

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 366

Introduced by Senator Wright

February 20, 2013

An act to amend Sections 19.6, 1203, 1209.5, and 1214.1 of the Penal Code, and to amend Sections 40509, 40509.5, and 42003 of the Vehicle Code, relating to fines.

LEGISLATIVE COUNSEL'S DIGEST

SB 366, as amended, Wright. Traffic fines: ability to pay.

(1) Existing law requires the court to hear and determine the suitability of probation in a particular case. At the hearing, the court is required to consider any report of the probation officer, and, if the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, the court may place the person on probation.

This bill would provide, for purposes of these provisions, that circumstances in mitigation include, but are not limited to, the payment of all or part of a traffic fine or a civil assessment imposed for the failure to appear in court or to pay a fine in an infraction, misdemeanor, or felony case, and participation in court ordered community service to satisfy a traffic fine or that civil assessment.

(2) Existing law authorizes the court to sentence a person who has been convicted of an infraction, upon showing that payment of the total fine, as defined, would pose a hardship on the person or his or her family, to perform community service in lieu of the total fine that would otherwise be imposed. Existing law requires the hourly rate applicable to community service work by criminal defendants to be determined

by dividing the total fine by the number of hours to be performed in lieu of the total fine.

This bill would additionally authorize the court to sentence a person who has been convicted of a misdemeanor for a failure to appear or to pay bail pursuant to specified provisions, or upon whom a civil assessment has been imposed for the failure to appear in court or to pay a fine in an infraction, misdemeanor, or felony case, upon a showing that payment of part or all of the total fine or civil assessment would pose a hardship on the person or his or her family, to perform community service in lieu of part or all of the total fine or civil assessment that would otherwise be imposed. *The bill would require the court to determine that paying all or a modified amount of the total fine is a hardship if the defendant receives any of certain categories of public benefits, as specified. The bill would authorize the court to delegate to the clerk of the court the authority to grant a defendant's request for community service based on receipt of those benefits, as specified.* The bill would require the community service to be performed in the ~~person's county of residence or another~~ county in this state chosen by the defendant. ~~The bill would require the hourly rate applicable to community service work to be determined by dividing the base fine by the number of hours to be performed in lieu of the total fine, and would require that the hourly rate be at least 150% of the applicable minimum wage.~~ *By increasing duties on local governments in connection with supervising defendants performing community service, this bill would impose a state-mandated local program.*

(3) Existing law authorizes the court, in addition to any other penalty in an infraction, misdemeanor, or felony case, to impose a civil assessment of up to \$300 against any defendant who fails, after notice and without good cause, to appear in court for any proceeding authorized by law, or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail, as specified. Existing law provides that the assessment shall not become effective until at least 10 calendar days after the court mails a warning notice to the defendant, and requires the court, if the defendant appears within the time specified in the notice and shows good cause for the failure to appear or for the failure to pay a fine or installment of bail, to vacate the assessment.

This bill would authorize the court, in its discretion, to waive or impose on a particular defendant, a civil assessment of not less than \$10, and not more than \$300, if that defendant fails, after notice and without good cause, to appear in court for any proceeding authorized

by law, fails to pay all or any portion of a fine ordered by the court, or fails to pay an installment of bail, as specified. The bill would require the amount of the assessment to be based on the defendant's ability to pay and set according to a schedule adopted by the Judicial Council. *The bill would authorize the court to determine that a defendant does not have the ability to pay the assessment if the defendant demonstrates that he or she receives any of certain categories of public benefits, as specified.* The bill would provide that the assessment shall not become effective until at least 30 calendar days after the court mails a warning notice to the defendant, and would require the court, if the defendant appears within the time specified in the notice, or beyond the time specified in the notice if there is evidence that the notice was not in fact received, and shows good cause for the failure to appear or for the failure to pay a fine or installment of bail, to vacate the assessment. *The bill would require the court to vacate the assessment if the defendant provides a sworn statement under penalty of perjury that the notice was not received because the defendant is homeless or has no fixed address.* The bill would provide that ability to post bail or to pay the fine or civil assessment is not a prerequisite to filing a request that the court vacate the assessment. The bill would require the court to provide a process for a defendant to appear to show good cause for failure to appear, and would require the court to waive a civil assessment if the defendant meets the good cause standard for vacating a civil assessment. *The bill would require the court to grant a defendant's request to vacate the civil assessment for good cause for the inability to pay if the defendant demonstrates that he or she receives any of certain categories of public benefits, as specified.*

By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

(4) Existing law authorizes a court to give notice to the Department of Motor Vehicles if any person has willfully failed to pay a lawfully imposed fine, or bail in installments, within the time authorized by the court, except as specified. Existing law requires the court to mail a courtesy warning notice to the defendant at least 10 days before sending a notice to the department for specified violations of the Vehicle Code. If thereafter the fine is fully paid, the court is required to issue and file with the department a certificate showing that the fine has been paid.

This bill would require the court, if the fine is fully paid, or an agreement is signed to pay the fine, fee, or bail in installments, or an agreement is signed to perform community service pursuant to the

provisions described in (2) above, to issue and file with the department a certificate showing that the fine has been paid or satisfied, or an agreement has been signed, and request that the license hold be lifted. The bill would prohibit the court from requiring the payment of bail, the fine, or a civil assessment before a person may request the court to vacate a civil assessment. The bill also would require the court to mail the courtesy warning notice to the defendant at least 30 days before sending a notice to the department for specified violations of the Vehicle Code. *The bill would authorize the court to give notice to the Department of Motor Vehicles if a person fails to pay an outstanding fine or fee in installments or to perform community service consistent with the terms of the signed agreement.*

(5) Existing law requires the court, in any case when a person appears before a traffic referee or judge for adjudication of a Vehicle Code violation, upon request of the defendant, to consider the defendant's ability to pay. Among other things, the court is required to order the defendant to appear before a county officer to make an inquiry into the ability of the defendant to pay specified costs or the court may make this determination. Existing law defines the defendant's ability to pay as the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the presentence report, and probation. A defendant's ability to pay includes, but is not limited to, the defendant's present financial position, reasonably discernible future financial position, and any other factors that may bear upon the defendant's financial capability to reimburse the county for costs.

This bill would require the court to consider the defendant's ability to pay when a defendant appears for adjudication of any infraction. ~~By increasing the duties of county officers, this bill would impose a state-mandated local program.~~ The bill would authorize the court to conclusively presume that a defendant does not have the ability to pay if the defendant demonstrates that he or she is receiving public benefits under specified programs, including, among others, the Supplemental Nutrition Assistance Program and Medi-Cal. This bill would also require the court to advise the defendant of the right to a determination of the ability to pay at the time of rendering judgment. *The bill would authorize the court to conclusively presume that a defendant does not have the ability to pay the fine if the defendant demonstrates that he or she receives any of certain categories of public benefits, as specified. The bill would authorize the court to give notice to the Department of Motor*

Vehicles if a person fails to pay an outstanding fine or fee in installments or to perform community service consistent with the terms of the signed agreement.

~~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 no reimbursement is required by this act for a specified reason:~~

~~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 with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

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 19.6 of the Penal Code is amended to
2 read:

3 19.6. (a) An infraction is not punishable by imprisonment. A
4 person charged with an infraction shall not be entitled to a trial by
5 jury. A person charged with an infraction shall not be entitled to
6 have the public defender or other counsel appointed at public
7 expense to represent him or her unless he or she is arrested and
8 not released on his or her written promise to appear, his or her own
9 recognizance, or a deposit of bail.

10 (b) In any case when a person appears before a traffic referee
11 or judge, or commissioner of the superior court for adjudication
12 of an infraction violation, the court, upon request of the defendant,
13 shall consider the defendant's ability to pay a fine or assessment
14 in accordance with ~~subdivision~~ subdivisions (c) and (d) of Section
15 42003 of the Vehicle Code.

16 SEC. 2. Section 1203 of the Penal Code is amended to read:

1 1203. (a) As used in this code, “probation” means the
2 suspension of the imposition or execution of a sentence and the
3 order of conditional and revocable release in the community under
4 the supervision of a probation officer. As used in this code,
5 “conditional sentence” means the suspension of the imposition or
6 execution of a sentence and the order of revocable release in the
7 community subject to conditions established by the court without
8 the supervision of a probation officer. It is the intent of the
9 Legislature that both conditional sentence and probation are
10 authorized whenever probation is authorized in any code as a
11 sentencing option for infractions or misdemeanors.

12 (b) (1) Except as provided in subdivision (j), if a person is
13 convicted of a felony and is eligible for probation, before judgment
14 is pronounced, the court shall immediately refer the matter to a
15 probation officer to investigate and report to the court, at a specified
16 time, upon the circumstances surrounding the crime and the prior
17 history and record of the person, which may be considered either
18 in aggravation or mitigation of the punishment.

19 (2) (A) The probation officer shall immediately investigate and
20 make a written report to the court of his or her findings and
21 recommendations, including his or her recommendations as to the
22 granting or denying of probation and the conditions of probation,
23 if granted.

24 (B) Pursuant to Section 828 of the Welfare and Institutions
25 Code, the probation officer shall include in his or her report any
26 information gathered by a law enforcement agency relating to the
27 taking of the defendant into custody as a minor, which shall be
28 considered for purposes of determining whether adjudications of
29 commissions of crimes as a juvenile warrant a finding that there
30 are circumstances in aggravation pursuant to Section 1170 or to
31 deny probation.

32 (C) If the person was convicted of an offense that requires him
33 or her to register as a sex offender pursuant to Sections 290 to
34 290.023, inclusive, or if the probation report recommends that
35 registration be ordered at sentencing pursuant to Section 290.006,
36 the probation officer’s report shall include the results of the
37 State-Authorized Risk Assessment Tool for Sex Offenders
38 (SARATSO) administered pursuant to Sections 290.04 to 290.06,
39 inclusive, if applicable.

1 (D) The probation officer shall also include in the report his or
2 her recommendation of both of the following:

3 (i) The amount the defendant should be required to pay as a
4 restitution fine pursuant to subdivision (b) of Section 1202.4.

5 (ii) Whether the court shall require, as a condition of probation,
6 restitution to the victim or to the Restitution Fund and the amount
7 thereof.

8 (E) The report shall be made available to the court and the
9 prosecuting and defense attorneys at least five days, or upon request
10 of the defendant or prosecuting attorney nine days, prior to the
11 time fixed by the court for the hearing and determination of the
12 report, and shall be filed with the clerk of the court as a record in
13 the case at the time of the hearing. The time within which the report
14 shall be made available and filed may be waived by written
15 stipulation of the prosecuting and defense attorneys that is filed
16 with the court or an oral stipulation in open court that is made and
17 entered upon the minutes of the court.

18 (3) (A) At a time fixed by the court, the court shall hear and
19 determine the application, if one has been made, or, in any case,
20 the suitability of probation in the particular case. At the hearing,
21 the court shall consider any report of the probation officer,
22 including the results of the SARATSO, if applicable, and shall
23 make a statement that it has considered the report, which shall be
24 filed with the clerk of the court as a record in the case. If the court
25 determines that there are circumstances in mitigation of the
26 punishment prescribed by law or that the ends of justice would be
27 served by granting probation to the person, it may place the person
28 on probation. If probation is denied, the clerk of the court shall
29 immediately send a copy of the report to the Department of
30 Corrections and Rehabilitation at the prison or other institution to
31 which the person is delivered.

32 (B) For purposes of subparagraph (A), circumstances in
33 mitigation of the punishment prescribed by law include, but are
34 not limited to, all of the following:

35 (i) The payment of all or part of a traffic fine.

36 (ii) The payment of all or part of a civil assessment imposed
37 under Section 1214.1.

38 (iii) Participation in court-ordered community service pursuant
39 to Section 1209.5 to satisfy a traffic fine or civil assessment
40 imposed under Section 1214.1.

1 (4) The preparation of the report or the consideration of the
2 report by the court may be waived only by a written stipulation of
3 the prosecuting and defense attorneys that is filed with the court
4 or an oral stipulation in open court that is made and entered upon
5 the minutes of the court, except that there shall be no waiver unless
6 the court consents thereto. However, if the defendant is ultimately
7 sentenced and committed to the state prison, a probation report
8 shall be completed pursuant to Section 1203c.

9 (c) If a defendant is not represented by an attorney, the court
10 shall order the probation officer who makes the probation report
11 to discuss its contents with the defendant.

12 (d) If a person is convicted of a misdemeanor, the court may
13 either refer the matter to the probation officer for an investigation
14 and a report or summarily pronounce a conditional sentence. If
15 the person was convicted of an offense that requires him or her to
16 register as a sex offender pursuant to Sections 290 to 290.023,
17 inclusive, or if the probation officer recommends that the court,
18 at sentencing, order the offender to register as a sex offender
19 pursuant to Section 290.006, the court shall refer the matter to the
20 probation officer for the purpose of obtaining a report on the results
21 of the State-Authorized Risk Assessment Tool for Sex Offenders
22 administered pursuant to Sections 290.04 to 290.06, inclusive, if
23 applicable, which the court shall consider. If the case is not referred
24 to the probation officer, in sentencing the person, the court may
25 consider any information concerning the person that could have
26 been included in a probation report. The court shall inform the
27 person of the information to be considered and permit him or her
28 to answer or controvert the information. For this purpose, upon
29 the request of the person, the court shall grant a continuance before
30 the judgment is pronounced.

31 (e) Except in unusual cases where the interests of justice would
32 best be served if the person is granted probation, probation shall
33 not be granted to any of the following persons:

34 (1) Unless the person had a lawful right to carry a deadly
35 weapon, other than a firearm, at the time of the perpetration of the
36 crime or his or her arrest, any person who has been convicted of
37 arson, robbery, carjacking, burglary, burglary with explosives,
38 rape with force or violence, torture, aggravated mayhem, murder,
39 attempt to commit murder, train wrecking, kidnapping, escape
40 from the state prison, or a conspiracy to commit one or more of

1 those crimes and who was armed with the weapon at either of those
2 times.

3 (2) Any person who used, or attempted to use, a deadly weapon
4 upon a human being in connection with the perpetration of the
5 crime of which he or she has been convicted.

6 (3) Any person who willfully inflicted great bodily injury or
7 torture in the perpetration of the crime of which he or she has been
8 convicted.

9 (4) Any person who has been previously convicted twice in this
10 state of a felony or in any other place of a public offense which,
11 if committed in this state, would have been punishable as a felony.

12 (5) Unless the person has never been previously convicted once
13 in this state of a felony or in any other place of a public offense
14 which, if committed in this state, would have been punishable as
15 a felony, any person who has been convicted of burglary with
16 explosives, rape with force or violence, torture, aggravated
17 mayhem, murder, attempt to commit murder, train wrecking,
18 extortion, kidnapping, escape from the state prison, a violation of
19 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one
20 or more of those crimes.

21 (6) Any person who has been previously convicted once in this
22 state of a felony or in any other place of a public offense which,
23 if committed in this state, would have been punishable as a felony,
24 if he or she committed any of the following acts:

25 (A) Unless the person had a lawful right to carry a deadly
26 weapon at the time of the perpetration of the previous crime or his
27 or her arrest for the previous crime, he or she was armed with a
28 weapon at either of those times.

29 (B) The person used, or attempted to use, a deadly weapon upon
30 a human being in connection with the perpetration of the previous
31 crime.

32 (C) The person willfully inflicted great bodily injury or torture
33 in the perpetration of the previous crime.

34 (7) Any public official or peace officer of this state or any city,
35 county, or other political subdivision who, in the discharge of the
36 duties of his or her public office or employment, accepted or gave
37 or offered to accept or give any bribe, embezzled public money,
38 or was guilty of extortion.

39 (8) Any person who knowingly furnishes or gives away
40 phencyclidine.

1 (9) Any person who intentionally inflicted great bodily injury
2 in the commission of arson under subdivision (a) of Section 451
3 or who intentionally set fire to, burned, or caused the burning of,
4 an inhabited structure or inhabited property in violation of
5 subdivision (b) of Section 451.

6 (10) Any person who, in the commission of a felony, inflicts
7 great bodily injury or causes the death of a human being by the
8 discharge of a firearm from or at an occupied motor vehicle
9 proceeding on a public street or highway.

10 (11) Any person who possesses a short-barreled rifle or a
11 short-barreled shotgun under Section 33215, a machinegun under
12 Section 32625, or a silencer under Section 33410.

13 (12) Any person who is convicted of violating Section 8101 of
14 the Welfare and Institutions Code.

15 (13) Any person who is described in subdivision (b) or (c) of
16 Section 27590.

17 (f) When probation is granted in a case which comes within
18 subdivision (e), the court shall specify on the record and shall enter
19 on the minutes the circumstances indicating that the interests of
20 justice would best be served by that disposition.

21 (g) If a person is not eligible for probation, the judge shall refer
22 the matter to the probation officer for an investigation of the facts
23 relevant to determination of the amount of a restitution fine
24 pursuant to subdivision (b) of Section 1202.4 in all cases where
25 the determination is applicable. The judge, in his or her discretion,
26 may direct the probation officer to investigate all facts relevant to
27 the sentencing of the person. Upon that referral, the probation
28 officer shall immediately investigate the circumstances surrounding
29 the crime and the prior record and history of the person and make
30 a written report to the court of his or her findings. The findings
31 shall include a recommendation of the amount of the restitution
32 fine as provided in subdivision (b) of Section 1202.4.

33 (h) If a defendant is convicted of a felony and a probation report
34 is prepared pursuant to subdivision (b) or (g), the probation officer
35 may obtain and include in the report a statement of the comments
36 of the victim concerning the offense. The court may direct the
37 probation officer not to obtain a statement if the victim has in fact
38 testified at any of the court proceedings concerning the offense.

39 (i) A probationer shall not be released to enter another state
40 unless his or her case has been referred to the Administrator of the

1 Interstate Probation and Parole Compacts, pursuant to the Uniform
2 Act for Out-of-State Probationer or Parolee Supervision (Article
3 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part
4 4) and the probationer has reimbursed the county that has
5 jurisdiction over his or her probation case the reasonable costs of
6 processing his or her request for interstate compact supervision.
7 The amount and method of reimbursement shall be in accordance
8 with Section 1203.1b.

9 (j) In any court where a county financial evaluation officer is
10 available, in addition to referring the matter to the probation officer,
11 the court may order the defendant to appear before the county
12 financial evaluation officer for a financial evaluation of the
13 defendant's ability to pay restitution, in which case the county
14 financial evaluation officer shall report his or her findings regarding
15 restitution and other court-related costs to the probation officer on
16 the question of the defendant's ability to pay those costs.

17 Any order made pursuant to this subdivision may be enforced
18 as a violation of the terms and conditions of probation upon willful
19 failure to pay and at the discretion of the court, may be enforced
20 in the same manner as a judgment in a civil action, if any balance
21 remains unpaid at the end of the defendant's probationary period.

22 (k) Probation shall not be granted to, nor shall the execution of,
23 or imposition of sentence be suspended for, any person who is
24 convicted of a violent felony, as defined in subdivision (c) of
25 Section 667.5, or a serious felony, as defined in subdivision (c) of
26 Section 1192.7, and who was on probation for a felony offense at
27 the time of the commission of the new felony offense.

28 SEC. 3. Section 1209.5 of the Penal Code is amended to read:

29 1209.5. (a) Notwithstanding any other law, a person described
30 in paragraph (1), (2), or (3) of subdivision (b) may, upon a showing
31 that payment of ~~part or all of~~ the total *or modified* fine ~~or civil~~
32 ~~assessment amount~~ would pose a hardship on the defendant or his
33 or her family, be sentenced to perform community service in lieu
34 of ~~part or all of~~ the total *or modified* fine ~~or civil assessment amount~~
35 that would otherwise be imposed. The defendant shall perform
36 community service *according to the schedule set forth in*
37 *subdivision (d)* in the defendant's county of residence, ~~or another~~
38 ~~county in this state chosen by the defendant, at the hourly rate~~
39 ~~applicable to community service work performed by criminal~~
40 ~~defendants choice.~~

1 (b) Subdivision (a) shall apply to a person described by any of
2 the following:

3 (1) Convicted of an infraction.

4 (2) Convicted of a misdemeanor for a failure to appear or to
5 pay bail pursuant to subdivision (a) or (b) of Section 40508 of the
6 Vehicle Code or Section 853.7 of this code.

7 (3) Upon whom a civil assessment has been imposed for a failure
8 to appear in court or to pay a fine pursuant to Section 1214.1.

9 (c) For the purposes of this section, ~~both~~ of the following shall
10 apply:

11 (1) “Total fine” means the base fine and all assessments,
12 *including civil assessments*, penalties, and additional moneys to
13 be paid by the defendant.

14 ~~(2) The hourly rate applicable to community service work by~~
15 ~~criminal defendants shall be determined by dividing the base fine~~
16 ~~by the number of hours of community service ordered by the court~~
17 ~~to be performed in lieu of the total fine. The hourly rate shall be~~
18 ~~at least 150 percent of the state minimum wage or any other~~
19 ~~applicable city or county minimum wage.~~

20 ~~(3)~~

21 (2) If the court orders the defendant to perform community
22 service pursuant to this section in lieu of part or all of the total fine
23 ~~or civil assessment~~ that would otherwise be imposed, the
24 performance of that community service work is in lieu of the total
25 fine, or that percentage of the total fine specified by the court. The
26 court shall not order the defendant to perform community service
27 in lieu of the base fine and still require the defendant to pay any
28 assessments, penalties, or additional moneys.

29 (d) *A defendant sentenced to perform community service*
30 *pursuant to this section shall perform the number of hours specified*
31 *as follows:*

32 (1) *For a total fine amount up to one thousand dollars (\$1,000),*
33 *four hours of community service.*

34 (2) *For a total fine amount of one thousand one dollars (\$1,001)*
35 *to five thousand dollars (\$5,000), eight hours of community service.*

36 (3) *For a total fine amount of five thousand one dollars (\$5,001)*
37 *or more, 15 hours of community service.*

38 (e) *For purposes of this section, the court shall determine that*
39 *paying the total or a modified fine is a hardship if the defendant*

1 falls within any of the categories described in subdivision (a) of
2 Section 68632 of the Government Code.

3 (f) The court may delegate to the clerk the authority to grant a
4 defendant's request for community service under subdivision (d)
5 if the defendant meets the eligibility and application requirements
6 for a fee waiver under Section 68632 of the Government Code.
7 The court shall not delegate to the clerk the authority to deny an
8 application for community service. If the court delegates its
9 authority, the court shall follow the processing and determination
10 procedures for fee waivers set forth in Sections 68633 and 68634
11 of the Government Code in determining the defendant's eligibility
12 for community service.

13 SEC. 4. Section 1214.1 of the Penal Code is amended to read:

14 1214.1. (a) (1) In addition to any other penalty in an
15 infraction, misdemeanor, or felony case, the court ~~may, in its~~
16 ~~discretion,~~ may waive or impose upon a particular defendant a
17 civil assessment of no less than ten dollars (\$10), but no greater
18 than three hundred dollars (\$300), if that defendant ~~(1)~~ fails, after
19 notice and without good cause, to appear in court for any
20 proceeding authorized by law, ~~(2)~~ fails to pay all or any portion
21 of a fine ordered by the court, or ~~(3)~~ fails to pay an installment of
22 bail as agreed to under Section 40510.5 of the Vehicle Code. The
23 amount of the assessment shall be based on that defendant's ability
24 to pay and set according to a schedule adopted by the Judicial
25 Council. This assessment shall be deposited in the Trial Court
26 Trust Fund, as provided in Section 68085.1 of the Government
27 Code. A civil assessment shall not be imposed for an infraction
28 violation ~~of the Vehicle Code~~ in which the defendant was not the
29 driver of the vehicle.

30 (2) The court may determine that a defendant does not have the
31 ability to pay the assessment if the defendant demonstrates that
32 he or she falls within one of the categories described in subdivision
33 (a) of Section 68632 of the Government Code.

34 (b) The assessment imposed under subdivision (a) shall not
35 become effective until at least 30 calendar days after the court
36 mails a warning notice to the defendant by first-class mail to the
37 address shown on the notice to appear or to the defendant's last
38 known address. The court shall vacate the assessment if the
39 defendant appears within the time specified in the notice and shows
40 good cause for the failure to appear or for the failure to pay a fine

1 or installment of bail. The court also shall vacate the assessment
2 if the defendant appears beyond the time specified in the notice
3 and ~~there is evidence provides a sworn statement under penalty~~
4 ~~of perjury~~ that the notice was not in fact received, ~~including~~
5 ~~evidence that because~~ the defendant is homeless or does not have
6 a fixed address. Ability to post bail or to pay the fine or civil
7 assessment is not a prerequisite to filing a request that the court
8 vacate the assessment. Imposition of a civil assessment shall not
9 preclude a defendant from scheduling a court hearing on the
10 underlying charge ~~if the defendant is otherwise entitled to the~~
11 ~~hearing.~~

12 (c) If a civil assessment is imposed under this section, a bench
13 warrant or warrant of arrest shall not be issued with respect to the
14 failure to appear at the proceeding for which the assessment is
15 imposed or the failure to pay the fine or installment of bail. An
16 outstanding, unserved bench warrant or warrant of arrest for a
17 failure to appear or for a failure to pay a fine or installment of bail
18 shall be recalled prior to the subsequent imposition of a civil
19 assessment.

20 (d) The assessment imposed under subdivision (a) shall be
21 subject to the due process requirements governing defense and
22 collection of civil money judgments generally. The court ~~shall~~
23 ~~provide a process for a defendant to appear before a judge to show~~
24 ~~good cause for failure to appear~~ and shall not limit the grounds for
25 good cause for failure to appear. The court shall waive the civil
26 assessment when the defendant meets the good cause standard for
27 vacating a civil assessment.

28 (e) *The court shall grant a defendant's request to vacate the*
29 *civil assessment for good cause for the inability to pay if the*
30 *defendant meets the eligibility and application requirements for*
31 *a fee waiver under subdivision (a) of Section 68632 of the*
32 *Government Code as determined under Sections 68633 and 68634*
33 *of the Government Code.*

34 (e)

35 (f) Each court and county shall maintain the collection program
36 that was in effect on July 1, 2005, unless otherwise agreed to by
37 the court and county. If a court and a county do not agree on a plan
38 for the collection of civil assessments imposed pursuant to this
39 section, or any other collections under Section 1463.010, after the
40 implementation of Sections 68085.6 and 68085.7 of the

1 Government Code, the court or the county may request arbitration
2 by a third party mutually agreed upon by the Administrative
3 Director of the Courts and the California State Association of
4 Counties.

5 SEC. 5. Section 40509 of the Vehicle Code is amended to read:

6 40509. (a) Except as required under subdivision (c) of Section
7 40509.5, if any person has violated a written promise to appear or
8 a lawfully granted continuance of his or her promise to appear in
9 court or before the person authorized to receive a deposit of bail,
10 or violated an order to appear in court, including, but not limited
11 to, a written notice to appear issued in accordance with Section
12 40518, the magistrate or clerk of the court may give notice of the
13 failure to appear to the department for any violation of this code,
14 or any violation that can be heard by a juvenile traffic hearing
15 referee pursuant to Section 256 of the Welfare and Institutions
16 Code, or any violation of any other statute relating to the safe
17 operation of a vehicle, except violations not required to be reported
18 pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b)
19 of Section 1803. If thereafter the case in which the promise was
20 given is adjudicated or the person who has violated the court order
21 appears in court or otherwise satisfies the order of the court, the
22 magistrate or clerk of the court hearing the case shall sign and file
23 with the department a certificate to that effect.

24 (b) (1) If any person has willfully failed to pay a lawfully
25 imposed fine within the time authorized by the court or to pay a
26 fine pursuant to subdivision (a) of Section 42003, the magistrate
27 or clerk of the court may give notice of the fact to the department
28 for any violation, except violations not required to be reported
29 pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b)
30 of Section 1803. If thereafter ~~(1)~~ the fine is fully paid, ~~(2)~~ an
31 agreement is signed to pay the fine or fee in installments, or ~~(3)~~
32 an agreement is signed to perform community service pursuant to
33 Section 1209.5 of the Penal Code, the magistrate or clerk of the
34 court shall issue and file with the department a certificate showing
35 that the fine has been paid or satisfied pursuant to Section 1209.5
36 of the Penal Code, or an agreement has been signed, and request
37 that the license hold be lifted. The court shall not require the
38 payment of bail, the fine, or a civil assessment before the person
39 may request *that* the court ~~to~~ vacate a civil assessment imposed
40 under Section 1214.1.

1 (2) *If a person fails to pay an outstanding fine or fee in*
2 *installments or to perform community service consistent with the*
3 *terms of the signed agreement, the court may give notice of the*
4 *fact to the department.*

5 (c) (1) Notwithstanding subdivisions (a) and (b), the court may
6 notify the department of the total amount of bail, fines,
7 assessments, and fees authorized or required by this code, including
8 Section 40508.5, which are unpaid by any person.

9 (2) Once a court has established the amount of bail, fines,
10 assessments, and fees, and notified the department, the court shall
11 not further enhance or modify that amount.

12 (3) This subdivision applies only to violations of this code that
13 do not require a mandatory court appearance, are not contested by
14 the defendant, and do not require proof of correction certified by
15 the court.

16 (d) With respect to a violation of this code, this section is
17 applicable to any court which has not elected to be subject to the
18 notice requirements of subdivision (b) of Section 40509.5.

19 (e) Any violation subject to Section 40001, which is the
20 responsibility of the owner of the vehicle, shall not be reported
21 under this section.

22 SEC. 6. Section 40509.5 of the Vehicle Code is amended to
23 read:

24 40509.5. (a) Except as required under subdivision (c), if, with
25 respect to an offense described in subdivision (e), a person has
26 violated his or her written promise to appear or a lawfully granted
27 continuance of his or her promise to appear in court or before the
28 person authorized to receive a deposit of bail, or violated an order
29 to appear in court, including, but not limited to, a written notice
30 to appear issued in accordance with Section 40518, the magistrate
31 or clerk of the court may give notice of the failure to appear to the
32 department for a violation of this code, a violation that can be
33 heard by a juvenile traffic hearing referee pursuant to Section 256
34 of the Welfare and Institutions Code, or a violation of any other
35 statute relating to the safe operation of a vehicle, except violations
36 not required to be reported pursuant to paragraphs (1), (2), (3), (6),
37 and (7) of subdivision (b) of Section 1803. If thereafter the case
38 in which the promise was given is adjudicated or the person who
39 has violated the court order appears in court and satisfies the order

1 of the court, the magistrate or clerk of the court hearing the case
2 shall sign and file with the department a certificate to that effect.

3 (b) (1) If, with respect to an offense described in subdivision
4 (e), a person has willfully failed to pay a lawfully imposed fine,
5 or bail in installments as agreed to under Section 40510.5, within
6 the time authorized by the court or to pay a fine pursuant to
7 subdivision (a) of Section 42003, the magistrate or clerk of the
8 court may give notice of the fact to the department for a violation,
9 except violations not required to be reported pursuant to paragraphs
10 (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If
11 thereafter, (1) the fine or bail is fully paid, (2) an agreement is
12 signed to pay the fine, fee, or bail in installments, or (3) an
13 agreement is signed to perform community service pursuant to
14 Section 1209.5 of the Penal Code, the magistrate or clerk of the
15 court shall issue and file with the department a certificate showing
16 that the fine or bail has been paid, or that it has been or will be
17 satisfied by the performance of community service pursuant to
18 Section 1209.5 of the Penal Code, and request that the license hold
19 be lifted. The court shall not require the payment of bail, or the
20 payment of the fine or civil assessment amount, before a person
21 may request the court to vacate a civil assessment imposed under
22 Section 1214.1.

23 (2) *If a person fails to pay an outstanding fine or fee in*
24 *installments or to perform community service consistent with the*
25 *terms of the signed agreement, the court may give notice of the*
26 *fact to the department.*

27 (c) If a person charged with a violation of Section 23152 or
28 23153, or Section 191.5 of the Penal Code, or subdivision (a) of
29 Section 192.5 of the Penal Code has violated a lawfully granted
30 continuance of his or her promise to appear in court or is released
31 from custody on his or her own recognizance and fails to appear
32 in court or before the person authorized to receive a deposit of
33 bail, or violated an order to appear in court, the magistrate or clerk
34 of the court shall give notice to the department of the failure to
35 appear. If thereafter the case in which the notice was given is
36 adjudicated or the person who has violated the court order appears
37 in court or otherwise satisfies the order of the court, the magistrate
38 or clerk of the court hearing the case shall prepare and forward to
39 the department a certificate to that effect.

1 (d) Except as required under subdivision (c), the court shall mail
2 a ~~courtesy warning~~ notice to the defendant by first-class mail at
3 the address shown on the notice to appear, at least 30 days before
4 sending a notice to the department under this section.

5 (e) If the court notifies the department of a failure to appear, or
6 pay a fine or bail, *or perform community service* pursuant to
7 subdivision (a) or (b), no arrest warrant shall be issued for an
8 alleged violation of subdivision (a) or (b) of Section 40508, unless
9 one of the following criteria is met:

10 (1) The alleged underlying offense is a misdemeanor or felony.

11 (2) The alleged underlying offense is a violation of any provision
12 of Division 12 (commencing with Section 24000), Division 13
13 (commencing with Section 29000), or Division 15 (commencing
14 with Section 35000), required to be reported pursuant to Section
15 1803.

16 (3) The driver's record does not show that the defendant has a
17 valid California driver's license.

18 (4) The driver's record shows an unresolved charge that the
19 defendant is in violation of his or her written promise to appear
20 for one or more other alleged violations of the law.

21 (f) Except as required under subdivision (c), in addition to the
22 proceedings described in this section, the court may elect to notify
23 the department pursuant to subdivision (c) of Section 40509.

24 (g) This section is applicable to courts that have elected to
25 provide notice pursuant to subdivision (b). The method of
26 commencing or terminating an election to proceed under this
27 section shall be prescribed by the department.

28 (h) A violation subject to Section 40001, that is the
29 responsibility of the owner of the vehicle, shall not be reported
30 under this section.

31 SEC. 7. Section 42003 of the Vehicle Code is amended to read:

32 42003. (a) A judgment that a person convicted of an infraction
33 be punished by a fine may also provide for the payment to be made
34 within a specified time or in specified installments. A judgment
35 granting a defendant time to pay the fine shall order that if the
36 defendant fails to pay the fine or any installment thereof on the
37 date that it is due, he or she shall appear in court on that date for
38 further proceedings. Willful violation of the order is punishable
39 as contempt.

1 (b) A judgment that a person convicted of any other violation
2 of this code be punished by a fine may also order, adjudge, and
3 decree that the person be imprisoned until the fine is satisfied. In
4 all of these cases, the judgment shall specify the extent of the
5 imprisonment which shall not exceed one day for every thirty
6 dollars (\$30) of the fine, nor extend in this case beyond the term
7 for which the defendant might be sentenced to imprisonment for
8 the offense of which he or she was convicted.

9 (c) (1) In any case when a person appears before a traffic
10 referee, *commissioner*, or judge of the superior court for
11 adjudication of a violation of this code or any other infraction
12 violation, the court, upon request of the defendant, shall consider
13 the defendant's ability to pay *the fine*. Consideration of a
14 defendant's ability to pay *the fine* may include his or her future
15 earning capacity. A defendant shall bear the burden of
16 demonstrating lack of his or her ability to pay *the fine*. Express
17 findings by the court as to the factors bearing on the amount of
18 the fine shall not be required. The reasonable cost of these services
19 and of probation shall not exceed the amount determined to be the
20 actual average cost thereof. The court shall order the defendant to
21 appear before a county officer designated by the court to make an
22 inquiry into the ability of the defendant to pay all or a portion of
23 those costs or the court ~~or~~, traffic referee, *or commissioner* may
24 make this determination at a hearing. At that hearing, the defendant
25 shall be entitled to have, but shall not be limited to, the opportunity
26 to be heard in person, to present witnesses and other documentary
27 evidence, to confront and cross-examine adverse witnesses, to
28 disclosure of the evidence against him or her, and to a written
29 statement of the findings of the court or the county officer. If the
30 court determines that the defendant has the ability to pay all or
31 part of the costs, the court shall set the amount to be reimbursed
32 and order the defendant to pay that sum to the county in the manner
33 in which the court believes reasonable and compatible with the
34 defendant's financial ability; or, with the consent of a defendant
35 who is placed on probation, the court shall order the probation
36 officer to set the amount of payment, which shall not exceed the
37 maximum amount set by the court, and the manner in which the
38 payment shall be made to the county. In making a determination
39 of whether a defendant has the ability to pay, the court shall take
40 into account the amount of any fine imposed upon the defendant

1 and any amount the defendant has been ordered to pay in
2 restitution.

3 (2) The court may hold additional hearings during the
4 probationary period. If practicable, the court or the probation officer
5 shall order payments to be made on a monthly basis. Execution
6 may be issued on the order in the same manner as a judgment in
7 a civil action. The order to pay all or part of the costs shall not be
8 enforced by contempt.

9 (3) A payment schedule for reimbursement of the costs of
10 presentence investigation based on income shall be developed by
11 the probation department of each county and approved by the
12 presiding judge of the superior court.

13 ~~(d) The court may conclusively presume that any defendant~~
14 ~~who demonstrates that he or she is receiving public benefits under~~
15 ~~one or more of the following programs does not have the ability~~
16 ~~to pay:~~

17 ~~(1) Supplemental Security Income (SSI) and State~~
18 ~~Supplementary Payment (SSP) (Article 5 (commencing with~~
19 ~~Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare~~
20 ~~and Institutions Code);~~

21 ~~(2) California Work Opportunity and Responsibility to Kids~~
22 ~~Act (CalWORKs) (Chapter 2 (commencing with Section 11200)~~
23 ~~of Part 3 of Division 9 of the Welfare and Institutions Code) or a~~
24 ~~federal Tribal Temporary Assistance for Needy Families (Tribal~~
25 ~~TANF) grant program (Section 10553.25 of the Welfare and~~
26 ~~Institutions Code);~~

27 ~~(3) Supplemental Nutrition Assistance Program (Chapter 51~~
28 ~~(commencing with Section 2011) of Title 7 of the United States~~
29 ~~Code) or the California Food Assistance Program (Chapter 10.1~~
30 ~~(commencing with Section 18930) of Part 6 of Division 9 of the~~
31 ~~Welfare and Institutions Code);~~

32 ~~(4) County Relief, General Relief (GR), or General Assistance~~
33 ~~(GA) (Part 5 (commencing with Section 17000) of Division 9 of~~
34 ~~the Welfare and Institutions Code);~~

35 ~~(5) Cash Assistance Program for Aged, Blind, and Disabled~~
36 ~~Legal Immigrants (CAPI) (Chapter 10.3 (commencing with Section~~
37 ~~18937) of Part 6 of Division 9 of the Welfare and Institutions~~
38 ~~Code);~~

1 ~~(6) In-Home Supportive Services (IHSS) (Article 7~~
2 ~~(commencing with Section 12300) of Chapter 3 of Part 3 of~~
3 ~~Division 9 of the Welfare and Institutions Code).~~

4 ~~(7) Medi-Cal (Chapter 7 (commencing with Section 14000) of~~
5 ~~Part 3 of Division 9 of the Welfare and Institutions Code).~~

6 *(d) Notwithstanding paragraph (1) of subdivision (c), the court*
7 *may conclusively presume that a defendant does not have the ability*
8 *to pay the fine if the defendant demonstrates that he or she falls*
9 *within a category described in subdivision (a) of Section 68632 of*
10 *the Government Code.*

11 (e) The court shall advise the defendant of the right to a
12 determination of the ability to pay pursuant to subdivision (c) or
13 (d) at the time of rendering judgment.

14 (f) The term “ability to pay” means the overall capability of the
15 defendant to reimburse the costs, or a portion of the costs, of
16 conducting the presentence investigation, preparing the presentence
17 report, and probation, and includes, but is not limited to, all of the
18 following regarding the defendant:

19 (1) Present financial position.

20 (2) Reasonably discernible future financial position. In no event
21 shall the court consider a period of more than six months from the
22 date of the hearing for purposes of determining reasonably
23 discernible future financial position.

24 (3) Likelihood that the defendant will be able to obtain
25 employment within the six-month period from the date of the
26 hearing.

27 (4) Any other factors that may bear upon the defendant’s
28 financial capability to reimburse the county for the costs.

29 (g) At any time during the pendency of the judgment rendered
30 according to the terms of this section, a defendant against whom
31 a judgment has been rendered may petition the rendering court to
32 modify or vacate its previous judgment on the grounds of a change
33 of circumstances with regard to the defendant’s ability to pay the
34 judgment. The court shall advise the defendant of this right at the
35 time of rendering of the judgment.

36 ~~SEC. 8. No reimbursement is required by this act pursuant to~~
37 ~~Section 6 of Article XIII B of the California Constitution because~~
38 ~~the only costs that may be incurred by a local agency or school~~
39 ~~district will be incurred because this act creates a new crime or~~
40 ~~infraction, eliminates a crime or infraction, or changes the penalty~~

1 ~~for a crime or infraction, within the meaning of Section 17556 of~~
2 ~~the Government Code, or changes the definition of a crime within~~
3 ~~the meaning of Section 6 of Article XIII B of the California~~
4 ~~Constitution.~~

5 *SEC. 8. No reimbursement is required by this act pursuant to*
6 *Section 6 of Article XIII B of the California Constitution for certain*
7 *costs that may be incurred by a local agency or school district*
8 *because, in that regard, this act creates a new crime or infraction,*
9 *eliminates a crime or infraction, or changes the penalty for a crime*
10 *or infraction, within the meaning of Section 17556 of the*
11 *Government Code, or changes the definition of a crime within the*
12 *meaning of Section 6 of Article XIII B of the California*
13 *Constitution.*

14 *However, if the Commission on State Mandates determines that*
15 *this act contains other costs mandated by the state, reimbursement*
16 *to local agencies and school districts for those costs shall be made*
17 *pursuant to Part 7 (commencing with Section 17500) of Division*
18 *4 of Title 2 of the Government Code.*