

CHAPTER 1123

An act to amend Sections 13959, 13964, and 13967 of the Government Code, and to amend Sections 1203 and 1203.1 of the Penal Code, relating to crimes, and making an appropriation therefor.

[Approved by Governor September 28, 1977. Filed with
Secretary of State September 28, 1977.]

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

SECTION 1. Section 13959 of the Government Code is amended to read:

13959. It is in the public interest to indemnify and assist in the rehabilitation of those residents of the State of California who as the direct result of a crime suffer a pecuniary loss

SEC 3. Section 13964 of the Government Code is amended to read:

13964 After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim incurred an injury which resulted in a pecuniary loss. However, no victim shall be eligible for assistance under the provisions of this article if:

(a) The board finds that the victim or the person whose injury or death gave rise to the application knowingly and willingly participated in the commission of the crime;

(b) The victim or the person whose injury or death gave rise to the application failed to cooperate with a law enforcement agency in the apprehension and conviction of the criminal committing the crime, or

(c) The board finds that the victim should not be allowed to recover because of the nature of his involvement in the events leading to the crime or the involvement of the persons whose injury or death gave rise to the application

SEC 4. Section 13967 of the Government Code is amended to read:

13967. (a) Upon a person being convicted of any felony or misdemeanor, the court shall order the defendant to pay a penalty assessment of ten dollars (\$10) for each felony conviction and five dollars (\$5) for each misdemeanor conviction. Such penalty assessments shall be in addition to any other penalty.

(b) All penalty assessments collected pursuant to this section shall be deposited in the Indemnity Fund in the State Treasury, hereby continued in existence, and the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this article

(c) Notwithstanding the provisions of Section 13521 of the Penal

Code, the penalties levied in accordance with Section 13521 of the Penal Code on all penalty assessments collected pursuant to this section shall be deposited in the Indemnity Fund in the State Treasury, hereby continued in existence, and the proceeds of which shall be available when appropriated by the Legislature to indemnify persons filing claims pursuant to this article.

SEC. 5. Section 1203 of the Penal Code is amended to read:

1203. (a) In every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the 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. The probation officer shall immediately investigate and make a written report to the court of his findings and recommendations, including his recommendations as to the granting or denying of probation and the conditions of probation, if granted. The probation officer shall also include in his report his determination of whether the defendant is a person who is required to pay a fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his report for the court's consideration whether the court shall require, as a condition of probation, restitution to the victim or to the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a recommendation thereof, and if so, the amount thereof, and the means and manner of payment. The report shall be made available to the court and the prosecuting and defense attorneys at least 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 attorney which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. 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 such 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 subserved by granting probation to the person, it may place him 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.

(b) 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.

(c) In every case in which 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 grant or deny probation. If such a case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning him which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him to answer or controvert it. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(d) 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 he had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his arrest, any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, assault with intent to commit murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of such crimes and was armed with such weapon at either of such times.

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

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he 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 he 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, murder, attempt to commit murder, assault with intent to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, or 288a, or a conspiracy to commit one or more of such 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 committed any of the following acts:

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

(ii) He used or attempted to use a deadly weapon upon a human

being in connection with the perpetration of such previous crime.

(iii) He willfully inflicted great bodily injury or torture in the perpetration of such 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 public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(e) When probation is granted in a case which comes within the provisions of subdivision (d), the court shall specify the circumstances indicating that the interests of justice would best be served by such a disposition.

(f) If a person is not eligible for probation, the judge may, in his discretion, refer the matter to the probation officer for an investigation of the facts relevant to the sentencing of the person. Upon such 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 findings.

(g) No probationer shall be released to enter another state unless his case has been referred to the Administrator, 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).

SEC. 6. Section 12031 of the Penal Code is amended to read:

12031 The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution of the sentence and may direct that such suspension may continue for such period of time not exceeding the maximum possible term of such sentence, except as hereinafter set forth, and upon such 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 the county jail for a period not exceeding the maximum time fixed by law in the instant case; provided, however, that where the maximum possible term of such sentence is five years or less, then such period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years, may fine the defendant in such sum not to exceed the maximum fine provided by law in such case; or may in connection with granting probation, impose either imprisonment in county jail, or fine, or both, or neither; may provide for reparation in proper cases; and may require bonds for the faithful observance and performance of any or all of the conditions of probation.

The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. In counties or cities and counties where road camps, farms, or other public work is available

the court may place the probationer in such camp, farms, or other public work instead of in jail, and 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 as therein provided; and supervisors of the several counties are hereby authorized to provide public work and to fix the scale of compensation of such adult probationers in their respective counties. In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money for the support of his dependents or to pay any fine imposed or reparation condition, to keep an account of his earnings, to report the same to the probation officer and apply such earnings as directed by the court.

In all such cases if 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 sentence at intermittent periods such 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 maintenance shall be a county charge.

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 such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such 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; provided, however, that 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, such marks of identification of each probationer must be taken and a record thereof kept and preserved.

Any other provision of law to the contrary notwithstanding, 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

SEC 7. The sum of sixty thousand dollars (\$60,000) is hereby appropriated from the General Fund to the State Controller for allocation and disbursement to local agencies, pursuant to Section 2231 of the Revenue and Taxation Code, to reimburse such agencies for costs incurred by them pursuant to this act.

SEC 8 It is the intent of the Legislature that if this bill is chaptered after Senate Bill No. 83, Section 13964 of the Government Code, as amended by Section 3 of Senate Bill No. 83, shall prevail over Sections 13959 and 13964 of the Government Code, as amended by Sections 1 and 3, respectively, of this bill, in which event Sections 1 and 3 of this bill shall be inoperative. It is the intent of the Legislature that if this bill is chaptered after Senate Bill No. 725, Section 13967 of the Government Code, as amended by Section 3 of Senate Bill No. 725, shall prevail over Section 13967 of the Government Code, as amended by Section 4 of this bill, in which event Section 4 of this bill shall be inoperative

CHAPTER 1124

An act relating to lupus erythematosus research, and in this connection supplementing Item 241 of the Budget Act of 1977 (Chapter 219 of the Statutes of 1977), and declaring the urgency thereof, to take effect immediately

[Approved by Governor September 28, 1977 Filed with
Secretary of State September 28, 1977]

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

SECTION 1. The proviso in Item 241 of the Budget Act of 1977 (Ch. 219, Stats 1977) relating to lupus erythematosus research shall be of no force and effect on and after the effective date of this section. On and after that date, funds appropriated in Item 241 for lupus erythematosus research may not be encumbered by any grant or contract providing for such research until such grant or contract has been approved by the committee created pursuant to Section 2 of Chapter 297 of the Statutes of 1976 to review such proposals.

SEC 2 This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The Budget Act of 1977 (Ch. 219, Stats 1977) was enacted without reflecting a change in the law relating to lupus erythematosus research made by Chapter 215 of the Statutes of 1977 that provides for the approval of grants, in addition to contracts, by a certain committee. In order that the encumbrance of funds appropriated for lupus erythematosus research will be subject to limitations that properly reflect the change made by Chapter 215 of the Statutes of