



Contra
Costa
County

To: Board of Supervisors
From: PUBLIC PROTECTION COMMITTEE
Date: September 17, 2019
Subject: Criminal Justice Adult Fees

RECOMMENDATION(S):

1. ACCEPT a report on the issue of certain fees assessed by the County related to criminal justice system.
2. CONSIDER adopting Resolution No. 2019/522 to place a moratorium on the assessment and collection of certain criminal justice fees and DIRECT staff to return to the Board of Supervisors with an update no later than December 31, 2019.
3. PROVIDE further direction to staff regarding next steps.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/17/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Diane Burgis, District III Supervisor
Federal D. Glover, District V Supervisor

NO: Candace Andersen, District II Supervisor
Karen Mitchoff, District IV 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: September 17, 2019

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

By: Jami Napier, Deputy

Contact: Paul Reyes,
925-335-1096

FISCAL IMPACT:

Should the Board of Supervisors enact a temporary moratorium on the collection of certain criminal justice fees, the net county cost would be approximately \$550,000 based on collections experienced during fiscal year 2018/19. This reflects the cost during the period September 17, 2019 through December 31, 2019 (the proposed date identified in the Resolution for staff to return to the Board on this issue). The annualized fiscal impact is approximately a \$1.8 million reduction in County revenue.

BACKGROUND:

On February 26, 2019, the Board of Supervisors referred to the Public Protection Committee the issue of criminal justice system fees charged to individuals. Existing law allows the County to impose various criminal justice fees for the cost of administering the criminal justice system. The referral requested a review of the current programs, policies and practices related to criminal justice fees.

On April 1, 2019, the Public Protection Committee accepted an introductory report on the issue of criminal justice fees assessed in the County. The report provided during this meeting focused on criminal justice fees that had been positively identified as being local and discretionary fees (ones not mandated by California law): Probation Fees, Public Defender Fees, and Sheriff Custody Alternative Facility Fees.

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. 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.

During both of these meetings, the Public Protection Committee considered a number of concerns revolving around adult criminal justice fees, including concern over the inequity of criminal justice fees in that these fees are often disproportionately imposed on communities of color. There was also concern that criminal justice fees are regressive in that these fees hurt the poorest the most. It was also discussed that these fees can be impoverishing in that large monetary sanctions translate to large levels of debt that reinforce poverty and make it difficult for individuals to lead financially stable lives. Criminal fees could potentially undermine public safety. The goal of a successful post-incarceration period is to reintegrate into the community, yet these fees can create significant barriers to successful reentry.

There was also 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. However, the Public Protection Committee received public comment from members of the public, defense attorneys, and a former judge that the ability-to-pay determinations are not being administered in a consistent and legal

manner. There was also concern expressed that assessing fees without considering one's ability to pay violates constitutional guarantees against "excessive fines".

The Public Protection Committee's consideration of the above concerns ultimately led to the determination 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 adult criminal justice fees.

Collection of Fees

For several years, the Superior Court of California - County of Contra Costa (Court) has been responsible for processing and collecting the majority of the criminal justice fees, fines and other assessments due to the County. The Court processes and collects the fees included in this report, with the exception of the Custody Alternative Facility fees, which are processed and collected by the Office of the Sheriff.

Revenue

The estimated revenue of the fees under consideration is approximately \$1.8 million for Fiscal Year 2019/2020. The table below shows a summary of the estimated fee revenue for Fiscal Year 2019/2020, by impacted department.

Impacted Department	FY 19/20 Est. Revenue
Sheriff - Custody Alternative Facility Fees	\$400,000
Sheriff - General Lab	\$120,000
Sheriff - Central Admin	\$40,000
Probation Department	\$521,000
Trial Court Programs (General Fund)	\$280,000
Alcohol & Other Drugs	\$230,000
Special Revenue Fund - Automated Fingerprint ID	\$180,000
Total	\$1,771,000

Attachment A shows the estimated fee revenue for Fiscal Year 2019/2020, by fee type.

Additional Information on Each Fee

10% Fee – California Penal Code § 1203.1 provides counties the ability to charge an administrative fee of up to ten percent (10%) of the amount of restitution ordered to be paid through the court. In 1994, Contra Costa County Board of Supervisors approved a resolution establishing a fee up to 10% of the amount of restitution ordered.

California Fingerprint ID Penalty – In 1988, the Board of Supervisors approved Resolution No. 88/565 pursuant to 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 for each \$10 fine, penalty, or forfeiture imposed and

collected by the courts for all criminal offense and certain violations of the Vehicle Code. The purpose of this fee was to assist the County in the establishment and maintenance of adequate fingerprint facilities and suspect booking identification facilities.

Booking Fee – 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.

Drug Diversion Fee – In 1994, the Board of Supervisors approved a resolution pursuant to California Penal Code § 1211 to charge a fee for the administrative costs incurred in processing a drug diversion case.

Alcohol Test & C.A.P Fee – 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 on defendants convicted of violating California Vehicle Code § 23152 or § 23153 (driving a motor vehicle under the influence of alcohol or drugs). Alcohol Test Fee revenue and fifty percent (50%) of C.A.P. fee revenue is used to offset the cost of laboratory testing performed by the Office of the Sheriff.

Probation Drug Diversion Fee – In 1995, the Contra Costa County Board of Supervisors authorized an administrative fee for the Probation Department’s processing of clients into a drug diversion program pursuant to Penal Code § 1001.15.

Probation Supervision Fee - The Probation Department is currently authorized by Resolution No. 2010/262 and Penal Code § 1203.1b to charge a Probation Supervision Fee to recover the cost of probation supervision.

Probation Drug Test Fee – The Probation Department is currently authorized by Penal Code § 1203.1ab to charge a Probation Drug Test Fee to recover the cost of drug testing required as a condition of one’s probation.

Probation Report Fee – The Probation Department is currently authorized by Ordinance 2009-28 and Penal Code § 1203.1b and § 1203.7 to charge a Probation Report Fee to recover the cost to conduct a preplea investigation of a criminal defendant and prepare a preplea report.

Alcohol and Drug Assessment Fee - Contra Costa County is currently authorized by Resolution 99/347 and Penal Code § 1463.13 to charge an Alcohol and Drug Assessment Fee to recover the cost of providing community substance abuse services for those convicted of driving under the influence. The revenue generated from this fee funds community substance abuse services.

Public Defender Fees - Contra Costa County is currently authorized by Penal Code § 987.81 to recover the cost of court appointed counsel. The revenue generated from this

fee are used to offset the County's cost for court appointed counsel. The Contra Costa Public Defender does not assess, process, or collect this fee.

Custody Alternative Facility Fees - 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.

CONSEQUENCE OF NEGATIVE ACTION:

The County would continue with its billing and collections practices related to criminal justice fees.

CLERK'S ADDENDUM

Public Speakers: Aila Ferguson, Brandon Banks, Christa Brown, Rita Barouch, Cheryl Sudduth, Ellen McDonnell, Rebecca Brown, Sarah Edwards, Ali Saidi, Willie Mims, Mary Sylla, Andrea Crider, Mariana Moore, Tony, Julian Ross, Suzanne Llewellyn, Jeff Landau.

Direct Public Protection Committee to gather requested data about justice fees in Costa County, and return to the Board of Supervisors before the end of the year.

ATTACHMENTS

Resolution 2019/522

Attachment A - Estimated Fee Revenue by Fee Type