

SENATE THIRD READING
SB 586 (Bradford)
As Amended August 30, 2021
Majority vote

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

Major Provisions

- 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.
- 6) Eliminates the ability of an employer to deduct a fee for setting up a restitution payment plan and for subsequent deductions.
- 7) 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.
- 8) 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.
- 9) Provides that unpaid fees in a domestic violence case shall not be a bar to ending probation.
- 10) 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.
- 11) Requires a finding of ability to pay before the defendant is assessed costs for obtaining DNA samples.
- 12) Eliminates the ability of the entity collecting restitution from a person granted probation to add an administrative fee to cover the costs of collection.
- 13) 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.

- 14) 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.
- 15) Eliminates the court's authority to order a person sentenced to prison to pay all or part of the cost of confinement.
- 16) Eliminates the ability to charge a fee when probation is transferred to another county.
- 17) Eliminates the ability to charge a fee to set up an installment account to pay fines and fees and for processing of installments.
- 18) Eliminates all fees relating to drug diversion treatment programs.
- 19) 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.
- 20) Eliminates the ability of the court to impose interest on unpaid restitution ordered as a condition of probation.
- 21) Eliminates ability of CDCR and the counties to collect an administration fee to cover the actual cost of collecting restitution and the restitution fine.
- 22) Repeals the authority of a county to charge \$15 for a violation of a written promise to appear on any Vehicle Code violation.
- 23) Eliminates the ability to charge for the failure to pay an installment associated with Vehicle Code violations.
- 24) 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.

COMMENTS

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:

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

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

"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%. And, in Los Angeles County, the collection rate for 'administrative' fees was as low as 1.7%. 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; [United States] Department of Justice data shows that approximately 80% of Californians in jail are indigent.

"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."

Arguments 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."

Arguments 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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Loss of Revenue (Trial Court Trust Fund, Trial Court Improvement and Modernization Fund and General Fund) to the trial courts of \$106.4 million annually, including \$96.9 million in civil assessments. Judicial Council estimates one of two revenue streams for the Trial Court Improvement and Modernization Fund (civil fines and assessments) is being eliminated. As a result, the loss of this revenue will render the fund insolvent. Judicial Council also notes that absent a backfill of lost revenue, branch operations funded from these revenues would be significantly reduced. Specifically, loss of civil assessment revenues will have a direct impact on court operations and staffing and thereby reduce access to justice. Judicial Council also estimates additional costs, possibly in excess of \$150,000, in increased workload as cases

with outstanding court-ordered debt are reviewed and repealed and court-ordered fees are ordered vacated.

- 2) Possibly reimbursable loss of revenue to counties resulting from eliminated fines and fees for diversion, drug testing and incarceration costs. GF allocations may be necessary to backfill lost revenue resulting from this bill to the extent the Commission on State Mandates determines the eliminated fees allowed for sufficient cost recovery to pay for mandated programs or increased levels of service by the local agencies.

VOTES

SENATE FLOOR: 30-7-3

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Jones, Ochoa Bogh, Wilk

ABS, ABST OR NV: Hurtado, Melendez, Nielsen

ASM PUBLIC SAFETY: 6-1-1

YES: Jones-Sawyer, Bauer-Kahan, Lee, Quirk, Santiago, Wicks

NO: Lackey

ABS, ABST OR NV: Seyarto

ASM APPROPRIATIONS: 12-4-0

YES: Lorena Gonzalez, Bryan, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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