

AMENDED IN SENATE AUGUST 14, 2006

AMENDED IN SENATE MAY 22, 2006

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2695

Introduced by Assembly Member Goldberg
(Coauthors: Assembly Members Chan, Cohn, Hancock, Koretz,
Leno, Liu, Oropeza, Pavley, Spitzer, and Villines)
(Coauthors: Senators Bowen, Kuehl, Migden, and Romero)

February 24, 2006

An act to amend 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 *order* 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 of the plaintiff's workplaces, at the discretion of the court. *The bill would also provide that no fee shall be paid for a subpoena filed in connection with a petition alleging the acts described above.*

(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.

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

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

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

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

1 the three months before the expiration of the injunction, the
2 plaintiff may apply for a renewal of the injunction by filing a
3 new petition for an injunction under this section.

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

7 (f) In a proceeding under this section if there are allegations or
8 threats of domestic violence, a support person may accompany a
9 party in court and, if the party is not represented by an attorney,
10 may sit with the party at the table that is generally reserved for
11 the party and the party's attorney. The support person is present
12 to provide moral and emotional support for a person who alleges
13 he or she is a victim of domestic violence. The support person is
14 not present as a legal adviser and may not provide legal advice.
15 The support person may assist the person who alleges he or she is
16 a victim of domestic violence in feeling more confident that he or
17 she will not be injured or threatened by the other party during the
18 proceedings if the person who alleges he or she is a victim of
19 domestic violence and the other party are required to be present
20 in close proximity. This subdivision does not preclude the court
21 from exercising its discretion to remove the support person from
22 the courtroom if the court believes the support person is
23 prompting, swaying, or influencing the party assisted by the
24 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 spoken in any other manner
27 that has placed the petitioner in reasonable fear of violence, and
28 that seeks a protective or restraining order or injunction
29 restraining stalking or future violence or threats of violence, in
30 any action brought pursuant to this section. No fee shall be paid
31 for a subpoena filed in connection with a petition alleging these
32 acts. No fee shall be paid for filing a response to a petition
33 alleging these acts.

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

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

1 (B) The protective order, restraining order, or injunction
2 issued pursuant to this section is based upon a credible threat of
3 violence.

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

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

9 SEC. 2. Section 527.8 of the Code of Civil Procedure is
10 amended to read:

11 527.8. (a) Any employer, whose employee has suffered
12 unlawful violence or a credible threat of violence from any
13 individual, that can reasonably be construed to be carried out or
14 to have been carried out at the workplace, may seek a temporary
15 restraining order and an injunction on behalf of the employee
16 and, at the discretion of the court, any number of other
17 employees at the workplace, and, if appropriate, other employees
18 at other workplaces of the employer.

19 (b) For the purposes of this section:

20 (1) "Unlawful violence" is any assault or battery, or stalking
21 as prohibited in Section 646.9 of the Penal Code, but shall not
22 include lawful acts of self-defense or defense of others.

23 (2) "Credible threat of violence" is a knowing and willful
24 statement or course of conduct that would place a reasonable
25 person in fear for his or her safety, or the safety of his or her
26 immediate family, and that serves no legitimate purpose.

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

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

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

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

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

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

1 violence or threats of violence. An injunction issued pursuant to
2 this section shall have a duration of not more than three years. At
3 any time within the three months before the expiration of the
4 injunction, the plaintiff may apply for a renewal of the injunction
5 by filing a new petition for an injunction under this section.

6 (g) This section does not preclude either party from
7 representation by private counsel or from appearing on his or her
8 own behalf.

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

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

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

34 (3) Upon receiving information at the scene of an incident of
35 unlawful violence or a credible threat of violence that a
36 protective order has been issued under this section, or that a
37 person who has been taken into custody is the subject of an order,
38 if the plaintiff or the protected person cannot produce an
39 endorsed copy of the order, a law enforcement officer shall
40 immediately attempt to verify the existence of the order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 6222. There is no filing fee for an application, a responsive
2 pleading, or an order to show cause that seeks to obtain, modify,
3 or enforce a protective order or other order authorized by this
4 division when the request for the other order is necessary to
5 obtain or give effect to a protective order. There is no fee for a
6 subpoena filed in connection with that application, responsive
7 pleading, or order to show cause.

8 SEC. 4. Section 6103.2 of the Government Code is amended
9 to read:

10 6103.2. (a) Section 6103 does not apply to any fee or charge
11 or expense for official services rendered by a sheriff or marshal
12 in connection with the levy of writs of attachment, execution,
13 possession, or sale. The fee, charge, or expense may be advanced
14 to the sheriff or marshal, as otherwise required by law.

15 (b) (1) Notwithstanding Section 6103, the sheriff or marshal,
16 in connection with the service of process or notices, may require
17 that all fees which a public agency, or any person or entity, is
18 required to pay under provisions of law other than this section, be
19 prepaid by a public agency named in Section 6103, or by any
20 person or entity, prior to the performance of any official act. This
21 authority to require prepayment shall include fees governed by
22 Section 6103.5.

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

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

30 (4) The requirement for prepayment of a fee deposit does not
31 apply to orders or injunctions described in paragraph (1) of
32 subdivision (q) of Section 527.6 and Section 527.8 of the Code of
33 Civil Procedure, Division 10 (commencing with Section 6200) of
34 the Family Code (Prevention of Domestic Violence), and Chapter
35 11 (commencing with Section 15600) of Part 3 of Division 9 of
36 the Welfare and Institutions Code (Elder Abuse and Dependent
37 Adult Civil Protection Act).

38 However, a sheriff, marshal, or constable may submit a billing
39 to the superior court for payment of fees in the manner prescribed
40 by the Judicial Council irrespective of the in forma pauperis

1 status of any party under Rule 985 of the Rules of Court. The
2 fees for service, cancellation of service, and making a not found
3 return may not exceed the amounts provided in Sections 26721,
4 26736, and 26738, respectively, and are subject to the provisions
5 of Section 26731.

6 SEC. 5. Section 1203.097 of the Penal Code, as amended by
7 Section 1 of Chapter 431 of the Statutes of 2003, is amended to
8 read:

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

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

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

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

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

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

27 Two-thirds of the moneys deposited with the county treasurer
28 pursuant to this section shall be retained by counties and
29 deposited in the domestic violence programs special fund created
30 pursuant to Section 18305 of the Welfare and Institutions Code,
31 to be expended for the purposes of Chapter 5 (commencing with
32 Section 18290) of Part 6 of Division 9 of the Welfare and
33 Institutions Code. The remainder shall be transferred, once a
34 month, to the Controller for deposit in equal amounts in the
35 Domestic Violence Restraining Order Reimbursement Fund and
36 in the Domestic Violence Training and Education Fund, which
37 are hereby created, in an amount equal to one-third of funds
38 collected during the preceding month. In no event may the funds
39 transferred to the Controller be less than one hundred thirty-three
40 dollars (\$133) for each defendant. However, if the court orders

1 the defendant to pay less than two hundred dollars (\$200)
2 because of his or her inability to pay, the state shall receive
3 two-thirds of the payment. Moneys deposited into these funds
4 pursuant to this section shall be available upon appropriation by
5 the Legislature and shall be distributed each fiscal year as
6 follows:

7 (A) Funds from the Domestic Violence Restraining Order
8 Reimbursement Fund shall be distributed to local law
9 enforcement or other criminal justice agencies for state-mandated
10 local costs resulting from the notification requirements set forth
11 in subdivision (b) of Section 6380 of the Family Code, based on
12 the annual notification from the Department of Justice of the
13 number of restraining orders issued and registered in the state
14 domestic violence restraining order registry maintained by the
15 Department of Justice, for the development and maintenance of
16 the domestic violence restraining order databank system.

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

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

38 (7) (A) (i) The court shall order the defendant to comply with
39 all probation requirements, including the requirements to attend

1 counseling, keep all program appointments, and pay program
2 fees based upon the ability to pay.

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

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

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

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

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

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

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

39 (iv) The defendant blames, degrades, or has committed acts
40 that dehumanize the victim or puts at risk the victim's safety,

1 including, but not limited to, molesting, stalking, striking,
2 attacking, threatening, sexually assaulting, or battering the
3 victim.

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

7 (vi) The defendant has made threats to harm anyone in any
8 manner.

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

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

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

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

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

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

38 (B) That the defendant reimburse the victim for reasonable
39 expenses that the court finds are the direct result of the
40 defendant's offense.

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

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

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

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

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

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

- 29 (A) Social, economic, and family background.
- 30 (B) Education.
- 31 (C) Vocational achievements.
- 32 (D) Criminal history.
- 33 (E) Medical history.
- 34 (F) Substance abuse history.
- 35 (G) Consultation with the probation officer.
- 36 (H) Verbal consultation with the victim, only if the victim
37 desires to participate.
- 38 (I) Assessment of the future probability of the defendant
39 committing murder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (L) A requirement that the defendant sign a confidentiality
22 statement prohibiting disclosure of any information obtained
23 through participating in the program or during group sessions
24 regarding other participants in the program.

25 (M) Program content that provides cultural and ethnic
26 sensitivity.

27 (N) A requirement of a written referral from the court or
28 probation department prior to permitting the defendant to enroll
29 in the program. The written referral shall state the number of
30 minimum sessions required by the court.

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

33 (i) Proof of enrollment, to be submitted to the court and the
34 probation department and to include the fee determined to be
35 charged to the defendant, based upon the ability to pay, for each
36 session.

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

39 (iii) Final evaluation that includes the program's evaluation of
40 the defendant's progress, using the criteria set forth in paragraph

1 (4) of subdivision (a) and recommendation for either successful
2 or unsuccessful termination or continuation in the program.

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

17 (2) The court shall refer persons only to batterer's programs
18 that have been approved by the probation department pursuant to
19 paragraph (5). The probation department shall do both of the
20 following:

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

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

1 shall have the option to cease referrals of defendants under this
2 section.

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

5 (A) The establishment of guidelines and criteria for education
6 services, including standards of services that may include
7 lectures, classes, and group discussions.

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

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

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

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

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

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

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

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

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

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

7 (iv) The payment of the approval fee.

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

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

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

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

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

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

36 (d) This section shall remain in effect only until January 1,
37 2010, and as of that date is repealed, unless a later enacted
38 statute, that is enacted before January 1, 2010, deletes or extends
39 that date.

1 SEC. 6. Section 1203.097 of the Penal Code, as added by
2 Section 2 of Chapter 431 of the Statutes of 2003, is amended to
3 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.

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

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

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

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

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

37 (A) Funds from the Domestic Violence Restraining Order
38 Reimbursement Fund shall be distributed to local law
39 enforcement or other criminal justice agencies for state-mandated
40 local costs resulting from the notification requirements set forth

1 in subdivision (b) of Section 6380 of the Family Code, based on
2 the annual notification from the Department of Justice of the
3 number of restraining orders issued and registered in the state
4 domestic violence restraining order registry maintained by the
5 Department of Justice, for the development and maintenance of
6 the domestic violence restraining order databank system.

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

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

28 (7) (A) (i) The court shall order the defendant to comply with
29 all probation requirements, including the requirements to attend
30 counseling, keep all program appointments, and pay program
31 fees based upon the ability to pay.

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

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

4 (8) The court also shall order the defendant to perform a
5 specified amount of appropriate community service, as
6 designated by the court. The defendant shall present the court
7 with proof of completion of community service and the court
8 shall determine if the community service has been satisfactorily
9 completed. If sufficient staff and resources are available, the
10 community service shall be performed under the jurisdiction of
11 the local agency overseeing a community service program.

12 (9) If the program finds that the defendant is unsuitable, the
13 program shall immediately contact the probation department or
14 the court. The probation department or court shall either
15 recalendar the case for hearing or refer the defendant to an
16 appropriate alternative batterer's program.

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

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

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

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

30 (iv) The defendant blames, degrades, or has committed acts
31 that dehumanize the victim or puts at risk the victim's safety,
32 including, but not limited to, molesting, stalking, striking,
33 attacking, threatening, sexually assaulting, or battering the
34 victim.

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

38 (vi) The defendant has made threats to harm anyone in any
39 manner.

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

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

6 (B) The program shall immediately report any violation of the
7 terms of the protective order, including any new acts of violence
8 or failure to comply with the program requirements, to the court,
9 the prosecutor, and, if formal probation has been ordered, to the
10 probation department. The probationer shall file proof of
11 enrollment in a batterer's program with the court within 30 days
12 of conviction.

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

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

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

30 (B) That the defendant reimburse the victim for reasonable
31 expenses that the court finds are the direct result of the
32 defendant's offense.

33 For any order to pay a fine, to make payments to a battered
34 women's shelter, or to pay restitution as a condition of probation
35 under this subdivision, the court shall make a determination of
36 the defendant's ability to pay. Determination of a defendant's
37 ability to pay may include his or her future earning capacity. A
38 defendant shall bear the burden of demonstrating lack of his or
39 her ability to pay. Express findings by the court as to the factors
40 bearing on the amount of the fine shall not be required. In no

1 event shall any order to make payments to a battered women's
2 shelter be made if it would impair the ability of the defendant to
3 pay direct restitution to the victim or court-ordered child support.
4 When the injury to a married person is caused, in whole or in
5 part, by the criminal acts of his or her spouse in violation of this
6 section, the community property shall not be used to discharge
7 the liability of the offending spouse for restitution to the injured
8 spouse, as required by Section 1203.04, as operative on or before
9 August 2, 1995, or Section 1202.4, or to a shelter for costs with
10 regard to the injured spouse, until all separate property of the
11 offending spouse is exhausted.

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

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

32 (1) The probation department shall make an investigation and
33 take into consideration the defendant's age, medical history,
34 employment and service records, educational background,
35 community and family ties, prior incidents of violence, police
36 report, treatment history, if any, demonstrable motivation, and
37 other mitigating factors in determining which batterer's program
38 would be appropriate for the defendant. This information shall be
39 provided to the batterer's program if it is requested. The
40 probation department shall also determine which community

1 programs the defendant would benefit from and which of those
2 programs would accept the defendant. The probation department
3 shall report its findings and recommendations to the court.

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

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

- 20 (A) Social, economic, and family background.
- 21 (B) Education.
- 22 (C) Vocational achievements.
- 23 (D) Criminal history.
- 24 (E) Medical history.
- 25 (F) Substance abuse history.
- 26 (G) Consultation with the probation officer.
- 27 (H) Verbal consultation with the victim, only if the victim
28 desires to participate.
- 29 (I) Assessment of the future probability of the defendant
30 committing murder.

31 (4) The probation department shall attempt to notify the victim
32 regarding the requirements for the defendant's participation in
33 the batterer's program, as well as regarding available victim
34 resources. The victim also shall be informed that attendance in
35 any program does not guarantee that an abuser will not be
36 violent.

37 (c) The court or the probation department shall refer
38 defendants only to batterer's programs that follow standards
39 outlined in paragraph (1), which may include, but are not limited
40 to, lectures, classes, group discussions, and counseling. The

1 probation department shall design and implement an approval
2 and renewal process for batterer's programs and shall solicit
3 input from criminal justice agencies and domestic violence
4 victim advocacy programs.

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

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

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

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

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

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

24 (F) Educational programming that examines, at a minimum,
25 gender roles, socialization, the nature of violence, the dynamics
26 of power and control, and the effects of abuse on children and
27 others.

28 (G) A requirement that excludes any couple counseling or
29 family counseling, or both.

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

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

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

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

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

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

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

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

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

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

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

32 (P) A sliding fee schedule based on the defendant's ability to
33 pay. The batterer's program shall develop and utilize a sliding fee
34 scale that recognizes both the defendant's ability to pay and the
35 necessity of programs to meet overhead expenses. An indigent
36 defendant may negotiate a deferred payment schedule, but shall
37 pay a nominal fee, if the defendant has the ability to pay the
38 nominal fee. Upon a hearing and a finding by the court that the
39 defendant does not have the financial ability to pay the nominal
40 fee, the court shall waive this fee. The payment of the fee shall be

1 made a condition of probation if the court determines the
2 defendant has the present ability to pay the fee. The fee shall be
3 paid during the term of probation unless the program sets other
4 conditions. The acceptance policies shall be in accordance with
5 the scaled fee system.

6 (2) The court shall refer persons only to batterer's programs
7 that have been approved by the probation department pursuant to
8 paragraph (5). The probation department shall do both of the
9 following:

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

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

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

33 (A) The establishment of guidelines and criteria for education
34 services, including standards of services that may include
35 lectures, classes, and group discussions.

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

38 (C) Adequate reporting requirements to ensure that all persons
39 who, after being ordered to attend and complete a program, may
40 be identified for either failure to enroll in, or failure to

1 successfully complete, the program or for the successful
2 completion of the program as ordered. The program shall notify
3 the court and the probation department, in writing, within the
4 period of time and in the manner specified by the court of any
5 person who fails to complete the program. Notification shall be
6 given if the program determines that the defendant is performing
7 unsatisfactorily or if the defendant is not benefiting from the
8 education, treatment, or counseling.

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

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

15 (5) The probation department shall have the sole authority to
16 approve a batterer's program for probation. The program shall be
17 required to obtain only one approval but shall renew that
18 approval annually.

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

21 (i) The completion of a written application containing
22 necessary and pertinent information describing the applicant
23 program.

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

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

35 (iv) The payment of the approval fee.

36 (B) The probation department shall fix a fee for approval not
37 to exceed two hundred fifty dollars (\$250) and for approval
38 renewal not to exceed two hundred fifty dollars (\$250) every
39 year in an amount sufficient to cover its costs in administering

1 the approval process under this section. No fee shall be charged
2 for the approval of local governmental entities.

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

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

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

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

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

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

26 SEC. 7. If the Commission on State Mandates determines that
27 this act contains costs mandated by the state, reimbursement to
28 local agencies and school districts for those costs shall be made
29 pursuant to Part 7 (commencing with Section 17500) of Division
30 4 of Title 2 of the Government Code.