a nominal fee, if the defendant has the ability to pay the
15 nominal fee. Upon a hearing and a finding by the court that the
16 defendant does not have the financial ability to pay the nominal
17 fee, the court shall waive this fee. The payment of the fee shall be
18 made a condition of probation if the court determines the
19 defendant has the present ability to pay the fee. The fee shall be
20 paid during the term of probation unless the program sets other
21 conditions. The acceptance policies shall be in accordance with
22 the scaled fee system.

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

27 (A) Provide for the issuance of a provisional approval,
28 provided that the applicant is in substantial compliance with
29 applicable laws and regulations and an urgent need for approval
30 exists. A provisional approval shall be considered an
31 authorization to provide services and shall not be considered a
32 vested right.

33 (B) If the probation department determines that a program is
34 not in compliance with standards set by the department, the
35 department shall provide written notice of the noncompliant
36 areas to the program. The program shall submit a written plan of
37 corrections within 14 days from the date of the written notice on
38 noncompliance. A plan of correction shall include, but not be
39 limited to, a description of each corrective action and timeframe
40 for implementation. The department shall review and approve all

1 or any part of the plan of correction and notify the program of
2 approval or disapproval in writing. If the program fails to submit
3 a plan of correction or fails to implement the approved plan of
4 correction, the department shall consider whether to revoke or
5 suspend approval and, upon revoking or suspending approval,
6 shall have the option to cease referrals of defendants under this
7 section.

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

10 (A) The establishment of guidelines and criteria for education
11 services, including standards of services that may include
12 lectures, classes, and group discussions.

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

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

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

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

32 (5) The probation department shall have the sole authority to
33 approve a batterer's program for probation. The program shall be
34 required to obtain only one approval but shall renew that
35 approval annually.

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

38 (i) The completion of a written application containing
39 necessary and pertinent information describing the applicant
40 program.

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

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

(iv) The payment of the approval fee.

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

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

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

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

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

(7) The program shall conduct an exit conference that assesses the defendant's progress during his or her participation in the batterer's program.

(d) This section shall become operative on January 1, 2007.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. Title 9 (commencing with Section 14100) is added to Part 4 of the Penal Code, to read:~~

~~TITLE 9. TRACKING AND REPORTING OF CRIMES
AGAINST INDIVIDUALS WITH DISABILITIES~~

~~14100. (a) Each law enforcement agency shall, during the next substantive revision of the local forms used to collect and report criminal statistics to the Department of Justice, but in no event later than January 1, 2009, modify the local forms to allow identification of whether or not the victim of the crime has a disability and, if so, whether the disability is psychiatric, cognitive, or physical.~~

~~(b) Each law enforcement agency shall develop a protocol during criminal investigations to note in crime reports whether or not the officer or officers investigating the criminal activity identified the victim as having a disability. The protocol shall require that, if there is a doubt regarding the victim's disability status, the officer ask the victim if he or she has a disability and note the response. If the victim declines to answer the officer, the disability status shall be reported as unknown.~~

~~14101. The Attorney General shall include in his or her annual "Crime in California" report, at a minimum, the following information based upon information submitted in compliance with Section 14100:~~

~~(a) The number of crimes that involve criminal victims with disabilities.~~

~~(b) The number of crime reports that involve crime victims with disabilities by type of crime reported and by the three categories of disability identified in subdivision (a) of Section 14100.~~

~~SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made~~

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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