
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 586 (Bradford) - Criminal fees

Version: February 18, 2021

Urgency: No

Hearing Date: May 3, 2021

Policy Vote: PUB. S. 4 - 1

Mandate: Yes

Consultant: Shaun Naidu

Bill Summary: SB 586 would eliminate or reduce, or require an ability-to-pay determination before imposing, a number of fees related to probation, diversion, traffic violations, and other criminal matters. It also would establish a cause of action related to an ignition interlock device (IID) service dealer's failure to comply with specified fee schedule provisions of law.

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 IID program by the Department of Motor Vehicle). 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 wide range of this bill's fiscal impact:

The elimination of certain court fees and assessments would, based on FY 2019-2020 figures of the amounts actually collected, have a minimum impact of approximately \$190.3 million annually on the courts. The elimination of the \$300 civil assessment specifically would translate to a loss of \$96.9 million to the trial court operating fund. Additionally, SB 586 could result in unknown, potentially-significant workload cost pressures to the courts to adjudicate alleged violations of requirements imposed on IID servicers.

The Department of Motor Vehicles anticipates annual revenue loss of approximately \$2 million to the Motor Vehicle Account with the repeal of the traffic violator school fee. The Department of Corrections and Rehabilitation reports minor revenue loss associated with this measure. Specifically, the department collects a little more than \$14,000 annually for global positioning system (GPS) monitoring that it would not be allowed to assess or collect under SB 586.

The Bureau of Automotive Repair anticipates ongoing annual workload costs of \$8,480 to review annual reports by approximately 3,000 IID installers. It also anticipates minor and absorbable one-time costs to develop the report document and publishing it on the bureau's website.

- County impact: Unknown, likely-major revenue loss to local jurisdictions associated with this measure. 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 proposed to be eliminated allowed for sufficient cost recovery to pay for mandated programs or increased levels of service by the local agencies. Additionally, 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 the 2011 Realignment Legislation, Proposition 30 (2012) permits local agencies to not provide those programs or levels of service above the level for which funding is provided by the state, leading to cost pressures for an appropriation of monies from the General Fund to backfill the revenue loss. (Local funds, General Fund)

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—and the actual amount of money collected from the fees and assessments imposed.

Background: Statutes, some done through the legislative process and some enacted by the voters through the initiative process, impose various fees on individuals upon a criminal arrest, prosecution, or conviction. Generally, these fees are related to the cost of administering the criminal legal, incarceration, and supervision systems, including administering probation and diversion programs, processing citations, administering drug testing, incarcerating individuals, facilitating medical visits, sealing or dismissing 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, existing law requires a person who has been convicted of driving under the influence of alcohol or a drug to install an IID on the vehicle that person operates. A manufacturer certified to provide IIDs is required to adopt a fee schedule for the payment of costs of the device in an amount commensurate with a person's ability to pay. Specifically, a person subject to an IID requirement must pay a percentage of the cost of the IID program, up to the full cost, based on the person's income. If a person has an income at 100 percent of the federal poverty level or below, existing law requires the person to pay 10 percent of the cost of the manufacturer's standard IID program costs.

Proposed Law: This bill would:

- Repeal the authority to collect specified fees related to a criminal arrest, prosecution, or conviction, including related to lab fees, programs for persons convicted of sex offenses, drug testing, incarceration and house arrest, and record dismissals, among others.
- Make the unpaid balance of most court-imposed costs unenforceable and uncollectible and would require any portion of a judgment imposing those costs to be vacated.
- Relieve a person who is sentenced to state prison or confined in a county jail from being required to pay any trial court filing fees or costs related to the person's underlying criminal conviction.

- Delete the authority of the court to require a person convicted of a nonviolent drug possession offense to contribute to the cost of their placement in a drug treatment program.
- Delete the requirement that a person on parole pay for the costs associated with GPS monitoring.
- Repeal the authority of the court to impose a civil assessment of up to \$300 against a defendant who fails, after notice and without good cause, to appear in court or who fails to pay all or any portion of a fine ordered by the court.
- Require the court to make an affirmative finding that a defendant has the ability to pay the minimum payment of \$500 if granted probation for a crime of domestic violence and the sliding scale fee for required participation in a batterer's program. It also would make authority to collect the fees inoperative if permanent funding sufficient to replace the fee revenue is appropriated in the Budget Act.
- Make a person with income at 100 percent of the federal poverty level responsible for 5 percent of the costs of required participation in an IID program.
- Require the IID installer to inform a person required to have an IID installed of the fee schedule and that the law provides for the payment of the costs of the device and its installation, maintenance, and servicing commensurate with the person's income.
- Establish a private cause of action and a civil penalty of up to \$1,000 against any IID installer who fails to inform a person of requirements mentioned immediately above.
- Require every IID provider to report annually to the Department of Consumer Affairs, Bureau of Automotive Repair, the provider's fee schedule, the total number of people for whom income verification was conducted, the number of people for whom a reduction of charges was made, and the amount of the reductions, among other information.

Related Legislation: AB 927 (Jones-Sawyer, 2019-2020 Reg. Sess.) would have required a court imposing a fine, fee, or assessment related to a criminal or juvenile proceeding involving a misdemeanor or a felony to make a finding that the defendant has the ability to pay. AB 927 was vetoed by the Governor, who stated in his veto message that the state must tackle the issue of fines, fees, and assessments that disproportionately impact low-income individuals, but he did not believe that an ability-to-pay hearing is the best approach in every case. The Governor stated his belief that the issue needed to be tackled in a comprehensive manner through the budget process. AB 227 (Jones-Sawyer, 2019-2020 Reg. Sess.) similarly would have required an ability-to-pay determination; it was held on the Suspense File of the Assembly Committee on Appropriations.

AB 1869 (Committee on Budget, Ch. 92, Stats. 2020) repealed a number of administrative fees related to the criminal legal system, including specified defense representation fees, citation and processing fees, interstate compact supervision fees, and alternative custody fees. AB 1869 also provides for the appropriation of funds to local jurisdiction to offset the revenue loss associated with the measure. For example, it provides that \$65 million from the General Fund is appropriated annually from FY 2021-2022 to FY 2025-2026 to counties to backfill revenue loss in accordance with a schedule provided by the Department of Finance. The bill specified legislative intent to pursue legislation with the Budget Act of 2021 to finalize the funding allocation methodology for distribution to counties.

SB 144 (Mitchell, 2019-2020 Reg. Sess.) would have eliminated a number of administrative fees imposed on a person related to involvement in the criminal legal system. SB 144 was never heard in the Assembly Committee on Public Safety.

SB 1290 (Durazo, Ch. 340, Stats. 2020) vacated certain county-assessed or court-ordered costs imposed before January 1, 2018, against parents and guardians of youth subject to the juvenile delinquency system and against persons aged 18 to 21 subject to the criminal justice system.

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: According to the analysis of this bill by the Senate Committee on Public Safety, some of the fees that would be impacted by SB 586 are as follows:

- Diversion fees, including fees for drug diversion programs.
- Returned check fee, when the check was used to pay a criminal fine.
- Civil assessment for failing to appear and other fines and assessments related a defendant's to failure to appear.
- Fees related to restitution.
- Hazardous material disposal penalty of the actual costs incurred by a jurisdiction to clean a site when a person is convicted of the manufacture, sale, possession for sale, possession, transportation, or disposal of a hazardous substance that is a controlled substance or a chemical that is a byproduct of the manufacture of a controlled substance.
- Domestic violence-related charges, including the requirement that a person who violates a protective order donate up to \$5,000 to a shelter for abused or battered persons.
- Incarceration costs, including the charge for part or all of the cost of a person's incarceration in state prison or county jail.
- Court fees related to setting aside a verdict or sealing a juvenile record.

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