

AMENDED IN SENATE MAY 22, 2006

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2695**

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**Introduced by Assembly Member Goldberg**

**(Coauthors: Assembly Members Chan, Cohn, ~~Koretz~~, Hancock, Koretz, Leno, Liu, Oropeza, and ~~Pavley Pavley, Spitzer, and Villines~~)**

**(Coauthors: Senators Bowen, Migden, and Romero)**

February 24, 2006

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An act to amend ~~Section~~ *Sections 527.6 and 527.8* of the Code of Civil Procedure, *to amend Section 6222 of the Family Code, to amend Section 6103.2 of the Government Code*, and to amend and repeal Section 1203.097 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2695, as amended, Goldberg. Domestic violence: probation conditions.

*(1) Existing law, until January 1, 2007, provides that there is no fee for the service of process of certain protective orders, restraining orders, or injunctions or for a subpoena filed in connection with a petition alleging that a person has inflicted or threatened violence or stalked the petitioner. The Judicial Council is required to prepare and develop application forms for applicants who wish to avail themselves of the service of process.*

*This bill would make that provision operative indefinitely, expand the provision providing that there is no fee for the service of process of certain orders and injunctions to include additional protective*

*orders, restraining orders, and injunctions, as specified, and require the Judicial Council to prepare and develop application forms for applicants who wish to avail themselves of the service of process.*

*(2) Existing law, in effect until January 1, 2007, provides that there is no fee for a subpoena filed in connection with an application, responsive pleading, or order to show cause that seeks to obtain, modify, or enforce a protective order or other, related order.*

*This bill would make that provision effective indefinitely.*

*(3) Existing law, effective January 1, 2007, excepts orders and injunctions relating to harassment and workplace violence from a provision authorizing a sheriff or marshal to require the prepayment of fees prior to the performance of any official act.*

*This bill would make that provision effective indefinitely and expand the exception to include orders and injunctions relating to domestic violence and elder abuse.*

*(4) Existing law provides that any employer whose employee has suffered unlawful violence or a credible threat of violence, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee, as specified.*

*This bill would allow an employer to seek a restraining or an injunction on behalf of any of his or her employees. This bill would also provide that a temporary restraining order or an injunction issued under these provisions may include persons employed at any the plaintiff's workplaces, at the discretion of the court.*

*(5) Existing law provides, beginning January 1, 2007, that upon application of the petitioner, there is no fee for the service of process of a protective order, restraining order, or injunction if that order or injunction is based upon specified acts or threats. Existing law provides for specified conditions to be required of persons granted probation on a domestic violence case, including a minimum payment of \$200 for specified purposes, which can be waived by a court for inability to pay.*

*This bill would increase that minimum payment from \$200 to \$400, until January 1, 2010, subject to the same court waiver provisions.*

*(6) Existing law provides that 1/3 of this money shall be retained by the county for specified purposes and that the remainder shall be transferred to the Controller for deposit into specified accounts.*

*This bill would provide instead that, until January 1, 2010, 2/3 of the money should be retained by the county for those purposes and the*

reduced remainder be transferred to the Controller in an amount not less than \$133 for each defendant. However, if the court orders the defendant to pay less than \$200 because of his or her inability to pay, the state would receive 2/3 of the payment.

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.

(7)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 527.6 of the Code of Civil Procedure is  
2 amended to read:

3 527.6. (a) A person who has suffered harassment as defined  
4 in subdivision (b) may seek a temporary restraining order and an  
5 injunction prohibiting harassment as provided in this section.

6 (b) For the purposes of this section, “harassment” is unlawful  
7 violence, a credible threat of violence, or a knowing and willful  
8 course of conduct directed at a specific person that seriously  
9 alarms, annoys, or harasses the person, and that serves no  
10 legitimate purpose. The course of conduct must be such as would  
11 cause a reasonable person to suffer substantial emotional distress,  
12 and must actually cause substantial emotional distress to the  
13 plaintiff.

14 As used in this subdivision:

15 (1) “Unlawful violence” is any assault or battery, or stalking  
16 as prohibited in Section 646.9 of the Penal Code, but shall not  
17 include lawful acts of self-defense or defense of others.

18 (2) “Credible threat of violence” is a knowing and willful  
19 statement or course of conduct that would place a reasonable

1 person in fear for his or her safety, or the safety of his or her  
2 immediate family, and that serves no legitimate purpose.

3 (3) “Course of conduct” is a pattern of conduct composed of a  
4 series of acts over a period of time, however short, evidencing a  
5 continuity of purpose, including following or stalking an  
6 individual, making harassing telephone calls to an individual, or  
7 sending harassing correspondence to an individual by any means,  
8 including, but not limited to, the use of public or private mails,  
9 interoffice mail, fax, or computer e-mail. Constitutionally  
10 protected activity is not included within the meaning of “course  
11 of conduct.”

12 (c) Upon filing a petition for an injunction under this section,  
13 the plaintiff may obtain a temporary restraining order in  
14 accordance with Section 527, except to the extent this section  
15 provides a rule that is inconsistent. A temporary restraining order  
16 may be issued with or without notice upon an affidavit that, to  
17 the satisfaction of the court, shows reasonable proof of  
18 harassment of the plaintiff by the defendant, and that great or  
19 irreparable harm would result to the plaintiff. In the discretion of  
20 the court, and on a showing of good cause, a temporary  
21 restraining order *or injunction*, issued under this section may  
22 include other named family or household members who reside  
23 with the plaintiff. A temporary restraining order issued under this  
24 section shall remain in effect, at the court’s discretion, for a  
25 period not to exceed 15 days, or, if the court extends the time for  
26 hearing under subdivision (d), not to exceed 22 days, unless  
27 otherwise modified or terminated by the court.

28 (d) Within 15 days, or, if good cause appears to the court, 22  
29 days from the date the temporary restraining order is issued, a  
30 hearing shall be held on the petition for the injunction. The  
31 defendant may file a response that explains, excuses, justifies, or  
32 denies the alleged harassment or may file a cross-complaint  
33 under this section. At the hearing, the judge shall receive any  
34 testimony that is relevant, and may make an independent inquiry.  
35 If the judge finds by clear and convincing evidence that unlawful  
36 harassment exists, an injunction shall issue prohibiting the  
37 harassment. An injunction issued pursuant to this section shall  
38 have a duration of not more than three years. At any time within  
39 the three months before the expiration of the injunction, the

1 plaintiff may apply for a renewal of the injunction by filing a  
2 new petition for an injunction under this section.

3 (e) This section does not preclude either party from  
4 representation by private counsel or from appearing on the  
5 party's own behalf.

6 (f) In a proceeding under this section—~~where~~ *if* there are  
7 allegations or threats of domestic violence, a support person may  
8 accompany a party in court and, ~~where~~ *if* the party is not  
9 represented by an attorney, may sit with the party at the table that  
10 is generally reserved for the party and the party's attorney. The  
11 support person is present to provide moral and emotional support  
12 for a person who alleges he or she is a victim of domestic  
13 violence. The support person is not present as a legal adviser and  
14 ~~shall~~ *may* not ~~give~~ *provide* legal advice. The support person ~~shall~~  
15 *may* assist the person who alleges he or she is a victim of  
16 domestic violence in feeling more confident that he or she will  
17 not be injured or threatened by the other party during the  
18 proceedings—~~where~~ *if* the person who alleges he or she is a victim  
19 of domestic violence and the other party—~~must~~ *are required to* be  
20 present in close proximity. This subdivision does not preclude  
21 the court from exercising its discretion to remove the support  
22 person from the courtroom if the court believes the support  
23 person is prompting, swaying, or influencing the party assisted  
24 by the support person.

25 (g) Upon *the* filing of a petition for an injunction under this  
26 section, the defendant shall be personally served with a copy of  
27 the petition, temporary restraining order, if any, and notice of  
28 hearing of the petition. Service shall be made at least five days  
29 before the hearing. The court may for good cause, on motion of  
30 the plaintiff or on its own motion, shorten the time for service on  
31 the defendant.

32 (h) The court shall order the plaintiff or the attorney for the  
33 plaintiff to deliver a copy of each temporary restraining order or  
34 injunction, or modification or termination thereof, granted under  
35 this section, by the close of the business day on which the order  
36 was granted, to the law enforcement agencies within the court's  
37 discretion as are requested by the plaintiff. Each appropriate law  
38 enforcement agency shall make available information as to the  
39 existence and current status of these orders to law enforcement  
40 officers responding to the scene of reported harassment.

1 An order issued under this section shall, on request of the  
2 plaintiff, be served on the defendant, whether or not the  
3 defendant has been taken into custody, by any law enforcement  
4 officer who is present at the scene of reported harassment  
5 involving the parties to the proceeding. The plaintiff shall  
6 provide the officer with an endorsed copy of the order and a  
7 proof of service that the officer shall complete and send to the  
8 issuing court.

9 Upon receiving information at the scene of an incident of  
10 harassment that a protective order has been issued under this  
11 section, or that a person who has been taken into custody is the  
12 subject of an order, if the protected person cannot produce a  
13 certified copy of the order, a law enforcement officer shall  
14 immediately attempt to verify the existence of the order.

15 If the law enforcement officer determines that a protective  
16 order has been issued, but not served, the officer shall  
17 immediately notify the defendant of the terms of the order and  
18 shall at that time also enforce the order. Verbal notice of the  
19 terms of the order shall constitute service of the order and is  
20 sufficient notice for the purposes of this section and for the  
21 purposes of Section 273.6 and subdivision (g) of Section 12021  
22 of the Penal Code.

23 (i) The prevailing party in any action brought under this  
24 section may be awarded court costs and attorney's fees, if any.

25 (j) Any willful disobedience of any temporary restraining  
26 order or injunction granted under this section is punishable  
27 pursuant to Section 273.6 of the Penal Code.

28 (k) (1) A person subject to a protective order issued under this  
29 section shall not own, possess, purchase, receive, or attempt to  
30 purchase or receive a firearm while the protective order is in  
31 effect.

32 (2) The court shall order a person subject to a protective order  
33 issued under this section to relinquish any firearms he or she  
34 owns or possesses pursuant to Section 527.9.

35 (3) Every person who owns, possesses, purchases or receives,  
36 or attempts to purchase or receive a firearm while the protective  
37 order is in effect is punishable pursuant to subdivision (g) of  
38 Section 12021 of the Penal Code.

39 (l) This section does not apply to any action or proceeding  
40 covered by Title 1.6C (commencing with Section 1788) of the

1 Civil Code or by Division 10 (commencing with Section 6200)  
2 of the Family Code. This section does not preclude a plaintiff  
3 from using other existing civil remedies.

4 (m) The Judicial Council shall promulgate forms and  
5 instructions therefor, and rules for service of process, scheduling  
6 of hearings, and any other matters required by this section. The  
7 petition and response forms shall be simple and concise, and their  
8 use by parties in actions brought pursuant to this section shall be  
9 mandatory.

10 (n) A temporary restraining order or injunction relating to  
11 harassment or domestic violence issued by a court pursuant to  
12 this section shall be issued on forms adopted by the Judicial  
13 Council of California and that have been approved by the  
14 Department of Justice pursuant to subdivision (i) of Section 6380  
15 of the Family Code. However, the fact that an order issued by a  
16 court pursuant to this section was not issued on forms adopted by  
17 the Judicial Council and approved by the Department of Justice  
18 shall not, in and of itself, make the order unenforceable.

19 (o) Information on any temporary restraining order or  
20 injunction relating to harassment or domestic violence issued by  
21 a court pursuant to this section shall be transmitted to the  
22 Department of Justice in accordance with subdivision (b) of  
23 Section 6380 of the Family Code.

24 (p) There is no filing fee for a petition that alleges that a  
25 person has inflicted or threatened violence against the petitioner,  
26 or stalked the petitioner, or acted or ~~spoke~~ *spoken* in any other  
27 manner that has placed the petitioner in reasonable fear of  
28 violence, and that seeks a protective or restraining order or  
29 injunction restraining stalking or future violence or threats of  
30 violence, in any action brought pursuant to this section. *No fee*  
31 *shall be paid for a subpoena filed in connection with a petition*  
32 *alleging these acts.* No fee shall be paid for filing a response to a  
33 petition alleging these acts.

34 ~~(q) This section shall become operative January 1, 2007.~~  
35 ~~(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2~~  
36 ~~of the Government Code, there shall be no fee for the service of~~  
37 ~~process of a protective order, restraining order, or injunction to~~  
38 ~~be issued, if any of the following conditions apply:~~

1 (A) *The protective order, restraining order, or injunction*  
2 *issued pursuant to this section is based upon stalking, as*  
3 *prohibited by Section 646.9 of the Penal Code.*

4 (B) *The protective order, restraining order, or injunction*  
5 *issued pursuant to this section is based upon a credible threat of*  
6 *violence.*

7 (C) *The protective order, restraining order, or injunction is*  
8 *issued pursuant to Section 6222 of the Family Code.*

9 (2) *The Judicial Council shall prepare and develop*  
10 *application forms for applicants who wish to avail themselves of*  
11 *the services described in this subdivision.*

12 ~~SECTION 1.~~

13 SEC. 2. Section 527.8 of the Code of Civil Procedure is  
14 amended to read:

15 527.8. (a) Any employer, whose employee has suffered  
16 unlawful violence or a credible threat of violence from any  
17 individual, that can reasonably be construed to be carried out or  
18 to have been carried out at the workplace, may seek a temporary  
19 restraining order and an injunction on behalf of the employee  
20 and, at the discretion of the court, any number of other  
21 employees at the workplace, and, if appropriate, other employees  
22 at other workplaces of the employer.

23 (b) For the purposes of this section:

24 (1) “Unlawful violence” is any assault or battery, or stalking  
25 as prohibited in Section 646.9 of the Penal Code, but shall not  
26 include lawful acts of self-defense or defense of others.

27 (2) “Credible threat of violence” is a knowing and willful  
28 statement or course of conduct that would place a reasonable  
29 person in fear for his or her safety, or the safety of his or her  
30 immediate family, and that serves no legitimate purpose.

31 (3) “Course of conduct” is a pattern of conduct composed of a  
32 series of acts over a period of time, however short, evidencing a  
33 continuity of purpose, including following or stalking an  
34 employee to or from the place of work; entering the workplace;  
35 following an employee during hours of employment; making  
36 telephone calls to an employee; or sending correspondence to an  
37 employee by any means, including, but not limited to, the use of  
38 the public or private mails, interoffice mail, fax, or computer  
39 e-mail.

1 (c) This section does not permit a court to issue a temporary  
2 restraining order or injunction prohibiting speech or other  
3 activities that are constitutionally protected, or otherwise  
4 protected by Section 527.3 or any other provision of law.

5 (d) For purposes of this section, the terms “employer” and  
6 “employee” mean persons defined in Section 350 of the Labor  
7 Code. “Employer” also includes a federal agency, the state, a  
8 state agency, a city, county, or district, and a private, public, or  
9 quasi-public corporation, or any public agency thereof or therein.  
10 “Employee” also includes the members of boards of directors of  
11 private, public, and quasi-public corporations and elected and  
12 appointed public officers. For purposes of this section only,  
13 “employee” also includes a volunteer or independent contractor  
14 who performs services for the employer at the employer’s  
15 worksite.

16 (e) Upon filing a petition for an injunction under this section,  
17 the plaintiff may obtain a temporary restraining order in  
18 accordance with subdivision (a) of Section 527, if the plaintiff  
19 also files an affidavit that, to the satisfaction of the court, shows  
20 reasonable proof that an employee has suffered unlawful  
21 violence or a credible threat of violence by the defendant, and  
22 that great or irreparable harm would result to an employee. In the  
23 discretion of the court, and on a showing of good cause, a  
24 temporary restraining order or injunction issued under this  
25 section may include other named family or household members  
26 who reside with the employee, or other persons employed at his  
27 or her workplace or workplaces.

28 A temporary restraining order granted under this section shall  
29 remain in effect, at the court’s discretion, for a period not to  
30 exceed 15 days, unless otherwise modified or terminated by the  
31 court.

32 (f) Within 15 days of the filing of the petition, a hearing shall  
33 be held on the petition for the injunction. The defendant may file  
34 a response that explains, excuses, justifies, or denies the alleged  
35 unlawful violence or credible threats of violence or may file a  
36 cross-complaint under this section. At the hearing, the judge shall  
37 receive any testimony that is relevant and may make an  
38 independent inquiry. Moreover, if the defendant is a current  
39 employee of the entity requesting the injunction, the judge shall  
40 receive evidence concerning the employer’s decision to retain,

1 terminate, or otherwise discipline the defendant. If the judge  
2 finds by clear and convincing evidence that the defendant  
3 engaged in unlawful violence or made a credible threat of  
4 violence, an injunction shall issue prohibiting further unlawful  
5 violence or threats of violence. An injunction issued pursuant to  
6 this section shall have a duration of not more than three years. At  
7 any time within the three months before the expiration of the  
8 injunction, the plaintiff may apply for a renewal of the injunction  
9 by filing a new petition for an injunction under this section.

10 (g) This section does not preclude either party from  
11 representation by private counsel or from appearing on his or her  
12 own behalf.

13 (h) Upon filing of a petition for an injunction under this  
14 section, the defendant shall be personally served with a copy of  
15 the petition, temporary restraining order, if any, and notice of  
16 hearing of the petition. Service shall be made at least five days  
17 before the hearing. The court may, for good cause, on motion of  
18 the plaintiff or on its own motion, shorten the time for service on  
19 the defendant.

20 (i) (1) The court shall order the plaintiff or the attorney for the  
21 plaintiff to deliver a copy of each temporary restraining order or  
22 injunction, or modification or termination thereof, granted under  
23 this section, by the close of the business day on which the order  
24 was granted, to the law enforcement agencies within the court's  
25 discretion as are requested by the plaintiff. Each appropriate law  
26 enforcement agency shall make available information as to the  
27 existence and current status of these orders to law enforcement  
28 officers responding to the scene of reported unlawful violence or  
29 a credible threat of violence.

30 (2) At the request of the plaintiff, an order issued under this  
31 section shall be served on the defendant, regardless of whether  
32 the defendant has been taken into custody, by any law  
33 enforcement officer who is present at the scene of reported  
34 unlawful violence or a credible threat of violence involving the  
35 parties to the proceedings. The plaintiff shall provide the officer  
36 with an endorsed copy of the order and proof of service that the  
37 officer shall complete and send to the issuing court.

38 (3) Upon receiving information at the scene of an incident of  
39 unlawful violence or a credible threat of violence that a  
40 protective order has been issued under this section, or that a

1 person who has been taken into custody is the subject of an order,  
2 if the plaintiff or the protected person cannot produce an  
3 endorsed copy of the order, a law enforcement officer shall  
4 immediately attempt to verify the existence of the order.

5 (4) If the law enforcement officer determines that a protective  
6 order has been issued, but not served, the officer shall  
7 immediately notify the defendant of the terms of the order and  
8 obtain the defendant's address. The law enforcement officer shall  
9 at that time also enforce the order, but may not arrest or take the  
10 defendant into custody for acts in violation of the order that were  
11 committed prior to the verbal notice of the terms and conditions  
12 of the order. The law enforcement officer's verbal notice of the  
13 terms of the order shall constitute service of the order and  
14 constitutes sufficient notice for the purposes of this section and  
15 for the purposes of Section 273.6 and subdivision (g) of Section  
16 12021 of the Penal Code. The plaintiff shall mail an endorsed  
17 copy of the order to the defendant's mailing address provided to  
18 the law enforcement officer within one business day of the  
19 reported incident of unlawful violence or a credible threat of  
20 violence at which a verbal notice of the terms of the order was  
21 provided by a law enforcement officer.

22 (j) (1) A person subject to a protective order issued under this  
23 section shall not own, possess, purchase, receive, or attempt to  
24 purchase or receive a firearm while the protective order is in  
25 effect.

26 (2) The court shall order a person subject to a protective order  
27 issued under this section to relinquish any firearms he or she  
28 owns or possesses pursuant to Section 527.9.

29 (3) Every person who owns, possesses, purchases or receives,  
30 or attempts to purchase or receive a firearm while the protective  
31 order is in effect is punishable pursuant to subdivision (g) of  
32 Section 12021 of the Penal Code.

33 (k) Any intentional disobedience of any temporary restraining  
34 order or injunction granted under this section is punishable  
35 pursuant to Section 273.6 of the Penal Code.

36 (l) Nothing in this section may be construed as expanding,  
37 diminishing, altering, or modifying the duty, if any, of an  
38 employer to provide a safe workplace for employees and other  
39 persons.

1 (m) The Judicial Council shall develop forms, instructions,  
2 and rules for scheduling of hearings and other procedures  
3 established pursuant to this section. The forms for the petition  
4 and response shall be simple and concise, and their use by parties  
5 in actions brought pursuant to this section shall be mandatory.

6 (n) A temporary restraining order or injunction relating to  
7 harassment or domestic violence issued by a court pursuant to  
8 this section shall be issued on forms adopted by the Judicial  
9 Council of California and that have been approved by the  
10 Department of Justice pursuant to subdivision (i) of Section 6380  
11 of the Family Code. However, the fact that an order issued by a  
12 court pursuant to this section was not issued on forms adopted by  
13 the Judicial Council and approved by the Department of Justice  
14 shall not, in and of itself, make the order unenforceable.

15 (o) Information on any temporary restraining order or  
16 injunction relating to harassment or domestic violence issued by  
17 a court pursuant to this section shall be transmitted to the  
18 Department of Justice in accordance with subdivision (b) of  
19 Section 6380 of the Family Code.

20 (p) There is no filing fee for a petition that alleges that a  
21 person has inflicted or threatened violence against an employee  
22 of the petitioner, or stalked the employee, or acted or spoke in  
23 any other manner that has placed the employee in reasonable fear  
24 of violence, and that seeks protective or restraining orders or  
25 injunctions restraining stalking or future violence or threats of  
26 violence, in any action brought pursuant to this section. No fee  
27 shall be paid for filing a response to a petition alleging these acts.

28 (q) (1) *Subject to paragraph (4) of subdivision (b) of Section*  
29 *6103.2 of the Government Code, there shall be no fee for the*  
30 *service of process of a temporary restraining order or injunction*  
31 *to be issued pursuant to this section if either of the following*  
32 *conditions apply:*

33 (A) *The temporary restraining order or injunction issued*  
34 *pursuant to this section is based upon stalking, as prohibited by*  
35 *Section 646.9 of the Penal Code.*

36 (B) *The temporary restraining order or injunction issued*  
37 *pursuant to this section is based upon a credible threat of*  
38 *violence.*

1 (2) *The Judicial Council shall prepare and develop*  
2 *application forms for applicants who wish to avail themselves of*  
3 *the services described in this subdivision.*

4 *SEC. 3. Section 6222 of the Family Code is amended to read:*

5 6222. ~~(a)~~ There is no filing fee for an application, a  
6 responsive pleading, or an order to show cause that seeks to  
7 obtain, modify, or enforce a protective order or other order  
8 authorized by this division when the request for the other order is  
9 necessary to obtain or give effect to a protective order. *There is*  
10 *no fee for a subpoena filed in connection with that application,*  
11 *responsive pleading, or order to show cause.*

12 ~~(b)~~ Fees otherwise payable by a petitioner to a law  
13 enforcement agency for serving an order issued under this  
14 division may be waived in any case in which the petitioner has  
15 requested a fee waiver on the initiating petition and has filed a  
16 declaration that demonstrates, to the satisfaction of the court, the  
17 financial need of the petitioner for the fee waiver.

18 ~~(c)~~ The declaration required by subdivision (b) shall be on one  
19 of the following forms:

20 ~~(1)~~ The form formulated and adopted by the Judicial Council  
21 for litigants proceeding in forma pauperis pursuant to Section  
22 68511.3 of the Government Code, but the petitioner is not subject  
23 to any other requirements of litigants proceeding in forma  
24 pauperis.

25 ~~(2)~~ Any other form that the Judicial Council may adopt for this  
26 purpose pursuant to Section 6226.

27 ~~(d)~~ In conjunction with a hearing pursuant to this division, the  
28 court may make an order for the waiver of fees otherwise payable  
29 by the petitioner to a law enforcement agency for serving an  
30 order issued under this division.

31 ~~(e)~~ This section shall become operative January 1, 2007.

32 *SEC. 4. Section 6103.2 of the Government Code is amended*  
33 *to read:*

34 6103.2. (a) Section 6103 does not apply to any fee or charge  
35 or expense for official services rendered by a sheriff or marshal  
36 in connection with the levy of writs of attachment, execution,  
37 possession, or sale. The fee, charge, or expense may be advanced  
38 to the sheriff or marshal, as otherwise required by law.

39 (b) (1) Notwithstanding Section 6103, the sheriff or marshal,  
40 in connection with the service of process or notices, may require

1 that all fees which a public agency, or any person or entity, is  
2 required to pay under provisions of law other than this section, be  
3 prepaid by a public agency named in Section 6103, or by any  
4 person or entity, prior to the performance of any official act. This  
5 authority to require prepayment shall include fees governed by  
6 Section 6103.5.

7 (2) This subdivision does not apply to the service of process or  
8 notices in any action by the district attorney's office for the  
9 establishment or enforcement of a child support obligation.

10 (3) This subdivision does not apply to a particular jurisdiction  
11 unless the sheriff or marshal, as the case may be, imposes the  
12 requirement of prepayment upon public agencies and upon all  
13 persons or entities within the private sector.

14 ~~(e) This section shall become operative January 1, 2007.~~

15 (4) *The requirement for prepayment of a fee deposit does not*  
16 *apply to orders or injunctions described in paragraph (1) of*  
17 *subdivision (q) of Section 527.6 and Section 527.8 of the Code of*  
18 *Civil Procedure, Division 10 (commencing with Section 6200) of*  
19 *the Family Code (Prevention of Domestic Violence), and Chapter*  
20 *11 (commencing with Section 15600) of Part 3 of Division 9 of*  
21 *the Welfare and Institutions Code (Elder Abuse and Dependent*  
22 *Adult Civil Protection Act).*

23 *However, a sheriff, marshal, or constable may submit a billing*  
24 *to the superior court for payment of fees in the manner*  
25 *prescribed by the Judicial Council irrespective of the in forma*  
26 *pauperis status of any party under Rule 985 of the Rules of*  
27 *Court. The fees for service, cancellation of service, and making a*  
28 *not found return may not exceed the amounts provided in*  
29 *Sections 26721, 26736, and 26738, respectively, and are subject*  
30 *to the provisions of Section 26731.*

31 ~~SEC. 2.~~

32 SEC. 5. Section 1203.097 of the Penal Code, as amended by  
33 Section 1 of Chapter 431 of the Statutes of 2003, is amended to  
34 read:

35 1203.097. (a) If a person is granted probation for a crime in  
36 which the victim is a person defined in Section 6211 of the  
37 Family Code, the terms of probation shall include all of the  
38 following:

39 (1) A minimum period of probation of 36 months, which may  
40 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) Successful completion of a batterer's program, as defined  
13 in subdivision (c), or if none is available, another appropriate  
14 counseling program designated by the court, for a period not less  
15 than one year with periodic progress reports by the program to  
16 the court every three months or less and weekly sessions of a  
17 minimum of two hours class time duration. The defendant shall  
18 attend consecutive weekly sessions, unless granted an excused  
19 absence for good cause by the program for no more than three  
20 individual sessions during the entire program, and shall complete  
21 the program within 18 months, unless, after a hearing, the court  
22 finds good cause to modify the requirements of consecutive  
23 attendance or completion within 18 months.

24 (7) (A) (i) The court shall order the defendant to comply with  
25 all probation requirements, including the requirements to attend  
26 counseling, keep all program appointments, and pay program  
27 fees based upon the ability to pay.

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

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

38 (8) The court also shall order the defendant to perform a  
39 specified amount of appropriate community service, as  
40 designated by the court. The defendant shall present the court

1 with proof of completion of community service and the court  
2 shall determine if the community service has been satisfactorily  
3 completed. If sufficient staff and resources are available, the  
4 community service shall be performed under the jurisdiction of  
5 the local agency overseeing a community service program.

6 (9) If the program finds that the defendant is unsuitable, the  
7 program shall immediately contact the probation department or  
8 the court. The probation department or court shall either  
9 recalendar the case for hearing or refer the defendant to an  
10 appropriate alternative batterer's program.

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

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

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

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

24 (iv) The defendant blames, degrades, or has committed acts  
25 that dehumanize the victim or puts at risk the victim's safety,  
26 including, but not limited to, molesting, stalking, striking,  
27 attacking, threatening, sexually assaulting, or battering the  
28 victim.

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

32 (vi) The defendant has made threats to harm anyone in any  
33 manner.

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

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

39 (B) The program shall immediately report any violation of the  
40 terms of the protective order, including any new acts of violence

1 or failure to comply with the program requirements, to the court,  
2 the prosecutor, and, if formal probation has been ordered, to the  
3 probation department. The probationer shall file proof of  
4 enrollment in a batterer's program with the court within 30 days  
5 of conviction.

6 (C) Concurrent with other requirements under this section, in  
7 addition to, and not in lieu of, the batterer's program, and unless  
8 prohibited by the referring court, the probation department or the  
9 court may make provisions for a defendant to use his or her  
10 resources to enroll in a chemical dependency program or to enter  
11 voluntarily a licensed chemical dependency recovery hospital or  
12 residential treatment program that has a valid license issued by  
13 the state to provide alcohol or drug services to receive program  
14 participation credit, as determined by the court. The probation  
15 department shall document evidence of this hospital or  
16 residential treatment participation in the defendant's program  
17 file.

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

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

23 (B) That the defendant reimburse the victim for reasonable  
24 expenses that the court finds are the direct result of the  
25 defendant's offense.

26 For any order to pay a fine, to make payments to a battered  
27 women's shelter, or to pay restitution as a condition of probation  
28 under this subdivision, the court shall make a determination of  
29 the defendant's ability to pay. Determination of a defendant's  
30 ability to pay may include his or her future earning capacity. A  
31 defendant shall bear the burden of demonstrating lack of his or  
32 her ability to pay. Express findings by the court as to the factors  
33 bearing on the amount of the fine shall not be required. In no  
34 event shall any order to make payments to a battered women's  
35 shelter be made if it would impair the ability of the defendant to  
36 pay direct restitution to the victim or court-ordered child support.  
37 When the injury to a married person is caused, in whole or in  
38 part, by the criminal acts of his or her spouse in violation of this  
39 section, the community property shall not be used to discharge  
40 the liability of the offending spouse for restitution to the injured

1 spouse, as required by Section 1203.04, as operative on or before  
2 August 2, 1995, or Section 1202.4, or to a shelter for costs with  
3 regard to the injured spouse, until all separate property of the  
4 offending spouse is exhausted.

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

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

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

37 (2) The court shall advise the defendant that the failure to  
38 report to the probation department for the initial investigation, as  
39 directed by the court, or the failure to enroll in a specified  
40 program, as directed by the court or the probation department,

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

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

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

14 (B) Education.

15 (C) Vocational achievements.

16 (D) Criminal history.

17 (E) Medical history.

18 (F) Substance abuse history.

19 (G) Consultation with the probation officer.

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

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

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

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

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

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

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

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

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

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

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

21 (G) A requirement that excludes any couple counseling or  
22 family counseling, or both.

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

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

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

36 (K) A requirement that the defendant enter into a written  
37 agreement with the program, which shall include an outline of  
38 the contents of the program, the attendance requirements, the  
39 requirement to attend group sessions free of chemical influence,  
40 and a statement that the defendant may be removed from the

1 program if it is determined that the defendant is not benefiting  
2 from the program or is disruptive to the program.

3 (L) A requirement that the defendant sign a confidentiality  
4 statement prohibiting disclosure of any information obtained  
5 through participating in the program or during group sessions  
6 regarding other participants in the program.

7 (M) Program content that provides cultural and ethnic  
8 sensitivity.

9 (N) A requirement of a written referral from the court or  
10 probation department prior to permitting the defendant to enroll  
11 in the program. The written referral shall state the number of  
12 minimum sessions required by the court.

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

15 (i) Proof of enrollment, to be submitted to the court and the  
16 probation department and to include the fee determined to be  
17 charged to the defendant, based upon the ability to pay, for each  
18 session.

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

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

25 (P) A sliding fee schedule based on the defendant's ability to  
26 pay. The batterer's program shall develop and utilize a sliding fee  
27 scale that recognizes both the defendant's ability to pay and the  
28 necessity of programs to meet overhead expenses. An indigent  
29 defendant may negotiate a deferred payment schedule, but shall  
30 pay a nominal fee, if the defendant has the ability to pay the  
31 nominal fee. Upon a hearing and a finding by the court that the  
32 defendant does not have the financial ability to pay the nominal  
33 fee, the court shall waive this fee. The payment of the fee shall be  
34 made a condition of probation if the court determines the  
35 defendant has the present ability to pay the fee. The fee shall be  
36 paid during the term of probation unless the program sets other  
37 conditions. The acceptance policies shall be in accordance with  
38 the scaled fee system.

39 (2) The court shall refer persons only to batterer's programs  
40 that have been approved by the probation department pursuant to

1 paragraph (5). The probation department shall do both of the  
2 following:

3 (A) Provide for the issuance of a provisional approval,  
4 provided that the applicant is in substantial compliance with  
5 applicable laws and regulations and an urgent need for approval  
6 exists. A provisional approval shall be considered an  
7 authorization to provide services and shall not be considered a  
8 vested right.

9 (B) If the probation department determines that a program is  
10 not in compliance with standards set by the department, the  
11 department shall provide written notice of the noncompliant  
12 areas to the program. The program shall submit a written plan of  
13 corrections within 14 days from the date of the written notice on  
14 noncompliance. A plan of correction shall include, but not be  
15 limited to, a description of each corrective action and timeframe  
16 for implementation. The department shall review and approve all  
17 or any part of the plan of correction and notify the program of  
18 approval or disapproval in writing. If the program fails to submit  
19 a plan of correction or fails to implement the approved plan of  
20 correction, the department shall consider whether to revoke or  
21 suspend approval and, upon revoking or suspending approval,  
22 shall have the option to cease referrals of defendants under this  
23 section.

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

26 (A) The establishment of guidelines and criteria for education  
27 services, including standards of services that may include  
28 lectures, classes, and group discussions.

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

31 (C) Adequate reporting requirements to ensure that all persons  
32 who, after being ordered to attend and complete a program, may  
33 be identified for either failure to enroll in, or failure to  
34 successfully complete, the program or for the successful  
35 completion of the program as ordered. The program shall notify  
36 the court and the probation department, in writing, within the  
37 period of time and in the manner specified by the court of any  
38 person who fails to complete the program. Notification shall be  
39 given if the program determines that the defendant is performing

1 unsatisfactorily or if the defendant is not benefiting from the  
2 education, treatment, or counseling.

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

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

9 (5) The probation department shall have the sole authority to  
10 approve a batterer's program for probation. The program shall be  
11 required to obtain only one approval but shall renew that  
12 approval annually.

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

15 (i) The completion of a written application containing  
16 necessary and pertinent information describing the applicant  
17 program.

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

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

29 (iv) The payment of the approval fee.

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

36 (C) The probation department has the sole authority to  
37 approve the issuance, denial, suspension, or revocation of  
38 approval and to cease new enrollments or referrals to a batterer's  
39 program under this section. The probation department shall  
40 review information relative to a program's performance or failure

1 to adhere to standards, or both. The probation department may  
2 suspend or revoke any approval issued under this subdivision or  
3 deny an application to renew an approval or to modify the terms  
4 and conditions of approval, based on grounds established by  
5 probation, including, but not limited to, either of the following:

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

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

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

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

18 (d) This section shall remain in effect only until January 1,  
19 2010, and as of that date is repealed, unless a later enacted  
20 statute, that is enacted before January 1, 2010, deletes or extends  
21 that date.

22 ~~SEC. 3.~~

23 *SEC. 6.* Section 1203.097 of the Penal Code, as added by  
24 Section 2 of Chapter 431 of the Statutes of 2003, is amended to  
25 read:

26 1203.097. (a) If a person is granted probation for a crime in  
27 which the victim is a person defined in Section 6211 of the  
28 Family Code, the terms of probation shall include all of the  
29 following:

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

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

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

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

39 (5) A minimum payment by the defendant of two hundred  
40 dollars (\$200) to be disbursed as specified in this paragraph. If,

1 after a hearing in court on the record, the court finds that the  
2 defendant does not have the ability to pay, the court may reduce  
3 or waive this fee.

4 One-third of the moneys deposited with the county treasurer  
5 pursuant to this section shall be retained by counties and  
6 deposited in the domestic violence programs special fund created  
7 pursuant to Section 18305 of the Welfare and Institutions Code,  
8 to be expended for the purposes of Chapter 5 (commencing with  
9 Section 18290) of Part 6 of Division 9 of the Welfare and  
10 Institutions Code. The remainder shall be transferred, once a  
11 month, to the Controller for deposit in equal amounts in the  
12 Domestic Violence Restraining Order Reimbursement Fund and  
13 in the Domestic Violence Training and Education Fund, which  
14 are hereby created, in an amount equal to two-thirds of funds  
15 collected during the preceding month. Moneys deposited into  
16 these funds pursuant to this section shall be available upon  
17 appropriation by the Legislature and shall be distributed each  
18 fiscal year as follows:

19 (A) Funds from the Domestic Violence Restraining Order  
20 Reimbursement Fund shall be distributed to local law  
21 enforcement or other criminal justice agencies for state-mandated  
22 local costs resulting from the notification requirements set forth  
23 in subdivision (b) of Section 6380 of the Family Code, based on  
24 the annual notification from the Department of Justice of the  
25 number of restraining orders issued and registered in the state  
26 domestic violence restraining order registry maintained by the  
27 Department of Justice, for the development and maintenance of  
28 the domestic violence restraining order databank system.

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

38 (6) Successful completion of a batterer's program, as defined  
39 in subdivision (c), or if none is available, another appropriate  
40 counseling program designated by the court, for a period not less

1 than one year with periodic progress reports by the program to  
2 the court every three months or less and weekly sessions of a  
3 minimum of two hours class time duration. The defendant shall  
4 attend consecutive weekly sessions, unless granted an excused  
5 absence for good cause by the program for no more than three  
6 individual sessions during the entire program, and shall complete  
7 the program within 18 months, unless, after a hearing, the court  
8 finds good cause to modify the requirements of consecutive  
9 attendance or completion within 18 months.

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

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

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

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

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

37 (10) (A) Upon recommendation of the program, a court shall  
38 require a defendant to participate in additional sessions  
39 throughout the probationary period, unless it finds that it is not in  
40 the interests of justice to do so, states its reasons on the record,

1 and enters them into the minutes. In deciding whether the  
2 defendant would benefit from more sessions, the court shall  
3 consider whether any of the following conditions exist:

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

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

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

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

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

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

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

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

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

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

1 department shall document evidence of this hospital or  
2 residential treatment participation in the defendant's program  
3 file.

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

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

9 (B) That the defendant reimburse the victim for reasonable  
10 expenses that the court finds are the direct result of the  
11 defendant's offense.

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

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

1 condition of probation. If the court finds that the defendant is not  
2 performing satisfactorily in the assigned program, is not  
3 benefiting from the program, has not complied with a condition  
4 of probation, or has engaged in criminal conduct, the court shall  
5 terminate the defendant's participation in the program and shall  
6 proceed with further sentencing.

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

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

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

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

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

40 (B) Education.

- 1 (C) Vocational achievements.
- 2 (D) Criminal history.
- 3 (E) Medical history.
- 4 (F) Substance abuse history.
- 5 (G) Consultation with the probation officer.
- 6 (H) Verbal consultation with the victim, only if the victim
- 7 desires to participate.
- 8 (I) Assessment of the future probability of the defendant
- 9 committing murder.

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

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

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

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

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

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

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

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

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

7 (G) A requirement that excludes any couple counseling or  
8 family counseling, or both.

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

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

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

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

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

33 (M) Program content that provides cultural and ethnic  
34 sensitivity.

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

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

1 (i) Proof of enrollment, to be submitted to the court and the  
2 probation department and to include the fee determined to be  
3 charged to the defendant, based upon the ability to pay, for each  
4 session.

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

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

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

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

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

35 (B) If the probation department determines that a program is  
36 not in compliance with standards set by the department, the  
37 department shall provide written notice of the noncompliant  
38 areas to the program. The program shall submit a written plan of  
39 corrections within 14 days from the date of the written notice on  
40 noncompliance. A plan of correction shall include, but not be

1 limited to, a description of each corrective action and timeframe  
2 for implementation. The department shall review and approve all  
3 or any part of the plan of correction and notify the program of  
4 approval or disapproval in writing. If the program fails to submit  
5 a plan of correction or fails to implement the approved plan of  
6 correction, the department shall consider whether to revoke or  
7 suspend approval and, upon revoking or suspending approval,  
8 shall have the option to cease referrals of defendants under this  
9 section.

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

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

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

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

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

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

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

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

1 (i) The completion of a written application containing  
2 necessary and pertinent information describing the applicant  
3 program.

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

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

15 (iv) The payment of the approval fee.

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

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

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

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

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

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

4 (d) This section shall become operative on January 1, 2010.

5 ~~SEC. 4.~~

6 *SEC. 7.* If the Commission on State Mandates determines that  
7 this act contains costs mandated by the state, reimbursement to  
8 local agencies and school districts for those costs shall be made  
9 pursuant to Part 7 (commencing with Section 17500) of Division  
10 4 of Title 2 of the Government Code.