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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** AB 927                      **Hearing Date:** June 18, 2019  
**Author:** Jones-Sawyer  
**Version:** March 27, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Crimes: Fines and Fees: Defendant's Ability to Pay*

### HISTORY

Source: Author

Prior Legislation: AB 2177 (Jones-Sawyer) held in Senate Appropriations 2018  
SB 881 (Hertzberg) Chapter 779, Stats. 2016  
SB 366 (Wright) held Senate Appropriations 2013

Support: California Attorneys for Criminal Justice; National Association of Social Workers, California Chapter

Opposition: None known

Assembly Floor Vote: 62 - 2

### PURPOSE

***The purpose of this bill is to prohibit the court in a criminal or juvenile proceeding involving a misdemeanor or felony from imposing fines, fees, and assessments, without making a finding that the defendant has the ability to pay.***

*Existing law* prohibits the imposition of excessive fines. (U.S. Const., 8th Amend.)

*Existing law* provides that no one shall be “deprived of life, liberty or property without due process of law.” (U.S. Const., 5th Amend.)

*Existing law* prohibits the states from depriving any person of life, liberty, or property, without due process of law; or denying to any person within its jurisdiction the equal protection of the laws. (U.S. Const., 14th Amend.)

*Existing law* prohibits the imposition of excessive fines. (Cal. Const., art. 1, § 17.)

*Existing law* states that when a defendant is convicted for a crime punishable by imprisonment in jail or prison and that crime does not specify a fine, the court may impose a fine on the offender not exceeding \$1,000 in misdemeanor cases, or \$10,000 in felony cases, in addition to the imprisonment prescribed. (Penal Code § 672.)

*Existing law* requires the court, in addition to any other penalty provided or imposed under the law, to order the defendant to pay a restitution fine ranging between \$300 and \$10,000 for felonies, and \$150 and \$1,000 for misdemeanors. The court must impose the fine unless there are compelling and extraordinary reasons not to, and the defendant's ability to pay is not such a reason. (Penal Code § 1202.4 (b).)

*Existing law* exempts the restitution fine from various penalty assessments. (Penal Code § 1202.4(e).)

*Existing law* requires the court to assess an additional probation-revocation restitution fine in the same amount as that imposed for the restitution fine. This additional fine becomes effective upon the revocation of probation, and shall not be waived or reduced by the court, absent compelling and extraordinary reasons stated on record. (Penal Code § 1202.44.)

*Existing law* requires the court to assess an additional parole-revocation restitution fine, post-release community-supervision (PRCS) revocation fine, or mandatory-supervision revocation fine in the same amount as that imposed for the restitution fine. This additional fine is suspended unless parole, PRCS, or mandatory supervision is revoked. (Penal Code § 1202.45.)

*Existing law* levies a state penalty assessment of \$10 for every \$10 on every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses. Where multiple offenses are involved, the state penalty shall be based on the total fine for each case. (Penal Code § 1464.)

*Existing law* requires that a state surcharge of 20 percent be levied on the base fine used to calculate the state penalty assessment noted above in Penal Code section 1464, with the monies going to the General Fund. (Penal Code § 1465.7.)

*Existing law* requires the court to impose a \$40 assessment on every conviction for a criminal offense in order to assist in funding court operations. (Penal Code, § 1465.8 (a).)

*Existing law* imposes a state court construction penalty of \$5 for every \$10 on every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, except as specified. (Government Code § 70372.)

*Existing law* requires the court to impose a \$30 assessment on every misdemeanor or felony criminal conviction in order to maintain adequate funding for court facilities. (Government Code, § 70373 (a).)

*Existing law* imposes a county penalty assessment in the amount of \$7 for every \$10, on every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses. (Government Code § 76000.)

*Existing law* allows a county board of supervisors to elect to levy an additional penalty in the amount of \$2 for every \$10 upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses for support of emergency medical services. (Government Code § 76000.5.)

*Existing law* imposes a penalty assessment of \$1 on every \$10 on every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, to help implement the DNA Fingerprint, Unsolved Crime and Innocence Protection Act. (Government Code §

76104.6.)

*Existing law* levies an additional state penalty of \$4 for every \$10 upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses to be deposited into the DNA Identification Fund. (Government Code § 76104.7.)

*Existing law* imposes myriad various other administrative and user fees, such as a registration fee to be represented by appointed counsel, attorney fees for appointed counsel, presentence report fees, jail booking fees, and more. (See e.g. Penal Code §§ 987.5; 987.8; 1203.1b Government Code § 29550.)

*This bill* states that in any misdemeanor or felony proceedings, the court must consider the defendant's ability to pay before imposing any fine, fee, or assessment, with the exception of direct victim restitution.

*This bill* defines "ability to pay" as "the overall capability of the defendant to pay the court-ordered fines, fees, and assessments, or a portion thereof, without undue hardship."

*This bill* creates a presumption that the defendant does not have the ability to pay under any of the following circumstances:

- a) The defendant is homeless, lives in a shelter, or lives in a transitional living facility;
- b) The defendant receives need-based public assistance;
- c) The defendant is "very low income;"
- d) The defendant is sentenced to state prison for an indeterminate term or life without parole.

*This bill* states that other factors to be considered for an inability to pay determination include but are not limited to, the following:

- a) The defendant's present financial circumstances;
- b) Whether the defendant is receiving any type of government benefits, including means-tested benefits;
- c) Whether the defendant was represented by court-appointed counsel;
- d) The defendant's reasonably discernible future financial circumstances, including the imposed term of incarceration;
- e) The likelihood that the defendant will be able to obtain employment within a six-month period from the date of the court's consideration of the issue;
- f) The amount of victim restitution ordered, if any; and,
- g) Any other factor that may bear upon the defendant's inability to pay.

*This bill* provides that the prosecution bears the burden of rebutting the presumption that the defendant does not have the ability to pay.

## COMMENTS

### 1. Need for This Bill

According to the author:

In California, both the Government and Penal Code contain sections that require a court to assess certain fines on criminal defendants. These fines, assessed without regard to a defendant's ability to pay, go to funds that provide money for at least 50 different state and local government programs.

There is over \$10 billion in outstanding debt. Last year, the court collected on \$1.5 billion in funds, over 1/3 of which was sent to collections. The state paid nearly \$113 million to collect that \$530 million.

On January 8, 2019, the Second Court of Appeal held that the mandatory imposition of certain fines on criminal defendants, without regard for their ability to pay, was a violation of that defendant's right to due process.

The Supreme Court has also recognized the unconstitutional nature of excessive fines and the danger that they pose to civil liberties. In *Timbs v. Indiana*, Justice Ginsberg wrote, "For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history. Exorbitant tolls undermine other constitutional liberties."

In recognition of the fact that these hefty fines are often levied on the poor, Judicial Council, following the work of the Commission on the Future of California's Court System, has been working to pilot an app that would allow defendants to seek reduced or waived fines for traffic fines which make up two-thirds of assessed fines. This bill would address the other one-third of fines for misdemeanors and felonies, both of which require the defendant to appear in court which cuts down on workload significantly.

### 2. Recent Case Law on Constitutional Protections against Excessive Fines

In *People v. Duenas* (2019) 30 Cal.App.5th 1157, the Second District Court of Appeal recently held that imposing court fines and assessments on indigent defendants who lack the ability to pay violates the Due Process Clauses of both the United States and California Constitutions. (*Id.* at p. 1168.)

In *Duenas*, the trial court imposed \$220 in fines and fees when an indigent, homeless mother of three children pleaded no contest to driving a suspended license.<sup>1</sup> (*People v. Duenas, supra*, 30 Cal.App.5th at p. 1160.) The court ordered that any outstanding debt at the end of Ms. Duenas's probation would go to collections without further court order. (*Ibid.*) Ms. Duenas argued on appeal that the failure to consider her ability to pay before imposition of

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<sup>1</sup> The suspended license was the result of the inability to pay over \$1000 arising from three juvenile citations. (*People v. Duenas, supra*, 30 Cal.App.5th at p. 1161.)

these charges violates due process.<sup>2</sup> (*Ibid.*) Specifically, Duenas argued that laws imposing mandatory fines on people who are too poor to pay essential punish these persons for their poverty. (*Id.* at p. 1164.)

The Court of Appeal agreed. The court noted that “Raising money for government through law enforcement, whatever the source ... can law a debt trap for the poor. When a minor offense produces a debt, that debt, along with attendant court appearances, can lead to a loss of employment or shelter, compounding interest, yet more legal action, and an ever-expanding financial burden- a cycle as predictable and counterproductive as it is intractable.” (*People v. Duenas, supra*, 30 Cal.App.5th at p. 1163.) The court relied on well-established case law holding that the State cannot inflict punishment on an indigent criminal defendant solely based on his or her poverty. (*Id.* at pp. 1166-1167, citing *In re Antazo* (1970) 3 Cal.3d 100; *Bearden v. Georgia* (1983) 461 U.S. 660 [103 S.Ct. 2064]; and *Tate v. Short* (1971) 401 U.S. 395 [91 S.Ct. 668].) The court rejected the prosecution’s argument that imposition of fines on people who cannot pay them is not punishment because such people do not face imprisonment for failure to pay, noting that punishment is not restricted to incarceration. (*People v. Duenas, supra*, 30 Cal.App.5th at pp. 1167-1168.) The court reversed the fees for court facilities and court operations, and stayed the restitution fine. The court remanded the case with directions that the charges be stayed until and unless prosecution establishes the defendant has the ability to pay them. (*Id.* at pp. 1172-1173.) The court invited the Legislature to consider whether the statutes should be amended to direct a trial court to consider the defendant’s ability to pay. (*People v. Duenas, supra*, 30 Cal.App.5th at p. 1172.)

Although the *Duenas* opinion dealt with three discreet fines and assessments, its rationale arguably applies to every criminal fine, fee, and assessment.

A separate U.S. Supreme Court opinion, *Timbs v. Indiana* (2019) 586 U.S. \_\_\_ [203 L.Ed.2d 11] made a similar finding to *Duenas*. *Timbs* was a case dealing with asset forfeiture, not specifically fines. *Timbs* was charged with three felonies stemming from the transportation of heroin. He pleaded guilty to two of the charges. The court sentenced *Timbs* to six years and ordered him pay fees and costs totaling approximately \$1200. Additionally, the prosecutor sought to forfeit *Timbs*’ Land Rover, which was purchased for \$42,000. *Timbs* argued that the seizure was an excessive fine, because it was more than four times the \$10,000 maximum fine which could be imposed for his conviction under state law. (*Timbs, supra*, 230 L.Ed.2d at p. 15.) The Supreme Court agreed and unanimously ruled that the Eighth Amendment’s prohibition against excessive fines applies to the states under the Due Process clause of the Fourteenth Amendment. (*Id.* at p. 17.) The Court noted that the Excessive Fines clause, which “limits the government’s power to extract payments, whether in cash or in kind, as punishment for some offense” is “deeply rooted in this Nation’s history and tradition.” (*Id.* at pp. 17, 19, citations omitted.) The opinion also recognized that “fines may be employed ‘in a measure out of accord with the penal goals of retribution and deterrence,’ for ‘fines are a source of revenue,’ while other forms of punishment ‘cost a State

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<sup>2</sup> Amicus Curiae Los Angeles County Public Defender also argued that imposing a restitution fine without considering ability to pay also violates the prohibition on excessive fines. The Court of Appeal did not specifically address this claim, noting that the due process and excessive fines analysis are sufficiently similar that they reach the same result. (*People v. Duenas, supra*, 30 Cal.App.5th at 1171, fn. 8.)

money.”” (*Id.* at p. 18, quoting *Harmelin v. Michigan* (1991) 501 U.S. 957, 979, fn. 9.)

**3. Requiring the court consider the ability to pay.**

Consistent with these constitutional protections, this bill would require the court to consider the defendant’s ability pay before imposition of any fine, fee, or assessment in a criminal or juvenile proceeding involving a misdemeanor or felony. It creates a presumption of an inability to pay if specified factors exist and states that the prosecution shall bear the burden of rebutting the presumption that the defendant does not have the ability to pay. It also sets for other factors that can be considered to establish the inability to pay.

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