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Who Pays For Penalty Assessment Programs in California?

By Marcus Nieto

For the Assembly Public Safety Committee

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R E S E A R C H B U R E A U

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EXECUTIVE SUMMARY

In California, criminal offenders may have fines included in their penalties, and these may be enhanced by either special assessments or penalty assessments. These penalty assessments are based on the concept of an “abusers fee,” in which those who break certain laws help finance programs related to decreasing those violations. For example, drug and alcohol offenses and domestic violence offenses are enhanced by special assessments on fines that directly fund county programs designed to prevent the violations. All other criminal offenses and traffic violations are subject to penalty assessments that are used to fund specific state programs.

In 1986, the Legislature enacted Senate Concurrent Resolution 53, requiring the Legislative Analyst Office (LAO) to study the statutory penalty assessments that are levied by the courts on offenders and the state programs that the funds support. The completed 1988 study found a complicated system of collection and distribution of penalty funds.¹ The LAO was unable to fully identify the source offenses that generated penalty revenues because of limitations in most county collection systems.

A principal recommendation of the LAO study was that the Legislature should eliminate the statutory allocation requirements of *Penal Code Section 1464* that direct specific penalty assessment to guarantee funding levels for specific state programs, and instead transfer the proceeds to the General Fund. However all but one of the penalty recipient programs, the Drivers Training Penalty Assessment Fund, have continued to receive statutory-driven formula funding from the State Penalty Assessment Fund.

In September 2005, the Assembly Public Safety Committee asked the California Research Bureau (CRB) to revisit this issue by surveying county courts. The purpose of the survey is to help the Legislature better understand the problems county courts encounter when assessing, collecting, and tracking the numerous penalty assessments and enhancements imposed by law.

Our survey found that very little has changed since the LAO study. California now has dedicated funding streams for over 269 separate court fines, fees, forfeitures, surcharges and penalty assessments that may be levied on offenders and violators. These fines, fees, forfeitures (bail defaults or judgments and damages), surcharges, and penalties appear in statutes in 16 different government codes and are in addition to the many fees, fines, and special penalties that local governments may impose on most offenses.²

As more surcharges and penalties have been imposed, the process has become even more complicated. County courts must now maintain two separate state accounts, and a state Judicial Council account, and one local penalty account from which monthly deposits are made into ten different state and five different county government sub-funds. This does not include the special assessment penalty accounts imposed on drug and alcohol and domestic violence violators.

Court clerks and, in turn, county auditors are responsible for maintaining detailed records

of payment from individual offenders and transmitting payments to the state. Our survey found that county courts and collection agencies use a variety of methods to collect unpaid debt from violators who fail to comply with payment schedules. This has led to uneven collection practices from county-to-county. As a result, offenders are being treated differently in how their debt is collected in different counties.

The majority of counties that responded to the CRB survey did not provide data or were unable to answer questions about specific offenses that generate penalty revenues because their case management systems (CMS) are not capable of doing this type of analysis. The Administrative Office of the Courts is developing a reporting system that will improve the ability of county courts to collect this type of data.

One-fourth of the counties responding to the CRB survey, including large counties such as Los Angeles, indicate that traffic offenses and/or violations generate the majority of all penalty assessment revenues for their counties. Data collected by the Administrative Office of the Courts corroborates this finding. Based on these findings, we can reasonably conclude that 86 percent of penalty assessment revenue is generated by traffic-related offenses. This is substantially higher than any previous estimate. Using this 86 percent figure, we estimate that roughly \$135.8 million of the \$158 million projected by the Department of Finance to be deposited into the State Penalty Fund account this Fiscal Year is generated by *Vehicle Code* violations.

Penalty assessments that are added by statute to the fines levied for criminal offenses produce surprisingly little revenue, about 14 percent (assuming criminal offenses are the remainder). There are additional costs associated with the imposition of these fines, as some criminal offenders opt for jail time in lieu of paying the fine, thereby increasing correctional costs. Our survey found that in two counties able to provide this data, about ten percent of the criminal offenders opted to go to jail rather than pay penalty assessments. This resulted in added costs associated with jail time.

The State Judicial Council is currently working with county courts to improve their offender debt collection procedures. According to survey comments received from county court clerks and county collection agencies, simplifying the distribution process by eliminating dedicated funds would also improve the collection process, because there would be fewer accounts to maintain and distribute.

These and a number of other options are discussed at the conclusion of this paper.

HISTORICAL USE OF PENALTIES AND SURCHARGES

In 1986, the Conference of State Court Administrators (COSCA) adopted nationally recommended state standards for court costs, surcharges, and fees. One of the major recommendations was to discourage the use of surcharges to fund non-court related programs and services. Many states, including California, were using surcharges and fees as a way to fund non-court related programs. In adopting its resolution, the COSCA stated:

The practice of earmarking funds for special purpose should be eliminated. Some surcharges are presently used for purposes related to the judiciary. Others are used for purposes that have no relationship to the operation of the judicial system. Neither of these approaches is appropriate.³

However since 1986, a number of states have created and expanded mechanisms to fund court technology and criminal information-sharing improvements, and programs that support victims, primarily by increasing offender fees and penalties.⁴ According to the National Conference of State Legislatures, at least 30 states impose an additional surcharge, fee, fine, or penalty on criminal cases or traffic violations (See Table 1). Some states impose a court-related fine or penalty fee to fund criminal technology programs.⁵ In California, the Legislature may impose fines for different offenses, and impose penalty assessments on these fines that exceed the maximum amount authorized by law. The courts have upheld the right of the Legislature to impose penalty assessments on offenders or violators in order to fund the Peace Officers' Training Fund.⁶

State	What is Imposed	Amount	Fund Recipient
Arizona	Surcharge on felony convictions	40 percent of fine	Criminal Justice Fund
Arkansas	Additional felony & misdemeanor fees DUI conviction	\$3/ misdemeanor conviction \$250/conviction (DUI)	Police Retirement Fund & Alcohol Anonymous Programs
Colorado	Fine on felony conviction	37 percent of fine	Victim/Witness Program
Connecticut	Motor vehicle fine	90 percent of fine	General Fund
Delaware	Criminal fees Drug fines	18 percent of criminal fee 15 percent of drug fine	Victim Compensation Drug Rehabilitation
Washington D.C.	Felony, misdemeanor & traffic fees	\$20-\$500/fine & \$10/traffic-related fine	Crime Victim Compensation
Georgia	All criminal convictions County-court convictions	\$1.50/fine (criminal) 10 percent of fine	Sheriff Retirement Jail Construction
Hawaii	DUI Case	\$5/case	Drivers Ed Fund
Idaho	Felony, misdemeanor, & infractions	\$4/judgment	Peace Officers Training Fund
Illinois	Felony, misdemeanor, or traffic defendant	\$1-\$3 per defendant	Defray Court Record Keeping Cost
Iowa	Criminal fines	20%/conviction	General Fund
Kentucky	Criminal court fees	\$10/case	Crime Victim Fund

