

Introduced by Senator Rubio

February 24, 2012

An act to amend Section 1203.097 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1379, as introduced, Rubio. Terms of probation: domestic violence.

Existing law provides that if a person is granted probation for a crime of domestic violence, the terms of probation shall include, among other provisions, a minimum period of probation of 36 months, a protective order, as specified, notice to the victim of the disposition of the case, and a minimum payment by the defendant of \$400. Existing law requires $\frac{2}{3}$ of the moneys deposited with the county treasurer pursuant to this provision to be retained by counties and deposited in the domestic violence programs special fund created as specified for the support of domestic violence shelter-based programs. Existing law requires the remainder of the moneys to be transferred once a month in equal amounts to the Controller for deposit in the Domestic Violence Restraining Order Reimbursement Fund, to be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from specified notification requirements relating to protective orders, restraining orders, and other injunctions relating to domestic violence, harassment, or the threat of violence, and in the Domestic Violence Training and Education Fund, to support a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. These amounts are available upon appropriation by the Legislature and distributed each fiscal year.

This bill would increase the amount of the minimum payment by a defendant when he or she is granted probation for a crime of domestic violence to \$500.

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

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

1 SECTION 1. Section 1203.097 of the Penal Code is amended
2 to read:

3 1203.097. (a) If a person is granted probation for a crime in
4 which the victim is a person defined in Section 6211 of the Family
5 Code, the terms of probation shall include all of the following:

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

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

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

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

15 (5) A minimum payment by the defendant of ~~four~~ five hundred
16 dollars ~~(\$400)~~ (\$500) to be disbursed as specified in this paragraph.
17 If, after a hearing in court on the record, the court finds that the
18 defendant does not have the ability to pay, the court may reduce
19 or waive this fee.

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

1 upon appropriation by the Legislature and shall be distributed each
2 fiscal year as follows:

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

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

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

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

38 (ii) The terms of probation for offenders shall not be lifted until
39 all reasonable fees due to the counseling program have been paid
40 in full, but in no case shall probation be extended beyond the term

1 provided in subdivision (a) of Section 1203.1. If the court finds
2 that the defendant does not have the ability to pay the fees based
3 on the defendant's changed circumstances, the court may reduce
4 or waive the fees.

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

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

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

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

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

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

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

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

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

1 (vi) The defendant has made threats to harm anyone in any
2 manner.

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

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

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

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

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

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

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

34 For any order to pay a fine, to make payments to a battered
35 women's shelter, or to pay restitution as a condition of probation
36 under this subdivision, the court shall make a determination of the
37 defendant's ability to pay. Determination of a defendant's ability
38 to pay may include his or her future earning capacity. A defendant
39 shall bear the burden of demonstrating lack of his or her ability to
40 pay. Express findings by the court as to the factors bearing on the

1 amount of the fine shall not be required. In no event shall any order
2 to make payments to a battered women's shelter be made if it
3 would impair the ability of the defendant to pay direct restitution
4 to the victim or court-ordered child support. When the injury to a
5 married person is caused, in whole or in part, by the criminal acts
6 of his or her spouse in violation of this section, the community
7 property shall not be used to discharge the liability of the offending
8 spouse for restitution to the injured spouse, as required by Section
9 1203.04, as operative on or before August 2, 1995, or Section
10 1202.4, or to a shelter for costs with regard to the injured spouse,
11 until all separate property of the 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 court
19 may consider factors, including, but not limited to, any violence
20 by the defendant against the former or a new victim while on
21 probation and noncompliance with any other specific condition of
22 probation. If the court finds that the defendant is not performing
23 satisfactorily in the assigned program, is not benefiting from the
24 program, has not complied with a condition of probation, or has
25 engaged in criminal conduct, the court shall terminate the
26 defendant's participation in the program and shall proceed with
27 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 Code,
30 in addition to the terms specified in subdivision (a), all of the
31 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 probation
40 department shall also determine which community programs the

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

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

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

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

19 (B) Education.

20 (C) Vocational achievements.

21 (D) Criminal history.

22 (E) Medical history.

23 (F) Substance abuse history.

24 (G) Consultation with the probation officer.

25 (H) Verbal consultation with the victim, only if the victim
26 desires to participate.

27 (I) Assessment of the future probability of the defendant
28 committing murder.

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (K) A requirement that the defendant enter into a written
39 agreement with the program, which shall include an outline of the
40 contents of the program, the attendance requirements, the

1 requirement to attend group sessions free of chemical influence,
2 and a statement that the defendant may be removed from the
3 program if it is determined that the defendant is not benefiting
4 from the program or is disruptive to the program.

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

9 (M) Program content that provides cultural and ethnic
10 sensitivity.

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

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

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

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

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

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

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

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

10 (B) If the probation department determines that a program is
11 not in compliance with standards set by the department, the
12 department shall provide written notice of the noncompliant areas
13 to the program. The program shall submit a written plan of
14 corrections within 14 days from the date of the written notice on
15 noncompliance. A plan of correction shall include, but not be
16 limited to, a description of each corrective action and timeframe
17 for implementation. The department shall review and approve all
18 or any part of the plan of correction and notify the program of
19 approval or disapproval in writing. If the program fails to submit
20 a plan of correction or fails to implement the approved plan of
21 correction, the department shall consider whether to revoke or
22 suspend approval and, upon revoking or suspending approval, shall
23 have the option to cease referrals of defendants under this 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 lectures,
28 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 successfully
34 complete, the program or for the successful completion of the
35 program as ordered. The program shall notify the court and the
36 probation department, in writing, within the period of time and in
37 the manner specified by the court of any person who fails to
38 complete the program. Notification shall be given if the program
39 determines that the defendant is performing unsatisfactorily or if

1 the defendant is not benefiting from the education, treatment, or
2 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 these
8 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 approval
12 annually.

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

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

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

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

27 (iv) The payment of the approval fee.

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

34 (C) The probation department has the sole authority to approve
35 the issuance, denial, suspension, or revocation of approval and to
36 cease new enrollments or referrals to a batterer's program under
37 this section. The probation department shall review information
38 relative to a program's performance or failure to adhere to
39 standards, or both. The probation department may suspend or
40 revoke any approval issued under this subdivision or deny an

- 1 application to renew an approval or to modify the terms and
2 conditions of approval, based on grounds established by probation,
3 including, but not limited to, either of the following:
- 4 (i) Violation of this section by any person holding approval or
5 by a program employee in a program under this section.
6 (ii) Misrepresentation of any material fact in obtaining the
7 approval.
- 8 (6) For defendants who are chronic users or serious abusers of
9 drugs or alcohol, standard components in the program shall include
10 concurrent counseling for substance abuse and violent behavior,
11 and in appropriate cases, detoxification and abstinence from the
12 abused substance.
- 13 (7) The program shall conduct an exit conference that assesses
14 the defendant's progress during his or her participation in the
15 batterer's program.
- 16 (d) This section shall become operative on January 1, 2010.