

SENATE RULES COMMITTEE

SB 144

Office of Senate Floor Analyses

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THIRD READING

Bill No: SB 144
Author: Mitchell (D) and Hertzberg (D), et al.
Amended: 5/21/19
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 4/23/19

AYES: Skinner, Bradford, Jackson, Mitchell, Wiener

NOES: Moorlach, Morrell

SENATE APPROPRIATIONS COMMITTEE: 4-2, 5/16/19

AYES: Portantino, Bradford, Hill, Wieckowski

NOES: Bates, Jones

SUBJECT: Criminal fees

SOURCE: A New Way of Life
All of Us or None
American Civil Liberties Union
Anti-Recidivism Coalition
East Bay Community Law Center
Ella Baker Center for Human Rights
Homeboy Industries
Insight Center for Community Economic Development
Legal Services for Prisoners with Children
Policy Link
San Francisco Financial Justice Project
San Francisco Public Defender
Western Center on Law and Poverty
Youth Justice Coalition

DIGEST: This bill eliminates numerous fees imposed on criminal offenses and Vehicle Code violations.

ANALYSIS:

Existing law:

- 1) Provides that in any case in which a party is provided legal assistance, either through the public defender or private counsel appointed by the court, upon the conclusion of the proceedings or upon the withdrawal of the public defender or private counsel, after a hearing on the matter the court may make a determination of the party to pay all or a portion of the cost of such legal assistance. If the court determines that the party has the ability to pay all or part of the cost, it shall order the party to pay the sum to the county in any installments and manner in which it believes reasonable and compatible with the party's ability to pay. (Government Code § 27712)
- 2) Provides that prior to furnishing counsel of legal assistance by the court, the court shall give notice to the defendant that after a hearing the court will make an ability to pay determination and that the person may be ordered to pay all or part of the costs of the legal assistance. (Government Code § 27753)
- 3) Provides that any county whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administrative fee for the administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest. The fee may be imposed as part of the judgment of conviction or as a condition of probation. (Government Code 29550 (c) (d))
- 4) Allows any city, special district, school district, community college district, college, university or other local agency to collect the criminal justice administrative fee. (Penal Code §§ 29550.1; 29550.2; 299550.3)
- 5) Provides that an administrative screening fee of \$25 shall be collected from each person arrested and released on his own recognizance upon conviction of any criminal offense related to an arrest other than an infraction. The fee shall be deposited in the General Fund. (Government Code 29550 (f))
- 6) Provides that a citation processing fee in the amount of \$10 shall be collected from each person cited and released by any peace officer in the filed or at a jail facility upon conviction of any criminal offense, other than an infraction. The fee shall be deposited in the General Fund. (Government Code 29550 (f))
- 7) Provides that notwithstanding any other provision, a person who is sentenced to state prison or confined in a county jail shall pay a partial amount of the trial court filing fees and costs. To apply for an initial fee waiver, a person who is

sentenced to state prison or confined in a county jail the person shall fill out the appropriate judicial council form. Existing law sets forth a process for determining if the person has an ability to pay and process for collecting the fees from the inmates accounts. (Government Code § 6835)

- 8) Provides for a \$4 fee imposed upon every conviction for a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code, except for parking tickets that go to fund Emergency Medical Air Transportation. This provision provides that the assessment of penalties shall stop on January 1, 2020, although fees imposed prior to that date shall still be collected after that date. This provision sunsets on January 1, 2022. (Government Code § 76000.10)
- 9) Provides that any person who receives probation for child endangerment or infliction of corporal punishment on a child shall be required to complete no less than one year of child abuser's treatment program and to pay for the full costs of the treatment program including any drug tests. The law further provides that the term of probation shall not be lifted until all reasonable fees due to the counseling program have been paid in full. (Penal Code §§ 273a; 273d; 273.1)
- 10) Provides that every defendant shall be assessed a registration fee of \$50 to be represented by the public defender. (Penal Code § 987.5)
- 11) Creates a pretrial diversion program for specified drug offenses. (Penal Code § 1000 *et seq*)
- 12) Provides that when a defendant completes pretrial diversion, or if pretrial diversion is terminated early, the defendant shall reimburse the probation department for the reasonable cost of any program investigation or progress report filed with the court. (Penal Code § 1000.3)
- 13) Allows a judge to require the payment of an administrative fee, as part of enrollment in a diversion program, to cover the cost of any criminalistics laboratory analysis, not to exceed \$500. In addition the court may require the payment of the actual costs of enrollment in diversion and a fee for the cost of supervising the divertee. (Penal Code §§ 1000.15; 1001.16)
- 14) Provides that all persons receiving diversion shall pay a diversion restitution fee and allows the county board of supervisors to cover the actual administrative costs of collection of the restitution fee not to exceed 10% of the

amount to be paid and the state shall pay the county agency collecting the fee 10% of the funds collected. (Penal Code § 1001.90)

- 15) Provides that a person convicted of a crime shall pay restitution to the victim. The law allows a county to impose a fee to cover the actual administrative costs of collecting the restitution, not to exceed 10% of the amount owed. (Penal Code § 1202.4)
- 16) Allows for restitution to be collected from a person's income and allows an employer to collect up to \$5 against offenders to cover the cost of the first income deduction for restitution and \$1 for each one after. (Penal Code § 1202.42)
- 17) Provides that a probationer cannot be released to another state until the probationer has paid the reasonable costs of processing their request to move states. (Penal Code § 1203)
- 18) Provides that a participant in home detention shall pay an administrative fee based on an ability to pay. Home detention can be terminated if an individual willfully fails to pay the fee. (Penal Code § 1203.016)
- 19) Allows a county to set up a pretrial electronic monitoring program and authorizes administrative fees to be paid and a person to be returned to custody if they fail to pay the fee. (Penal Code § 1203.018)
- 20) Provides that if the court orders restitution to the victim, the entity collecting the restitution may add a fee to cover the actual administrative costs of collection not to exceed 15% of the total amount paid. (Penal Code § 1203.1)
- 21) Provides that a person convicted of a drug offense can be required to undergo drug testing while on probation and can be required to reasonable fees to pay for the testing. (Penal Code § 1203.1ab)
- 22) Provides that person on probation can be charged the reasonable cost of any probation supervision including fees related to any pre-plea or re-sentence report, the cost of processing a judicial transfer and the cost of collection for installment payments. (Penal Code § 1203.1b)
- 23) Requires a person who is required to install an ignition interlock device because of a DUI conviction shall be required to pay for the device based on an ability to pay determination. (Penal Code § 1203.1bb; Vehicle Code §§ 23573; 23575.3)

- 24) Allows a county to seek reimbursement for the reasonable costs of county parole supervision. (Penal Code § 1203.1e)
- 25) Allows counties or cities to seek reimbursement for the cost of incarceration in a county or city jail, based on an ability to pay determination. (Penal Code § 1203.1c)
- 26) Provides that the court may order a defendant who is sentenced to state prison to pay the reasonable costs of imprisonment. (Penal Code § 1203.1m)
- 27) Provides that if a person is over 26 years of age and is seeking the sealing of a juvenile record a court can charge up to \$150. (Penal Code § 1203.45; Welfare and Institutions Code §903.3)
- 28) Provides that a fee may be charged for transferring a probation case to another county. (Penal Code § 1203.9)
- 29) Provides that the court may charge a \$30 fee for setting up a payment plan for a fine. (Penal Code § 1205)
- 30) Allows a defendant granted work furlough or home detention to be charged an administrative fee and application fee, although an offender cannot be denied based on an inability to pay. (Penal Code § 1208.2)
- 31) Provides that a person convicted of a non-violent drug offense can be ordered to contribute to the cost of placement in a drug treatment program. (Penal Code § 1210.1)
- 32) Provides that, based on an ability to pay, a chief probation officer may charge for the cost of supervising an offender on electronic monitoring. (Penal Code § 1210.15)
- 33) Provides that if defendant is ordered to pay more than \$50 in restitution they may also be ordered to pay 10% interest on outstanding principle. (Penal Code § 1214.5)
- 34) Provides for a \$300 civil penalty assessment by the court for a failure to appear. (Penal Code § 1214.1)
- 35) Allows the California Department of Corrections and Rehabilitation (CDCR) to charge a 10% fee to cover the actual costs of collecting restitution. (Penal Code §2085.5)

- 36) Allows counties to collect a 10% fee to cover the actual costs of collecting restitution from a person on PRCS/Mandatory Custody or post-release from custody. (Penal Code §§2085.6; 2085.7)
- 37) Provides that county, city or CDCR may recover costs for medical, dental, and hospital care for an incarcerated youth from the person who is responsible for the youth. (Penal Code § 3000.07)
- 38) Allows for the temporary release of an inmate for a family emergency or for a purpose to prepare them for release and allows the county to charge the offender for expenses relating to that release. (Penal Code § 4024.2)
- 39) Allows a person to be charged an administrative fee for participation in a work release program. (Penal Code § 4024.2)
- 40) Allows CDCR to charge an administrative fee for a work furlough program. (Penal Code §6266)
- 41) Authorizes a county to charge \$15 for a written promise to appear. (Vehicle Code § 40508.5)
- 42) Provides that if a defendant fails to make an installment payment for a Vehicle Code violation, the court may charge a fee for failure to appear. The defendant shall also pay a fee up to \$35 for the administrative costs of a payment plan. (Vehicle Code § 40510.5)
- 43) Provides that the court shall charge a \$25 fee for a “fix it ticket.” (Vehicle Code § 40511)

This bill:

- 1) Deletes the provision requiring an ability to pay determination for the use of a public defender and the provision requiring notice that such a determination will be made.
- 2) Deletes the provision allowing for the recovery of costs associated with arrest.
- 3) Deletes the \$25 administrative processing fee and \$10 citation processing fee.
- 4) Provides that Emergency Medical Air Transportation fees shall cease to be recovered after January 1, 2020, and changes the sunset date to January 1, 2021.
- 5) Deletes the \$50 registration fee for representation by a public defender.

- 6) Deletes the requirement that a defendant reimburse probation for the cost of reports associated with pretrial diversion.
- 7) Deletes the fees for laboratory analysis, enrollment and supervision relating to diversion.
- 8) Deletes the fee to cover the administrative cost of collecting the diversion restitution fee and the county share for collecting restitution.
- 9) Deletes the ability of a county to collect a fee to cover the administrative costs of collecting restitution.
- 10) Deletes the ability of an employer to collect up to \$5 or \$1 for an income deduction for restitution.
- 11) Deletes the requirement that a probationer reimburse the costs for transfer to another state before being allowed to leave.
- 12) Deletes the fees relating to home detention.
- 13) Deletes the provisions allowing fees for pretrial electronic monitoring.
- 14) Deletes the ability of the entity collecting restitution to add a fee to cover actual administrative costs.
- 15) Deletes the requirement that a person convicted of a drug offense pay for drug testing.
- 16) Deletes the fees related to the cost of probation supervision.
- 17) Deletes the requirement that an offender pay for an ignition interlock and specifically states they are not responsible for the costs.
- 18) Deletes the ability to recover for incarceration costs.
- 19) Deletes the ability of a county to seek reimbursement for the reasonable costs of county parole supervision.
- 20) Deletes the ability to collect state prison costs.
- 21) Deletes the ability to collect a \$150 fee to cover a petition to change a plea or set aside a verdict.
- 22) Deletes the \$60 fee for a petition of the dismissal or an infraction or misdemeanor.

- 23) Deletes the \$150 fee for a petition to change a plea or set aside a verdict for an 1170h offense.
- 24) Deletes the ability to charge a person over 26 years of age the cost of sealing a juvenile record.
- 25) Deletes the ability to charge a defendant for transferring a case to another county.
- 26) Deletes the ability to charge a defendant \$30 to set up a payment plan.
- 27) Deletes the ability to charge a fee for work furlough or home detention.
- 28) Deletes the ability to require a non-violent drug offender to contribute to the cost of treatment.
- 29) Deletes the ability of probation to charge a person for electronic monitoring.
- 30) Deletes the \$300 civil penalty assessment for a failure to appear.
- 31) Deletes the ability of the court to order payment of interest on restitution.
- 32) Deletes the ability of CDCR to collect an administration fee to cover the actual cost of collecting restitution.
- 33) Deletes the ability of the counties to collect a 10% fee to cover the actual costs of collecting restitution from a person on PRCS/Mandatory Custody.
- 34) Deletes the ability to charge a responsible party for health care for incarcerated youth.
- 35) Deletes the ability to charge for expenses relating to a temporary release of an inmate.
- 36) Deletes the ability to charge for a work-release program.
- 37) Deletes the ability of CDCR to charge an administrative fee for a work furlough program.
- 38) Deletes the authorization to charge \$15 for a written promise to appear.
- 39) Deletes the ability to charge a fee for failure to make an installment payment or a fee to setup up the installment plan.
- 40) Deletes the fee for a "fix it ticket."

- 41) Provides that as of January 1, 2020, a number of fees that are deleted by this bill are no longer enforceable or collectible and any amounts remaining unpaid shall be vacated.
- 42) Makes a number of cross-reference and conforming changes.

Comments

According to the author, “SB 144 would end the assessment and collection of administrative fees imposed against people in the criminal justice system. By doing so, it would dramatically reduce the suffering caused by court-ordered debt and enhance the economic security of system-involved populations, stalking the first step towards ushering in an era of more just criminal justice policy that does not rely on stripping wealth from communities of color and low-income communities.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- 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. This in turn would create cost pressures on the General Fund to backfill those losses. (General Fund, various funds)
- 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.

SUPPORT: (Verified 5/20/19)

A New Way of Life (co-source)
All of Us or None (co-source)
American Civil Liberties Union (co-source)
Anti-Recidivism Coalition (co-source)
East Bay Community Law Center (co-source)
Ella Baker Center for Human Rights (co-source)
Homeboy Industries (co-source)
Insight Center for Community Economic Development (co-source)
Legal Services for Prisoners with Children (co-source)
Policy Link (co-source)
San Francisco Financial Justice Project (co-source)
San Francisco Public Defender (co-source)
Western Center on Law and Poverty (co-source)
Youth Justice Coalition (co-source)
Alameda County Community Food Bank
Asian Americans Advancing Justice
California Catholic Conference
California Coalition for Women Prisoners
California Partnership
Californians United for a Responsible Budget
Center for Employment Opportunities
Center for Responsible Lending
Center on Juvenile and Criminal Justice
Children's Defense Fund-California
City and County of San Francisco
Community Coalition
Community Health Councils
Community Legal Services in East Palo Alto
Courage Campaign

Disability Rights California
Drug Policy Alliance
Fines & Fees Justice Center
Friends Committee on Legislation of California
GACE Institue
Harriet Buhai Center for Family Law
Housing and Economic Rights Advocates
Immigrant Legal Resource Center
Indivisible East Bay
Initiate Justice
John Burton Advocates for Youth
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
League of Women Voters California
Legal Services for Prisoners with Children
Pacific Juvenile Defender Center
People for Mobility Justice
Prisoner Hunger Strike Solidarity Coalition
Public Counsel
Rise Together
Root and Rebound
Rubicon Programs
Safe Return Project
Showing Up for Racial Justice
Sister Warriors Freedom Coalition
Starting Over, Inc.
The Debt Collective
UDW/AFSCME Local 3930
Underground Scholars Initiative
United Food and Commercial Workers Western States Council
Youth Justice Coalition
Number of individuals

OPPOSITION: (Verified 5/28/19)

California State Association of Counties
California State Sheriffs' Association
Chief Probation Officers of California
Coalition of Ignition Interlock Manufacturers
County of Santa Barbara
Mothers Against Drunk Driving
Rural County Representatives of California

Urban Counties of California

ARGUMENTS IN SUPPORT: According to the sponsors:

At every point in the criminal legal process, California state law authorizes counties to charge administrative fees. From booking and arrest to representation by a public defender and probation supervision, an individual can face a host of fees, including for the collection of such fees. Although state law authorizes such fees, local jurisdictions decide which fees to impose and in what amounts. Currently, 56 of 58 California counties charge one or more administrative fees. The fee types, amounts, and burdens on individuals vary widely by county and even courtroom. Once imposed, the “court shall order or the probation officer shall set payments” to be made on a monthly basis. “Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action.” An order shall not be enforced by contempt, but if an individual fails to repay their debt in full or make payments on time, a county can refer the debt to the state Franchise Tax Board which can intercept tax refunds and garnish wages until the debt is paid in full.

Years of research on fines and fees in California, including a review of state law, county policies and practices, state and local data, and the experiences of individuals in the criminal justice system, have found that these fees are unjust, high pain, and low gain.

Low-income people of color are overrepresented at every stage in the criminal legal system, even when controlling for alleged criminal behavior. According to data from the California Department of Justice, people of color are grossly overrepresented in our criminal justice system. Due to over policing and targeted policing in communities of color, they are punished more frequently and harshly at a variety of discretion points. They are more likely to be arrested, incarcerated, and put on probation, and they serve longer jail and probation terms. As a result, they are more likely to face higher fee burdens and the collateral consequences that stem from being unable to pay off related debt. Further, a recent study found that the lack of black representation in local government is connected to the use of fines and court fees as a source of local revenue.

Fees are incredibly burdensome and create financial hardship and limit

employment prospects for individuals seeking to reenter their communities. The fees disproportionately harm low-income people and people of color. Studies have found that criminal justice debt correlates with a greater likelihood of recidivism, even after controlling for case characteristics and demographics. These negative outcomes only make reentry harder....

ARGUMENTS IN OPPOSITION: According to the California State Association of Counties, Chief Probation Officers of California, Urban Counties of California, and the Rural County Representatives of California:

Our organizations share a commitment to help offenders successfully transition back into their communities and overcome obstacles to making positive changes. We recognize that today's system of assessing criminal fees is overly complex, and its financial and legal implications are often crippling for those who can least afford them. The associated debt often works as a considerable impediment to successful integration and full participating in family, community, and work responsibilities. An in-depth policy conversation about these implication is certainly warranted.

Our organizations' position to SB 144 is not grounded in response to the proposed restructuring or eliminating fines and fees. It is, however, tied to the significant and permanent redirection of funding sources that support a diverse set of local programs and services. We cannot support changes to the system that would directly result in program elimination or service disruptions at the county level. A conversation about abolishing fee authority must be accompanied by a comprehensive assessment of the resulting fiscal impacts on agencies and organizations that today receive associated revenue. For decades, the Legislature has funded a wide array of criminal justice programs using fine and fee revenue. Many such examples date back to the 1990s when the state was facing a multi-billion-dollar deficit. As numerous and diverse programs and reforms have been enacted by the State, many of which are tied on an associated fee or fine as a funding source, counties rely on the current funding structure now in place. Funding is critical to ensuring counties can continue to carry out a number of these programs.

Senate Bill 144 eliminates all criminal justice fees. Removal of specified fees for probation services alone, for example, would likely result in the loss of tens of millions of dollars in probation funding, funding that currently supports vital programs and practices as well as probation positions. The loss

of positions would mean impacts on court related services we provide, an increase in caseload sizes and impacts on evidenced-based program delivery.

Prepared by: Mary Kennedy / PUB. S. /
5/28/19 10:21:23

**** **END** ****