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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2839                      **Hearing Date:** June 28, 2016  
**Author:** Thurmond  
**Version:** April 13, 2016  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Criminal Penalties: Nonpayment of Fines*

### HISTORY

**Source:** Conference of California Bar Associations

**Prior Legislation:** AB 1375 (Thurmond) Chapter 209, Stats. 2015

**Support:** Legal Services for Prisoners with Children; California Public Defenders Association

**Opposition:** None known

**Assembly Floor Vote:** 78 - 0

### PURPOSE

*The purpose of this bill is to clarify that when a criminal defendant is ordered imprisoned for non-payment of a non-restitution criminal fine, only the base fine is used when determining the term of imprisonment.*

*Existing law* authorizes the court to incarcerate a defendant until an imposed criminal fine is satisfied, but limits such imprisonment to the maximum term permitted for the particular offense of conviction. (Penal Code § 1205 (a).)

*Existing law* requires that the time of imprisonment for failure to pay a fine be calculated as no more than one day for every \$125 of the fine. (Penal Code § 1205 (a).)

*Existing law* states that this provision applies to any violation of any of the codes or statutes of the state which are punishable by a fine or by a fine and imprisonment, but that it does not apply to restitution fines or restitution orders. (Penal Code § 1205 (c) & (f).)

*Existing law* provides that all days spent in custody by the defendant must first be applied to the term of imprisonment and then to any fine including, but not limited to, base fines at the rate of not less than \$125 per day, or more, in the discretion of the trial court. (Penal Code § 2900.5. (a).)

*This bill* prohibits the term of imprisonment for nonpayment of a fine from exceeding one day for each \$125 of the base fine or the term for which the defendant may be sentenced.

*This bill* specifies that all days that a defendant is in custody shall be credited upon the defendant's term of imprisonment or credited proportionally to any criminal base fine, excluding restitution or restitution orders, at a rate of not less than \$125 per day.

*This bill* states that any fees and assessments imposed on the base fine shall be reduced proportionally to the reduction of the base fine awarded as a result of custody credits.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;

- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

Last year, the Legislature unanimously approved AB 1375 to help address the excesses of the “debt trap” faced by many defendant facing small fines in criminal court. The bill enacted an inflationary adjustment from \$30 to \$125 per day to the rate at which jail time offset assessed fines that the prisoner could not pay. The purpose of the bill was to reduce the time spent in jail by indigent defendants unable to pay small fines.

Unfortunately, in response, some courts have now changed their method of calculating the fines against which the jail time is offset. Where before the offset was applied to the base fine, with penalties and assessments disregarded or reduced, these courts now are applying the credit only after penalties and assessments have been added. The net result in these courts is that indigent defendants now end up facing more jail time for the same minor fine, rather than less.

AB 2839 will address this issue by specifying that the credit for jail time is to be applied to the base fine, not to the fine enhanced by penalties and assessments.

### 2. Criminal Fines and Penalties

Criminal fines and penalties have climbed steadily in recent decades. Government entities tasked with collecting these fines have realized diminishing returns from collection efforts. A recent San Francisco Daily Journal article noted, “California courts and counties collect nearly \$2 billion in fines and fees every year. Nevertheless, the state still has a more than \$10.2 billion balance of uncollected debt from prior years, according to the most recent date from 2012.” (See Jones & Sugarman, State Judges Bemoan Fee Collection Process, San Francisco Daily Journal, (January 5, 2015).) “Felons convicted to prison time usually can’t pay their debts at all. The annual growth in delinquent debt partly reflects a supply of money that doesn’t exist to be collected.” (Id.) In the same article, the Presiding Judge of San Bernardino County was quoted 1 However, imprisonment pending payment of a fine is unconstitutional as applied to a convicted indigent defendant if the failure to pay is due to indigence and not to willfulness. (In re Antazo (1970) 3 Cal.3d 100, 103-104.) AB 1375 (Thurmond ) Page 4 of 4 as saying “the whole concept is getting blood out of a turnip.” (Id.)

### 3. Clarifying Credits Apply to the Base Fine

As noted in the author's statement, AB 1375 (Thurmond), enacted last year, increased the amount of credit toward fines that a person gets for each day served in jail. This bill clarifies that fees and assessments are to be imposed on the base fine as reduced by custody credits. Currently, courts impose fees and assessments automatically in proportion to the base fine. Existing law states that when incarcerated individuals receive credit toward their criminal fines –excluding restitution fines and orders-, those individuals receive not less than \$125 per day in custody. This bill would apply those custody credits to the base fine, rather than the total of the base fine with added fees and assessments. Because fees and assessments are calculated proportionally to the base AB 2839 Page 3 fine, these amendments would reduce the total of the fines imposed on defendants by reducing the base fine.

### 4. Support

The Conference of California Bar Associations, the sponsor of this bill, states:

AB 2839 is follow-up legislation to AB 1375 (Thurmond) of 2015, reaffirming that bill's intent and invalidating its mis-implementation by at least one court. AB 1375, which was approved unanimously by both houses, amended Penal Code §§1205 and §2900.5 to increase the minimum credit for incarceration towards paying off a criminal fine from \$30.00 per day to \$125.00 per day. The intent of the bill was to make it easier for poor defendants charged with minor offenses to ease the burden of paying off ever-increasing fines by converting those fines to jail time at a more reasonable rate, and to ease jail overcrowding by enabling low-income defendants to satisfy their debt more quickly. The bill was also intended to reduce incarceration costs, since counties end up paying significant amounts of money to incarcerate non-violent, poor defendants, jailed only for non-payment of debt.

For forty years, California courts have calculated jail credits against the base fine, with penalties and assessments reduced proportionately. Unfortunately, in response to the change made by AB 1375, some courts have changed their method of calculating the fines against which the jail time is applied by applying credits only after penalties and assessments have been added. In these courts, indigent defendants now face more jail time for the same minor fine than they did before AB 1375, despite the legislation's clear intent. This also increases jail overcrowding for minor offenses, and costs counties more money in incarceration costs.

AB 2839 would restore the "normal" calculation method in place for the forty years before the passage of AB 1375, thereby ensuring that the Legislature's intent in enacting the bill is given effect, jail overcrowding is reduced, and local costs are kept low.