

No. 00-1260

In The
SUPREME COURT OF THE UNITED STATES

UNITED STATES,

Petitioner,

v.

MARK JAMES KNIGHTS,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF
THE *AMICUS CURIAE* RUTHERFORD INSTITUTE IN
SUPPORT OF RESPONDENT**

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MOTION FOR LEAVE TO FILE

The Rutherford Institute hereby moves this Honorable Court for leave to file a brief *amicus curiae* in support of the Respondent on the grounds that the brief is desirable in view of the significance of the issues raised by the Petitioner and by the State of California in support of a grant of certiorari, and to bring to the Court's attention important issues and legal facts not addressed by the parties and to bring to the attention of the Court pursuant to Supreme Court Rule 15.2 an apparent misstatement of California law and policy made by the Attorney General of the State Of California, all of which will be helpful to this court in resolving whether this case is appropriate for review at this time.

Amicus previously filed a brief at the petition stage. This brief updates that brief in light of changes in the law and makes clerical corrections.

The Solicitor General of the United States has consented to the filing of this brief. Respondent's counsel has not consented.

The interest of the proposed *Amicus* in this case is fully set forth at page 1 of the Brief.

QUESTION FOR REVIEW SUGGESTED
BY AMICUS CURIAE

Whether, in light of *Colonnade v. United States*, 397 U.S. 72 (1970) and *Griffin v. Wisconsin*, 483 U.S. 868 (1987), a condition of probation that a probationer submit to “a search any time of the day or night by any peace officer with or without a warrant,” in the absence of legislative approval, is repugnant to the Fourth Amendment of the Constitution?

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

**STATEMENT OF *AMICUS CURIAE* INTEREST AND
INTRODUCTION**

The Rutherford Institute¹ is an international, non-profit civil liberties organization headquartered in Charlottesville, Virginia. The Institute, founded in 1982 by its President, John W. Whitehead, educates and litigates on behalf of constitutional and civil liberties. Attorneys affiliated with the Institute have filed petitions for writ of certiorari in the United States Supreme Court in more than two dozen cases, and certiorari has been accepted in several significant constitutional cases. *See Frazee v. Dept. of Employment Sec.*, 489 U.S. 829 (1989); *Arkansas Educational Television Comm'n. v. Forbes*, 523 U.S. 666 (1998); and *Good News Club v. Milford Central School*, No. 99-2036 (October Term 2000). Institute attorneys have filed numerous *amicus curiae* briefs in the United States Supreme Court in cases involving the rights of the accused.² Institute attorneys currently handle several hundred cases nationally, including numerous Fourth Amendment cases. The Institute has published educational materials and taught continuing legal education classes in this area as well.

The issue presented by this Petition, the degree to which a probationer can be searched “any time of the day or night by any peace officer,” is a question of great concern, insofar as it touches upon how society deals with offenders and assures itself that the offender does in fact comply with conditions of probation while on a discretionary grant of probation. Because of the depth and breadth of its knowledge on this subject, the Rutherford Institute believes that its insights on this

¹ *Amicus curiae* The Rutherford Institute files this brief upon leave of the Court. Counsel for The Rutherford Institute authored this brief in its entirety. No person or entity, other than the Institute, its supporters, or its counsel, made a monetary contribution to the preparation or submission of this brief.

² *See, e.g., Wyoming v. Houghton*, 526 U.S. 295 (1999), *Slack v. McDaniel*, 529 U.S. 472 (2000), *Illinois v. Wardlow*, 528 U.S. 119 (2000); *Florida v. J.L.*, 529 U.S. 266 (2000); *Indianapolis v. Edmond*, 121 S.Ct. 447 (2000); *Ferguson v. City of Charleston*, Sup.Ct. No. 99-936 (March 21, 2001), and *Illinois v. McArthur*, 121 S.Ct. 946 (2001).

issue, in light of the California Attorney General's brief, will be helpful to understand more accurately the legal environment in California with respect to that issue. Sup. Ct. Rule 15.2.

SUMMARY OF ARGUMENT

This court has consistently held that for a search to be valid, it must either comply with the Fourth Amendment or be legislatively, and expressly, authorized. Of the several states, District of Columbia and the territories of the United States, only three states, including California, permit search of a probationer any time of the day or night by any peace officer. Of a large number of state supreme courts that have considered the issue, all but three have rejected such a scheme as unconstitutional. The Ninth Circuit Court of Appeals' decision is therefore consistent with *stare decisis* from this Court and an overwhelming majority of state supreme courts. As California has not legislatively authorized search and seizure any time of the day or night by clear and unequivocal language, the court should decline review, or, in the alternative, grant certiorari, and summarily dispose of the case *per curiam* based on *stare decisis*.

ARGUMENT

I.

THE NINTH CIRCUIT'S DECISION IS IN ACCORD WITH StARE DECISIS OF THIS COURT AND A MAJORITY OF THE StaTE COURTS THAT HAVE CONSIDERED THE ISSUE

A. THERE MUST BE A CLEAR, EXPRESS, STATUTORY AUTHORIZATION FOR A FOURTH AMENDMENT WAIVER TO BE EFFECTIVE

While statutory authorization of warrantless searches is not the *sine qua non* of a valid search, in the absence of an express statutory authorization, traditional Fourth Amendment rules must apply. *Colonnade Corp. v. United States*, 397 U.S. 72 (1970). In *Colonnade*, a case arising under 26 USC §§ 5301(c), 5146, and 7606 for possible violations of the Internal Revenue Code, the agents sought evidence of violations and demanded entry to inspect pursuant to a statutory

authorization, which provided for sanctions on refusal to permit entry but did not expressly provide for a warrantless entry to search. The Court noted “Congress has broad power to design such powers of inspection under the liquor laws as it deems necessary to meet the evils at hand.” *Colonnade*, 397 U.S. at 76. It went on, however, to note “that administrative entry, without consent, upon the portions of the commercial premises not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure....” *Id.* at 76-77. The Court concluded, “Where Congress has authorized inspection but made no rules governing the procedure that inspectors must follow, the Fourth Amendment and its various restrictive rules apply.” *Id.* at 77; *cf. United States v. Biswell*, 482 U.S. 691 (1972) (express Congressional authorization; regulated industry). In *Payton v. New York*, 445 U.S. 573 (1980), the Court struck down a state statute that permitted warrantless searches absent probable cause. *See also G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977) (warrantless entry and seizure of assets on company property unlawful); *See v. Seattle*, 387 U.S. 541 (1967) (warrantless administrative inspection in commercial building unlawful); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920); and *cf. Illinois v. Krull*, 480 U.S. 340, 349-355 (1986) (statutory scheme for inspection of junk dealers held unconstitutional under state law) with *New York v. Burger* 482 U.S. 691, 699-703 (1987) (statutory inspection scheme of junk dealers upheld). Consequently, where no express legislative authorization exists that is reasonably related to the purposes of a probation program, traditional Fourth Amendment procedures must apply to avoid delegating unfettered discretion to peace officers.

All States make some provision for probation. Not all States are consistent with what conditions should be required, and some have not made any statutory provisions at all for conditions.³ Insofar as Fourth

³ That there should be legislation, and uniformity in the legislation, is obvious in light of the states’ various enactments of the Uniform Act for Out-Of-State Parolee Supervision. *See* United States Code and state statutory provisions cited in Appendix A. The Act does not provide for any particular conditions of probation, except as follows: “(2) That each receiving state will assume duties of visitation and of supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.” Cal. P.C., §§ 11177. This provides for discriminatory treatment. For example, a probationer from Illinois on supervision in California is subject to searches

Amendment search issues are concerned, the most common condition found is consistent with the Model Penal Code § 301.1(2)(j) “to report as directed to the Court or the probation officer and to permit the officer to visit his home;” Many States adopting the (j) provision add “and elsewhere.” A few States provide, in one form or another for the MPC § 301.1(2)(l) “to satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.” *See* Appendix A. Only two states, Illinois and North Carolina, have a detailed procedure for warrantless searches by a probation officer. Many States expressly provide for drug testing. No state, by statute, expressly permits a warrantless search by peace officers. *See* Appendix A.

A requirement that the several States by legislation authorize in the first instance the waiver of Fourth Amendment rights, with necessary safeguards, is essential in view of the importance of this issue, in order to give clear notice to those who must administer the program and those who must abide by the terms, provide clear guidance to probationers on their duties and responsibilities, provide for uniform treatment of probationers who are subject to relocation and transfer, and to assure that appropriate consideration is given to third parties and potential

“any time of the day or night by any probation officer or peace officer” whereas a probationer from California on supervision in Illinois is subject to “visits by the probation officer at the probationer’s home or place of work at reasonable times.” Twenty-seven jurisdictions have express statutory provisions for either visits, searches, or both, limited to the probation officer; one permits the probation officer to use peace officers; none permit a peace officer to conduct searches. Twenty-seven jurisdictions have no express statutory provision for visits or searches by anyone; of these, one, New Mexico, by administrative regulation, prohibits a probation officer from conducting searches, requiring the officer to pursue normal search procedures, but by case law allows a probation officer to conduct searches. Courts in sixteen of the fifty-four jurisdictions surveyed have considered the issue. Two, Arkansas and Georgia, give greater latitude than expressly permitted by statute. In the Arkansas case, on state grounds, the scope of the statute limiting searches to probation offers was not discussed; the discussion centered only on federal grounds and the 4th Amendment, pursuant to *Griffin*. Eight found that the conditions imposed were rationally related to a legitimate purpose of rehabilitating the probationer. Only five were faced with a state statute which had no express provisions for visits or searches and of those five, only California permits “blanket searches.” *See* following footnote and Appendix A.

bystanders whose rights should not be impaired by unreasonable conditions of probation and parole.

B. THIS COURT HELD IN *GRIFFIN* THAT A STATE DOES HAVE AN INTEREST IN CLOSE SUPERVISION OF THOSE *IN CUSTODIA LEGIS*

Regardless of the applicable standard, a probationer's, or parolee's home, like everyone else's, is protected by the Fourth Amendment's requirement that searches be "reasonable." *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987) (probationer).⁴ Supervision is a special need of the state permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large, but the permissible degree is not unlimited. 483 U.S. at 875. The "special needs" of a probation system make the warrant system impracticable and justify the replacement of the standard of probable cause by "reasonable ground." 483 U.S. at 875-76.

In most jurisdictions, the result reached in *Griffin v. Wisconsin* had been a foregone conclusion, with other courts having moved in the direction of requiring at a minimum that a peace officer at least have consulted with a probation officer.⁵ It would appear that California

⁴ The court did not reach the question as to when a police officer could search. In *Griffin*, the police officer reported he thought that the probationer had a gun, but it was the probation officer, not the police, who conducted the search.

⁵ *E.g.*, *State v. Cullison*, 173 N.W.2d 533 (Iowa 1970) (parolee; unreasonable search); *People v. Way*, 319 N.Y.S.2d 16 (New York 1971)(parolee; limited scope); *People v. Peterson*, 233 N.W.2d 250, 254-55 (Mich. 1975) (blanket searches by peace officers unlawful); *Temez v. State*, 534 S.W.2d 686 (Tex. 1976); *State v. McGivney*, 585 P.2d 767 (Ore 1978); *State v. Holm*, 579 P.2d 860 (Ore. 1978) (probation Officer; "any peace officer" too broad); *Dearth v. State*, 390 So.2d 108 (Fla. App., 1980) (conditions of probation; fact that probationer agreed to "unfettered discretion" does not make void condition voluntary); *State v. Fogarty*, 610 P.2d 140 (Mont. 1980) (probation; search condition unconstitutional); *State v. Fields*, 686 P.2d 1379, 1389 (Haw. 1984)(probation; probable cause required); *Commonwealth v. La France*, 525 N.E.2d 379 (Mass. 1988) (search by probation officer); *People v. Hellenthal*, 465 N.W.2d 329 (Mich. 1990); *State v. Gallagher*, 675 P.2d 429 (NM. 1984); *State v. Cumming*, 262 N.W.2d 56 (S.D. 1978) (probation officer consent required); *State v. Gardner*,

is the first state ever to expressly authorize “blanket searches” of probationers without a warrant by any peace officer. *People v. Bravo*, 43 Cal.3d 600 (1987). *Bravo*, however, was decided only several days after *Griffin*, and cites *Griffin* only once. 43 Cal.3d at 608. *Bravo* conflicts with *Griffin* in that California had no state detailed regulation of probation, unlike Wisconsin, which authorized a departure from Fourth Amendment warrants. In *Griffin*, there was an objective standard, approved by the Court, which had to be met over and above being a mere parolee, and there were detailed regulations covering the subject.

The Oregon experience is illuminating. The Supreme Court noted that while the courts had the power to impose conditions of probation, and that while a “search and seizure” condition may be appropriate, there was no express legislative authority, such conditions could not be unlimited, that the courts were not the means of defining that limit in the first instance, but did so reluctantly. Evidently the Oregon legislature took the hint because it appears to have enacted legislation permitting a “search and seizure” condition “by the probation officer, or any peace officer assisting the probation officer.” *State v. Hovater*, 588 P.2d 56 (1978); *State v. Davis*, 597 P.2d 1280 (1979).

The great weight of authority thus holds that neither a parolee nor a probationer may be abused during authorized searches. Given the purpose of probation and parole, the fact that the probation and parole officers know their own charges better than anyone else, and certainly

619 P.2d 847 (N.M. 1980) (state statute silent; administrative code required probation officer to seek search warrant, but actual condition imposed provided that probation officer could conduct search; search led by probation officer valid); *State v. Perbix*, 331 N.W.2d 14 (ND. 1983) (search consistent with statutes permitting probation officer to search) [see now N.D.C.C. 15A-1343 adopting MOC (j)]. *But see People v. Bravo*, 43 Cal.3d 600 (1987); *Wilson v. State*, 752 S.W.2d 46 (Ark. 1988) [see now A.C.A. § 5-4-303 adopting MPC (j)]; *Allen v. State*, 369 S.E.2d 909 (Ga. 1988) [see now O.C.G.A. § 45-8-35 adopting MPC (j)]; *State v. Finnegan*, 439 N.W.2d 496 (Neb. 1989) (search “by any peace officer” limited to part of drug rehabilitation program only); *People v. Hellenthal*, 465 N.W.2d 329 (Mich. 1990) (drug search as part of drug rehabilitation program approved). *See generally*, Annotation, *Validity of Requirement that, As Condition of Probation, Defendant Submit to Warrantless Searches*, 79 A.L.R. 3d 1083; Annotation, *Validity, Under Fourth Amendment, of Warrantless Search of Parolee or His Property by Parole Officer*, 32 A.L.R. Fed 155.

more than a magistrate knows about unknown citizens when issuing a search warrant, the Fourth Amendment requires at a minimum that peace officers contact the parole or probation officer for permission to conduct a search of the parolee or probationer, and no search unless so authorized is valid, absent exigent circumstances, because the administration of conditions of parole and probation are a non-delegable duty necessary to rehabilitate the offender, yet prevent the exploitation of such persons and the abuse of those not on probation. This result is consistent with, and required by, this Court' enunciated rule of law which forbids the granting of "unfettered discretion" to peace officers in the area of law enforcement. *E.g., Florida v. Wells*, 95 U.S. 1 (1990) inventory of containers where no state policy authorizes inventory); *Payton v. New York*, 45 U.S. 573 (1980); Rotunda, *Constitutional Treatise*, §§ 20.9, p. 34. It is for the courts to supervise probationers, through the probation office, and not for peace officers, and such a delegation is simply not permitted.

**C. CALIFORNIA HAS NO DETAILED RULES AND REGULATIONS
FOR THE IMPOSITION OF A STATUTORY WAIVER OF THE
FOURTH AMENDMENT FOR THOSE ON PROBATION**

California's legislature has not clearly and unequivocally authorized a condition of probation searches "by any peace officer at any time of the day or night with or without a warrant, as a Condition of Probation. P.C., §§ 1192.3⁶, 1202.7⁷, 1202.8⁸, 1203⁹, 1203.016¹⁰, 1203.1¹¹, 1203a,¹² 1210.1¹³.

⁶ P.C. § 1192.3(a); Appendix, p. C1.

⁷ P.C., § 1202.7; Appendix C1

⁸ P.C., § 1208.8(a); Appendix C1

⁹ P.C., § 1203(a); Appendix C1

¹⁰ P.C., § 1203.016; Appendix, p. C8. This section, Electronic Home Detention Act of 1988, provides for home detention and electronic monitoring as a means of reducing local jail over crowding. It permits a peace officer, subject to the Detention Administrator, to inspect the home for compliance and take the person into custody without an arrest warrant when the system is not operational..

¹¹ PC § 1203.1; Appendix, p. C17

¹² P.C., § 1203a; Appendix, p. C22

¹³ P.C., § 1210.1; Appendix p. C17. Not even in drug cases has the

There is no basis for the Attorney General's reliance on sections 1000.12 or Penal Code § 3067. The former has to do with Delayed Entry of Judgment (DEJ), a form of diversion wherein the defendant, without a judgment being entered, is placed under the custody of a probation officer for period of rehabilitation. It is designed solely for child abuse/molestation cases, and not available to other offenses. California Stats. 1995, Chap. 935 (Appendix, p. D1), which enacted § 1000.12 (DEF) and two versions of § 1203.016 (Probation).¹⁴ Chapter 935 provides for "search any time of the day or night" for those on DEF, but not for those on probation. Surely, with the condition under consideration for DEJ, the legislature could not have overlooked the possibility and duplicated the condition for probation, had they wanted it. It is circumstantial evidence, in light of the sister state legislation, and other Supreme Court decisions, not to vest peace officers with unfettered discretion in cases of probation. P.C., § 3067 is not relevant because that provision deals with those on parole, i.e. a period of supervision after having served a period of time in state prison.

This court's decision in *Colonnade, supra*, is directly on point: absent legislative approval in the first instance, the regulation is void for lack of authority. Moreover, as discussed above, an overwhelming number of state supreme courts agree that such a provision is unconstitutional and therefore void.

legislature provided explicitly for a statutory waiver of the 4th amendment.

¹⁴ This case involves a question concerning conditions of probation, neither DEJ nor parole. However, it is difficult in light of the overwhelming evidence that unfettered discretion for such searches is bad to justify such a condition with respect to either P.C., § 1000.12(c)(4)(4) or P.C., § 3067.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Court's *amicus* respectfully submits that this Court should affirm the decision of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX A

APPENDIX B

Section 1: Jurisdictions incorporating Model Penal Code § 301.1(2)(j), requiring probationers “to report as directed to the Court or the probation officer and to permit the officer to visit his home;

....”:

State	As of 1993	As of 2001
Ark	Code Ann. § 54-303	To Section 2a
Ga	O.C.G.A. § 45-8-35	To Section 2
Ind	A.I.C. 35-38-2-2.3	To Section 2
Kan	S.A. 21-4610	To Section 2
Ky	RS 533.030	To Section 2
La	RS. 15:574.4	To Section 2
Me	R.S.A. § 1204	To Section 2
Neb	R.R.S. 1993, § 29-2262	R.R.S. 1993, § 29-2262(2)(k)
N.J	S.A. 2C:45-1	S.A. 2C:45-1(b)(10)
N.Y	Penal Law § 65.10	To Section 2
Pa.	42 Pa CSA § 9754	42 Pa CSA § 9754(C)(10)

Section 2: Jurisdictions incorporating Model Penal Code § 301.1(2)0.) and adding "and elsewhere:"

State	As of 1993	As of 2001
US	18 USC, § 3563	18 USC, § 3563
Al	From Section 6	15-22-52(4)
Ark	Code Ann. § 54-303	Code Ann. § 54-303
Colo	R.S.A. § 16-11-204(i)	16-11-204(2)(x)
Fla.	S.A. § 948.03	S.A. § 948.03(1)(b)
Ga	From Section 1	O.C.G.A. § 42-8-35(4)
Hawaii	RS § 706-624	RS § 706-624(f)
Ill.	730 ILCS 5/5-6-3	730 ILCS 5/5-6-3(a)(5) & 3.1
Ind.	From Section 1	AIC 35-38-2-2.3(a)(10)
Kan.	From Section 1	S.A. 21-4610(c)(4)
Ky	From Section 1	RS 533.030(2)(j)
La	From Section 1	CCRP 895(4)
Me	From Section 1	17-49-1204.2-A(j)
Miss	Code 1972, § 47-7-35	Code 1972, § 47-7-35(e)
N.D.	C.C. § 12.1-32-07*	C.C. § 12.1-32-07.4(h)
N.Y	From Section 1	Penal Law § 65.10.2(a)
Ore	RS § 137.540	RS § 137.540
Vt	Stat 28 § 252*	Stat 28 § 252(b)(10)*

* Limited to Reasonable times.

Section 2a: Jurisdictions using an analogous Model Penal Code § 301.1(2)(0), requiring probationers “to report as directed to the Court or the probation officer and to permit the officer to visit his work, and elsewhere”:

State	As of 1993	As of 2001
Ark	New	Code Ann. § 5-4-303(2)(j)

Section 3: Jurisdictions incorporating Model Penal Code § 301.1(2)(l), requiring probationers “to satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience:

State	As of 1993	As of 2001
US	18 USC, § 3563	18 USC, § 3563(b)
Ark	Code Ann. § 54-303	Code Ann. § 54-303(e)(1)
Hawaii	RS § 706-624	RSs § 706.624(2)
Ill	730 ILCS 5/5-6-3	730 ILCS 5/5-6-3
N.J	N.J.S.A. 2C:45-1(b)(12)	N.J.S.A. 2C:45-1(b)(12)
Pa.	Stat. 42 § 9754	42 Pa CSA § 9754(c)(13)

Section 4: Jurisdictions with detailed procedures for warrantless searches by a probation officer:

State	As of 1993	As of 2001
Ill	730 ILCS 5/5-6-3	730 ILCS 5/5-6-3(a)(5)
N.C.	G.S. § 15A-1343(b)(5)	G.S. § 15A-1343(b)(3)*
Ohio	New	ORC 2951.02(C)(2)*

* Limited to searches by probation officers

Section 5: Jurisdictions that expressly provide for drug testing:

State	As of 1993	As of 2001
US	18 USC, § 3563	18 USC, § 3563
Ariz	R.S. §13-914	R.S. §13-914
Fla.	S.A. § 948.03	S.A. § 948.03(2)
Hawaii	RS § 706-624	RS § 706-624
Ill.	CS 5/3-6-3 S.H.A. 730	CS 5/3-6-3 S.H.A. 730
Ind.	A.I.C. 35-38-2-2.3	A.I.C. 35-38-2-2.3(a)(10)
Md	New	Art 27, § 64(a)(1)(ii)1.
Me	R.S.A. § 1204	R.S.A. § 1204
MI	New	773.1(2)(g)
Miss	Code 1972, § 47-7-35	Code 1972, § 47-7-35

Neb.	R.R.S. 1993, § 29-2262	R.R.S. 1993, § 29-2262(2)(n)
Nev	R.S. 176.185 to 176.227	R.S. 176.185 to 176.227
N.D.	C.C. § 12.1-32-07	C.C. § 12.1-32-07
Ok.	New	St. Anno. 2.2-991, 991A.1.k., .p, & .y
Ore.	RS § 137.540	RS § 137.540
Puerto Rico	Law 34 § 1027a	Law 34 § 1027a
Tex	Ann. C.Cr.P. art. 42.12, § 11	Ann. C.Cr.P. art. 42.12, § 11

Section 6: Jurisdictions silent on the issues of consent to search:

State	As of 1993	As of 2001
US	18 USC, § 3563	18 USC, § 3563
Ala.	Code 1975, § 15-22-29	Code 1975, § 15-22-29
Alaska	Stat. § 12.55.100	Stat. § 12.55.100
Ariz.	R.S. §§ 12-299, et seq.	R.S. §§ 13-901 et seq.
Cal.	Pen. C. §§ 11175to11179	Pen. C. §§1203, 1203.1, 11175to11179
Conn.	G.S.A. § 53a-30	G.S.A. § 53a-30
Del.	Code 11 § 4332	Code 11 § 4332
D.C.	Code 1981, §§ 24-101 to 24-106	Code 1981, §§ 24-101 to 24-106
Idaho	C. §§ 19-2601 to 19-2607	C. §§ 19-2601 to 19-2607
Iowa	C.A. § 907.6	C.A. § 907.6
Md.	Code 1957, art. 27, § 641, 641A	Code 1957, art. 27, § 641, 641A
Mass	G.L.A. C. 276, § 387, 387A	G.L.A. C. 276, § 387, 387A
Mich	C.L.A. § 771.3	C.L.A. § 771.3
Minn	S.A. § 609.135	S.A. § 609.135
Mo.	V.A.M.S. § 217.705	V.A.M.S. § 217.705, 559.016
Mont.	CA §§ 46-1-202, 46-18-201, 46-23-1001	CA §§ 46-1-202, 46-18-201, 46-23-1001
N.H.	RSA 651:2	RSA 651:2
N.M	.S.A. 1978, § 31-21-21	.S.A. 1978, § 31-21-21
Ohio	R.C. § 2951.02	R.C. § 2951.02???(c)(1)
Okl	St. Ann. 22 § 991a	St. Ann. 22 § 991a
R.I.	G.L. 1956 §§ 12-19-8, 21-284.21	GL. 1956 § 12-18.1-1

S.C.	Code 1976 § 24-21-430	Code 1976 § 24-21-430
S.D.	C.L. 23A-27-18	C.L. 23A-27-18
Tenn	C.A. § 40-35-303	C.A. § 42.01
Utah	Code 1953 § 77-18-1	Code 1953 § 77-18-1
Virgin Islands	Code S § 3711	Code S § 3711
Va.	Code 1950, § 19.2-303	Code 1950, §§ 19.2-123, 19.2-303
Wash.	Rev. Code § 9-95-210	Rev. Code § 9-95-210
W.Va.	Code § 62-12-9	Code § 62-12-9
Wis.	S.A. § 973.09	S.A. § 973.09
Wyo.	Stat. 1977 § 7-13-30	Stat. 1977 § 7-13-30

Section 6: Jurisdictions expressly permitting search and seizures by any peace officer at any time:

State	As of 1993	As of 2001
CA	-----	P.C. § 1000.12(c)(4)(D)*

*DEJ, not probation, and limited to those involved in child abuse/molestation.

CALIFORNIA CODES

PENAL CODE

P.C. § 1192.3(a). A plea of guilty or nolo contendere to an accusatory pleading charging a public offense, other than a felony specified in Section 1192.5 or 1192.7, which public offense did not result in damage for which restitution may be ordered, made on the condition that charges be dismissed for one or more public offenses arising from the same or related course of conduct by the defendant which did result in damage for which restitution may be ordered, may specify the payment of restitution by the defendant as a condition of the plea or any probation granted pursuant thereto, so long as the plea is freely and voluntarily made, there is factual basis for the plea, and the plea **and all conditions are approved by the court..**

1202.7 The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation.

1202.8. (a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation. (b) Within 30 days of a court making an order to provide restitution to a victim or to the Restitution Fund, the probation officer shall establish an account into which any restitution payments that are not deposited into the Restitution Fund shall be deposited.

1203. (a) As used in this code, "probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, "conditional sentence" means the suspension of the imposition or execution of a

sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

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

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

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

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

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

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

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

(E) At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. 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, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

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

(c) If a defendant is not represented by an attorney, the court shall

order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

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

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, train wrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

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

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

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

punishable as a felony.

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

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

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

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

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

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

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

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

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

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

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

(13) Any person who is described in paragraph (2) or (3) of subdivision (g) of Section 12072.

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

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

Section 1202.4.

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

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator of the Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs. Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

(k) Probation shall not be granted to, nor shall the execution of, or imposition of sentence be suspended for, any person who is convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, and who was on probation for a felony offense at the time of the commission of the new felony offense. 1203.01.

Immediately after judgment has been pronounced, the judge and

the district attorney, respectively, may cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with any reports the probation officer may have filed relative to the prisoner. The judge and district attorney shall cause those statements to be filed if no probation officer's report has been filed. The attorney for the defendant and the law enforcement agency that investigated the case may likewise file with the clerk of the court statements of their views respecting the defendant and the crime of which he or she was convicted. Immediately after the filing of those statements and reports, the clerk of the court shall mail a copy thereof, certified by that clerk, with postage prepaid, addressed to the Department of Corrections at the prison or other institution to which the person convicted is delivered. Within 60 days after judgment has been pronounced, the clerk shall mail a copy of the charging documents, the transcript of the proceedings at the time of the defendant's guilty plea, if the defendant pleaded guilty, and the transcript of the proceedings at the time of sentencing, with postage prepaid, to the prison or other institution to which the person convicted is delivered. The clerk shall also mail a copy of any statement submitted by the court, district attorney, or law enforcement agency, pursuant to this section, with postage prepaid, addressed to the attorney for the defendant, if any, and to the defendant, in care of the Department of Corrections, and a copy of any statement submitted by the attorney for the defendant, with postage prepaid, shall be mailed to the district attorney.

1203.016. (a) Notwithstanding any other provision of law, the board of supervisors of any county may authorize the correctional administrator, as defined in subdivision (h), to offer a program under which minimum security inmates and low-risk offenders committed to a county jail or other county correctional facility or granted probation, or inmates participating in a work furlough program, may voluntarily participate in a home detention program during their sentence in lieu of confinement in the county jail or other county correctional facility or program under the auspices of the probation officer.

(b) The board of supervisors may prescribe reasonable rules and regulations under which a home detention program may operate. As a condition of participation in the home detention program, the inmate shall give his or her consent in writing to participate in the home detention program and shall in writing agree to comply with the rules

and regulations of the program, including, but not limited to, the following rules:

(1) The participant shall remain within the interior premises of his or her residence during the hours designated by the correctional administrator.

(2) The participant shall admit any person or agent designated by the correctional administrator into his or her residence at any time for purposes of verifying the participant's compliance with the conditions of his or her detention.

(3) The participant shall agree to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with the rules and regulations of the home detention program. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person supervising the participant which is to be used solely for the purposes of voice identification.

(4) The participant shall agree that the correctional administrator in charge of the county correctional facility from which the participant was released may, without further order of the court, immediately retake the person into custody to serve the balance of his or her sentence if the electronic monitoring or supervising devices are unable for any reason to properly perform their function at the designated place of home detention, if the person fails to remain within the place of home detention as stipulated in the agreement, if the person willfully fails to pay fees to the provider of electronic home detention services, as stipulated in the agreement, subsequent to the written notification of the participant that the payment has not been received and that return to custody may result, or if the person for any other reason no longer meets the established criteria under this section. A copy of the agreement shall be delivered to the participant and a copy

retained by the correctional administrator.

(c) Whenever the peace officer supervising a participant has reasonable cause to believe that the participant is not complying with the rules or conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the correctional administrator, and without a warrant of arrest, retake the person into custody to complete the remainder of the original sentence.

(d) Nothing in this section shall be construed to require the correctional administrator to allow a person to participate in this program if it appears from the record that the person has not satisfactorily complied with reasonable rules and regulations while in custody. A person shall be eligible for participation in a home detention program only if the correctional administrator concludes that the person meets the criteria for release established under this section and that the person's participation is consistent with any reasonable rules and regulations prescribed by the board of supervisors or the administrative policy of the correctional administrator.

(1) The rules and regulations and administrative policy of the program shall be written and reviewed on an annual basis by the county board of supervisors and the correctional administrator. The rules and regulations shall be given to or made available to any participant upon request.

(2) The correctional administrator, or his or her designee, shall have the sole discretionary authority to permit program participation as an alternative to physical custody. All persons referred or recommended by the court to participate in the home detention program pursuant to subdivision (e) who are denied participation or all persons removed from program participation shall be notified in writing of the specific reasons for the denial or removal. The notice of denial or removal shall include the participant's appeal rights, as established by program administrative policy.

(e) The court may recommend or refer a person to the correctional administrator for consideration for placement in the home detention program. The recommendation or referral of the court shall be given great weight in the determination of acceptance or denial. At the time of sentencing or at any time that the court deems it necessary, the court may restrict or deny the defendant's participation in a home detention program.

(f) The correctional administrator may permit home detention program participants to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, or seek medical and dental assistance. Willful failure of the program participant to return to the place of home detention not later than the expiration of any period of time during which he or she is authorized to be away from the place of home detention pursuant to this section and unauthorized departures from the place of home detention are punishable as provided in Section 4532.

(g) The board of supervisors may prescribe a program administrative fee to be paid by each home detention participant that shall be determined according to his or her ability to pay. Inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay. All program administration and supervision fees shall be administered in compliance with Section 1208.2.

(h) As used in this section, the following words have the following meanings:

(1) "Correctional administrator" means the sheriff, probation officer, or director of the county department of corrections.

(2) "Minimum security inmate" means an inmate who, by established local classification criteria, would be eligible for placement in a Type IV local detention facility, as described in Title 15 of the California Code of Regulations, or for placement into the community for work or school activities, or who is determined to be a minimum security risk under a classification plan developed pursuant to Section

1050 of Title 15 of the California Code of Regulations.

(3) "Low-risk offender" means a probationer, as defined by the National Institute of Corrections model probation system.

(i) Notwithstanding any other law, the police department of a city where an office is located to which persons on an electronic monitoring program report may require the county correctional administrator to provide information concerning those persons. This information shall be limited to the name, address, date of birth, and offense committed by the home detainee. Any information received by a police department pursuant to this paragraph shall be used only for the purpose of monitoring the impact of home detention programs on the community.

(j) It is the intent of the Legislature that home detention programs established under this section maintain the highest public confidence, credibility, and public safety. In the furtherance of these standards, the following shall apply:

(1) The correctional administrator, with the approval of the board of supervisors, may administer a home detention program pursuant to written contracts with appropriate public or private agencies or entities to provide specified program services. No public or private agency or entity may operate a home detention program in any county without a written contract with that county's correctional administrator. However, this does not apply to the use of electronic monitoring by the California Department of Corrections or the Department of the Youth Authority as established in Section 3004. No public or private agency or entity entering into a contract may itself employ any person who is in the home detention program.

(2) Program acceptance shall not circumvent the normal booking process for sentenced offenders. All home detention program participants shall be supervised.

(A) All privately operated home detention

programs shall be under the jurisdiction of, and subject to the terms and conditions of the contract entered into with, the correctional administrator.

(B) Each contract shall include, but not be limited to, all of the following:

(i) A provision whereby the private agency or entity agrees to operate in compliance with any available standards promulgated by state correctional agencies and bodies, including the Board of Corrections, and all statutory provisions and mandates, state and county, as appropriate and applicable to the operation of home detention programs and the supervision of sentenced offenders in a home detention program.

(ii) A provision that clearly defines areas of respective responsibility and liability of the county and the private agency or entity.

(iii) A provision that requires the private agency or entity to demonstrate evidence of financial responsibility, submitted and approved by the board of supervisors, in amounts and under conditions sufficient to fully indemnify the county for reasonably foreseeable public liability, including legal defense costs, that may arise from, or be proximately caused by, acts or omissions of the contractor. The contract shall provide for annual review by the correctional administrator to ensure compliance with requirements set by the board of supervisors and for adjustment of the financial responsibility requirements if warranted by caseload changes or other factors.

(iv) A provision that requires the private agency or entity to provide evidence of financial responsibility, such as certificates of insurance or copies of insurance policies, prior to commencing any operations pursuant to the contract or at any time requested by the board of supervisors or correctional administrator.

(v) A provision that permits the correctional administrator to immediately terminate the contract with a private agency or entity at any time that the contractor fails to demonstrate evidence of financial responsibility.

(C) All privately operated home detention programs shall comply with all appropriate, applicable ordinances and regulations specified in subdivision (a) of Section 1208.

(D) The board of supervisors, the correctional administrator, and the designee of the correctional administrator shall comply with Section 1090 of the Government Code in the consideration, making, and execution of contracts pursuant to this section.

(E) The failure of the private agency or entity to comply with statutory provisions and requirements or with the standards established by the contract and with the correctional administrator may be sufficient cause to terminate the contract.

(F) Upon the discovery that a private agency or entity with whom there is a contract is not in compliance pursuant to this paragraph, the correctional administrator shall give 60 days' notice to the director of the private agency or entity that the contract may be canceled if the specified deficiencies

are not corrected.

(G) Shorter notice may be given or the contract may be canceled without notice whenever a serious threat to public safety is present because the private agency or entity has failed to comply with this section.

(k) For purposes of this section, "evidence of financial responsibility" may include, but is not limited to, certified copies of any of the following:

- (1) A current liability insurance policy.
- (2) A current errors and omissions insurance policy.
- (3) A surety bond.

1203.02. The court, or judge thereof, in granting probation to a defendant convicted of any of the offenses enumerated in Section 290 of this code shall inquire into the question whether the defendant at the time the offense was committed was intoxicated or addicted to the excessive use of alcoholic liquor or beverages at that time or immediately prior thereto, and if the court, or judge thereof, believes that the defendant was so intoxicated, or so addicted, such court, or judge thereof, shall require as a condition of such probation that the defendant totally abstain from the use of alcoholic liquor or beverages.

1203.03. (a) In any case in which a defendant is convicted of an offense punishable by imprisonment in the state prison, the court, if it concludes that a just disposition of the case requires such diagnosis and treatment services as can be provided at a diagnostic facility of the Department of Corrections, may order that defendant be placed temporarily in such facility for a period not to exceed 90 days, with the further provision in such order that the Director of the Department of Corrections report to the court his diagnosis and recommendations concerning the defendant within the 90-day period.

(b) The Director of the Department of Corrections shall, within the 90 days, cause defendant to be observed and examined and shall

forward to the court his diagnosis and recommendation concerning the disposition of defendant's case. Such diagnosis and recommendation shall be embodied in a written report and copies of the report shall be served only upon the defendant or his counsel, the probation officer, and the prosecuting attorney by the court receiving such report. After delivery of the copies of the report, the information contained therein shall not be disclosed to anyone else without the consent of the defendant. After disposition of the case, all copies of the report, except the one delivered to the defendant or his counsel, shall be filed in a sealed file and shall be available thereafter only to the defendant or his counsel, the prosecuting attorney, the court, the probation officer, or the Department of Corrections.

(c) Notwithstanding subdivision (b), the probation officer may retain a copy of the report for the purpose of supervision of the defendant if the defendant is placed on probation by the court. The report and information contained therein shall be confidential and shall not be disclosed to anyone else without the written consent of the defendant. Upon the completion or termination of probation, the copy of the report shall be returned by the probation officer to the sealed file prescribed in subdivision (b).

(d) The Department of Corrections shall designate the place to which a person referred to it under the provisions of this section shall be transported. After the receipt of any such person, the department may return the person to the referring court if the director of the department, in his discretion, determines that the staff and facilities of the department are inadequate to provide such services.

(e) The sheriff of the county in which an order is made placing a defendant in a diagnostic facility pursuant to this section, or any other peace officer designated by the court, shall execute the order placing such defendant in the center or returning him therefrom to the court. The expense of such sheriff or other peace officer incurred in executing such order is a charge upon the county in which the court is situated.

(f) It is the intention of the Legislature that the diagnostic facilities made available to the counties by this section shall only be used for the purposes designated and not in lieu of sentences to local facilities.

(g) Time spent by a defendant in confinement in a diagnostic

facility of the Department of Corrections pursuant to this section or as an inpatient of the California Rehabilitation Center shall be credited on the term of imprisonment in state prison, if any, to which defendant is sentenced in the case.

(h) In any case in which a defendant has been placed in a diagnostic facility pursuant to this section and, in the course of his confinement, he is determined to be suffering from a remediable condition relevant to his criminal conduct, the department may, with the permission of defendant, administer treatment for such condition. If such treatment will require a longer period of confinement than the period for which defendant was placed in the diagnostic facility, the Director of Corrections may file with the court which placed defendant in the facility a petition for extension of the period of confinement, to which shall be attached a writing signed by defendant giving his consent to the extension. If the court finds the petition and consent in order, it may order the extension, and transmit a copy of the order to the Director of Corrections.

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper

cases. The restitution order shall be fully enforceable as a civil judgment forthwith and in accordance with Section 1202.4 of the Penal Code.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund.

Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars (\$50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost-effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by

the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all felony cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours

of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i) (1) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(2) Upon conviction of any sex offense subjecting the defendant to the registration requirements of Section 290, the court may order as a condition of probation, at the request of the victim or in the court's discretion, that the defendant stay away from the victim and the victim's residence or place of employment, and that the defendant have no contact with the victim in person, by telephone or electronic means, or by

mail.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(l) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

1203a. In all counties and cities and counties the courts therein, having jurisdiction to impose punishment in misdemeanor cases, shall have the power to refer cases, demand reports and to do and require all things necessary to carry out the purposes of Section 1203 of this code insofar as they are in their nature applicable to misdemeanors. Any such court shall have power to suspend the imposing or the execution of the sentence, and to make and enforce the terms of probation for a period not to exceed three years; provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period during which sentence may be suspended and terms of probation enforced may be for a longer period than three years, but in such instance, not to exceed the maximum time for which sentence of imprisonment might be pronounced.

1210.1. Possession of Controlled Substances; Probation; exceptions. (a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, **the trial court is not otherwise limited in the type of probation conditions it may impose.**

CALIFORNIA STATUTES

BILL NUMBER: SB 816 CHAPTERED 10/16/95

[1995 Stats.] CHAPTER 935

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AMENDED IN SENATE MAY 17, **1995**

INTRODUCED BY Senator Peace

(Coauthor: Senator Kopp)

(Coauthor: Assembly Member Rainey)

FEBRUARY 23, 1995

An act to amend Section 13964 of the Government Code, to amend Sections 288.1, 1000.12, and 1203.066 of the Penal Code, and to amend Section 656 of the Welfare and Institutions Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

SB 816, Peace. Children: sexual abuse.

(1) Existing law authorizes the State Board of Control to provide assistance to, among others, derivative victims of crimes, including the parent of a child who has been sexually abused, unless the board makes certain findings, including the fact that the parent failed to cooperate with a law enforcement agency in the apprehension and conviction of the perpetrator. This bill would specify that a parent shall not be considered uncooperative under these provisions if the parent cooperates with the prosecution or Child Protective Services by providing assistance to law enforcement in the disposition of the case.

(2) Existing law provides for the granting of probation to, and deferred entry of judgment and treatment of, specified child molesters who may be feasibly rehabilitated in recognized treatment programs. This bill would revise the standards applicable to a recognized treatment program, as defined.

(3) Existing law provides that the court may not suspend the sentence of a specified child molester until the court obtains a report on the offender's mental condition from a reputable psychiatrist or psychologist, as provided. This bill instead would provide that the court may not suspend the sentence of a specified child molester until the court obtains that report from a reputable psychiatrist or psychologist, or from a recognized treatment program referred to in (2) above. The bill would make various technical changes.

(4) This bill would incorporate additional changes in Section 656 of the Welfare and Institutions Code enacted by AB 817 (Ch. 313, Stats. **1995**). This bill would incorporate additional changes in Section 1203.066 of the Penal Code enacted by AB 1491 (Ch. 48, Stats. **1995**). It would also incorporate additional changes in that section proposed by AB 95, to be operative only if AB 95 and this bill are both chaptered and become effective on January 1, 1996, and this bill is chaptered last.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT
AS FOLLOWS:

SECTION 1. Section 13964 of the Government Code is amended to read:

SEC. 2. Section 288.1 of the Penal Code is amended to read:

SEC. 3. Section 1000.12 of the Penal Code is amended to read:

1000.12. (a) It is the intent of the Legislature that nothing in this chapter deprive a prosecuting attorney of the ability to prosecute any person who is suspected of committing any crime in which a minor is a victim of an act of **molestation**, abuse, or neglect to the fullest extent of the law, if the prosecuting attorney so chooses.

(b) Except as provided in subdivision (c), in lieu of prosecuting a person suspected of committing any crime, involving a minor victim, of an act of abuse or neglect, the prosecuting attorney may refer that person to the county department in charge of public social services or the probation department for counseling or psychological treatment and such other services as the department deems necessary. The prosecuting attorney shall seek the advice of the county department in charge of public social services or the probation department in determining whether or not to make the referral.

(c) (1) In lieu of trial, the prosecuting attorney may make a motion to the trial court to defer entry of judgment with respect to any crime charged in which a minor is a victim of an act of **molestation** or sexual abuse, provided that the defendant pleads guilty to all crimes and enhancements charged. Upon that motion and defendant's plea of guilty to all charges and enhancements, the court may defer entry of judgment, contingent upon the defendant's referral to, and completion of, a treatment program approved by the prosecuting attorney. Upon the defendant's successful completion of the treatment program, and upon the positive recommendation of the treatment program authority and the motion of the prosecuting attorney, but no sooner than five years from the date of the defendant's referral to the treatment program, the court shall dismiss the charge or charges against the defendant.

(2) Upon any failure of treatment under the program described in paragraph (1), the prosecuting attorney may make a motion to the court for entry of judgment and the court shall, upon a finding of failure of treatment based on a

preponderance of evidence, enter judgment upon the defendant's pleas and admissions, and schedule a sentencing hearing as otherwise provided in this **code**.

(3) The office of the prosecuting attorney shall promulgate eligibility standards for deferred entry of judgment and treatment of defendants described in paragraph (1), which shall include, but not be limited to, all of the following:

(A) Deferred entry of judgment for the defendant is in the best interests of the minor victim.

(B) Rehabilitation of the defendant is feasible in a recognized treatment program, as defined in Section 1203.066, designed to deal with child **molestation**, abuse, or neglect, as specifically related to the charges made.

(C) There is no threat of harm to the minor victim if entry of judgment is deferred.

(D) No person shall be deemed eligible for deferred entry of judgment under this section unless he or she pleads guilty to all charges and enhancements.

(E) Deferred entry of judgment shall not apply to any person who is charged under subdivision (b) of Section 288, or any sexual offense involving force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the minor victim or another person.

(F) Any person who applies for deferred entry of judgment under this section shall also meet all of the requirements for the counseling program

delineated under Section 1000.13.

(4) Deferred entry of judgment shall be granted upon the following terms:

(A) Defendant shall seek and participate in a rehabilitation program as prescribed by the district attorney.

(B) Defendant shall not use, handle, or have in his or her possession marijuana, narcotics, dangerous drugs, or controlled substances of any kind, unless lawfully prescribed for the defendant by a licensed physician.

(C) Defendant shall not associate with known or reputed users or sellers of marijuana, dangerous drugs, or narcotics, or be in places where narcotics or dangerous drugs are present.

(D) Defendant shall submit his or her person, property, automobile, and any object under his or her control to search and seizure in or out of the presence of the defendant, by any law enforcement officer or probation officer.

(E) Unification with the family or unsupervised contact with the minor victim or any other minor shall be prohibited except upon recommendation of the treatment program and motion of the district attorney and order of the court.

(F) Any violation of the law constitutes a failure of treatment.

SEC. 4. Section 1203.066 of the Penal Code is amended to read:

1203.066. (a) Notwithstanding Section 1203 or any other law,

probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) A person who is convicted of violating Section 288 or 288.5 when the act is committed by the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288 or 288.5.

(3) A person who is convicted of a violation of Section 288 or 288.5 and who was a stranger to the child victim or befriended the child victim for the purpose of committing an act in violation of Section 288 or 288.5, unless the defendant honestly and reasonably believed the victim was 14 years of age or older.

(4) A person who used a weapon during the commission of a violation of Section 288 or 288.5.

(5) A person who is convicted of committing a violation of Section 288 or 288.5 and who has been previously convicted of a violation of Section 261, 262, 264.1, 266, 266c, 267, 285, 286, 288, 288.5, 288a, or 289, or of assaulting another person with intent to commit a crime specified in this paragraph in violation of Section 220, or who has been previously convicted in another state of an offense which, if committed or attempted in this state, would constitute an offense enumerated in this paragraph.

(6) A person who violated Section 288 or 288.5 while kidnapping the child victim in violation of Section 207, 208, or 209.

(7) A person who is convicted of committing a violation

of Section 288 or 288.5 against more than one victim.

(8) A person who, in violating Section 288 or 288.5, has substantial sexual conduct with a victim who is under 14 years of age.

(9) A person who, in violating Section 288 or 288.5, used obscene matter, as defined in Section 311, or matter, as defined in Section 311, depicting sexual conduct, as defined in Section 311.3.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) Paragraphs (7), (8), and (9) of subdivision (a) shall not apply when the court makes all of the following findings:

(1) The defendant is the victim's natural parent, adoptive parent, stepparent, relative, or is a member of the victim's household who has lived in the victim's household.

(2) A grant of probation to the defendant is in the best interest of the child.

(3) Rehabilitation of the defendant is feasible, the defendant is amenable to undergoing treatment, and the defendant is placed in a recognized treatment program designed to deal with child **molestation** immediately after the grant of probation or the suspension of execution or imposition of sentence.

(4) The defendant is removed from the household of the victim until the court determines that the best interests of the victim would be served by returning the defendant to the household of the victim. While removed from the household, the court shall prohibit contact by the defendant with the

victim, except the court may permit the supervised contact, upon the request of the director of the court ordered supervised treatment program, and with the agreement of the victim and the victim's parent or legal guardian, other than the defendant. As used in this paragraph, "contact with the victim" includes all physical contact, being in the presence of the victim, communication by any means, any communication by a third party acting on behalf of the defendant, and any gifts.

(5) There is no threat of physical harm to the child victim if probation is granted. The court upon making its findings pursuant to this subdivision is not precluded from sentencing the defendant to jail or prison, but retains the discretion not to do so. The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

The court shall order the psychiatrist or psychologist who is appointed pursuant to Section 288.1 to include a consideration of the factors specified in paragraphs (2), (3), and (4) in making his or her report to the court.

(d) The existence of any fact that would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) As used in this section and in Section 1000.12, the following terms apply:

(1) "Recognized treatment program" means a program with substantial expertise in the treatment of children who are victims of sexual abuse, their families, and offenders, that demonstrates to the court all of the following:

(A) An integrated program of treatment and assistance to victims and their families.

(B) A treatment regimen designed to specifically address the offense.

(C) The ability to serve indigent clients.

(2) "Integrated program of treatment and assistance to victims and their families" means that the program provides all of the following:

(A) A full range of services necessary to the recovery of the victim and any nonoffending members of the victim's family, including individual, group, and family counseling as necessary.

(B) Interaction with the courts, social services, probation, the district attorney, and other government agencies to ensure appropriate help to the victim's family.

(C) Appropriate supervision and treatment, as required by law, for the offender.

(f) For purposes of this section and Section 1000.12, a program that provides treatment only to offenders and does not provide an integrated program of treatment and assistance to victims and their families is not a recognized treatment program.

SEC. 5. Section 1203.066 of the Penal Code is amended to read:

1203.066. (a) Notwithstanding Section 1203 or any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) A person who is convicted of violating Section 288 or 288.5 when the act is committed by the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288 or 288.5.

(3) A person who is convicted of a violation of Section 288 or 288.5 and who was a stranger to the child victim or befriended the child victim for the purpose of committing an act in violation of Section 288 or 288.5, unless the defendant honestly and reasonably believed the victim was 14 years of age or older.

(4) A person who used a weapon during the commission of a violation of Section 288 or 288.5.

(5) A person who is convicted of committing a violation of Section 288 or 288.5 and who has been previously convicted of a violation of Section 261, 262, 264.1, 266, 266c, 267, 285, 286, 288, 288.5, 288a, or 289, or of assaulting another person with intent to commit a crime specified in this paragraph in violation of Section 220, or who has been previously convicted in another state of an offense which, if committed or attempted in this state, would constitute an offense enumerated in this paragraph.

(6) A person who violated Section 288 or 288.5 while kidnapping the child victim in violation of Section 207, 209, or 209.5.

(7) A person who is convicted of committing a violation of Section 288 or 288.5 against more than one victim.

(8) A person who, in violating Section 288 or 288.5, has substantial sexual conduct with a victim who is under 14 years of age.

(9) A person who, in violating Section 288 or 288.5, used obscene matter, as defined in Section 311, or matter, as defined in Section 311, depicting sexual conduct, as defined in Section 311.3.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) Paragraphs (7), (8), and (9) of subdivision (a) shall not apply

when the court makes all of the following findings:

(1) The defendant is the victim's natural parent, adoptive parent, stepparent, relative, or is a member of the victim's household who has lived in the victim's household.

(2) A grant of probation to the defendant is in the best interest of the child.

(3) Rehabilitation of the defendant is feasible, the defendant is amenable to undergoing treatment, and the defendant is placed in a recognized treatment program designed to deal with child **molestation** immediately after the grant of probation or the suspension of execution or imposition of sentence.

(4) The defendant is removed from the household of the victim until the court determines that the best interests of the victim would be served by returning the defendant to the household of the victim. While removed from the household, the court shall prohibit contact by the defendant with the victim, except the court may permit supervised contact, upon the request of the director of the court-ordered supervised treatment program, and with the agreement of the victim and the victim's parent or legal guardian, other than the defendant. As used in this paragraph, "contact with the victim" includes all physical contact, being in the presence of the victim, communication by any means, any communication by a third party acting on behalf of the defendant, and any gifts.

(5) There is no threat of physical harm to the child victim if probation is granted. The court upon making its findings pursuant to this subdivision is not precluded from sentencing the defendant to jail or prison, but retains the discretion not to do so. The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

The court shall order the psychiatrist or psychologist who is appointed pursuant to Section 288.1 to include a consideration of the factors specified in paragraphs (2), (3), and (4) in making his or her report to the court.

(d) The existence of any fact that would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) As used in this section and in Section 1000.12, the following terms apply:

(1) "Recognized treatment program" means a program with substantial expertise in the treatment of children who are victims of sexual abuse, their families, and offenders, that demonstrates to the court all of the following:

(A) An integrated program of treatment and assistance to victims and their families.

(B) A treatment regimen designed to specifically address the offense.

(C) The ability to serve indigent clients.

(2) "Integrated program of treatment and assistance to victims and their families" means that the program provides all of the following:

(A) A full range of services necessary to the recovery of the victim and any nonoffending members of the victim's family, including individual, group, and family counseling as necessary.

(B) Interaction with the courts, social services,

probation, the district attorney, and other government agencies to ensure appropriate help to the victim's family.

(C) Appropriate supervision and treatment, as required by law, for the offender.

(f) For purposes of this section and Section 1000.12, a program that provides treatment only to offenders and does not provide an integrated program of treatment and assistance to victims and their families is not a recognized treatment program.

SEC. 6. Section 656 of the Welfare and Institutions Code, as amended by Chapter 313 of the Statutes of **1995**, is amended to read:

656. A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and subdivision under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to petitioner, of both of the parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there are none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and

subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, that:

(1) Section 903 may make that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court;

(2) Section 903.1 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor by a private attorney or a public defender appointed pursuant to the order of the juvenile court;

(3) Section 903.2 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and

(4) the liabilities established by these sections are joint and several.

(i) In a proceeding alleging that the minor comes within Section 601, notice to the parent, guardian, or other person having control or charge of the minor that failure to comply with the compulsory school attendance laws is an infraction, which may be charged and prosecuted before the juvenile court judge sitting as a municipal court judge. In those cases, the petition shall also include notice that the parent, guardian, or other person having control or charge of the minor has the

right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure.

(j) If a proceeding is pending against a minor child for a violation of Section 594.2, 640.5, 640.6, or 640.7 of the Penal Code, a notice to the parent or legal guardian of the minor that if the minor is found to have violated either or both of these provisions that (1) any community service which may be required of the minor may be performed in the presence, and under the direct supervision, of the parent or legal guardian pursuant to either or both of these provisions; and (2) if the minor is personally unable to pay any fine levied for the violation of either or both of these provisions, that the parent or legal guardian of the minor shall be liable for payment of the fine pursuant to those sections.

(k) A notice to the parent or guardian of the minor that if the minor is ordered to make restitution to the victim pursuant to Section 730.6, or to pay fines or penalty assessments, the parent or guardian may be liable for the payment of restitution, fines, or penalty assessments.

SEC. 7. Section 5 of this bill incorporates amendments to Section 1203.066 of the Penal Code proposed by both this bill and AB 95. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 1203.066 of the Penal Code, and (3) this bill is enacted after AB 95, in which case Section 4 of this bill shall not become operative.