
THIRD READING

Bill No: AB 304
Author: Holden (D), et al.
Amended: 9/1/23 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 7/11/23
AYES: Bradford, Ochoa Bogh, Skinner, Wiener
NO VOTE RECORDED: Wahab

SENATE APPROPRIATIONS COMMITTEE: 6-0, 9/1/23
AYES: Portantino, Jones, Ashby, Bradford, Wahab, Wiener
NO VOTE RECORDED: Seyarto

ASSEMBLY FLOOR: 72-0, 5/31/23 - See last page for vote

SUBJECT: Domestic violence: probation

SOURCE: Author

DIGEST: This bill transfers responsibility for approving batterer's intervention programs from county probation departments to the Department of Justice (DOJ); requires DOJ to oversee the batterer's intervention programs; and requires the Judicial Council to makes changes to judicial training programs on domestic violence.

ANALYSIS:

Existing law:

- 1) Requires a person granted probation for domestic violence to serve a minimum period of probation of 36 months, which may include a period of summary probation as appropriate. (Pen. Code, § 1203.097 subd. (a)(1).)

- 2) Requires the term of probation for domestic violence to include a criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions. (Pen. Code, § 1203.097, subd. (a)(2).)
- 3) Requires the term of probation for domestic violence to include notice to the victim of the disposition of the case. (Pen. Code, § 1203.097, subd. (a)(3).)
- 4) Requires the term of probation for domestic violence to include booking the defendant within one week of sentencing if the defendant has not already been booked. (Pen. Code, § 1203.097, subd. (a)(4).)
- 5) Requires a person granted probation for domestic violence to successfully complete a batterer's program, as specified, or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. (Pen. Code, § 1203.097, subd. (a)(6).)
- 6) Requires a person granted probation for domestic violence to attend consecutive weekly sessions of a batterer's program, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program. (Pen. Code, § 1203.097, subd. (a)(6).)
- 7) Requires completion of the batterer's program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months. (Pen. Code, § 1203.097, subd. (a)(6).)
- 8) Requires the court to order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay. (Pen. Code, § 1203.097, subd. (a)(7).)
- 9) Requires the batterer's program, if it finds that the defendant is unsuitable, to immediately contact the probation department or the court. Requires the probation department or the court, if notified that the batterer's program has found that the defendant is unsuitable, to either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program. (Pen. Code, § 1203.097, subd. (a)(9).)

- 10) Requires a court, upon recommendation of the batterer's program, to order defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. (Pen. Code, §1203.097, subd. (a)(10)(A).)
- 11) Requires the batterer's program to immediately report a violation of the terms of the protective order, including any new acts, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation is ordered, to the probation department. (Pen. Code, 1203.097, subd. (a)(10)(B).)
- 12) Requires when a person is granted formal probation for domestic violence, all of the following in addition to the terms specified above:
 - a) Requires the probation department to make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant.
 - b) Requires the court to advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect.
(Pen. Code, § 1203.097, subd. (b).)
- 13) Requires the court or the probation department to refer defendants only to batterer's programs that follow specified standards, which may include, but are not limited to, lectures, classes, group discussions, and counseling. Requires the probation department to design and implement an approval and renewal process for batterer's programs and to solicit input from criminal justice agencies and domestic violence victim advocacy programs. (Pen. Code, § 1203.097, subd. (c).)

- 14) Requires the court to only refer persons to batterer's programs that have been approved by the probation department. (Pen. Code, § 1203.097, subd. (c)(2).)
- 15) Requires the probation department to have the sole authority to approve a batterer's program for probation. Requires approval to be renewed annually. (Pen. Code, § 1203.097, subd. (c)(5).)
- 16) Requires the Judicial Council to establish judicial training programs for individuals who perform duties in domestic violence matters, including, but not limited to, judges, referees, commissioners, mediators, and others as deemed appropriate by the Judicial Council. Requires the training programs to include a domestic violence session in any orientation session conducted for newly appointed or elected judges and an annual training session in domestic violence. Requires the training programs to include instruction in all aspects of domestic violence, including, but not limited to, the detriment to children of residing with a person who perpetrates domestic violence and that domestic violence can occur without a party seeking or obtaining a restraining order, without a substantiated child protective services finding, and without other documented evidence of abuse. (Gov. Code, § 68555.)

This bill:

- 1) Requires the judicial training programs for individuals who perform duties in domestic violence matters to include instruction in all aspects of domestic violence, including, but not limited to:
 - a) Implicit and explicit bias related to parties involved in domestic violence cases;
 - b) Trauma;
 - c) Coercive control;
 - d) Victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;
 - e) The detriment to children residing with a person who perpetrates domestic violence; and,
 - f) That domestic violence can occur without a party seeking or obtaining a restraining order, without a substantiated child protective services finding, and without other documented evidence of abuse.
- 2) Requires the court to inform a defendant who is required to attend a batterer's intervention program as a requirement of probation, of the availability of a

program fee waiver if the defendant does not have the ability to pay the fee.

- 3) Provides that a program provider must report a violation of the terms of a protective order by the defendant within seven business days.
- 4) Requires the investigation that probation must make to take into consideration the defendant's sexual orientation, gender identity, financial means, language-access needs, cultural identity.
- 5) Requires the probation department to promptly notify each program in which the defendant is required to participate as a part of probation of all of the court-mandated programs in which the defendant is required to participate and all of the defendant's probation violations pertaining to a domestic violence offense.
- 6) Requires the court to provide a defendant with a selection of available program providers, including the program providers' standard fees and sliding fee scales, upon the defendant's request.
- 7) Requires program providers to post publicly, including on a website, a comprehensive description of their sliding fee scale.
- 8) Transfers the responsibility for approving batterer's intervention programs from probation departments to the DOJ.
- 9) Requires DOJ, beginning on April 1, 2024, to be responsible for all of the following to ensure compliance with state law:
 - a) Collaborating with Judicial Council and relevant stakeholders to set program provider standards;
 - b) Approving, monitoring, and renewing approvals of program providers;
 - c) Conducting periodic audits of program providers;
 - d) Developing, in consultation with the Injury and Violence Prevention Branch of the State Department of Public Health, comprehensive, statewide standards through regulations, including, but not limited to:
 - i) Program provider curricula; and,
 - ii) Training for social workers, counselors, probation departments, peace officers, and others involved in the enforcement of domestic violence crimes or the monitoring or rehabilitation of individuals convicted of

domestic violence crimes in all aspects of domestic violence, including, but not limited to:

- iii) Implicit and explicit bias related to parties involved in domestic violence cases;
 - a. Trauma and emotional abuse;
 - b. Coercive control; and,
 - c. Victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence.
 - e) Identifying and developing a comprehensive final assessment tool to assess whether a defendant has satisfactorily completed the requirements of the program.
 - f) Analyzing the effectiveness of programs, including, but not limited to, through the tracking of relevant offender and program data.
- 10) Requires Judicial Council to establish guidelines and training for judges to ensure the consistent adjudication of probation violations by April 1, 2024.
 - 11) Defines “program provider” as a provider of a batterer’s program, as specified, or if none is available, another appropriate counseling program.
 - 12) Provides that program providers do not include alcohol or drug counseling or alcohol and drug programs, as specified.
 - 13) Makes other technical and conforming changes.
 - 14) Includes uncodified legislative findings and declarations.

Background

State Auditor’s Report

In October 2022, the California State Auditor published its report on the state’s batterer interventions programs. The Auditor examined the administration and oversight of a sample of the state’s batterer intervention programs in five counties—Alameda, Contra Costa, Del Norte, Los Angeles, and San Joaquin. The Auditor found that individuals convicted of domestic violence and who completed the required batterer’s intervention program were “far less likely to reoffend” than

those who did not complete the program. However, nearly half of the offenders reviewed did not complete the full program, and the majority of those individuals subsequently reoffended. (State Auditor, *Batterer Intervention Programs: State Guidance and Oversight Are Needed to Effectively Reduce Domestic Violence*, Report 2021-113, p. 1 <<https://www.auditor.ca.gov/pdfs/reports/2021-113.pdf> .)

The State Auditor found “probation departments did not consistently assess all offenders for underlying issues, such as mental health or substance abuse concerns, that might interfere with an offender’s ability to complete a program.” (*Id.* at p. 2.) Additionally, probation departments, program providers, and courts generally did not hold many of the offenders accountable for probation and program violations. (*Ibid.*) Finally, “even when notified about offenders’ violations, the courts, in some instances, referred the offenders back to a program without imposing additional consequences.” (*Ibid.*) The report opined that “decisions not to impose escalating penalties on offenders who violate their probation likely weakens the impact of programs.” (*Ibid.*)

The State Auditor found that many of the deficiencies identified with the administration and oversight of the batterer intervention system were due in part to the fact that “none of the five probation departments had established sufficient standards, policies, and procedures for overseeing program providers and ensuring program compliance.” (*Ibid.*) Lack of adequate oversight led some program providers to fail to supervise offenders appropriately or to report required information to the courts and probation departments. (*Ibid.*) In addition, the probation departments often failed to conduct required annual on-site visits of programs leading to program providers’ noncompliance going unnoticed which resulted in the approval or renewal of providers not in full compliance with state law. (*Ibid.*)

The State Auditor concluded that the efficacy of batterer’s intervention programs would benefit from transferring oversight authority from county probation departments and courts to the state:

[A] statewide oversight agency in California could provide comprehensive guidance to program providers, rather than the inconsistent and inadequate guidance providers currently receive from county probation departments. The oversight agency could also standardize program curriculum and instructor qualification requirements; track and analyze offender and program data; and collaborate with relevant stakeholders to recommend quality

improvements to ensure that programs achieve the desired outcomes. Finally, the oversight agency could work with the Judicial Council of California (Judicial Council) to ensure that the courts and judges have sufficient guidance on holding offenders accountable when they violate the conditions of their probation. Without this additional oversight, it will be difficult for policymakers to make informed decisions about how to improve California's approach to reducing domestic violence. (*Id.* at p. 3.)

Based on its findings, the Auditor recommended that the Legislature designate the Department of Justice to be responsible for oversight of the state's batterer intervention system with the following duties:

- Approving, monitoring, and renewing all program providers.
- Conducting periodic audits of probation departments and program providers.
- Establishing statewide comprehensive standards through regulations, including but not limited to, facilitators' educational requirements and a 52-week curriculum.
- Identifying or developing a comprehensive offender assessment tool.
- Collaborating with the Judicial Council and relevant stakeholders, such as law enforcement representatives, mental health professionals, rehabilitative experts, victims' advocates, and district attorneys, to set standards for programs.
- Tracking relevant offender and program data to analyze program effectiveness. (*Id.* at p. 6.)

This bill adopts several of the above recommendations.

FISCAL EFFECT: Appropriation: No Fiscal Com.:Yes Local:Yes

According to the Senate Appropriations Committee:

- The DOJ reports costs of approximately \$28.9 million in 2023-24, \$34.6 million annually thereafter to design and implement an approval and renewal process for batterer's programs and counseling programs with input from criminal justice agencies and domestic violence victim advocacy programs, and to oversee the approval, renewal, revocation and suspension of such programs (General Fund).

- The JCC reports ongoing annual costs of approximately \$1 million for additional staff to create the new training programs in six specified areas of instruction and provide them specified judicial officers during orientation, annual training, and with periodic updates (General Fund).
- Costs in the low to mid hundreds of thousands to the California Department of Public Health (CDPH) for additional staffing to consult with DOJ to develop comprehensive standards through regulations, including, but not limited to, program provider curricula and training to various professions involved in the enforcement of domestic violence crimes or the monitoring or rehabilitation of individuals convicted of domestic violence crimes (General Fund).
- Unknown, potentially reimbursable costs to local probation departments as a result of additional reporting requirements imposed by AB 304 (local funds, General Fund). General Fund costs will depend on whether this bill imposes a reimbursable state mandate as determined by the Commission on State Mandates. The bill may simultaneously result in significant savings to local probation departments as a result of transferring responsibility for the BIP to the DOJ.

SUPPORT: (Verified 9/1/23)

California Attorneys for Criminal Justice
California Public Defenders Association
Little Hoover Commission
Los Angeles County District Attorney's Office

OPPOSITION: (Verified 9/1/23)

Association of Orange County Deputy Sheriffs
California Fraternal Order of Police
Chief Probation Officers' of California
Judicial Council of California
Sacramento County Probation Association
San Diego County Probation Officers Association
San Joaquin County Probation Officers Association
State Coalition of Probation Organizations

ASSEMBLY FLOOR: 72-0, 5/31/23

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Megan Dahle, Dixon, Essayli, Flora, Mike Fong,

Vince Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Santiago, Schiavo, Soria, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

NO VOTE RECORDED: Chen, Davies, Stephanie Nguyen, Ramos, Rodriguez, Blanca Rubio, Sanchez, Ta

Prepared by: Stephanie Jordan / PUB. S. /
9/5/23 10:01:17

**** END ****