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THIRD READING

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Bill No: SB 586  
Author: Bradford (D), et al.  
Amended: 5/25/21  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 4-1, 4/13/21  
AYES: Bradford, Kamlager, Skinner, Wiener  
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21  
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski  
NOES: Bates, Jones

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**SUBJECT:** Criminal fees

**SOURCE:** ACLU California  
All of Us or None  
Anti-Recidivism Coalition  
East Bay Community Law Center  
Homeboy Industries  
Insight Center  
Lawyers' Committee for Civil Rights  
Legal Services for Prisoners with Children  
Policy Link  
San Francisco Financial Justice Project  
San Francisco Public Defender's Office  
Western Center for Law and Poverty  
Youth Justice Coalition

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**DIGEST:** This bill eliminates a number of fees related to probation, diversion, traffic violations and other criminal cases.

**ANALYSIS:**

Existing law:

- 1) Provides that the Office of Traffic Safety shall adopt standards for installation, maintenance, and servicing of ignition interlock device, and provides for penalties if the standards are violated. (Business and Professions Code Section 9882.14)
- 2) Allows for probation in specified child abuse cases with specified requirements including mandatory counseling and provides that the terms of probation shall not be lifted until all reasonable fees due the counseling program have been paid in fee, unless the court determines the defendant does not have the ability to pay and waives the fees. (Penal Code Sections 273a; 273d; 273.1)
- 3) Provides that a judge may require a fee of a person convicted of a felony enrolled in a diversion program to cover the actual costs of lab fees, not to exceed \$500 and up to \$300 for a person charged with a misdemeanor. (Penal Code Sections 1001.15; 1001.16)
- 4) Allows a county to impose a fee to cover the actual administrative costs of the collection of a restitution fee. (Penal Code Sections 1001.90; 1202.4)
- 5) Allows restitution to be deducted from a person's income and allows an employer to deduct \$5 for the first payment \$1 for every payment after from the person's income. (Penal Code 1202.42)
- 6) Provides that if a person is convicted of domestic violence, a minimum fee of \$500 shall be paid and the money used for domestic violence programs special fund in the counties and to the controller for use in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund. If the court waives the fee it must state its reasons on the record. The section further provides that the terms of probation shall not be lifted until fees are paid. (Penal Code Section 1203.097)
- 7) Provides that when a court grants probation and orders the person to pay restitution to the victim, the entity collecting the restitution may add a fee to cover the actual administrative cost of the collection, not to exceed 15 person and to be paid to the general fund of the County. (Penal Code Section 1203.1(l))
- 8) Provides that a person who is granted probation for the unlawful possession, use, sale or other furnishing of a controlled substance shall be required to not

- use or be under the influence of any controlled substance and shall submit to drug and substance abuse testing and if the defendant is an adult over 21 years of age, the court shall order the defendant to pay a reasonable fee, not to exceed the actual cost of testing. (Penal Code Section 1203.1ab)
- 9) Provides that when a person is convicted of an offense and ordered to serve time in a county jail or other local detention facility as part of a term of probation or conditional sentence, upon a determination of an ability to pay, the court may order a person to pay a portion of the reasonable costs of incarceration. (Penal Code Section 1203c)
  - 10) Provides that if a person is ordered to be confined in state prison, after a determination of an ability to pay, the person can be ordered to pay all or a portion of the reasonable cost of confinement. (Penal Code Section 1203.1m)
  - 11) Provides that every person convicted of a misdemeanor and not granted probation and every person convicted of an infraction can any time one year from the date of judgement petition to have the conviction dismissed when the person has met the requirement of the underlying sentence and led an upstanding life. A person who petitions for a dismissal for a charge may be required to reimburse the county and court for the costs of services rendered in an amount not to exceed \$60. (Penal Code Section 1203.4a)
  - 12) Provides for a procedure for a court to transfer a case where a person is on probation or mandatory supervision to the person's home county and to allow any local fees to be paid by the defendant to the collection program for the transferring court. (Penal Code Section 1203.9)
  - 13) Provides that a person can pay a criminal fine through an installment plan and for the court or collecting agency to be able to collect a fee for the processing of the installment account. (Penal Code Section 1205)
  - 14) Sets for the basic requirements for an approved drug treatment program and includes rules relating to fees and a fee schedule. (Penal Code Section 1211)
  - 15) Provides for a \$300 fee to be imposed on a person who fails to appear in court, in addition to any other penalties. (Penal Code Section 1214.1)
  - 16) Allows a court to impose interest on any unpaid restitution balance. (Penal Code Section 1214.5)

- 17) Allows money to pay a restitution fine to be deducted from the trust account on person in state prison or county jail and to include an administrative fee of up to 10%. (Penal Code Sections 2085.5; 2085.6)
- 18) Provides that a county may require the court to impose an assessment of \$15 on a person who fails to appear on a Vehicle Code infraction. (Vehicle Code Section 40508.5)
- 19) Allows a person to make payment to pay for a fine associated with an infraction, and if a person fails to make an installment, a civil assessment may be imposed, and requires the defendant to pay a processing fee. (Vehicle Code Section 40510.5)

This bill:

- 1) Allows for a civil action by an individual against an ignition interlock provider who violates the standards in the Business and Professions Code.
- 2) Provides that every interlock provider must annually report to the Bureau of Automotive Repair the following: total number of people for who income verification was conducted; total number of people who had a reduction in charges based on income, and if denied why denied; total dollar amount of reductions based on income; total amount that remains unpaid for the installation of devices; and, programs standard ignition interlock device charges.
- 3) Deletes the provisions saying that probation cannot be lifted until all fees for the child abuse counseling program has been paid.
- 4) Deletes the ability of the court to charge a person given diversion up to \$500 if a felony and up to \$300 if a misdemeanor to cover lab fees.
- 5) Deletes a county's ability to impose a fee to cover the cost of collecting restitution.
- 6) Deletes the ability of an employer to deduct a fee for setting up a restitution payment.
- 7) Deletes the requirement that a court that waives the \$500 domestic violence fee on the record. It provides that at any time a county may choose not to collect the fee and may vacate or declare satisfied any unpaid domestic violence fees. It further provides that if at any time there is permanent funding sufficient to replace the average annual domestic violence fee revenue appropriated in the

budget, then the authority to impose a fee shall not be operative. And finally it provides that unpaid fees in a domestic violence case shall not be a bar to ending probation.

- 8) Deletes the ability of the entity collecting restitution from a person granted probation to add a fee
- 9) Deletes the requirement that a person over the age of 21 pays a reasonable fee not to exceed the cost of testing when convicted of a drug offense.
- 10) Removes the ability of the court to order a person to pay a portion of the reasonable costs of incarceration.
- 11) Removes the ability of the court to order a person sentenced to prison to pay all or part of the cost of confinement.
- 12) Deletes the ability to require a person petitioning for a dismissal of a charge to pay \$60 to cover the costs of the petition.
- 13) Deletes the ability to charge a fee when probation is transferred to another county.
- 14) Deletes the ability to charge a fee for an installment account.
- 15) Deletes all references to fees relating to drug treatment programs.
- 16) Deletes the \$300 penalty for a failure to appear.
- 17) Deletes the ability of the court to impose interest on unpaid restitution.
- 18) Deletes the ability to charge a trust account 10% for administration fees related to collecting restitution.
- 19) Deletes the ability to impose an assessment of \$15 on a Vehicle Code infraction.
- 20) Deletes the ability to charge for a failure to pay an installment or to pay a processing fee.
- 21) Makes a number of technical and conforming changes.

**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 potentially 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. This, in turn, would create cost pressures on the General Fund to backfill those losses. For example, the elimination of the \$300 civil assessment specifically would translate to a loss of \$96.9 million to the trial court operating fund. (General Fund, various funds)
- *County impact:* Unknown 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.

**SUPPORT:** (Verified 5/20/21)

ACLU California (co-source)  
All of Us or None (co-source)  
Anti-Recidivism Coalition (co-source)  
East Bay Community Law Center (co-source)  
Homeboy Industries (co-source)  
Insight Center (co-source)  
Lawyers' Committee for Civil Rights (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's Office (co-source)  
Western Center for Law and Poverty (co-source)  
Youth Justice Coalition (co-source)  
Bay Area Legal Aid  
Bay Area Regional Health Inequities Initiative  
Black Leadership Council  
California Attorneys for Criminal Justice  
California Public Defenders Association  
Center for Responsible Lending  
Center on Juvenile and Criminal Justice  
Community Legal Services in East Palo Alto  
Ella Baker Center for Human Rights  
Legal Services of Northern California  
National Association of Social Workers, California Chapter  
Neighborhood Legal Services of Los Angeles County  
Prosecutors Alliance of California  
Public Counsel  
Root & Rebound  
San Francisco Bay Area Planning and Urban Research Association  
Underground Grit  
Underground Scholars Initiative at the University of California, Irvine  
Underground Scholars Initiative, University of California, Davis  
University of California, Irvine School of Law Consumer Law Clinic

**OPPOSITION:** (Verified 5/20/21)

California District Attorneys Association  
Peace Officers Research Association of California

**ARGUMENTS IN SUPPORT:** One of this bill's sponsors, the San Francisco Public Defender's Office adds:

At every point in the criminal legal process, state law authorizes counties to charge administrative fees, including fees for diversion programs, drug and alcohol testing, missing court, record sealing, and even a fee to be placed on a payment plan. While some fees are mandatory under state law, others can be imposed at the discretion of counties. As a result, fee types, amounts, and burdens on individuals vary widely by county and even courtroom.

Once imposed, the court or county can set monthly payments or order amounts to be paid in full. Fees are regularly ordered as civil judgments and can be referred first to local collections agencies, who often add additional service

charges, and then to the state Franchise Tax Board, which can intercept tax refunds, levy bank accounts, and garnish wages until paid in full.[1]

Four counties have already stopped charging the majority of fees within their discretion but 54 of 58 California counties continue to charge even discretionary fees. Recognizing the extreme harm caused by criminal administrative fees to individuals, families, and communities, Governor Newsom signed AB 1869 into law, which abolishes 23 fees in the criminal legal system effective July 1, 2021.[2] SB 586 builds upon this important work by eliminating the over 60 fees that remain

**ARGUMENTS IN OPPOSITION:** The California District Attorneys Association oppose stating:

CDAAs understand the Legislature's concern with the consequences of imposing fines and assessments when a defendant cannot afford to pay. As prosecutors our only interest is in maintaining justice and justice services for all citizens. For this reason we would support legislation that requires a court find a defendant has the ability to pay prior to imposition of a particular fee. This is in line with the Court of Appeal's decision in *People v. Duenas* (2019) 30 Cal.App.5th 1157. Such a requirement would ensure we are not penalizing poverty while still permitting the collection of monies to support critical justice infrastructure.

Wholesale elimination and cancellation of fee assessments and payments will be unduly detrimental to programs that benefit victims and even defendants in criminal cases. For example, the interest fee currently authorized by Penal Code section 1214.5 helps support county law libraries (See Gov. Code, § 68085.1, subd. (c)(1)(C)) which can be critical resources for persons in criminal and civil cases who might not otherwise have access to legal materials or professionals.

Numerous other fees eliminated by SB 586 help fund the collection and distribution of victim restitution payments. (See Pen. Code, §§ 1203.1, 2805.5, 2805.6, 2805.7.) Other fees eliminated by your bill support the victim restitution fund. (See Pen. Code, §§ 1001.90, 1202.4(l).) Victims of crime are often members of underrepresented populations impacted by unemployment and indigency issues of their own. Victims rely on restitution payments to help put their lives back together after the impacts of crime.

Prepared by: Mary Kennedy / PUB. S. /  
5/25/21 10:56:39

\*\*\*\* END \*\*\*\*