

**Introduced by Senator Wright**February 20, 2013

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An act to amend Sections 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 introduced, 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 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.

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 a specified provision of the Vehicle Code, 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 community service to be performed in the person's county of residence.

(3) Existing law authorizes the court, in addition to any other penalty in infraction, misdemeanor, or felony cases, 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, 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. The bill would require the amount of the assessment to be based on the defendant's ability to pay. 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 provide that ability to post bail is not a prerequisite to filing a request that the court vacate the assessment. The bill would prohibit the court from limiting the grounds for good cause for failure to appear, and would require the court to exercise its authority to waive civil assessments if the defendant meets the standards for vacating a civil assessment.

(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 or bail in installments, or community service is performed 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 before a person may request the court to vacate a civil assessment. The bill would require the court to issue a certificate to the department to lift the hold on a driver's license if the person satisfies the order of the court. 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.

(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. 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 authorize the court to 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.

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

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

1 SECTION 1. Section 1203 of the Penal Code is amended to  
2 read:

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

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

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

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

34 (C) If the person was convicted of an offense that requires him  
35 or her to register as a sex offender pursuant to Sections 290 to  
36 290.023, inclusive, or if the probation report recommends that  
37 registration be ordered at sentencing pursuant to Section 290.006,  
38 the probation officer’s report shall include the results of the

1 State-Authorized Risk Assessment Tool for Sex Offenders  
2 (SARATSO) administered pursuant to Sections 290.04 to 290.06,  
3 inclusive, if applicable.

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

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

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

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

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

35 (B) *For purposes of subparagraph (A), circumstances in*  
36 *mitigation of the punishment prescribed by law include, but are*  
37 *not limited to, all of the following:*

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

39 (ii) *The payment of all or part of a civil assessment imposed*  
40 *under Section 1214.1.*

1 (iii) *Participation in court-ordered community service pursuant*  
2 *to Section 1209.5 to satisfy a traffic fine or civil assessment*  
3 *imposed under Section 1214.1.*

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

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

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

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

37 (1) Unless the person had a lawful right to carry a deadly  
38 weapon, other than a firearm, at the time of the perpetration of the  
39 crime or his or her arrest, any person who has been convicted of  
40 arson, robbery, carjacking, burglary, burglary with explosives,

1 rape with force or violence, torture, aggravated mayhem, murder,  
2 attempt to commit murder, trainwrecking, kidnapping, escape from  
3 the state prison, or a conspiracy to commit one or more of those  
4 crimes and who was armed with the weapon at either of those  
5 times.

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

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

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

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

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

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

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

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

37 (7) Any public official or peace officer of this state or any city,  
38 county, or other political subdivision who, in the discharge of the  
39 duties of his or her public office or employment, accepted or gave

1 or offered to accept or give any bribe, embezzled public money,  
2 or was guilty of extortion.

3 (8) Any person who knowingly furnishes or gives away  
4 phencyclidine.

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

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

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

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

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

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

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

37 (h) If a defendant is convicted of a felony and a probation report  
38 is prepared pursuant to subdivision (b) or (g), the probation officer  
39 may obtain and include in the report a statement of the comments  
40 of the victim concerning the offense. The court may direct the



1 probation officer not to obtain a statement if the victim has in fact  
2 testified at any of the court proceedings concerning the offense.

3 (i) ~~No~~A probationer shall *not* be released to enter another state  
4 unless his or her case has been referred to the Administrator of the  
5 Interstate Probation and Parole Compacts, pursuant to the Uniform  
6 Act for Out-of-State Probationer or Parolee Supervision (Article  
7 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part  
8 4) and the probationer has reimbursed the county that has  
9 jurisdiction over his or her probation case the reasonable costs of  
10 processing his or her request for interstate compact supervision.  
11 The amount and method of reimbursement shall be in accordance  
12 with Section 1203.1b.

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

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

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

32 SEC. 2. Section 1209.5 of the Penal Code is amended to read:

33 1209.5. (a) Notwithstanding any other ~~provision of law, any~~  
34 ~~a person convicted of an infraction described in paragraph (1),~~  
35 ~~(2), or (3) of subdivision (b)~~ may, upon a showing that payment  
36 of *part or all of the total fine or civil assessment* would pose a  
37 hardship on the defendant or his or her family, be sentenced to  
38 perform community service in lieu of *part or all of the total fine*  
39 *or civil assessment* that would otherwise be imposed. The defendant  
40 shall perform community service *in the defendant's county of*

1 *residence* at the hourly rate applicable to community service work  
 2 performed by criminal defendants. ~~For~~

3 (b) *Subdivision (a) shall apply to a person described by any of*  
 4 *the following:*

5 (1) *Convicted of an infraction.*

6 (2) *Convicted of a misdemeanor for a failure to appear or to*  
 7 *pay bail pursuant to subdivision (a) or (b) of Section 40508 of the*  
 8 *Vehicle Code.*

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

11 (c) *For the purposes of this section, the term “total both of the*  
 12 *following shall apply:*

13 (1) *“Total fine” means the base fine and all assessments,*  
 14 *penalties, and additional moneys to be paid by the defendant. For*  
 15 *purposes of this section, the*

16 (2) *The hourly rate applicable to community service work by*  
 17 *criminal defendants shall be determined by dividing the total fine*  
 18 *by the number of hours of community service ordered by the court*  
 19 *to be performed in lieu of the total fine.*

20 SEC. 3. Section 1214.1 of the Penal Code is amended to read:

21 1214.1. (a) In addition to any other penalty in infraction,  
 22 misdemeanor, or felony cases, the court may, *in its discretion,*  
 23 *waive or impose upon a particular defendant a civil assessment*  
 24 *of up to no less than ten dollars (\$10), but no greater than three*  
 25 *hundred dollars (\$300) against any, if that defendant who fails,*  
 26 *after notice and without good cause, to appear in court for any*  
 27 *proceeding authorized by law or who fails to pay all or any portion*  
 28 *of a fine ordered by the court or to pay an installment of bail as*  
 29 *agreed to under Section 40510.5 of the Vehicle Code. The amount*  
 30 *set shall be based on that defendant’s ability to pay. This*  
 31 *assessment shall be deposited in the Trial Court Trust Fund, as*  
 32 *provided in Section 68085.1 of the Government Code.*

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

1 installment of bail, the court shall vacate the assessment. *Ability*  
2 *to post bail is not a prerequisite to filing a request that the court*  
3 *vacate the assessment.*

4 (c) If a civil assessment is imposed under this section, ~~no~~ a  
5 bench warrant or warrant of arrest shall *not* be issued with respect  
6 to the failure to appear at the proceeding for which the assessment  
7 is imposed or the failure to pay the fine or installment of bail. An  
8 outstanding, unserved bench warrant or warrant of arrest for a  
9 failure to appear or for a failure to pay a fine or installment of bail  
10 shall be recalled prior to the subsequent imposition of a civil  
11 assessment.

12 (d) The assessment imposed under subdivision (a) shall be  
13 subject to the due process requirements governing defense and  
14 collection of civil money judgments generally. *The court shall not*  
15 *limit the grounds for good cause for failure to appear, and shall*  
16 *exercise its authority to waive civil assessments if the defendant*  
17 *meets the standards for vacating a civil assessment.*

18 (e) Each court and county shall maintain the collection program  
19 that was in effect on July 1, 2005, unless otherwise agreed to by  
20 the court and county. If a court and a county do not agree on a plan  
21 for the collection of civil assessments imposed pursuant to this  
22 section, or any other collections under Section 1463.010, after the  
23 implementation of Sections 68085.6 and 68085.7 of the  
24 Government Code, the court or the county may request arbitration  
25 by a third party mutually agreed upon by the Administrative  
26 Director of the Courts and the California State Association of  
27 Counties.

28 SEC. 4. Section 40509 of the Vehicle Code is amended to read:

29 40509. (a) Except as required under subdivision (c) of Section  
30 40509.5, if any person has violated a written promise to appear or  
31 a lawfully granted continuance of his or her promise to appear in  
32 court or before the person authorized to receive a deposit of bail,  
33 or violated an order to appear in court, including, but not limited  
34 to, a written notice to appear issued in accordance with Section  
35 40518, the magistrate or clerk of the court may give notice of the  
36 failure to appear to the department for any violation of this code,  
37 or any violation that can be heard by a juvenile traffic hearing  
38 referee pursuant to Section 256 of the Welfare and Institutions  
39 Code, or any violation of any other statute relating to the safe  
40 operation of a vehicle, except violations not required to be reported

1 pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b)  
2 of Section 1803. If thereafter the case in which the promise was  
3 given is adjudicated or the person who has violated the court order  
4 appears in court or otherwise satisfies the order of the court, the  
5 magistrate or clerk of the court hearing the case shall sign and file  
6 with the department a certificate to that effect.

7 (b) If any person has willfully failed to pay a lawfully imposed  
8 fine within the time authorized by the court or to pay a fine  
9 pursuant to subdivision (a) of Section 42003, the magistrate or  
10 clerk of the court may give notice of the fact to the department for  
11 any violation, except violations not required to be reported pursuant  
12 to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section  
13 1803. If thereafter the fine is fully paid, *an agreement is signed to*  
14 *pay the fine or bail in installments, or community service is*  
15 *performed pursuant to Section 1209.5 of the Penal Code, the*  
16 *magistrate or clerk of the court shall issue and file with the*  
17 *department a certificate showing that the fine has been paid or*  
18 *satisfied pursuant to Section 1209.5 of the Penal Code, or an*  
19 *agreement has been signed, and request that the license hold be*  
20 *lifted. The court shall not require the payment of bail before a*  
21 *person may request the court to vacate a civil assessment imposed*  
22 *under Section 1214.1. The court shall issue a certificate to the*  
23 *department to lift the hold on a driver's license if the person*  
24 *satisfies the order of the court.*

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

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

32 (3) This subdivision applies only to violations of this code that  
33 do not require a mandatory court appearance, are not contested by  
34 the defendant, and do not require proof of correction certified by  
35 the court.

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

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

4 SEC. 5. Section 40509.5 of the Vehicle Code is amended to  
5 read:

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

24 (b) If, with respect to an offense described in subdivision (e), a  
25 person has willfully failed to pay a lawfully imposed fine, or bail  
26 in installments as agreed to under Section 40510.5, within the time  
27 authorized by the court or to pay a fine pursuant to subdivision (a)  
28 of Section 42003, the magistrate or clerk of the court may give  
29 notice of the fact to the department for a violation, except violations  
30 not required to be reported pursuant to paragraphs (1), (2), (3), (6),  
31 and (7) of subdivision (b) of Section 1803. If thereafter the fine or  
32 bail is fully paid, *an agreement is signed to pay the fine or bail in*  
33 *installments, or community service is performed pursuant to*  
34 *Section 1209.5 of the Penal Code*, the magistrate or clerk of the  
35 court shall issue and file with the department a certificate showing  
36 that the fine or bail has been paid *or satisfied pursuant to Section*  
37 *1209.5 of the Penal Code, or an agreement has been signed, and*  
38 *request that the license hold be lifted. The court shall not require*  
39 *the payment of bail before a person may request the court to vacate*  
40 *a civil assessment imposed under Section 1214.1. The court shall*

1 *issue a certificate to the Department of Motor Vehicles to lift the*  
2 *hold on a driver's license if the person satisfies the order of the*  
3 *court.*

4 (c) If a person charged with a violation of Section 23152 or  
5 23153, or Section 191.5 of the Penal Code, or subdivision (a) of  
6 Section 192.5 of that code has violated a lawfully granted  
7 continuance of his or her promise to appear in court or is released  
8 from custody on his or her own recognizance and fails to appear  
9 in court or before the person authorized to receive a deposit of  
10 bail, or violated an order to appear in court, the magistrate or clerk  
11 of the court shall give notice to the department of the failure to  
12 appear. If thereafter the case in which the notice was given is  
13 adjudicated or the person who has violated the court order appears  
14 in court or otherwise satisfies the order of the court, the magistrate  
15 or clerk of the court hearing the case shall prepare and forward to  
16 the department a certificate to that effect.

17 (d) Except as required under subdivision (c), the court shall mail  
18 a courtesy warning notice to the defendant by first-class mail at  
19 the address shown on the notice to appear, at least ~~10~~ 30 days  
20 before sending a notice to the department under this section.

21 (e) If the court notifies the department of a failure to appear or  
22 pay a fine or bail pursuant to subdivision (a) or (b), no arrest  
23 warrant shall be issued for an alleged violation of subdivision (a)  
24 or (b) of Section 40508, unless one of the following criteria is met:

25 (1) The alleged underlying offense is a misdemeanor or felony.  
26 (2) The alleged underlying offense is a violation of any provision  
27 of Division 12 (commencing with Section 24000), Division 13  
28 (commencing with Section 29000), or Division 15 (commencing  
29 with Section 35000), required to be reported pursuant to Section  
30 1803.

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

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

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

39 (g) This section is applicable to courts that have elected to  
40 provide notice pursuant to subdivision (b). The method of

1 commencing or terminating an election to proceed under this  
2 section shall be prescribed by the department.

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

6 SEC. 6. Section 42003 of the Vehicle Code is amended to read:

7 42003. (a) A judgment that a person convicted of an infraction  
8 be punished by a fine may also provide for the payment to be made  
9 within a specified time or in specified installments. A judgment  
10 granting a defendant time to pay the fine shall order that if the  
11 defendant fails to pay the fine or any installment thereof on the  
12 date that it is due, he or she shall appear in court on that date for  
13 further proceedings. Willful violation of the order is punishable  
14 as contempt.

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

23 (c) (1) In any case when a person appears before a traffic  
24 referee or judge of the superior court for adjudication of a violation  
25 of this code, the court, upon request of the defendant, shall consider  
26 the defendant's ability to pay. Consideration of a defendant's ability  
27 to pay may include his or her future earning capacity. A defendant  
28 shall bear the burden of demonstrating lack of his or her ability to  
29 pay. Express findings by the court as to the factors bearing on the  
30 amount of the fine shall not be required. The reasonable cost of  
31 these services and of probation shall not exceed the amount  
32 determined to be the actual average cost thereof. The court shall  
33 order the defendant to appear before a county officer designated  
34 by the court to make an inquiry into the ability of the defendant  
35 to pay all or a portion of those costs or the court or traffic referee  
36 may make this determination at a hearing. At that hearing, the  
37 defendant shall be entitled to have, but shall not be limited to, the  
38 opportunity to be heard in person, to present witnesses and other  
39 documentary evidence, to confront and cross-examine adverse  
40 witnesses, to disclosure of the evidence against him or her, and to

1 a written statement of the findings of the court or the county officer.  
2 If the court determines that the defendant has the ability to pay all  
3 or part of the costs, the court shall set the amount to be reimbursed  
4 and order the defendant to pay that sum to the county in the manner  
5 in which the court believes reasonable and compatible with the  
6 defendant's financial ability; or, with the consent of a defendant  
7 who is placed on probation, the court shall order the probation  
8 officer to set the amount of payment, which shall not exceed the  
9 maximum amount set by the court, and the manner in which the  
10 payment shall be made to the county. In making a determination  
11 of whether a defendant has the ability to pay, the court shall take  
12 into account the amount of any fine imposed upon the defendant  
13 and any amount the defendant has been ordered to pay in  
14 restitution.

15 ~~The~~

16 (2) *The* court may hold additional hearings during the  
17 probationary period. If practicable, the court or the probation officer  
18 shall order payments to be made on a monthly basis. Execution  
19 may be issued on the order in the same manner as a judgment in  
20 a civil action. The order to pay all or part of the costs shall not be  
21 enforced by contempt.

22 ~~A~~

23 (3) A payment schedule for reimbursement of the costs of  
24 presentence investigation based on income shall be developed by  
25 the probation department of each county and approved by the  
26 presiding judge of the superior court.

27 (d) *The court may presume that any defendant who demonstrates*  
28 *that he or she is receiving public benefits under one or more of*  
29 *the following programs does not have the ability to pay:*

30 (1) *Supplemental Security Income (SSI) and State Supplementary*  
31 *Payment (SSP) (Article 5 (commencing with Section 12200) of*  
32 *Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions*  
33 *Code).*

34 (2) *California Work Opportunity and Responsibility to Kids Act*  
35 *(CalWORKs) (Chapter 2 (commencing with Section 11200) of Part*  
36 *3 of Division 9 of the Welfare and Institutions Code) or a federal*  
37 *Tribal Temporary Assistance for Needy Families (Tribal TANF)*  
38 *grant program (Section 10553.25 of the Welfare and Institutions*  
39 *Code).*



1 (3) *Supplemental Nutrition Assistance Program (Chapter 51*  
2 *(commencing with Section 2011) of Title 7 of the United States*  
3 *Code) or the California Food Assistance Program (Chapter 10.1*  
4 *(commencing with Section 18930) of Part 6 of Division 9 of the*  
5 *Welfare and Institutions Code).*

6 (4) *County Relief, General Relief (GR), or General Assistance*  
7 *(GA) (Part 5 (commencing with Section 17000) of Division 9 of*  
8 *the Welfare and Institutions Code).*

9 (5) *Cash Assistance Program for Aged, Blind, and Disabled*  
10 *Legal Immigrants (CAPI) (Chapter 10.3 (commencing with Section*  
11 *18937) of Part 6 of Division 9 of the Welfare and Institutions*  
12 *Code).*

13 (6) *In-Home Supportive Services (IHSS) (Article 7 (commencing*  
14 *with Section 12300) of Chapter 3 of Part 3 of Division 9 of the*  
15 *Welfare and Institutions Code).*

16 (7) *Medi-Cal (Chapter 7 (commencing with Section 14000) of*  
17 *Part 3 of Division 9 of the Welfare and Institutions Code).*

18 (e) *The court shall advise the defendant of the right to a*  
19 *determination of the ability to pay pursuant to subdivision (c) or*  
20 *(d) at the time of rendering judgment.*

21 ~~(e)~~

22 (f) The term “ability to pay” means the overall capability of the  
23 defendant to reimburse the costs, or a portion of the costs, of  
24 conducting the presentence investigation, preparing the presentence  
25 report, and probation, and includes, but is not limited to, all of the  
26 following regarding the defendant:

27 (1) Present financial position.

28 (2) Reasonably discernible future financial position. In no event  
29 shall the court consider a period of more than six months from the  
30 date of the hearing for purposes of determining reasonably  
31 discernible future financial position.

32 (3) Likelihood that the defendant will be able to obtain  
33 employment within the six-month period from the date of the  
34 hearing.

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

37 ~~(e)~~

38 (g) At any time during the pendency of the judgment rendered  
39 according to the terms of this section, a defendant against whom  
40 a judgment has been rendered may petition the rendering court to

1 modify or vacate its previous judgment on the grounds of a change  
2 of circumstances with regard to the defendant's ability to pay the  
3 judgment. The court shall advise the defendant of this right at the  
4 time of rendering of the judgment.

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