
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 372 **Hearing Date:** July 11, 2017
Author: Mark Stone
Version: June 19, 2017
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Domestic Violence: Probation*

HISTORY

Source: California State Association of Counties
Chief Probation Officers of California

Prior Legislation: AB 1886 (Lowenthal) Ch. 544, Stats. of 2000
AB 93X (Burton) Ch. 28, Stats. of 1994

Support: Alameda County District Attorney's Office; Catholic Conference; California Federation of Teachers; County Behavioral Health Directors Association of California; Los Angeles County Professional Peace Officers Association; Los Angeles County Probation Officers Union; National Association of Social Workers, California Chapter; Santa Clara County Board of Supervisors; California Protective Parents Association (if amended)

Opposition: Center for Domestic Peace (unless amended); City and County of San Francisco Department on the Status of Women (unless amended); Domestic Abuse Center; Family Violence Appellate Project (unless amended); Family Violence Law Center (unless amended); Los Angeles County Board of Supervisors (unless amended); Next Door Solutions to Domestic Violence (unless amended); San Francisco Domestic Violence Consortium; San Francisco District Attorney's Office (unless amended); Turning Point Counseling and Educational Services (unless amended)

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to modify the components of a batterer's treatment program, establish requirements for the provider of a batterer's treatment program, and establish additional requirements when the probation department conducts its initial assessment.

Existing law defines "domestic violence" in the Family Code as abuse perpetrated against any of the following persons:

- a) A spouse or former spouse;

- b) A cohabitant or former cohabitant;
- c) A person with whom the defendant is having or has had a dating or engagement relationship;
- d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent;
- e) A child of a party or a child where the presumption applies that the male parent is the father of the child to be protected; and,
- f) Any other person related by consanguinity or affinity within the second degree. (Fam. Code, § 6211.)

Existing law requires a person convicted of domestic violence who receives probation 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 52 weeks 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. The defendant is required to attend consecutive weekly sessions unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program, and is required to complete the 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).)

Existing law 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. If requested, this information shall be provided to the batterer's program. (Pen. Code § 1203.097, subd. (b)(1).)

Existing law requires the probation department to also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department is required report its findings and recommendations to the court. (Pen. Code § 1203.097, subd. (b)(1).)

Existing law provides that after the court orders the defendant to a batterer's program, the probation department is required to conduct an initial assessment of the defendant, including, but not limited to, all of the following:

- a) Social, economic, and family background;
- b) Education;
- c) Vocational achievements;
- d) Criminal history;

- e) Medical history;
- f) Substance abuse history;
- g) Consultation with the probation officer;
- h) Verbal consultation with the victim, only if the victim desires to participate; and,
- i) Assessment of the future probability of the defendant committing murder. (Pen. Code § 1203.097, subd. (b)(3)(A)-(I).)

Existing law requires the court or the probation department to refer defendants only to batterer's programs that follow standards as outlined below, which may include, but are not limited to, lectures, classes, group discussions, and counseling. The probation department is required to design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs. (Pen. Code § 1203.097, subd. (c).)

Existing law specifies that the goal of a batterer's program is to stop domestic violence and that it shall consist of the following components:

- a) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence;
- b) A requirement that the defendant participate in ongoing same-gender group sessions;
- c) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse;
- d) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent;
- e) A requirement that the defendant attend group sessions free of chemical influence;
- f) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others;
- g) A requirement that excludes any couple counseling or family counseling, or both;
- h) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program;

- i) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system;
- j) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers;
- k) A requirement that the defendant enter into a written agreement with the program, which shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program;
- l) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program;
- m) Program content that provides cultural and ethnic sensitivity;
- n) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court;
- o) Procedures for submitting to the probation department uniform written responses to include proof of enrollment, periodic progress reports, and a final evaluation of the defendant's progress; and,
- p) A sliding fee schedule based on the defendant's ability to pay, as specified. (Pen. Code § 1203.097, subd. (c)(1).)

Existing law authorizes the court to refer persons only to batterer's programs that have been approved by the probation department, as specified. (Pen. Code § 1203.097, subd. (c)(2).)

Existing law defines "evidence-based practices" as "supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or post release supervision." (Pen. Code, § 17.5, subd. (a)(9).)

This bill provides that the defendant shall be granted no more than five excused absences, rather than three, for good cause during the entire program.

This bill provides that after the court orders the defendant to a batterer's program, the probation department is required to conduct an initial assessment of the defendant for the purpose of supporting the determination of the offender's criminogenic risks and needs, and the commensurate corrective and rehabilitative services and treatment designed to reduce the offender's short- and long-term risk of violence and reoffending. This assessment is required to include a verbal consultation with the victim, if the victim desires to participate, and an assessment of the future probability of the defendant committing murder.

This bill provides that the goal of a batterer's program is to stop domestic violence through effective programming that includes components which are evidence-based or promising

practices and that address the criminogenic needs of batterers that can be reasonable addressed within the scope of the program.

This bill modifies the components of a batterer's program, to add the following requirements:

- a) Evidence-based or promising practices for reducing client resistance to change in unwanted behaviors and habits;
- b) A skill-based and insight-oriented curriculum that includes structured cognitive behavioral treatments and interventions that have proven to be effective; and,
- c) Program content that incorporates trauma-informed practices.

This bill requires that a provider of a batterer's treatment program, as opposed to a batterer's program, have all of the following:

- a) A comprehensive written curriculum that informs the operations of the program and outlines the treatment and intervention modalities.
- b) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse;
- c) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources and that attendance in any program does not guarantee that an abuser will not be violent;
- d) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program;
- e) Procedures to ensure that, to the extent possible, a defendant identified as low risk shall not be included in the same classes as a defendant determined to have a high risk level.
- f) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system;
- g) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers; and,
- h) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program.
- i) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the

defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

This bill defines “evidence-based program or practice” as a program or practice that has a high level of research indicating its effectiveness, determined as a result of multiple rigorous evaluations including randomized controlled trials and evaluations that incorporate strong comparison group designs, or a single large multisite randomized study, and, typically, has specified procedures that allow for successful replication.

This bill defines “promising program or practice” as a program or practice that has some research demonstrating its effectiveness but does not meet the full criteria for an evidence-based designation.

This bill makes other conforming changes.

This bill provides that the effective date of the above provisions is July 1, 2018.

COMMENTS

1. Need for This Bill

According to the author:

In the early 1990’s California led the nation when it established a mandatory 52 week batterer intervention program (BIPs) for people placed on probation for domestic violence battery. Under state law, probation chiefs are responsible for assessing offender needs and certifying and monitoring BIPs. However, most of these programs have not been updated since 1994 nor are they evidence based.

In 2012, the Crime and Justice Institute released a report that found domestic violence offenders have an incredibly high right of recidivism. Studies using direct victim interviews estimate relapse violence in 40%-80% of the cases. The report found that most court-mandated batterer intervention programs do not reduce recidivism or alter batterers’ attitudes about violence.

Furthermore, the requirements to satisfy the batter intervention programs are incredibly hard to meet. Offenders must attend 52 weeks of programming, only being able to miss three. If they miss more than three, the clock resets and they must start all over at week one. This tedious program should help offenders learn not to recidivate instead of placing them in a situation that teaches nothing.

AB 372 will update California code to provide counties the opportunity to make sure their programs best fit the needs of the offenders. It will require that the goal of a batterer intervention program to be stopping domestic violence through evidence based or promising practice programs that will reduce recidivism. To do this it will ensure that offenders be given an initial assessment by probation to

determine the offenders criminogenic needs and determine the short and long term risk of violence and reoffending. It will also require the use of a written curriculum and adds that trauma informed practice be included within the program.

2. Evidence-Based Practices as Applied to Domestic Violence Offender Assessment, Treatment, and Supervision

“Domestic violence offenders generally have a high rate of recidivism. Studies using direct victim interviews over a period of time estimate repeat violence in the range of 40 to 80 percent of cases.” (Webster & Bechtel, *Evidence-Based Practices for Assessing, Supervising and Treating Domestic Violence Offender* (Aug. 2012) Crime and Justice Institute at Community Resources for Justice, p. 10, citation in footnote omitted.) “[D]omestic violence is a complicated community problem and we have yet to figure out what works for effectively intervening with batterers to reduce recidivism. Research to date has indicated that the most common court-mandated batterer intervention programs do not reduce recidivism or alter batterers’ attitudes about violence.” (Id. at p. 12, citation in footnote omitted.) “Community supervision agencies are struggling with budget cuts, high caseloads and pressure to reduce failure rates. A growing body of literature points to four core practices that when implemented as a system can contribute to reductions in reoffending. These include (1) use a risk assessment tool to identify criminogenic risks and needs; (2) employ tailored supervision strategies and treatment plans; (3) implement a system of rewards and sanctions; and (4) provide skill-building support for probation officers.” (Id. at p. ii.)

3. Judicial Council Study

The Judicial Council conducted a study of the state’s batterer intervention programs (BIPs) and published the findings in 2009. (Judicial Council of California, *Batterer Intervention Systems in California* <<http://www.courts.ca.gov/documents/batterer-report.pdf>> [as of Jun. 21, 2017].) The study concluded the following:

- The men who find their way into the justice system and ultimately enroll in BIPs appear to be non-representative of the larger social problem of domestic violence. The sample of men convicted of domestic violence offenses drawn for this study generally had low levels of educational attainment, were poor, majority Hispanic, and had lengthy criminal records;
- Slightly more than one third of the men convicted of domestic violence in our sample report that they still live with their victim; about one third of the men reported that they live with children;
- BIPs appear to incorporate multiple approaches to intervention with domestic violence offenders into their programs, integrating components of cognitive behavioral therapy, the Duluth model and other methods that they determine are appropriate and effective;
- The educational topics that BIPs identified as important to helping offenders end their abuse appear to be consistent with the legislative requirements for these programs;
- Offenders’ rates of program completion varied across different BIPs. The reason for this,

however, appears to be in part that the characteristics of men who are enrolled in different BIPs varies systematically across programs. The statistical significance of the differences in program completion across BIPs declines as additional, individual-level variables are added to the model;

- In contrast to the weak correlation between program completion and BIP, there is no statistical association at all between programs and an offender's likelihood of re-offense;
- For offenders who successfully completed the 52-week BIP, attitudes and beliefs showed small, positive, changes along a number of dimensions including taking greater personal responsibility, understanding the effect of abuse on others, and anger management;
- The strongest predictors of whether or not men were re-arrested following intake in a BIP were individual characteristics of the offenders, not the characteristics of jurisdictions or BIPs in which offenders were enrolled. Men who were more educated, older, had shorter criminal histories, and did not display clear signs of drug or alcohol dependence had a lower likelihood of re-arrest;
- Whether probation or the court is primarily responsible for oversight of the offenders made no difference in the likelihood of re-arrest.

In addition, the study raised the following issues that may have policy implications:

- Because of the salience of individual characteristics in predicting program completion and re-offense, enhanced risk and needs assessment at intake may improve offender treatment.
- Drug/alcohol treatment may be essential to help offenders end their abuse.
- The current BIP fee structure may hinder differentiated case management.
- The effort to understand the impact of the justice system as a whole is hampered by variation *within* jurisdictions.
- Clearer specification of system intervention measures is needed.
- More information on BIPs is needed to understand and identify promising practices.

4. Considerations

Should the terms “trauma-informed practices” and “criminogenic needs” be defined?

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