



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

“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.”¹

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.^{2,3} 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.⁴

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.⁵

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.⁶

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*.⁷ 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.^{8,9,10,11}

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.¹²

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.¹³ 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.”¹⁴

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.¹⁵ 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.¹⁶

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.”¹⁷ 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;¹⁸ 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.¹⁹

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.²⁰

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."²¹

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.

¹ https://drive.google.com/file/d/1gUo96d0ldfa6qdFj5QhGY-cdl61MZ_9q/view

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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

³ http://reentrysolutionsgroup.org/meeting_materials/Press_release_and_moratorium_letters_10-28-16_english_and_spanish.pdf

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

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

⁶ 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

⁷ http://test-sfttx.pantheonsite.io/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019.pdf

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

⁹ http://www.abajournal.com/news/article/debt_collection_law_firm_to_pay_3.4m_to_settle_class_action/

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

¹¹ http://www.hoysettlement.com/media/2115094/stipulation_of_class_action_settlement.pdf

¹² http://reentrysolutionsgroup.org/meeting_materials/2_26_19_RSGFinalV2.pdf

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

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

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

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

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

¹⁸ 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).

¹⁹ Assistant Sheriff Mathew Schuler, email communication to Rebecca Brown, October 25, 2019.

²⁰ 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.

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