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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair

2019 - 2020 Regular Session

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### SB 144 (Mitchell) - Criminal fees

**Version:** March 27, 2019

**Urgency:** No

**Hearing Date:** May 6, 2019

**Policy Vote:** PUB. S. 5 - 2

**Mandate:** Yes

**Consultant:** Shaun Naidu

**Bill Summary:** SB 144 would eliminate a number of administrative fees imposed on a person related to involvement in the criminal justice system.

#### **Fiscal Impact:**

- State impact (direct): Major direct ongoing revenue loss to the state minimally in the hundreds of millions of dollars annually. A number of state funds and state entities would experience a revenue loss resulting from the enactment of this measure. Additionally, in some instances, the fee elimination would lead to unfunded positions and programs that still would be required to operate (e.g., the interlock ignition device (IID) program by the Department of Motor Vehicle (DMV)). This in turn would create cost pressures on the General Fund to backfill those losses. (General Fund, various funds)

Following are a few examples of the impact:

The elimination of certain court administrative fees would have a minimum impact of approximately \$150 million annually on the courts. Moreover, based on 2017-18 revenue data, ending the civil penalty assessment would translate to a loss of roughly \$105 million. The courts do not track the collection of all the fees impacted by this measure, so these figures do not represent the total loss that the judicial branch would experience.

Looking at just one aspect of how this bill would impact the Department of Corrections and Rehabilitation, it would experience an impact of around \$2.2 million with the loss of the administrative fee from inmates' and parolees' restitution fines. These monies, in part, go to fund 7.0 staff positions in the Office of Victim and Survivor Rights and Services to assist victims and payers with restitution matters. Similarly, this measure would render insolvent the Domestic Violence Training and Education Fund that is operated by the Department of Public Health to fund local grants and 2.0 staff positions on public health approaches to domestic violence prevention.

- County impact: Major ongoing revenue loss to local governments in the hundreds of millions of dollars annually in the aggregate. Some local costs resulting from this measure would be subject to reimbursement by the state to the extent that the Commission on State Mandates determines that the fees that would be eliminated by SB 144 allowed for sufficient cost recovery to pay for mandated programs or increased levels of service by the local agencies. Additionally, local costs

associated with this measure may be subject, in part, to Proposition 30 funding-service conditions. (Local funds, General Fund\*)

Proposition 30 (2012) exempts the state from mandate reimbursement for realigned responsibilities for “Public Safety Services” including the managing of local jails and the provision of services for, and supervision of, minor and adult offenders. The constitutional amendment, however, provides that legislation enacted after September 30, 2012 that has an overall effect of increasing the costs already borne by a local agency for public safety services transferred by the 2011 Realignment Legislation apply to local agencies only to the extent that the state provides annual funding for the cost increase. The provisions of Proposition 30 have not been adjudicated by the courts to date, but to the extent that this measure results in overall cost increases to the locals for programs and services determined to be included within the scope of Proposition 30, local agencies would not be obligated to provide those programs or levels of service above the level for which funding is provided by the state.

The actual impact to each county would vary, depending on a number of factors, including which fees are charged currently (as some counties waive certain fees), the collection practices of the county, the cost of fee collection—while some counties spend more to collect than they recoup, other counties/county agencies recoup more than the cost to collect (e.g., Fresno County spends approximately \$235,000 to collect approximately \$900,000 in probation-related fees)—and the number of people in a county who would be subject to the services and programs for which the administrative fees would pay.

An informal survey of a handful of counties showed the collection of the following amounts (which would be eliminated under this measure):

- Probation-related fees: \$24.7 million (partial numbers from 16 counties)
- Public Defender fees: \$1.5 million (partial numbers from 13 counties)
- Sheriff-related fees: \$2.4 million (partial numbers from 8 counties)
  - Looking at just some of the work furlough fees, Sacramento County collects \$3.7 million and Santa Clara County collects \$1.5 million.

Looking at one specific example of the local impact of SB 144, Los Angeles County would lose about \$2.5 million with the elimination of the \$15 fee a county is authorized to impose on a person who violates a written promise to appear in court or who otherwise fails to comply with a valid court order. These monies go specifically to pay for the county-wide warrant system.

**Background:** There are various fees imposed on individuals upon a criminal arrest, prosecution, or conviction. Generally, these fees are related to the cost of administering the criminal justice system, including administering probation and diversion programs, collecting restitution orders, processing arrests and citations, administering drug testing, incarcerating individuals, facilitating medical visits, sealing or expunging criminal records, punishing the lack of a person’s appearance in court, monitoring a person while on parole, and using an IID as a condition to drive and to reinstate driving privileges.

Additionally, county public defenders' offices are required to defend any person who is charged with the commission of a crime but is not financially able to hire an attorney. At the conclusion of a trial, the court may make a determination of a defendant's present ability to pay all or a portion of the cost of the public defender; this may include an examination and determination by the court of whether the defendant owns real estate or other assets upon which a lien may be imposed. If the court finds that the defendant has the financial ability to pay, the court must order the defendant to pay all or a part of the costs the court believes reasonable and compatible with the defendant's financial ability.

**Proposed Law:** This bill would:

- Eliminate a number of fees and an assessment imposed on a person related to involvement in the criminal justice system and the ability to collect these fees.
- Make any unpaid balance of a court-imposed cost unenforceable and uncollectable and would require the court to vacate a judgment imposing those costs.
- Eliminate the ability of the court to impose a lien on a defendant's property and make a post-trial determination of the defendant's ability to pay and to order the defendant to pay the costs of the public defender.
- Eliminate the ability of the court to require a person convicted of a nonviolent drug possession offense to contribute to the cost of that person's placement in a drug treatment program, as allowed by Proposition 36 (2000).
- Eliminate the ability of the court to impose a civil assessment of up to \$300 against a defendant who fails to appear in court, after notice and without good cause, or who fails to pay any part of a court-ordered fine.
- Eliminate the requirement that a person on parole after the conviction of a registerable sex offense pay the costs associated with being monitored by a global positions system, as required by Proposition 83 (2006).
- Eliminate the requirement that a person who is required to use an IID because of the conviction of a specified offense to pay the costs of the IID.
- Eliminate the requirement that a person who is required to use an IID to pay DMV the fee to cover the costs of operating the IID program.

**Related Legislation:** SB 545 (Hill, 2019) would require the use of an IID for all persons convicted of a first driving under the influence of alcohol DUI offense and would require an extension of the IID use requirement if a person had a failed start, as defined, within 60 days prior to the end of the requirement. SB 545 is pending on the Suspense File of this Committee.

AB 2533 (Stone, Ch. 764, Stats. 2018) provided that a state prison inmate who has maintained an inmate trust account with \$25 or less for 30 consecutive days be deemed indigent and receive basic supplies necessary for maintaining personal hygiene.

SB 185 (Hertzberg, 2017) would have reformed court procedures and fine determinations related to infraction offenses. SB 185 was held on the Suspense File of the Assembly Committee on Appropriations.

SB 190 (Mitchell, Ch. 678, Stats. 2017) repealed the authority of local agencies to assess and collect fees against families of person subject to the juvenile delinquency system.

**Staff Comments:** As laid out in the analysis of this bill by the Senate Committee on Public Safety, SB 144 would eliminate—and, starting January 1, 2020, prevent the collection of—the following fees:

County fees:

- The public defender fee, including registration fee—a determination is made about whether a person can pay part of the public defender costs.
- Cost relating to the arrest of a person
- Administrative screening and citation fee
- Amnesty fee

Probation and specialty program fees:

- Reimbursement for probation monitoring of offenders in certain programs
- Costs of laboratory analysis related to diversion
- Home detention administrative fees
- Pretrial electronic monitoring fees
- Probation costs of removing offender from custody
- Drug testing while on probation
- Reasonable cost of probation
- Fees associated with a change of county
- Work furlough administration and application fee
- Electronic monitoring administration and application fee
- Work release administrative fee

Court fees:

- Administrative court fees for various petitions and motions, including change of plea, motion to dismiss a misdemeanor, petition to set aside a plea, motion to seal a juvenile record (by a person over 26)
- Civil penalty assessment for failure to appear
- Traffic fine installment plan collection fee
- Fee to help oversee traffic violator schools

IID program fee

Fees relating to incarceration:

- Reimbursement for incarceration in jail or prison
- Co-pay for medical visits in jail or prison
- Collection for healthcare costs of a juvenile to be paid by responsible party

Restitution-related costs:

- Fees to cover administrative costs to collect restitution by various entities.
- Administrative costs to cover income deduction by an employer

Fees relating to programs required by the nature of the conviction:

- Fee for animal ordinance class
- Fee for Static Risk Assessment for sex offenders
- Sex offender program fees
- \$500 domestic violence fee
- Domestic violence program fees
- Drug treatment programs
- Drug diversion programs
- Treatment of a child in a child neglect case
- Hazardous clean-up costs related to drug offenses

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