

Date of Hearing: July 13, 2021

Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 586 (Bradford) – As Amended May 25, 2021

SUMMARY: Repeals various administrative fees that agencies and courts are authorized to impose in order to fund elements of the criminal justice system, and eliminates outstanding debt incurred as a result of the fees. Specifically, **this bill:**

- 1) Eliminates the requirement that a person granted probation in a child abuse case pay for the full costs of child abuse treatment counseling.
- 2) Repeals the prohibition against terminating probation in a child abuse case until all fees for the child abuse treatment counseling program have been paid.
- 3) Eliminates the ability of the court to charge a person granted diversion up to \$500 if a felony and up to \$300 if a misdemeanor to cover laboratory analysis fees.
- 4) Eliminates a county's ability to impose a fee to cover the cost of collecting a diversion restitution fee.
- 5) Eliminates a county's ability to impose a fee to cover the cost of collecting a restitution fine.
- 4) Eliminates the ability of an employer to deduct a fee for setting up a restitution payment plan and for subsequent deductions.
- 5) Makes the \$500 domestic violence fee subject to the defendant's ability to pay. Requires a court to waive the fee if the defendant does not have the ability to pay.
- 6) Provides that at any time a county may choose not to collect the domestic violence fee or the domestic violence program fee and may vacate or declare satisfied any unpaid fees.
- 7) Provides that unpaid fees in a domestic violence case shall not be a bar to ending probation.
- 8) 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.
- 7) Eliminates the ability of the entity collecting restitution from a person granted probation to add an administrative fee to cover the costs of collection.
- 8) Eliminates the requirement that a person over the age of 21 pay a reasonable fee not to exceed the cost of testing when convicted of a drug offense.

- 9) Eliminates the court's authority to order a person to pay for the reasonable costs of incarceration in county jail or another local detention facility.
- 10) Eliminates the court's authority to order a person sentenced to prison to pay all or part of the cost of confinement.
- 11) Eliminates the ability to charge a fee when probation is transferred to another county.
- 12) Eliminates the ability to charge a fee to set up an installment account to pay fines and fees and for processing of installments.
- 13) Eliminates all fees relating to drug diversion treatment programs.
- 14) Repeals the \$300 civil penalty assessment for a failure to appear in court or failure to pay all or part of a court-ordered fine.
- 15) Eliminates the ability of the court to impose interest on unpaid restitution ordered as a condition of probation.
- 16) Eliminates ability of CDCR and the counties to collect an administration fee to cover the actual cost of collecting restitution and the restitution fine.
- 17) Repeals the authority of a county to charge \$15 for a violation of a written promise to appear on any Vehicle Code violation.
- 18) Eliminates the ability to charge for the failure to pay an installment associated with Vehicle Code violations.
- 19) Provides that as of January 1, 2022, a number of fees that are repealed by this bill are no longer enforceable or collectible and that any remaining amounts are to be vacated.
- 20) Permits a civil action by an individual against an ignition interlock (IID) provider who fails to comply with specified requirements in the Business and Professions Code and Vehicle Code.
- 21) Requires 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.
- 22) Makes various technical and conforming changes.
- 23) Contains legislative findings and declarations.

EXISTING LAW:

- 1) 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 full, unless the court

determines the defendant does not have the ability to pay and waives the fees. (Pen. Code, §§ 273a; 273d; 273.1.)

- 2) 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 for a felony and up to \$300 for a person charged with a misdemeanor. (Pen. Code, §§ 1001.15 & 1001.16.)
- 3) Allows a county to impose a fee to cover the actual administrative costs of the collection of a restitution fee. (Pen. Code, §§ 1001.90 & 1202.4.)
- 4) Allows restitution to be deducted from a person's wages and allows an employer to deduct \$5 for the first payment and \$1 for every subsequent payment from the person's wages. (Pen. Code, § 1202.42.)
- 5) Requires in domestic violence convictions, a minimum fee of \$500 to 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. Probation shall not be terminated until fees are paid. (Pen. Code, § 1203.097.)
- 6) 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 percent. This money goes to the general fund of the County. (Pen. Code, § 1203.1, subd. (l).)
- 7) Provides that a person who is granted probation for the unlawful possession, use, sale or other furnishing of a controlled substance 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. (Pen. Code, § 1203.1ab.)
- 8) 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. (Pen. Code, § 1203c.)
- 9) 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. (Pen. Code, § 1203.1m.)
- 10) Provides that every person convicted of a misdemeanor and not granted probation and every person convicted of an infraction can petition for a dismissal any time one year from the date of judgement 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. (Pen. Code, § 1203.4a.)
- 11) 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. (Pen. Code, § 1203.9.)

- 12) Allows a person to pay a criminal fine through an installment plan, in which case the court or collecting agency can collect a fee for the processing of the installment account. (Pen. Code, § 1205.)
- 13) Sets forth the basic requirements for an approved drug treatment program and includes a fee schedule. (Pen. Code, § 1211.)
- 14) Provides for a \$300 fee to be imposed on a person who fails to appear in court, in addition to any other penalties. (Pen. Code, § 1214.1.)
- 15) Allows a court to impose interest on any unpaid restitution balance. (Pen. Code, § 1214.5.)
- 16) Allows a restitution fine to be deducted from an incarcerated person's trust account and includes an administrative fee of up to 10%. (Pen. Code, §§ 2085.5 & 2085.6.)
- 17) 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. (Veh. Code, § 40508.5.)
- 18) Allows a person to make installment payments 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. (Veh. Code, § 40510.5.)
- 19) 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. (Bus. & Prof. Code, § 9882.14.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "California law currently allows counties and courts to charge administrative fees to people in the criminal legal system. These administrative fees can quickly add up to thousands of dollars for a single person and function as a regressive tax on low-income people, especially people in Black and Brown communities. People and their families experience these fees as another form of punishment after already having served time, paid fines, or faced other consequences.

"The Financial Justice Project San Francisco conducted a study of criminal fees and found three major problems:

- i. Criminal justice administrative fees are primarily charged to low-income people who cannot afford to pay.
- ii. Criminal justice administrative fees create barriers for people to re-enter the community and can increase the likelihood of recidivism.

- iii. Criminal justice administrative fees are counterproductive, ineffective, and an anemic source of revenue.¹

“While counties are authorized to charge administrative fees to pay for costs associated with the system, counties net little revenue from these fees. For example, in Glenn County, the rate of collection for incarceration fees was consistently below 25 percent. And, in Los Angeles County, the collection rate for ‘administrative’ fees was as low as 1.7 percent. Because of the high costs and low returns associated with trying to collect fees from low-income people, most of the fee revenue pays for collection activities. The reality is the people in the system are just too poor to pay this fees; US Department of Justice data shows that approximately 80 percent of Californians in jail are indigent.²

“In theory, one of the seemingly sensible thing to do in the context of fees, is to base it on a person’s ability to pay. However, when there are so many poor people in the system, and the cost of processing and collections is as high as 69 cents on the dollar collected, it no longer makes fiscal sense to spend money on creating bureaucracy that create further challenges and obstructions for the masses. Further, while an ability to pay model could make sense in theory if there were more affluent people in the system, the Debt Free Justice Coalition found that in practice, application of the ability to pay programs vary widely by counties. Many courts do not conduct these determinations, and for those that do, few guidelines exist.

“SB 586 would end the assessment and collection of 22 administrative fees imposed against people in the criminal legal system and modify other sections of the Penal Code and Business and Professions Code pertaining to domestic violence counseling programs, payments to shelters, and ignition interlock device civil actions and reporting respectively.

“By doing so, SB 586 would dramatically reduce the suffering caused by court-ordered debt and enhance the economic security of system-involved populations. This bill is a critical next step at the intersection of racial justice and budget equity in California because it ends the practice of using administrative fees to balance the state and county budgets on the backs of those in the Black and Brown communities who are negatively impacted, and who then have a harder time climbing out of the trenches of debt to achieve stability and upward mobility on account of the burden the debt holds over them.”

- 2) **Financial Implications for Criminal Defendants:** “As legislative and other policy makers are becoming increasingly aware, the growing use of ... fees and similar forms of criminal justice debt creates a significant barrier for individuals seeking to rebuild their lives after a criminal conviction. Criminal justice debt and associated collection practices can damage credit, interfere with a defendant's commitments, such as child support obligations, restrict employment opportunities and otherwise impede reentry and rehabilitation. “What at first glance appears to be easy money for the state can carry significant hidden costs—both human and financial—for individuals, for the government, and for the community at large. ... Debt-related mandatory court appearances and probation and parole conditions leave debtors

¹ The Financial Justice Project San Francisco, *Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government*, (May 22, 2018). http://test-sftx.pantheonsite.io/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019.pdf.

² U.S. DOJ, Defense Counsel in Criminal Cases (2000), <https://bjs.ojp.gov/content/pub/ascii/dccc.txt>

vulnerable for violations that result in a new form of debtor's prison. ... Aggressive collection tactics can disrupt employment, make it difficult to meet other obligations such as child support, and lead to financial insecurity—all of which can lead to recidivism.” (Citation omitted.) These additional, potentially devastating consequences suffered only by indigent persons in effect transform a funding mechanism for the courts into additional punishment for a criminal conviction for those unable to pay.” (*People v. Duenas* (2019) 30 Cal.App.5th 1157, 1168, quoting *People v. Neal* (2018) 29 Cal.App.5th 820, 827.)

- 3) **Growth of Uncollected Debt:** While criminal fines, fees, and penalties have climbed steadily, government entities tasked with collecting these fines have realized diminishing returns from collection efforts. Government resources can be wasted in futile collection attempts. A San Francisco Daily Journal article from several years ago noted, "When it comes to collecting fines, superior court officials in several counties describe the process as 'very frustrating,' 'crazy complicated' and 'inefficient.'" (See *State Judges Bemoan Fee Collection Process*, San Francisco Daily Journal, 1/5/2015 by Paul Jones and Saul Sugarman.)

Simply put, criminal defendants can generally not produce a substantial flow of money for fines. That well will quickly run dry. In the same Daily Journal article, the Presiding Judge of San Bernardino County was quoted as saying "the whole concept is getting blood out of a turnip." (*Daily Journal, supra.*) The article noted in particular that "Felons convicted to prison time usually can't pay their debts at all. The annual growth in delinquent debt partly reflects a supply of money that doesn't exist to be collected." (*Ibid.*)

The most recent Overview of Criminal Fine and Fee System prepared by the Legislative Analyst's Office (LAO) this year and presented to the Senate Budget Subcommittee No. 5 on Corrections, Public Safety, Judiciary, Labor and Transportation, states that, "The judicial branch reports \$8.6 billion in fines and fees remained outstanding at the end of 2019-20." (*Overview of Criminal Fine and Fee System*, May 13, 2021, p. 4 < <https://lao.ca.gov/Publications/Detail/4427>>.) The LAO notes that, "[t]he total amount of fine and fee revenue distributed to state and local governments has declined since 2010-11." (*Id.* at p. 5.)

- 4) **Recent Repeal of Criminal Justice Administrative Fees:** Last year, AB 1896 (Committee on Budget), Chapter 92, Statutes of 2020, eliminated roughly 20 criminal justice administrative fees. This included the repeal of statutes associated with public defense fees, cost of counsel, public defender registration fee, public defense fees for minors, recovery of costs associated with arrest, the \$25 administrative-processing fee and \$10 citation-processing fee, the interstate compact supervision fee, fees associated with alternative custody, fees associated with electronic monitoring, and probation department investigation/progress report fees. The repeal of those fees became effective July 1, 2021. The budget trailer bill provided that the unpaid balances related to the aforementioned eliminated fees were uncollectible. Finally, the budget trailer bill appropriated \$65,000,000 annually from the General Fund to the Controller beginning in the 2021-22 fiscal year to the 2025-26 fiscal year, inclusive, to backfill revenues lost from the repeal of the fees.

Similarly, the May Revision to this year's budget includes "\$300 million one-time federal American Rescue Plan Act of 2021 (ARPA) funds to support additional relief for low-income Californians in the form of a debt forgiveness program to eliminate debt owed on

existing fines and fees for traffic and non-traffic infraction tickets issued between January 1, 2015 and June 30, 2021. Specifically, under this program an individual could apply to have 100 percent of their debt forgiven upon submission of an application verifying their low-income status. The one-time funding covers implementation costs for the trial courts and the backfill of lost revenues that would have otherwise been allocated for court operations and to local governments.” (See Judicial Branch Budget Summary, p. 149, available at: <http://www.ebudget.ca.gov/budget/2021-22MR/#/BudgetSummary>) Elimination of fees is also being proposed.

In light of the FY 2020-21 budget actions that were just implemented and the currently-proposed budget actions, should the proposals made in the bill be addressed through the budget process rather than in this committee?

- 5) **County Maintenance of Effort Obligations to the State:** With the passage of the Trial Court Funding Act of 1997, existing state and county financing provisions of law were repealed and the state assumed responsibility to fund the trial courts. However, as part of providing the counties relief from direct responsibility to fund the trial courts, counties were required to make payments to the state into the Trial Court Trust Fund. These are known as maintenance of effort obligations (MOEs). The amount of payment to the state was tied to and capped at the amounts of county general fund money provided to fund the courts in FY 1994-1995, and specified fine and penalty revenues the county remitted to the state in FY 1994-1995. Over time, both the amounts and the number of counties obligated have changed as a result of legislation. (See <https://www.courts.ca.gov/documents/tcbac-20151216-fms-item9-informational.pdf>.)

In a 2016 report, *Improving California’s Criminal Fine and Fee System*, the Legislative Analyst’s Office discussed the relationship of county MOEs to the fines and fee system. The LAO noted that, “local governments currently receive about 40 percent of criminal fine and fee revenue—about \$820 million in 2013–14—for a variety of purposes.” (p. 21, available at: <https://lao.ca.gov/reports/2016/3322/criminal-fine-and-fee-system-010516.pdf> .)

Additionally, “counties often use their share of fine and fee revenue to meet their maintenance-of-effort (MOE) obligations to the state.” (*Id.* at p. 22.) According to the LAO, “counties currently remit about \$660 million annually to the state to meet these obligations. In 2013–14, counties received \$657 million in fine and fee revenue—nearly the same amount owed to the state.” (*Ibid.*) The LAO suggested that, “one promising mechanism available to the Legislature for mitigating the impact on many counties is through reducing or eliminating the MOEs they are currently required to pay to the state related to trial court operations.” (*Ibid.*)

This bill would repeal numerous fines and fees that are being collected by the counties, but it does not change the obligations of the counties that are intertwined with the collection of these monies. Should the Legislature consider the aforementioned approach suggested by the LAO to mitigate the financial impact that this bill would have on the counties?

- 6) **Argument in Support:** According to the *American Civil Liberties Union California Action*, “The ACLU California Action is proud to cosponsor your SB 586, which would end the assessment and collection of the numerous administrative fees imposed against people in the criminal legal system. By eliminating these racially disparate fees, California will further reduce the suffering caused by the imposition of court-ordered debt, and enhance the

economic security and wellness of populations with system involvement. This is a vital step towards racial justice, budget equity, and a legal system that does not fund itself by stripping wealth from Black and Brown communities. By ending the collection, and writing-off all debt from previously assessed fees, SB 586 helps undo the economic harm from decades of racially biased policing and court decisions and improves California's ability to weather the current economic crisis caused by COVID-19.

"In California, low-income people of color are overrepresented at every stage in the criminal legal system. 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. Eliminating criminal administrative fees will allow former system-involved people and their families to devote their already limited resources to critical needs like food, education, housing, and health insurance. Additionally, because the vast majority of people in the criminal legal system are low-income, collection rates on criminal administrative fees are minimal and only decrease as debt grows older. Criminal administrative fees are an unreliable and inefficient revenue source.

"SB 586 will continue the trajectory of justice on criminal fines and fees in California. Recognizing the extreme harm caused by criminal administrative fees to individuals, families, and communities, Governor Newsom signed AB 1869 into law, abolishing 23 fees in the criminal legal system effective July 1, 2021. SB 586 builds upon this important work by eliminating many of the over 60 fees that remain."

- 7) **Argument in Opposition:** According to the *California District Attorneys Association*, "CDAA understands 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."

8) **Prior Legislation:**

- a) AB 1869 (Committee on Budget), Chapter 92, Statutes of 2020, eliminated multiple fees in the criminal legal system effective July 1, 2021 and made the unpaid balances related to the aforementioned eliminated fees uncollectible.
- b) SB 144 (Mitchell), of the 2019-2020 Legislative Session, would have eliminated the authority to collect many fees connected to criminal arrests, prosecution, and conviction related to administration of the criminal justice system, and would have made the unpaid balance of most court-ordered debt unenforceable. SB 144 was not heard in the Assembly Public Safety by request of the author.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco Public Defender (Sponsor)
ACLU California Action (Co-Sponsor)
All Rise Alameda
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
Bay Area Legal Aid
Bay Area Regional Health Inequities Initiative
Black Leadership Council
Building the Base Face to Face
California Attorneys for Criminal Justice
California Public Defenders Association
California Public Defenders Association (CPDA)
Center for Responsible Lending
Center on Juvenile and Criminal Justice
Change Begins With Me
Cloverdale Indivisible
Community Legal Services in East Palo Alto
Contra Costa Moveon
Defending Our Future: Indivisible in Ca
East Bay Community Law Center
East Valley Indivisibles
El Cerrito Progressives
Ella Baker Center for Human Right
Ella Baker Center for Human Rights
Homeboy Industries
Housing California
Indivisible 36
Indivisible 41
Indivisible Auburn CA
Indivisible Beach Cities
Indivisible CA 37

Indivisible CA Statestrong
Indivisible Ca-25 Simi Valley Porter Ranch
Indivisible Ca-3
Indivisible Ca-39
Indivisible Ca-7
Indivisible Ca29
Indivisible Ca: Statestrong
Indivisible Claremont / Inland Valley
Indivisible Colusa County
Indivisible East Bay
Indivisible Elmwood
Indivisible Euclid
Indivisible Lorin
Indivisible Los Angeles
Indivisible Marin
Indivisible Media City Burbank
Indivisible Normal Heights
Indivisible North Oakland Resistance
Indivisible North San Diego County
Indivisible Northridge
Indivisible Oc 46
Indivisible Oc 48
Indivisible Petaluma
Indivisible Sacramento
Indivisible San Bernardino
Indivisible San Jose
Indivisible San Pedro
Indivisible Santa Barbara
Indivisible Sausalito
Indivisible Sebastopol
Indivisible Sf
Indivisible Sonoma County
Indivisible South Bay LA
Indivisible Stanislaus
Indivisible Suffragists
Indivisible Ventura
Indivisible Windsor
Indivisible Yolo
Indivisible: San Diego Central
Indivisibles-sherman Oaks
Insight Center for Community Economic Development
Lawyers' Committee for Civil Rights - San Francisco
Legal Services for Prisoners With Children
Legal Services of Northern California
Livermore Indivisible
Los Angeles Conservation Corps
Los Angeles County District Attorney's Office
Mill Valley Community Action Network
Mountain Progressives

Multi-faith Action Coalition
National Association of Social Workers, California Chapter
Neighborhood Legal Services of Los Angeles County
Nothing Rhymes With Orange
Orchard City Indivisible
Orinda Progressive Action Alliance
Policylink
Prosecutors Alliance California
Public Counsel
Root & Rebound
San Diego Indivisible Downtown
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Financial Justice Project
Santa Cruz Indivisible
Sfv Indivisible
Tehama Indivisible
Together We Will/indivisible - Los Gatos
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
Vallejo-benicia Indivisible
Venice Resistance
Yalla Indivisible
Youth Justice Coalition

Oppose

California District Attorneys Association
California Narcotic Officers' Association
Peace Officers Research Association of California (PORAC)

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