
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: AB 304 **Hearing Date:** July 11, 2023
Author: Holden
Version: May 18, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Domestic violence: probation*

HISTORY

Source: Author

Prior Legislation: SB 616 (Rubio), died on the Senate Inactive File in 2022
AB 372 (Stone), Ch. 290, Stats. 2018
AB 1886 (Lowenthal), Ch. 544, Stats. 2000
SB 218 (Solis), Chapter 662, Stats. 1999
AB 93X (Burton), Ch. 28, Stats. 1994

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

Opposition: Association of Orange County Deputy Sheriffs; California Fraternal Order of Police; Sacramento County Probation Association; San Diego County Probation Officers Association; San Joaquin County Probation Officers Association; State Coalition of Probation Organizations; Chief Probation Officers' of California (unless amended); Judicial Council of California (unless amended)

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to transfer responsibility for approving batterer's intervention programs from county probation departments to the Department of Justice (DOJ); require DOJ to oversee the batterer's intervention programs; and require the Judicial Council to make changes to judicial training programs on domestic violence.

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law requires when a person is granted formal probation for domestic violence, all of the following in addition to the terms specified above:

- 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.

- 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).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law 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 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:

- Implicit and explicit bias related to parties involved in domestic violence cases;
- Trauma;
- Coercive control;
- Victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;
- The detriment to children 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.

This bill 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.

This bill provides that a program provider must report a violation of the terms of a protective order by the defendant within seven business days.

This bill 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.

This bill 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.

This bill 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.

This bill requires program providers to post publicly, including on a website, a comprehensive description of their sliding fee scale.

This bill transfers the responsibility for approving batterer's intervention programs from probation departments to the DOJ.

This bill requires DOJ, beginning on April 1, 2024, to oversee the probation departments and program providers to ensure compliance with state law.

This bill requires DOJ to be responsible for all of the following:

- Collaborating with Judicial Council and relevant stakeholders to set program provider standards;
- Approving, monitoring, and renewing approvals of program providers;
- Conducting periodic audits of probation departments and program providers;
- 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:
 - Program provider curricula; and,
 - 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:
 - Implicit and explicit bias related to parties involved in domestic violence cases;
 - Trauma and emotional abuse;
 - Coercive control; and,
 - Victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence.

- Identifying and developing a comprehensive final assessment tool to assess whether a defendant has satisfactorily completed the requirements of the program.
- Analyzing the effectiveness of programs, including, but not limited to, through the tracking of relevant offender and program data.

This bill requires Judicial Council to establish guidelines and training for judges to ensure the consistent adjudication of probation violations by April 1, 2024.

This bill defines “program provider” as a provider of a batterer’s program, as specified, or if none is available, another appropriate counseling program.

This bill provides that program providers do not include alcohol or drug counseling or alcohol and drug programs, as specified.

This bill makes other technical and conforming changes.

This bill includes uncodified legislative findings and declarations.

COMMENTS

1. Need For This Bill

According to the author:

Despite its efforts over the last three decades, the California Legislature and other state agencies have struggled to implement effective domestic violence diversion tactics. An investigation by the California State Auditor of our batterer intervention programs has revealed a disparity in oversight on the part of probation departments and courts. This, coupled with the insufficient training for those involved in handling domestic violence incidents, has very real implications for domestic violence survivors. This widespread issue affects more people than we realize. Between 2012 and 2021 approximately 1.6 million calls for domestic-violence related assistance were made in California. We already have the infrastructure to help, but are falling short in its oversight and implementation. It is pertinent we revise our batterer intervention system to make it more effective in protecting domestic violence survivors and rehabilitating domestic violence offenders.

2. 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 most of the above recommendations.

3. AB 372 Pilot Program

AB 372 (Stone) authorized the Counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer an alternative program for individuals convicted of domestic violence that does not comply with the requirement of the batterer's program under Penal Code section 1203.097. AB 372 was introduced to permit counties to offer batterer intervention programs that were more tailored to an individual offender's needs and to update the curriculum of those programs to incorporate evidence-based practices.

Penal Code section 1203.099 requires participating counties to collect specified information regarding program participants, including "the offender's outcome at the time of program completion, and six months after completion, including subsequent restraining order violations, arrests and convictions, and feedback provided by the victim if the victim desires to participate." (Pen. Code, § 1203.099, subd. (a)(7)(E).) Preliminary data on the alternative programs being offered by participating counties is promising. However, the most recent report on the pilot program notes that a "more nuanced" approach to examining local recidivism data is necessary to determining the success of the alternative programs in reducing domestic violence. (California State Association of Counties, *AB 372 Legislative Report: Year 3*, p. 16 <https://www.counties.org/sites/main/files/file-attachments/ab372_year_3_legislative_report.pdf>.) This conclusion was reached in part due to the fact that Penal Code section 1203.099 does not require new arrests or convictions to be related to domestic violence. The Year Three report found that for individuals who entered the program in fiscal year 2021, the second year of its existence, "nearly half (45%) had shown a positive completion of the program." (*Id.* at p. 14.) Positive completion is defined as completing the program, and for some counties, paying all program fees.

Authorization for the pilot program is set to expire July 1, 2023. AB 479 (Rubio) would extend the sunset date for the pilot program to July 1, 2026. The extension of the pilot program will allow the participating counties to continue to gather and report data that may inform future conversations regarding program standards and curricula. The bill is currently awaiting Governor Newsom's signature.

4. Comment

Although it has not taken a formal position supporting or opposing this bill, the California Partnership to End Domestic Violence submitted a joint letter with the Alliance for Boys and Men of Color letter voicing a number of concerns. The organizations write:

[T]here are components to the current bill language that spark concern and we've compiled some feedback that we believe will minimize unintended consequences...:

Oversight Entity: While we agree that probation is not fit to oversee and manage batterer intervention programs, we do not think that the Department of Justice (DOJ) is the right place for these responsibilities to be located. ... Instead, we recommend that oversight of BIPs be moved to a government agency that has expertise in behavioral health and public health approaches to addressing violence.

...

Inclusion of Relevant Stakeholders and Continuous Improvement of Programs: AB 304 mentions “collaborating with the Judicial Council and relevant stakeholders to set program provider standards” and “developing, in consultation with the ... State Department of Public Health, comprehensive standards through regulations.” While this language is a step in the right direction, it does not go far enough to provide inclusion of the necessary experts and stakeholders. ...

...

Judicial Training: We believe that Judicial training is important and support that focus. We are however cautious about a proscriptive list of topics. ...

Addressing Absences: Our organization would like to continue exploring changes to the absences policy that will support participants in successfully completing the program.

...

Addressing the sustainability of batterer intervention programs: This bill does not address the financial challenges for batterer intervention programs operating under the current funding structure. ... We believe that a more sustainable funding structure is essential to support these programs in providing high-quality content and continuing to innovate and adapt their work to meet the needs of the individuals they work with.

5. Arguments in Support

The Little Hoover Commission writes:

In its 2021 report, *Beyond the Crisis: A Long-Term Approach to Reduce, Prevent, and Recover from Intimate Partner Violence*, the Commission found that California’s batterer intervention programs were “structured in such a way that it’s nearly down to chance – except the odds are stacked against participants who are not financially secure – whether the program will work for a participant or leave them indebted in the county lockup.” Among other concerns, the Commission found the programs were not always available in the geographic region or language offenders needed, affordable for lower-income Californians, nor formatted in a manner that addressed the spectrum of genders and sexualities found among Californians.

The Commission recommended that the state review its requirements for batterer intervention programs to determine if they facilitate rehabilitation; begin a process to determine how to tailor rehabilitative services to an individual's needs; and, ensure that rehabilitation is not contingent on an individual's ability to pay.

According to the California Public Defenders Association:

We believe these changes to the law will result in our clients being more likely to successfully complete probation by ensuring that they are better informed of the costs of batterer programs before agreeing to these programs as conditions of probation and that these programs are better tailored for our client's needs...

In addition, AB 304's requirement[s]...will ensure that our client's domestic violence cases across counties and courtrooms are adjudicated fairly and consistently.

6. Arguments in Opposition

According to Chief Probation Officers of California:

We share the desire to see domestic violence programs serve to reduce recidivism and address interpersonal violence ... It is for these reasons that in 2018 CPOC co-sponsored AB 372 (Stone, Chapter 290, Statutes of 2018), which established pilot programs in the Counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to update domestic violence programs by applying evidence-based approaches to curriculum that reduce recidivism and address criminogenic needs.

... We believe that these programs represent an important model that meets the myriad of goals pertaining to these programs.

There are important discussions around provisions in the bill pertaining to how best to strengthen processes on ensuring program accountability and completion. However, we are opposed unless amended to the provisions that would remove county probation from certifying and approving these programs due to the potential negative impacts resulting from separating the local delivery of service from the ability to certify the programs and the potential loss of providers that we may see as a result.

... Transferring certification away from where the services are delivered impedes the county's ability to be locally responsive to the needs and capacity pertaining to these programs.

...

We are concerned that the changes proposed in this bill would predate the comprehensive look on what changes are needed and encourage the continuation of the pilot program to have the corresponding data and evaluation to guide any changes to the current domestic violence programs.

The Judicial Council writes:

Government Code section 68555 currently requires that the council establish training programs for judges and other court personnel whose work involves domestic violence to provide them with information about the specific issues that arise when domestic violence is involved in a case before the court. ... AB 304 would repeal that section and replace it with a more proscriptive set of requirements that require that the council provide training on an extensive list of specific topics. This expansion of the Legislature's efforts to regulate judicial training represents an unnecessary intrusion into the operations of the judicial branch, especially as it has long demonstrated a commitment to robust training in these areas.

...

The council also objects to proposed new subdivision (f) of Penal Code section 1203.097...The council objects to the notion that it would implement guidelines and training for consistent adjudication of probation violations, as the courts must look to each case individually and apply the law within the parameters set by statute. ...

The council is taking no position on the proposed shift of oversight of BIPs from probation departments to DOJ...but is concerned... Because probation is an arm of the court when it provides neutral recommendations and oversees the supervision of defendants on probation, the council is concern that statutory language suggesting that DOJ is overseeing probation or auditing its work would violate separation of powers. ...

-- END --