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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 190                      **Hearing Date:** March 21, 2017  
**Author:** Mitchell  
**Version:** January 26, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Juveniles*

## HISTORY

**Source:** Center on Juvenile and Criminal Justice  
East Bay Community Law Center  
Lawyers' Committee for Civil Rights of the  
San Francisco Bay Area  
PolicyLink  
Western Center on Law and Poverty  
Youth Justice Coalition

**Prior Legislation:** SB 941 (Mitchell) – Died in Senate Appropriations, 2016  
SB 504 (Lara) – Ch. 388, Stats. 2015

**Support:** Alameda County Board of Supervisors, District Two; Alliance for Boys and Men of Color; California Alliance for Youth and Community Justice; California Asset Building Coalition; California Attorneys for Criminal Justice; California Catholic Conference; Children's Defense Fund; Children Now; Coleman Advocates for Children and Youth; Communities Unites for Restorative Justice; Contra Costa County Public Defender; Courage Campaign; Dolores Huerta Foundation; Drug Policy Alliance; Equality California; Fair Chance Project; Fathers & Families of San Joaquin; Free Indeed Reentry Project; Further the Work; John Burton Advocates for Youth; Justice Now; Juvenile Court Judges of California; Juvenile Law Center; Motivating Individual Leadership for Public Advancement; National Center for Youth Law; National Employment Law Project; Pacific Juvenile Defender Center; Prison Law Office; Public Counsel; Public Law Center; Root & Rebound; RYSE Youth Center; Silicon Valley De-Bug; Southern Poverty Law Center; The Financial Justice Project of the City and County of San Francisco; Youth Alive; Youth Law Center; W. Haywood Burns Institute

**Opposition:** None known

## PURPOSE

*The purpose of this bill is to eliminate a number of fiscal liabilities to parents, guardians, and minors for costs associated with a minor's involvement in the juvenile justice system and, in some instances, comparable costs for convicted young adults under the age of 21, as specified.*

### **Family Liability Based on Juvenile Detention or Wardship**

*Current law* generally authorizes the board of supervisors for any county to designate a county officer to make financial evaluations of defendants and other persons liable for reimbursable costs under the law, as specified. (Government Code § 27750.)

*Current law* requires, in counties that designate a financial evaluation officer, that the officer make financial evaluations of parental liability<sup>1</sup> for reimbursements and other court-ordered costs relating to reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution, as a result of temporary detention or a delinquency court order, legal services, probation supervision, and costs for records sealing, as specified,<sup>2</sup> as directed by the board of supervisors, or as established by order of the juvenile court, and may enforce the court order as any other civil judgment, including any balance remaining unpaid after jurisdiction of the minor has terminated. (Government Code § 27756.)

*This bill* would narrow the scope of this liability for these kinds of costs to apply only to legal services rendered to the minor by an attorney pursuant to an order of the juvenile court, any cost to the county or the court of legal services rendered directly to the father, mother, or spouse, of the minor or any other person liable for the support of the minor, in a dependency proceeding by an attorney appointed pursuant to an order of the juvenile court (Welfare and Institutions Code (“WIC”) § 903.1), for costs associated with disputing a county financial evaluation officer’s determination regarding ability to pay for reimbursable costs allowed by law (WIC § 903.45), and, for persons age 26 and older, the cost to the county and court for any investigation related to the sealing and for the sealing of any juvenile court or arrest records, as specified. (WIC § 903.3.)

*Current law* generally permits a county financial evaluation officer to reduce, cancel or remit the costs of juvenile wardship, as described above; to investigate the financial condition of the minor and his or her relatives to determine their financial capacity to pay such charges; and to enforce a claim for reimbursement for these charges if it is learned that property or other assets subsequently were acquired, as specified. (Government Code § 27757.)

*This bill* would amend this section to delete all of its provisions except the authority to reduce, cancel or remit the costs associated with legal services rendered, record sealing, and disputing the ability to pay determination.

### **Liability Based on Costs for Electronic Home Detention or County Inmate Work Furlough Participation**

*Current law* authorizes sheriffs, probation officers, and directors of county departments of corrections to “offer a program under which inmates committed to a county jail or other county correctional facility or granted probation, or inmates participating in a work furlough program, may voluntarily participate or involuntarily be placed in a home detention program during their sentence in lieu of confinement in the county jail or other county correctional facility or program under the auspices of the probation officer.” (Penal Code § 1203.016.)

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<sup>1</sup> Specifically, the father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor.

<sup>2</sup> Sections 903, 903.1, 903.2, 903.3, and 903.45 of the Welfare and Institutions Code.

*Current law* provides that the “board of supervisors may prescribe a program administrative fee to be paid by each home detention participant that shall be determined according to his or her ability to pay. Inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay,” as specified. (Penal Code § 1203.016 (g).)

*This bill* would limit this administrative fee to adult home detention participants who are over 21 years of age and under the jurisdiction of the criminal court.

*Current law* generally allows a county, upon approval by the board of supervisors, to establish a work furlough program for qualifying screened offenders, and permits the work furlough administrator to collect the inmate’s earning in order to pay for the inmate’s board and personal expenses, and administrative costs. (Penal Code § 1208.)

*Current law* provides that a board of supervisors which implements work furlough, electronic home detention, or parole programs, as specified, may prescribe a program administrative fee and an application fee, that together shall not exceed the pro rata cost of the program to which the person is accepted, including equipment, supervision, and other operating costs, except that with “regard to a privately operated electronic home detention program . . . the limitation, . . . (that that these fees shall not exceed the pro rata cost of the program to which the person is accepted) . . . in prescribing a program administrative fee and application fee shall not apply.” (Penal Code § 1208.2 (b).)

*This bill* would provide that with regard to an electronic home detention program, as specified, “whether or not the program is privately operated, any administrative fee or application fee prescribed by a board of supervisors shall only apply to adults over 21 years of age and under the jurisdiction of the criminal court.”

### **Liability for the Costs of Drug Testing**

*Current law* provides that, for persons convicted of an offense involving the unlawful possession, use, sale, or other furnishing of any controlled substance, in addition to any other sanctions, and unless the court makes a finding that this condition would not serve the interests of justice, the court, when recommended by the probation officer, shall require as a condition of probation that the defendant submit to drug and substance abuse testing. If the defendant required to submit to testing and “has the financial ability to pay all or part of the costs associated with that testing, the court shall order the defendant to pay a reasonable fee, which shall not exceed the actual cost of the testing.” (Penal Code § 1203.1ab.)

*This bill* would limit this provision to adults over 21 years of age and under the jurisdiction of the criminal court.

*Current law* imposes this same liability on minors found to be a ward of the court by reason of the commission of an offense involving the unlawful possession, use, sale, or other furnishing of a controlled substance. (WIC § 729.9.)

*This bill* would delete the provisions subjecting the minor to a court order to pay for any part of this testing.

### **Liability for Transporting a Minor Held in Temporary Custody**

*Current law* generally provides that a minor who is held in temporary custody in a law enforcement facility that contains a lockup for adults may be released to a parent, guardian, or responsible relative by the law enforcement agency operating the facility, or into his or her own custody, provided that a minor released into his or her own custody is furnished, upon request, with transportation to his or her home or to the place where the minor was taken into custody. (WIC § 207.2.)

*Current law* provides that a parent or guardian is liable for the reasonable costs of transporting the minor to a juvenile facility and for the costs of the minor's food, shelter, and care at the juvenile facility when the parent or guardian has actual notice the minor is scheduled for release and that the parent or guardian is asked to pick up the minor by a time certain no later than six hours from the time the minor was placed in detention; when it is "reasonably possible" for the parent or guardian to pick up the minor; and the parent or guardian refused to accept or make a reasonable effort to pick up on the minor. (WIC § 207.2 (b).) Current law imposes a \$100 maximum on this liability, combined with additional, related liabilities as specified, for every 24-hour period the parent or guardian fails to make a reasonable effort to pick up the minor, as specified. (WIC § 207.2 (c).) Current law further limits this liability by ability to pay, as specified. (WIC § 207.2 (d).)

*This bill* deletes all of the financial liability provisions of this section.

### **Liability for Legal Expenses**

*Current law* provides that the "father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the cost to the county or the court, whichever entity incurred the expenses, of legal services rendered to the minor by an attorney pursuant to an order of the juvenile court. The father, mother, spouse, or other person liable for the support of a minor and the estate of that person shall also be liable for any cost to the county or the court of legal services rendered directly to the father, mother, or spouse, of the minor or any other person liable for the support of the minor, in a dependency proceeding by an attorney appointed pursuant to an order of the juvenile court. The liability of those persons (in this article called relatives) and estates shall be a joint and several liability." (WIC § 903.1.)

*Current law* provides that this liability does not apply "if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the jurisdictional hearing." (WIC § 903.1.)

*This bill* would limit this liability to apply to any cost to the county or the court of legal services rendered directly to the father, mother, or spouse, of the minor or any other person liable for the support of the minor, in a dependency proceeding by an attorney appointed pursuant to an order of the juvenile court.

### **Conforming Amendments**

*This bill* makes conforming amendments consistent with its provisions limiting the liabilities as described above, in the following sections:

- Family notification of potential liabilities required in a petition to commence proceedings in the juvenile court to declare a child a ward or dependent of the court is limited to legal services rendered directly to the parent (WIC § 332.)
- Family notification of potential liabilities required in a petition to commence proceedings in the juvenile court to declare a minor a ward is eliminated (WIC § 656.)

### **Liability for Damage to Electronic Monitor**

*Current law* provides that “a minor, who while under the supervision of a probation officer, removes his or her electronic monitor without authority and who, for more than 48 hours, violates the terms and conditions of his or her probation relating to the proper use of the electronic monitor shall be guilty of a misdemeanor. If an electronic monitor is damaged or discarded while in the possession of the minor, restitution for the cost of replacing the unit may be ordered as part of the punishment.” (WIC § 871 (d).)

*Current law* also provides that the liability established regarding damaged or discarded monitors “shall be limited by the financial ability of the person or persons ordered to pay restitution under this section, who shall, upon request, be entitled to an evaluation and determination to pay under Section 903.45.” (WIC § 871 (e).)

*This bill* provides that person required to pay is entitled to an evaluation of his or her ability to pay.

### **Liabilities Pertaining to the Support of Wards and Dependent Children**

*Current law* states that if “it is necessary that provision be made for the expense of support and maintenance of a ward or dependent child of the juvenile court or of a minor person concerning whom a petition has been filed . . . the order providing for the care and custody of such ward, dependent child or other minor person shall direct that the whole expense of support and maintenance of such ward, dependent child or other minor person, up to the amount of . . . \$20 per month be paid from the county treasury and may direct that an amount up to any maximum amount per month established by the board of supervisors of the county be so paid. The board of supervisors of each county is hereby authorized to establish, either generally or for individual wards or dependent children or according to classes or groups of wards or dependent children, a maximum amount which the court may order the county to pay for such support and maintenance. All orders made pursuant to the provisions of this section shall state the amounts to be so paid from the county treasury, and such amounts shall constitute legal charges against the county.” (WIC § 900.)

*This bill* would instead require that the whole expense order for the care and custody of the ward, dependent child or other minor be paid for from the county treasury.

*This bill* additionally makes a technical correction to this section.

**CalWORKS Welfare to Work**

*Current law* generally provides statutory requirements for eligibility for an individual to participate in “family stabilization,” as specified. (WIC § 11325.24.)

*This bill* would add a “child in the family has been held in temporary custody in a law enforcement facility pursuant to subdivision (d) of Section 207.1” to the list of situations and crises specified for eligibility to participate in “family stabilization.”

**Statutes Repealed by This Bill**

*This bill* additionally repeals the following sections providing for liability relating to wards of the court:

- WIC section 902 (orders for additional amounts to pay the whole expense of support and maintenance of a ward, dependent child, or other minor person);
- WIC section 903 (liability for costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place, as specified);
- WIC section 903.15 (liability for registration fee of up to \$50 for appointed legal counsel);
- WIC section 903.2 (liability for probation supervision, home supervision, or electronic supervision);
- WIC section 903.25 (food, shelter and care costs of juveniles in custody of probation or detained in juvenile facility);
- WIC section 903.4 (recovery of moneys or incurred costs for support of minors in county institution or other placed program);
- WIC section 903.5 (voluntary placement of minor in out-of-home care);
- WIC section 903.6 (distribution of collected funds);
- WIC section 903.7 (the “Foster Children and Parent Training Fund”) and
- WIC section 904 (determination of charges by boards of supervisors or courts).

**Outstanding Court-Ordered Costs Unenforceable after January 1, 2018**

*This bill* would provide that on and after January 1, 2018, the balance of any court-ordered costs imposed pursuant to the liabilities eliminated by this bill “shall be unenforceable and uncollectable, and, on January 1, 2019, the portion of the judgment imposing those costs shall be vacated.”

*This bill* further would provide that on and after January 1, 2018, the balance of any court-ordered costs imposed pursuant Section 903.1 of the Welfare and Institutions Code that are related to the rendering of legal services to a minor by an attorney pursuant to an order of the juvenile court shall be unenforceable and uncollectable, and, on January 1, 2019, the portion of the judgment imposing those costs shall be vacated.”

## COMMENTS

### 1. Stated Need for This Bill

The author states in part:

Current law authorizes counties to charge fees to families with youth in the juvenile justice system for the costs of legal representation, detention, and probation conditions, including electronic monitoring, supervision, and drug-testing. Although state law authorizes such fees, the counties decide which fees to impose and in what amounts. Fifty-three of California's 58 counties currently charge for one or more juvenile administrative fees.

State law prohibits counties from charging fees without determining a family's ability to pay. By law, counties may designate financial evaluation officers (FEOs) to conduct such determinations. In evaluating ability to pay, the FEO and the juvenile court are supposed to consider the family's income, obligations, and dependents.

Once assessed, juvenile administrative fees become a civil judgment enforceable against the parent or guardian. Unpaid fees are subject to collection like any other civil judgment....

A study by the Policy Advocacy Clinic at U.C. Berkeley Law documents the regressive and racially disparate impact of juvenile administrative fees on children and their families in California, including the following key findings: (1) the fees harm families and undermine the rehabilitative purpose of the juvenile justice system; (2) counties charge fees that violate state and federal law; and (3) the fees yield little net fiscal gain to counties while imposing high costs on individuals, communities, and society.

Juvenile administrative fees cause financial hardship to families, weaken family ties, and undermine family reunification. Because Black and Latino youth are overrepresented and overpunished relative to White youth in the juvenile justice system, families of color bear a disproportionate burden of the fees. Criminologists recently found that juvenile debt correlates with a greater likelihood of recidivism, even after controlling for case characteristics and youth demographics. These negative outcomes from fees undermine the rehabilitative purpose of the juvenile justice system.

Some counties charge fees that violate state law, including charging fees that are not authorized in the juvenile setting, charging fees that exceed statutory maximums, and charging families of innocent youth. Other counties assess fees that violate federal law by for example, charging families for food while seeking reimbursement for the same meals from the National School Lunch Program. Further, counties engage in fee practices that may violate the California Constitution by depriving families of due process through inadequate ability to pay determinations and by denying families equal protection in charging them for electronic monitoring and supervision.

Counties are authorized to charge families for juvenile administrative fees to pay for the care and supervision of their children. Yet counties net little revenue from the fees. Because of the high costs and low returns associated with trying to collect fees from low-income families, most of the fee revenue pays for collection activities, not for the care and supervision of youth....

... In sum, juvenile administrative fees are harmful, unlawful, and costly, undermining the rehabilitative purpose of the juvenile justice system.

There is growing recognition of the harmful impact of fees charged to families with youth in the juvenile justice system. In the last 12 months, Alameda, Contra Costa, and Santa Clara Counties have all repealed or suspended their assessment and collection of fees. Los Angeles County imposed a moratorium on juvenile fee assessments in 2009, and San Francisco has never charged juvenile fees....

... Courts have also raised concerns about juvenile administrative fees. For example, the U.S. Court of Appeals for the Ninth Circuit recently admonished the Orange County Probation Department for aggressively pursuing payment on a more than \$16,000 juvenile fee bill after the financial burden forced a mother to sell her home and declare bankruptcy....

Just a week before President Barack Obama left office, the U.S. Department of Justice issued a formal advisory regarding such fees, imploring local courts to consider the effects of imposing juvenile administrative fees on juveniles and their families.

SB 190 will end the...assessment and collection of administrative fees against families with youth in the juvenile justice system. By doing so, SB 190 will protect families across the state from facing excessive and unaffordable charges without impacting the fiscal integrity of counties...[and] will foster the rehabilitative goals of the juvenile system.

## **2. What This Bill Would Do**

As explained in detail above, this bill would repeal existing statutory authority to charge the families and guardians of children in the juvenile justice system for the costs of their care and supervision. Liabilities for costs associated with a youth being in the juvenile system which would be eliminated under this bill include:

- supervised drug testing;
- home detention or work furlough programs that are alternatives to incarceration;
- legal services rendered directly to the juvenile;
- replacement of a damaged or discarded electronic monitor;
- orders for out-of-home care and custody of a minor; and
- reasonable costs for transporting a minor to a juvenile facility, and food, shelter and care costs.



Some of this bill's provisions would, additionally, apply to young adults under the age of 21. Liabilities for costs associated with a young adult being in the juvenile system which would be eliminated under this bill include:

- supervised drug testing;
- home detention or work furlough programs that are alternatives to incarceration;

This bill would make any pending orders for these charges unenforceable after January 1, 2018.

### 3. Background: Data Collected

The Policy Advocacy Clinic at U.C. Berkeley Law School has studied the practice and impact of county assessment of juvenile administrative fees for the past three years. The Clinic published a report in March 2017<sup>3</sup> finding: (1) fees cause financial hardships to families, weaken family ties, and undermine family reunification; (2) many counties engage in fee collection practices that violate state law, and in some cases, federal law; and (3) some counties lose money from collecting fees due to labor and other associated costs while other counties net relatively small revenue from fee collection. The study concluded that they could “not find a single county in which fee practices were both fair and cost-effective.”

The following table from the Clinic's 2016 report<sup>4</sup> on juvenile administrative fees lists the fees that families of youth sentenced to the average probation conditions in Alameda County would be charged in California's high-population counties. Since the report's publication, Contra Costa County has suspended the assessment and collection of such fees, and Alameda County and Santa Clara County have repealed the assessment and collection of such fees.

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<sup>3</sup> UC Berkeley School of Law Policy Advocacy Clinic, *Making Families Pay: The Harmful, Unlawful, and Costly Practice of Charging Juvenile Administrative Fees in California* (2017).

<sup>4</sup> UC Berkeley School of Law Policy Advocacy Clinic, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California* (2016).

| County         | Total   | Juvenile Hall (24 days) | Electronic Monitoring (33 days) | Drug Testing (8 times) | Probation Supervision (17 months) |
|----------------|---------|-------------------------|---------------------------------|------------------------|-----------------------------------|
| Sacramento     | \$4,895 | \$18.40/day             | \$24.00/day                     | \$20.00/test           | \$206/mo.                         |
| Santa Clara    | \$3,052 | \$30.00/day             | \$14.00/day                     | \$0                    | \$110.00/mo.                      |
| Orange         | \$2,994 | \$23.90/day             | \$0                             | \$11.91/test           | \$136.78/mo.                      |
| Alameda        | \$2,861 | \$25.29/day             | \$15.00/day                     | \$28.68/test           | \$90.00/mo.                       |
| San Diego      | \$1,859 | \$30.00/day             | \$0                             | \$0                    | \$67.00/mo.                       |
| Contra Costa   | \$1,281 | \$30.00/day             | \$17.00/day                     | \$0                    | \$0                               |
| Ventura        | \$1,115 | \$33.00/day             | \$75.00 + \$7.50/day            | \$0                    | \$0                               |
| Fresno         | \$997   | \$19.00/day             | \$11.00/day                     | \$16.00/test           | \$50.00 once                      |
| Riverside      | \$720   | \$30.00/day             | \$0                             | \$0                    | \$0                               |
| Stanislaus     | \$636   | \$24.41/day             | \$0                             | \$0                    | \$50.00 once                      |
| San Bernardino | \$492   | \$20.53/day             | \$0                             | \$0                    | \$0                               |
| Sonoma         | \$198   | \$0                     | \$0                             | \$8.20/test            | \$132.30 once                     |
| Los Angeles    | \$0     | \$0                     | \$0                             | \$0                    | \$0                               |
| San Francisco  | \$0     | \$0                     | \$0                             | \$0                    | \$0                               |

The following table shows the average juvenile probation conditions and fees by race in Alameda County based on a July 2013 monthly report:

| Race   | Total   | Juvenile Hall (days) | Electronic Monitoring (days) | Drug Testing | Supervision (months) |
|--------|---------|----------------------|------------------------------|--------------|----------------------|
| Black  | \$3,438 | 25                   | 34                           | 11           | 22                   |
| Latino | \$2,563 | 24                   | 33                           | 7            | 14                   |
| Asian  | \$2,269 | 7                    | 56                           | 6            | 12                   |
| White  | \$1,637 | 11                   | 21                           | 5            | 10                   |
| Other  | \$1,192 | 4                    | 31                           | 3            | 6                    |

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