

JUNE 23, 2023

# Overview of Criminal Fine and Fee System and Notable Related Actions

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PRESENTED TO:           Committee on Revision of the Penal Code



LEGISLATIVE ANALYST'S OFFICE

## Overview of Handout

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- During court proceedings, trial courts typically levy fines and fees upon people convicted of criminal offenses (including traffic violations). These assessments are known collectively as criminal fines and fees.
- This handout provides an overview of how criminal fines and fees are assessed, collected, and distributed. It then summarizes recent LAO recommendations for improving the state's criminal fine and fee system. Finally, it discusses notable actions taken to address declines in criminal fine and fee revenue as well as to reduce impacts of the fines and fees upon people.



# Background

## How are Criminal Fines and Fees Assessed?

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

As of January 1, 2023

	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 <sup>a</sup>	40	390
County Penalty Assessment	\$7 for every \$10 <sup>a</sup>	28	273
Court Construction Penalty Assessment	\$5 for every \$10 <sup>a</sup>	20	195
Proposition 69 DNA Penalty Assessment	\$1 for every \$10 <sup>a</sup>	4	39
DNA ID Fund Penalty Assessment	\$4 for every \$10 <sup>a</sup>	16	156
EMS Penalty Assessment	\$2 for every \$10 <sup>a</sup>	8	78
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		(\$234)	(\$1,820)
<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>\$234</b>	<b>\$2,020</b>

<sup>a</sup> The base fine is rounded up to the nearest \$10 to calculate these charges. For example, the \$35 base fine for a failure to stop would be rounded up to \$40.

DUI = Driving Under Influence; DNA ID Fund = DNA Identification Fund; and EMS = Emergency Medical Services.

- The total owed begins with a base fine set in statute for each criminal offense. State law then requires courts add certain charges. In some cases, counties and courts can levy additional charges depending on the specific violations and other factors. People may request courts adjust the amount owed based on their ability to pay. Statute gives judges some discretion to reduce the total amount owed by waiving or reducing certain charges.



# Background

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## How Are Fines and Fees Collected?

- **Counties and Courts Involved in Collection Process.** Counties are statutorily responsible for collecting fine and fee payments. However, some collection duties are often delegated back to the courts. As a result, collection programs may be operated by both courts and counties. Programs can collect the amount owed themselves as well as contract with private collection vendors or the Franchise Tax Board (FTB).
- **Various Collection Tools and Sanctions Employed.** Examples of collection tools include installment payment plans, monthly billing slips, or payment kiosks. Sanctions can apply when a person fails to pay the amount owed or appear in court without good cause 20 calendar days following notification of delinquency. Examples of sanctions include a civil assessment, wage garnishments, and bank levies.

## How Is Fine and Fee Revenue Distributed?

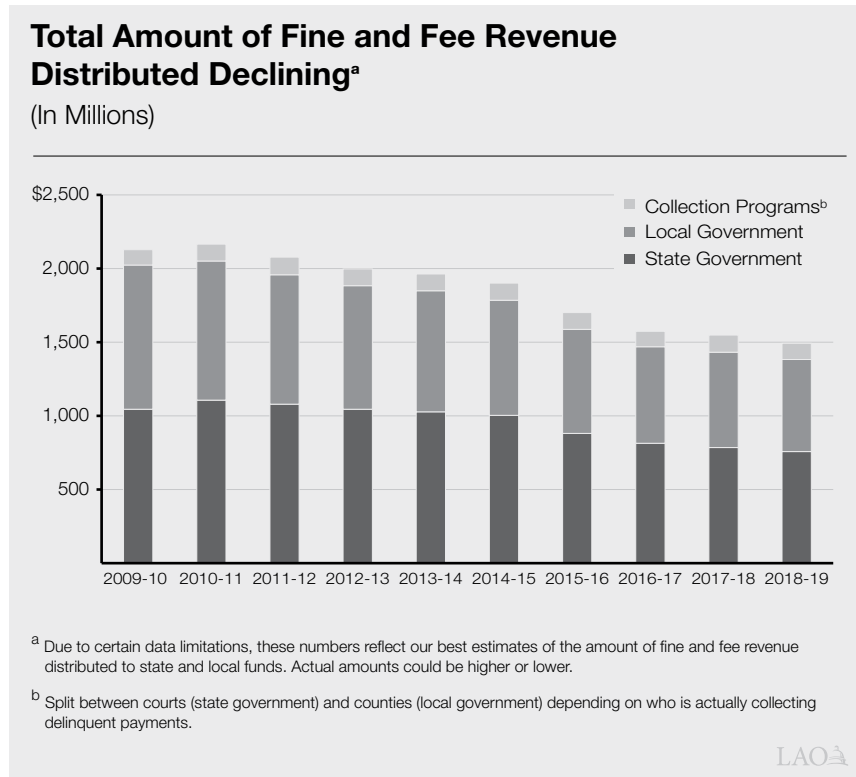
- **Numerous Funds Eligible to Receive Fine and Fee Revenue.** Over 50 state funds—in addition to many local funds throughout the state—are eligible to receive fine and fee revenue. However, some may only receive very little revenue, such as those that only receive revenue from fines and fees for specific offenses that occur infrequently.
- **Complex Process for Distributing Fine and Fee Revenue.** State law (and county resolutions for certain local charges) dictates a very complex process for the distribution of fine and fee revenue. State law currently contains over 200 distinct code sections specifying how individual fines and fees are to be distributed to numerous 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.



# Background

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## Who Benefits From Fine and Fee Revenues?



- **State Receives Majority of Revenue Distributed.** We estimate that a total of \$1.5 billion in fine and fee revenue was distributed to state and local governments in 2018-19. (This is the most recent data that we have analyzed.) Of this amount, roughly half went to the state, 42 percent went to local governments, and the remainder offsets collection program costs related to collecting delinquent payments.
- **Amount Distributed Has Declined Over Time.** As shown in the figure, the total amount of fine and fee revenue distributed to state and local governments has steadily declined since 2010-11. This has resulted in the state taking various actions to address a number of state funds (and the programs they support) facing insolvency.



# LAO Recommendations to Improve Criminal Fine and Fee System

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## Evaluate Structure of Criminal Fine and Fee System

- ***What Should Be the Goals of the Criminal Fine and Fee System?*** A fine and fee system can service various purposes, such as deterring behavior or mitigating the negative effects of crime. Fines and fees should be set in a manner to reflect the intended goals.
- ***Should Ability to Pay Be Incorporated?*** There are various ways to incorporate ability to pay into the system. One way is to calculate fines and fees based on a person's ability to pay. Another option is to levy the same level of fines and fees on all people related to the same violation, but implement alternative methods for addressing the amount owed (such as through community service).
- ***What Should Be the Consequences for Failing to Pay?*** The Legislature will want to consider what consequences people should face when they fail to pay their fines and fees. The Legislature could also take action to help prevent people from becoming delinquent—such as by authorizing programs to offer a discount if people pay the amount owed in full.
- ***Should Fines and Fees Be Adjusted?*** The Legislature will want to decide whether and how fines and fees are adjusted in the future. For example, the levels could be regularly reevaluated or automatically adjusted (such as by using a statewide economic indicator).



# LAO Recommendations to Improve Criminal Fine and Fee System

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## Increase Legislative Control of Criminal Fine and Fee Expenditures

- ***Deposit Most Criminal Fine and Fee Revenue in the General Fund.*** Depositing nearly all fine and fee revenue into the state General Fund for subsequent legislative appropriation would increase oversight and ensure that funding is provided based on program workload and legislative priorities. Programs supported by such revenue would also no longer be disproportionately impacted by fluctuations in fine and fee revenue.
- ***Consolidate Most Fines and Fees.*** Consolidating most fines and fees into a single, statewide charge and removing the ability of trial courts and local governments to add charges would eliminate the need for the state's existing complex distribution model and make it easier for collection programs to track such revenue.
- ***Evaluate Existing Programs Supported by Criminal Fine and Fee Revenues.*** Reviewing each program currently supported by criminal fine and fee revenues will help the Legislature to determine whether the program is a statewide priority as well as to define its expectations on program service levels and the level of funding needed to meet those expectations.
- ***Mitigate Impacts on Local Governments.*** The Legislature will want to consider how to mitigate the fiscal impact any restructuring of fines and fees would have on local governments. We note counties often use their share of revenue to meet their required payments to the state for the support of trial court operations—currently about \$660 million annually.



# Notable Actions Taken to Address Declining Fine and Fee Revenue

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## Cost Shifts

- In the past several years, the state has shifted costs from various funds supported by fine and fee revenues to the General Fund or other funds in different ways. For example, some programs were shifted entirely to be supported by the General Fund. Other funds or programs are receiving General Fund backfills to maintain revenue and/or expenditure levels.

## Expenditure Reductions

- In the past several years, the state has directed certain state entities supported by fine and fee revenue to reduce expenditures. For example, the Commission on Peace Officer Standards and Training was required to reduce expenditures in certain years and the judicial branch temporarily halted a number of construction projects prior to 2018-19.

## Revenue Increases

- The state has also attempted to increase the amount of fine and fee revenue collected in different ways. For example, the 2017-18 budget package provided resources for FTB to increase its fine and fee revenue collection activities.

## Other Actions

- In 2017-18, the state eliminated statutory formulas dictating how criminal fine and fee revenues deposited into the State Penalty Fund are distributed. Instead, specific dollar amounts are now appropriated to specific programs in the annual budget based on state priorities.
- In 2021-22, the judicial branch's two construction accounts were consolidated in order to delay the need to address their insolvency.





# Notable Actions Taken to Reduce Impacts of Fines and Fees on People

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## Elimination of Certain Assessments

- ***Restitution Fines (Pending)***. The 2022-23 budget included intent language to eliminate restitution fines deposited in the Restitution Fund and to backfill the resulting revenue loss to the fund beginning in 2024-25. However, the language makes this action contingent on sufficient General Fund resources being available to support the changes in 2024-25.
- ***Emergency Medical Air Transportation (EMAT) Penalty Assessment***. Under state law, authority to assess the EMAT penalty assessment (\$4 per conviction) expired as of January 2023. However, such assessments ordered prior to this date may continue to be collected and distributed through December 2023.
- ***Various Criminal Justice Fees***. The 2021-22 budget package eliminated about 17 fees generally related to diversion programs as well as to the collection of restitution and other criminal assessments as of January 2022. It also provided \$50 million annually to counties from the General Fund to backfill lost revenue. Additionally, the 2022-23 budget provided \$10.3 million annually to the judicial branch from the General Fund to backfill their share of lost revenue.
- ***Various Administrative Fees***. The 2020-21 budget package eliminated about 20 criminal justice administrative fees generally related to arrest and booking, indigent criminal defense, and alternative to incarceration programs (such as work release or electronic monitoring) as of July 2021. It also provided \$65 million annually to counties from the General Fund for five years beginning in 2021-22 to backfill lost revenue.



# Notable Actions Taken to Reduce Impacts of Fines and Fees on People

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## Sanction Reductions

- **Civil Assessment.** The 2022-23 budget package required civil assessment revenues be deposited into the state General Fund instead of a judicial branch special fund. It also changed state law to reduce the maximum amount of civil assessment that could be charged from \$300 to \$100. On net, these two changes required an ongoing \$67 million General Fund backfill to maintain trial court funding levels. Additionally, the budget package waived civil assessments owed prior to July 2022 and provided \$10 million one-time General Fund to backfill lost revenue.
- **Driver's License Holds and Suspensions.** The 2017-18 budget package eliminated collection programs' ability to use driver's license holds and suspensions as a collection sanction for people who fail to pay their criminal fines and fees.

## Online Adjudication and Ability to Pay

- The 2022-23 budget authorized the statewide use of an online adjudication tool for infractions and required all courts offer the ability-to-pay component of the tool by June 2024. It also provided an ongoing General Fund backfill for the expected revenue loss—estimated to total \$28.4 million annually beginning in 2024-25. This originally began as a pilot program authorized as part of the 2018-19 budget package.

## Traffic Amnesty Program

- The 2015-16 budget package authorized an 18-month traffic amnesty program for delinquent criminal fine and fee payments. Under the program, eligible people who began paying the amount they owed had their (1) civil assessments waived, (2) total amount owed reduced by 50 percent (80 percent for those who were low income), and (3) drivers' licenses reinstated (if previously suspended).

