
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1375 **Hearing Date:** June 16, 2015
Author: Thurmond
Version: February 27, 2015
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Criminal Penalties: Nonpayment of Fines*

HISTORY

Source: Conference of California Bar Associations

Prior Legislation: SB 1371 (Anderson), Chapter 49, Statutes of 2012

Support: American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Public Defenders Association; Legal Services for Prisoners with Children; Ella Baker Center for Human Rights

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to increase the statutory rate for payment of fines by incarceration from not less than \$30 per day to not less than \$125 per day.

Existing law authorizes the court to incarcerate a defendant until an imposed criminal fine is satisfied, but limits such imprisonment to the maximum term permitted for the particular offense of conviction. (Penal Code § 1205(a).)

Existing law requires that the time of imprisonment for failure to pay a fine be calculated as no more than one day for every \$30 of the fine. (Penal Code § 1205(a).)

Existing law states that this provision applies to any violation of any of the codes or statutes of the state which are punishable by a fine or by a fine and imprisonment, but that it does not apply to restitution fines or restitution orders. (Penal Code § 1205(c) and (f).)

Existing law provides that all days spent in custody by the defendant must first be applied to the term of imprisonment and then to any fine including, but not limited to, base fines at the rate of not less than \$30 per day, or more, in the discretion of the trial court. (Penal Code § 2900.5(a).)

This bill requires that the time of imprisonment for failure to pay a fine be calculated as no more than one day for every \$125 of the fine.

This bill provides that all days spent in custody by the defendant must first be applied to the term of imprisonment and then to any fine including, but not limited to, base fines at the rate of not less than \$125 per day.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Legislation

According to the author:

Under existing law, a criminal defendant may choose or be ordered to serve jail time in lieu of paying a criminal fine, or he or she may be allowed to credit time spent incarcerated against the payment of a fine. The minimum rate of credit is \$30.00 per day of incarceration – an amount that was set 39 years ago in 1976 and has not been adjusted since. In almost all California counties, this “minimum” has since become the actual amount credited. At the same time, while base fines have not increased substantially since 1976, the total amount offenders are required to pay has skyrocketed due to added penalties and assessments. The total fine for running a red light increased from \$103 in 1993 to \$490 today – a 475% increase in just 20 years, compared to the proposed 416% increase in the credit proposed by AB 1375. Speeding up to 15 mph over the limit also comes with a \$238 price tag – more than 800% above what it cost in 1993.

It is not fiscally responsible to credit defendants only \$30 per day in lieu of fine payments. At an average cost of \$100 per day to house somebody in a California county jail, it would take 10 days and cost \$1000 to house a person paying off a \$300 fine. At the more equitable rate of \$125 per day, it would only take 3 days and cost about \$300. The cost savings alone justify the increase to \$125 per day.

This failure to adjust the rate of credit hurts poor defendants far more than better-off defendants, increasing anger and resentment at the inequity. Poor defendants are less likely to be able to post bail and will spend more time incarcerated awaiting a hearing or “working off” their fine. The inability of an increasing number of defendants to pay the fine outright also increases jail overcrowding.

2. Effect of Legislation

Penal Code section 1205 gives the court power to enforce payment of fine in criminal case by imprisonment.¹ Penal Code section 1205 also allows defendants to request that the trial court exercise its discretion to convert fines to jail time. The statute, however, cannot be used to pay off restitution fines or victim restitution orders. (Penal Code § 1205(f).)

Criminal fines and penalties have climbed steadily in recent decades. Government entities tasked with collecting these fines have realized diminishing returns from collection efforts. A recent San Francisco Daily Journal article noted, “California courts and counties collect nearly \$2 billion in fines and fees every year. Nevertheless, the state still has a more than \$10.2 billion balance of uncollected debt from prior years, according to the most recent date from 2012.” (See Jones & Sugarman, *State Judges Bemoan Fee Collection Process*, San Francisco Daily Journal, (January 5, 2015).) “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.” (*Id.*) In the same article, the Presiding Judge of San Bernardino County was quoted

¹ However, imprisonment pending payment of a fine is unconstitutional as applied to a convicted indigent defendant if the failure to pay is due to indigence and not to willfulness. (*In re Antazo* (1970) 3 Cal.3d 100, 103-104.)

as saying “the whole concept is getting blood out of a turnip.” (*Id.*)

By raising the daily rate at which defendants can pay off fines and fees by converting them to jail time, this bill may help incentivize defendants to address delinquent debt.

3. Argument in Support

According to the *Conference of California Bar Associations*, the sponsor of this bill:

Under existing law, a criminal defendant may choose or be ordered to serve jail time in lieu of paying a criminal fine, or he or she may be allowed to credit time spent incarcerated against the payment of a fine. The minimum rate of credit is \$30.00 per day of incarceration – an amount that was set in 1976 and has not been adjusted since. In almost all California counties, this “minimum” has since become the actual amount credited.

When this law was enacted, \$30.00 was equivalent to working 12 hours at a minimum wage job (\$1.50/hour). On January 1, 2016, the minimum wage in California will increase to be \$10.00/hour, meaning that the same 12-hour day should be worth \$120 – essentially the amount provided by AB 1375. By another measure, \$30.00 in 1976 had the same buying power as \$125.00 in 2014, according to the Bureau of Labor Statistics.

Further, while base fines have not increased substantially in the 39 years since 1976, the total amount offenders are required to pay has skyrocketed due to added penalties and assessments. The total fine for running a red light increased from \$103 in 1993 to \$490 today – a 475% increase in just 20 years, compared to the proposed 416% increase in the credit proposed by AB 1375. Speeding up to 15 mph over the limit also comes with a \$238 price tag - more than 800% above what it cost in 1993. By almost any standard, the proposed increase in the credit for jail time in lieu of a fine is very reasonable, modest even, when it is compared to the rise in inflation, the increased minimum wage, and the vast inflation of court fines and fees.

This failure to adjust the rate of credit hurts poor defendants far more than better-off defendants, increasing anger and resentment at the inequity. Poor defendants are less likely to be able to post bail and will spend more time incarcerated awaiting a hearing or “working off” their fine. The inability of an increasing number of defendants to pay the fine outright also increases jail overcrowding.

Finally, it is not fiscally responsible to credit defendants only \$30 per day in lieu of fine payments. At an average cost of \$100 per day to house somebody in a California county jail, it would take 10 days and cost \$1000 to house a person paying off a \$300 fine. At the more equitable rate of \$125 per day, it would only take 3 days and cost about \$300. The cost savings alone justify the increase to \$125 per day.