



# Agenda

## PUBLIC PROTECTION COMMITTEE

February 24, 2020

10:30 A.M.

651 Pine Street, Room 101, Martinez

Supervisor Candace Andersen, Chair  
Supervisor Federal D. Glover, Vice Chair

### Agenda Items:

Items may be taken out of order based on the business of the day and preference of the Committee

1. Introductions
2. Public comment on any item under the jurisdiction of the Committee and not on this agenda (speakers may be limited to three minutes).
3. APPROVE Record of Action from the February 3, 2020 meeting. **(Page 3)**
4. CONSIDER accepting an update on the implementation of the moratorium on the collection of certain criminal justice fees assessed by the County and provide direction to staff regarding next steps. **(Paul Reyes, Senior Deputy County Administrator)**  
**(Page 6)**
5. The next meeting is currently scheduled for March 23, 2020.
6. Adjourn

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*The Public Protection Committee will provide reasonable accommodations for persons with disabilities planning to attend Public Protection Committee meetings. Contact the staff person listed below at least 72 hours before the meeting.*

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*Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Public Protection Committee less than 96 hours prior to that meeting are available for public inspection at 651 Pine Street, 10th floor, during normal business hours.*

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*Public comment may be submitted via electronic mail on agenda items at least one full work day prior to the published meeting time.*

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For Additional Information Contact:

Paul Reyes, Committee Staff  
Phone (925) 335-1096  
[paul.reyes@cao.cccounty.us](mailto:paul.reyes@cao.cccounty.us)

## Glossary of Acronyms, Abbreviations, and other Terms (in alphabetical order):

Contra Costa County has a policy of making limited use of acronyms, abbreviations, and industry-specific language in its Board of Supervisors meetings and written materials. Following is a list of commonly used language that may appear in oral presentations and written materials associated with Board meetings:

<b>AB</b>	Assembly Bill	<b>HIPAA</b>	Health Insurance Portability and Accountability Act
<b>ABAG</b>	Association of Bay Area Governments	<b>HIV</b>	Human Immunodeficiency Syndrome
<b>ACA</b>	Assembly Constitutional Amendment	<b>HOV</b>	High Occupancy Vehicle
<b>ADA</b>	Americans with Disabilities Act of 1990	<b>HR</b>	Human Resources
<b>AFSCME</b>	American Federation of State County and Municipal Employees	<b>HUD</b>	United States Department of Housing and Urban Development
<b>AICP</b>	American Institute of Certified Planners	<b>Inc.</b>	Incorporated
<b>AIDS</b>	Acquired Immunodeficiency Syndrome	<b>IOC</b>	Internal Operations Committee
<b>ALUC</b>	Airport Land Use Commission	<b>ISO</b>	Industrial Safety Ordinance
<b>AOD</b>	Alcohol and Other Drugs	<b>JPA</b>	Joint (exercise of) Powers Authority or Agreement
<b>BAAQMD</b>	Bay Area Air Quality Management District	<b>Lamorinda</b>	Lafayette-Moraga-Orinda Area
<b>BART</b>	Bay Area Rapid Transit District	<b>LAFCo</b>	Local Agency Formation Commission
<b>BCDC</b>	Bay Conservation & Development Commission	<b>LLC</b>	Limited Liability Company
<b>BGO</b>	Better Government Ordinance	<b>LLP</b>	Limited Liability Partnership
<b>BOS</b>	Board of Supervisors	<b>Local 1</b>	Public Employees Union Local 1
<b>CALTRANS</b>	California Department of Transportation	<b>LVN</b>	Licensed Vocational Nurse
<b>CaiWIN</b>	California Works Information Network	<b>MAC</b>	Municipal Advisory Council
<b>CaiWORKS</b>	California Work Opportunity and Responsibility to Kids	<b>MBE</b>	Minority Business Enterprise
<b>CAER</b>	Community Awareness Emergency Response	<b>M.D.</b>	Medical Doctor
<b>CAO</b>	County Administrative Officer or Office	<b>M.F.T.</b>	Marriage and Family Therapist
<b>CCCPCD</b>	(ConFire) Contra Costa County Fire Protection District	<b>MIS</b>	Management Information System
<b>CCHP</b>	Contra Costa Health Plan	<b>MOE</b>	Maintenance of Effort
<b>CCTA</b>	Contra Costa Transportation Authority	<b>MOU</b>	Memorandum of Understanding
<b>CDBG</b>	Community Development Block Grant	<b>MTC</b>	Metropolitan Transportation Commission
<b>CEQA</b>	California Environmental Quality Act	<b>NACo</b>	National Association of Counties
<b>CIO</b>	Chief Information Officer	<b>OB-GYN</b>	Obstetrics and Gynecology
<b>COLA</b>	Cost of living adjustment	<b>O.D.</b>	Doctor of Optometry
<b>ConFire</b>	(CCCPCD) Contra Costa County Fire Protection District	<b>OES-EOC</b>	Office of Emergency Services-Emergency Operations Center
<b>CPA</b>	Certified Public Accountant	<b>OSHA</b>	Occupational Safety and Health Administration
<b>CPI</b>	Consumer Price Index	<b>Psy.D.</b>	Doctor of Psychology
<b>CSA</b>	County Service Area	<b>RDA</b>	Redevelopment Agency
<b>CSAC</b>	California State Association of Counties	<b>RFI</b>	Request For Information
<b>CTC</b>	California Transportation Commission	<b>RFP</b>	Request For Proposal
<b>dba</b>	doing business as	<b>RFQ</b>	Request For Qualifications
<b>EBMUD</b>	East Bay Municipal Utility District	<b>RN</b>	Registered Nurse
<b>ECCPCD</b>	East Contra Costa Fire Protection District	<b>SB</b>	Senate Bill
<b>ECCRPC</b>	East Contra Costa Regional Planning Commission	<b>SBE</b>	Small Business Enterprise
<b>EIR</b>	Environmental Impact Report	<b>SRVRPC</b>	San Ramon Valley Regional Planning Commission
<b>EIS</b>	Environmental Impact Statement	<b>SWAT</b>	Southwest Area Transportation Committee
<b>EMCC</b>	Emergency Medical Care Committee	<b>TRANSPAC</b>	Transportation Partnership & Cooperation (Central)
<b>EMS</b>	Emergency Medical Services	<b>TRANSPLAN</b>	Transportation Planning Committee (East County)
<b>EPSDT</b>	State Early Periodic Screening, Diagnosis and Treatment Program (Mental Health)	<b>TRE or TTE</b>	Trustee
<b>et al.</b>	et alii (and others)	<b>TWIC</b>	Transportation, Water and Infrastructure Committee
<b>FAA</b>	Federal Aviation Administration	<b>VA</b>	Department of Veterans Affairs
<b>FEMA</b>	Federal Emergency Management Agency	<b>vs.</b>	versus (against)
<b>F&amp;HS</b>	Family and Human Services Committee	<b>WAN</b>	Wide Area Network
<b>First 5</b>	First Five Children and Families Commission (Proposition 10)	<b>WBE</b>	Women Business Enterprise
<b>FTE</b>	Full Time Equivalent	<b>WCCTAC</b>	West Contra Costa Transportation Advisory Committee
<b>FY</b>	Fiscal Year		
<b>GHAD</b>	Geologic Hazard Abatement District		
<b>GIS</b>	Geographic Information System		
<b>HCD</b>	(State Dept of) Housing & Community Development		
<b>HHS</b>	Department of Health and Human Services		



# Contra Costa County Board of Supervisors

## Subcommittee Report

### **PUBLIC PROTECTION COMMITTEE**

3.

**Meeting Date:** 02/24/2020  
**Subject:** RECORD OF ACTION - February 3, 2020  
**Submitted For:** David Twa, County Administrator  
**Department:** County Administrator  
**Referral No.:** N/A  
**Referral Name:** RECORD OF ACTION - February 3, 2020  
**Presenter:** Paul Reyes, Committee Staff      **Contact:** Paul Reyes, (925) 335-1096

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#### **Referral History:**

County Ordinance requires that each County body keep a record of its meetings. Though the record need not be verbatim, it must accurately reflect the agenda and the decisions made in the meeting.

#### **Referral Update:**

Attached for the Committee's consideration is the Record of Action for the Committee's February 3, 2020 meeting.

#### **Recommendation(s)/Next Step(s):**

APPROVE Record of Action from the February 3, 2020 meeting.

#### **Fiscal Impact (if any):**

No fiscal impact. This item is informational only.

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#### **Attachments**

Record of Action - February 3, 2020

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## PUBLIC PROTECTION COMMITTEE

RECORD OF ACTION FOR  
February 3, 2020

Supervisor Candace Andersen, Chair  
Supervisor Federal D. Glover, Vice Chair

Present: Candace Andersen, Chair  
Federal D. Glover, Vice Chair

Staff Paul Reyes, Committee Staff  
Present:

1. Introductions

***Convened - 10:30 AM***

2. Public comment on any item under the jurisdiction of the Committee and not on this agenda (speakers may be limited to three minutes).

***No public comment.***

3. APPROVE Record of Action from the December 2, 2019 meeting.

***Approved as presented.***

AYE: Chair Candace Andersen  
Vice Chair Federal D. Glover

4. REVIEW and APPROVE the fiscal year 2020/21 AB 109 budget proposal, as recommended by the Community Corrections Partnership - Executive Committee.

***Approved as presented.***

AYE: Chair Candace Andersen  
Vice Chair Federal D. Glover

5. 1. RECOMMEND nominees for appointment to seats on the CY2020 Community Corrections Partnership & Executive Committee (see attachments); 2. PROVIDE direction to staff on an alternative recruitment process for membership on the CCP and the CCP Executive Committee.

***Approved as presented.***

AYE: Chair Candace Andersen  
Vice Chair Federal D. Glover

6.
  1. APPROVE calendar year 2019 Public Protection Committee Annual Report for submission to the Board of Supervisors;
  2. PROVIDE direction to staff as appropriate.

***Approved as presented.***

AYE: Chair Candace Andersen  
Vice Chair Federal D. Glover

7. The next meeting is currently scheduled for February 24, 2020.
8. Adjourn

***Adjourned - 10:47 am***

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For Additional Information Contact:

Paul Reyes, Committee Staff  
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paul.reyes@cao.cccounty.us



# Contra Costa County Board of Supervisors

## Subcommittee Report

### PUBLIC PROTECTION COMMITTEE

4.

**Meeting Date:** 02/24/2020  
**Subject:** Criminal Justice Fees  
**Department:** County Administrator  
**Referral No.:** N/A  
**Referral Name:** Criminal Justice Fees  
**Presenter:** Paul Reyes, Committee Staff      **Contact:** Paul Reyes, 925-335-1096

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### **Referral History:**

On February 26, 2019, the Board of Supervisors referred to the Public Protection Committee the topic of criminal justice system fees charged to individuals and a review the current programs, policies and practices related to criminal justice fees. A copy of the referral is included as Attachment A.

On April 1, 2019, the Public Protection Committee considered an introductory report on the issue of criminal justice fees assessed in the County. During that meeting, it was noted that momentum to end criminal fees is growing in the state and individual counties have begun to view criminal justice fees as ineffective and have taken steps to eliminate them. In 2017, the County of Los Angeles eliminated its public defender registration fee. In May 2018, San Francisco eliminated all criminal administrative fees under its control, freeing over 21,000 people of more than \$32,000,000 in outstanding criminal administrative fees and surcharges. Most recently, in December 2018, the Alameda County Board of Supervisors voted to eliminate a host of county-imposed criminal fees. The board voted to eliminate \$26,000,000 in fees for tens of thousands of Alameda County residents. A copy of the Alameda County Board of Supervisors approved ordinance is included as Attachment B.

With the passage of Senate Bill 190 in 2017, the State of California eliminated juvenile justice fees in all counties. In January 2019, Senate Bill (SB) 144 was introduced by Sen. Holly Mitchell and would state the intent of the Legislature to enact legislation to eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system, and to eliminate all outstanding debt incurred as a result of the imposition of administrative fees. At the time of the April PPC meeting there had been discussion at the state level about the proposed elimination of specific fees – the probation fee, the public defender fee, and work furlough fee.

Also during the April PPC, general arguments in favor or against continuing criminal justice fees were discussed. It was also noted that analysis of adult criminal justice fees had proven to be complicated. State law dictates a very complex process for the distribution of fine and fee revenue. Per a recent Legislative Analyst's Office report, state law currently contains at least 215 distinct code sections specifying how individual fines and fees are to be distributed to state and local funds, including additional requirements for when payments are not made in full.

The report provided at the April PPC meeting focused on those fees that had been positively identified as being local and discretionary fees (i.e. not mandated by California law), specifically Probation Fees, Public Defender Fees, and Sheriff Custody Alternative Facility Fees. Further research and analysis will be needed on other fines and fees collected by the Contra Costa Superior Court of California (Court) and remitted to the County.

The April staff report included the following information on Probation, Public Defender, and work furlough fees:

### **Probation Fees**

Probation Report Fee - In 2009, the Board of Supervisors adopted Ordinance 2009-28 authorizing the Probation Department to charge a fee of \$176 for the cost of generating a probation report to the Court. This is one-time fee.

Cost of Probation Fee - In 2010, the Board of Supervisors adopted Resolution No. 2010/262 to increase the monthly Cost of Probation Fee from \$50 per month to \$75 per month (average daily cost of \$2.50).

Probation Drug Testing Fee – The Probation Department currently charges \$10 per month (average daily cost of \$0.33) for drug testing.

Probation Dept. Drug Diversion Fee – The Probation Department currently receives approximately \$1,000 per year from this fee.

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 shall be assessed for their ability to pay said fees. The ability-to-pay determination is sent to the Court. The Court will order the amount the probationer is required to pay and refer the probationer to the Court Collections Unit for collection.

The following table illustrates the total amount of probation fees a probationer could hypothetically be charged. This is assuming the probation is placed on 3 years of probation and requires monthly drug testing. Over 3 years, a probationer could be charged up to \$3,236 for probation.

<b>Example Probationer</b>	<b>Cost</b>	<b># of Months</b>	<b>Total</b>
Supervision	\$75/month	36	2,700
Drug Testing	\$10/month	36	360
Report Fee	\$176 one-time	n/a	176
<b>Total Cost of Probation</b>			<b>3,236</b>

Cost of Collection and Revenue

The following table shows the actual and estimated cost of collection and revenue for FY 17/18 and FY 18/19, respectively. The Probation fee revenue is used to offset the salaries of adult Deputy Probation Officers.

<b>Fee</b>	<b>FY 17/18</b>		<b>Estimated FY 18/19</b>	
	<b>Collection Cost</b>	<b>Revenue</b>	<b>Collection Cost</b>	<b>Revenue</b>
Probation Dept. Drug Diversion Fee (PC 1001.9)	143	1,249	10	1,000
Cost of Probation Fee	91,957	475,573	82,000	444,000
Probation Cost of Drug Test Fee (PC 1203.1(ab))	12,332	60,638	12,000	61,000
Probation Report Fee (PC 1203.1(b))	4,554	27,333	5,000	30,000
<b>Total</b>	<b>108,986</b>	<b>564,793</b>	<b>99,010</b>	<b>536,000</b>

Public Defender Fees

Penal Code 987.81 authorizes the Court to consider and make a determination of the defendant’s ability to pay all or a portion of the costs of legal assistance provided through the public defender or private counsel appointed by the court and may order the defendant to pay all or a part of the cost.

Adults charged with capital or homicide cases may have to pay fees ordered by the court at the conclusion of the case to reimburse the County for the cost of outside counsel. The defendant is referred to the Contra Costa Superior Court Collections Unit by the judge who orders the amount to be paid. The Court makes a determination as to how much, if any, of the ordered amount the person can afford to pay. This determination is made on a sliding scale based upon the person's financial resources. The Office of the Public Defender is not involved in the determination of, or collection of fees.

Cost of Collection and Revenue

The following table shows the actual and estimated cost of collection and revenue for FY 17/18 and FY 18/19, respectively. The Public Defender Fee revenue is used to offset cost of County trial court function, specifically costs associated with capital cases.

Fee	FY 17/18		Projected FY 18/19	
	Collection Cost	Revenue	Collection Cost	Revenue
Public Defender Fee	1,849	26,100	-	121,000

Sheriff Office Custody Alternative Facility Program Fees

In 2009, the Board of Supervisors approved Resolution No. 2009/435 setting the fees for the Office of the Sheriff custody alternative programs. The current fees for the Custody Alternative Facility programs are provided below.

Fee	Cost
<b>Electronic Home Detention and Alcohol Monitoring:</b>	
Application fee	\$125.00 one-time
Electronic Home Monitoring Only	\$20.00 per day
Alcohol Monitoring Only	\$20.00 per day
Electronic Home Monitoring and Alcohol Monitoring	\$23.50 per day
Urinalysis Test	\$6.00 per test
<b>Work Alternative Program:</b>	
Application fee	\$125.00 one-time
Daily Fee	\$16.00 per day

Ability to Pay Process

The current Custody Alternative Facility (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 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.

Future Plan for CAF Electronic Home Detention and Work Alternative Programs

CAF is currently working with representatives from the Office of Re-Entry and Justice, the Public Defender's Office, and Reentry Solutions Group to present updated Ability to Pay forms.

Revenue

The following table shows the actual and estimated revenue for FY 17/18 and FY 18/19, respectively. The CAF Fee revenue is used to offset program costs.

Program	FY 17/18	Projected FY 18/19
Work Alternative Program	443,055	423,000
Electronic Home Detention	568,541	12,000

<b>Total</b>	1,011,596	435,000
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The PPC accepted the introductory report and directed staff to perform further research on other fees that are collected or remitted to the County and to report back to the Committee with staff's findings.

On July 1, 2019, the Public Protection Committee accepted an a follow-up report on this issue which included a review of a wider range of criminal justice fees, including those that are mandated by state legislation. This update included the following information on criminal justice fees and SB 144.

### **Criminal Justice Fees**

The Legislative Analyst's Office (LAO) provided a report titled "Overview of State Criminal Fines and Fees and Probation Fees. The report provide background information regarding both criminal fines and fees and probation fees. This includes an explanation of how criminal fines and fees are assessed. A copy of the LAO report is included as Attachment C.

Upon the request of the Committee, the analysis of the County's criminal justice fees was expanded beyond the fees charged for Probation, indigent defense, and alternatives-to-incarceration fees. Attachment D summaries the fee analysis performed by staff which includes: fee description, relevant code section, authority, ability-to-pay provision, funded County program or function, and revenue collected.

### **Senate Bill 144**

As of July 1, 2019, SB 144 had passed through the California Senate and was in the California Assembly. SB 144 is set to be heard on July 9th in the Assembly Public Safety Committee. SB 144 is currently opposed by California State Association of Counties, Urban Counties of California, Rural County Representatives of California, and the Chief Probation Officers of California. These organizations' opposition is not based on the underlying policy conversation regarding lessening the financial burden associated with fines and fees levied on adults in the criminal justice system, but is based on the fiscal implications and the request for the addition of a sustainable funding source to ensure this does not inadvertently impact the core services, programs and efforts to promote the rehabilitation of offenders. A copy of the amended SB 144 can be found here: [http://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill\\_id=201920200SB144&version=20190SB14497AMD](http://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=201920200SB144&version=20190SB14497AMD)

During the July meeting, the Public Protection Committee considered a number of concerns revolving around adult criminal justice fees, including significant concern brought up regarding the ability-to-pay process. The majority of criminal fees include provisions that allow for either a waiver or reduction of the fee based on one's ability to pay. The Public Protection Committee voted unanimously to refer to the full Board of Supervisors a temporary moratorium on the assessment and collection of criminal justice fees currently authorized by the Contra Costa County Board of Supervisors.

On September 17, 2019, the Board of Supervisors considered adopting Resolution No. 2019/522 to place a moratorium on the assessment and collection of certain criminal justice fees. The Board of Supervisors approved the moratorium and directed the Public Protection Committee to gather additional data about criminal justice fees in Contra Costa County and to return to the Board of Supervisors before the end of the year. A copy of the Resolution is attached for reference (Attachment E).

Following the adoption of the moratorium by the Board of Supervisors, the County Administrator's Office had notified the Sheriff's Office, the Probation Department, and the Superior Court of this moratorium on the assessment and collection of the applicable criminal justice fees.

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 Committee directed staff to assemble a small work group to identify and provide to the Committee any additional available and relevant data.

On November 4, 2019, the Committee was updated on the progress the workgroup had made. This update included information on the San Francisco Financial Justice Project, the ability-to-pay process of Probation and the Sheriff's Office, local data on race/income, pending data collection efforts, and an update on the Superior Court implementation of the moratorium. The Committee also discussed Additionally, Reentry Solutions Group provided a Report on Criminal Justice Fees in Contra Costa which provides additional information on the San Francisco Financial Justice Project, the local research process, and local/national research (see Attachment G).

On December 2, 2019, the Committee was provided with a summary report outlining the data, policies, and practices related to criminal justice fees within Contra Costa County (see Attachment H). The Committee directed staff to return to the Board of Supervisors to continue the moratorium and to request approval to notify the Court to proceed with necessary programming to implement the moratorium.

On December 17, 2019, the Board of Supervisors accepted an update on the moratorium on the assessment and collection of certain criminal justice fees and authorized the County Administrator to request the Court to incur the necessary expenditures to fully implement the moratorium. The Board also directed the County Administrator to report back to the Board in 90 days for an update.

**Referral Update:**

Following the December 17, 2019 Board meeting, the County Administrator's Office contacted the Court to request the Court to move forward with the programming and other work necessary to identify the accounts and balances impacted by the moratorium. Since waiving or suspending the impacted fees is irreversible, the waiving or suspending of these fees would be a discharge from accountability for collection of accounts and will require authorization from the Board of Supervisors before such fees can be waived or suspended.

The Court has provided a list of outstanding balances of the amounts that would need to be waived in order for the Court to cease collection efforts. The list of balances includes the following data points: Name, Case Number, Date Assigned, Last Payment Date, County Fee Type, Assigned Amount, Payments to Date, Balance Owed. A summary and analysis of the outstanding debt is provided below:

There are approximately 41,000 cases with total outstanding balance of approximately \$36 million. 52% of the outstanding balance is for the cost of probation. The table below provides the outstanding balance by fee type.

**Balance by Fee Type**

Fee Type	Balance Owed	% of Balance Owed
Cost of Probation Fee	18,601,675	52%
Drug Diversion Fee	610,339	2%
Probation Drug Test Fee	2,343,384	6%
Probation Report Fee	906,077	3%
Public Defender Fee	5,527,244	15%
Sheriff Booking Fee	896,038	2%
Victim Restitution Admin Fee	7,176,146	20%
<b>Grand Total</b>	<b>36,060,902</b>	<b>100%</b>

Based on current outstanding cases, 5% of the assigned debt has been collected. The below table shows the percentage collected by fee type.

**Collection Rate by Fee Type**

Fee Type	Assigned amount	Payments to Date	% Collected
Cost of Probation Fee	19,922,156	1,320,481	7%
Drug Diversion Fee	643,739	33,230	5%
Probation Drug Test Fee	2,497,217	153,834	6%
Probation Report Fee	937,103	31,027	3%
Public Defender Fee	5,582,840	55,596	1%
Sheriff Booking Fee	966,404	70,366	7%
Victim Restitution Admin Fee	7,213,892	37,721	1%
<b>Grand Total</b>	<b>37,763,351</b>	<b>1,702,254</b>	<b>5%</b>

When comparing our actual revenue collected to the balance owed, we are ranging from a 1% to 4% collection on the balance. The table below shows FY 17/18 revenue compared to the outstanding balance.

**Revenue by Fee Type**

Fee Type	Balance Owed	FY 17/18 Revenue	% Rev/Bal
Cost of Probation Fee	18,601,675	488,374	2.6%
Drug Diversion Fee	610,339	n/a	

Probation Drug Test Fee	2,343,384	65,921	2.8%
Probation Report Fee	906,077	27,995	3.1%
Public Defender Fee	5,527,244	28,499	0.5%
Sheriff Booking Fee	896,038	39,464	4.4%
Victim Restitution Admin Fee	7,176,146	75,246	1.0%

The average case balance is \$877 and ranges from \$.01 to \$391,500. However, the top 100 cases with the highest balance account for \$4 million of the outstanding balance and is solely for Victim Restitution Admin Fees. The outstanding debt is largely old debt with an average case being 6 years old and ranging up to 27 years old. Of the cases with outstanding balances only 5% had a payment within the past year. 90% of cases do not have a single payment made against the assigned County fees.

**Recommendation(s)/Next Step(s):**

1. ACCEPT an update on the implementation of a moratorium on the collection and assessment of certain criminal justice fees assessed by the County; and
2. CONSIDER directing staff to return to the Board of Supervisors to present the discharge from accountability for the impacted accounts for approval.

**Fiscal Impact (if any):**

Implementation of the moratorium has resulted in a budgetary impact which is illustrated Attachment I.

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**Attachments**

- Attachment A - BOS Referral - Criminal Justice Fees
  - Attachment B - Alameda County Ordinance Eliminating Fees
  - Attachment C - LAO Report
  - Attachment D - Adult Fee Analysis
  - Attachment E - Resolution No. 2019/522
  - Attachment F - Court Letter
  - Attachment G - RSG Report on CJ Fees In Contra Costa
  - Attachment H - Summary Report
  - Attachment I - Budgetary Impact
-



Contra  
Costa  
County

To: Board of Supervisors  
From: PUBLIC PROTECTION COMMITTEE  
Date: February 26, 2019  
Subject: Criminal Justice Fees

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**RECOMMENDATION(S):**

REFER to the Public Protection Committee the issue of criminal justice system fees charged to individuals.

**FISCAL IMPACT:**

No fiscal impact. This action refers the issue of justice system fees to the Public Protection Committee.

**BACKGROUND:**

Existing law allows the County to impose various criminal justice fees for the cost of administering the criminal justice system. This referral is being requested to review the current programs, policies and practices related to criminal justice fees.

**CONSEQUENCE OF NEGATIVE ACTION:**

The issue will not be referred to the Public Protection Committee for review.

- 
- APPROVE  OTHER
  - RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE
- 

Action of Board On: **02/26/2019**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

ABSENT: Diane Burgis, District III Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 26, 2019

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Paul Reyes,  
925-335-1096

cc:

**AN ORDINANCE AMENDING SECTION 2.42.190 OF THE ADMINISTRATIVE CODE TO ELIMINATE PROBATION FEES; REPEALING RESOLUTION 2011-142 REGARDING PUBLIC DEFENDER/CONFLICT COUNSEL FEES FOR REPRESENTATION OF INDIGENT ADULTS; AND ELIMINATING SHERIFF'S WORK ALTERNATIVE PROGRAM ADMINISTRATIVE AND ATTENDANCE FEES.**

WHEREAS, criminal justice financial obligations like probation supervision and investigation fees, indigent defense fees, and fees associated with work release programs, can have long-term effects that can undermine successful societal reentry goals of the formerly-incarcerated, such as attaining stable housing, transportation, and employment; and

WHEREAS, this Board of Supervisors recognizes that criminal justice debt levied against low-income or indigent adults compromises key principles of fairness in the administration of justice in a democratic society and engenders deep distrust of the criminal justice system among those overburdened by such debt; and

WHEREAS, California Penal Code section 1203.1b authorizes but does not require a county to recover the actual costs for probation services in lieu of incarceration; and

WHEREAS, County of Alameda Administrative Code section 2.42.190 establishes probation department fees; and

WHEREAS, California Penal Code sections 987.5 and 987.8 authorizes but does not require the assessment of fees to cover the costs of appointed counsel; and

WHEREAS, the Board of Supervisors most recently authorized Indigent Defense Fees in Resolution 2011-142; and

WHEREAS, California Penal Code section 4024.2 authorizes but does not require a board of supervisors to assess an administrative fee on inmates of the county jail for costs associated with a county's work release program; and

WHEREAS, the Board of Supervisors has approved the Alameda County Sheriff's Office Sheriff Work Alternative Program (SWAP) and set administrative and attendance fees for participation in that Program; and

WHEREAS, the Board of Supervisors finds that it is in the best interest of the County, justice-involved adults, and the larger community to repeal the above-named adult fees; and

WHEREAS, it is also in the best interests of the County and the community that the Auditor-Controller be authorized to write-off all accounts receivable balances and close the associated fee accounts;

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

**SECTION I**

Section 2.42.190 of the County of Alameda Administrative Code is hereby amended to read as follows:

**2.42.190 Probation Department fees.**

Notwithstanding any prior County ordinance or resolution of the Board of Supervisors to permit assessment of probation fees and costs under California Penal Code section 1203.1b, neither the Probation Department nor any other County agency shall assess fees for probation services, or any other fees or costs authorized by Penal Code section 1203.1b.

**SECTION II**

The Public Defender schedule of fees authorized by this Board in Resolution No. 2011-142 on May 10, 2011 is hereby repealed.

**SECTION III**

The Sheriff's Office Alternative Work Program (SWAP) administrative fee and attendance fee, authorized by this Board by resolution as permitted by Penal Code section 4024.2 is repealed. Neither the Sheriff's Office or any other County agency shall assess SWAP administration or attendance fees.

**SECTION IV**

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the 4th day of December, 2018, by the following called vote:

AYES: Supervisors Carson, Haggerty, Miley & President Chan

NOES: None

EXCUSED: Supervisor Valle

  
\_\_\_\_\_  
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: R. Bailey  
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: K. Scott Dickey  
Assistant County Counsel

FEBRUARY 5, 2019

# Overview of State Criminal Fines and Fees and Probation Fees

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PRESENTED TO:

Assembly Committee on Public Safety  
Hon. Reginald Byron Jones-Sawyer, Sr.



LEGISLATIVE ANALYST'S OFFICE

# Introduction

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In this handout, we provide background information responding to common questions regarding both criminal fines and fees and probation fees.

- ***Criminal Fines and Fees.*** During court proceedings, trial courts typically levy fines and fees upon individuals convicted of criminal offenses (including traffic violations).
- ***Probation Fees.*** State law authorizes counties to levy fees on probationers to cover probation-related costs. For example, a probationer who is subject to electronic monitoring—such as being required to wear a Global Positioning System (GPS) unit on his or her ankle—can be charged for its costs.



## How Are Criminal Fines and Fees Assessed?

### Various Fines and Fees Substantially Add to Base Fines

*As of January 1, 2019*

	How Charge is Calculated	Stop Sign Violation (Infraction)	DUI of Alcohol/Drugs (Misdemeanor)
<b>Standard Fines and Fees</b>			
Base Fine	Depends on violation	\$35	\$390
State Penalty Assessment	\$10 for every \$10 of a base fine <sup>a</sup>	40	390
County Penalty Assessment	\$7 for every \$10 of a base fine <sup>a</sup>	28	273
Court Construction Penalty Assessment	\$5 for every \$10 of a base fine <sup>a</sup>	20	195
Proposition 69 DNA Penalty Assessment	\$1 for every \$10 of a base fine <sup>a</sup>	4	39
DNA Identification Fund Penalty Assessment	\$4 for every \$10 of a base fine <sup>a</sup>	16	156
EMS Penalty Assessment	\$2 for every \$10 of a base fine <sup>a</sup>	8	78
EMAT Penalty Assessment	\$4 per conviction	4	4
State Surcharge	20% of base fine	7	78
Court Operations Assessment	\$40 per conviction	40	40
Conviction Assessment Fee	\$35 per infraction conviction and \$30 per felony or misdemeanor conviction	35	30
Night Court Fee	\$1 per fine and fee imposed	1	1
Restitution Fine	\$150 minimum per misdemeanor conviction and \$300 minimum per felony conviction	—	150
Subtotals		(\$238)	(\$1,824)
<b>Examples of Additional Fines and Fees That Could Apply</b>			
DUI Lab Test Penalty Assessment	Actual costs up to \$50 for specific violations	—	\$50
Alcohol Education Penalty Assessment	Up to \$50	—	50
County Alcohol and Drug Program Penalty Assessment	Up to \$100	—	100
Subtotals		(—)	(\$200)
<b>Totals</b>		<b>\$238</b>	<b>\$2,024</b>

<sup>a</sup> The base fine is rounded up to the nearest \$10 to calculate these additional charges. For example, the \$35 base fine for a failure to stop would be rounded up to \$40. DUI = Driving Under Influence; EMS = Emergency Medical Services; and EMAT = Emergency Medical Air Transportation.

The total amount owed by an individual begins with a base fine set in state law for each criminal offense. State law then requires courts to add certain charges to this fine. On a limited basis, counties and courts can levy additional charges depending on the specific violations and other factors. Statute gives judges some discretion to reduce the total amount owed by waiving or reducing certain charges.



## How Have Fine and Fee Levels Changed Over Time?

**Total Fine and Fee Level for Stop Sign Violation Has Increased Significantly Since 2005<sup>a</sup>**

	Stop Sign Violation (Infraction)		
	2005	2019	Change
Base Fine	\$35	\$35	—
State Penalty Assessment	40	40	—
County Penalty Assessment	28	28	—
Court Construction Penalty Assessment	20	20	—
Proposition 69 DNA Penalty Assessment	4	4	—
DNA Identification Fund Penalty Assessment	—	16	\$16
EMS Penalty Assessment	—	8	8
EMAT Penalty Assessment	—	4	4
State Surcharge	7	7	—
Court Operations Fee	20	40	20
Conviction Assessment Fee	—	35	35
Night Court Fee	1	1	—
<b>Totals</b>	<b>\$155</b>	<b>\$238</b>	<b>\$83</b>

<sup>a</sup> Depending on the specific violation and other factors, additional county or state assessments may apply.  
EMS = Emergency Medical Services and EMAT = Emergency Medical Air Transportation

**Total Fine and Fee Levels Have Increased Significantly.** Since 2005, the number and size of charges added to the base fine have increased significantly—resulting in increases in the total amount owed by individuals convicted of criminal offenses. As shown in the above figure, the total penalty for a stop sign violation has increased by 54 percent since 2005.

**Fine and Fee Levels Set to Serve Multiple Purposes.** The state has enacted various fines and fees for various purposes. Some (such as the base fine) are generally tied to the seriousness of the crime. Others (such as the DNA assessments) were enacted to generate revenue to fund specific activities. Finally, some fines and fees were enacted to help offset state or local costs for providing particular services to individuals paying the specific charge.



## How Is Fine and Fee Revenue Distributed?

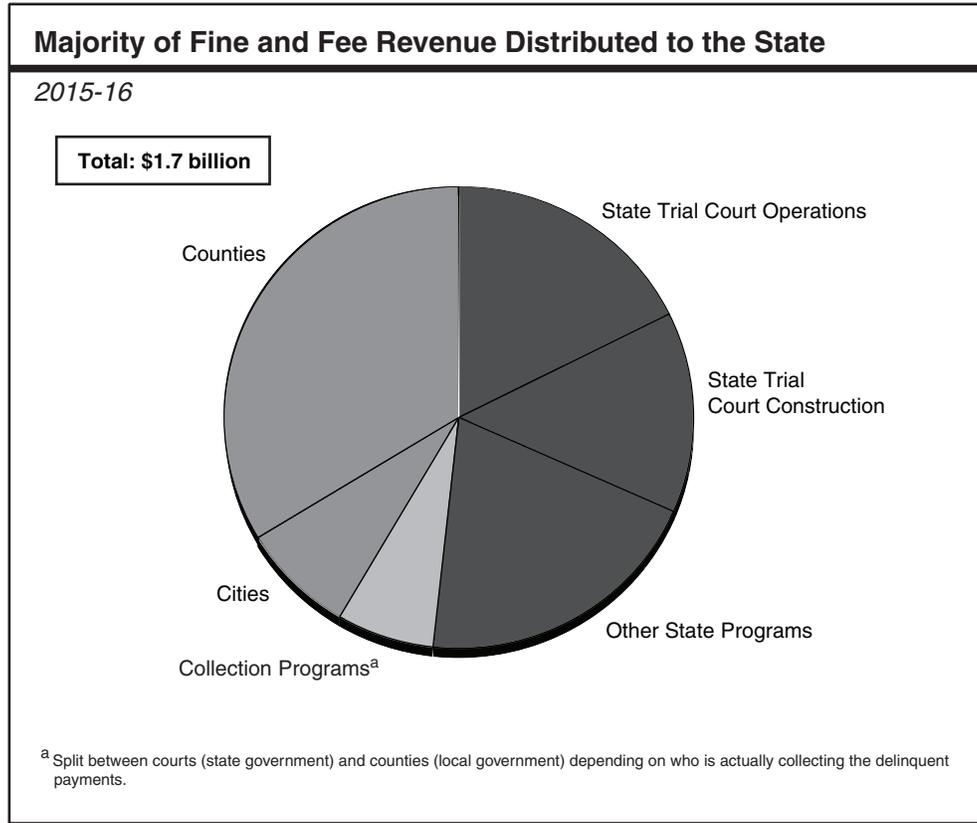
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**Numerous Funds Eligible to Receive Fine and Fee Revenue.** Over 50 state funds—in addition to many local funds throughout the state—are eligible to receive fine and fee revenue. However, some of these funds receive very little revenue, such as those that only receive revenue from fines and fees for specific offenses that occur infrequently.

**Complex Process for Distributing Fine and Fee Revenue.** State law (and county resolutions for certain local charges) dictate a very complex process for the distribution of fine and fee revenue. State law currently contains at least 215 distinct code sections specifying how individual fines and fees are to be distributed to state and local funds, including additional requirements for when payments are not made in full. In order to comply with these requirements, collection programs must carefully track, distribute, and record the revenue they collect.



## Who Benefits From Fine and Fee Revenue?



**State Receives Majority of Revenue.** According to available data compiled by the State Controller's Office and the judicial branch, we estimate that a total of \$1.7 billion in fine and fee revenue was distributed to state and local governments in 2015-16. (This is the most recent data that we have analyzed.) As shown in the figure, the state received \$881 million (or roughly half) of this revenue. Of this amount, roughly 60 percent went to support trial court operations and construction.

**Local Governments Receive Most of Remaining Revenue.** We estimate that local governments received \$707 million (or 42 percent) of the total amount distributed in 2015-16. Of this amount, about 80 percent went to the counties.



## Who Benefits From Fine and Fee Revenue?

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*(Continued)*

**Collection Programs Receive Share of Revenue.** Collection programs received \$114 million (or 7 percent) of the total amount distributed in 2015-16 for their operational costs related to the collection of delinquent payments. These funds are split between state trial courts and counties depending on which entity incurred the costs.



## How Are Probation Fees Assessed?

<b>Examples of Probation Fees for Selected Counties</b>			
<b>Fee</b>	<b>San Luis Obispo County</b>	<b>San Diego County</b>	<b>Butte County</b>
GPS monitoring (daily)	\$12	\$9	\$5 to \$7
Supervision fees (monthly)	\$76	\$17 to \$176	\$164
Installment fee (one time) <sup>a</sup>	\$75	\$75	—
Transfer between counties (one time)	\$148	—	\$392
Court mandated reports (per report)	—	Up to \$1,433	Up to \$1,077
Drug testing fee (per test)	\$55	—	\$32
Probation violation (per event)	—	—	\$109

<sup>a</sup> Fee charged in exchange for allowing probationers to pay their other fees on an installment plan  
GPS = Global Position System.

**Fee Levels Vary Between and Within Counties.** The above figure shows certain probation fees charged by three selected counties. As shown, the number, type, and level of probation fees varies significantly by county and the specific fee levied. We note that in addition to probation fees, probationers could also be required to pay other government fines and fees, such as the criminal fines and fees assessed by trial courts.

**Ability to Pay Can Impact Fees Levied.** Some probation fees can be adjusted based on a probationer's ability to pay. In addition, some counties have policies stating that inability to pay shall not prevent a probationer from receiving services such as supervision and electronic monitoring.



# What Is the Total Amount of Probation Fees That Probationers Are Charged?

## Hypothetical Examples of Probation Fees Charged for Three Selected Counties

*Estimates Over a Three-Year Period*

Probationer	San Luis Obispo County	San Diego County	Butte County
Low supervision and fees <sup>a</sup>	\$3,000	\$2,000	\$1,000
High supervision and fees <sup>b</sup>	18,000	18,000	16,000

<sup>a</sup> On probation for a misdemeanor, has one pre-sentence report, is on the lowest level of active supervision, and is on an installment plan, which allows the probationer to pay fees on an installment basis

<sup>b</sup> On probation for a felony, has one pre-sentence report, is on the highest level of active supervision, is on GPS monitoring, receives random drug testing once a month, committed one felony probation violation, and is on an installment plan

**Fees Owed Can Vary Substantially Between Probationers.** The figure above provides hypothetical examples of the total probation fees that two probationers might be charged over a three-year period. These examples are intended to demonstrate the magnitude of (1) the fees a probationer can owe and (2) the difference between fee levels for similar probationers in different counties.

**Level of Supervision Significantly Impacts Fee Amounts.** A probationer on low-level supervision (such as someone convicted for a misdemeanor) is generally charged fewer fees compared to a probationer on high-level supervision (such as someone convicted of a felony) who must also follow certain other requirements (such as being on GPS monitoring and receiving random drug tests on a regular basis).



**Court Collected Fees:**

Court Fee Description	Code Section	Authority	Ability to Pay Written in Statute	Funded Program	FY 17/18 Revenue	FY 18/19 Est. Revenue
Alcohol Prevention Fee APPA	PC 1463.25	State	None specified.	Alcohol & Other Drugs - SB920 Alcohol Education Program	\$ 78,328	\$ 73,800
10% Fee	PC 1203.1 (I)	County	None specified.	Trial Court Programs	\$ 75,246	\$ 82,800
California Fingerprint ID Penalty	GC 76102	County	None specified.	Automated Fingerprint ID	\$ 170,986	\$ 174,300
Domestic Violence Fee	PC 1203.097(a)5	State	Ability to pay determination by the court.	Domestic Violence Victim Assistance	\$ 32,269	\$ 40,200
Booking Fee	GC 29550.1	County	None specified.	Sheriff Central Admin	\$ 39,464	\$ 42,300
Adult DA Diversion Fee	PC 1001.16	State	Ability to pay determination by the court.	Trial Court Programs	\$ 111,085	\$ 117,400
Drug Diversion Fee	PC 1211(c)(3)	County	Fee exemptions available.	Trial Court Programs	\$ 111,085	\$ 117,400
Alcohol Test Fee	PC 1463.14	County	Ability to pay determination required.	Sheriff - General Lab	\$ 129,975	\$ 123,600
C.A.P. Fee	PC 1463.16	County	None specified.	Combined with Alcohol Test Fee	\$ 129,975	\$ 123,600
B&P 7028.2 (Compliants Against Unlicensed Contractors)	BPC 7028.2	State	None specified.	SLESF-Criminal Prosecution	\$ 373	\$ 900
DNA Penalty Fee	GC 76104.6	State	Hardship determination by the court.	DNA Identification Fund	\$ 235,130	\$ 237,400
CITE Fee	PC 1463.07	State	Ability to pay determination by the court.	Trial Court Programs	\$ 458,755.86	\$ 462,000
Own Recognizance Fee	PC 1463.07	State	Ability to pay determination by the court.	Trial Court Programs	\$ 458,755.86	\$ 462,000
Drug Program Fee	H&S 11372.7	State	Ability to pay determination by the court.	Criminalistics Lab Fund	\$ 15,314	\$ 14,000
Probation Drug Diversion Fee	PC 1001.9	N/A	N/A	Probation - Adult	\$ 1,273	\$ 1,200
Probation Supervision Fee	PC 1203.1b	County	Ability to pay determination by the court.	Probation - Adult	\$ 488,374	\$ 452,600
Probation Drug Test Fee	PC 1203.1ab	County	Ability to pay determination required.	Probation - Adult	\$ 65,921	\$ 61,400
Probation Report Fee PC	PC 1203.1b	County	Ability to pay determination by the court.	Probation - Adult	\$ 27,995	\$ 28,700
Alcohol/Drug Assessment Fee	PC 1463.13	County	Ability to pay determination by the court.	Alcohol & Other Drugs - SB921 Drug Abuse Ed	\$ 207,529	\$ 194,300
Public Defense Fee	PC 987.81	County	Ability to pay determination by the court.	Trial Court Programs	\$ 28,499	\$ 118,200
<b>Total</b>					\$ 2,166,517	\$ 2,225,100

\* Revenue amounts for CITE and OR Fees are combined with Traffic School Fees (VC 42007) when remitted from the Court.

**Sheriff Collected Fees:**

CAF Fee	Code Section	Authority	Ability to Pay Written in Statute	Funded Program	FY 17/18 Revenue	FY 18/19 Est. Revenue
Work Alternative	PC 4024.2	County	Ability to pay program admin. fee.	Custody Alternative Facility	443,055	363,000
Electronic Home Detention/Alcohol Monitoring	PC 1203.016	County	Ability to pay program admin. fee pay.	Custody Alternative Facility	568,541	38,000
<b>Total</b>					1,011,596	401,000

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/17/2019 by the following vote:

<b>AYE:</b>	<input type="checkbox"/>	<b>John Gioia</b>
	<input checked="" type="checkbox"/>	<b>Diane Burgis</b>
	<input type="checkbox"/>	<b>Federal D. Glover</b>
<b>NO:</b>	<input type="checkbox"/>	<b>Candace Andersen</b>
	<input checked="" type="checkbox"/>	<b>Karen Mitchoff</b>
<b>ABSENT:</b>	<input type="checkbox"/>	
<b>ABSTAIN:</b>	<input type="checkbox"/>	
<b>RECUSE:</b>	<input type="checkbox"/>	



**Resolution No. 2019/522**

IN THE MATTER OF a proposed moratorium on the assessment and pursuit of collection of certain adult criminal justice fees.

WHEREAS, criminal justice financial obligations, such as fees for probation, indigent defense, and work release programs, can have long-term effects that can undermine successful societal reentry goals of the formerly-incarcerated, such as attaining stable housing, transportation, and employment.

WHEREAS, criminal justice debt levied against low income or indigent adults compromises key principles of fairness in the administration of justice in a democratic society and engenders deep distrust of the criminal justice system among those overburdened by such debt.

WHEREAS, according to a report by the Ella Baker Center for Human Rights, the average debt incurred for court-ordered fines and fees line was roughly equal to the annual income for low-income respondents.

WHEREAS, a national survey of formerly incarcerated people found that families often bear the burden of fees.

WHEREAS, on July 21, 1994, Contra Costa County Board of Supervisors approved a resolution pursuant to California Penal Code § 1203.1 to charge up to a ten percent fee ("10% Fee") of the amount of restitution ordered by the Superior Court.

WHEREAS, Contra Costa County is currently authorized by Resolution No. 88/565 and California Government Code § 76102 to establish a County Automated Fingerprint Identification Fund in Contra Costa County and to charge a fifty cent (\$0.50) assessment ("California Fingerprint ID Penalty") for each \$10 fine, penalty, or forfeiture imposed and collected by the Superior Court for all criminal offense and certain violations of the Vehicle Code for the purpose of assisting the County in the establishment and maintenance of adequate fingerprint facilities and suspect booking identification facilities.

WHEREAS, Contra Costa County is currently authorized by Ordinance No. 2011-13 and California Government Code § 29550 to recover any criminal justice administration fee ("Booking Fee") imposed by the County from the arrested person if the person is convicted of any criminal offense related to the arrest.

WHEREAS, Contra Costa County is currently authorized by California Penal Code § 1211 and resolution approved by the Board of Supervisors on July 21, 1994 to charge a fee ("Drug Diversion fee") for the administrative and laboratory analysis costs incurred in processing a drug diversion case.

WHEREAS, Contra Costa County is currently authorized by Resolution No. 88/28 and California Penal Code § 1463.14 and § 1463.16 to charge two separate \$50 assessments (the "Alcohol Test fee" and "C.A.P. fee") on defendants convicted of violating California Vehicle Code § 23152 or § 23153 (driving a motor vehicle under the influence of alcohol or drugs).

WHEREAS, on September 14, 1995, the Contra Costa County Board of Supervisors authorized a Probation Drug Diversion administrative fee ("Probation Department Drug Diversion fee") for the Probation Department's processing of clients into a drug diversion program pursuant to Penal Code § 1001.15.

WHEREAS, Contra Costa County's Probation Department is currently authorized by Resolution No. 2010/262 and Penal Code § 1203.1b to charge a Probation Supervision Fee ("Cost of Probation fee") to recover the cost of probation supervision.

WHEREAS, Contra Costa County's Probation Department is currently authorized by Penal Code § 1203.1ab to charge a

Probation Drug Test fee (“Probation Drug Testing fee”) to recover the cost of drug testing required as a condition of one’s probation.

WHEREAS, Contra Costa County’s Probation Department is currently authorized by Ordinance 2009-28 and Penal Code § 1203.1b and § 1203.7 to charge a Probation Report Fee (“Probation Report Fee”) to recover the cost to conduct a preplea investigation of a criminal defendant and prepare a preplea report.

WHEREAS, Contra Costa County is currently authorized by Resolution 99/347 and Penal Code § 1463.13 to charge an Alcohol and Drug Assessment Fee (“Alcohol and Drug Assessment Fee”) to recover the cost of providing community substance abuse services for those convicted of driving under the influence.

WHEREAS, Contra Costa County is currently authorized by Penal Code § 987.81 to charge Public Defender Fees (“Public Defender Fees”) to recover the cost of court appointed counsel.

WHEREAS, the Contra Costa County Office of the Sheriff is currently authorized by Resolution 2008/303 and Penal Code § 4024.2 and § 1203.016 to charge fees to participate in the Custody Alternative Program to recover the cost of administering the program.

WHEREAS, the Board of Supervisors referred to the Public Protection Committee the matter of whether the County should continue to assess and collect certain adult criminal justice fees in light of the financial hardship and social impact of such fees on individuals and their families.

WHEREAS, the Public Protection Committee received testimony from the community expressing concern that these fees are assessed without a consistent ability-to-pay determination.

WHEREAS, the Board of Supervisors finds that it is in the best interest of the County, justice-involved adults, and the larger community to place a moratorium on the assessment and collection of the above-named adult fees.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Effective September 17, 2019, and until further action by the Board of Supervisors, the Office of the Sheriff’s authority to assess Custody Alternative Facility program fees is temporarily suspended. In addition, the Office of the Sheriff will not pursue collection of such fees on existing accounts.
2. Effective September 17, 2019, and until further action by the Board of Supervisors, the Probation Department’s authority to assess and collect the following fees is temporarily suspended: Probation Report Fee, Cost of Probation fee, Probation Drug Testing fee, and Probation Department Drug Diversion fee. In addition, the Probation Department will not pursue collection of such fees on existing accounts.
3. Effective September 17, 2019, and until further action by the Board of Supervisors, Contra Costa County will temporarily suspend the assessment and collection of the following fees: 10% Fee, California Fingerprint ID Penalty, Booking Fee (collected from arrestee), Drug Diversion fee, Alcohol Test fee, C.A.P. fee, Alcohol and Drug Assessment Fee, and Public Defender Fees.
4. The County Administrator will notify the Superior Court of this moratorium on the assessment and collection of the above adult criminal justice fees that are collected by the Superior Court. This includes a moratorium on the collection of such fees on existing accounts.
5. The County Administrator will report back to the Board of Supervisors on this matter on or before December 31, 2019.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

**ATTESTED: September 17, 2019**

David J. Twa, County Administrator and Clerk of the Board of Supervisors

*Jami Napier*  
By: Jami Napier, Deputy



Contact: Paul Reyes, 925-335-1096

cc: Robert Campbell, Auditor-Controller

# Superior Court of California

COUNTY OF CONTRA COSTA  
725 COURT STREET  
P.O. BOX 911  
MARTINEZ, CA 94553-0091



Kate Bieker  
Court Executive Officer

October 21, 2019

Paul Reyes  
Senior Deputy County Administrator  
Contra Costa County  
County Administrator's Office  
651 Pine Street, 10th Floor  
Martinez, California 94553

Dear Mr. Reyes:

Attached please find an analysis and cost estimation the Court has completed for the identification, separation and programming necessary to complete the 2019/522 approved Board of Supervisors' moratorium on the assessment and collection of certain County fees.

Again, we stress the importance of communicating, once these fees are waived or suspended, they cannot later be re-imposed if the temporary moratorium is lifted.

The Court will await written approval of County to move forward on further work on the current collection cases for the necessary programming.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kate Bieker". The signature is stylized and fluid.

Kate Bieker  
Court Executive Officer  
Contra Costa Superior Court

Attachment

cc: Hon. Barry Baskin, Presiding Judge  
David Twa, County Administrator  
Timothy M. Ewell, Chief Assistant County Administrator  
Lisa Driscoll, County Finance Director  
Julie Enea, Senior Deputy County Administrator

Kate Bieker  
Court Executive Officer

# Superior Court of California

COUNTY OF CONTRA COSTA  
725 COURT STREET  
P.O. BOX 911  
MARTINEZ, CA 94553-0091



## Memorandum

**DATE:** October 21, 2019

**TO:** Paul Reyes, Senior Deputy County Administrator

**FROM:** Kate Bieker, Court Executive Officer 

**RE:** Board of Supervisor Resolution 2019/522 Analysis

The purpose of this analysis is to assess the impact to the Contra Costa Superior Court resulting from the Contra Costa County Board of Supervisor's Resolution No. 2019/522 to authorize a moratorium on certain fees and assessments that are distributed to the County.

The resolution authorized a moratorium on the imposition and collection of the following fees and assessments:

Name of Fee/ Assessment	Statutory Authority	County Authority	Case Type(s) Affected	Court Imposed	Court Collected
10% Fee	PC 1203.1(l)	BOS Res 7/21/94	Criminal	Y	Y
Ca Fingerprint ID Penalty	GC 76102	BOS Res 88/565	Criminal & Traffic	Y	Y
Booking Fee	GC 29550	Ord 2011-13	Criminal	Y	Y
Drug Diversion Fee	PC 1211	BOS Res 7/21/94	Criminal	Y	Y
Alcohol Test Fee	PC 1463.14(b)	BOS Res 88/28	Criminal (DUI & Reckless)	N	N
CAP Fee	PC 1463.16(c)	BOS Res 88/28	Criminal (DUI & Reckless)	N	N
Prob Drug Diversion Fee	PC 1001.15	BOS Res 9/14/95	Criminal	N	N
Cost of Probation	PC 1203.1b	BOS Res 2010/262	Criminal	N	Y
Probation Drug Test Fee	PC 1203.1ab			N	Y
Probation Report Fee	PC 1203.1b / PC 1203.7	Ord 2009-28	Criminal	N	Y
Alcohol and Drug Assessment Fee	PC 1463.13(d)	BOS Res 99/347	Criminal	N	N
Public Defender Fee	PC 987.81		Criminal	N	Y
Sheriff Custody Alt Program	PC 4024.2 / PC 1203.016	BOS Res 2008/303	Criminal	N	N

The Court currently collects and distributes 8 of the 13 fees and assessments identified above. 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. Refer to the attached Estimated Costs to Implement County Fees Moratorium for a list of activities needed to implement the moratorium and associated costs. These costs are estimates only; actual costs may vary.

The following is an analysis of each fee or assessment affected by the moratorium, in order of difficulty to implement, from most difficult to least:

**California Fingerprint ID Penalty:**

The California Fingerprint ID Penalty is automatically imposed on all criminal and traffic offenses where a base fine is imposed. This penalty is calculated as \$0.50 per every \$10, or part of \$10, of base fine imposed on the violation. Since the penalty is not a standalone flat fee, it is part of the total fine amount imposed on the violation. Although the intent of the moratorium is to reduce the court-ordered fines and fees for criminal convictions, elimination of this penalty would not actually reduce the total fine imposed.

GC 76000(a)(1) establishes an additional penalty in each county in the amount of \$7 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 involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. GC 76000(e) reduces this penalty to \$5 in Contra Costa County when the money in the local courthouse construction fund established by Section 76100 as of January 1, 1998 is transferred to the state under Section 70402. GC 76106 further specifies that, with respect to any fund established pursuant to this chapter, the penalty amounts to be deposited in the fund shall be specified by resolution adopted by the Board of Supervisors. The Contra Costa County Board of Supervisors has established the following county funds and corresponding local penalty assessments:

GC 76100 – Courthouse Construction Fund: \$2 per \$10  
 GC 75101 – Criminal Justice Facilities Construction Fund: \$2.5 per \$10  
 GC 76102 – Automated Fingerprint ID Fund: \$0.50 per \$10  
GC 76104 – Emergency Medical Services Fund: \$2 per \$10  
 Total local penalties: \$7 per \$10

GC 76102 authorizes the Board of Supervisors to establish by resolution an Automated Fingerprint Identification and Digital Image Photographic Suspect Booking Identification System Fund (Automated Fingerprint ID Fund), and the County passed Resolution 88/565 to approve the \$0.50 California Fingerprint ID Penalty. Although the moratorium eliminates the Automated Fingerprint ID Fund and associated \$0.50 per \$10 California Fingerprint ID Penalty, GC 76000 requires the Court to continue to impose a \$7 per \$10 additional penalty pursuant to GC 76000(a).

There are two options to implement the moratorium on the California Fingerprint ID Penalty. The first option is for the Court to continue imposing, collecting, and distributing the \$0.50 per \$10 additional penalty to the same County-designated account, and the County may deposit the funds in this account into another local fund authorized under GC 76000(a). The Court would not incur any implementation costs with this option.

The second option is for the County to designate a new local fund for the \$0.50 per \$10 additional penalty to be deposited to. To implement the second option, the Court will need to update 27 traffic violation fee schedules in its traffic case management system, C-Track, as well as all criminal violation distribution tables. The Court is unable to discontinue the distribution of the

California Fingerprint ID Penalty for existing traffic cases through configuration changes in C-Track. As a work-around, the Court may manually adjust the monthly distribution reports to redistribute the Automated Fingerprint ID Fund to the new County-specified fund going forward.

### **Probation Fees**

The Court may impose and collect the following fees for cases where the defendant is sentenced to probation:

- Cost of probation fee in the amount of \$75 per month pursuant to PC 1203.1b
- Probation drug test fee in the amount of \$10 per month pursuant to PC 1203.1ab
- Probation report fee in the amount of \$176 pursuant to PC 1203.1b

The Court only imposes these probation fees if charged by the County Probation Department. Since County Probation suspended performing ability to pay evaluations and setting up new accounts to charge these fees earlier this year, the Court has not imposed these fees since then. The Court still has a number of existing accounts with probation fees ordered, but these accounts also include other Court-ordered fines and fees, so the Court cannot easily separate out and waive just the balance owed on probation fees ordered. The Court has requested its CUBS vendor to programmatically identify and waive only the probation fees portion of the account balance for all existing criminal accounts. Furthermore, to prevent future probation fees from being set up, the Court will require programming by its LJIS programmer to discontinue the integration between LJIS and CUBS for fee set up.

### **Drug Diversion Fee**

The Court imposes a drug diversion fee of \$200 for cases where the defendant is sentenced to a drug diversion program. Since the case may have other Court-ordered fines and fees, the Court cannot separate out and waive just the balance owed on drug diversion fees. The Court has requested its CUBS vendor to programmatically identify and waive only the diversion admin fees portion of the account balance for all existing criminal accounts with drug diversion sentences. Furthermore, to prevent future drug diversion fees from being set up, the Court will require programming by its LJIS programmer to discontinue the integration between LJIS and CUBS for fee set up. The Court has also requested its judges to stop imposing drug diversion fees.

### **10% Fee**

The County Board of Supervisors authorized an administrative fee equal to 10% of the victim's restitution ordered pursuant to PC 1203.1 and by resolution in 1994. This fee was increased to 15% in 2010. The Court currently imposes the 15% fee on any restitution ordered but not yet paid at the time of account set-up. Since the 15% fee is added to the same account as the restitution order and other court-ordered fines and fees, the Court cannot easily separate out and waive just the 15% fee owed. The Court has requested its CUBS vendor to programmatically identify and waive only the 15% fee portion of the account balance for all existing criminal accounts. The Court has suspended adding 15% fees on new accounts with restitution orders.

### **Public Defender Fee**

The Court may impose a public defender fee for cases where the defendant had a court-appointed public defender, and the defendant either waived the right to an ability to pay evaluation or were determined to have the ability to pay the fee. The amount of the fee ranges from \$200 to \$500 and depends on the complexity of the trial. The Court took over the collection of public defender fees from the County Probation Collections Unit (PCU) in 2017. Of the accounts transferred from PCU, the Court has identified 25,240 accounts with a balance of approximately \$5.54 million currently with Linebarger. The Court has notified Linebarger to immediately suspend collections of these accounts.

Any public defender fees imposed after the PCU transition, however, have been added to the same account set up for the defendant's other court-ordered fines and fees, so the Court cannot easily separate out and waive just the public defender fee owed. The Court has requested its CUBS vendor to programmatically identify and waive only the public defender fees portion of the account balance for all existing criminal accounts. Furthermore, to prevent future public defender fees from being set up, the Court will require programming by its LJIS programmer to discontinue the integration between LJIS and CUBS for fee set up. The Court has also discontinued ability to pay evaluations for public defender fees and has requested its judges to stop imposing public defender fees.

### **Booking Fee**

The Court may order an arrestee to pay a booking fee in the amount of \$564 as requested by the arresting agency. The Court collects and distributes these booking fees on behalf of the County and several city arresting agencies. We interpret this County moratorium affects the booking fee imposed for Contra Costa County Sheriff, but not booking fees imposed for local arresting agencies.

The Court sets up unique accounts for collection and distribution of booking fees. The Court has identified 3,684 accounts with a balance of \$901,092 set up to collect booking fees for the Contra Costa Sheriff and has notified Linebarger to immediately suspend collections on these accounts. The Court will need to automate the cancellation of these accounts in CUBS and with Linebarger. Furthermore, to prevent future County booking fees accounts from being set up, the Court will require programming by its LJIS programmer to discontinue the integration between LJIS and CUBS for account set up. Lastly, the Court has also requested its judges to stop imposing booking fees.

### **Fees neither Imposed nor Collected by Court**

The following fees and assessments identified in the moratorium are neither imposed nor collected by the Court:

- **Alcohol Test Fee:** PC 1463.14(b) authorizes an additional penalty of up to \$50 to be imposed for convictions of VC 23152 or 23153 (DUI violations). The Board of Supervisors passed resolution 88/28 authorizing the \$50 assessment. Although the Court distributes \$50 of each fine collected for DUI and Reckless Driving violations to the special County account used for alcohol testing pursuant to PC 1463.14(a), the Court does not impose an additional \$50 penalty pursuant to PC 1464.14(b) and resolution 88/28.
- **CAP Fee:** PC 1463.16(c) authorizes Contra Costa to impose a \$50 assessment to be imposed for convictions of VC 23152 or 23153 (DUI violations). The Board of Supervisors passed resolution 88/28 authorizing the \$50 assessment. Although the Court distributes \$50 of each fine collections for each DUI and Reckless Driving violations to the County Alcohol Program pursuant to PC 1463.16(a), the Court does not impose an additional \$50 assessment pursuant to PC 1463.16(c) and resolution 88/28.
- **Alcohol and Drug Assessment Fee:** PC 1463.13(d) requires the Court to impose an assessment of no more than \$150 upon court order to participate in the County's alcohol and drug problem assessment program, if the Board of Supervisors passes a resolution to subject the County to this section and the Court has determined that the defendant has the ability to pay this assessment. The County passed resolution 99/347 authorizing the Alcohol and Drug Assessment Fee for DUI convictions. Although the Court imposes an Alcohol Drug Problem Assessment Fee of \$100 for DUI violations pursuant to VC 23649,

the Court does not impose an Alcohol and Drug Assessment Fee of up to \$150 for DUI violations pursuant to PC 1463.13(d).

- Custody Alternative Program Fee: Resolution 2008/303 and PC 4024.2 and 1203.016 authorizes the Contra Costa Sheriff to charge fees to participate in the Custody Alternative Program to recover the cost of administering the program. This fee is neither imposed nor collected by the Court.

**Contra Costa Superior Court  
Estimated Costs to Implement County Fees Moratorium**

Description of Activity	Resource	Cost of Hourly Rate	Estimated Number of Hours	Total Estimated Cost
Update 27 traffic violation fee schedules in C-Track and criminal distribution tables to replace the California Fingerprint ID Penalty with a new Courty-specified fund.	Court Finance Director	\$108.52	80	\$8,681.60
Programmatically waive balanced owed on Probation Fees, Diversion Admin Fees in Drug Diversion accounts, 15% Fee, and Public Defender Fee for all existing criminal accounts.	Columbia Ultimate Vendor (CUBS) Collections System Programming	\$170.00	70	\$11,900.00
First year of annual maintenance associated with above CUBS enhancements.	Columbia Ultimate Vendor Collections System Programming			\$1,428.00
Testing to validate fee balances owed were correctly waived.	Court Financial Services Analyst	\$73.97	80	\$5,917.60
Programming in Law & Justice to discontinue the integration between LJIS and CUBS for the account set up of the following fees: Probation Fees, Diversion Admin Fees in Drug Diversion accounts, Public Defender Fee, and Booking Fee.	Criminal Case Management System - Mainframe Programming  Department of Information Technology (DoIT) Programmer (Cost to the Court)	\$136.50	80	\$10,920.00
Testing to validate Law & Justice to CUBS integration has been succesfully discontinued for the fees identiified above.	Court Financial Services Analyst	\$73.97	80	\$5,917.60
Automate the cancellation of existing County Sheriff Booking Fee Accounts.	Court Business Analyst	\$63.45	80	\$5,076.00
Review and validate cancellations were correctly performed.	Court Financial Services Analyst	\$73.97	80	\$5,917.60

<b>Total Direct Costs</b>	<b>\$55,758.40</b>
<b>Indirect Costs (24.82% of Salaries and Benefits)</b>	<b>\$7,820.88</b>
<b>TOTAL COSTS</b>	<b>\$63,579.28</b>
	<b>**Estimate**</b>

**\*\*This is an estimated amount only. The Court will submit monthly invoices to the CAO's Office until project is complete.\*\***



## Report on Criminal Justice Fees in Contra Costa

Prepared by Rebecca Brown, Member, Contra Costa County Criminal Justice Fees Work Group  
Presented to the Public Protection Committee of the Contra Costa County Board of Supervisors  
November 4, 2019

Note: All documents referenced in this report are available upon request.

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“We found it difficult to access the data we needed to understand the basics of fines and fees and how they impact individuals, as well as our city and county bottom lines.

After working diligently with various city and county departments to better understand their fines and fees, we realized that most cities and counties, including San Francisco, lack answers to basic questions, such as how many people receive various fines, fees, tickets; collection and delinquency rates, penalties for nonpayment as well as the cost of collection to the city and county.”<sup>1</sup>

*San Francisco Financial Justice Project*

### 1. Context

In Contra Costa County, attention to the use of administrative fees in the adult criminal justice system was preceded by the County’s decision to end such fees in the juvenile justice system. In October 2016, the Board of Supervisors unanimously voted to impose a moratorium on such fees, which they followed with another unanimous vote in October 2017, permanently repealing these juvenile fees.<sup>2,3</sup> In the aftermath of these historic votes, Contra Costa went on to become the first county in the nation to identify and reimburse families who had been unlawfully charged such fees.<sup>4</sup>

This interest in juvenile fee reform - both locally and statewide - dovetailed with increasing public attention to the use of similar fees in the adult criminal justice system. Across California, demand has been growing to remedy the disproportionately punitive consequences of money-based sanctions.

In July 2018, the Board of Supervisors of the City and County of San Francisco - with the support of the San Francisco Chief of Probation, District Attorney, Public Defender, Sheriff, and more than a dozen community organizations - unanimously passed an ordinance to end its adult criminal justice fees, thus eliminating more than \$32.7 million in outstanding debt levied against more than 21,000 people. In November 2018, Alameda County also voted to eliminate their county-controlled criminal justice fees.

In January 2019, Senators Mitchell and Hertzberg introduced Senate Bill 144 (SB144), to substantially amend or end the use of state and local justice fees; it has been turned into a two-year bill and will be considered in the 2020 legislative session.

In September 2019, Contra Costa County 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.

## 2. San Francisco Financial Justice Project

In late 2016, the City and County of San Francisco established the Financial Justice Project (FJP), housed in the Office of the Treasurer. San Francisco is the first city in the nation to launch such an entity to assess and reform fines, fees, and financial penalties that disproportionately impact low-income people, communities of color, people struggling with homelessness, and people exiting the criminal justice system.<sup>5</sup>

The FJP is directed by Anne Stuldreher, MBA, who was previously a Senior Program Manager for The California Endowment, Senior Policy Fellow for New America, and Senior Policy Advisor for Governor Arnold Schwarzenegger. The FJP is managed by Christa Brown, who previously served as Director of the SparkPoint Initiative for the United Way of the Bay Area and who holds a Master's in Public Administration from the Goldman School of Public Policy at the University of California, Berkeley.

Over the course of its first two years, the FJP convened and facilitated the work of a Fines and Fees Task Force comprised of community members, ten governmental departments, and the courts. With the support of FJP, the Task Force examined best practices, reviewed evidence related to the use and impact of monetary sanctions, and received expert testimony, while the FJP worked with the Budget Office to conduct an audit of San Francisco's fines and fees. At the conclusion of its work, the Task Force recommended 40 reforms to both policy and process.<sup>6</sup>

In late 2018, San Francisco's Financial Justice Project issued a new report, *Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government*.<sup>7</sup> Subtitled *A Call to Action for California Counties*, the report called on all counties in the state of California to undertake substantial reforms.

## 3. Summary of Local Research Process

In Contra Costa County, much of the original research and analysis into the county's criminal justice fees was undertaken by Reentry Solutions Group (RSG), working in primary partnership with the UC Berkeley School of Law Policy Advocacy Clinic (UCB), along with other local stakeholders.

In December 2017, RSG requested that the Office of the Sheriff establish a work group to remedy the County's failure to comply with California state statutes regarding the policies and procedures for Electronic Monitoring in Lieu of Bail (California Penal Code 1203.018(e)); Home Detention in Lieu of Confinement (PC 1203.016(b) and 1203.016(d)(1)); and Work Release in Lieu of Confinement (PC 4024.2(c)).

In response to this request, in January 2018 the Office of the Sheriff approved a Work Group proposal submitted by RSG, and a Work Group was formed, comprising representatives of the Sheriff's Office along with Donté Blue, Deputy Director of the County's Office of Reentry and Justice; Ellen McDonnell, Chief Assistant Public Defender; and Rebecca Brown, Director of RSG.

Over the past 20 months, this Work Group has made incremental progress, and the Sheriff's Office has largely suspended the use of application or administrative fees for the programs delegated to its administration by the Board of Supervisors. However, new policies have not yet been drafted, reviewed, or approved by the Board of Supervisors, and the County remains out of compliance with state law.

In October 2018, in partnership with local Contra Costa stakeholders, UCB submitted a Public Records Act Request to Sharon Anderson, County Counsel for Contra Costa County, seeking information on "how Contra Costa County assesses and collects fees against adults...in the criminal justice system." In response to this request, Contra Costa County provided a seven (7) page document that included, in its totality, a cover letter, two administrative forms, and one Administrative Bulletin. In the document's cover letter, Chief Assistant County Administrator Tim Ewell wrote, "We have reviewed the remainder of your request," deemed it "overly broad," and requested greater specificity.

In November 2018, through a series of emails between UCB and Mr. Ewell, Contra Costa County provided four web addresses that link to webpages offering summary information and various Fee Schedules used by the Office of the Sheriff: Civil Unit fees, Records Unit fees, Custody Alternative Facility fees, and Coroner's Division fees. It should be noted that three of these web sources do not pertain to criminal justice fees, and that the one that does - for fees related to the Custody Alternative Facility (CAF), operated by the Sheriff's Office as authorized by the Board of Supervisors - the link simply connects to the CAF handbook, which is substantially out of date.

In sum: Contra Costa County provided no administrative data that would have allowed analysis of the County's use of criminal justice fees.

In October 2018, again in partnership with local stakeholders, UCB similarly submitted a Public Records Act Request for fee-related judicial records to Matthew Kitson, Public Information Officer of the Superior Court of California, Contra Costa County. In his response of November 2018, Mr. Kitson wrote that the Court:

- "does not maintain any non-adjudicative 'records relating to the demographics of adults in the justice system'" and has "no records responsive" to this request;
- "does not track the aggregate number of adults who are assessed and/or charged fees annually [and has] no responsive records";
- "does not track the total amount of adult fees assessed per year, reduced or waived due to inability to pay per year, and/or total amount currently owed [and] no responsive records exist";
- has "no aggregated data concerning" adjudicative records pertaining to individual cases
- "keeps no data or records specifically 'relating to the amount spent on collecting adult fees' although "the monthly Financial Report spreadsheets may contain relevant information."

However, to his response Mr. Kitson attached a 362-page PDF document containing hundreds of pages of scanned financial accounting and tracking spreadsheets used by the Court in its role as financial administrator for state and local justice-related fees. It should be noted that these data do not provide information related to individual cases, and the document contained no individual or identifying information. Instead, this document provides a month-by-month financial detail of the funds associated with each criminal justice fee collected by the Court as authorized by either state statutes or local ordinances.

In November and December 2018, on behalf of a coalition of stakeholders, Rebecca Brown, Director of RSG, conducted extensive analysis of the data embedded in this document. From it, she produced a comprehensive, month-by-month, item-by-item categorical report on every criminal justice fee collected and distributed by the Courts on Contra Costa County's behalf in each month throughout from July 2017 through June 2018. Capturing all the Contra Costa County data provided in the Court's document, this analysis included line-by-line accounting for each fee type, recording Non-delinquent Receipts, Delinquent Receipts, and Net Revenue Distribution, among other data.

In December 2018, Ms. Brown, along with Carson Whitelemons from UCB, engaged in a telephone interview with Mr. Kitson and Fae Li, Financial Services Director for the Superior Court, to seek additional information about the document provided by the Court. During this interview, Ms. Li explained various administrative processes as they relate to the tracking, accounting, and distribution of such fees, and the production of the Court's financial reports. She also discussed the contract with the Court's debt collector, Linebarger Goggan Blair & Sampson, LLP (Linebarger). It may be of interest that Linebarger is the subject of multiple class action lawsuits across the United States.<sup>8,9,10,11</sup>

In December 2018, Ms. Brown obtained a copy of, and closely reviewed, Linebarger's Master Agreement for Collection Services, which is a contract between Linebarger and the Judicial Council/Administrative Office of the Courts, effective as of January 1, 2014. Although neither California's 58 counties nor its 58 Superior Courts is required to enter into this Master Agreement, both Contra Costa County and the Superior Court of Contra Costa County are named as Participating Entities in this Agreement.

The Agreement contains provisions for Obligation (Section 2.2), Non-Exclusivity (Section 2.3), Franchise Tax Board Transfer Services (Section 3.7), Termination for Convenience (Section 4.2), and Termination for Cause (Section 4.3).

The Statement of Work that accompanies the Master Agreement obligates Linebarger to provide a "list of old cases...annually, or as specified by the Participating Entity. The Participating Entity may request a list of cases...[to] determine eligibility for discharge." Section 1.5.1 requires Linebarger to "supply an account payment history for each Account on the Participating Entity's request."

The Fee Schedule that accompanies the Agreement reveals that the bulk of Linebarger's commissions range from 18% to 25% of all debt collected. The commission percentage rises with the age of the debt, with the maximum percentage charged against debt that is two years old or more.

In February 2019, Ms. Brown disseminated the results of her financial and administrative analyses of Contra Costa County's justice fees and the Linebarger contract (along with her analysis of the

Contra Costa County DA's civil asset forfeiture practices) at a public meeting of Reentry Solutions Group. Entitled *What the Numbers Tell Us: Money and Justice in Contra Costa County*, this public presentation was also immediately published on RSG's website.<sup>12</sup>

In February 2019, the Board of Supervisors formally referred the matter of criminal justice fees to the Board's Public Protection Committee (PPC). In its meetings in April and July 2019, the PPC reviewed information provided by RSG and by staff of the CAO, heard public testimony, and considered potential options for action. At its July meeting, the PPC determined to recommend to the Board of Supervisors that it enact a moratorium on adult criminal justice fees heretofore authorized or imposed by Contra Costa County.

On September 17, 2019, the Board of Supervisors considered this recommendation, voted to authorize a moratorium, and referred the matter of criminal justice fees to continuing attention by the PPC, requesting that the PPC attempt to identify and provide to the BOS additional available and relevant data. In response to the September 2019 request by the BOS, Rebecca Brown has drafted this report for submission to the PPC to advance its research and for consideration at its meeting on November 4, 2019. (It is our understanding that the County Administrator's Office is preparing a summary report on the policies and administrative practices of relevant Contra Costa agencies; we encourage the PPC and the Board to review that summary.)

On October 21, 2019, the Superior Court of California, County of Contra Costa (Court), provided a letter to the CAO regarding administrative measures related to implementing the moratorium. In the letter, the Court estimates \$63,570 as the administrative cost to implement the moratorium. Although in the letter the Court acknowledges its difficulties in providing specific dollar amounts related to any of the outstanding fee amounts, three points of interest are mentioned:

- In terms of public defense fees (which, it should be noted, do not contribute to the budget of the Public Defender), it has identified 25,240 accounts with a balance of approximately \$5.54 million in collections with Linebarger, and it has notified Linebarger to suspend collections on these accounts.
- In terms of booking fees, which may be ordered in the amount of \$564, it has identified 3,684 accounts with a balance of \$901,092, and it has notified Linebarger to suspend collections on these accounts.
- In terms of probation fees – which, by RSG's analysis, represent 54% of the revenues generated by criminal justice fees in Contra Costa in the year studied – the Court has not yet been able to identify the total amount of unpaid debt and it has not yet suspended collections on such fees, pending an administrative revision to its vendor data system.

## 4. A Body of Evidence

Local and national research has widely and consistently shown that criminal justice fees are harmful, that they undermine successful reentry, and that they increase the chance of recidivism. For those who are convicted in criminal court, fees for probation supervision, drug and alcohol testing, representation by a public defender and non-custodial sentencing options are assessed in addition to

other costs and can quickly add up to thousands of dollars. In Contra Costa County, an individual with a three-year term of supervised probation is assessed \$2,700 in Probation supervision fees alone.

Research shows that the vast majority of people charged such costs cannot afford to pay them and that counties typically net very little or even lose revenue after accounting for collections costs.<sup>13</sup> Fees make reentry harder, hurting credit scores, making it harder for people to find housing or open a bank account, and discouraging people from seeking formal employment out of fear that their wages will be garnished, bank accounts levied, or tax refunds intercepted.”<sup>14</sup>

National research is unanimous on this point: Given the endemic racial bias present throughout our justice systems, administrative fees are disproportionately imposed on communities of color, who are further disproportionately likely to have difficulty paying them. In California, close to half of Black and Latinx families struggle to put food on the table and pay for housing.<sup>15</sup> And research has found that the burden of such fees is typically felt by family members; in a national survey by the Ella Baker Center for Human Rights, 63% of respondents reported that family members were primarily responsible for covering conviction-related costs, and 83% of those paying such costs are women. Nearly half also reported that their families could not afford to pay these fines and fees, and 1 in 5 families across income levels reported that they had to take out a loan to cover conviction-related costs.<sup>16</sup>

It should be noted that a report released in May 2019 by the Board of Governors of the Federal Reserve System drives home the devastating havoc that can result from costs such as criminal justice fees. *Entitled Report on the Economic Well-Being of U.S. Households in 2018*, the report found that “many adults are financially vulnerable and would have difficulty handling an emergency expense as small as \$400.”<sup>17</sup> The study found that 17% of adults are forced to leave some bills unpaid each month, while another 12% said that an additional expense of \$400 would leave them unable to meet their basic needs. A full 42% of people who have no college education would be pushed into financial hardship by such an expense, with an even higher percentage of African Americans (58%) affected in this way. Even for African Americans with some college or an associate’s degree find significant harm; 46% report that they would not be able to pay their monthly bills if hit with an additional \$400 expense. And rather than constituting a one-time expense, criminal justice fees tend to recur - probation fees, drug testing fees, and partial payment fees all accrue month after month.

## 5. Contra Costa County Implications

According to the American Bar Association, the vast majority of people accused in criminal courts are considered indigent, unable to afford their own attorney and eligible therefore for the constitutional protections for public defense. The ABA estimates that 85 to 95 percent of people accused of crimes cannot afford their own lawyer;<sup>18</sup> however, Contra Costa County collects no local data on this point.

Data provided by the Contra Costa County Office of the Sheriff can serve as a sufficient proxy for the racial implications of our local criminal justice system; according to the Office of the Sheriff, 71% of people currently incarcerated in our county jails are people of color.<sup>19</sup>

In Contra Costa County, the Probation Department, the Sheriff's Office, and the Courts are authorized to impose local criminal justice fees. Each of these entities is governed by a different set of internal policies and practices with regard to the fees in question, and our research suggests that Contra Costa County has thus far failed to develop consistent, transparent, or equitable practices; has not engaged in meaningful oversight or analyses of the implementation and impacts of these fees; and indeed both expanded and increased these fees in the immediate aftermath of the economic recession of 2007-2009, a time when unemployment was at near record levels and millions of families across the nation found themselves bankrupt, foreclosed on, evicted, and out of work.<sup>20</sup>

## 6. Summary

**The policy implications from national and local research are clear:** "We should end the practice of assessing criminal administrative fees. Eliminating administrative fees will allow formerly incarcerated people to devote their limited resources to critical needs like food, education, housing and health insurance. Repealing criminal fees will also result in improved employment prospects for formerly incarcerated people and put more money in the pockets of economically insecure families, aiding successful reentry and reducing California's recidivism rate."<sup>21</sup>

Contra Costa County is not unique in its past practices with criminal justice fees, and there is a way forward. By establishing a governmental entity to recognize and begin to redress this endemic American reality, the Financial Justice Project in San Francisco has been a trailblazer, but the research conducted in Contra Costa County is equally uncommon; we know of no other county in California in which non-governmental agencies have undertaken this level of detailed local analysis. And of course, as the third county in the nation to end or suspend such fees, Contra Costa County now stands as one of the leading lights committed to such opportunities for change.

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<sup>1</sup> [https://drive.google.com/file/d/1gUo96d0ldfa6qdFj5QhGY-cdI61MZ\\_9q/view](https://drive.google.com/file/d/1gUo96d0ldfa6qdFj5QhGY-cdI61MZ_9q/view)

<sup>2</sup>

[http://64.166.146.245/agenda\\_publish.cfm?dsp=agm&seq=27510&rev=0&id=&form\\_type=AG\\_MEMO&beg\\_meet\\_mth=10&beg\\_meetyr=2016&end\\_meetmth=10&end\\_meetyr=2016&mt=ALL&sstr=juvenile&dept=ALL&hartkeywods=&sortby=f.form\\_num,%20f.rev\\_num&fp=ADVSRCH&StartRow=1](http://64.166.146.245/agenda_publish.cfm?dsp=agm&seq=27510&rev=0&id=&form_type=AG_MEMO&beg_meet_mth=10&beg_meetyr=2016&end_meetmth=10&end_meetyr=2016&mt=ALL&sstr=juvenile&dept=ALL&hartkeywods=&sortby=f.form_num,%20f.rev_num&fp=ADVSRCH&StartRow=1)

<sup>3</sup> [http://reentrysolutionsgroup.org/meeting\\_materials/Press\\_release\\_and\\_moratorium\\_letters\\_10-28-16\\_english\\_and\\_spanish.pdf](http://reentrysolutionsgroup.org/meeting_materials/Press_release_and_moratorium_letters_10-28-16_english_and_spanish.pdf)

<sup>4</sup> <https://www.themarshallproject.org/2018/01/07/the-check-is-in-the-mail-for-real>

<sup>5</sup> <https://sftreasurer.org/sites/default/files/2019-08/Overview%20of%20the%20Financial%20Justice%20Project%2012.11.18.pdf>

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<sup>6</sup> [https://drive.google.com/file/d/1gUo96d0ldfa6qdFj5QhGY-cdl61MZ\\_9q/view](https://drive.google.com/file/d/1gUo96d0ldfa6qdFj5QhGY-cdl61MZ_9q/view), including: Eliminate all criminal justice administrative fees charged by the City and County of San Francisco. allow lower-income people non-monetary options to clear their Quality of Life citations, reduce or waive fees related to parking tickets and other citations for lower-income people, adopt court reforms to substantially reduce the cost of state-imposed traffic fines and fees for lower-income people, reduce the city's steep towing and "boot" fees for lower-income San Franciscans, develop a pilot program to relieve parents of debt paid to the government instead of to child support payments, reduce use of money bail

<sup>7</sup> [http://test-sfttx.pantheonsite.io/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL\\_04-24-2019.pdf](http://test-sfttx.pantheonsite.io/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019.pdf)

<sup>8</sup> <https://texasmonitor.org/lawsuit-against-collection-firm-raises-questions-on-tax-judgments/>

<sup>9</sup> [http://www.abajournal.com/news/article/debt\\_collection\\_law\\_firm\\_to\\_pay\\_3.4m\\_to\\_settle\\_class\\_action/](http://www.abajournal.com/news/article/debt_collection_law_firm_to_pay_3.4m_to_settle_class_action/)

<sup>10</sup> <https://www.classaction.org/media/guerra-v-miami-dade.pdf>

<sup>11</sup> [http://www.hoysettlement.com/media/2115094/stipulation\\_of\\_class\\_action\\_settlement.pdf](http://www.hoysettlement.com/media/2115094/stipulation_of_class_action_settlement.pdf)

<sup>12</sup> [http://reentrysolutionsgroup.org/meeting\\_materials/2\\_26\\_19\\_RSGFinalV2.pdf](http://reentrysolutionsgroup.org/meeting_materials/2_26_19_RSGFinalV2.pdf)

<sup>13</sup> East Bay Community Law Center, *Pay or Prey* (2018); Berkeley Law Public Advocacy Clinic, *Making Families Pay* (2017).

<sup>14</sup> <https://ebclc.org/cadebtjustice/policy-platform/>

<sup>15</sup> Insight Center for Community Economic Development, *Cost of Being Californian* (2018).

<sup>16</sup> Ella Baker Center, *Who Pays? The True Cost of Incarceration on Families* (2015).

<sup>17</sup> <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>

<sup>18</sup> Laurence A . Benner, *Eliminating Excessive Public Defender Workloads*, 2011 A .B .A, *Criminal Justice Vol . 2*, [https://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_magazine/cjsu11\\_benner .authcheckdam .pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsu11_benner_authcheckdam .pdf).

<sup>19</sup> Assistant Sheriff Mathew Schuler, email communication to Rebecca Brown, October 25, 2019.

<sup>20</sup> Contra Costa County Resolutions No. 2010/251, 2010/252, 2010/253, 2010/262. Originally research into bureaucratic and administrative history in Contra Costa County, produced by Reentry Solutions Group in February 2018, unpublished and available upon request.

<sup>21</sup> <https://ebclc.org/cadebtjustice/policy-platform/>



## EXECUTIVE SUMMARY

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 this issue to the Public Protection Committee (PPC) to provide the Board with additional data and information.

It is important to distinguish the common types of monetary payments in the criminal justice system:

- **Administrative Fees** are imposed to offset the administrative costs of court activities, supervision, or incarceration.
- **Fines and restitution** are monetary punishments for infractions, misdemeanors or felonies. Fines and restitution are intended to deter crime, punish offenders, and compensate victims for losses.
- **Bail** is a bond payment for a defendant's release from jail prior to court proceedings, and the majority of a bail payment is returned to a defendant after case disposition. Bail payments are intended to incentivize defendants to appear at court and, in some cases, to reduce the criminal risk of returning a defendant to the community.

The moratorium affects only locally-imposed criminal justice administrative fees and excludes fines, restitution, bail and state-imposed administrative fees. Such administrative fees are imposed on individuals who have already faced other consequences for their crime. They have often served time in jail, paid other fines, or are paying victim restitution. The goals of these local criminal justice fees are to generate revenue to cover costs, not create an additional layer of punishment.

**In regard to criminal justice fees in Contra Costa County, several key findings emerge:**

- **From early 2018 through the present, substantial research and analysis into locally-imposed administrative fees was conducted** by Reentry Solutions Group (RSG) in partnership with UC Berkeley School of Law Policy Advocacy Clinic (UCB) and other stakeholders. This comprehensive process included the collection and analysis of all existing and relevant financial records provided by the Superior Court of Contra Costa County. In its scope and depth, this local process was commensurate with similar research undertaken by the City and County of San Francisco's Financial Justice Project.
- **Vast majority of criminal-justice involved individuals are indigent.** As a proxy method to determine the percentage of justice-involved people in Contra Costa who are legally indigent, the Contra Costa County Probation Department conducted a review of its records and found that 93% of probationers are represented by the Public Defender or the Alternate Defender's Office. A further review of Probation cases found that approximately 88% of Probationers had income levels below 200% of the federal poverty guideline.
- **Vast majority of criminal-justice involved individuals are people of color.** A snapshot report conducted in October 2019 by the Contra Costa County Office of the Sheriff found that 71% of the people incarcerated in Contra Costa County's jails are people of color.
- **Moratorium's implementation is incomplete, as the Court awaits further direction from the County.** The Court has largely stopped imposing locally-controlled fees on new cases, but it continues to collect and attempt to collect fees previously imposed. Due to limitations with the



Court's current data system the Court cannot fully implement the moratorium. Estimating the cost of such changes as \$63,750, the Court is awaiting the County's direction to undertake necessary data-system changes and incur these expenses on behalf of the County.

**From our review of national research, our key findings include:**

- **Criminal justice fees disproportionately harm the poor and people of color.** African Americans are more likely to be arrested than people from any other racial/ethnic group. Administrative fees are disproportionately imposed on communities of color, who are further disproportionately likely to have difficulty paying them. Demographic analysis confirms that in California, close to half of Black and Latinx families struggle to put food on the table and pay for housing.
- **Families bear the brunt of the financial costs of justice involvement.** A study by the Ella Baker Center found that family members, usually women, often pay criminal justice fines and fees on behalf of their loved ones.
- **Benefit of collecting these fees is outweighed by the cost of imposing them.** Research shows that the vast majority of people charged such costs cannot afford to pay them and that counties typically net very little or even lose revenue after accounting for collections costs. Fees make reentry harder, hurt credit scores, make it harder for people to find housing or open a bank account, and discourage people from seeking formal employment out of fear that their wages will be garnished, bank accounts levied, or tax refunds intercepted.



## 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 (FJP) 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 FJP to staff the Task Force.

Since its creation, the FJP has had two full-time staff members, including a Director and a Program Manager. The FJP is directed by Anne Stuldreher, who was previously a Senior Program Manager for The California Endowment, Senior Policy Fellow for New America, and Senior Policy Advisor for Governor Arnold Schwarzenegger. The FJP is managed by Christa Brown, who previously served as Director of the SparkPoint Initiative for the United Way of the Bay Area and who holds a Master's in Public Administration from the Goldman School of Public Policy at the University of California, Berkeley.

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 FJP released a report on the Task Force's findings. The report proposed 40 reforms of both policy and practice, 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, London Breed, the Mayor of San Francisco, 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, *Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government*, detailing the impact of criminal justice administrative fees on the community.<sup>1</sup>

In the report, the FJP found that approximately 21,000 people owed approximately \$32.7 million in outstanding debt. 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.

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<sup>1</sup> [http://test-sfttx.pantheonsite.io/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL\\_04-24-2019.pdf](http://test-sfttx.pantheonsite.io/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019.pdf)



An evaluation of the Public Defender's Clean Slate Program showed that most of their clients were living in extreme poverty.

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 on July 1, 2018.

While the fees included in the legislation are authorized by the county, the San Francisco Superior Court serves as the financial administrator for collecting fees. Because the courts are independently governed, the San Francisco Board of Supervisors does not have the authority to direct the court to clear past judgments. 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 debts 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 had eliminated more than \$32.7 million in outstanding debt stemming from these fees.

### **3. SUMMARY OF LOCAL RESEARCH PROCESS**

Similar research and analysis have been conducted in Contra Costa County over the past two years, largely by Reentry Solutions Group (RSG) in partnership with UC Berkeley School of Law Policy Advocacy Clinic (UCB) and other stakeholders, as follows:

In partnership with the Office of the Sheriff, the Public Defender's Office, and the Office of Reentry and Justice, RSG established a work group to improve the policies and procedures for Electronic Monitoring in Lieu of Bail, Home Detention in Lieu of Confinement, and Work Release in Lieu of Confinement. Over the past 20 months, the Work Group has made incremental progress, and the Sheriff's Office has largely suspended the use of application or administrative fees for the programs delegated to its administration by the Board of Supervisors.

In October 2018, UCB submitted a public records request to County Counsel for Contra Costa County, seeking information on how the County "assesses and collects fees against adults...in the criminal justice system. In response to this request, Contra Costa County provided several procedural forms, with no further administrative data, policy documents, or analyses.

In October 2018, UCB submitted to the Superior Court a public records request for fee-related judicial records. The Court replied that it had no responsive records regarding the numbers, demographics, amounts imposed, fees waived, or cost of collections related to such fees. The Court did provide a 362-page PDF of financial accounting and tracking spreadsheets used by the Court in its role as financial administrator for state and local justice-related fees. It should be noted that these data do not provide information related to individual cases, and the document contained no individual or identifying information. Instead, this document provides a month-by-month financial detail of the funds associated with each criminal justice fee collected by the Court as authorized by either state statutes or local ordinances.

In November and December 2018, RSG's Director, Rebecca Brown, conducted an extensive analysis of the data embedded in this document. From it, Ms. Brown produced a comprehensive, month-by-month, item-by-item categorical report on every criminal justice fee collected and distributed by the Courts on Contra Costa County's behalf in each month throughout from July 2017 through June 2018. Capturing all the Contra Costa County data provided in the Court's document, this analysis included line-by-line



accounting for each fee type, recording Non-delinquent Receipts, Delinquent Receipts, and Net Revenue Distribution, among other data.

In December 2018, Ms. Brown and a law student from UCB's Policy Advocacy Clinic engaged in a telephone interview with the Court to seek additional information related to the financial data provided. Also in December, Ms. Brown obtained a copy of, and closely reviewed, the Master Agreement for Collection Services, which is a contract between the Court and its debt collector, Linebarger Goggan Blair and Sampson, LLP. The Fee Schedule that accompanies the Agreement reveals that the bulk of Linebarger's commissions range from 18-25% of all debt collected, with financial incentives to collect debt that is at least two years old.

In February 2019, RSG disseminated the results of the financial and administrative analyses of Contra Costa County's justice fees and the Linebarger contract (along with an analysis of the Contra Costa County DA's civil asset forfeiture practices) at a public meeting. Entitled *What the Numbers Tell Us: Money and Justice in Contra Costa County*, this public presentation was also published on RSG's website.<sup>2</sup>

#### **4. 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 who have been ordered to formal Probation, which includes mandatory supervision, and who are ordered to pay Probation fees, drug testing fees and/or the cost of their various reports, should be assessed for their ability to pay said fees. However, the Chief Probation Officer has acknowledged that enforcement of this policy is inconsistent, and that requiring Deputy Probation Officers to engage in questions about money and fees is contrary to their mission of rehabilitation. The Probation's Department's official fee assessment process is as follows:

- 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) is to provide him or her with the Application for Financial Evaluation.
- 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 is to 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.
- Once the probationer returns the completed application, the DPO is to send the application and the order for Probation to the Probation Account Clerk to review the application and determine the probationer's ability to pay based on net income and Probation's Fee Reduction schedule.

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<sup>2</sup> [http://reentrysolutionsgroup.org/meeting\\_materials/2\\_26\\_19\\_RSGFinalV2.pdf](http://reentrysolutionsgroup.org/meeting_materials/2_26_19_RSGFinalV2.pdf)



- Once this determination has been made, the Probation Account Clerk is to respond to the DPO with the total amount the probationer is determined able to pay over the duration of their time on Probation.
- Upon receipt of the determination of the probationer's ability to pay, the DPO reviews the ability to pay determination with the probationer; the probationer has the option to agree to the amount or to request a hearing.
- 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.
- If the probationer disagrees with the amount determined by the Probation Department, the DPO is to contact the court clerk and calendar a hearing and to 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.

- Office of the Sheriff Ability to Pay Process

Beginning in mid-2018, the Office of the Sheriff revised its practices to assess and set application and daily fees for CAF. Under the new guidelines, CAF participants apply to and are enrolled in CAF prior to any discussion of fees or ability to pay. Upon enrollment, participants review and complete the personal budget form with their assigned CAF Specialist. The participant may request a reduction/waiver of fees based on their stated ability to pay. A CAF Sergeant is to review and approve the Personal Budget form. By statute, a participant's inability to pay all or a portion of any fee(s) shall not preclude them from being enrolled or completing any program offered by the Custody Alternative Facility.

- Office of the Sheriff Process of Collections

CAF fees are collected by CAF staff after participants are enrolled in CAF. 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. Because the Sheriff’s Office has historically collected no data on assessments, collections, or ability to pay, it is not possible to provide accurate information regarding these considerations.

- Office of the Sheriff 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 develop Ability to Pay processes and forms.

- Cross-County Comparison: Work Alternative Program Fees

In September 2018, Alameda Sheriff’s Office provided a presentation on their Sheriff’s Work Alternative Program.<sup>3</sup> Included in that presentation was a cost comparison of Work Alternative Programs among twelve different counties (see Figure 1). Contra Costa County’s Administrative Fee for the Work Alternative Program was the highest amongst the county’s included in this comparison.

*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

- Superior Court

The Court currently collects and distributes eight of the 13 fees and assessments identified in the moratorium. In response to a request made by the County Administrator’s Office, on October 21, 2019, the Superior Court of California, County of Contra Costa (Court) provided a letter summarizing the administrative/technological processes required to suspend collection of past-due fees, as directed by the moratorium.

Figure 2 summarizes the Court’s role the imposition and collection of the referenced fees, along with the current status related to moratorium’s implementation.

*Figure 2. Summary of Court Fees*

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<sup>3</sup> Sheriff’s Work Alternative Program (SWAP) Presentation, Alameda County Sheriff’s Office, September 13, 2018



<b>Name of Fee/Assessment</b>	<b>Case Type(s) Affected</b>	<b>Court Imposed</b>	<b>Court Collected</b>	<b>Continued Collection</b>	<b>Continued Imposition</b>
<i>10% Fee</i>	Criminal	Y	Y	Pending	N
<i>CA Fingerprint ID Penalty</i>	Criminal & Traffic	Y	Y	N/A	Y
<i>Booking Fee</i>	Criminal	Y	Y	N	N
<i>Drug Diversion Fee</i>	Criminal	Y	Y	Pending	N
<i>Alcohol Test Fee</i>	Criminal (DUI & Reckless)	N	N	N/A	N/A
<i>CAP Fee</i>	Criminal (DUI & Reckless)	N	N	N/A	N/A
<i>Probation Drug Diversion Fee</i>	Criminal	Y	Y	Pending	N
<i>Cost of Probation</i>	Criminal	N	Y	Pending	N
<i>Probation Drug Test Fee</i>	Criminal	N	Y	Pending	N
<i>Probation Report Fee</i>	Criminal	N	Y	Pending	N
<i>Alcohol and Drug Assessment Fee</i>	Criminal	N	N	N/A	N/A
<i>Public Defender Fee</i>	Criminal	N	Y	Pending	N

The Court’s current data system is not sufficient to conduct the data analysis required to enact the moratorium; it estimates that the necessary modifications will cost an estimated \$63,750. The Court’s letter also emphasized that the data system does not have the capacity to temporarily suspend fees for potential future reinstatement.

Given the cost of technological modifications and the inability to suspend (but not eliminate) unpaid debt, the Court requests further direction from the County.

In its letter, the Court reports that its current data system does not allow it to quantify the total unpaid amount for each fee type. However, its letter includes three points of interest:

- For public defense fees, the Court has identified 25,240 accounts with a balance of approximately \$5.54 million in collections with Linebarger. It has notified Linebarger to suspend collections on these accounts.
- For booking fees, the Court has identified 3,684 accounts with a balance of \$901,092. It has notified Linebarger to suspend collections on these accounts.
- For probation fees – which, by RSG’s analysis, represent 54% of the revenues generated by criminal justice fees in Contra Costa in the year studied – the Court has not yet been able to identify the total amount of unpaid debt.



## 5. 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

Data provided by the Contra Costa County Office of the Sheriff can serve as a sufficient proxy for the racial implications of our local criminal justice system; according to the Office of the Sheriff, 71% of people currently incarcerated in our county jails are people of color (39% Black, 25% Latino, 7% Other)<sup>4</sup> Given that approximately 8.8% of the population in Contra Costa County is Black,<sup>5</sup> the per capita incarceration rate for African Americans in Contra Costa County is 4.4 times its overall representation in the larger population.<sup>6</sup>

According to data from the State of California DOJ CJSC, in both 2013 and 2014, African Americans were more likely to be arrested than individuals from any other racial/ethnic group in all but one city in Contra Costa County. While the specific rate of the disparity varied by city, the disparity tended to be higher in cities with smaller African American populations (see Appendix B for more information). Across the County, African American adults were more than three times more likely to be arrested than adults from any other racial/ethnic group, and African American youth were more than seven times more likely to be arrested than youth from any other racial/ethnic group.<sup>7</sup>

### B. INCOME DEMOGRAPHICS

To assess indigency in the county's criminal justice system, the Probation Department conducted a review of 115 Probation cases from March 2018 to March 2019. It found that approximately 88% of Probationers had income levels below 200% of the federal poverty guideline (\$49,200 for a family of four). For reference, the median family income in Contra Costa is \$113,973.<sup>8</sup>

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<sup>4</sup> Contra Costa County Sheriff's Office, email communication to Rebecca Brown, October 25, 2019.

<sup>5</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)

<sup>7</sup> Racial Justice Task Force Final Report, [http://64.166.146.245/docs/2018/BOS/20180724\\_1121/34430\\_FINAL%20CCC-RJTF\\_BoS-memo\\_20180710\\_STC.pdf](http://64.166.146.245/docs/2018/BOS/20180724_1121/34430_FINAL%20CCC-RJTF_BoS-memo_20180710_STC.pdf)

<sup>8</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 3. 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%		

Figure 4. 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 Reduction					
	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

The Probation Department also reviewed 197 cases that were referred to the Probation Department for a probation report. Out of 197 cases, 184 cases were represented by the Public Defender or Alternate Defender Office, meaning that 93% of the people in this sample were legally considered indigent.

**6. NATIONAL BODY OF RESEARCH**

Local and national research has widely and consistently shown that criminal justice fees are harmful, that they undermine successful reentry, and that they increase the chance of recidivism. For those who are convicted in criminal court, fees for probation supervision, drug and alcohol testing, representation by a public defender and non-custodial sentencing options are assessed in addition to other costs and can quickly add up to thousands of dollars. In Contra Costa County, an individual with a three-year term of supervised probation is assessed \$2,700 in Probation supervision fees alone.



Research shows that the vast majority of people charged such costs cannot afford to pay them and that counties typically net very little or even lose revenue after accounting for collections costs.<sup>9</sup> Fees make reentry harder, hurting credit scores, making it harder for people to find housing or open a bank account, and discouraging people from seeking formal employment out of fear that their wages will be garnished, bank accounts levied, or tax refunds intercepted.”<sup>10</sup>

Given the endemic racial bias present throughout our justice systems, administrative fees are disproportionately imposed on communities of color, who are further disproportionately likely to have difficulty paying them. In California, close to half of Black and Latinx families struggle to put food on the table and pay for housing.<sup>11</sup> And research has found that the burden of such fees is typically felt by family members; in a national survey by the Ella Baker Center for Human Rights, 63% of respondents reported that family members were primarily responsible for covering conviction-related costs, and 83% of those paying such costs are women. Nearly half also reported that their families could not afford to pay these fines and fees, and 1 in 5 families across income levels reported that they had to take out a loan to cover conviction-related costs.<sup>12</sup>

It should be noted that a report released in May 2019 by the Board of Governors of the Federal Reserve System drives home the devastating results from costs such as criminal justice fees. Entitled Report on the Economic Well-Being of U.S. Households in 2018, the report found that “many adults are financially vulnerable and would have difficulty handling an emergency expense as small as \$400.”<sup>13</sup> The study found that 17% of adults are forced to leave some bills unpaid each month, while another 12% said that an additional expense of \$400 would leave them unable to meet their basic needs. A full 42% of people who have no college education would be pushed into financial hardship by such an expense, with an even higher percentage of African Americans (58%) affected in this way. Even for African Americans with some college or an Associate’s degree find significant harm; 46% report that they would not be able to pay their monthly bills if hit with an additional \$400 expense. And rather than constituting a one-time expense, criminal justice fees tend to recur - probation fees, drug testing fees, and partial payment fees all accrue month after month.

According to the American Bar Association (ABA), the vast majority of people accused in criminal courts are considered indigent, unable to afford their own attorney and eligible therefore for the constitutional protections for public defense. The ABA estimates that 85 to 95 percent of people accused of crimes cannot afford their own lawyer; however, Contra Costa County collects no local data on this point.<sup>14</sup>

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<sup>9</sup> East Bay Community Law Center, Pay or Prey (2018); Berkeley Law Public Advocacy Clinic, Making Families Pay (2017).

<sup>10</sup> <https://ebclc.org/cadebtjustice/policy-platform/>

<sup>11</sup> Insight Center for Community Economic Development, Cost of Being Californian (2018).

<sup>12</sup> Ella Baker Center, Who Pays? The True Cost of Incarceration on Families (2015).

<sup>13</sup> <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>

<sup>14</sup> Laurence A . Benner, Eliminating Excessive Public Defender Workloads, 2011 A .B .A, Criminal Justice Vol . 2, [https://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_magazine/cjsu11\\_benner.authcheckdam .pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsu11_benner.authcheckdam.pdf).

Fee Description	Funded Department/Program	FY 19/20 Budgeted Revenue	FY 19/20 YTD Revenue	Unrealized Revenue
10% Fee	Trial Court Programs	-	20,651.00	(20,651.00)
California Fingerprint ID Penalty	Automated Fingerprint ID	158,534.00	42,448.64	116,085.36
Booking Fee	Sheriff Central Admin	7,000.00	6,562.67	437.33
Drug Diversion Fee <sup>1</sup>	Trial Court Programs	-	25,548.34	(25,548.34)
Alcohol Test Fee <sup>2</sup>	Sheriff - General Lab	100,000.00	26,237.92	73,762.08
C.A.P. Fee <sup>2</sup>	Sheriff - General Lab			-
C.A.P. Fee	Alcohol & Other Drugs	-	8,882.69	(8,882.69)
Probation Drug Diversion Fee	Probation - Adult	-	388.62	(388.62)
Probation Supervision Fee	Probation - Adult		88,239.72	(88,239.72)
Probation Drug Test Fee	Probation - Adult	-	10,926.36	(10,926.36)
Probation Report Fee	Probation - Adult	-	5,176.16	(5,176.16)
Alcohol/Drug Assessment Fee	Alcohol & Other Drugs	-	35,009.72	(35,009.72)
Public Defense Fee	Trial Court Programs	94,000.00	42,666.21	51,333.79
Work Alternative	Custody Alternative Facility	350,000.00	55,703.00	294,297.00
Electronic Home Detention/Alcohol Monitoring	Custody Alternative Facility	100,000.00	11,622.00	88,378.00
Total		809,534.00	380,063.05	429,470.95

## Note:

1 - Drug Diversion Fee YTD Revenue includes other state mandated fee revenue.

2 - The fee revenue for Sheriff-General Lab is made up of both Alcohol Test and 50% of C.A.P. Fee.