
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 355 **Hearing Date:** March 28, 2017
Author: Mitchell
Version: February 14, 2017
Urgency: No **Fiscal:** No
Consultant: NG

Subject: *Reimbursement for Court-Appointed Counsel*

HISTORY

Source: Conference of California Bar Associations

Prior Legislation: SB 405 (Hertzberg) – Chapter 385, Statutes of 2015

Support: Alliance for Boys and Men of Color; California Attorneys for Criminal Justice; Courage Campaign; Drug Policy Alliance; National Employment Law Project; Reentry Solutions Group; Root & Rebound Reentry Advocates

Opposition: None known

PURPOSE

The purpose of this bill is to: 1) eliminate the fees for court appointed counsel in cases which do not result in a conviction for a felony or a misdemeanor; and 2) in cases which result in a conviction for a felony or misdemeanor, provide the courts the discretion to make a determination of whether or not a defendant shall pay all or a portion of the fees associated with court appointed counsel.

Existing law requires the court to provide counsel to defendants in all criminal prosecutions. (U.S. Const. 6th Amend.)

Existing case law has expanded the interpretation of the 6th Amendment of the United States Constitution to include that a defendant has a right to counsel in state prosecutions. (*Gideon v. Wainwright*, 372 U.S. 335 (1963))

Existing law requires, if a defendant is entitled to counsel, but is unable to employ counsel, and if counsel is assigned to represent such person in a criminal trial, proceeding, or appeal, the assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court. (Penal Code § 987.2 (a).)

Existing law requires if the defendant is provided legal counsel, upon conclusion of the criminal proceedings in court, the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. Upon the court's discretion, the court may hold one such additional hearing within six months of the conclusion of

the criminal proceedings, and order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided. (Penal Code § 987.2 (b).)

Existing law establishes criteria for determining a defendant's capacity to pay all or a portion of the fees associated with court appointed counsel. (Penal Code § 987.8 (g).)

Existing law establishes that Penal Code § 987.8 shall apply to all proceedings, including contempt proceedings, in which the party is represented by a public defender or appointed counsel. (Penal Code § 987.8 (h)(i).)

This bill eliminates court fees associated with court appointed counsel for defendants who are found not guilty of any felonies or misdemeanors.

Existing law requires that the court shall, after a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost of counsel. (Penal Code § 987.81 (b).)

This bill provides only in cases which result in a conviction for a felony or misdemeanor, the courts discretion to make a determination of whether or not a defendant should pay all or a portion of the fees associated with court appointed counsel.

COMMENTS

1. Need for This Bill

According to the author:

Under existing criminal law, an indigent Californian who is accused of a crime he or she did not commit, refuses to accept a plea bargain, then goes to trial and is found not guilty, may still be ordered to pay the court for the costs of a court-appointed attorney. Consequently, under current law, a low-income individual who was falsely arrested, wrongly imprisoned, wrongly prosecuted, and ultimately exonerated, is still subject to an "accusation tax" penalty of thousands of dollars for asserting their constitutional right to an attorney.

Current law requires a court to assign counsel to a defendant who desires the assistance of counsel but cannot afford to pay for it. Upon conclusion of the proceedings against the defendant, or withdrawal of counsel, existing law authorizes the court to determine the defendant's ability to pay all or a portion of his or her defense costs, and to require the defendant to reimburse the county for that portion he or she has been determined able to pay. These provisions apply regardless of whether the defendant is found guilty of the crime charged or is determined to be completely innocent.

The effect of these statutes is to make individuals who are wrongly prosecuted but ultimately exonerated still subject to a penalty of thousands of dollars for defending their innocence in court. Such a penalty imposes yet another insuperable burden on the already-poor, increasing the chances they will be unable to meet family and other societal obligations and may run afoul of the

system as a result. Such a system is fundamentally unfair – particularly as there is no “reverse fees” provision whereby the prosecution or court is required to pay the costs of the wrongly accused.

In addition, in some instances courts have been known to use the threat of the defendant having to pay “attorney’s fees” whether he or she wins or loses, to induce defendants to enter into plea bargains. Consequently, innocent people, who should not be convicted, are induced to plead guilty to time-served offers in exchange for an agreement to waive such fees.

Data collected from the 2016 Court Statistics Report on Statewide Caseload Trends show that roughly one in six felony filings result in a dismissal or acquittal of the charges (37,722 cases). The data also shows that 127,661 non-traffic misdemeanor cases did not result in a conviction. With a conservative estimate of 10% of individuals in these cases being assessed attorney’s fees, roughly 26,560 people statewide who have not been convicted of any crime are ordered to pay a fee each year. Counties in California cannot continue to balance their books on the backs of poor people.

SB 355 addresses the problems of innocent defendants being required to reimburse the courts for the cost of appointed counsel by amending California Penal Code provisions (§§987.8 and 987.81) to specify that this requirement only may be imposed in cases where the defendant is actually convicted of a crime.

2. Effect of This Bill

This legislation eliminates all court fees associated with court appointed counsel for those defendants who have not been convicted of a felony or a misdemeanor. What this means is that, for instance, if a defendant is charged with a felony or a misdemeanor, and is appointed counsel, but is found innocent at the conclusion of criminal proceedings, the defendant will not have to pay fees associated with court appointed counsel. Therefore, this bill will also eliminate the necessity for the court to hold a hearing to make a determination on the defendant’s ability to pay all or a portion of the fees associated with court appointed counsel.

This bill will also provide, in cases that result in a conviction of a felony or a misdemeanor, the courts with the discretion whether or not to hold a hearing to determine if the defendant is able to pay all or a portion of the fees associated with court appointed council.

3. Arguments in Support

The Courage Campaign supports this bill stating:

In some instances, the threat of having to pay attorney’s fees even if they are acquitted has been used to induce innocent defendants to enter guilty pleas to crimes they did not commit in exchange for an agreement to waive such fees. This situation is fundamentally unfair, particularly since a defendant who is found guilty of the charged crime and sentenced to a year or more in prison or county jail is deemed exempt from the obligation to reimburse the court for attorney’s fees, “unless the court finds unusual circumstances.” Thus, the statute is set up so that the innocent must pay for their court-appointed counsel, but the guilty do not.

SB 355 will remove an unjustified burden on the innocent, and also remove an improper inducement (the threat of such fees) from pre-trial plea negotiations. Simple fairness demands its enactment. Courage Campaign supports SB 355 and reiterates our appreciation of your co-authorship of the bill. We respectfully request that you continue to do all you can to support the bill's passage.

The Reentry Solutions Group supports this bill stating:

Under existing criminal law, people who are acquitted at trial may be order to pay the court for the costs for the court-appointed attorney who represented them during erroneous prosecution. These costs, which can amount to thousands of dollars, should not have to be borne by an innocent defendant. Even the possibility of bearing potential responsibility for attorney's fees can improperly affect disposition for innocent people. In some instances, the threat of having to pay attorney's fees has been used to induce innocent defendants to enter guilty pleas to crimes they did not commit in exchange for an agreement to waive such fees. SB 355 will remove an unjustified burden on the innocent while eliminating an improper inducement from pre-trial plea negotiations. Simple fairness demands its enactment. Reentry Solutions Group supports SB 355 and reiterates our appreciation of your co-authority of the bill.

The Root & Rebound Reentry Advocates support this bill stating:

Under existing criminal law, a person who is falsely accused of a crime, refuses to accept a plea bargain for a crime he or she did not commit, goes to trial, and wins (because he or she was not guilty may still be ordered to pay the court for the costs of the court-appointed attorney who represented them during the erroneous prosecution... SB 355 will remove an unjustified burden on the innocent, and also remove an improper inducement (the threat of such fees) from pre-trial plea negotiations. Simple fairness demands its enactment.

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