
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2177 **Hearing Date:** May 15, 2018
Author: Jones-Sawyer
Version: February 12, 2018
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Penalty Assessments: Fees*

HISTORY

Source: Author

Prior Legislation: SB 881 (Hertzberg) Chapter 779, Stats. 2016
SB 366 (Wright) held Senate Appropriations 2013

Support: California Public Defenders Association; Ella Baker Center for Human Rights;
National Association of Social Workers – California Chapter

Opposition: None known

Assembly Floor Vote: 70 - 0

PURPOSE

The purpose of this bill is to clarify that the criminal laboratory analysis fee and drug program fee are not subject to specified penalty assessments.

Existing law requires every person convicted of a violation of specified drug offenses to pay a criminal laboratory analysis fee in the amount of \$50 for each separate offense. (Health & Saf. Code § 11372.5 (a).)

Existing law requires every person convicted of a drug offense, except as specified, to pay a drug program fee in the amount of \$150 for each separate offense. (Health & Saf. Code § 11372.7(a).)

Existing law states that there shall be levied a state penalty in the amount of \$10 for every \$10, or part of \$10, upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses, except specified parking offenses, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. (Penal Code § 1464 (a).)

Existing law requires a state surcharge of 20% upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses, except specified parking offenses, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. (Penal Code § 1465.7(a).)

Existing law requires an assessment of \$5 for every \$10 or fraction thereof, upon every fine, penalty or forfeiture collected by the courts for criminal offenses, including all Vehicle Code offenses, except specified parking offenses. These funds are to be used for state court construction. (Government Code § 70372.)

Existing law provides for an additional county penalty assessment of up to \$7 for every \$10 or fraction thereof, upon every fine, penalty, or forfeiture imposed for criminal offenses, including Vehicle Code offenses, except for parking offenses. The money collected shall be placed in any of the following funds, if established by a county board of supervisors: Courthouse Construction Fund, Criminal Justice Facilities Construction Fund, Automated Fingerprint Identification Fund, Emergency Medical Services (EMS) Fund; and/or DNA Identification Fund. (Government Code § 76000.)

Existing law allows the board of supervisors of counties to assess a fine of \$2 for every \$10 or fraction thereof, upon every fine, penalty or forfeiture collected by the courts for criminal offenses, including all Vehicle Code offenses, except specified parking offenses for funding emergency medical services. (Government Code § 76000.5.)

Existing law requires the assessment of \$1 for every \$10 or fraction thereof, upon every fine, penalty or forfeiture collected by the courts for criminal offenses, including all Vehicle Code offenses, except specified parking offenses. The funds are to be used to implement the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, as created by Proposition 69 (1994). (Government Code § 76104.6.)

Existing law requires the assessment of \$3 for every \$10 or fraction thereof, upon every fine, penalty or forfeiture collected by the courts for criminal offenses, including all Vehicle Code offenses. The funds are to be used for operation of the DNA fingerprinting and Unsolved Crime & Innocence Protection Act. (Government Code § 76104.7.)

This bill states that the criminal laboratory analysis fee and the drug program fee are not subject to penalty assessments and charges including the following:

- a) The penalty to be deposited in the State Penalty Fund pursuant to Penal Code section 1464;
- b) The 20 percent state surcharge on fines to be deposited in the State Penalty Fund pursuant to Penal Code section 1465.7;
- c) The state court construction penalty authorized under Government Code section 70372;
- d) The penalty authorized under Government Code section 76000 to be deposited in a variety of funds;
- e) The penalty for support of emergency medical services authorized under Government code section 76000.5;
- f) The penalty to be deposited in the DNA Identification Fund pursuant to Government Code section 76104.6; and,

- g) The forensic laboratory penalty also to be deposited in the DNA Identification Fund pursuant to Government Code section 76104.7.

This bill deletes obsolete cross-references in existing law.

COMMENTS

1. Need for This Bill

According to the author:

Individuals convicted of criminal offenses, including traffic violations, are often required to pay a number of fines and fees as part of their punishment. The revenue from these payments is deposited in specific funds to support various state and local government programs and services. In recent years, the Legislature has expressed concern with the level of the state's fines and fees and their impact on low-income individuals. The total amount owed by an individual consists of a base fine, as well as various additional charges (such as other fines, fees, forfeitures, penalty surcharges, assessments, and restitution orders). In California, the penalty assessment can be as much as \$30 for every \$10 fine, or fraction thereof, according to state court documents. California has also added several flat fees to cover fixed court costs such as the criminal laboratory analysis and drug program fees. These fees are fixed and should not be subjected to penalty assessments. However, over the years, penalty assessments have been imposed on these fees without justification.

2. Fine vs. Fee

The distinction between a fine and a fee is important in criminal cases because it has constitutional implications. The ex post facto clauses of the federal and California constitutions prohibit retroactive application of a law that increases the punishment for a criminal act. (U.S. Const., art. I, § 10, cl. 1, and Cal. Const. art. I, § 9.) Fines are generally considered punitive because they arise from convictions. (*People v. Alford* (2007) 42 Cal.4th 749, 757.) In contrast, "fees" are generally considered "a fixed charge" applied to users of the system, and are not considered punitive. (*People v. High* (2004) 119 Cal.App.4th 1192, 1199.)

Whether a payment is a fine or a fee does not necessarily depend on the descriptive language used by the Legislature. In determining the character of a payment as a fine or a fee, the courts consider whether the Legislature intended the sanction to be punitive, and, if not, whether the sanction is so punitive in effect as to prevent the court from legitimately viewing it as regulatory or civil in nature, despite the legislative intent. (*People v. Alford, supra*, 42 Cal.4th at p. 755.) "The United States Supreme Court has articulated certain non-exclusive factors governing this determination. 'The factors most relevant to our analysis are whether, in its necessary operation, the regulatory scheme: has been regarded in our history and tradition as punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with regard to this purpose.'" (*Id.* at 757, quoting *Smith v. Doe* (2003) 538 U.S. 84.)

There is a split of authority as to whether the criminal laboratory analysis fee and the drug program fee are actually “fines” subject to penalty assessments. “Almost all California appellate districts ... have weighed in on the topic (albeit in unpublished opinions).” (*People v. Martinez* (2017) 15 Cal.App.5th 659, 662.)¹

Cases finding that the “fees” are “fines” and so punishment subject to penalty assessments despite the Legislature calling them “fees” include: *People v. Alford* (2017) 12 Cal.App.5th 964 (rev. gr. 9/13/17 [S243340]); *People v. Moore* (2017) 12 Cal.App.5th 558 (rev. gr. 9/13/17 [S243387]); *People v. Sharret* (2011) 191 Cal.App.4th 859; *People v. McCoy* (2007) 156 Cal.App.4th 1246; *People v. Terrell* (1999) 69 Cal.App.4th 1246; *People v. Martinez* (1998) 65 Cal.App.4th 1511; *People v. Sanchez* (1998) 64 Cal.App.4th 1329; and *People v. Sierra* (1995) 37 Cal.App.4th 1690. The Supreme Court also assumed that penalty assessments apply in the context of a crime lab fee. (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153.) As the *Sharret* court analyzed and determined, the “fee” is imposed only upon conviction for specified criminal offenses; it has no application in the civil context; it is assessed in proportion to the defendant's culpability because it attaches to each separate conviction; it is mandatory and not dependent on ability to pay; and that the monies collected are to be used for law enforcement purposes. They are “earmarked for the criminalistics laboratories fund, which has no civil purpose.” (*People v. Sharret, supra*, 191 Cal.App.4th at pp. 869-870.)

Cases finding that the fees are not punishment and therefore addition of penalty assessment is unauthorized include: *People v. Martinez, supra*, 15 Cal.App.5th 659; *People v. Webb* (2017) 13 Cal.App.5th 486; *People v. Watts* (2016) 2 Cal.App.5th 223; and *People v. Vega* (2005) 130 Cal.App.4th 183. Generally, these courts found it persuasive that crime-lab and drug-program fees serve an administrative purpose; that neither fee is substantial enough to have a deterrent effect, and that both are in fixed amounts, so are not based on the seriousness of a defendant's conduct. Because the fees are non-punitive the courts hold it is error to impose penalty assessments on them.

¹ In *People v. Ruiz* (May 19, 2015, F068737) [nonpub. opn.], review granted 9/14/2016 (S235556) , the California Supreme Court granted review on the following issue: May a trial court properly impose a criminal laboratory analysis fee (Health & Saf. Code, § 11372.5, subd. (a)) and a drug program fee (Heath & Saf. Code, § 11372.7, subd. (a)) based on a defendant's conviction for conspiracy to commit certain drug offenses? Since granting review in that case, the Supreme Court has granted review with briefing deferred in a series of cases which raise the issue of applicability of penalty assessments to the crime lab fee and the drug program fee. (See *People v. Mendoza* (Dec. 29, 2016, F070324) [nonpub. opn.], review granted 3/22/2017 (S239436); *People v. Blanco* (April 5, 2017, D070069) [nonpub. opn.], review granted 7/12/2017 (S241800); *People v. Ford* (April 10, 2017, D070689) [nonpub. opn.], review granted 7/12/2017 (S241984); *People v. Monroe* (May 18, 2017, D070387) [nonpub. opn.], review granted 7/26/2017 (S242744); *People v. Alford* (2017) 12 Cal.App.5th 964, review granted 9/13/2017 (S243340/D070486); *People v. Moore* (2017) 12 Cal.App.5th 558, review granted 9/13/2017 (S243387/C079171); *People v. Carter* (June 28, 2017, H043251) [nonpub. opn.], review granted 9/20/2017 (S243417); *People v. Ramos* (July 14, 2017, D070165) [nonpub. opn.], review granted 9/27/2017 (S243901); *People v. Guizar* (July 31, 2017, H042370) [nonpub. opn.], review granted 10/18/2017 (S244224); *People v. Kurtz* (Aug. 23, 2017, H043729) [nonpub. opn.], review granted 11/1/2017 (S244589); *People v. Day* (Sept. 25, 2017, H043843) [nonpub. opn.], review granted 11/29/2017 (S245019); *People v. Puckett* (Sept. 29, 2017, D070928) [nonpub. opn.], review granted 12/13/2017 (S245273); *People v. Lopez* (Oct. 12, 2017, F073918) [nonpub. opn.], review granted 12/20/2017 (S245493); *People v. Lopez* (Oct. 17, 2017, F073203) [nonpub. opn.], review granted 1/10/2018 (S245618); *People v. Shackelford* (Nov. 3, 2017, F072964) [nonpub. opn.], review granted 1/10/2018 (S245768); *People v. Underwood* (Nov. 3, 2017, C082647) [nonpub. opn.], review granted 1/10/2018 (S245833)

Notably, in *People v. Moore, supra*, 12 Cal.App.5th 558, the Third District Court of Appeal commented, “[T]he Legislature, which is presumed to be aware of longstanding judicial interpretations of statute [citation], has not amended section 11372.5 to abrogate the holding the section constitutes a fine or penalty in the nearly two decades since the decision in *Martinez, supra*, 65 Cal.App.4th at pages 1520-1522.” (*Id.* at p. 571.)

This bill would specify that the penalty assessments and other surcharges do not apply to the criminal analysis fee and the drug program fee.

3. Calculation of Fines and Fees Has Become Burdensome and Complex

“However laudable these charges may be, the patchwork nature of the ever-growing financial penalties in criminal actions has created a system that begins to match the complexity of the federal income tax. . . . It is doubtful that criminal trial lawyers and trial court judges have the ability to keep track of the myriad of charges that now attach to criminal convictions.” (*People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1533, J. KRIEGLER, concurring.)

“From the institutional viewpoint of the criminal justice system, the current approach is problematic. The penalties in a criminal action, including any financial penalties, should be easily identifiable. Prosecutors should be able to clearly determine the financial consequences of a case when assessing punishment and negotiating case settlements. Defense counsel should be able to clearly and concisely explain the possible financial charges to the client to ensure that when a guilty or no contest plea is entered, the defendant does so with full knowledge of its economic consequences. And trial courts should not have to search the Penal, Government, or Health and Safety Codes in an attempt to identify mandatory fines, fees, or penalties, some of which may have no logical connection to a pending case. This is not a trifling matter. This court deals with issues surrounding the imposition of financial charges on a regular basis. Undoubtedly, the trial courts expend precious resources in attempting to properly impose the mandated penalties. The expansive criminal justice system in California generates large amounts of revenue for the state and local governments. It ought to do so in a more straightforward manner.” (*People v. Castellanos, supra*, 175 Cal.App.4th at pp. 1533-1534.)

As to the judicial costs trying to resolve the issue of whether assessments apply to the crime lab and drug program fees, one court noted, “The judicial and public attorney resources devoted to the issue (including many published and nonpublished appellate decisions) have likely far outweighed the penalties collected.” (*People v. Alford, supra*, 12 Cal.App.5th at p. 967, fn. 2, (rev. gr. 9/13/17 [S243340].)

4. Growth of Uncollected Debt

Criminal fines and penalties have climbed steadily in recent decades. 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.*)

In March of 2017, when the Legislative Analyst's Office (LAO) analyzed the Governor's criminal fines and fees proposal for the 2017-2018 budget, it noted, "Based on available data in Judicial Council reports, the total amount of criminal fines and fees collected has declined annually since 2013-14. ... [T]otal collections decreased by nearly \$200 million—from \$1.8 billion in 2013-14 to \$1.6 billion in 2015-16. The \$1.6 billion consists of about \$905 million (56 percent) in debt that was not delinquent and \$720 million (44 percent) in delinquent debt." (See *2017-2018 Budget: Governor's Criminal Fines and Fees Proposal*, pp. 7-8, <http://www.lao.ca.gov/reports/2017/3600/Criminal-Fine-Fee-030317.pdf>)

As to the balance of outstanding debt, the LAO commented, "Every year, the courts estimate the total outstanding balance of debt owed by individuals. This balance may decrease when individuals make payments or debt is resolved in an alternative manner, such as when a portion of debt is dismissed because the individual performs community service in lieu of payment. However, this amount generally grows each year as some amount of newly imposed fines and fees goes unpaid and is added to the amount of unresolved debt from prior years. ... [A]n estimated \$12.3 billion in fines and fees remained outstanding at the end of 2015-16. We would note, however, that a large portion of this balance may not be collectable as the costs of collection could outweigh the amount that would actually be collected." (*Id.* at p. 8.)

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