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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 249                      **Hearing Date:** June 9, 2015  
**Author:** Obernolte  
**Version:** April 13, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Criminal Courts: Appeals: Fees*

## HISTORY

Source: Judicial Council

Prior Legislation: AB 354 (Rogan), Chapter 18, Statutes of 1995

Support: California District Attorneys Association; California Judges Association

Opposition: None known

Assembly Floor Vote: 78 - 0

## PURPOSE

***The purpose of this bill is to require a defendant to make a motion in the trial court before filing an appellate brief alleging only errors in the imposition or calculation of fines, fees, and assessments.***

*Existing law* provides that either party in a felony case may appeal on questions of law alone. (Penal Code, § 1235.)

*Existing law* allows a defendant to appeal a final judgment of conviction, subject to a few limitations, and from any order made after judgment affecting the defendant's substantial rights. (Penal Code, § 1237.)

*Existing law* defines a "final judgment" for purposes of appeal as "[a] sentence, an order granting probation, or the commitment of the defendant for insanity, the indeterminate commitment of a defendant as a mentally disordered sex offender, or the commitment of a defendant for controlled substance addiction." (Penal Code, §1237 (a).)

*Existing law* provides that a defendant cannot appeal from a judgment of conviction on the ground of an error in the calculation of presentence custody credits, unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction of the record in the trial court. (Penal Code § 1237.1.)

*Existing law* limits the issues a defendant can appeal in a guilty plea case, unless he or she obtains a certificate of probable cause. (Penal Code § 1237.5.)

*Existing law* allows the prosecution to appeal certain specified orders, such as a motion to dismiss, and order granting a new trial, and an unauthorized sentence. (Penal Code § 1238.)

*This bill* provides that an appeal may not be taken solely on the ground of an error in the imposition or calculation of fines, penalty assessments, surcharge, fees or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court, which may be informally in writing.

*This bill* provides that the trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the imposition or calculation of fines, penalty assessments, surcharges, fees or costs upon the defendant's request for correction.

*This bill* clarifies that a request to correct presentence custody credits in the trial court may be made informally in writing.

*This bill* provides that the trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the calculation of presentence custody credits upon the defendant's request for correction.

#### 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 Bill

According to the author:

The statutory scheme that governs the calculation of fines and other monetary penalties in California criminal cases is vast, complex, and frequently modified by the Legislature. As a result, appellate courts are often called upon to correct the erroneous calculation of fines and other monetary penalties on appeal.

When a calculation error is the sole issue on appeal, trial and appellate courts incur significant costs and burdens associated with preparation of the formal record on appeal and resulting in resentencing proceedings.

### 2. Appeal For an Error in Fines

Existing law provides that if a defendant is appealing the calculation of presentence credits, he or she must first make a formal request to the trial court before bringing the issue to the appellate court.

As was the case with the calculation of presentence custody credits, appellate courts are often called upon to correct sentences that contain errors in fines and penalty assessments. (*People v. Hamed* (2013) 221 Cal.App.4th 928, 939.) Appellate courts have voiced frustration about correcting these errors which can easily be resolved by the trial court. (*Id.*) This bill requires that criminal defendants resolve issues regarding fines, fees, and assessments in the trial court before raising them in the Court of Appeal. The sponsor, Judicial Council believes that"

AB 249 brings efficiencies to the court by reducing the burdens associated with formal appeals and resentencing proceedings stemming from a common sentencing error. By requiring that this sentencing error be first raised in the trial court, which has ready access to the court records and other information necessary to review and resolve such issues, this bill would promote judicial economies and efficiencies by avoiding the costs and burdens associated with a formal appeal.

### 3. Formal Motion vs. Informal Written Request

In *People v. Clavel* (2002) 103 Cal.App.4th 516, 519, the Court of Appeal dismissed an appeal because the sole issue raised was whether the trial court had miscalculated the credits and no formal motion had been filed. In *Clavel*, appellate counsel had filed an informal request for correction of credits before raising the issue on appeal, but the trial court failed to act on the request. (*Id.* at p. 518.) Because section 1237.1 requires the defendant to "make a motion" in the trial court, an informal request is not a motion, and an appeal raising a credits issue without such a motion is subject to dismissal. While the *Clavel* court expressly condoned the informal procedure to the extent that it gets the desired result, it held that if no action is taken by the superior court, counsel must proceed to make a formal motion. (*Id.* at p. 519.) This bill specifies that as to "motions" to correct either presentence credits or errors in the imposition or calculation of fines and fees, the requests may be made informally in writing.

### 4. Jurisdiction

As a general rule a trial court loses jurisdiction to vacate its own judgment once a party files a notice of appeal, thus shifting jurisdiction over the case to the Court of Appeal. (*People v. Alanis* (2008) 158 Cal.App.4th 1467, 1472.) The appellate court maintains jurisdiction of the case until the appeal is determined and the remittitur has issued. The purpose of this rule "is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The rule prevents the trial court from rendering an appeal futile by altering the appealed judgment." (*Ibid.*, quoting *Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1089.) There are, however, a few exceptions to the rule removing subject matter jurisdiction from the trial court. First, after the notice of appeal is filed, the trial court retains jurisdiction to correct clerical errors, but not judicial errors. A clerical error is one that is made in recording the judgment, whereas a judicial error is one made in rendering the judgment. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *In re Candelario* (1970) 3 Cal.3d 702, 705.) Additionally, the trial court may recall the sentence for 120 days under Penal Code section 1170 subdivision (d), if the recall is only for reasons rationally related to sentencing. (*Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1834-1836.) The trial court also has jurisdiction to vacate a void --but not voidable-- judgment, such as an unauthorized sentence. A judgment is void, rather than voidable, only if the trial court lacked subject matter jurisdiction. (*People v. Malveaux* (1996) 50 Cal.App.4th 1425, 1434.) This bill would require alleged errors regarding the imposition of fine, fees, and assessments to be raised in the trial court, rather than the appellate court, when there are no other issues to be raised on appeal. While some issues involving fines and fees may involve clerical changes or unauthorized sentences, others will not. The latter would fall outside the scope of the trial court's jurisdiction. However, the Legislature may regulate the mode of exercising appellate jurisdiction. (See e.g., *Powers v. City of Richmond* (1995) 10 Cal.4th 85.)

This bill clarifies that the trial court retains jurisdiction to correct any error in the calculation of presentence credits or the imposition or calculation of fines, penalty assessments, surcharges, fees or costs upon the defendant's request for corrections.

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