BENCH-BAR COALITION

PRESENTATION: FINES, FEES, PENALTIES, AND ASSESSMENTS

JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

Friday, September 30, 2016

11:05 a.m.–11:55 a.m.
Marriott Marquis San Diego Marina,
Grand Ballroom 4

San Diego, California

Agenda

Overview
Judicial officers and legal practitioners will learn about different types of fines, fees, penalties, and assessments, understand the difference between criminal fines and civil fees, and learn the status of revenue generation and distribution practices.

Facilitator: **Ms. Shelley Curran**, Director, Criminal Justice Services, Judicial Council of California

Presenters: **Hon. Mark S. Borrell,** Judge, Superior Court of California, County of Ventura
Hon. Peter J. Siggins, Associate Justice, Court of Appeal First Appellate District, Division Three

11:05-11:10 a.m. **Opening Remarks**

11:10-11:20 a.m. **Overview**

11:20-11:40 a.m. **Criminal Fines and Assessments**

- **The Role of the Courts and the Legislature**
- **The Role of the Judicial Council**
- **The Impact of Change in Court Filings Statewide**
- **Futures Commission Actions**
- **Trends and Predictions for Legislative Action**

11:40-11:55 a.m. **Questions/Open Discussion**

Bench-Bar Coalition
Presentation: Fines, Fees, Penalties, and Assessments

Facilitator/Presenter Biographies

FACILITATOR:
Ms. Shelley Curran, Director, Criminal Justice Services, Judicial Council of California
Shelley Curran serves as the director of the Criminal Justice Services office of the Judicial Council of California. In that capacity, Ms. Curran leads a team of attorneys, researchers, and analysts to implement the Judicial Council's priorities related to criminal law and procedure, including the implementation of criminal justice realignment, the imposition of criminal and traffic fines and fees, Propositions 36 and 47, adult collaborative courts, the Recidivism Reduction Fund Court Grant Program, evidence based practices, and community supervision. Prior to joining the Judicial Council in 2009, Ms. Curran served as Principal Consultant to the President pro Tempore of the California State Senate on budget and legislative matters related to adult and juvenile criminal justice, civil rights, and the judiciary. She also spent seven years as a Policy Analyst with Consumers Union where she advocated on behalf of low-income Californians on matters related to credit and finance. Ms. Curran has a B.A. from Indiana University, Bloomington and a M.A. in policy analysis from the University of Wisconsin, Madison.

PRESENTER:
Hon. Mark S. Borrell, Judge, Superior Court of California, County of Ventura
Judge Mark S. Borrell was appointed to the Superior Court, Ventura County, in May 2010. He has presided over civil and criminal trial departments and presently serves on the appellate division of that court. He is a former member of the Judicial Council's Traffic Advisory Committee (2009-2015) and chaired the committee for four years. Judge Borrell was appointed by the Chief Justice to the Commission on the Future of California's Court System, where he serves on the Criminal and Traffic Working Group. In 2007, Judge Borrell was named the Ventura Center for Dispute Settlement's ADR Advocate of the Year. He was a court commissioner for five years prior to his appointment, hearing criminal and traffic arraignments and trials, among other things. Before joining the bench, Judge Borrell was a litigator in private practice for 18 years and served as president of the Ventura County Trial Lawyers Association and Ventura County Criminal Defense Bar Association.

PRESENTER:

Hon. Peter J. Siggins, Associate Justice, Court of Appeal First Appellate District, Division Three

Justice Peter J. Siggins was appointed to the First District Court of Appeal in December 2005, and confirmed by the Commission on Judicial Appointments on January 6, 2006. Prior to his appointment, he served as Legal Affairs Secretary and Counsel to Governor Arnold Schwarzenegger (2003-2005) and Interim Chief of Staff in the Governor's Office (September to November 2005). Justice Siggins was a lawyer in the California Attorney General's Office from 1988 until 2003, and Chief Deputy Attorney General for Legal Affairs under Attorney General Bill Lockyer (1999-2003). He is a member of the Executive Committee of the Commission on the Future of California's Court System, has been a member of the State-Federal Judicial Council and served on various Judicial Council committees and work groups. Justice Siggins practiced general civil litigation and maritime law in San Francisco with the firm of Acret & Perrochet (1980–1983), as a sole practitioner (1983-1985), and in the two lawyer firm of German & Siggins (1985-1988). He is a graduate of Loyola Marymount University (B.A. 1977), and Hastings College of the Law (J.D. 1980).

Fines, Fees, Penalties, and Assessments in California

Facilitator: Ms. Shelley Curran, Director, Criminal Justice Services, Judicial Council of California

Presenters: Hon. Mark S. Borrell, Judge, Superior Court of California, County of Ventura
Hon. Peter J. Siggins, Associate Justice, Court of Appeal First Appellate District, Division Three

Definitions

Base fine: the monetary sanction imposed on a criminal case set forth in state law. Varies depending on violation

- Example: Exceeding maximum speed limit of 65 MPH. (VEH 22349(a))
  - 1-15 miles over limit: $35 base fine
  - 16-25 miles over limit: $70 base fine
  - 26 or more miles over limit: $100 base fine

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Definitions

Fees/Assessments: *non-punitive* "add ons" that are either mandatory or permissive amounts added to the base fine for applicable violations and are imposed via legislatively approved statutes. Fees and assessments are earmarked for specific purposes.

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Definitions

Penalties: Additional (punitive) penalties as defined by statute.

- Example: Alcohol Abuse Education and Prevention Penalty (VEH 23645)

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Definitions

Restitution: amounts added for certain offenses for the purpose of compensating the victim of a crime, who incurs an economic loss as a result of the commission of the crime, directly from the defendant convicted of that crime.

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Definitions

Civil Assessments: amounts levied on an individual who fails to appear, fails to pay, or both, as ordered by the court. Civil assessments were adopted by the Legislature in 1985 as an alternative to having courts issues arrest warrants.

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	1994	2014	Total Estimated Collections (2013-14)[a]
1. Base Fine	$35	$35	
2. Prior Conviction Enhancement	$10	$10	
Enhanced Base Fine	$45	$45	$307,976,079
3. State Penalty ($10 per $10)	$40	$40	$177,650,879
4. County Penalty (up to $7 per $10)	$28	$28	$171,418,324
5. Night Court Assessment/fee	$1	$1	$2,334,728
6. Record of Priors Assessment/fee	$10	$10	$7,968,468
Subtotal	$124	$124	$667,348,478
7. 20% Surcharge on Enhanced Fine		$7	$48,976,664
8. Court Construction Penalty ($5 per $10)		$20	$113,507,559
9. DNA Penalty ($5 per $10)		$20	$86,284,421
10. Court Operations Assessment		$40	$151,309,961
11. Emergency Medical Services Penalty ($2 per $10)		$8	$35,081,627
12. Conviction Assessment		$35	$132,350,601
13. Emergency Medical Air Transportation Penalty		$4	$10,175,490
Subtotal of new add-ons		$134	$577,686,323
Total	**$124**	**$258**	$1,245,034,801

[a] Amounts represent the estimated total collections by component for all violations in the state

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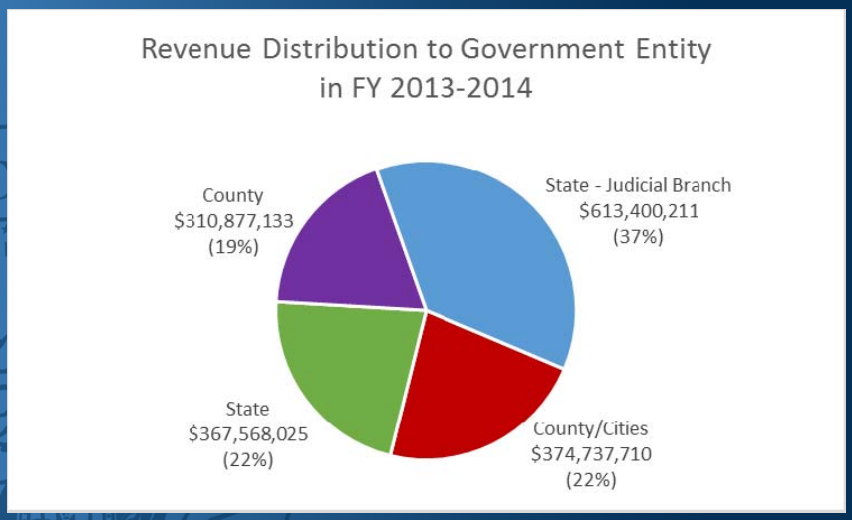

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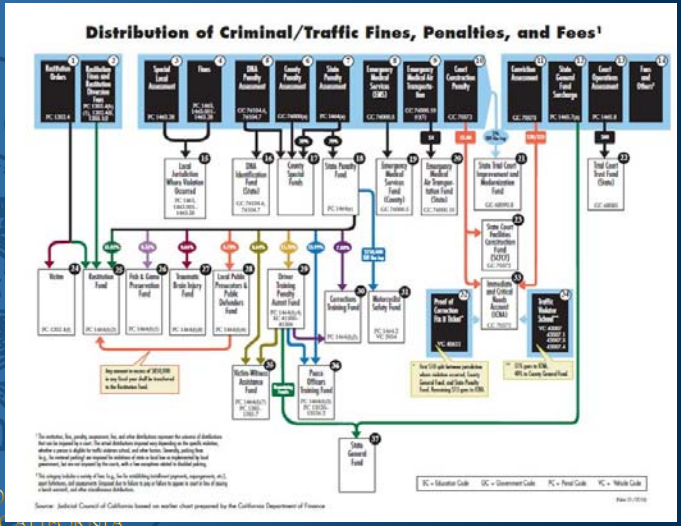
Where does the money go?



Amnesty Program Summary
Reporting Period: January 1, 2016 – April 30, 2016

Reporting metrics: 54 of 58 Programs Reporting	1st Reporting Period: Oct. – Dec. 2015	2nd Reporting Period: Jan. – Apr. 2016	Change from 1st to 2nd Reporting Period
TOTAL OF 693,407 unique visitors to the Judicial Council's amnesty website	296,449 (average of 98,816 per month)	215,553 (average of 53,888 per month)	Decrease of 45%
TOTAL OF 32 MILLION DMV notices mailed as inserts in DMV registration notices	13.7 million	18.3 million	
TOTAL OF 132,879 delinquent infraction and misdemeanor accounts resolved through the amnesty program including payments in full and installment payments	60,872 (average of 20,291 per month)	72,007 (average of 18,002 per month)	Decrease of 11.28%[1]
TOTAL OF 104,105 requests to lift holds of driver's licenses sent to DMV (including amnesty and non-amnesty requests)	39,984 (average of 13,328 per month)	64,121 (average of 16,030 per month)	Increase of 20.27%[2]
TOTAL OF $18,883,598 in gross revenue collected[3]	$7,158,204 (average of $2,386,068 per month)	$11,725,394 (average of $2,931,349 per month)	Increase of 22.85%[4]

- DMV reports that 612,831 Californians currently have a suspended driver's license for failure to appear/failure to pay traffic tickets.[5]

- There are an estimated 4.9 million amnesty-eligible accounts (violations initially due prior to Jan. 1, 2013) in California worth an estimated $4.0 billion. This calculation reflects data from 34 of 58 courts; actual numbers may be higher and could be reflected in subsequent reports.

- Counties/Courts not reporting in this period: Nevada, San Bernardino

- Compared to revenue projections through September 2015, several branch funds, including court construction and operations, are showing significant estimated revenue decreases since October 2015, which coincides with the launch of the amnesty program.

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[1] Because the first reporting period contained three months and the second reporting period contained four months, monthly averages were used to calculate percentage changes in outcomes.
[2] See above. Note, too, that the number of driver's licenses actually restored depends on further action by the participants directly with DMV; some individuals who have worked with courts to clear up specific violations may not be eligible to drive for other reasons, including outstanding violations in other counties.
[3] Includes installment payments from amnesty-related payment plans established in the current reporting period and in the three months of the previous reporting period. After program operating costs of $6,378,384, the amount available to distribute is $12,487,674 to all sources.
[4] See footnote 1; includes amounts from ongoing payments against installment plans.
[5] Current as of December 2015.

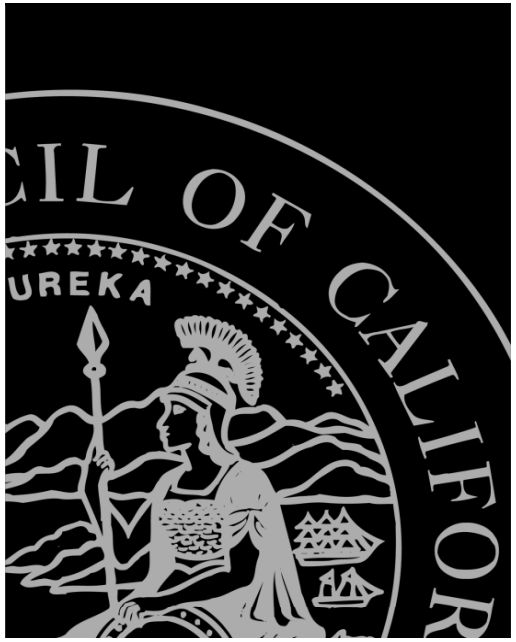
Court/County Amnesty Program

Includes infractions and misdemeanors from 1st and 2nd reporting periods

Program	No. Accounts Reduced	No. DL Reinstated	Gross Revenue Collected	Program Operating Costs	Net Revenue Collected
Alameda	10,240	5,423	$540,010.55	$565,471.59	-25,461
Alpine	4	4	$551.45	$88.52	265
Amador	48	0	$4,641.93	$7,054.80	-2,413
Butte	505	627	$8,443.95	$165,083.15	-156,639
Calaveras	75	118	$13,459.34	$4,599.00	8,860
Colusa	275	131	$38,449.67	$20,678.15	17,772
Contra Costa	5,963	11,893	$1,029,379.83	$437,979.37	591,400
Del Norte	199	114	$23,919.88	$0.00	6,600
El Dorado	398	187	$32,330.00	$52,043.00	-19,713
Fresno	10,019	1,681	$754,457.82	$109,666.15	644,792
Glenn	334	207	$52,131.73	$23,060.46	29,071
Humboldt	521	369	$42,240.23	$24,311.83	17,928
Imperial	964	2,088	$245,417.00	$47,035.31	198,382
Inyo	45	41	$5,162.42	$4,673.22	489
Kern	4,430	1,065	$470,149.37	$274,467.10	195,682
Kings	312	64	$31,065.40	$15,286.43	15,779
Lake	451	571	$86,464.72	$34,348.12	52,117
Lassen	273	108	$29,712.06	$35,158.06	-5,446
Los Angeles	26,422	30,980	$8,397,802.18	$1,235,776.10	7,162,026
Madera	114	0	$12,808.71	$6,872.58	5,936
Marin	279	451	$80,559.62	$31,290.75	49,269
Mariposa	82	8	$6,685.68	$3,150.59	3,535
Mendocino	850	304	$96,250.55	$29,037.52	67,213
Merced	2,044	1,035	$90,800.87	$40,719.00	50,082
Modoc	27	17	$2,341.42	$0.00	2,341
Mono	16	14	$1,883.97	$9,084.28	-7,200
Monterey	1,148	1,201	$60,146.28	$50,057.56	10,089
Napa	410	680	$27,237.41	$3,004.68	24,233
Nevada	157	65	$503.24	$0.00	503
Orange	6,101	8,011	$704,375.14	$342,446.09	361,929
Placer	662	6	$61,278.13	$114,056.56	-52,778
Plumas	45	2	$5,465.45	$2,080.00	3,385
Riverside	12,812	5,926	$1,144,324.71	$157,632.14	986,693
Sacramento	11,867	6,833	$164,629.94	$235,163.21	-70,533
San Benito	43	41	$7,613.41	$1,850.00	5,763
San Bernardino	2,386	1,709	$158,755.83	$120,124.78	38,631
San Diego	2,581	3,699	$221,373.14	$67,510.09	153,863
San Francisco	1,313	1,851	$246,677.41	$149,673.88	97,004
San Joaquin	4,202	1,768	$110,169.04	$80,242.05	29,927
San Luis Obispo	132	147	$6,429.76	$11,836.98	-5,407
San Mateo	1,413	1,844	$358,061.20	$159,552.30	198,509
Santa Barbara	258	259	$34,804.55	$47,189.72	-12,385
Santa Clara	1,159	1,423	$114,568.34	$147,097.00	-32,529
Santa Cruz	1,104	787	$77,956.34	$56,659.32	21,297
Shasta	2,625	597	$238,909.35	$161,916.91	76,992
Sierra	20	8	$1,416.47	$4,427.83	-3,011
Siskiyou	167	157	$19,038.46	$77,047.41	-58,009
Solano	342	623	$90,818.33	$113,705.79	-22,887
Sonoma	1,120	1,125	$384,169.32	$55,941.79	328,228
Stanislaus	3,113	1,474	$220,683.78	$182,197.92	38,486
Sutter	237	165	$24,950.21	$9,151.63	15,799
Tehama	465	187	$55,937.51	$24,296.22	31,641
Trinity	15	11	$1,400.69	$861.01	540
Tulare	4,788	912	$490,367.49	$419,449.81	70,918
Tuolumne	180	248	$29,892.07	$19,294.90	10,597
Ventura	6,179	4,438	$1,615,914.00	$323,182.80	1,292,731
Yolo	266	135	$36,551.63	$6,113.70	30,438
Yuba	679	273	$72,058.72	$57,707.16	14,352
Total	**132,879**	**104,105**	**$18,883,597.30**	**$6,378,406**	**$12,487,674**

Reporting from Nevada and San Bernardino Counties/Courts was not available at the time of this report.

Prepared 07-20-2016
56 of 58 courts reporting



Uniform Bail and Penalty Schedules

2016 EDITION

(Cal. Rules of Court, rule 4.102)

TRAFFIC
BOATING
FORESTRY
FISH AND GAME
PUBLIC UTILITIES
PARKS AND RECREATION
BUSINESS LICENSING

JUDICIAL COUNCIL
OF CALIFORNIA

JUDICIAL COUNCIL OF CALIFORNIA
455 Golden Gate Avenue
San Francisco, California 94102-3688

Rule 4.102. UNIFORM BAIL AND PENALTY SCHEDULES

TRAFFIC, BOATING, FORESTRY, FISH AND GAME, PUBLIC UTILITIES, PARKS AND RECREATION, BUSINESS LICENSING

The Judicial Council of California has established the policy of promulgating uniform bail and penalty schedules for certain offenses in order to achieve a standard of uniformity in the handling of these offenses.

In general, bail is used to ensure the presence of the defendant before the court. Under Vehicle Code sections 40512 and 13103, bail may also be forfeited and such forfeiture may be ordered without the necessity of any further court proceedings and treated as a conviction for specified Vehicle Code offenses. A penalty in the form of a monetary sum is a fine imposed as all or a portion of a sentence imposed.

To achieve substantial uniformity of bail and penalties throughout the state in traffic, boating, fish and game, forestry, public utilities, parks and recreation, and business licensing cases, the trial court judges, in performing their duty under Penal Code section 1269b to annually revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions, must give consideration to the Uniform Bail and Penalty Schedules approved by the Judicial Council. The Uniform Bail and Penalty Schedule for infraction violations of the Vehicle Code will be established by the Judicial Council in accordance with Vehicle Code section 40310. Judges must give consideration to requiring additional bail for aggravating or enhancing factors.

After a court adopts a countywide bail and penalty schedule, under Penal Code section 1269b, the court must, as soon as practicable, mail a copy of the schedule to the Judicial Council with a report stating how the revised schedule differs from the council's uniform traffic bail and penalty schedule, uniform boating bail and penalty schedule, uniform fish and game bail and penalty schedule, uniform forestry bail and penalty schedule, uniform public utilities bail and penalty schedule, uniform parks and recreation bail and penalty schedule, or uniform business licensing bail and penalty schedule.

The purpose of this uniform bail and penalty schedule is to:

1. Show the standard amount for bail, which for Vehicle Code offenses may also be the amount utilized for a bail forfeiture instead of further proceedings; and
2. Serve as a guideline for the imposition of a fine as all or a portion of the penalty for a first conviction of a listed offense where a fine is used as all or a portion of the penalty for such offense. The amounts shown for the misdemeanors on the boating, fish and game, forestry, public utilities, parks and recreation, and business licensing bail and penalty schedules have been set with this dual purpose in mind.

Unless otherwise shown, the maximum penalties for the listed offenses are six months in the county jail or a fine of $1,000, or both. The penalty amounts are intended to be used to provide standard fine amounts for a first offense conviction of a violation shown where a fine is used as all or a portion of the sentence imposed.

The bail amounts in the Uniform Bail and Penalty Schedules are calculated by using the maximum county and emergency medical services penalty amount authorized by Government Code sections 76000 and 76000.5. When a court adopts a countywide bail schedule under Penal Code section 1269b for infraction offenses, the local schedule should be adjusted to reflect the specific penalty assessments that apply to a particular county under Government Code sections 76000 and 76000.5. If a court does not have night or weekend sessions for traffic cases, the countywide bail schedule should omit the $1 fee under Vehicle Code section 42006. The Safety Enhancement–Double Fine Zone schedule applies only to specific counties as expressly authorized by statute.

Note: Courts may obtain copies of the Uniform Bail and Penalty Schedules by contacting:

Judicial Council of California
Criminal Justice Services
455 Golden Gate Avenue
San Francisco, California 94102-3688
Ph: 415-865-7611

www.courts.ca.gov/7532.htm

PREFACE

I. Section and Offense

A. Historically, only those offenses most often filed in municipal courts were included in the Uniform Bail and Penalty Schedules. Penal Code section 1269b and Vehicle Code section 40310 require the Judicial Council to establish a schedule for infractions of the Vehicle Code. The Judicial Council approved the first Traffic Infraction Bail and Penalty Schedule in November 1992.

B. The letter "M" designates a misdemeanor: a crime punishable, at the discretion of the court, by imprisonment in a county jail for a period of no longer than 6 months or by a fine not exceeding $1,000 or by both (Penal Code section 19).

C. The letter "I" designates an infraction: a violation of a law not punishable by imprisonment but by a fine generally not exceeding $100 for violations of the Vehicle Code (Vehicle Code section 42001) or $250 for violations of other codes (Penal Code section 19.8(b) (Sen. Bill 1461; Stats. 2014, ch. 54).

II. Base Bail

The "Base Bail" indicated is the amount from which the "additional penalties" required by Penal Code section 1464; Government Code sections 70372, 76000, 76104.6, and 76104.7; the surcharge required by Penal Code section 1465.7; and the penalty authorized by Government Code section 76000.5 are calculated.

III. Additional Penalties and Surcharge

A. An "additional penalty" of between $22 and $27 ($10 state penalty required by Penal Code section 1464; state court construction penalty of $5 required by Government Code section 70372(a); a county and state DNA Identification Fund penalty of $5 required by Government Code sections 76104.6 and 76104.7 (amended effective June 27, 2012); and a county penalty of up to $7 required by Government Code section 76000(e)) shall be levied upon every $10, or part of $10, of every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses. The "additional penalty" may increase by $2 for every $10, or part of $10, of the base fine if the county board of supervisors elects to levy an emergency medical services (EMS) penalty assessment under Government Code section 76000.5.

B. Government Code section 70372(a) requires imposition of a state court construction penalty on every fine, penalty, or forfeiture collected by the courts for criminal offenses, including, but not limited to, all offenses, except parking offenses, as defined in Penal Code section 1463, involving violations of the Fish and Game Code and Vehicle Code or local ordinances adopted pursuant to the Vehicle Code. Section 70372 specifies a state court construction penalty of $5 for every $10, or part of $10, of the criminal fine, penalty, or forfeiture.

C. Penal Code section 1464(b) provides that in the case of multiple offenses, the amount of "additional penalties" is to be determined by the total base bail or fine for all the offenses cited, and if the fine or base bail is suspended in whole or part, the "additional penalties" shall be reduced in proportion to the amount of suspension.

D. Penal Code section 1465.7(a) requires imposition on criminal offenses of a state surcharge equal to 20 percent of the base fine used to calculate the state penalty assessment as specified in Penal Code section 1464(a). Penal Code section 1465.7(b) requires that the surcharge be imposed in addition to the state penalty assessment pursuant to Penal Code section 1464 and not be included in the base fine used to calculate the state penalty assessment as specified in section 1464. For the limited purpose of calculating the fee to attend traffic violator school under Vehicle Code section 42007, Penal Code section 1465.7(g) provides that the surcharge is excluded from the "Total Bail" amount used to determine the fee but is collected and distributed according to section 1465.7. The surcharge is part of the "Total Bail" in other circumstances, such as when a defendant requests a trial by written declaration or when a court permits payment of the "Total Bail" in installments.

E. In counties with bonded indebtedness for court facilities, the count penalty assessment amount under Government Code section 76000(e) is $7 for every $10 or part of $10 of the base fine. In counties without bonded indebtedness for court facilities, if the county penalty assessment amount listed in Government Code section 76000(e) is less than $7, the penalty for every $10, or part of $10, of the base fine is equal to the amount listed in Government Code section 76000(e) plus the amount obtained from multiplying the difference between $7 and the amount listed in Government Code section 76000(e) by the ratio of the square footage of court facilities transferred from the county to the state to the total court facility square footage in the county.

F. Under Government Code section 76000.10(c)(1), a penalty of $4 for emergency medical air transportation (EMAT) services is imposed for every conviction of a violation of the Vehicle Code, or a local ordinance adopted under the Vehicle Code, committed on or after January 1, 2011. The penalty is due to end on January 1, 2018. (Sen. Bill 326; Stats. 2015, ch. 797.)

IV. Total Bail

A. Effective January 1, 1989, the Judicial Council adopted a "Total Bail" concept in an effort to obtain statewide consistency in the "bail" policies of the courts. The indicated "Total Bail" is for the first offense, and it must be followed to the extent required by Penal Code section 1269b.

B. Except as otherwise required by statute, under Penal Code sections 1203, 1203.1, and 1203b, trial courts have discretion to suspend the minimum sentence, including fines and penalties. For traffic cases, Vehicle Code section 42003 permits

a judge or referee to consider a defendant's ability to pay. Vehicle Code section 42007 permits a judicial officer to reduce the fee to attend traffic violator school upon a showing that the defendant is unable to pay the full amount. Vehicle Code sections 42003 and 40510.5 permit installment payments of judgments in traffic cases, and Vehicle Code section 42007 permits installment payments of the fee to attend traffic violator school.

C. Except for the following exceptions, counties must adhere to the Judicial Council's Traffic Infraction Bail and Penalty Schedule for infraction violations of the Vehicle Code (Penal Code section 1269b and Vehicle Code section 40310).

Penal Code section 1463.28 provides that 30 counties may exceed the "Total Bail" amounts of the Traffic Infraction Bail and Penalty Schedule. Those counties are

1. Alpine
2. Amador
3. Butte
4. Calaveras
5. Contra Costa
6. Del Norte
7. Fresno
8. Humboldt
9. Kings
10. Lake
11. Lassen
12. Los Angeles
13. Madera
14. Mariposa
15. Mendocino
16. Modoc
17. Mono
18. Plumas
19. San Benito
20. San Diego
21. San Joaquin
22. Santa Clara
23. Sierra
24. Stanislaus
25. Sutter
26. Trinity
27. Tulare
28. Tuolumne
29. Yolo
30. Yuba

Additional exceptions result from two pieces of legislation that became operative on January 1, 1994:

1. Vehicle Code section 42001 allows local public entities that employ peace officers, universities, and state colleges to set a fine schedule for bicycle violations occurring in their jurisdictions that would supersede the Judicial Council penalty schedule.

2. Vehicle Code section 42009 requires that for any specified offense committed within a highway construction or maintenance area during hours when work is being performed, the fine shall be double in the case of misdemeanors and in the case of infractions shall be one category higher than otherwise provided in the Traffic Infraction Fixed Penalty Schedule. An appendix with the specified offenses listed and the enhanced amounts follows the Traffic portion of the bail and penalty schedules, starting on page 102.

3. Streets and Highways Code section 97 provides for increased fines for a safety enhancement–double fine zone on the segment of Route 12 between the Route 80 junction in Solano County and the Route 5 junction in San Joaquin County.

Streets and Highways Code section 97.4 provides for increased fines for a safety enhancement–double fine zone on Vasco Road, between the State Highway Route 580 junction in Alameda County and the Walnut Boulevard intersection in Contra Costa County upon approval of resolutions of the Alameda County and Contra Costa County boards of supervisors. (Assem. Bill 348; Stats. 2011, ch. 290.) Under section 97, the base fine for any specified offense committed in the safety enhancement–double fine zone shall be double in the case of misdemeanors and in the case of infractions shall be one category higher than otherwise provided in the Uniform Bail and Penalty Schedules. Any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine.

The "Categories" indicated in the Traffic Infraction Bail and Penalty Schedule under Vehicle Code sections 40310, 42009(a), and 42010 will be shown as "1a" and "1b," "2a" and "2b," "3a" and "3b," and "4a" and "4b," with the "b" subcategory referring to the violation when it is committed in a highway construction zone or safety enhancement–double fine zone.

D. The "Total Bail" amounts within the Uniform Boating, Forestry, Fish and Game, Public Utilities, Parks and Recreation, and Business Licensing Bail Schedules are suggested amounts, and their adoption by courts is not compulsory.

E. The "Total Bail" amount indicated includes the base bail and those "additional penalties" required by Penal Code section 1464 and Government Code sections 70372, 76000, 76104.6, and 76104.7, and the 20 percent surcharge on the base bail required by Penal Code section 1465.7, except as provided in Vehicle Code section 42007. When authorized by the county board of supervisors, the "Total Bail" for a countywide bail schedule adopted under Penal Code section 1269b may also include an additional $2 penalty under Government Code section 76000.5 for every $10, or part of $10, of the base fine. Assessments adopted by a court—such as under Vehicle Code section 40508.6—shall be collected in addition to the "Total Bail." The court operations assessment imposed per convicted offense under Penal Code section 1465.8; assessment for night court under Vehicle Code section 42006; traffic assistance program (TAP) fee under Vehicle Code section 11205.2; and criminal conviction assessment under Government Code section 70373 are collected as part of the "Total Bail," but are not subject to the special distribution for the "Total Bail" in traffic violator school cases under Vehicle Code section 42007. For every conviction of a violation of the Vehicle Code, or ordinance adopted under the Vehicle Code, committed on or after January 1, 2011, a $4 EMAT penalty is imposed under Government Code section 76000.10(c)(1) as part of the "Total Bail." Effective January 1, 2014, Penal Code section 1202.4(b)(1) requires a minimum $150 restitution fine as an assessment in addition to the "Total Bail" in every case where there is a misdemeanor conviction. Other mandatory assessments may also be applicable, especially in DUI cases.

Fish and Game Code section 12021 authorized a $15 penalty to be collected in addition to the fine and penalties normally collected for violations of the Fish and Game Code, to be deposited in the Fish and Game Preservation Fund and disbursed as specified. The $15 additional penalty does not apply to violations punishable pursuant to Fish and Game Code section 12002.1(b) or 12002.2(b) or to any regulation relating to the wearing or display of a fishing license.

F. "Total Bail" shall not exceed statutory limits. Vehicle Code section 40310 specifies that the "fine" amount of the total bail shall not exceed the limitations specified by Vehicle Code sections 42001 and 42001.5.

G. Rule 4.105 of the California Rules of Court provides that with certain exceptions deposit of bail is not required to appear for arraignment or trial for an infraction case. Deposit may be required: by statute, such as trial by written declaration; if a person does not sign a promise to appear as ordered by the court; or a judicial officer states a reason for a deposit to schedule a trial.

In cases where a court appearance is required by a court, the amounts set forth in the Uniform Bail and Penalty Schedules do not necessarily indicate the appropriate total penalties; rather, they ensure that, in most cases, when bail is posted, sufficient funds will be available to meet the defendant's obligations. Upon conviction, however, "additional penalties" are added to any fine. It is incumbent upon the judge who hears each case to determine the proper total penalty (fine and "additional penalties") based on the particular facts presented.

With the exception of juveniles under age 18, there shall be no mandatory court appearance for any infraction of the California Vehicle Code punishable by fine only. A court may require a mandatory appearance for an infraction violation of the Vehicle Code when a statutory driver's license restriction, suspension, or revocation is authorized; community service or proof of payment or correction is mandatory; or a violation requires specific action under the Vehicle Code in addition to a fine. This paragraph does not apply to violations of local ordinances based on Vehicle Code sections.

H. The "Total Bail" for an offense *not specifically listed* in the Uniform Traffic Infraction Bail and Penalty Schedule is the amount set for the general category of that offense unless a California code or regulation specifies otherwise. The court operations assessment and criminal conviction assessment are collected in addition to the "Total Bail." The suggested minimum "Total Bail" for an offense *not specifically listed* in the Uniform Traffic Misdemeanor Bail and Penalty Schedule, unless a California code or regulation specifies otherwise, is:

	Base	+	Additional Penalties*& Surcharge	+	Fees	=	Total Bail*/Fees (*See sections II–IV)
Misdemeanor	$ 75	+	$251	+	$70	=	$396
Infraction	$ 35	+	$127	+	$75	=	$237

The suggested minimum "Total Bail" for an offense *not specifically listed* in the Uniform Public Utilities Bail and Penalty Schedule, unless a California code or regulation specifies otherwise, is:

Misdemeanor	$185	+	$588	+	$70	=	$839

The suggested minimum "Total Bail" for an offense *not specifically listed* in the Uniform Boating, Business Licensing, Fish and Game, Forestry, or Parks and Recreation Bail and Penalty Schedules, unless a California code or regulation specifies otherwise, is:

Misdemeanor	$100	+	$310	+	$70	=	$480
Infraction	$ 35	+	$123	+	$75	=	$233

V. Bail Categories

Assembly Bill 1344 (Stats. 1992, ch. 696), effective September 15, 1992, amended Vehicle Code section 40310 to classify Vehicle Code offenses into four or fewer penalty categories, according to the severity of the offenses. The Judicial Council has approved the following categories of bail/fine after considering suggestions from its Traffic Advisory Committee and the recommendations made by the National Center for State Courts:

		Base Fine +	Additional Penalties* &	Sur-charge	+Fees	=	Total(*See secs. II–IV) Bail* /Fees
Category 1	Bicyclist, motorized scooter, pedestrian, pocket bike, vehicle registration and equipment offenses	$ 25 +	$96		+ $75	=	$196
Category 2	Driver's license, operation of vehicle, and size and load offenses	$ 35 +	$127		+ $75	=	$237
Category 3	Substance abuse infractions, VC 2818, VC 20004, VC 21706.5, and VC 27375	$ 70 +	$221		+ $75	=	$366
Category 4	Miscellaneous offenses for which the penalties or the fee for dismissal with proof of correction are specifically set by the Vehicle Code, speeding offenses (refer to Speed Chart), and infractions pursuant to PC 19.8						

If a citation does not indicate that an offense is eligible for correction under Vehicle Code 40522, a court may presume that the offense is cited as noncorrectable. (See also *California Highway Patrol v. Superior Court* (2008) 158 Cal.App.4th 726, 740.) Vehicle Code section 14610.5(a) may be charged as either an infraction or a misdemeanor (Vehicle Code section 14610.5(b)). Penal Code section 19.8 lists the following offenses that are an infraction with a fine of up to $250: Vehicle Code sections 5201.1, 12500(a), 14601.1, 23109(c), 27150.1, 40508, and 42005. If one of these offenses is charged as an infraction, the appropriate penalty is listed in the Traffic Infraction Bail and Penalty Schedule. If the offense is charged as a misdemeanor, the recommended penalty is listed in the Traffic Misdemeanor Bail and Penalty Schedule.

VI. Point Count

Vehicle Code sections 12810, 12810.2, 12810.3, and 12810.4 determine the amount of point count. The Department of Motor Vehicles establishes conviction point count based on statutory guidance and definition. Vehicle Code section 12810.5 defines a "negligent operator" based on point count. The Department of Motor Vehicles may take an administrative sanction against a person's driving privilege based on "points" (Vehicle Code section 12810.5).

VII. Prior Convictions

A. The base fine for one Vehicle Code moving violation that is assessed "points" on a current arrest or citation shall be enhanced by $10 for each "prior" conviction within 36 months of the new alleged offense. For calculating the enhancement, both the current and "prior" offense must be a moving violation for which a "point" has been assigned per Vehicle Code section 12810 or 12810.2. A confidential conviction after completion of traffic violator school is not assigned a point or counted as a prior offense for purposes of enhancing the fine of a subsequent offense. Regardless of the number of moving violation convictions on a citation, only one "prior" per citation shall be counted in determining the enhancement on the current offense.

While Vehicle Code section 42001 references maximum fines within a one-year time frame, the Judicial Council has interpreted section 42001 to not preclude a court from considering "prior" convictions for a longer period of time. The period of 36 months was adopted by the Judicial Council (effective January 1, 1989) to correspond to and reinforce Vehicle Code sections 12810 and 12810.5. These sections define the "point system" used by the Department of Motor Vehicles as prima facie evidence of the negligent operation of a motor vehicle.

Vehicle Code sections 15306 and 15308 specify penalties for commercial drivers in terms of subsequent offenses occurring within three years.

B. In the case of an owner responsibility citation, the "prior" must relate to the particular vehicle for which the new offense is charged.

C. Vehicle Code section 42004 provides that the court, in determining a penalty to be imposed pursuant to the Vehicle Code, may use a written report from the Department of Motor Vehicles that contains information showing prior convictions.

D. With the exception of parking, pedestrian, and bicycle offenses on a current citation, Vehicle Code section 40508.6 authorizes courts to establish an administrative assessment, not to exceed $10, for the purpose of recording and maintaining a record of a defendant's prior convictions, that is payable at the time of payment of a fine or when bail is forfeited for any subsequent violation.

VIII. Traffic Violator School

A. Vehicle Code section 42007 provides that:

1. The court shall collect a fee from every person ordered or permitted to attend traffic violator school in an amount equal to the total bail set forth for the eligible offense in the uniform countywide bail schedule;

2. Where multiple offenses are charged on a single notice to appear, the "total bail" amount collected is the amount applicable to the greater of the eligible offenses; and

3. The court may set a lesser fee upon a showing that the defendant is unable to pay the full amount.

B. Vehicle Code section 40512.6 provides that the fee may be converted to bail and forfeited if the defendant fails to submit proof of school completion within the time ordered by the court.

C. Vehicle Code section 42007.1(a) provides that a $49 fee, a fee for monitoring traffic violator schools, and a TAP fee under Vehicle Code section 11205.2(c) are to be added to the "total bail" of the offense eligible for traffic violator school.

D. Vehicle Code section 42005 prohibits drivers of commercial vehicles from eligibility for traffic violator school. Drivers

with a Class A, Class B, or commercial Class C driver's license may attend traffic violator school to avoid points for traffic violations in a vehicle that requires only a class M or noncommercial class C license. Vehicle Code section 42005(d) excludes violations of Vehicle Code sections 20001, 20002, 23103, 23104, 23105, 23140, 23152, 23153, or 23103, as specified in section 23103.5, from eligibility for traffic violator school for pretrial diversion, a confidential conviction, or to avoid points.

Sample Calculation of Bail, Traffic Violator School Fee, and Court Operations Assessment for Multiple Offenses

1. Violation of Vehicle Code sections 21453(b), 27360.5(a), 24252(a), and 26707.
2. No prior convictions are charged.
3. "Additional penalties" of between $22 and $29 as set out in section III for every $10 of base fine or part thereof, plus the surcharge on the base fine, and the $4 EMAT penalty assessment per offense:

"Total Bail" Without Traffic School or Proof		Traffic Violator School and Correction Total With Proof	
VC 21453(b)	= $ 35	(VC 21453(b))	($ 0)
VC 27360.5(a)	= $ 100	(VC 27360.5(a))	($490)
VC 24252(a), VC 26707	= $ 50	TVS fee	$ 49
Total base fine	= $ 185	TVS/DMV admin. fee	$ 3
Penalties and surcharge	= $ 604	Correction fee (2 X $25)	$ 50
TOTAL BAIL	= $ 789	Court operations (1 X $40)	$ 40
Court operations	= $ 160	(TAP fee; VC 11205.2)	($)
Conviction assessment	= $ 140	Conviction assessment	$ 35
TOTAL	$1,089	TOTAL	$ 667

4. If the defendant is ordered to attend traffic violator school under VC 41501 for VC 21453(b) and VC 27360.5(a), per VC 42007 the defendant is charged for the greater/more severe of the qualifying offenses: VC 27360.5(a) at $490 plus the $49 and $3 DMV TVS fee per VC 42007.1 (total of $542).
5. The charges of VC 21453(b) and VC 27360.5(a) are continued under VC 41501. The charges of VC 24252(a) and VC 26707 are continued pending proof of correction, required under VC 40522 for dismissal.
6. The defendant presents to the court timely evidence that he or she has completed traffic violator school. The VC 21453(b) and VC 27360.5(a) violations are reported under VC 41501.
   If the defendant submits to the court timely evidence under VC 40616 that the violations of VC 24252(a) and VC 26707 have been corrected, the VC 24252(a) and VC 26707 violations are dismissed under VC 40522, and a $50 "transaction fee" is charged under VC 40611. A court operations assessment of $40 is collected and distributed as required by Penal Code section 1465.8 for reporting of VC 21453(b) for completion of traffic violator school, and a criminal conviction assessment of $35 is collected under Government Code section 70373 for VC 21453(b).
7. The case is closed, with the court collecting $667 ($490 + $49 + 3 + $50 + $40 + $35) plus any fee under VC 11205.2 and deduction of $1 if the court does not impose a night or weekend court assessment under VC 42006.

IX. Late Charge

Vehicle Code section 40310 requires the imposition of a late charge of 50 percent on any traffic penalties not paid within 20 days.

The 20 days shall be counted from the mailing of a notice that the penalty has been assessed. The initial penalty consists of the base fine; a fine enhancement for prior convictions (if any); the state, county, and court facility construction additional penalties; the $4 emergency medical air transportation penalty; and the emergency medical services penalty, if authorized (Penal Code section 1464 and Government Code sections 70372, 76000, 76000.5, 76000.10(c)(1), 76104.6, and 76104.7).

Sample Calculation of Late Penalty

1. Base fine		$ 25
2. Enhancement for one prior conviction	+	10
Enhanced base fine		$ 35
3. Additional penalties (PC 1464 and GC 70372, 76000, 76000.5, 76104.6, and 76104.7) ($29* X 4) (*See section III)	+	116
4. EMAT penalty for conviction of Vehicle Code violation (GC 76000.10(c)(1))	+	4
Initial Penalty		$ 155
5. Night court assessment (VC 42006)	+	1
6. Administrative assessment for maintaining a record of priors (VC 40508.6)	+	10
7. Surcharge on base fine (PC 1465.7)	+	7
8. Court operations assessment (PC 1465.8)	+	40
9. Conviction assessment (GC 70373(a)(1))	+	35
Total Due		$ 248
10. Late charge (VC 40310) [50% of initial penalty]	+	77.50
Total Due		$ 325.50

X. Offenses Eligible for Correction

Under Vehicle Code section 40522, an officer arresting for violations specified in Vehicle Code section 40303.5 is required to specify the offense charged and note in a form approved by the Judicial Council that the charge shall be dismissed upon proof of correction. Certain offenses specified in Vehicle Code section 40303.5 are designated in the following schedule as potentially eligible for correction. The offenses designated in the schedule as potentially eligible for correction and those offenses specified by Vehicle Code section 40303.5 that are not contained in the schedule may be eligible for dismissal with proof of correction if the citing officer determines that none of the disqualifying conditions of Vehicle Code section 40610(b) exist. (See *California Highway Patrol v. Superior Court* (2008) 158 Cal.App.4th 726 [riding a motorcycle without wearing any helmet presents an "immediate safety hazard" when an officer makes that determination and issues a noncorrectable citation].) Those disqualifying conditions are present if an officer finds any of the following:

1. Evidence of fraud or persistent neglect;
2. The violation presents an immediate safety hazard;
3. The violator does not agree to, or cannot, promptly correct the violation.

If a citation does not indicate that an offense is eligible for correction, a court may presume that the offense is cited as noncorrectable. (See also *California Highway Patrol v. Superior Court, supra,* 158 Cal.App.4th at p. 740.) Upon proof of correction of an alleged violation of section 12500 or 12951 or any violation cited pursuant to section 40610, Vehicle Code section 40611 authorizes courts to collect a $25 transaction fee for each violation. No bail amount shall be collected.

In cases alleging violation of Vehicle Code section 4000(a), or alleging that a vehicle is not registered as required by the Vehicle Code, Vehicle Code section 40152 requires that proof of registration or proof of payment of the appropriate registration fees, or proof that the vehicle has been reduced to junk, be produced in court before the offense can be adjudicated as a dismissal.

XI. Evidence of Financial Responsibility

Pursuant to Vehicle Code section 16028(e), upon submission of evidence of financial responsibility, in a form consistent with Vehicle Code section 16020, showing that the driver was in compliance with that section at the time the notice to appear for violating Vehicle Code section 16028 was issued, further proceedings for the violation shall be dismissed and no bail amount shall be collected. Vehicle Code section 40611 authorizes courts to collect a $25 transaction fee for each violation that is dismissed pursuant to section 16028(e).

XII. Parking Violations

Assembly Bill 408 (Stats. 1992, ch. 1244), effective January 1, 1993, revised and recast the procedures for processing and adjudicating parking law violations as administrative offenses subject to a civil penalty. The bill required courts to transfer the processing of parking offenses to issuing agencies not later than January 1, 1994. Consequently, parking violations that cannot be cited as infractions have been removed from the Uniform Bail and Penalty Schedules. Vehicle Code section 463 defines “park” or “parking” as the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in the loading or unloading of merchandise or passengers. Under Vehicle Code section 40225(a), equipment violations entered on a notice of parking violation are subject to a civil penalty established according to Vehicle Code section 40225(c). The Traffic Infraction Fixed Penalty Schedule includes Vehicle Code sections that may be cited for a stopping violation on a notice to appear that is signed by the driver. Under Vehicle Code section 42001.13, a violation of disabled parking provisions in Vehicle Code section 22507.8 may be cited as an infraction on a notice to appear. Under Vehicle Code section 42001.5, a violation of Vehicle Code sections 22500(i), 22500(*l*), and 22522 may be cited as an infraction on a notice to appear. Under Vehicle Code section 42001.6, a violation of Vehicle Code section 22511.1 may be cited as an infraction on a notice to appear. Government Code section 70373 requires a conviction assessment of $35, and Government Code section 70372(b) imposes an additional assessment of $4.50 on each parking violation infraction conviction. Government Code section 76000.3 imposes a $3 penalty on every fine imposed for a parking infraction violation committed on or after January 1, 2011.

LAO 75 YEARS OF SERVICE

Improving California's Criminal Fine and Fee System

MAC TAYLOR • LEGISLATIVE ANALYST • JANUARY 2016

LAO

EXECUTIVE SUMMARY

California's Criminal Fine and Fee System. Upon conviction of a criminal offense (including traffic violations), individuals are typically required by the court to pay various fines and fees as part of their punishment. Collection programs—operated by both courts and counties—collect payments from individuals and then distribute them to numerous funds to support various state and local government programs and services. Distribution occurs in accordance to a very complex process dictated by state law.

Key Problems With Existing Fine and Fee System. Based on our analysis of the state's existing fine and fee system, we identified four major problems with the system.

- ***Difficult for Legislature to Control Use of Fine and Fee Revenues.*** The existing system distributes fine and fee revenue based on various statutory formulas, making it difficult for the Legislature to control how such revenue is used. This is because the current formula-based system limits the information available to guide legislative decisions, makes it difficult for the Legislature to reprioritize the use of revenue, and allows administering entities to maintain significant control over the use of funds.

- ***Revenue Distributions Generally Not Based on Need.*** The existing system distributes revenue in a manner that is generally not based on program need—thereby resulting in programs receiving more or less funding than needed.

- ***Difficult to Distribute Revenue Accurately.*** The complexity of the existing system makes it difficult for collection programs to accurately distribute fine and fee revenue.

- ***Lack of Complete and Accurate Data on Collections and Distributions.*** A lack of complete and accurate data on fine and fee collections and distributions makes it difficult for the Legislature to conduct fiscal oversight.

LAO Recommendations. To address the above problems, we make recommendations to improve the state's fine and fee system. First, we recommend that the Legislature reevaluate the overall structure of the fine and fee system to ensure the system is consistent with its goals. As part of this process, the Legislature will want to determine the specific goals of the system, whether ability to pay should be incorporated into the system, what should be the consequences for failing to pay, and whether fines and fees should be regularly adjusted. Second, we recommend increasing legislative control over the use of criminal fine and fee revenue to ensure that its uses are in line with legislative priorities by (1) requiring that most criminal fine and fee revenue be deposited in the state General Fund, (2) consolidating most fines and fees into a single, statewide charge, (3) evaluating the existing programs supported by fine and fee revenues, and (4) mitigating the impacts of potential changes to the fine and fee system on local governments.

INTRODUCTION

Individuals convicted of criminal offenses, including traffic violations, are often required to pay a number of fines and fees as part of their punishment. The revenue from these payments are deposited in specific funds to support various state and local government programs and services. In recent years, a number of these funds have faced operational shortfalls due to a decline in fine and fee revenue. At the same time, the Legislature has expressed concern with the level of the state's fines and fees and their impact on low-income individuals. In order to help address both of these issues, the Legislature recently took steps to (1) temporarily redirect monies to specific state funds experiencing shortfalls in fine and fee revenue and (2) provide onetime relief to individuals who were unable to pay the fines and fees for certain traffic violations. While these actions address some of the concerns and challenges with the state's existing fine and fee system on a temporary basis, there are opportunities for the Legislature to make ongoing improvements.

In this report, we: (1) provide background information on California's criminal fine and fee system, including how fines and fees are calculated and distributed; (2) identify problems with the existing system; and (3) make recommendations to improve the system. In preparing this report, we spoke with Judicial Council staff, trial court administrators and judges, and county staff throughout the state in order to gain an in-depth understanding of how fines and fees are calculated, distributed, and used. We also analyzed various reports and data compiled by the judicial branch and the State Controller's Office. Finally, we talked to officials from other states regarding their fine and fee systems.

CALIFORNIA'S CRIMINAL FINE AND FEE SYSTEM

What Are Criminal Fines and Fees?

During court proceedings, trial courts typically levy fines and fees upon individuals convicted of criminal offenses (including traffic violations). As we discuss below, the total amount owed by an individual consists of a base fine, as well as various additional charges (such as other fines, fees, forfeitures, penalty surcharges, assessments, and restitution orders). Collectively, these various fines and fees are often referred to as court-ordered debt, which is the focus of this report. (Parking violations are not considered court-ordered debt as state trial courts do not administer such violations.)

How Are Criminal Fine and Fee Levels Set?

Trial Courts Determine Total Amount Owed. Trial courts are responsible for determining the total amount of fines and fees owed by individuals upon their conviction for a criminal offense. This calculation begins with a base fine that is set in state law for each criminal offense. For example, as shown in Figure 1 (see next page), the base fine for the infraction of a stop sign violation is $35, while the base fine for the misdemeanor of driving under the influence (DUI) of alcohol or drugs is $390. State law then requires the court to add certain charges to the base fine, which can significantly increase the total amount owed. Some of these additional charges are calculated using the base fine. For example, the state penalty assessment consists of adding $10 for every $10 portion of the base fine. Others are flat charges, such as the court operations assessment of $40 per conviction. On a limited basis, state law also authorizes counties

and courts to levy additional charges depending on the specific violation and other factors. Some of these additional charges require the county board of supervisors to approve a resolution before it may be imposed. Finally, statute gives judges some discretion to reduce the total amount owed by waiving or reducing certain charges. As shown in the figure, the total payment owed by an individual can be many times greater than the base fine.

Fine and Fee Levels Set to Serve Multiple Purposes. The state has enacted various fines and fees for a variety of purposes. Some, such as the base fine and the restitution fine, are generally tied to the seriousness of the crime. Others were enacted to generate revenue to fund specific activities. For example, two DNA penalty assessments support the Department of Justice's DNA Laboratory and other local DNA-related activities. Finally, some fines and fees were enacted to help offset state or local costs for providing particular services to individuals paying the specific charge. For example, the night court fee is used to offset facility costs for trial courts that choose to conduct night or weekend sessions for traffic offenses. The fee may not be charged if such sessions are not conducted. Over the past decade, the number and size of charges added to the

Figure 1

Various Fines and Fees Substantially Add to Base Fines

As of September 1, 2015

	How Charge Is Calculated	Stop Sign Violation (Infraction)	DUI of Alcohol/Drugs (Misdemeanor)
Standard Fines and Fees			
Base Fine	Depends on violation	$35	$390
State Penalty Assessment	$10 for every $10 of a base fine[a]	40	390
County Penalty Assessment	$7 for every $10 of a base fine[a]	28	273
Court Construction Penalty Assessment	$5 for every $10 of a base fine[a]	20	195
Proposition 69 DNA Penalty Assessment	$1 for every $10 of a base fine[a]	4	39
DNA Identification Fund Penalty Assessment	$4 for every $10 of a base fine[a]	16	156
EMS Penalty Assessment	$2 for every $10 of a base fine[a]	8	78
EMAT Penalty Assessment	$4 per conviction	4	4
State Surcharge	20% of base fine	7	78
Court Operations Assessment	$40 per conviction	40	40
Conviction Assessment Fee	$35 per infraction 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		($238)	($1,824)
Examples of Additional Fines and Fees That Could Apply			
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)
Totals		**$238**	**$2,024**

[a] The base fine is rounded up to the nearest $10 to calculate these additional charges. For example, the $35 base fine for a stop sign violation is rounded up to $40.
DUI = Driving Under Influence; EMS = Emergency Medical Services; and EMAT = Emergency Medical Air Transportation.

base fine have increased significantly—resulting in increases in the total amount owed by individuals convicted of criminal offenses. For example, as shown in Figure 2, the total fine and fee level for a stop sign violation has increased significantly since 2005. (As discussed in the nearby box, fine and fee levels in California for criminal violations generally appear to be high relative to other states.)

Figure 2

Total Fine and Fee Level for Stop Sign Violation Has Increased Significantly Since 2005[a]

	Stop Sign Violation (Infraction)		
	2005	2015	Change
Base Fine	$35	$35	
State Penalty Assessment	40	40	—
County Penalty Assessment	28	28	—
Court Construction Penalty Assessment	20	20	—
Proposition 69 DNA Penalty Assessment	4	4	—
DNA Identification Fund Penalty Assessment	—	16	$16
EMS Penalty Assessment	—	8	8
EMAT Penalty Assessment	—	4	4
State Surcharge	7	7	—
Court Operations Fee	20	40	20
Conviction Assessment Fee	—	35	35
Night Court Fee	1	1	—
Totals	**$155**	**$238**	**$83**

[a] Depending on the specific violation and other factors, additional county or state assessments may apply. EMS = Emergency Medical Services and EMAT = Emergency Medical Air Transportation.

How Are Criminal Fines and Fees Collected?

Counties and Courts Involved in Collection Process. While trial courts are responsible for determining the amount of fines and fees owed by individuals, counties are statutorily responsible for collecting fine and fee payments. However, some collection duties are often delegated back to the trial courts. As a result, collection programs may be operated by both courts and counties. Individuals who plead guilty or are convicted of a criminal offense must either provide full payment immediately or set up installment payment plans with the collection program. If an offender does not pay on time, the amount owed becomes delinquent.

State law authorizes the collection program to use a variety of tools or sanctions (such as

Certain Criminal Fines and Fees Appear Higher Than Certain Other States

Currently, comprehensive information is not available on the criminal fine and fee levels of other states. However, in order to compare California's fine and fee levels to the rest of the nation, we surveyed other states. Specifically, we surveyed one large jurisdiction in each of 33 states (including many states similar to California) for the fines and fees associated with the two offenses: a stop sign violation and speeding at 20 miles per hour over the limit. We found that California's fines and fees associated with these common traffic offenses are relatively high. For example, the total fines and fees for a stop sign violation in California is $238, which was higher than 28 of the surveyed states (about 85 percent). The total in other surveyed states ranged from $58 to $277, and averaged $157. The total fines and fees for speeding at 20 miles per hour over the limit in California was $367, which was higher than all of states we surveyed. The total in other surveyed states ranged from $73 to $350, and averaged $203.

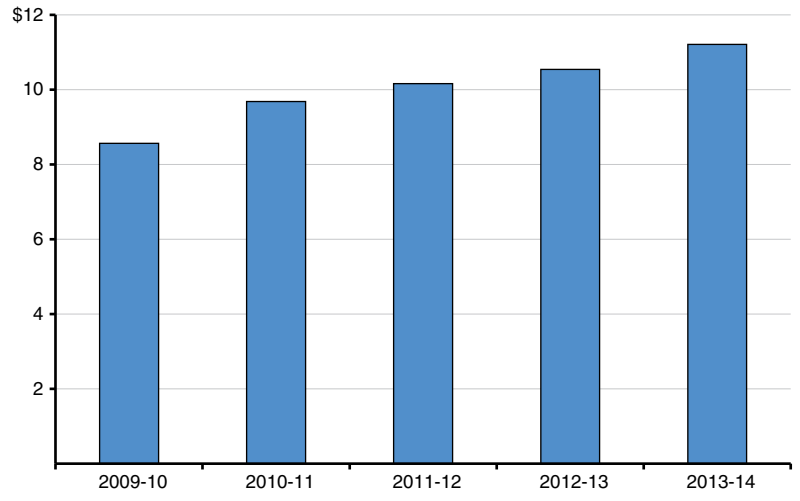
wage garnishments or the suspension of a driver's license) to motivate offenders to pay their debt. Additionally, in lieu of issuing an arrest warrant, state law authorizes collection programs to impose a civil assessment of up to $300 against any offender who fails to either make payment or appear in court without good cause. Finally, state law permits collection programs that meet specified criteria to recover most operating costs related to the collection of delinquent payments prior to distribution to various state and local funds. (Please see our November 2014 report, *Restructuring the Court-Ordered Debt Collection Process*, for more detailed information regarding the debt collection process.) Since 2009-10, programs reported collecting a total of roughly $1.8 billion in fine and fee revenue annually. However, this amount may be understated due to incomplete reporting by collection programs.

Amount of Outstanding Debt Increasing. Every year, the courts estimate the total outstanding balance of debt owed by individuals. This balance may decrease when individuals make payments or debt is resolved in an alternative manner, such as when a portion of a debt is dismissed because the individual performs community service in lieu of payment. However, this amount generally grows each year as some amount of newly imposed court-ordered debt goes unpaid and is added to the amount of unresolved debt accumulated from prior years. As shown in Figure 3, an estimated $11.2 billion in criminal fines and fees remained outstanding at the end of 2013-14. We would note, however, that a large portion of this balance may not be collectable as the costs of collection could outweigh the amount that would actually be collected.

Figure 3

Outstanding Balance of Unresolved Fines and Fees Continues to Grow

(In Billions)



How Are Criminal Fines and Fees Distributed?

As shown in Figure 4, over 50 state funds—in addition to many local funds throughout the state—are eligible to receive fine and fee revenue. However, some of these funds receive very little revenue, such as those that only receive revenue from fines and fees for specific offenses that occur infrequently. For example, the state Voter Intimidation Restitution Fund only receives revenue when an individual is convicted of voter intimidation. In order to comply with the numerous state laws dictating which funds receive fine and fee revenue, collection programs must carefully track, distribute, and record the revenue they collect. Programs submit this information, along with the revenue, to the county for (1) distribution to county funds and (2) transfer to the State Controller's Office (SCO) for distribution to state funds.

State law dictates a very complex process for the distribution of fine and fee revenue. As we discuss below, state law specifies how individual fine and

Figure 4

Numerous State and Local Funds Receive Fine and Fee Revenue

State Administered Funds	
State General Fund	Oil Pollution Response and Restoration Subaccount
Abalone and Restoration and Preservation Account	Osteopathic Medical Board of California Contingent Fund
Abandoned Watercraft Abatement Fund	Peace Officers' Training Fund
California Beverage Container Recycling Fund	Pharmacy Board Contingent Fund
California Fire and Arson Training Fund	Private Security Services Fund
California Motorcyclist Safety Fund	Restitution Fund
Cigarette and Tobacco Products Compliance Fund	Safe Drinking Water and Toxic Enforcement Fund
Cigarette Tax Fund	Secret Witness Program
Clandestine Drug Lab Clean-Up Account	State Children's Trust Fund
Contingent Fund of the Medical Board of California	State Court Facilities Construction Fund
Corrections Training Fund	State Dentistry Fund
Court Facilities Trust Fund	State Fire Marshal Fireworks Enforcement and Disposal Fund
Department of Justice DNA Testing Fund	State Highway Account
Department of Justice Sexual Habitual Offender Fund	State Optometry Fund
Domestic Violence Restraining Order Reimbursement Fund	State Penalty Fund
Domestic Violence Training and Education Fund	State Water Pollution Cleanup and Abatement Account
Driver Training Penalty Assessment Fund	Toxic Substances Control Account
Emergency Medical Air Transportation Act Fund	Traumatic Brain Injury Fund
Environmental Enforcement and Training Account	Trial Court Improvement and Modernization Fund
Farmworker Remedial Account	Trial Court Operations Fund
Fish and Game Preservation Fund	Trial Court Trust Fund
Hazardous Materials Administration Subaccount	Underground Storage Tank Cleanup Fund
Home Care Penalties Subaccount	Veterinary Medical Board Contingent Fund
Illegal Drug Lab Cleanup Account	Victim-Witness Assistance Fund
Immediate and Critical Needs Account	Voter Intimidation Restitution Fund
Local Public Prosecutors and Public Defenders Fund	Waste Discharge Permit Fund
Missing Persons DNA Data Base Fund	Winter Recreation Fund
Motor Vehicle Account	Worker's Compensation Fraud Account
Oil Pollution Administration Subaccount	Various unspecified funds to support specific activities
County Administered Funds (Per County)	
County General Fund	Drug Program Fund
Alcohol Abuse and Prevention Fund	Fish and Game Propagation Fund
Automated County Warrant Fund	Forensic Laboratory Fund
Automated Fingerprint Identification and Digital Image Photographic Suspect Booking Identification System Fund	Inmate Welfare Fund
Children's Trust Fund	Juvenile Justice Construction Fund (Kern and Ventura Counties)
Courthouse Construction Fund	Maddy Emergency Services Fund
Criminal Justice Facilities Construction Fund	Night Court Session Fund
Criminal Justice Investigation Fund (Imperial County)	Rabies Treatment and Eradication Fund
Criminalistics Laboratory Fund	Real Estate Fraud Prosecution Trust Fund
County Jail Fund (Orange and Solano Counties)	Special Purpose Funds
DNA Identification Fund	Transportation District, Commission, or Authority General Fund
Domestic Violence Programs Special Fund	Various unspecified funds to support specific activities
City Administered Funds (Per City)	
City General Fund	Various unspecified funds to support specific activities

fee payments are to be distributed to state and local funds, including additional requirements for when payments are not made in full (such as under an installment plan). Currently, state law contains at least 215 distinct code sections related to these processes.

Distribution Among State and Local Funds. State law (and county board of supervisor resolutions for certain local charges) specifies how payments made to resolve individual fines and fees are distributed among state and local funds. First, state law includes formulas for distributions of certain fines and fees. For example, state penalty assessments are deposited into the State Penalty Fund (SPF) for subsequent distribution to nine other state funds (such as the Victim-Witness Assistance Fund). Statute also requires that a portion of certain fines and fees be allocated to specific purposes (such as to support cost-recovery and the Trial Court Improvement and Modernization Fund) *prior* to distributing revenue to various state and local funds. Second, state law authorizes local governments to determine

Figure 5

Examples of Distributions to State and Local Funds

Fine and Fee/Recipient Fund	Stop Sign Violation (Infraction)	DUI Violation (Misdemeanor)
Base Fine		
County and/or City General Fund	$34.30	$264.60
Restitution Fund—DUI Additional Restitution Allocation	—	19.60
Local DUI Lab Test Special Account	—	49.00
Local DUI Alcohol Program Special Account	—	49.00
Trial Court Improvement and Modernization Fund	0.70	7.80
State Penalty Assessment		
State Penalty Fund (subsequently distributed to 9 other state funds)	$27.44	$267.54
County General Fund	11.76	114.66
Trial Court Improvement and Modernization Fund	0.80	7.80
County Penalty Assessment		
Courthouse Construction Fund[a]	$8.82	$86.00
Criminal Justice Facilities Construction Fund[a]	8.82	86.00
Maddy EMS Fund[a]	3.92	38.22
DNA Identification Fund[a]	1.96	19.11
Automated Fingerprint Identification Fund and Digital Image Photographic Suspect Identification Fund[a]	3.92	38.22
Trial Court Improvement and Modernization Fund	0.56	5.46
Court Construction Penalty Assessment		
Immediate and Critical Needs Account[a]	$7.84	$76.44
State Court Facilities Construction Fund[a]	11.76	114.66
Trial Court Improvement and Modernization Fund	0.40	3.90
Proposition 69 DNA Penalty Assessment		
County or State DNA Identification Fund	$3.92	$38.22
Trial Court Improvement and Modernization Fund	0.08	0.78
DNA Identification Fund Penalty Assessment		
DNA Identification Fund	$15.68	$152.88
Trial Court Improvement and Modernization Fund	0.32	3.12

(Continued)

how certain fines or fees are to be distributed among various local funds. For example, individual counties choose how payments made to address the county penalty assessment are deposited among several local funds. Finally, state law includes some distributions that vary by criminal offense. Figure 5 provides an example of the distribution of fines and fees for a stop sign violation and DUI violation. As shown in the figure, payments to satisfy the base fine for a stop sign violation are deposited in the Trial Court Improvement and Modernization Fund, as well as in the county and/or city General Fund, depending on where the offense occurs and which law enforcement entity cited the offense. In contrast, payments to satisfy the base fine of a DUI violation are deposited into three additional funds and must be distributed in a particular order under state law. As shown in the figure, these various distribution requirements result in a complex series of deposits into numerous state and local funds.

Distribution of Debt Not Paid in Full. Further complicating the distribution of fine and

Figure 5

Examples of Distributions to State and Local Funds (Continued)

Fine and Fee/Recipient Fund	Stop Sign Violation (Infraction)	DUI Violation (Misdemeanor)
EMS Penalty Assessment		
Maddy EMS Fund	$7.84	$76.44
Trial Court Improvement and Modernization Fund	0.16	1.56
EMAT Penalty Assessment		
EMAT Act Fund	$3.92	$3.92
Trial Court Improvement and Modernization Fund	0.08	0.08
State Surcharge		
State General Fund	$7.00	$78.00
Court Operations Assessment		
Trial Court Trust Fund	$40.00	$40.00
Conviction Assessment Fee		
Immediate and Critical Needs Account	$35.00	$30.00
Night Court Fee		
Court Facilities Trust Fund (State) and Night Court Session Fund (County)	$1.00	$1.00
Restitution Fine		
State Restitution Fund	—	$147.00
Trial Court Improvement and Modernization Fund	—	3.00
DUI Lab Test Penalty Assessment		
County Special Account	—	$49.00
Trial Court Improvement and Modernization Fund	—	1.00
Alcohol Education Penalty Assessment		
Alcohol Abuse and Prevention Fund	—	$49.00
Trial Court Improvement and Modernization Fund	—	1.00
County Alcohol and Drug Program Penalty Assessment		
County Special Account and General Fund	—	$100.00
Totals	**$238.00**	**$2,024.00**

[a] Acutal deposits can vary by county.
DUI = Driving Under Influence of alcohol/drugs; EMS = Emergency Medical Services; and EMAT = Emergency Medical Air Transportation.

fee revenue, state law specifies the order in which payments that are less than the full amount owed are used to satisfy the fines and fees individuals are charged. For example, state law requires that installment payments be credited in a particular order. As shown in Figure 6, all fines and fees fall within one of five distribution categories. The fines and fees in each category must be fully satisfied before payments may be credited to the next category. This means that state and local funds in the lower distribution priorities fail to receive full allocations or receive delayed allocations if payments are not made in full or are delinquent. For partial payments that are not part of an installment payment plan, collection programs can either prorate the payments across (1) all charges equally or (2) any remaining charges after fulfilling those that are set amounts (such as the $40 per conviction court operations assessment).

Who Benefits From Criminal Fine and Fee Revenues?

Below, we discuss our best estimate of the total amount of revenue distributed to state and local governments and how it is divided between them. As we discuss later in this report, due to various data limitations, actual revenue amounts could be higher or lower than our estimates.

Total Revenue Distributed to State and Local Governments Declining. According to available data compiled by the SCO and the judicial branch, the total amount of fine and fee revenue distributed to state and local governments annually has declined since 2010-11. Specifically, the amount has declined by approximately $200 million—from nearly $2.2 billion in 2010-11 to nearly $2 billion in 2013-14. (As we discuss in more detail later in this report, this amount does not reconcile with

Figure 6

State Law Specifies How Installment Payments Must Be Distributed

Distribution Priority	Category	Major Beneficiaries	Number of Applicable Code Sections[c]
1	Victim Restitution	Victim and State	6
2	Cost Recovery of Delinquent Collection Costs	Collection Program (court or county)	1
3	State Surcharge	State	1
4	Fines and Penalty Assessments[a] (prorated across category)	State, Court, and County	156
5	Fees and Reimbursements[b] (prorated across category)	Court and County	48

[a] Example of fines and penalty assessments include the base fine and the State Penalty Assessment.
[b] Examples of fees and reimbursements include the Parole/Probation Supervision Fee and the Traffic Violator School Fee.
[c] Additional statutes may apply (such as fees for services).

the above $1.8 billion that collections programs report collecting in fine and fee revenue annually.) Most state and local funds receiving fine and fee revenue have also experienced a decline in the amount distributed to them. For example, the SPF received nearly $30 million less in 2013-14 than in 2010-11—about a 25 percent decline in revenue. The cause of such declines is unknown but could be due to a variety of factors—including the number of citations issued by law enforcement, individuals' willingness to make payments, and the amount collected by collection programs. For example, the total number of criminal infraction and misdemeanor filings steadily declined by nearly 1.6 million total filings since 2010-11—a decline of about 22 percent. (A more detailed breakdown of deposits into specific state and local funds can be found in the Appendix on page 24.)

Half of Revenue Distributed to State. The state received a little over $1 billion of the total amount of fine and fee revenue distributed in 2013-14. As shown in Figure 7, this represents roughly half of all distributed revenue. Of this amount, a little less than two-thirds went to support trial court operations and construction. The remainder supported various other state programs such as victim-witness assistance, peace officer training, and the state's DNA laboratory. Of the amount allocated to trial courts, roughly half funded statewide trial court construction, and the other half supported trial court operations.

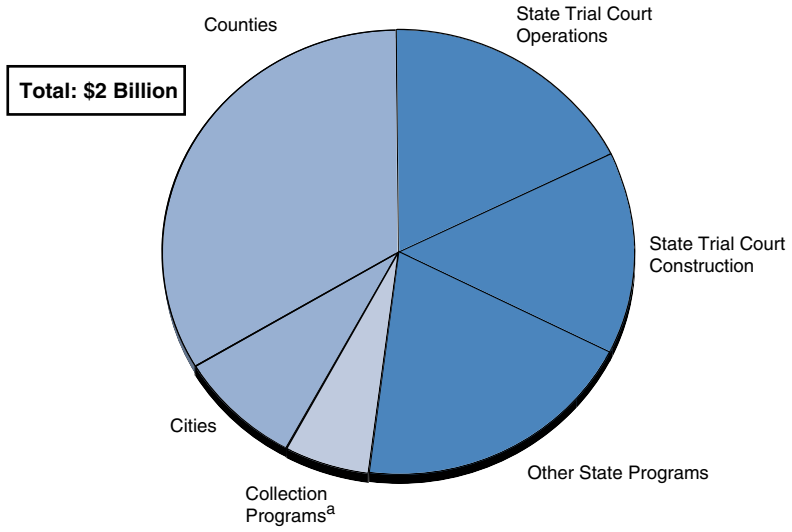
Collection Programs Receive Share of Revenue. Collection programs received $114 million (or 6 percent) of fine and revenue distributed in 2013-14 for their operational costs related to the collection of delinquent payments. These funds are split between state trial courts and counties depending on which entity incurred the costs.

Remaining Revenue Distributed to Local Governments. We estimate that local governments received $820 million (or 42 percent) of the total amount of fine and fee revenue distributed in 2013-14. Of this amount, $657 million (or 80 percent) went to the counties. We would note, however, that counties often use their share of fine and fee revenue to meet their maintenance-of-effort (MOE) obligations to the state. These MOE obligations—or requirements for counties to continue to provide some financial support for trial courts—were established in 1997 when the

Figure 7

Half of Fine and Fee Revenue Distributed to the State

2013-14



[a] Split between courts (state government) and counties (local government) depending on who is actually collecting delinquent payments.

Legislature shifted primary responsibility for trial court funding from the counties to the state. To date, annual county MOE obligations to the state for trial court operations total about $660 million.

KEY PROBLEMS WITH EXISTING FINE AND FEE SYSTEM

Based on our analysis of California's existing fine and fee system, we identified four major problems with the system. Specifically, we find that the existing system (1) makes it difficult for the Legislature to control how fine and fee revenue is used, (2) distributes revenue in a manner that is generally not based on program need, (3) makes it difficult for collection programs to accurately distribute such revenue, and (4) lacks complete and accurate data on fine and fee collections and distributions. Figure 8 provides a summary of our findings, which we discuss in more detail below.

Difficult for Legislature to Control Use of Fine and Fee Revenue

As discussed earlier, the state's existing fine and fee system includes a complex distribution method that disburses monies to funds based on various statutory formulas. These formulas ensure certain programs receive funding annually, which often makes it difficult for the Legislature to control the use of fine and fee revenue. This is because the statutory distribution formulas often have the following effects:

- ***Limited Information to Guide Legislative Decisions.*** Because the current statutory formulas effectively guarantee certain programs funding, these programs are generally not required to regularly provide the Legislature with information on program expenditures and outcomes. This makes it difficult for the Legislature to regularly evaluate how effectively these programs are using the funds they are provided. Although some programmatic information is typically provided when programs require additional funding (such as due to insufficient revenue), the Legislature is often informed of these challenges late in the process when there are few viable options that would not cause major impacts to program operations.

- ***Difficult for Legislature to Reprioritize Use of Revenue.*** Because the existing distribution formulas effectively lock in the uses of fine and fee revenue on an ongoing basis, it is difficult for the Legislature to reprioritize the use of these funds based on changing needs and priorities (such as increasing the amount of revenue allocated to some programs or using these funds to support alternative programs that it deems to be of higher

Figure 8
Problems With California's Fine and Fee System

- ✓ Difficult for Legislature to control use of fine and fee revenue.
- ✓ Revenue distributions generally not based on need.
- ✓ Difficult to distribute revenue accurately.
- ✓ Lack of complete and accurate data on collections and distributions.

priority). This limits the Legislature's ability to ensure that such funds are being used in a manner that is consistent with its priorities.

- ***Administering Entities Maintain Significant Control Over Use of Funds.*** The current formula-driven system also gives certain state and local entities significant discretion in how they use fine and fee revenue. For example, statute authorizes the judicial branch to determine the specific statewide projects funded by the Trial Court Improvement and Modernization Fund based on broad guidance outlined in statute. The Legislature only receives an annual report on expenditures once the fiscal year is complete. In other cases, entities have complete discretion over the use of certain funds. For example, cities have complete control on how they use the share of their fine and fee revenue that is deposited into their General Funds and are not required to report to the Legislature on how such monies are used. As a result, the Legislature maintains limited control over a significant portion of fine and fee revenues.

Revenue Distributions Generally Not Based on Need

By locking in funding formulas in statute, the existing system preserves the level of funding deemed appropriate when the formulas were established. On the one hand, this can result in some programs receiving more funding than necessary to fulfill their statutory requirements. For example, in some years, the Restitution Fund, the primary funding source for the Victim Compensation and Government Claims Board, received more fine and fee revenue than the board needed to make payments to eligible crime victims. This resulted in the Restitution Fund having an annual balance of over $100 million in unused funds from 2005-06 through 2007-08.

On the other hand, the distribution formulas can result in some programs receiving insufficient funding to fulfill their statutory requirements. For example, over the past decade, the existing formula allocating a specific percentage of SPF fine and fee revenue to the Peace Officers' Training Fund—which supports the Commission on Peace Officer Standards and Training (POST)—has resulted in POST not having sufficient funding to maintain the level of training services previously provided, particularly when there has been a change in the amount of revenue collected. Given this shortfall, the Legislature chose to redirect $14 million annually during this time period from another SPF fund to support POST, as well as provide a one-time $3.2 million General Fund appropriation in 2014-15. The Legislature also approved an 18-month traffic amnesty program as part of the 2015-16 budget and directed that a portion of the additional revenues resulting from the program support POST in the short run. We would note that there are a number of other funds supported by fine and fee revenue that are also nearing or currently experiencing operational shortfalls.

Difficult to Distribute Revenue Accurately

The numerous statutory requirements governing the distribution of fine and fee revenue can also make it difficult for individual courts and counties to track, distribute, and report such revenue accurately and consistently. This is because every charge has its own distribution requirement which can vary based on other factors (such as where the offense occurred). This challenge is further complicated by additional statutory requirements related to how partial and

installment payments are to be credited against various charges. This can result in payments for the same type of violation being distributed in different ways. Although some courts and counties have automated computer programs to assist them with this task, these automated programs can sometimes be difficult to correctly program. Other courts and counties do not have such programs and thus still make these calculations manually.

While courts and counties can be fined by the state for certain errors in their distribution of fine and fee revenue, unintentional errors still occur. Because of the numerous and overlapping distribution requirements specified in statute, a distribution error can sometimes impact over 20 state and local funds. This is particularly the case where certain funds receive funding *after* a portion of the revenue is allocated to a different fund. Since errors may not be corrected for several years, it can result in the misallocation of significant sums of money. Distribution errors are regularly found by the SCO, which is authorized to review whether criminal fines and fees have been deposited accurately and in a timely manner. In reviews conducted from 2006 through 2014, the SCO identified $63 million in errors made between 1998-99 and 2012-13. (We would note that the number of reviews conducted—and the fiscal years examined—in a given year varies by county and court.) Of this amount, about $48 million was related to instances where counties did not remit sufficient revenue to the state. We note that the total value of errors made between 1998-99 and 2012-13 is likely higher than $63 million because the SCO audits we examined did not evaluate all distributions occurring over this time period. While the SCO has found that counties and courts generally resolve the cause of most distribution errors identified in its reviews, it frequently finds new errors in subsequent reviews.

Lack of Complete and Accurate Data on Collections and Distributions

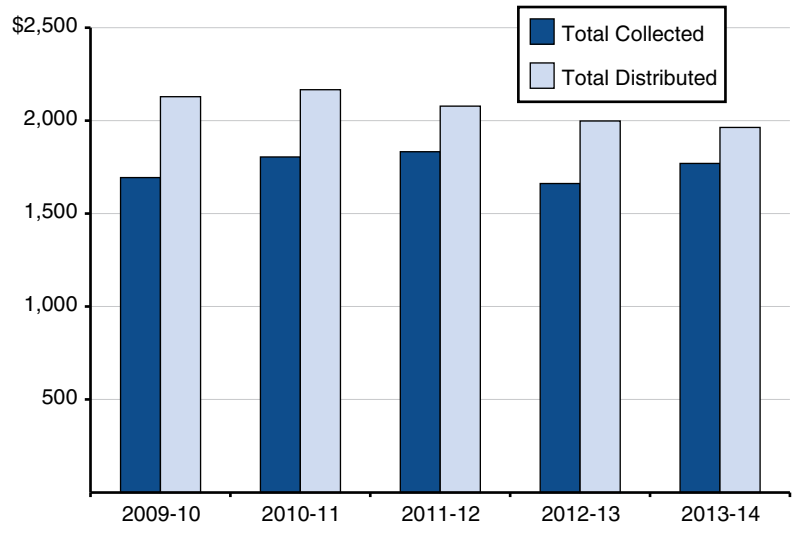
Although SCO and the judicial branch both collect information on the collection and distribution of fines and fees, each of the various records they maintain omit pieces of data. This is primarily because such data is often not required to be collected. For example, while counties transmit fine and fee revenue and information on how the revenue should be distributed among state funds to SCO, the SCO does not receive—and thus does not record—the amount kept by counties or cities. Additionally, the judicial branch is only required by state law to report on the amount of delinquent payments collected by collection programs and thus does not always record and report information on non-delinquent payments. Although the judicial branch informally tracks some distribution data, it is not required to do so under state law. In view of the above, the state currently lacks complete data on both the collection and distribution of fine and fee revenue.

Compounding the problem regarding the lack of collections and distributions data, it appears that there are inconsistencies (1) between similar pieces of data collected by the SCO and the judicial branch and (2) in how collection programs report data. For example, as shown in Figure 9, SCO and judicial branch reports on collections and distributions are inconsistent, as they report a greater amount being distributed than collected. From our attempts to reconcile the data, it appears that programs may differ in what charges and distributions they classify as criminal fines and fees as well as how they report such information—impacting both the collections and distributions data. In addition, it appears that part of the difference is also attributable to data that is missing from collections reports. Without complete, consistent, and accurate data, it is difficult for the

Legislature to conduct fiscal oversight to ensure that funds are being allocated accurately and used in accordance with its priorities and state law. It also makes it difficult for the Legislature to determine the impacts of enacted or proposed changes to fines and fees, which further limits the ability of the Legislature to effectively oversee the current system and programs supported by it.

Figure 9

Inconsistency Between Fine and Fee Collection and Distribution Data



LAO RECOMMENDATIONS

In this report, we reviewed California's existing fine and fee system and identified several problems. To address these problems, we provide several recommendations to overhaul and improve the fine and fee system. First, we recommend reevaluating the overall structure of the fine and fee system to ensure the system meets legislative goals. Second, we recommend increasing legislative control over the use of criminal fine and fee revenue to ensure that its uses are in line with legislative priorities. Figure 10 provides a summary of our recommendations, which are discussed in greater detail below.

Reevaluate Structure of Criminal Fine and Fee System

As discussed earlier, the state's current fine and fee system has evolved from statutes passed over the course of numerous years. In order to ensure that the system effectively meets current legislative goals and priorities, we recommend that the Legislature reevaluate the overall structure of the system. As part of this evaluation, we recommend

Figure 10

Summary of LAO Recommendations

✓ Revaluate structure of criminal fine and fee system.

✓ Increase legislative control of criminal fine and fee expenditures.
- Deposit most criminal fine and fee revenue in the General Fund.
- Consolidate most fines and fees.
- Evaluate existing programs supported by criminal fine and fee revenues.
- Mitigate impacts on local government.

the Legislature consider the following key questions in its deliberations to guide any subsequent changes to the state's fine and fee system.

What Should Be the Goals of the Criminal Fine and Fee System? A fine and fee system can serve various purposes:

- ***Deterrence.*** Fines and fees are used to deter criminal activity in several ways. First, they can be set to ensure that the fines and fees for committing an illegal act are greater than the benefit that individuals can obtain from the act—making it less likely that individuals commit the illegal activity. Deterrence can also be achieved by setting fines and fees high enough to result in a hardship that individuals will seek to avoid. Lastly, the effective enforcement of law and collection of fines and fees could deter criminal activity. This is because the more likely it is that offenders are caught and required to pay, the less likely it is that they would violate the law in the future.

- ***Proportional Punishment.*** Fines and fees can be used to provide a punishment that is proportional to the seriousness of a crime committed by an offender. This also conveys the seriousness of the offense. To achieve proportional punishment, fines and fees must be large enough to represent a reasonable hardship for offenders to ensure that they constitute a punishment. While the determination of whether the fines and fees for a particular offense are proportional and reasonable is subjective, it can be guided by information on how the requirement to pay affects offenders.

- ***Mitigating Effects of Crime.*** Another goal could be to generate sufficient revenue to help mitigate the negative effects of crime. For example, the state's current system often requires offenders to compensate their victims for certain losses through restitution orders. The state's system could be modified to offset other costs as well. For example, revenue could be used to offset costs imposed on the state and local governments by criminal activity, such as by providing funds for the enforcement of specific laws. To achieve this goal, it is necessary to collect information on the costs created by a criminal act and ensure that some portion of each offender's payment is used to offset those costs.

In general, the above goals are not mutually exclusive—meaning a fine and fee system can seek to achieve more than one of the goals. For example, fines and fees could be set sufficiently high to deter criminal activity with the resulting revenue used to offset the negative effects of criminal activity. However, in certain circumstances, some of the goals cannot be fully accomplished together. For example, requiring a payment that is high enough to generate sufficient revenue to fully offset all negative effects of a crime may result in a punishment that the Legislature views as disproportionate. Accordingly, the Legislature may need to determine which of its goals it values most when assessing the state's fine and fee system.

Should Ability to Pay Be Incorporated? The Legislature may also want to consider whether an individual's ability to pay should be incorporated into its fine and fee system. California has historically incorporated ability to pay by authorizing judges to waive or reduce certain fines and fees under certain circumstances. To the extent the Legislature is interested in incorporating ability to pay, there are various ways it can do so. We would note, however, that some of these options would entail one-time or ongoing administrative costs.

- ***Calculate Fines Based on Ability to Pay.*** One option is to calculate fines and fees in ways that reflect an individual's ability to pay. For example, the Legislature could consider a day fine system in which the total amount owed is calculated based on an offender's daily income. Under such a system, a low-income earning offender and a high-income earning offender would pay the same percentage of their income as punishment for their offense. However, the total amount each pays would differ substantially. Alternatively, the total amount owed for each offense can have a statutory maximum and be adjusted downward based on an offender's income, either automatically or through judicial discretion. This is similar to the state's current system in which judges are given discretion to waive certain fines and fees.

- ***Implement Alternative Methods for Addressing Debt.*** Another option is offering alternative methods for individuals to address their debt. For example, the Legislature could require collection programs to adjust their installment payment plans to make payment easier for low-income individuals. Currently, programs vary in how they determine appropriate installment payment amounts. The Legislature could set guidelines for how programs should calculate installment payments, such as by specifying how to calculate discretionary income (such as which household expenses could be deducted) in establishing installment payments or by setting limits on how much of an individual's income may be taken to address fine and fee obligations in a given month. The Legislature could also expand the use of alternative methods to satisfy fines and fees, such as by allowing offenders to completely address their debt through community service (which is currently not allowed).

What Should Be the Consequences for Failing to Pay? The Legislature will want to consider what consequences individuals should face when they fail to pay their fines and fees. Statute currently authorizes the use of certain consequences, including civil sanctions for failures to pay. The Legislature will want to consider whether to authorize additional sanctions and/or continue or modify existing sanctions (such as wage garnishments, tax liens, or holds on drivers' licenses). For example, under current law, collection programs can only direct the Department of Motor Vehicles to suspend the driver's license of an offender who fails to pay *once*. Programs tend to leave these suspensions in place until an individual completes payment, as the program is unable to resuspend the license if the individual stops making payments on the debt in the future. This can significantly increase the amount of time that individuals' licenses are suspended. Alternatively, the Legislature could authorize programs to impose a suspension more than once, in order to allow programs to lift a suspension as soon as a new payment agreement is reached. (This is already permitted in cases where individuals have their licenses suspended for failing to appear in court.) The Legislature could also take action to help prevent offenders from becoming delinquent. For example, the Legislature could authorize programs to offer an incentive (such as a discount) if offenders pay their debt in full within a certain period of time.

Should Fines and Fees Be Adjusted? Once the Legislature sets the appropriate fine level for criminal offenses, the Legislature will want to decide whether and how such fines are adjusted

in the future. Under current law, fines and fees are set in statute and are only changed through the enactment of new statute. Such changes have generally involved increasing existing charges or adding new ones. The Legislature could require that the state regularly adjust fine and fee levels in the future to ensure that they are set at an appropriate level to accomplish its goals for the system. For example, the Legislature could choose to reevaluate levels every five or ten years. Alternatively, the Legislature could require the automatic adjustment of fines and fees, such as based on a statewide economic indicator. This could raise or lower fine levels to conform to movements in the state's economy—including lowering fines when the state enters a recession.

Increase Legislative Control of Criminal Fine and Fee Expenditures

Deposit Most Criminal Fine and Fee Revenue in the General Fund. We recommend that the Legislature require that nearly all fine and fee revenue (including such revenue currently distributed to local government) be deposited into the state General Fund for subsequent appropriation by the Legislature in the annual state budget. (We would note that this action would not impact the Proposition 98 guarantee because fines and fees are not tax revenues.) Depositing all fine and fee revenue in the General Fund would allow the Legislature to ensure that annual funding for state and local programs is based on workload and its priorities, rather than on the amount of revenue generated by the fine and fee system. Moreover, an annual review of programmatic funding levels would facilitate periodic reviews of programs to help ensure that they are operating effectively and efficiently. In addition, any fluctuations in the collection of fine and fee revenue would no longer disproportionately impact programs supported by fines and fees. Instead, fluctuations in revenue would be addressed at a statewide level across other state programs—ensuring that adjustments in funding levels were based on statewide legislative priorities.

Based on our assessment of existing criminal fines and fees, we recommend excluding two types of fines and fees from being deposited to the General Fund—fish and game assessments and victim restitution orders. This is primarily due to certain legal restrictions regarding these particular fines and fees. For example, the State Constitution requires that money collected under any state law related to the protection or propagation of fish and game be used for related activities. Victim restitution orders for damages should also continue to be paid directly to victims as these are charges set by the court to compensate individual victims for losses they incurred.

In addition, we note that the Legislature would need to account for certain legal requirements and ongoing commitments previously made from fine and fee revenue. First, Proposition 69 (2004) established a DNA assessment of $1 for every $10 portion of the base fine for criminal offenses. The Legislature would want to ensure that the programs supported by this assessment continue to receive at least the same level of funding they would have under the current system, in order to meet the requirements of Proposition 69. Second, the state and local governments have committed some of their fine and fee revenue to support long-term, contractual expenditures. For example, the State Trial Court Construction Fund and the local Criminal Justice Facilities Construction Funds commit monies for decades to make debt service payments to repay bonds sold to finance construction. The Legislature would need to ensure that revenue is available to meet such obligations in order to avoid litigation or punitive actions.

Depositing nearly all fine and fee revenue into the General Fund could also increase public confidence in the system. Currently, some members of the public distrust the existing system as they believe that various state and local entities, such as law enforcement and trial courts, directly benefit from each citation that is issued. Our recommendation could minimize this perception as the Legislature would be responsible for allocating all of the revenue based on its General Fund priorities.

Consolidate Most Fines and Fees. We also recommend the Legislature consolidate most fines and fees into a single, statewide charge and eliminate the ability of trial courts and local governments to charge additional fines and fees. (Based on our above recommendation, fish and game assessments, as well as victim restitution orders, would continue to be imposed separately.) Such consolidation would eliminate the need for the existing complex distribution model and make it easier for counties and courts to track such revenue—thereby improving the accuracy and completeness of collection data.

Simplifying the calculation of fines and fees could also generate greater public confidence in the system. Currently, individuals are often confused about how the total amount they must pay can increase so significantly from the initial base fine or why it can vary by county. This often results in individuals viewing the existing fine and fee system as unfair and overly punitive, which can sometimes result in a reluctance to pay. Simplifying the calculation of fines and fees can increase transparency by providing offenders with a clearer idea of their punishment.

Evaluate Existing Programs Supported by Criminal Fine and Fee Revenues. If the Legislature adopted our recommendation to deposit fine and fee revenue to the General Fund, it would need to determine the appropriate level of funding (if any) for the various programs currently supported by fine and fee revenue. In making these funding decisions, the Legislature might first want to consider whether an individual program should be a state responsibility, as well as how it compares to other statewide budgetary priorities.

To assist in its budget deliberations, the Legislature would need to acquire information on how fine and fee revenues are currently being used, such as by requiring state and local programs to submit reports on current expenditures or conducting hearings with various stakeholders. In addition, the Legislature would need to define its expectations on program service levels and determine the funding needed to meet those expectations. For example, the Legislature could direct programs to develop workload or staffing ratios to establish program funding needs. The Legislature could use this information to evaluate the need and cost-effectiveness of each program relative to all other programs currently supported by the General Fund. This would help ensure that programs that the Legislature prioritizes most receive an appropriate amount of funding, rather than whatever amount happens to be generated by fines and fees. However, we recognize that the above process would take time to complete, as most programs currently have limited data on program outcomes and expenditures. Accordingly, the Legislature could choose to gradually implement changes to the level of funding provided to various state and local programs as it receives such information.

Mitigate Impacts on Local Government. As discussed previously, local governments currently receive about 40 percent of criminal fine and fee revenue—about $820 million in 2013-14—for a variety of purposes. Under our recommended approach, such fine and fee revenue would instead be deposited in the state General Fund. As part of any restructuring of fine and fee revenues, we

recommend that the Legislature mitigate the fiscal impact this would have on local governments. For example, one promising mechanism available to the Legislature for mitigating the impact on many counties is through reducing or eliminating the MOEs they are currently required to pay to the state related to trial court operations. As discussed previously, counties currently remit about $660 million annually to the state to meet these obligations. In 2013-14, counties received $657 million in fine and fee revenue—nearly the same amount owed to the state. We note that since the MOEs were first established in 1997-98, the state has taken actions to change MOE obligations for trial court operations—reducing the required payments from nearly $1.2 billion to about $660 million (a decrease of nearly 45 percent). This reduction included eliminating a portion of the MOE obligation entirely for 38 counties.

The Legislature could also consider taking other mitigating actions for counties and cities. For example, given that some fine and fee revenue distributed to local government has been used to meet ongoing obligations (such as facility debt service), the Legislature could gradually implement any changes in funding provided to local governments. This would give local governments time to fully address any ongoing obligations that are currently being paid for with fine and fee revenue. It would also provide local governments time to restructure or eliminate programs currently supported by fine and fee revenue.

IMPLEMENTING CHANGES TO THE FINE AND FEE SYSTEM

As the Legislature considers making changes to the fine and fee system, it may also want to consider making comprehensive changes across the entire system—balancing changes to fine and fee levels, enforcement, collection, and distribution. Depending on the Legislature's goal for the state's fine and fee system, the Legislature may ultimately make changes—such as lowering fine and fee levels—that could result in a decline in revenue to state and local programs. To mitigate such revenue losses, the Legislature could make improvements to the collection process—such as those contained in our November 2014 report—in order to help increase the amount of fine and fee revenue ultimately collected. (Please see the nearby box for a summary of the findings and recommendations made in our November 2014 report on restructuring the court-ordered debt collection process.) This would increase the amount available for distribution, helping to mitigate any potential loss of fine and fee revenue. Additionally, after evaluating programs currently supported by fine and fee revenue, the Legislature could decide that certain programs currently receiving funding are not legislative priorities or make changes to programs so that they operate more cost-effectively. Redirecting the resulting funds freed up by such changes could also help mitigate the impact of a potential loss of fine and fee revenue on state and local programs.

Restructuring the Court-Ordered Debt Collection Process

Our November 2014 report, *Restructuring the Court-Ordered Debt Collection Process*, identified a number of weakness with the current court-ordered debt collection process. First, there is a lack of clear fiscal incentives for collection programs to collect debt in a cost-effective manner or to maximize the total amount of debt they collect. For example, there is almost no direct relationship between a program's collection effort and the revenue that accrues to it. Second, we found that it is difficult to comprehensively evaluate and compare the performance of existing collection programs due to a lack of complete, consistent, and accurate reporting on how programs collect debt. Finally, we found that the current statutory division of responsibilities between counties and courts can undermine the oversight and modification of collection programs—thereby making it difficult to make improvements.

In view of these weaknesses, we recommended a series of improvements to the collection process. First, we recommend that the Legislature shift statutory responsibility for debt collection to the trial courts and pilot a new collections incentive model. This restructured process would: (1) consolidate responsibility with the entity best suited for managing collections, (2) provide courts with greater flexibility in how and when they collect debt, and (3) reward courts for collecting cost-effectively or increasing the total amount collected. Second, we recommend improving data collection and measurements of performance to enable a comprehensive evaluation of court-ordered debt collections. In combination, we believe these recommendations would improve the efficiency of debt collection and increase the total amount of debt revenue collected and distributed to state and local funds. We note that these recommendations related to the collection process complement the recommended changes in this report regarding the overall criminal fine and fee system.

APPENDIX

Summary of Fine and Fee Revenue Deposits in State and Local Funds[a]

(In Millions)

	2009-10	2010-11	2011-12	2012-13	2013-14
State Administered Funds (Non Judicial Branch)					
State Penalty Fund[b]	$161.2	$153.4	$138.4	$130.5	$124.4
General Fund	80.7	87.8	75.0	69.1	73.0
DNA Identification Fund	27.6	40.7	53.9	62.8	67.9
Motor Vehicle Account	36.1	41.3	42.3	48.3	53.5
Restitution Fund	59.8	60.8	56.4	54.9	52.7
EMAT Act Fund	—	0.7	11.7	10.2	10.2
Fish and Game Preservation Fund	0.5	0.6	0.3	0.5	0.5
Other Funds	1.7	1.4	1.2	1.0	1.1
Totals	**$367.7**	**$386.6**	**$379.3**	**$377.4**	**$383.3**
State Administered Funds (Judicial Branch)					
Trial Court Trust Fund	$253.2	$269.3	$310.6	$302.2	$302.1
Immediate and Critical Needs Account	247.3	263.5	241.5	224.4	217.5
State Court Facilities Construction Fund	99.1	91.6	84.3	76.5	74.0
Trial Court Improvement and Modernization Fund	75.5	67.1	61.8	58.3	48.2
Court Facilities Trust Fund	2.1	1.9	1.7	5.7	2.3
Totals	**$677.2**	**$720.4**	**$700.1**	**$667.2**	**$644.1**
Local Government Administered Funds (County)					
General Fund	$466.9	$460.3	$431.7	$415.5	$415.9
Maddy EMS Fund	93.3	92.2	85.0	81.0	86.1
Criminal Justice Facilities Fund	84.4	79.2	71.7	65.3	52.1
Courthouse Construction Fund	51.4	47.3	43.1	40.5	39.0
DNA Identification Fund	25.3	29.4	28.9	28.0	27.5
Alcohol and Drug Related Special Funds (various)	12.2	12.6	12.6	12.2	11.3
Automated Fingerprint Identification Fund and Digital Image Photographic Suspect Identification Fund	9.7	9.2	9.3	8.3	8.1
Laboratory Special Funds (various)	7.7	7.7	7.5	7.2	6.8
Other Funds	13.4	9.6	10.2	10.0	10.0
Totals	**$764.4**	**$747.4**	**$700.0**	**$668.0**	**$656.8**
Local Government Administered Funds (City)					
General Fund	$214.3	$196.7	$178.1	$170.7	$165.4
Totals	**$214.3**	**$196.7**	**$178.1**	**$170.7**	**$165.4**
Collection Programs					
Operating Costs	$104.8	$114.9	$120.2	$114.5	$113.6
Totals	**$104.8**	**$114.9**	**$120.2**	**$114.5**	**$113.6**
Total Amount Distributed	**$2,128.4**	**$2,166.0**	**$2,077.6**	**$1,997.8**	**$1,963.2**

[a] Due to certain data limitations, these numbers reflect our best estimate of the amount of fine and fee revenue distributed to state and local funds. Actual amounts could be higher or lower.

[b] State Penalty Fund revenues are allocated to nine other state funds (such as the Peace Officers' Training Fund and the Restitution Fund) with each receiving a certain percentage specified in state law.

EMS = Emergency Medical Services and EMAT = Emergency Medical Air Transportation.

Commission on the Future of California's Court System

As of August 29, 2016

Concept: Fines and Fees: Judicial Discretion and Court Adjudication – Explore: 1) increasing judicial discretion to strike, modify, or waive criminal fees and civil assessments based on a defendant's ability to pay; 2) establishing an alternative means to pay fines, fees, and assessments, accessible 24 hours a day; 3) allowing conversion of fines, fees, and civil assessments to jail or community service; and 4) creating an alternative method to facilitate the conversion of fines, fees, and civil assessments to jail or community service.

Concept: Decriminalize Traffic Infractions and Move to an Alternate Forum – Decriminalize traffic infractions and move adjudication of these violations to a non-criminal judicial forum. Click here for additional information.

Concept: Restructuring Criminal Fines and Fees – Explore: 1) Increasing base fines for infractions and misdemeanors while eliminating surcharges, penalties, and assessments; 2) depositing fine revenue into a single fund for distribution to the courts and state and local programs; and 3) placing overall responsibility for collecting delinquent court-ordered debt in the state executive branch and not the courts and counties.

Concept: Fines and Fees: Judicial Discretion and Court Adjudication

Explore: 1) increasing judicial discretion to strike, modify, or waive criminal fees and civil assessments based on a defendant's ability to pay; 2) establishing an alternative means to pay fines, fees, and assessments, accessible 24 hours a day; 3) allowing conversion of fines, fees, and civil assessments to jail or community service; and 4) creating an alternative method to facilitate the conversion of fines, fees, and civil assessments to jail or community service.

Why is this concept being considered by the Futures Commission?

Despite significant collection efforts by the courts and counties, the amount of outstanding court-ordered debt in fiscal year 2014-2015 increased to $9.3 billion from the $9.1 billion reported in fiscal year 2013-2014. With the exception of one-time-only allowances, such as the current Statewide Traffic Tickets/Infraction Amnesty Program (signed into law by the Governor on June 24, 2015, and effective from October 1, 2015 through March 31, 2017), there are no standards or guidelines that permit courts or counties to accept less than full payment to satisfy court-ordered debt.

The Criminal/Traffic Working Group (working group) is exploring concepts that acknowledge and balance the need for appropriate fines and fees with the reality of what a defendant can pay. Defendants' inability to satisfy court-ordered debt is reflected in the large amount of outstanding debt and the courts' inability to collect the entire amount of these fines, fees, and assessments. The working group believes that a defendant's ability to pay must be considered when assessing any fine, fee, or assessment, and that significant action must be undertaken to increase payment and collection of future court-ordered debt. The working group also considers it important that the means by which defendants may satisfy their court-ordered debt be expanded to avoid multiple civil assessments that inundate defendants with debt owed to the courts.

Limited judicial discretion to strike, modify, or waive criminal fees and civil assessments

One factor contributing to uncollected court-ordered debt is that defendants are charged a sizeable amount for violations, when considering the aggregate amount of the base penalty and fees. Fines and fees for infractions and misdemeanors in California are among the highest in the country. For example, the base penalty for a red signal traffic violation is $100, but after fees have been added, the total assessment is $490. If a defendant fails to pay the original amount due in a timely manner or fails to appear for the court date, a civil assessment of $300 may be added to the already sizeable amount due. In the example of the red signal violation, the total amount owed may quickly grow to $790.

Currently, judicial officers may strike, modify or waive criminal fines but their discretion to do the same to certain fees and assessments is limited. In the red light violation example, a judicial officer may modify the base fine owed by the defendant but may not be able to reduce all of the remaining $390

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owed. For a defendant earning the minimum wage of $10 an hour, this amount would require 39 hours of work, almost a full work week, not taking into consideration any withholding of taxes on wages and any other employee contributions to benefits.

Limited ability to access courthouse to pay court-ordered debt

Years of significant budget cuts during and following the 2008-2009 recession negatively affected the California court system. As a result, over 200 courtrooms have been closed and staff has been reduced. Court users have encountered fewer open courthouses, many of which have limited counter hours resulting in longer wait times. Defendants must go to a courthouse to make payments at the clerk's counter during hours that are considered traditional working hours, often resulting in loss of pay that is needed to contribute to the court payment. Some courts do offer online payment methods for traffic infractions, but do not always offer the ability to pay other fines and fees online.

Limited ability to convert all fines, fees, and assessments into community service or jail time

The inability to pay court-imposed fines can have adverse collateral consequences for those violators who try their best but cannot fulfill their financial responsibility. In some cases, the ability to modify the sentence to community service or jail time may be a more feasible and welcome alternative to both the defendant and the courts.

A defendant convicted of an infraction may be sentenced to perform community service instead of paying the imposed fine on a showing that payment of the fine would impose a hardship on the defendant or his or her family. But community service is not allowed in place of a civil assessment. In addition, some courts do not allow fines to be converted to community service if the defendant opts to attend traffic school or is employed full-time.

There is no statutorily set rate to convert fines and fees to community service hours. Many individuals whose offense carries a large fine and fee, and who are allowed to convert fines and fees into community service, find it difficult to complete the required hours. The conversion rate generally used by judicial officers is one hour of community service work for every $10 of fees imposed. The timeline to complete community service can often be short and may require individuals to work up to 40 hours a week, which is problematic for those with employment and family obligations.

To convert fines and fees into jail time for felony and misdemeanor convictions, an individual receives credit on the fine, at the rate specified in the judgment, for each day that he or she serves in jail. For felony and misdemeanor jail time for non-payment, the rate established is not less than $125 per day of jail time.

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Conversion requests must be made in person

As stated above, the California court system has faced budget cuts due to the recession, resulting in statewide courtroom closures and staff reductions. Court users have encountered fewer open courthouses, limited available judicial officers, and longer wait times for a court date. If a defendant is unable to pay the fines and fees but would like to perform community service in lieu of payment, the defendant must make this request before a judicial officer. This process places an additional burden not only on the defendant, but also on the court's resources to make a finding that could appropriately be made by other means.

Goals and Strategies

Increase judicial discretion to strike, modify, or waive criminal fees and assessments and limit the number of civil assessments

The working group is interested in increasing judicial discretion to strike, modify, or waive fees and assessments based on a defendant's ability to pay. In addition, the working group is interested in limiting the court's ability to impose civil assessments to one time unless the court finds that a second failure to pay or failure to appear is willful.

Establish alternative methods of payment and make them accessible 24 hours a day

The working group is interested in expanding the means by which fines and fees can be paid.
At least one central location in each county that accepts all forms of payment should be accessible beyond traditional court hours for defendants to pay without having to take time off work and potentially lose wages or employment.

The working group is also interested in exploring courts accepting payments online. The online functionality might include payment via a mobile device application.

These alternative payment methods and means should be made available for fines and fees in all cases, including infractions, misdemeanors, and felonies, thus making it easier for defendants to pay fines and fees and comply with any court-ordered debt payment.

Allow conversion to jail time or community service for all fines and fees, including civil assessments, and increase the conversion rate

The working group is interested in expanding the types of fines and fees that may be converted to jail time or community service hours and increasing the rate at which conversion occurs. The working group is exploring making all fines and fees eligible for conversion to jail time and community service, except those associated with victim restitution. Under this concept, courts would use a conversion rate for community service of no less than the current minimum wage, for example, $10 credit toward fines and

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fees for each hour of community service. For jail time served, the conversion rate should be similar. For example, for every day served by the defendant a credit may be given for no less than $240 (24 hours at $10 an hour equals $240).

Create alternative methods to facilitate conversion of fines and fees to jail time or community service

The working group is exploring changes that would automatically entitle a defendant to a one-time right to convert fines or fees into jail time or community service, and vice versa, without having to appear before a judicial officer. The working group believes this would likely require statutory authorization and that a new Judicial Council form might be needed to facilitate such requests.

Further, the working group believes conversion requests should be accepted both at the clerk's counter and online. The working group is exploring whether a court clerk, rather than a bench officer, can be authorized to determine if a defendant meets the criteria for conversion and adhere to an algorithm for conversion that would not involve the exercise of judicial discretion.

If the first time conversion request is denied, the defendant would have the right to appeal the decision to a judicial officer. Any later request to convert would require the defendant to appear in person before a judicial officer. The defendant would have to show good cause for a second conversion.

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Concept: Decriminalize Traffic Infractions and Move to an Alternate Forum

Decriminalize traffic infractions and move adjudication of these violations to a non-criminal judicial forum.

Why is this concept being considered by the Futures Commission?

Currently, minor traffic violations are adjudicated as infractions in the California criminal courts. These cases, although relatively minor in nature, make up a substantial part of the court's workload. In fiscal year 2013-2014, just over six million criminal cases were filed in the state of California. Of these, seventy-five percent were traffic infractions.

The adjudication of minor traffic cases under formal rules of criminal procedure places a tremendous burden on the criminal justice system and can impair access to justice. For many Californians, dealing with a traffic ticket may be their primary—or only–contact with the courts, and most will resolve his or her case without the assistance of an attorney. Criminal law procedures, developed to apply to more complicated and serious misdemeanor and felony prosecutions, may at times seem restrictive and confusing to the lay court user. These procedures, which serve as important safeguards in these other contexts, when applied to an unrepresented party in a minor traffic case may have the unwanted effects of impeding access to justice and impairing efficient court operations. A civil traffic adjudication model provides the flexibility to create a fair and much more user-friendly process.

In exploring how traffic infractions may be adjudicated differently, the Criminal/Traffic Working Group (working group) is guided by the goal of establishing a traffic adjudication process that preserves due process for motorists, while offering a more intuitive and efficient adjudication forum. Courts in other jurisdictions have achieved these goals by adopting adjudication models based on civil law for traffic infractions. The working group carefully examined and evaluated the procedures used in these jurisdictions. Among other things, the working group considered the following:

1. The appropriate role of judicial officers, law enforcement, prosecutorial agencies, and court administration in a civil adjudication model.

2. Rules of procedure and evidence for civil infraction trials, including the appropriate burden of proof, more intuitive rules of evidence, and alternatives to conventional court trials, such as trials by written declaration.

3. Best practices to address failures to appear and to avoid many of the penalties imposed under criminal law when a motorist fails to appear.

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Goals and Strategies

Adjudication of traffic infractions should be processed in a civil forum. Appropriate legislative language and procedures should be created to facilitate these changes and to follow the guidelines below.

Law enforcement authority to stop a motorist

The adoption of a civil traffic adjudication model should not impact the authority of law enforcement officers to stop, temporarily detain, and cite a motorist suspected of a violation. The rules governing when and under what circumstances a law enforcement officer may stop and temporarily detain a motorist for a criminal traffic infraction are well established. Whether these rules apply in a civil model has been considered. California case law and case law from jurisdictions that have implemented a civil model suggest that, with appropriate enabling legislation, California law enforcement officers will have comparable authority under a civil model to stop and temporarily detain a motorist for a suspected civil violation as exists under current criminal law.

Motorist signature on citation and identification

Current law states that when a motorist is cited for a traffic infraction violation, he or she must either sign a written promise to appear in court or be taken before a magistrate. The vast majority of motorists cited are released upon a promise to appear; however, in rare instances in which a motorist refuses to sign a promise to appear, current law requires the citing officer to take the motorist before a magistrate.

Under a civil model, the current practice of requiring a motorist to sign a promise to appear in court or be taken before a magistrate is not necessary or appropriate. Instead, service of lawful process by the citing officer is sufficient to attain jurisdiction over the motorist. A civil infraction proceeding would be initiated by the issuance, service, and filing of the notice of civil infraction, which would act as both the summons and the charging document.

Under a civil model, as under current law, the state bears the burden to prove the identity of a violator. Law enforcement should retain the tools necessary to collect evidence of identity. Current law requires a motorist suspected of a violation to provide satisfactory evidence of identity (generally a driver's license) upon request and allows the officer to obtain a thumbprint when sufficient proof of identification is not produced. These provisions of existing law should be retained as part of a civil traffic adjudication system.

Initial appearance by the motorist

Currently, a motorist accused of a criminal traffic infraction will, in some cases, appear at an in-person arraignment to plead and in some instances to have a trial date set. A motorist not wishing to contest a citation may deposit and forfeit cash bail with the clerk of the court and make no appearance. This

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practice is based on the premise that the money deposited with the court is considered bail, although in actuality it is not bail. A civil model of traffic infraction adjudication offers greater transparency. Procedures and supporting forms may be developed which will allow a motorist accused of a violation to admit or deny an allegation without an in-court appearance and without resorting to concepts of bail or forfeiture. These practices will allow courts increased flexibility to develop online resources to enable court users to enter pleas, pay fines, and set matters for hearing without physically coming to court.

Failure to appear and default judgment

Under existing law, a motorist who willfully violates a written promise to appear is guilty of a misdemeanor and, subject to restrictions, an arrest warrant may be issued for this offense. Alternatively, the motorist's driver's license may be suspended and/or a civil assessment of up to $300 may be imposed. Under a civil model, a defaulting party would be deemed to have submitted the alleged violation to the court for adjudication without opposition. Therefore, a failure to appear is not treated as a violation or a basis for additional punishment; instead, a party's failure to appear results in a default judgment and a determination of the charge without the imposition of driver's license suspension, a civil assessment, or any other punishments or penalties beyond that associated with the underlying infraction.

Under the general rules of civil procedure, a party who defaults with good cause may seek relief within a specified time. A civil traffic model should provide a similar process, allowing a motorist to move to set aside a default judgment within a reasonable time. This new procedure should be intuitive, user-friendly, and simple. The working group is examining current small claims procedures that address similar objectives. Under small claims procedures, a moving party may file a written motion to vacate a judgment entered in the moving party's absence within thirty days after the clerk has mailed notice of the entry of judgment. However, if service was improper, a motorist may move to vacate a judgment within 180 days after he or she discovers or should have discovered the entry of judgment. Relief may be granted upon a showing of good cause. Standardized forms should be created for this purpose.

Burden of proof at trial

An important consideration in any adjudication process is the burden of proof. As used here, "burden of proof" refers to the burden of persuasion (the burden of proof is the degree of belief by which the evidence must establish the existence of a fact). The three most common burdens of proof are: preponderance of the evidence, clear and convincing evidence, and proof beyond a reasonable doubt.

California case law suggests that no one standard would be required or excluded from consideration in a civil model. Appellate courts have not mandated, on constitutional due process grounds, a burden of proof more demanding than proof by a preponderance of the evidence in similar contexts. The working group examined each level of burden of proof for an appropriate recommendation. Although the standard of proof by a preponderance of the evidence is applied in most civil matters, the working group

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recognizes that the higher standard of clear and convincing evidence may be more in line with public expectations.

Evidence at trial

In considering the changes required to move to a civil model from the current criminal model, the working group discussed what level of evidentiary rules would be appropriate and examined case types of similar nature to the proposed model, including relevant rules in other jurisdictions that currently have a civil model. The working group also considered the rules of evidence applied in small claims court, and, although those rules met the objective of being user-friendly, the working group concluded that a more structured set of rules was required given the nature of the proceedings contemplated.

The working group is considering the language found in Government Code section 11513 (oral arguments in administrative adjudication formal hearings) as a basis for the proposed evidentiary rules in a civil model. This code section offers rules of evidence that are more easily understood by non-attorney court users. The working group, however, is considering two modifications to these rules to better tailor them to the unique nature of a civil traffic court trial.

First, the working group believes that a more flexible and intuitive rule of hearsay evidence is appropriate. Government Code section 11513 puts the burden on the parties to assert objections based on general rules of hearsay evidence. However, in most traffic trials, there is no prosecuting attorney and law enforcement officers do not have standing to raise evidentiary objections. Moreover, non-attorney court users are likely not familiar with the highly technical rules of hearsay evidence and, therefore, cannot reasonably be expected to assert proper, timely hearsay objections. The working group believes that a hearsay rule which vests the bench officer with greater discretion to admit or exclude hearsay evidence based on considerations of trustworthiness is appropriate. However, such a new rule should not allow an element of a charged offense to be established solely on the basis of hearsay evidence which would not otherwise be admissible in a civil action over objection. Thus, the rule contemplated would not substantially lessen the state's burden of proof.

In addition, Government Code section 11513 subsection (b) allows a respondent to be called as an adverse witness by the opposing party. The working group recommends language be adopted that grants a motorist the statutory right to refuse to be compelled to testify.

Role of judge and law enforcement in adjudication

Existing law defines the role of both judicial officers and law enforcement officers in criminal traffic infraction proceedings. For example, the law allows law enforcement officers to determine the charges to be alleged through the filing of a notice to appear and to request charges be dismissed. Existing case law establishes the role of law enforcement officers and judicial officers in contested traffic infraction

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court trials. It is not intended that these practices and procedures would be affected by the adoption of a civil traffic adjudication model.

Trial by Written Declaration

Under current law, a motorist may request a trial by written declaration in lieu of an in-person court trial. If the motorist is found guilty, the motorist may request a trial de novo and receive a new trial before a bench officer. In a civil model, the right to the trial by written declaration should continue as it offers a valuable alternative to coming to court to obtain a trial. However, the working group recommends that, under a civil model, the right to a trial de novo not be retained. Trial de novo is, in a civil context, an unnecessary procedural safeguard because trial by declaration is entirely at the election of the motorist. In other words, in a civil model, the motorist should only be able to have his or her case tried once by either means as he or she chooses. A motorist will retain the right to appeal a judgment from either form of trial.

Sentencing

Under existing criminal procedures, limitations exist to prevent multiple punishments for the same criminal conduct. The working group will consider whether it is appropriate to adopt a comparable restriction under a civil traffic adjudication system in order to assure fairness in determining fine amounts where multiple violations are proved based on the same wrongful act or omission.

Alternative resolution procedures

Many jurisdictions with a civil model have successfully implemented some process to facilitate early resolution. These processes are varied among jurisdictions and influenced by, among other considerations, individual court resources and the involvement of local law enforcement. For example, some jurisdictions encourage pretrial disposition by offering hearings where motorists may discuss the disposition of a violation with a law enforcement officer from the citing agency, while other jurisdictions allow hearings with a bench officer where liability is admitted and the only issue is the amount of the fine to be imposed.

California courts may take advantage of the flexibility of a new civil traffic model to develop early resolution programs tailored to the unique circumstances of that court and community. Rules adopted to implement a civil model should allow for innovation in developing such programs.

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Concept : Restructuring Criminal Fines and Fees

Explore: 1) Increasing base fines for infractions and misdemeanors while eliminating surcharges, penalties, and assessments; 2) depositing fine revenue into a single fund for distribution to the courts and state and local programs; and 3) placing overall responsibility for collecting delinquent court-ordered debt in the state executive branch and not the courts and counties.

Why is this concept being considered by the Futures Commission?

Fines/Fees are no longer commensurate with underlying offense

Fines/fees for infractions and misdemeanors in California, especially low-grade ones, are among the highest in the country. For example, a moving violation infraction has a base penalty of $35, but because of enhancements and assessments added by the legislature over the years, the total fine for this violation is $238. A more serious violation such as driving more than 25 MPH over the speed limit can result in a total fine of $490, and if not timely paid, $790 after all enhancements and assessments have been added. Because traffic offenders are also subject to driver license suspensions for failure to timely pay a traffic fine (or for failure to appear in court to address the citation), a job may be lost if an offender is no longer able to drive, or if a work location does not have practical, accessible public transportation options. As a result, the steep cost of infractions and misdemeanors is often out of reach for California's most economically disadvantaged citizens and is disproportionate to the offense.

Current fines/fees structure presents the appearance of impropriety and is a declining source of revenue

The vast majority of states do not provide significant support for judicial branch operations with revenue derived from court-imposed fines or fees; California appears to be one of ten states that do. For Fiscal Year 2015-16, $1.7 billion or approximately 1.4 percent of California's General Fund provides 46 percent of the judiciary's $3.7 billion budget. This 1.4 percent share of the general fund appears to remain among the lowest of court systems supported by state general funds. The remaining necessary financial support for the judicial branch is largely revenue-derived from fines and fees imposed in criminal cases and infractions and from civil filing fees.

Despite the judicial branch's reliance on criminal fines and fees, the state Legislative Analyst's Office has recently observed that the revenue distributed from this system has steadily declined since 2010-2011.

In recent years, many critics of California's fines and fees system have argued that fines and fees are geared not toward addressing public safety, but rather toward raising revenue. Considerations of public policy support some separation between court and agency funding and the assessment and collection of fines. Unless there is such separation, the public has reason to question the independence and impartiality of courts with a direct economic stake in fines and fees. Furthermore, serious questions of due process may arise when an adjudicative entity has a pecuniary interest in the outcome of cases.

Current fines/fees structure is an inappropriate and inflexible mechanism for funding state and local programs

Of the approximately $1.7 billion annually generated by fines and fees in Fiscal Year 2013-14, approximately $940 million provided funding to more than 100 state and local programs. This aspect of the existing fines and fees system undermines the authority of the Governor and legislature to assess and provide funding to worthwhile programs through the budgetary process. Funding for state and local

programs should be assessed annually against existing revenue and priorities. Gubernatorial and legislative discretion is limited when traffic violator revenue is automatically applied to specific programs and restricted in use pursuant to current statutory formulae.

Current delinquent collections structure lacks consistent standards and presents the appearance of impropriety

Despite significant efforts by the courts and counties to collect delinquent court-ordered debt, including an amnesty program in 2012, in Fiscal Year 2013-2014 the amount of outstanding court debt grew to $9.1 billion from $8.3 billion the previous year.

With the exception of the 2015 amnesty program, there are no current standards or guidelines that permit collecting courts or counties to accept less than payment in full in satisfaction of court-ordered debt. Yet, sound considerations of public policy may support doing so in certain cases. As noted above, the inability to pay court-imposed fines can have collateral adverse consequences for those violators who try their best but cannot fulfill their financial responsibility. In some cases, compromise of the amount due may be the most desirable outcome. A single state agency charged with statewide collection responsibilities can establish policies to inform these kinds of decisions to compromise in a way that is free from any taint that its policy positions may be affected by a direct interest in the collection of revenue. Unifying collection efforts under a single executive branch agency will also foster the equitable treatment of violators who are unable to pay fines in full or on time for valid reasons because a policy approach to these cases will be made on the basis of statewide experience, not court by court or county by county.

Goals and Strategies

Increasing base fines and eliminating all add-ons

Given the current levels, after the elimination of penalties and assessments, it is not unreasonable to consider raising base fines by multiples of four or six. This would mean that an offense currently with a base fine of $20 would be recalibrated to a total fine of $80 or $120, and an offense with a base fine of $70 would be recalibrated to a total fine of $280 or $420. The exact amounts of reconfigured base fines may vary based upon what the legislature considers to be roughly proportionate to the offenses in light of present day economic realities.

Once new base fines are agreed upon, the amount available for distribution to programs will be affected by the amount considered by the legislature to be appropriate and fair for different classes of violations. Obviously, if restructuring base fines does not cause a reduction in total revenue, funds could be appropriated to the courts and state and local programs much the same as under the current system. But fines will be set on the basis of fairness that takes into account the gravity of the offense, and to the extent that base fine revenue is not calculated to yield current levels of support, programs will be funded upon need and desirability rather than a rigid and preconceived statutory formula. Such a distribution will reflect gubernatorial and legislative priority, and will allow policymakers to consider the needs of the many worthwhile programs currently funded automatically from court-generated revenues.

Depositing fine revenue in a special deposit fund

Under this proposal, the revenue collected from newly structured base fines will be payable to the state and placed in a special deposit fund to be applied for the benefit of the courts and state and local

programs as determined by the legislature. Revenue from court-ordered fines and fees, which are on a downward trend, are taken into account when the Governor considers the level of general fund support required by the courts in the state budget. To the extent this proposal centralizes receipt of those monies in an account in the state treasury, this proposal will ensure that forecasting for the judicial branch accurately accounts for this declining stream of projected revenue and that fines are used to supplement not supplant the state's general fund obligation to fund the judiciary.

Placing payment and collection of all court-ordered criminal fines at the state level will also afford policymakers the opportunity to consider whether revenue supporting the courts from such fines should be replaced with some source that is more stable than the general fund.

Shifting collection responsibility out of the courts and counties

Once the penalties for infractions are restructured into a schedule of new base fines and all criminal fines are payable to the state for deposit in a special deposit fund, sound public policy supports transferring the overall responsibility for collection of delinquent fines from the courts and counties to a single state executive branch agency. The amounts due will no longer be received and distributed by the courts or counties, but will be obligations owed to the state. If in setting the penalty for an infraction, ability to pay may be taken into account or alternative sanctions may be imposed, the courts will be charged with exercising the discretion to do so. Thus, as the arbiters of the measure and possible alternatives to fines, sound policy considerations support relieving the courts of the primary responsibility for enforcement and collection. To continue relying on the courts as arbiters and collection agencies may cast doubt on judicial impartiality and undermine public confidence in the judiciary. Similarly, to continue relying on the counties for law enforcement and collection agency services may cast doubt on the impartiality of local law enforcement and undermine public confidence in county governments. At present, the California Franchise Tax Board has two programs that provide collection services to courts and counties, and could possibly provide the appropriate oversight of collection programs statewide.