



November 4<sup>th</sup> Update on Criminal Justice Fees

1. Introduction

In September 2019, Contra Costa County Board of Supervisors (Board) voted to impose a moratorium on the use of locally imposed criminal justice fees, becoming only the third county in the nation to end or suspend such fees. The Board also referred the matter of criminal justice fees to the Public Protection Committee (PPC), requesting that the PPC attempt to identify and provide to the Board additional available and relevant data.

On September 30, 2019, the Public Protection Committee accepted an update on the implementation of the moratorium on the collection of adult criminal justice fee. The PPC directed staff to assemble a small work group to identify and provide to the PPC any additional available and relevant data.

2. San Francisco Financial Justice Project

In late 2016, the San Francisco Board of Supervisors called for the creation of the Financial Justice Project within the Office of The Treasurer and Tax Collector to assess and reform how fines and fees impact low-income San Franciscans and people of color. The Board of Supervisors also initiated a Fines and Fees Task Force, composed of staff from city and county departments and community organization representatives. The Task Force was directed to study the impact of fines, fees, tickets, and various financial penalties that disproportionately impact low-income San Franciscans, and propose reforms. The Board of Supervisors directed the newly-created Financial Justice Project to staff the Task Force. Since its creation, the Financial Justice Project has had two full-time staff members, including a Director and a Program Manager.

For approximately one year, the Fines and Fees Task Force held seven meetings researching and discussing the impact of fines and fees on the San Francisco community. The Fines and Fees Task Force was supported by funding partners, including the Citi Community Development and the Walter & Elise Haas Fund. In October of 2017, the Financial Justice Project released a report on the Task Force's findings. The report proposed several recommendations including implementing an ability to pay system for court fees, reducing reliance on quality of life crime fines, and decreasing the rate of suspending driver's licenses.

On February 6, 2018, the SF Board of Supervisors President London Breed announced she was introducing legislation to eliminate all criminal justice administrative fees authorized by local government. In April of 2018, the Financial Justice Project released a report detailing the impact of criminal justice administrative fees on the community, which it states was part of a yearlong collaborative process.

In the report, the Financial Justice Project found that there was approximately \$32.7 million in outstanding debt, owed by around 21,000 people. The majority of outstanding debt was for Probation-related fees. The report estimated that the elimination of fees would result in at least \$1 million in decreased annual revenue. An evaluation of the Public Defender's Clean Slate Program was conducted, which showed most of their clients were living in extreme poverty. The preparation of the Criminal



Justice Administrative Fees analysis report was supported by multiple funding partners, including The San Francisco Foundation, the Lauren and John Arnold Foundation, and the Walter & Elise Haas Fund.

In June of 2018, legislation eliminating the local administered fees was unanimously passed with support from the San Francisco Board of Supervisors, the Chief of Probation, District Attorney, Public Defender, and the Sheriff. The ordinance was scheduled to become effective and operative 30 days later on July 1, 2018.

While the fees included in the legislation are authorized by the county, they are collected by the San Francisco Superior Court. Because the courts are independently governed, the San Francisco Board of Supervisors does not have the authority to direct the court to clear judgments they have issued in the past. To resolve this issue, the Public Defender's Office, the District Attorney's Office, and the Financial Justice Project worked to submit a petition to the court to clear all of the debt associated with the fees included in the legislation, along with a list of associated account numbers. The UC Berkeley Law School Public Advocacy Clinic assisted with the process of collecting information on outstanding debt. Two months later, in August of 2018, the San Francisco Superior Court announced they eliminated more than \$32.7 million in outstanding debt stemming from these fees.

### 3. Contra Costa County Processes

Each agency that assesses and/or collects adult criminal justice fees– the Probation Department, the Office of the Sheriff, and the Superior Court- is governed by a different set of internal policies and practices. Each of these will be laid out in the following sections: (1) Probation Department, (2) Sheriff's Office, and (3) the Superior Court of California, County of Contra Costa (Court).

#### a. Probation Department

In January 2018, the Probation Department updated their ability-to-pay determination process. All adults that have been ordered to formal Probation, which includes mandatory supervision, and ordered to pay Probation fees, drug testing fees and/or the cost of their court report are assessed for their ability to pay said fees.

Below is an outline of the Probation's Department's fee assessment process:

1. Once the probationer has been out of custody for three (3) months, or if the probationer was sentenced from out of custody, the Deputy Probation Officer (DPO) will provide him or her with the Application for Financial Evaluation.
2. The probationer is instructed to complete the evaluation form and return it to the DPO within 20 business days or sooner. If the probationer fails to return the completed evaluation or returns an incomplete evaluation form, the DPO will give the probationer a warning that the evaluation needs to be completed within 10 business days or the amount of fees will be set at the maximum allowed.
3. Once the probationer returns the completed the application, the DPO will send the application and the order for Probation to the Probation Account Clerk who will review the application and determine the probationer's ability to pay based on net income and Probation's Fee Reduction schedule.



4. Once this determination has been made, the Probation Account Clerk will respond to the DPO with the total amount the probationer is able to pay over the duration of their time on Probation.
5. Upon receipt of the determination of the probationer's ability to pay, the DPO reviews the ability to pay determination with the probationer and the probationer has the option to agree to the amount, or requesting a hearing.
6. If the probationer agrees to the determined amount, the DPO prepares and sends the Determination of Ability to Pay memo to the Court along with a copy of the Ability to Pay Determination/Waiver/Instructions. The DPO also informs the probationer that in the event of changed financial circumstances, the probationer may request an updated Ability to Pay review or may request that the Court modify or vacate an existing court judgement for payment of fees.
7. If the probationer disagrees with the amount determined by the Probation Department. The DPO will contact the court clerk and calendar a hearing. The DPO will notify the probationer of the hearing date, time and location. The Defense Attorney and the District Attorney shall be notified and provided copies of all documents provided to the Court, including the Determination of Ability to Pay Memo, the Application for Financial Evaluation, the Ability to Pay Determination/Waiver/ Instructions and any other supporting documentation.

b. Office of the Sheriff

The Office of the Sheriff is responsible for the administration of Custody Alternative Facility (CAF) programs, which includes Work Alternative Program (WAP), Electronic Home Detention (EHD)/Alcohol Monitoring (SCRAM), and County Parole. Assessment and collection of fees is the responsibility of the Office of the Sheriff. With respect to WAP, PC 4024.2(c) authorizes the county's board of supervisors to "prescribe reasonable rules and regulations under which a work release program is operated." With respect to EHD, PC 1203.016(d)(1) specifies that the rules, regulations, and administrative policy of the Electronic Home Detention Program shall be written and reviewed on an annual basis by the County Board of Supervisors and the Correctional Administrator. The Board of Supervisors last conducted an annual review of the policies and procedures of the Custody Alternative Facilities programs in 2010.

Ability to Pay Process:

The CAF procedure provides for the CAF participant to be completely enrolled in a CAF program prior to discussing fees or ability to pay. Participants review and complete the personal budget form with their assigned CAF Specialist. The participant will then request a reduction/waiver of fees based on their stated ability to pay. A CAF Sergeant will review and approve the Personal Budget form. A participant's inability to pay all or a portion of any fee(s) will not preclude them from being enrolled or completing any program offered by the Custody Alternative Facility.

Process of Collections:

CAF fees are collected after the participant is enrolled in a CAF program. Fees can be paid in the manner which is most appropriate for the participant. Participants can pay their total program fees at one time or over a pre-determined length of time. There is no process established to collect payment from



participants who complete the program, but do not pay. A participant's ability to successfully complete a CAF programs is not impacted by lack of payment.

Percentage of participants who pay fees:

It is difficult to approximate the percentage of individuals who pay fees because we do not maintain statistics. Approximately 50% of CAF participants pay all or some of their assessed fees.

CAF Workgroup:

The Office of the Sheriff has worked with representatives from the Office of Reentry and Justice, the Public Defender's Office, and Reentry Solutions Group to review the CAF policies and procedures, including updating the Ability-to-Pay forms.

Work Alternative Program Fees by County:

In September 2018, Alameda Sheriff's Office provided a presentation on their Sheriff's Work Alternative Program<sup>1</sup>. Included in that presentation was a cost comparison of Work Alternative Programs amongst twelve different counties (see Figure 1). Contra Costa County

Figure 1. Work Alternative Cost Comparison

COUNTY	DAILY COST	ADMIN FEE
Alameda County	\$12.00	\$65.00
Butte County	\$7.00	\$75.00
Contra Costa County	\$16.00	\$125.00
El Dorado County	\$20.00	\$40.00
Fresno County	\$10.00	\$60.00
Marin County	\$12.00	35.00
Mendocino County	\$10.00	\$35.00
San Francisco County	\$20.00	\$100.00
San Joaquin County	\$10.00 (or 1 hour gross wage, whichever is greater)	\$75.00
San Luis Obispo County	\$14.00	\$75.00
Santa Clara County	Based on hours of work, not a daily rate	N/A
Tulare County	\$7.00	\$75.00

<sup>1</sup> Sheriff's Work Alternative Program (SWAP) Presentation, Alameda County Sheriff's Office, September 13, 2018



c. Superior Court

The Court currently collects and distributes 8 of the 13 fees and assessments identified in the moratorium. As the Court relies on legacy case management systems to collect and distribute criminal fines and fees, significant resources and time will be needed to update its legacy systems and procedures to fully implement the County's moratorium. The Court estimates \$63,570 as the administrative cost to implement the moratorium and waiting for further direction from the County. The Court has stressed that once these fees are waived or suspended, they cannot later be re-imposed if the temporary moratorium is lifted. This would require a write-off of existing debt.

Below is a summary of further analysis performed by the County Administrator's Office that was aided by additional information from the Superior Court (See Figure 2). This summarizes the Courts responsibility for the imposition and collection of the referenced fees and the level of implementation of the moratorium.

**Figure 2. Summary of Court Fees**

<b><i>Name of Fee/Assessment</i></b>	<b><i>Case Type(s) Affected</i></b>	<b><i>Court Imposed</i></b>	<b><i>Court Collected</i></b>	<b><i>Continued Collection</i></b>	<b><i>Continued Imposition</i></b>	<b><i># of Accounts</i></b>	<b><i>Balance</i></b>
<b><i>10% Fee</i></b>	Criminal	Y	Y	Pending	N		
<b><i>CA Fingerprint ID Penalty</i></b>	Criminal & Traffic	Y	Y	N/A	Y		
<b><i>Booking Fee</i></b>	Criminal	Y	Y	N	N	3,684	\$901,092
<b><i>Drug Diversion Fee</i></b>	Criminal	Y	Y	Pending	N		
<b><i>Alcohol Test Fee</i></b>	Criminal (DUI & Reckless)	N	N	N/A	N/A		
<b><i>CAP Fee</i></b>	Criminal (DUI & Reckless)	N	N	N/A	N/A		
<b><i>Probation Drug Diversion Fee</i></b>	Criminal	Y	Y	Pending	N		
<b><i>Cost of Probation</i></b>	Criminal	N	Y	Pending	N		
<b><i>Probation Drug Test Fee</i></b>	Criminal	N	Y	Pending	N		
<b><i>Probation Report Fee</i></b>	Criminal	N	Y	Pending	N		
<b><i>Alcohol and Drug Assessment Fee</i></b>	Criminal	N	N	N/A	N/A		
<b><i>Public Defender Fee</i></b>	Criminal	N	Y	Pending	N	25,240	\$5.54 million



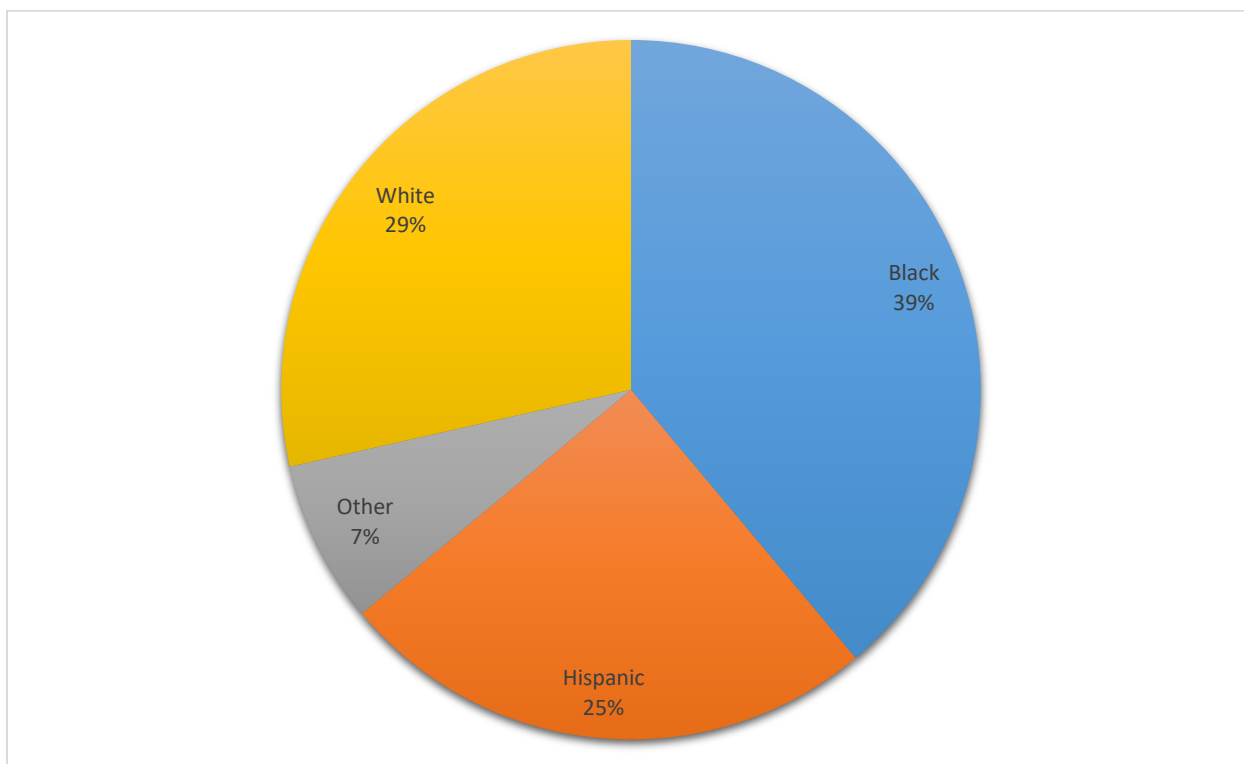
#### 4. Available Data

In addition to the body of evidence and contra costa county implications, included in Reentry Solutions Group's Report on Criminal Justice Fees in Contra Costa, there was limited data provided by the Sheriff's Office and the Probation Departments on race and income levels.

##### a. Racial Demographics

Based on a snapshot of the demographics of individuals in custody as of October 25, 2019, approximately 39% were Black (see Figure 3). Within Contra Costa County, approximately 8.5% of the population is Black or African American.<sup>2</sup>

**Figure 3. Racial Demographic –In-custody Adults as of October 25, 2019**



Source: Contra Costa County Office of the Sheriff

According to data from the State of California DOJ CJS, in both 2013 and 2014, Blacks were more likely to be arrested than individuals from any other racial/ethnic group in every city except one in Contra Costa County. While the specific rate of the disparity varied by city the disparity tended to be higher in cities with smaller black populations (see Appendix B for more information). Across the County, Black adults were more than 3 times more likely to be arrested than adults from any other racial/ethnic group,

<sup>2</sup> 2018 American Community Survey, ACS DEMOGRAPHIC AND HOUSING ESTIMATES, [https://data.census.gov/cedsci/table?q=contra%20costa%20&hidePreview=false&table=DP05&tid=ACSDP1Y2018.DP05&g=0500000US06013&vintage=2018&layer=county&cid=DP05\\_0001E&lastDisplayedRow=93](https://data.census.gov/cedsci/table?q=contra%20costa%20&hidePreview=false&table=DP05&tid=ACSDP1Y2018.DP05&g=0500000US06013&vintage=2018&layer=county&cid=DP05_0001E&lastDisplayedRow=93)



and Black youth were more than 7 times more likely to be arrested than youth from any other racial/ethnic group.<sup>3</sup>

b. Income Demographics

The Probation Department reviewed 115 cases from March 2018 to March 2019 and found that approximately 88% had income levels up to 200% of the federal poverty guideline and received a fee reduction or waiver, whereas approximately 12% were charged the full amount (See Figure 4). Probation Fee Reduction Schedule has been included below (See Figure 5.) For reference, the estimated median household income in Contra Costa is approximately \$64,300 for nonfamily households and \$114,000 for family households.<sup>4</sup>

**Figure 4. Probation Fee Reduction Sample (March 2018 - March 2019)**

Accounts	% of Total	Federal Poverty Level	Fee Reduction
79	69%	At or Below 100%	100%
5	4%	Up to 125%	80%
3	3%	Up to 150%	60%
11	10%	Up to 175%	40%
3	3%	Up to 200%	20%
14	12%	Above 200%	0%
115	100%		

<sup>3</sup> Racial Justice Task Force Final Report,  
[http://64.166.146.245/docs/2018/BOS/20180724\\_1121/34430\\_FINAL%20CCCC-RJTF\\_BoS-memo\\_20180710\\_STC.pdf](http://64.166.146.245/docs/2018/BOS/20180724_1121/34430_FINAL%20CCCC-RJTF_BoS-memo_20180710_STC.pdf)

<sup>4</sup> 2018 American Community Survey 1-Year Estimates  
[https://data.census.gov/cedsci/table?q=contra%20costa%20county%20income&hidePreview=false&table=DP03&tid=ACSDP1Y2018.DP03&t=Income%20and%20Earnings&g=0500000US06013&vintage=2018&layer=county&cid=DP03\\_0001E&lastDisplayedRow=105](https://data.census.gov/cedsci/table?q=contra%20costa%20county%20income&hidePreview=false&table=DP03&tid=ACSDP1Y2018.DP03&t=Income%20and%20Earnings&g=0500000US06013&vintage=2018&layer=county&cid=DP03_0001E&lastDisplayedRow=105)



Figure 5. Contra Costa County Probation Fee Reduction Schedule

Contra Costa County Probation Fee Reduction						
Poverty Level*	At or Below 100%	125%	150%	175%	200%	Above 200%
Number Dependent on Income	Fee Waived	80% Discount	60% Discount	40% Discount	20% Discount	No Discount
1	\$0-\$12,060	\$12,061-\$15,075	\$15,076-\$18,090	\$18,091-\$21,105	\$21,106-\$24,120	\$24,121+
2	\$0-\$16,240	\$16,241-\$20,300	\$20,301-\$24,360	\$24,361-\$28,420	\$28,421-\$32,480	\$32,481+
3	\$0-\$20,420	\$20,421-\$25,525	\$25,526-\$30,630	\$30,631-\$35,735	\$35,736-\$40,840	\$40,841+
4	\$0-\$24,600	\$24,601-\$30,750	\$30,751-\$36,900	\$36,901-\$43,050	\$43,051-\$49,200	\$49,201+
5	\$0-\$28,780	\$28,781-\$35,975	\$35,976-\$43,170	\$43,171-\$50,365	\$50,366-\$57,560	\$57,561+
6	\$0-\$32,960	\$32,961-\$41,200	\$41,201-\$49,440	\$49,441-\$57,680	\$57,681-\$65,920	\$65,921+
7	\$0-\$37,140	\$37,141-\$46,425	\$46,426-\$55,710	\$55,711-\$64,995	\$64,996-\$74,280	\$74,281+
8	\$0-\$41,320	\$41,321-\$51,650	\$51,651-\$61,980	\$61,981-\$72,310	\$72,311-\$82,640	\$82,641+

\* Based on [2017 Federal Poverty Guidelines](#)

\* Fee reduction is applied to net (after-tax) income

c. Pending Data

The Probation Department is currently reviewing case files to determine what percentage of probationers were represented by a Public Defender. The Public Defender's Office is currently reviewing Clean Slate cases to provide further information on income demographics.