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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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C A L I F O R N I A R E S E A R C H B U R E A U

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Table of Contents

EXECUTIVE SUMMARY 1

HISTORICAL USE OF PENALTIES AND SURCHARGES 3

STATUTORY BASIS FOR STATE AND COUNTY PENALTY ASSESSMENTS .. 9

- **STATE PENALTIES, SURCHARGES, AND FEES** 9
- **COUNTY PENALTIES ASSESSMENTS** 11

OFFENSES THAT GENERATE PENALTY ASSESSMENTS AND THE PROGRAMS THEY FUND 15

- **COUNTY AND COURT COLLECTION SYSTEM LIMITATIONS** 16

FINDINGS OF THE CALIFORNIA RESEARCH BUREAU PENALTY ASSESSMENT SURVEY 19

- **COUNTY COLLECTIONS** 19
- **WHAT PENALTY SOURCES CAN COUNTIES IDENTIFY?** 22
  - *Collecting Penalty Assessment Debts* 25

LEGISLATIVE AND ADMINISTRATIVE OPTIONS 27

- **IMPROVE COLLECTION OF COURT-ORDERED DEBT** 27
- **CONSOLIDATION OF FINES, FEES, AND PENALTIES** 28
  - *Simplify and Consolidate State Court Fines, Fees, Penalties and Assessments Imposed on Criminal Offenders and Traffic Violators.* 28
  - *Simplify Statutory Requirements for Distribution of Funds.* 29
- **DRIVERS TRAINING PENALTY ASSESSMENT FUND** 29
  - *Separation of Criminal Offenses From Traffic Offenses* 30

APPENDIX A 31

- **STATE PENALTY FUND PROGRAM RECIPIENTS** 31
  - *Restitution Fund* 32
  - *Victim Witness Assistance Fund* 32
  - *Peace Officers' Training Fund* 32
  - *Correction Training Fund* 33
  - *Local Public Prosecutors and Public Defenders Training Fund* 33
  - *Traumatic Brain Injury Assessment Fund* 34
  - *Drivers Training Penalty Assessment Fund* 34
  - *The Fish and Game Preservation Fund* 34

APPENDIX B 35

- **COUNTY SURVEY OF SOURCE OFFENSES FOR PENALTY ASSESSMENT FUNDS** 35

ENDNOTES..... 39

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 collaborates 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]

Table 1
Surcharges, Fees, and Penalties Imposed In Criminal Cases by State Courts to Support Criminal Justice and Victim-Related Programs

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

Table 1 (cont)			
State	**What is Imposed**	**Amount**	**Fund Recipient**
Louisiana	Felony & misdemeanor fees	$10-$17/fee	Indigent Defense Fund
Maine	Additional fees on all fines levied	10%/fine $30/conviction (DUI)	General Fund/Transportation Fund
Maryland	Additional fees on all crimes	$15/conviction	Criminal Injuries Compensation Board
Michigan	Felony, serious misdemeanor fees, & traffic assessments	$60/felony, $40/serious misdemeanor, & $60/traffic-related	Crime Victim Rights Fund
Minnesota	Criminal felony convictions & traffic fines	$15-$40/conviction 10% of traffic fine	Library Fund/Police Training Fund
Missouri	Felony & misdemeanor costs	$10/case	Crime Victim Fund
Montana	Felony & misdemeanor surcharge	$20 or 10 percent/fine $10/fine (misdemeanor)	County District Attorney Fund
Nebraska	Felony & misdemeanor surcharge	$2/case & $1/case	Law Enforcement Fund/Judge Retirement Fund
Nevada	Felony conviction & court citation	$20/fine $1-$10/citation	Victims of Crime Fund/Court Administration
New Hampshire	Fines on all offenses	3%-15%/fine	Peace Officers Training Fund & Victim Fund
New York	Felony, misdemeanor, & other violations surcharges	$150/felony, $85/ misdemeanor, $40/other	Criminal Justice Services
Ohio	Criminal conviction surcharge	$20/felony & $10/other	General Fund & Victims Reparation Fund
Oklahoma	Convicted defendant	$5-$10,000/case at the discretion of the court	Victim Compensation Fund
Oregon	All convictions	$50/felony & $20/misdemeanor	Police Training Fund/Victims Assessment Fund
South Carolina	All state offenses	$6-$200/fine or 20% of fine	Criminal Justice Academy/Correctional Facility Fund
South Dakota	Criminal cases & traffic offenses	$11 & $4	Law Enforcement Fund & Indigent Fund
Vermont	Fines & penalties	$5 & $3	General Fund & Victims Fund
Wisconsin	Felony, misdemeanor, DUI, & criminal fines	$50, $30, $250, & 20% assessment	Victim Witness Fund
Source: National Center for State Courts, 1992			

Some states require offenders to pay fees to reimburse the cost of their jail stay using recoverable assets, wages, or deferred payments.[7] California, like most states, relies on court fees, fines, or penalties to generate income to pay the cost of processing fingerprint and criminal history information and DNA testing. For the full range of California programs funded by fees, surcharges, and penalty assessments, see Chart 1 on page 6.

Penalty assessments began in California over 45 years ago to help finance the State School Fund, which funded driver education programs for local school districts. The assessment was based on the concept of an "abusers fee," in which those who break or abuse certain laws help finance programs related to decreasing violations.[8] The initial penalty assessment rate was $1 for every $20 of a base fine, or a fraction thereof,

involving most Vehicle Code Violations.[9] Fines that were imposed by the courts were collected by counties and transferred to the state General Fund, which in turn reimbursed the State School Fund. In 1981, the Legislature increased the number of crimes and offenses subject to penalty assessments and increased the rates.

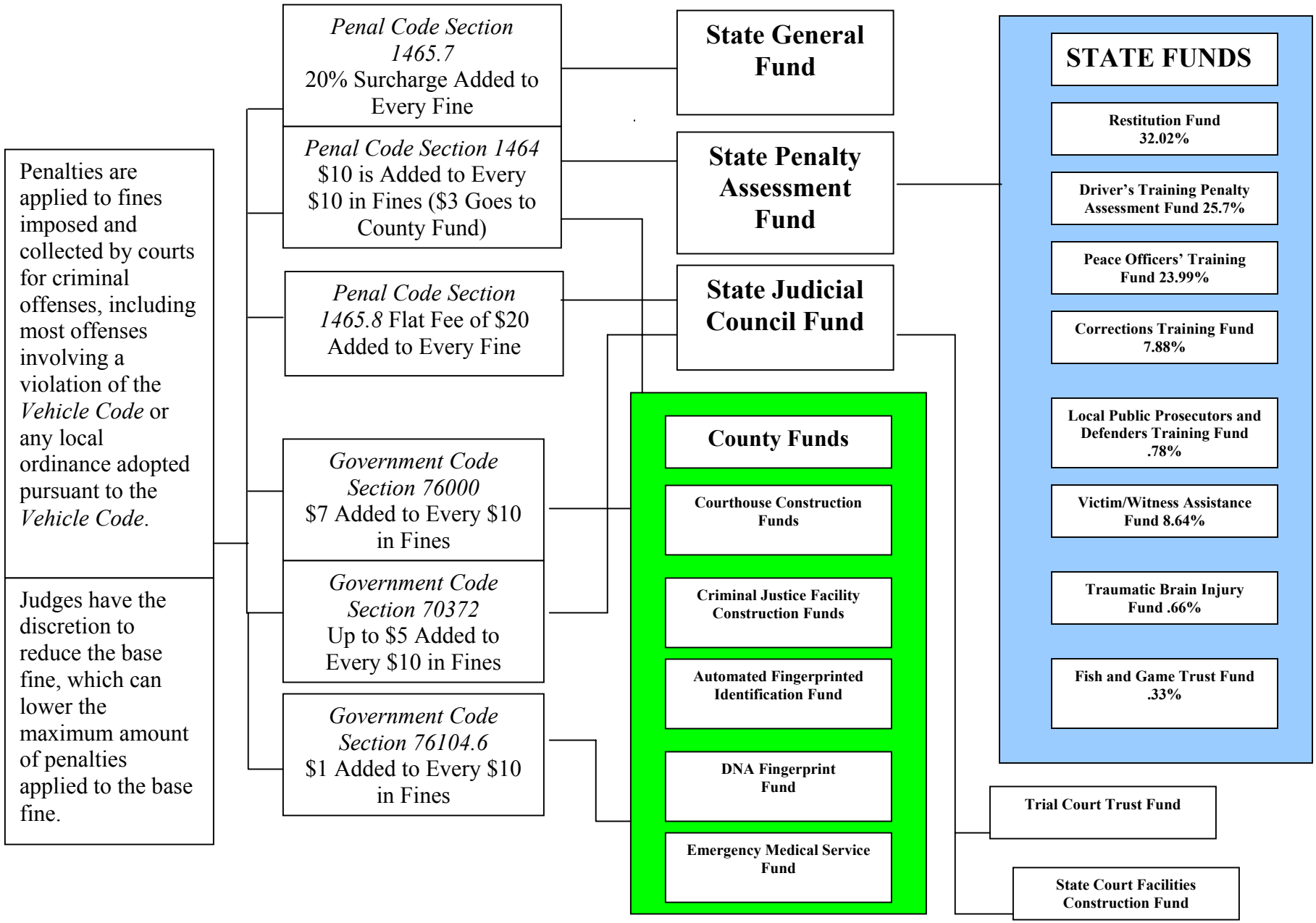
The term "penalty assessment" is often applied broadly by sentencing courts. These funds flow to a complex multitude of special state and county accounts, as shown in Chart 1. Cities and counties have traditionally retained the money generated by the underlying fines and forfeitures that generate the penalty assessments. [*] Money collected from penalty assessment funds are deposited in special accounts, which are generally administered by counties and the state. These funds support a variety of criminal justice programs at the state and county levels, as well as courthouse construction and county security and detention facility construction. A number of state and county programs are now financed by penalty assessment funds.[10]

An overview of how penalties and surcharges are collected and distributed in California is presented in Chart 1. Each of these surcharge and assessment categories are imposed at the city or county level. Funds are passed on to the state General Fund, the State Judicial Council, the State Penalty Assessment Fund and various County Funds through a complex system of funds/accounts.

[*] The Trial Court Funding Act of 1985 (Chapter 1211, Statues of 1987) altered the fine distribution formula by requiring counties that participated in state trial court funding programs to help finance the trial court system by remitting monies generated from fines to the state. More recently, the State Court Facilities Construction Fund (Chapter 1082, Statues of 2002) requires counties to remit up to $5 for every $10 in fines collected by the courts to the State Judicial Council for the purpose of improving county court facilities

Chart 1

The Flow of Penalty Assessment Revenue



California now has over 269 dedicated funding streams for court fines, fees, forfeitures, surcharges and penalty assessments that may be levied on offenders and violators. These fines, fees, forfeitures, 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.[11]

State and county penalty assessment funds are generated by a basic penalty assessment rate of $10 for every $10 in base fines, doubling the amount the court can levy on the offender. The court levies an additional assessment rate of $7 for every $10 in base fines to support county activities.

Penalty assessments are levied by the court under the authority of *Penal Code Section 1464* and *Government Code Section 7600 et seq*. These statutes require that penalty assessments be levied on every fine, penalty or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the *Vehicle Code*, except those involving parking violations. Other state and county fees and surcharges fall into two general categories—those assessed at the basic rate established by *Penal Code Sections 1465.7 and 1465.8*; and those imposed at the county level under the authority of *Government Code Sections 70372 and 76104.6*.

Over the last eight years, the Legislature has imposed more fees and surcharges to help finance existing penalty assessment funds. The voters through Proposition 69 also imposed fees to fund local and state criminal justice programs. These state penalty assessment funds generate revenue for specified law enforcement programs such as peace officer training, correctional training, and training for public defender and public prosecutors.[12]

The penalty assessment system has become exceedingly complex over time. For example, under *Vehicle Code Section 23152 (A),* it is a crime to operate a vehicle under the influence of drugs or alcohol. Persons convicted of crimes under this statute are subject to a minimum/maximum fine of $390/$1,000. Judges have the discretion to impose a lesser fine that can proportionally reduce the penalty. When penalty assessments, surcharges, and fees are added to the maximum base fine of $1,000, an offender could be required to pay as much as $3,320. This does not include alcohol and blood testing fees or victim restitution that a Driving Under the Influence (DUI) offender is also required to pay.

Table 2 below summarizes the fees, surcharges, and penalties added to a maximum DUI fine.

Table 2

Total Penalty Costs Added to a Maximum Base Fine of $1,000 for Driving Under the Influence

Statutory Authorization	Type of Charge	Dollar Amount
Criminal Traffic Offense	Maximum DUI fine	$1,000
Penal Code 1464	$10 for every $10 in fines	$1,000
Penal Code 1465.7	20 percent surcharge per fine	$200
Penal Code 1465.8	$20 fee per fine	$20
Government Code 76000	$7 for every $10 in fines	$700
Government Code 70372	Up to $5 for every $10 in fines	$500
Government Code 76104.6	$1 for every $10 in fines	$100
Total fines, fees, surcharges, and penalty costs		**$3,320**

Source: California Research Bureau/State Library, 2005

STATUTORY BASIS FOR STATE AND COUNTY PENALTY ASSESSMENTS

STATE PENALTIES, SURCHARGES, AND FEES

State Penal Code Section 1465.7 requires that a 20 percent surcharge be levied on every base fine collected by the court. All the money collected is deposited in the state General Fund. This state surcharge becomes inoperative in July 2007.

State Penal Code Section 1465.8 requires a flat fee of $20 on every criminal fine or traffic fine, except parking offenses, to ensure adequate funding for county court security. Fees collected are deposited in a special account in the county treasury and transferred to the state Trial Court Trust Fund. The State Judicial Council is responsible for administering this fund.

State Penal Code Section 1464 requires a "state penalty" of $10 to be levied on every $10 base fine or forfeiture imposed (for every dollar fine there is a dollar penalty), effectively doubling the amount for every criminal and traffic offense except parking violations. The county receives $3 of the $10 penalty collected. The remaining state funds are distributed into the following sub-fund accounts based on statutory formulas that were enacted between 1991 and 2000:

- Fish and Game Preservation Fund (.33 percent)
- Restitution Fund (32.02 percent)
- Peace Officers Training Fund (23.99 percent)
- Corrections Training Fund (7.88 percent)
- Local Public Prosecutors and Public Defenders Fund (.78 percent, but not more than $855,000)
- Victim Witness Assistance Fund (8.64 percent)
- Traumatic Brain Injury Fund (.66 percent, not to exceed $500,000)
- Driver Training Penalty Assessment Fund (25.7 percent)

Currently, the Correctional Training Fund and the Victim Witness Assistance Fund receive reduced proceed amounts from the State Penalty Fund. According to one state official in the Correctional Standards Authority, the Correctional Training Fund has not received its full allocation for several years. This has significantly challenged smaller rural correctional agencies to meet training needs, as they do not have the resources to backfill decreasing state funding. Newly hired employees in these agencies often do not receive job-related core training within the first year of employment.[13]

The Drivers Training Penalty Program Fund continues to receive statutory-required funding even though the revenues have been reallocated by the Legislature to other

purposes since 1992.* At that time, the Legislature suspended minimum funding guarantees to drivers training programs. In 1994, the State Appellate Court subsequently upheld the Legislature's right to appropriate the funds to the General Fund.[14] Funding has not been allocated back to the drivers training program.†

Table 3 displays the eight state penalty assessment funds, the statutory allocation percentage, and revenues since 1997.

Table 3
State Penalty Assessment Fund Distribution to Programs

(Revenue in the $ Millions, Rounded to the Nearest $100,000)

Fund Account & Statutory Allocation	Administering Agency or Dept.	FY 1997/8	FY 1998/9	FY 1999/0	FY 2000/1	FY 2001/2	FY 2002/3	FY 2003/4	FY 2004/5
Restitution 1870-001-0214 (32.02%)	Victim Compensation & Claims	$41.5	$46.7	$53.2	$50.1	$49	$45.4	$47.8	$48.1
Fish and Game Preservation 3600-001-0200 (.33%)	Fish and Game	$.426	$.480	$.554	$.543	$.603	$.580	$.625	$.700
Driver Training Penalty Assessment 6110-001-0178 (25.70%)	Education	$33.1	$37.5	$41.8	$39.5	$39.5	$38.7	$30.6	$38.4
Peace Officers' Training 8120-001-0268 (23.99%)	Peace Officers Standards and Training	$33.2	$35	$38	$37.1	$37.8	$34.9	$35.6	$38.4
Correctional Training 5430-001-1070 (7.88%)	Corrections & Rehabilitation	$10.1	$11.4	$12.6	$18.7	$12.1	$12	$11.7	$11.8
Victim-Witness 0690-001-0425 (8.64%)	Office of Emergency Services	$11.1	$12.6	$13.5	$13.4	$13.5	$12.6	$13	$12.9
Public Prosecutors and Defenders Training 0690-001-0241 (.78%)	Office of Emergency Services	$.850	$.850	$.850	$.850	$.850	$.850	$.850	$.850
Traumatic Brain Injury 4440-001-0311 (.66 %)	Mental Health	$.500	$.500	$.999	$2.5	$1	$1	$.996	$.986
Total Disbursement		**$129**	**$145**	**$162**	**$162**	**$154**	**$146**	**$142**	**$150**

Source: Peace Officers Standards & Training (POST) Budget Office, 2005

* *California Association of Safety Education v Brown* (1994, 6th Dist) 30 Cal App 4th 1264, 36 Cal Reporter 2nd 404. The State's act of transferring money contained in the Drivers Training Penalty Assessment Fund to the General Fund does not constitute an illegal expenditure of funds even though *Education Code, Section 41304* provides that money shall be appropriated. Further, a court cannot impose a duty on the Legislature to appropriate money in the annual budget.

† Funds required for deposit in the Drivers Training Penalty Assessment account and Correctional Training account can be diverted to other state penalty fund accounts and the General Fund pursuant to the Budget Acts of 1991-92 through 2005-06, *Control Section 24.10*. The School Bus Driver Instructor Training Fund, as provided in *Section 40070 of the Education Code*, received $1,148,000 from the Driver Training Penalty Assessment Fund in 2005-06 FY budget.

COUNTY PENALTIES ASSESSMENTS

Government Code Section 76000 provides an additional county penalty assessment of $7 for every $10 in fines, penalties, or forfeitures imposed by the court for criminal and traffic offenses (except parking fines). The money collected from this assessment may be deposited in any of the following statutory accounts, as authorized by the County Board of Supervisors:

- Courthouse Construction Fund (*Government Code Section 76100*)
- Criminal Justice Facilities Construction Fund (*Government Code Section 76102*)
- Automated Fingerprint Identification Fund (*Government Code Section 76103*)
- Emergency Medical Service Fund (*Government Code Section 76104*)
- DNA Identification Fund (*Government Code Section 76105.5*)

Cities within a county may impose an additional penalty fee of $2.50 for each parking violation. The county treasurer is required to deposit $1 of every $2.50 collected by the city into the county general fund, and the remaining $1.50 is deposited into the county fund for state courthouse construction.

Government Code Section 70372 provides additional penalty assessments. In 2002, the State Judicial Council assumed financial responsibility for local courthouse construction that was previously the responsibility of counties, using penalty funds collected under *Government Code Section 76000*. This change established the State Courthouse Construction Fund by adding a penalty assessment of up to $5 for every $10 or fraction thereof, of every fine, penalty, and forfeiture imposed by the courts for every criminal and traffic offense except parking violations. The $5 county courts collect under *Government Code Section 70372* is reduced on a dollar-for-dollar basis by the amount owed to the State Judicial Council for local courthouse construction (authorized under *Government Code Section 76100).*

Based on preliminary data provided by the State Judicial Council, the difference between what is collected by the state under *Government Code Section 70372,* and what is owed by the counties (under *Government Code Section 76100*) for local courthouse construction varies from county to county. For instance, if a county owed the State Judicial Council the equivalent of $2.40 for every $7 it collects under *Government Code Section 76100,* that would be offset by the $5 it collected under *Government Code Section 70372* from the state Court Facilities Construction Fund. The net amount collected for local use would be $2.60.

Using a violation of the *Vehicle Code Section 23152 (A*), driving under the influence as an example, Table 4 details the *Government Code Sections* that authorize counties to impose local penalty assessments, and the average amount levied.

Table 4 Example of a County Allocation of Funds For Penalty Assessments and Other Charges For Driving Under the Influence (DUI)			
County Penalties	**Statutory Authorization**	**Assessment Authorization**	**Amount of Money Collected For Each Account /$10 of Fine**
Fund Name-Description			
Local Courthouse Construction	*Government Code* 76100	Assessment Determined by Board of Supervisors	Average penalty of $93.60/ DUI fine
Criminal Justice Facilities Construction	*Government Code* 76101	Assessment Determined by Board of Supervisors	Average penalty of $78/DUI fine
Automated Fingerprint Identification	*Government Code* 76102	Assessment Determined by Board of Supervisors	Average penalty of $19.50/ DUI fine
Forensic Laboratory	*Government Code* 76103	Assessment Determined by Board of Supervisors	Average penalty of $3.90/DUI fine
Emergency Medical Service	*Government Code* 76104	Assessment Determined by Board of Supervisors	Average penalty of $78/DUI fine
DNA Identification	Government Code 76104.5		Up to $0.50 per $7 in base fine
DNA Identification (state)	*Government Code* 76104.6*		$1 for every $10 in base fine
State Courthouse Construction	*Government Code* 70372**	Assessment is determined by what the county owes the state	Average penalty of $2.40 for every $5 collected

* There is an additional penalty of $1 for every $10 in fines collected for the state DNA Identification fund, of which the county will receive 75 percent beginning in 2008.
** The difference between the $5 that is authorized under *GC Section 70372* for state courthouse construction and the amount remitted to the state for local courthouse construction, as authorized in *GC Section 76100,* varies. For example, if a county owes $2.40 for local courthouse construction, it pays the state $2.60 for state court construction, for a total of $5.
Source: California Research Bureau and California State Judicial Council, 2005

Government Code Section 70372 allows cities within a county to impose a penalty fee of $1.50 for each parking violation for the state court construction fund. Agencies that process parking penalties are required to pay the county treasury $1.50 for each parking violation that is not filed in court. County treasurers are required to transmit these funds to the State Court Construction Fund within 45 days of deposit.

Government Code Section 76104.6 adds a penalty of $1 for every $10 in fines, penalties, and forfeitures imposed by the court for every criminal and traffic offense (except parking fines). Money from this fund is collected by each county treasurer and is transferred quarterly to the State Controller and deposited into the state DNA Identification Fund. The state Department of Justice administers this fund to support DNA testing for the purpose of implementing Proposition 69 of 2004 (*State DNA Fingerprint, Unresolved Crime and Innocence Protection Act of 2004*). The state's share is 70 percent in the first two years (2005 and 2006), 50 percent in the third year and 25 percent every year thereafter. The remainder goes to the local government DNA fund administered by each county.

Using a *Vehicle Code* violation as an example, Table 5 shows the percentage that is deposited in each fund or account when an offender pays fines and state and local

penalties assessments.

Table 5 Percentage Deposited In Each Fund or Account When An Offender Pays Criminal Fines and Penalties	
Base Fine (proceeds go to counties)	28.8 percent
State Penalty Assessment	28.8 percent
State Courthouse Construction Fund	7.5 percent
County Criminal Courthouse Construction Fund	6.9 percent
County Criminal Justice Construction Fund	5.8 percent
County Emergency Medical Fund	5.8 percent
State Surcharge	5.8 percent
Alcohol Program Fund	3.7 percent
Fee Blood Testing Fund	3.7 percent
Trial Court Security Fund	1.5 percent
County Automated Fingerprint Fund	1.4 percent
County Forensic Laboratory Fund (DNA)	.3 percent
Totals	100 percent
Source: State Judicial Council, 2005	

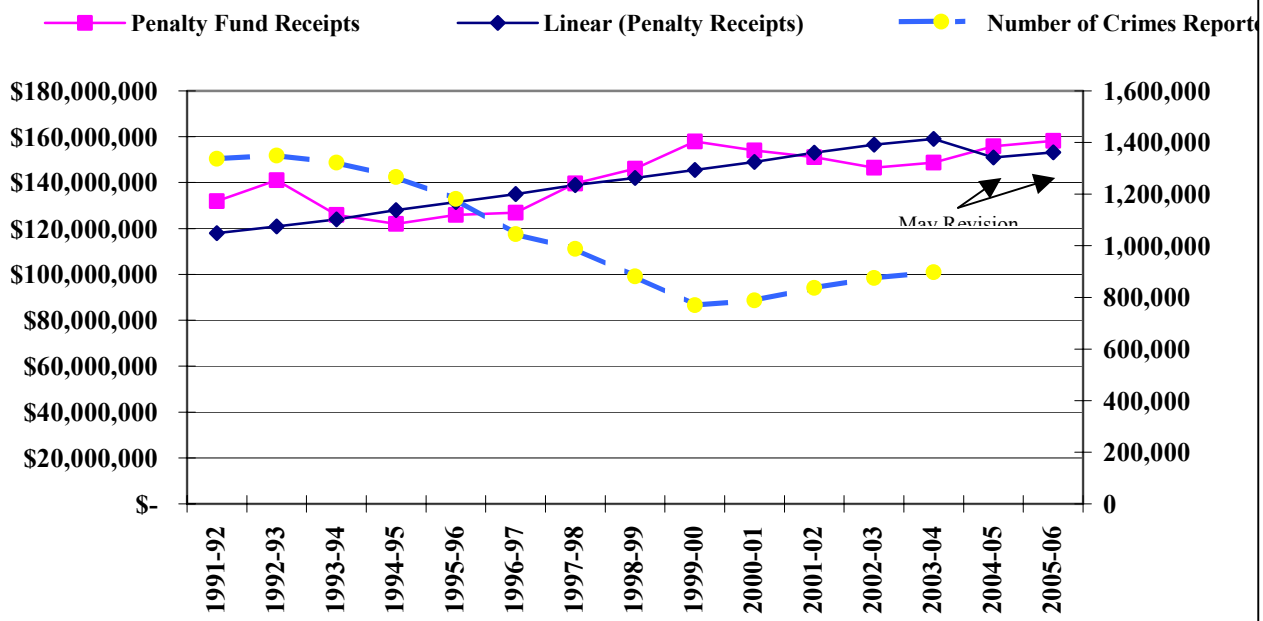
OFFENSES THAT GENERATE PENALTY ASSESSMENTS AND THE PROGRAMS THEY FUND

The direct financial relationship between the offenses that generate penalty assessment revenue and the programs that benefit from those assessments is at times difficult to discern. While a particular statute may specify that a penalty assessment should be distributed to specific county and state funds, the system of payment records maintained by court and county clerks generally only identifies the amounts distributed to the specific funds but not the offenses that generated the dollars. In other words, the penalty assessments all go into a big pot and are re-allocated as directed by statute.

Court clerks and, in turn, county auditors are responsible for maintaining detailed records of payment from individual offenders and for transmitting payment to the state. We found that most county court clerks are unable to identify the individual accounts and the types of offenses that generated payments into the penalty assessment account fund. Although a number of counties were able to identify the most frequent offenses in their case management systems (CMS), they were unable to specify the amount of the penalty assessments levied by the courts for each offense. The county collection systems and/or case management systems used to distribute the funds generated by specific offender accounts are inadequate to perform this kind of analysis. In 1988, the Legislative Analyst Office made a similar finding.[15] Generally, counties do not record the amount of money collected for specific offenses from individual offenders. Those counties that can identify a particular offense usually cannot determine the amount of penalty assessment funds generated from the offense.

In order to project a budget for State Penalty Assessment Fund recipients, the Governor's Department of Finance uses a ten-year time-line linear analysis based on the amounts collected and received by the state in previous years. It does not assume that an increase in penalty fees enacted by the Legislature will impact state funds one way or another.

As noted in Chart 2, substantial increases in revenues occurred in the early and late 1990s, as well as in 2003, when penalty assessments were increased. For a time following these increases, revenues increased. In each case, revenues fell off again. This was likely the result of decreasing collections, since crime generally declined between 1991 and 2003.



Source: California Department of Finance and Department of Justice, 2005

COUNTY AND COURT COLLECTION SYSTEM LIMITATIONS

In 2003, the Legislature enacted Senate Bill 940 (*Penal Code Section 1463.010*), requiring the Judicial Council to convene a collaborative court-county working group to develop guidelines for counties to follow in collecting court-ordered debt. The purpose of the guidelines is to provide prompt, efficient and effective collection of court-ordered fees, fines, and penalty assessments, without changing the underlying structure of California's complex system of debt collection and distribution of penalty assessment funds to various local and state accounts.[16]

The accounting task faced by the courts is complicated by 11 separate state and local penalty accounts (See Chart 1 page 6). In addition, fine proceeds generally must be allocated among the cities and counties, depending on the jurisdiction in which the offense or infraction occurred and the classification (sheriff, police, highway patrol, etc.) of the law enforcement personnel involved.[17]

According to CRB survey findings, many counties do not have an accounting system or a case management system capable of analyzing individual payment accounts. They can tell how much has been collected in the fund account or monthly pot, but not how much was levied. Chart 2 raises the hypothesis that collections fall off. With our survey data we tried to find out how much the courts levied and how much they collected from offenders. However they were unable to provide us with that information.

According to some survey respondents, the relationship between collection and accounting (the courts and the county auditor) is difficult. The county auditor maintains monthly penalty accounts for deposit into the State Penalty Fund. However it is usually the court's responsibility to collect what is owed from the offender. The county auditor or collections department becomes involved in the collection process only when an account becomes delinquent and the court is unable to make a deposit from that account. Any missed payments or delinquent accounts affect the county auditor's monthly deposits into the State Penalty Fund.

When an offender makes payment in full, the payment is apportioned and disbursed in amounts ordered by the court in priority order. If a restitution order is involved, the first priority is to pay this amount on behalf of the victim, followed by the state surcharge account, and all local and state penalty assessments.[18]

If an offender is unable to pay the total amount levied by the court, the court can set up a payment account for the offender to pay fines and penalties on a monthly basis. Once again, if a restitution order is involved, a priority order determines the percentage of the monthly payment that is set aside by the court clerk and/or court collection manager. Payments are applied first to victim restitution, then to the state surcharge, and various state and local penalty assessment accounts. Once these account debts are satisfied, payments are applied toward any reimbursable costs as required by law, such as the cost of probation or probation investigation, and the cost of jail.[19]

Each month the court compiles the total of all fund payments by all offenders and transmits the funds to the county auditor. The county auditor deposits these funds into statutory accounts and transmits the funds monthly to the State Treasurer, who subsequently submits the county reports to the State Controller. Within a 45-day period, the State Controller deposits the penalty assessment funds into the various state accounts and General Fund, as required by law.

County auditors are required to file annual financial reports to the State Controller, and may prepare optional monthly and quarterly financial statements. Revenue reports follow a format established by the Controller that does not distinguish the penalty assessment portion of the revenue from the fines and forfeitures.[*] Forfeitures can include judgments and damages, deposits for performance bonds, and the sale of vehicles used in a crime. Counties are required by the Controller to submit their share of revenues from *Vehicle Code* fines, but not the penalty portion of the fines. Revenues resulting from penalties are reported together with forfeitures, including surcharges, assessments, criminal fines, court costs and other judgments.

Table 6 summarizes information complied by the State Controller's Office, in the *Counties Annual Report* (FY 2002-03).

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[*] California *Government Code Section 30200* requires the California State Controller to prescribe uniform accounting procedures for counties. The *Accounting Standards and Procedures for Counties* manual provides the Uniform Chart of Accounts, fund structure, funds, and activities, and includes specific accounting procedures for specialized accounting to be used by counties in California. This manual is available at www.sco.ca.gov/ard/manual/cntyman.

Table 6 Statement of County Revenues-Fines, Forfeitures and Penalties, 2002-03	
Vehicle Code Fines (including parking fines)	$86,045,605
Other Court Fines	$347,339,784
Forfeitures and Penalties	$141,590,354
Penalties and Cost on Delinquent Taxes	$254,583,580
Statewide Total	$829,559,323
Source: State Controller's Office, Counties Annual Report, Fiscal Year 2002-03	

The financial data complied by the State Controller's Office does not reveal the amount of funds generated by penalty assessments, or the type and nature of the offenses and infractions. In addition, state penalty assessments are not imposed on many fines and forfeitures. As a result it is not possible to draw any conclusions about penalty assessment revenue from the State Controller's data.

FINDINGS OF THE CALIFORNIA RESEARCH BUREAU PENALTY ASSESSMENT SURVEY

In October 2005, the CRB surveyed County Superior Court Clerks and county collection departments in all 58 counties of the state (see Appendix B for a summation of all findings). This survey was conducted at the request of the Assembly Public Safety Committee. A major question was whether there is a diminishing return on penalty revenues as a result of accumulative increases in the rate of assessed penalties. In order to answer the question, we needed data on the fines levied and the actual amount collected. The survey goals were to:

- Understand how County Superior Court Clerks and county collection departments collect penalty assessment funds from offenders and deposit them into county and state accounts.
- Determine the amounts of penalty assessment funds collected for county and state use in FY 2004-05.
- Identify the technical capability of County Superior Courts to determine the most frequent types of offenses or infractions that generate county and state penalty assessment revenue.
- Identify procedures used by counties to collect unpaid penalty assessments from offenders.
- Determine the number of offenders who opted for jail time or community service instead of paying assessed monetary penalties.

Surveys were returned by 36 of the 58 counties (representing 92 percent of the state's population). All of the large urban counties in the state participated, in addition to a mix of rural, coastal, and mountain counties. Much of the data provided by the counties was of a general nature but nonetheless very useful, because it highlighted the difficulty counties have in analyzing or even identifying their penalty fund database by source offense categories.

COUNTY COLLECTIONS

When asked to identify the estimated dollar amount collected for county and state penalty assessments levied on all criminal and traffic offenses, most of the responding county courts were able to provide this information (34/36). In the last Fiscal Year (2004-05), court respondents collected an estimated $310.3 million for both county and state penalty assessment accounts. Of this amount, more than $138 million was collected for deposit into the State Penalty Fund account (seven counties were unable to provide this breakdown).

When asked to determine the amount deposited into each of the county's penalty assessments funds, most courts (24/36) were able to do so, although seven could only

provide a summary total (See Table 7). Most respondents pointed out that while they could provide the total amount collected, they could not specify the amount levied against individual offenders. They may know the amount deposited into the accounts of designated funds, but not the number of deposits or the source offenses. The seven county respondents who could not provide any detailed information most frequently cited personnel-related deficiencies or older case management systems (CMS) as the reason.

The Criminal Justice Facility Construction Fund received the most funding ($65.9 million), followed by the Local Courthouse Construction Fund ($58.3 million), the Emergency Medical Services Fund ($39.5 million), the Fingerprint Account Fund ($7.1 million), and the DNA Fund ($1.6 million).

Table 7 County Penalty Assessment Funds, FY 2004-05						
County	**Justice Facility Fund**	**Local Courthouse Fund**	**EMS Fund**	**Fingerprint Fund**	**DNA Fund**	**Total**
Alameda	$349,000	$300,022	$293,000	$41,147	$34,348	$1,017,517
Butte	$596,452	$104,913	$271,696	$37,659	$3,665	$1,014,385
Calaveras	$78,957	$125,031	N/R	$15,366	N/R	$219,354
Contra Costa	$1,085,892	$1,255,618	$1,216,504	$223,232	N/R	$3,781,246
El Dorado	$240,107	$199,247	$205,318	$48,246	$14,302	$707,220
Kern	$3,102,192	$2,024,675	$2,286,622	N/R	$303,057	$7,716,546
Lassen	$2,165	$2,165	$2,165	$1,265	$538	$8,298
Los Angeles	$23,094,178	$19,864,634	$17,091,933	$3,230,077	N/R	$63,280,822
Madera*	$182,520	$182,520	$182,520	N/R	N/R	$547,560
Marin	$720,646	$629,439	$455,337	$109,909	N/R	$1,915,331
Monterey	$616,340	$496,765	$620,709	$119,541	$17,115	$1,870,470
Nevada	$209,974	$212,108	$220,497	$44,074	$1,841	$688,494
Orange	$1,341,225	$2,682,795	$4,215,514	$663,244	N/R	$8,902,778
Plumas	$101,054	$98,852	$51,171	N/R	N/R	$251,077
Riverside	$2,317,900	$2,752,611	$3,028,047	$553,000	$105,603	$8,757,161
Sacramento	$2,513,029	$2,140,833	$1,911,950	$363,700	$161,849	$7,091,361
San Benito*	$108,912	$108,912	$108,912	N/R	N/R	$326,736
San Bernardino	$2,574,619	$2,225,145	$1,720,052	$430,282	N/R	$6,950,098
San Diego	$16,062,954	$16,062,954	$1,067,000	N/R	$590,021	$33,782,929
San Francisco	$1,922,226	$1,771,000	$488,323	$895,035	N/R	$5,076,584
San Luis Obispo	$458,818	$369,465	$453,901	$88,335	N/R	$1,370,519
San Mateo	$924,925	$924,898	$828,244	$205,574	$23,518	$2,907,159
Santa Clara	$4,301,048	$1,344,078	$627,236	N/R	N/R	$6,272,362
Shasta*	$412,628	$412,628	$412,628	N/R	$3,981	$1,241,865
Siskiyou	$106,951	$140,123	$67,453	$16,744	$322	$331,593
Sonoma	$1,016,575	$510,960	$406,385	N/R	$29,291	$1,963,211
Stanislaus*	$294,041	$294,041	$294,041	N/R	N/R	$882,123
Tehama*	$67,455	$67,455	$67,455	N/R	N/R	$202,365
Tulare*	$214,685	$214,685	$214,685	N/R	N/R	$644,055
Ventura	$631,580	$631,580	$631,580	N/R	N/R	$1,894,740
Yuba	$341,172	$201,504	$103,302	$51,576	$27,556	$725,110.00
Totals	**$65,990,220**	**$58,351,656**	**$39,544,180**	**$7,138,006**	**$1,317,007**	**$172,341,069**

*Counties that provided a summary of local penalty assessments
N/R= not reporting
Source: California Research Bureau, California State Library, Penalty Assessment Survey, 2005

WHAT PENALTY SOURCES CAN COUNTIES IDENTIFY?

One of the goals of the survey was to determine if counties could identify the top five source offense categories that generate the most state and local penalty assessment revenues. However, we found that most county courts track only the limited categories of source-offense information that they are required to submit to the state Controller's Office.

County court clerks and county auditors do maintain records on individuals who are fined and penalized by the courts, but this information is not readily accessible. Nonetheless, nine county courts out of 36 responding to the survey (including Los Angeles and San Francisco counties) were able to query their case management systems to identify the types of offenses and/or the frequency with which they generated penalty assessment revenue. However these nine counties could not consistently provide detailed information about the amount of penalty assessments levied by the courts; several could provide information about the amount collected for those offenses.

Data submitted by Los Angeles County, which makes up one-fourth of California's population, shows that the five most frequently cited violations were traffic-related and totaled 675,224 offenses for FY 2004-05. Data submitted by eight other counties also report traffic-related offenses most frequently. The number and type of offenses for FY 2004-05 cited by three of the counties (Los Angeles, San Mateo, and San Francisco) are as follows:

- Speeding in posted areas violations (211,950)
- Proof of car insurance violations (135,787)
- Seat belt violations (129,705)
- Driving through a red light violations (121,086)
- Speeding beyond 65 miles per hour violations (93,291)

Other source offenses that generate penalty assessments are also traffic-related.

- Driving under the influence (49,000)
- Reckless Driving in a Construction Zone (11,726)
- Promise to Appear Violation (2,939 one county reporting)
- Driving without a licenses (1,909 one county reporting)

Criminal offenses (violations of the *Penal Code*) are not among the top ten categories that generate penalty assessments according to the responding nine counties. Based on these findings and, in particular, the Los Angeles County data, we can reasonably conclude that the majority of penalty assessment revenue is generated by traffic-related offenses. Data collected recently by the California Judicial Council, Administrative Office of the Courts

(AOC), does find similar results. According to the AOC, the total number of criminal and traffic dispositions reported by counties in FY 2003-04 was 6,324,015, of which 5,445,962 were traffic-related, or 86 percent of the total offenses. This is substantially higher than any previous estimate. Table 8 displays the outcomes by county for traffic and non-traffic related offenses.

Table 8

Total Criminal and Traffic-Related Disposition Outcomes by County, FY 2003-04

County	Felonies	Non-Traffic Misdemeanors and Infractions	Traffic Misdemeanors and Infractions	Totals
Alameda	5,075	29,292	260,582	294,949
Alpine	1	25	121	147
Amador*	0	0	0	0
Butte	1,369	5,705	24,210	31,284
Calaveras	285	979	5,907	7,171
Colusa*	0	0	0	0
Contra Costa	2,829	12,735	141,072	156,636
Del Norte	53	353	5,061	5,467
El Dorado	272	5,532	21,457	27,261
Fresno	4,280	27,429	129,091	160,800
Glenn	82	5,899	10,693	16,674
Humboldt	1,192	3,054	14,048	18,294
Imperial*	0	0	0	0
Inyo	130	599	16,816	17,545
Kern	1,201	18,153	135,824	155,178
Kings	849	2,433	24,162	27,444
Lake*	0	0	0	0
Lassen	64	634	9,338	10,036
Los Angeles	31,147	167,987	1,736,280	1,935,414
Madera	846	1,966	22,277	25,089
Marin	500	3,300	51,185	54,985
Mariposa (i)	21	199	1,039	1,259
Mendocino	327	1,527	16,472	18,326
Merced	2,005	5,643	39,441	47,089
Modoc*	0	0	0	0
Mono	54	778	5,463	6,295
Monterey (i)	1,970	7,348	44,585	53,903
Napa	528	2,181	19,511	22,220
Nevada	293	2,449	17,672	20,414
Orange (i)	12,606	59,189	502,976	574,771
Placer	128	4,885	63,509	68,522
Plumas	79	868	4,402	5,349
Riverside	11,366	43,979	233,019	288,364
Sacramento	5,816	18,424	134,074	158,314
San Benito (i)	165	605	4,881	5,651

Table 8 (Continued)

Total Criminal and Traffic-Related Disposition Outcomes by County, FY 2003-04

County	Felonies	Non-Traffic Misdemeanors and Infractions	Traffic Misdemeanors and Infractions	Totals
San Bernardino	11,749	78,247	239,596	329,592
San Diego	9,811	58,191	412,833	480,835
San Francisco	1,865	28,350	66,352	96,567
San Joaquin	997	15,365	83,519	99,881
San Luis Obispo	950	9,545	55,434	65,929
San Mateo	2,282	8,715	124,884	135,881
Santa Barbara	305	15,650	66,495	82,450
Santa Clara	7,938	31,924	241,233	281,095
Santa Cruz	352	9,461	41,847	51,660
Shasta	1,138	5,767	30,443	37,348
Sierra	13	121	1,001	1,135
Siskiyou	286	969	21,595	22,850
Solano	1,944	6,051	59,921	67,916
Sonoma	1,562	11,861	63,488	76,911
Stanislaus (i)	208	1,630	921	2,759
Sutter	579	2,195	14,621	17,395
Tehama	339	1,629	14,739	16,707
Trinity*	0	0	0	0
Tulare	448	6,626	46,171	53,245
Tuolumne (i)	28	128	807	963
Ventura	2,085	13,262	139,776	155,123
Yolo	2,515	2,490	16,098	21,103
Yuba	441	2,358	9,020	11,819
Totals	**133,368**	**744,685**	**5,445,962**	**6,324,015**

Source: California Research Bureau, using Judicial Council of California, Administrative Office of the Courts data, 2005.
*Not reporting data.
(i) Reporting partial data.

Applying the 86 percent traffic-violation share to the amount of penalty assessments funds projected by the Department of Finance to be deposited into the State Penalty Fund account for FY 2005-06, we estimate that roughly $135.8 million of the $158 million generated in FY 2005-06 was due to *Vehicle Code* violations.

To illustrate the impact that *Vehicle Code* violations have on funding state and local criminal justice programs, we apply the estimated percentage of *Vehicle Code* violations found in the AOC data (86 percent) to the Department of Finance's State Penalty Fund projection using the current penalty assessment allocation formula: $10 in state assessments for every $10 in fines, $7 in county assessments for every $10 in fines, plus the surcharges and add-on penalties that go to the state and the courts. Table 9 shows the amount of revenues that are generated from *Vehicle Code* violations and other criminal offenses.

Table 9 Projected Source Offense Revenues Using Department of Finance Penalty Fund Projections, FY 2004-05					
	Base Fine (28.8%)	State Penalty Assessment (28.8%)	County Penalty Assessment (20.2%)	State Court Security, Surcharges, and other Fines (22.2%)	Total Fines, Assessments, and Surcharges
Type of Offense					
Vehicle	$158 million	$135.8 million	$ 99 million	$109.8 million	$502.6 million
Criminal	N/A	$ 22.2 million	$ 12 million	$ 12.2 million	$ 46.4 million
Totals	**$158 million**	**$158 million**	**$111 million**	**$122 million**	**$549 million**
Source: California Research Bureau 2005, based on CRB survey findings and State Judicial Council data.					

Collecting Penalty Assessment Debts

High penalty assessments may result in higher rates of default by the guilty parties. Some offenders may elect to spend time in jail, or plea for community service, rather than pay the fine and penalty assessment. The end result may be that a substantial amount of fines, fees, and penalties is not collected. If offenders choose jail time, in lieu of paying the fines and penalties, additional public costs will be incurred.

California Supreme Court Chief Justice Ronald George expressed concern in his 2003 *State of the Judiciary* address, that, "The failure to enforce court orders imposing fines and fees undermines the judicial system not simply because of the ensuing loss of revenue, but also because it diminishes respect for the courts and their roles."[20]

Most of the courts responding to the CRB survey (21 out of 36 counties) use a county-developed uniform bail/fine schedule that automatically applies a penalty to all fines. In some of the smaller county courts, judges collaborate among themselves to ensure consistency in the application of penalties. However judges do have the discretion to reduce the base fine when they deem it appropriate, and this in turn decreases the amount of penalties assessed.

There is wide variation in how counties and courts pursue collecting unpaid fines, fees, and penalties. Six county courts contract with private vendors to handle collections. Private agencies can add to the administrative cost of collecting the outstanding debt since they usually take a percentage fee on successful collections. In 11 counties, the courts rely on county collection programs, court collection programs or programs jointly operated by the county and courts (hybrid programs). These jointly operated programs are typically governed by a memorandum of understanding or memorandum of agreement, which defines the role and responsibilities of each, as well as specifying how collection revenues will be split. One hybrid program also contracts with an outside vendor for part of its collections cases.

The majority of county respondents (19) participate in the Franchise Tax Board's optional Court-Ordered Debt Collection Program (*Penal Code Section 1463.007)* after exhausting other methods of collection. This collection program has the ability to intercept state tax returns and lottery winnings, options not available to private collection agencies or county collection departments. The program also can charge up to 15 percent on all debts collected in order to cover administrative costs.

Because counties use different methods to collect unpaid debt, offenders are treated differently. Currently state law allows collection practices to vary from county to county. The State Judicial Council has constructed guidelines for counties and courts to use to implement a criminal case management system that includes a comprehensive collection system, as required by *Chapter 275, Statutes of 2003* (Senate Bill 940). According to Judicial Council staff, these guidelines are still in the developmental stages and are being pilot tested in one county. Until a uniform county collection standard is developed for criminal offenses in all 58 counties, questions about equity will remain.[21]

The CRB survey asked county courts if they could provide information on the number of offenders who opt for jail or community service in lieu of paying a fine and penalty assessment.[†] However, the majority of counties responding to the CRB survey could not provide information about jail or community service time in lieu of fines, fees, and penalties because of limitations with their data systems or time constraints. Two counties were able to respond that a total of 1,066 offenders selected jail time instead of making payments. They did not know if the offenders were released early from jail because of overcrowding or if they served the full sentence. Assuming the offenders who elected to serve jail time instead of paying penalties were either felony or misdemeanor violators, they represented about nine percent of the offender population base from one county and less than three percent from the other.

Extra jail time costs the state and counties more, in many cases, than the assessed fines. Due to jail overcrowding, in most counties judges do not have the option of putting an offender who chooses not pay fines and penalties into jail. Instead, judges usually require community service. A recommended conversion by the National Center for State Courts is $10 per hour, or for a $200 assessment, 20 hours of work.[22] One county official commented that criminal offenses usually result in jail time or prison rather than fines, and that in those cases where fines are assessed, they usually are not collected.[23] In summary, county respondents do not know if counties are losing penalty assessment revenue due to defaults by offenders or if they are incurring additional costs due to jailing.

[†]A 2002 State Appeals Court decision *People v. Mc Garry*, 2002. 96 Cal. App. 4th ed. 644, allows judges to convert assessed fines and penalties into jail time.

LEGISLATIVE AND ADMINISTRATIVE OPTIONS

While not necessarily the recommendations of the California Research Bureau, the author, or Legislative members requesting this report, the following options reflect some of the possible applications of this research.

IMPROVE COLLECTION OF COURT-ORDERED DEBT

California Supreme Court Chief Justice Ronald George expressed concern in his 2003 State of the Judiciary address, that, "The failure to enforce court orders imposing fines and fees undermines the judicial system not simply because of the ensuing loss of revenue, but also because it diminishes respect for the courts and their roles."

Multiple government agencies including courts, cities, counties, the state and private agencies are involved in collecting criminal fines and penalties. Our survey found that not all county collection systems are the same. According to the State Judicial Council, this lack of uniformity results in uneven justice for debtors. Some counties rely on private collection programs that deduct up to 15 percent of the cost of collection from the revenues collected, before disbursement of the funds.[24]

In 2004, the State Judicial Council began developing collection guidelines for cooperative use between counties and courts. One pilot test county court has subsequently begun to develop a case management system (CMS) able to monitor debt compliance. In addition, the Judicial Council and the Franchise Tax Board (FTB) are addressing the feasibility of developing a uniform collection program for all 58 counties (per *Revenue and Taxation Code Section 19280*). That process has yet to be completed.

- The Legislature could call upon the State Judicial Council and FTB to speed up their work, given the amount of potential revenue that might be collected by a more uniform collection system. This might include uniform collection standards for all counties/courts when delinquent debt accounts pass a certain time line, such as 90 days. Delinquent accounts could be automatically passed to the FTB for the purpose of garnishing wages and/or tax returns. For example, the state Department of Child Support Services and the FTB jointly operate a Financial Institution Match System that automatically exchanges data on delinquent accounts. Any financial institution doing business with the state has the ability to use this system to identify delinquent accounts and trigger FTB involvement to garnish any wages and/or tax returns. A similar enforcement mechanism could be set up by the courts to collect unpaid court-ordered offender debt.

- The Department of Motor Vehicles (DMV) is another mechanism that could be used as leverage to collect unpaid court-ordered debt. The DMV could withhold driver license renewals or vehicle registrations when offender accounts become delinquent.

- In order to improve collections and deal with the accounting complexity of

multiple fines, penalties and assessments, most county case management systems probably need to be updated. State and federal criminal justice grants could be directed towards this priority. Alternatively, a fine similar to that for courthouse construction and technology could be created to fund county case management systems improvements.

CONSOLIDATION OF FINES, FEES, AND PENALTIES

California has more than 269 dedicated funding streams for court fines, fees, surcharges, and penalty assessments in 16 different statutory codes. This does not include certain other assessments and administrative fees that may be added to the original fine when debts are not paid. Criminal offenders and traffic violators pay more than 240 percent in penalties over the original fine for their offense.

The accounting task faced by county court clerks in collecting these fines, fees, and penalties is enormously complex given the number of different accounts that specify and prioritize how funds are to be distributed. Many of the penalty accounts are split between state and local funds.

Our survey found that county courts do not know how much money has been collected from offenders and violators, or how much debt is owed at any given time. Legislation requires the Judicial Council to develop guidelines to streamline the state's debt collection and revenue distribution process (Senate Bill 940, *Chapter 275, Statutes of 2003*), but this effort is still in the developmental stage and is not ready for implementation.

Simplify and Consolidate State Court Fines, Fees, Penalties and Assessments Imposed on Criminal Offenders and Traffic Violators.

- The Legislature could consolidate criminal and traffic penalties into a single uniform fund for all statutory state and county penalty accounts. As many as 11 state and county penalty assessment and surcharge accounts are currently maintained and distributed by county courts. Consolidation would allow for easier debt accountability, lower accounting costs, and simplify distribution by county courts to local and state penalty funds.
- The Legislature could ensure that restitution remains a critical part of the penalty assessment distribution process. The first priority of any funds collected could continue to pay restitution to victims.
- The Legislature has already required the Judicial Council to streamline the criminal court debt collection system. The Legislature could require the Judicial Council to consolidate fines, fees, and penalties into a single schedule that would result in one uniform fine for every criminal offense and be adjusted for multiple offenses. The actual amount would vary based on the severity of the offense. For example, a traffic offense (speeding) could range from $370 to $3,700, and could be deposited into existing state and local accounts on a pro-rata basis.

Simplify Statutory Requirements for Distribution of Funds.

When offenders make partial payments toward their court-ordered debt, state law requires that money must first go to victim restitution orders, followed by state surcharges, county penalty assessments, and restitution fines. This distribution process adds to an already complex system of collection and imposes a burdensome bookkeeping, reporting and auditing requirement for both the county courts and the State Controller's Office.

- Counties could make quarterly payments to each penalty and program, based on a set percentage of the total fund amount collected.
- Alternatively the Legislature could eliminate automatic disbursement and make yearly appropriations as it does for other programs, placing the revenue in a special fund or the General Fund.
- *Penal Code Section 1465.7* requires that a 20 percent surcharge be imposed on all traffic and criminal fines and be deposited into the State General Fund. This statute is expected to expire in 2007. The Legislature could use this opportunity to reconsider how penalty assessment funds are structured.

DRIVERS TRAINING PENALTY ASSESSMENT FUND

Since the early 1990s, the Legislature has diverted money from the State Penalty Fund designated for drivers training. This was done initially in response to severe yearly budget shortfalls. Currently some revenue from the Drivers Training Penalty Assessment Fund is diverted to other penalty fund accounts, and the majority of money is placed into the state General Fund where it used for a variety of purposes. This practice is consistent with previous Legislative Analyst Office policy recommendations to transfer penalty assessment revenue to the General Fund for distribution to programs based on budget priorities.

- The Legislature could eliminate the Driver Training Penalty Fund and correspondingly adjust other state statutory penalty accounts. For example, the Victim/Witness Penalty Fund was augmented this Fiscal Year with funds from Drivers Training Penalty Fund in order to meet minimum program needs. If the Drivers Training Fund was eliminated, and new minimum funding requirements were established for the remaining penalty accounts, it might eliminate some of the need to continuously adjust penalty fund programs for ongoing shortfalls.
- Given that young adults are at higher risk for traffic violations and accidents, the Legislature could restore the Driver Training Penalty Fund to its original purpose of funding drivers training education in the state's high schools.

Separation of Criminal Offenses From Traffic Offenses

Of the counties that were able to respond to the CRB survey, nearly 90 percent indicated that traffic-related offenses are the principal source of revenue for penalty assessments. Data provided by the Administrative Office of the Courts confirms this finding. We estimate that 86 percent of all revenues are generated by *Vehicle Code* violations. This is an important finding because data currently available from the State Controllers' Office cannot distinguish traffic-related offenses from criminal-related offenses. Since traffic-related offenses generate most revenue for the State Penalty Assessment Fund, we should concentrate on collecting this debt. Although many criminal offenses are also subject to fees and penalties they are also less likely to be paid and are more likely to result in jail or prison time.

- Legislation could be crafted to make it easier to collect traffic-related debt, given its importance as a funding source. Any default could hold up car registration, for example.
- The Legislature could amend Penal Code Section 1464 to impose state penalty assessments only on traffic offenses. Criminal offenders such as those involved in sex crimes, domestic violence, and drugs are already subject to victim restitution fines and other fee requirements. Many of these offenders are also more likely to wind up in jail than pay penalty assessments because of the seriousness of their crimes. Eliminating state penalties on some criminal offenses might make it easier for the courts to impose a realistic fine structure that would be easier to monitor and less likely to result in default.

APPENDIX A

STATE PENALTY FUND PROGRAM RECIPIENTS

Restitution Fund

The State Victims Compensation and Claims Program (SVCCP) administers the Restitution Fund. The Restitution Fund received 32.02 percent, or approximately $48.8 million, of the State Penalty Fund in FY 2004-05, to help victims of crime, especially those who suffer financial hardship as a direct result of a violent crime, or who sustain damage or injury. Victims are required to file claims with the State Victims and Compensation Claims Program prior to receiving care or services from providers. According to SVCCP, the Restitution Fund reimburses for out-of-pocket medical expenses, funeral and burial costs, wages or support loses, and rehabilitation services to medical service providers and other care providers who treat victims.[25] The SVCCP also receives restitution funds from counties that impose and collect restitution fines and orders. Ten percent of these funds are returned by SVCCP to the counties as an incentive for aggressively collecting restitution fines and orders. The SVCCP also receives matching federal funds through the Victims of Crimes Act, based on the previous year funding level.

Victim Witness Assistance Fund

The Office of Emergency Services administers the Witness Assistance Fund. The Witness Assistance Fund received 8.64 percent, or approximately $13 million, of the State Penalty Assessment Fund in FY 2004-05. In addition, $4.1 million was added from the Driver Training fund (in accordance with *Section 24.10* of the 2005-06 Budget Act) to provide assistance to victim/witnesses of domestic violence, rape crisis centers, and to other public and private agencies for public safety and victim service projects. Victim/Witness Assistance Centers are funded to facilitate victim services and are housed within four types of agencies. There are 41 centers within district attorneys offices, 11 in probation departments, one in a sheriff's office, and five in community based organizations.

This fund also provides support to the California criminal justice system through policy research and development in coordination with the Office of Emergency Services, and through awards of federal and State grant funds to public and private agencies for public safety and victim services projects.

Peace Officers' Training Fund

The Commission on Peace Officers Standards and Training (POST) administers the Peace Officers' Training Fund. The Peace Officers' Training Fund (POTF) received 23.99 percent, or $36.3 million in FY 2005-06, of the State Penalty Assessment Fund to support the training programs of POST. In addition, $14 million was added to this fund from the Drivers Training account in accordance with *Section 24.10* of the 2005-06 Budget Act.

POST is responsible for establishing selection and training standards for peace officers and public safety dispatchers. It is charged with raising the level of competence of state

and local law enforcement officers whose agencies participate in the POST program. Requirements established by the POST Commission apply to more than 600 cities, counties, and districts that receive state aid from the POTF.

POST provides management consultation to local law enforcement agencies. This activity includes conducting studies for the purpose of improving the administration, management, or operations of police agencies. POST also conducts feasibility studies to assess the need for employees of an agency to acquire peace officer authority.

Job-related selection and training standards for peace officers and dispatchers, established by POST, are enforced through inspections of local agencies receiving state aid to ensure they are adhering to minimum state standards.

POST provides financial assistance to participating jurisdictions for instructional costs associated with selected training courses. Funding is also provided for the cost of student travel and per diem expenses associated with training presentations and for necessary overtime to enable line officers to receive in-service training in areas of critical need.

Correction Training Fund

The Corrections Standards Authority (CSA), formerly the Board of Corrections, derives support funding from the Corrections Training Fund (CTF) to administer the Standards and Training for Corrections (STC) program. The amount appropriated in 2004-05 was approximately $2.6 million. The CTF is statutorily eligible to receive approximately 7.8 percent of State Penalty Assessment Funds.

Prior to the 2003-04 Budget Act the CSA distributed assistance funds to local corrections agencies to be used for training cost subvention. For example, the 2002-03 Budget Act appropriated $17.2 million in local assistance that included $6.9 million from the Driver Training Penalty Assessment Fund, pursuant to Budget Control *Section 24.10*, and $10.3 million from the CTF. However, the Legislature and the Administration has subsequently redirected those funds into the state General Fund resulting in significant challenges for local agencies to meet training needs.

The STC program is responsible for establishing and maintaining selection and training standards for local adult and juvenile corrections officers, and probation officers. Specific functions performed by the STC program include developing and updating standards through evidence-based research leading to the selection of qualified persons, administering a seven-step selection criteria process, administering a statewide training course certification program promoting the maintenance of staff competency through on-going training, and providing support and technical assistance to local departments on processes and best practices that will ensure a competent workforce in the field.

Local Public Prosecutors and Public Defenders Training Fund

The Office of Emergency Services (OES) administers the Local Public Prosecutor and

Public Defender Training Fund. The Local Public Prosecutor and Public Defender Training Fund receive a fixed statutory amount each year of $850,000 from the State Penalty Assessment Fund. This fund and income from other funds in the OES supports the public prosecutor and public defender legal training program, which provides statewide standards in education, training, and research for local prosecutors and public defenders. This fund also supports training seminars on emerging issues (domestic violence for example) qualifying for continuing legal education requirements, training materials (videos, reference publications), on-line legal research services, and a pool of expert speakers (training-for-trainers).

Traumatic Brain Injury Assessment Fund

The Department of Mental Health administers the Traumatic Brain Injury Fund (TBIF). The Traumatic Brain Injury Fund is scheduled to receive .66 percent of the State Penalty Assessment Fund, not to exceed $500,000. In the FY 2005-06 Budget, the fund received $168,000 from the State Penalty Fund, along with other penalties and revenues totaling $1.2 million. The program's purpose is to fund pilot projects that successfully demonstrate a post-acute continuum-of-care for adults 18 years of age or older with acquired traumatic brain injuries. The fund also is responsible for providing an array of services and assistance to meet the needs of these individuals and their families, including developing a community-based model care program.

Funds deposited into the Traumatic Brain Injury Fund, pursuant to *Section 1464 (8) (f) of the Penal Code,* can be matched by federal vocational rehabilitation services funds.

Drivers Training Penalty Assessment Fund

The Department of Education administers the Drivers Training Penalty Fund. The suspended Drivers Training Penalty Assessment Fund is mandated to receive 25.7 percent of the State Penalty Assessment Fund, or approximately $37.9 million in FY 2004-05. The Department of Education uses up to $1.1 million of the suspended fund to cover the cost of rented vehicles and to train drivers of school buses, farm labor vehicles, and school activity buses to pass examinations for certification.

The Fish and Game Preservation Fund

The Department of Fish and Game administers the Fish and Game Preservation Fund (FGPF). The FGPF receives the smallest amount of revenue from the State Penalty Assessment Fund (.33 percent), or about $146,000 in the current budget year. In the FY 2005-06 Budget, the FGPF received $980,078 in penalties levied against violators of state laws relating to protection and propagation of fish and wildlife. Revenue from this fund is used to educate and train Department of Fish and Game staff. The FGPF also funds part of the Biodiversity Conservation Program, which encourages the preservation, conservation, and maintenance of wildlife resources. Activities include the conservation, protection and management of fish, wildlife, native plants, and habitat.

APPENDIX B

COUNTY SURVEY OF SOURCE OFFENSES FOR PENALTY ASSESSMENT FUNDS

Survey of Source Offense For State Penalty Assessment Fund

1. Are you able to determine what the estimated dollar amount collected for penalty assessments levied on all criminal and traffic offenses (not including parking violations) by Superior Court judges in your county for the most recent Fiscal Year?

Yes *34 counties* *$287 million total*

No *2 counties* Please explain why not.

Did not have staff resources to perform this analysis.

2. Are you able to determine the total dollar amount of penalty assessments deposited in the State Penalty Assessment Fund for all criminal and traffic offenses in your county for the most recent Fiscal Year?

Yes *29 counties* *$138 million total*

No *7 counties* Please explain why not.

Personnel shortages and time constraints, or because their case management systems (CMS) could not query the data.

3. Are you able to determine the total dollar amount of penalty assessments deposited in each of your county's funds/accounts for all criminal and traffic offenses (not including parking violations) in your county for the most recent Fiscal Year?

Yes *31counties*

Please list those funds/accounts and the amount deposited:

(31 counties reporting) Courthouse Construction Fund_____ $65,990,220

(31 counties reporting) Criminal Justice Facilities Fund_____ $58,351,656

(31 counties reporting) Emergency Medical Services Fund_____ $39,544,180

(15 counties reporting) DNA Fund_____ $ 1,317,007

(19 counties reporting) Automated Fingerprint Fund_____ $ 7,138,006

No *8 counties* Please explain why not.

Personnel shortages and time constraints, or because their case management systems (CMS) could not query the data.

4. Please list the top five source offenses in your county for the most recent Fiscal Year that generated state and county penalty assessment revenues. (Please list by the volume of revenue and include the number of offenses whenever possible). Results reported by eight counties:

1. *Speeding in posted areas (211,950)*
2. *No proof of insurance (135,787)*
3. *No seat belt (129,705)*
4. *Driving through a red light (121,086)*
5. *Speeding beyond 65 miles per hour (93,291)*

If you cannot determine what those offenses are, please explain why.

Most county respondents indicated that their case management system (CMS) was not capable of performing this type of analysis.

5. Are you able to determine if the Superior Court judges in your county are uniformly applying similar penalty assessments to similar criminal offenses?

Yes *21 counties*
Please explain briefly how this done.

These county courts use a uniform fine schedule that applies penalties to all fines. A number of smaller county courts indicated that the judge or judges collaborate to ensure consistency in the application of penalties.

No *10 counties* Please explain why not.

Ten county respondents did not answer this question.

6. What efforts or procedures have your county implemented to collect unpaid penalty assessments? Please explain or attach the county's policy.

Nineteen county courts and/or collection departments participate in the Franchise Tax Board, Court-Ordered Debt Collection Program. Eleven counties have a jointly-operated collection program with the courts. Six counties use private collection agencies to handle collections.

If the county is unable to collect unpaid penalty assessments, please explain why.

No respondents.

7. In the most recent Fiscal Year, are you able to determine the number of defendants who were assessed monetary penalties in addition to their base fines that opted for jail time instead? Yes *2 counties* How many? *1,066 offenders*

(a) If you are unable to answer question 7 above, please explain why.

Most county respondents indicated that their CMS was not capable of performing this type of analysis. Other respondents indicated that they could do the analysis required but did not have staff time and resources to do it.

8. What can your county do to enhance its ability to make more specific source-benefit comparisons of offenses that generate penalty assessment revenues?

Almost all respondents indicated that it would take a new or improved CMS to do the type of source offense analysis that we requested. Some respondents also indicated that the Judicial Council Task Force is trying to develop a statewide CMS that all courts could use.

ENDNOTES

[1] Legislative Analyst Office (LAO), Penalty *Assessments, A Review of Their Use As A Financing Mechanism*. Sacramento: LAO, 1988. page 10.

[2] California State Controllers' Office, Manual *of Accounting and Audit Guidelines for Trial Courts-Revision 16, Appendix C, California Codes*. The State Controller's January 2004.

[3] Annual Conference of State Court Administrators, "Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges and a National Survey of Practices." *Standards Adopted by the Conference*, Omaha, Nebraska, August 7, 1986.

[4] National Criminal Justice Association, "Who Decides? An overview of how states are addressing delegation of authority and decision making in managing integrated justice information systems," Washington D.C.: NCJA, March 2001.

[5] Blake Harrison, National Conference of State Legislatures, "Funding Justice Information Sharing." *The Forum for America's Ideas*, May 2005.

[6] *People v. Watson* (1971), 2nd District 15 Cal App 3rd 28, 92 Cal Reporter 860.

[7] Blake Harrison, National Conference of State Legislatures, "Funding Justice Information Sharing." *The Forum for America's Ideas*, May 2005, page 2.

[8] Legislative Analyst Office (LAO), *Penalty Assessments, A Review of Their Use As A Financing Mechanism*. Sacramento: LAO, 1988.

[9] Legislative Analyst Office (LAO), *Penalty Assessments, A Review of Their Use As A Financing Mechanism*. Sacramento: LAO, 1988.

[10] See for example, Chapter 1023, Statutes of 1999, Amendment to *Penal Code Section 1464,* adding Traumatic Brain Injury Fund to the State Penalty Assessment Fund.

[11] California State Controllers' Office, Manual *of Accounting and Audit Guidelines for Trial Courts-Revision 16, Appendix C, California Codes*. The State Controller's, January 2004.

[12] Telephone interview with Alan Deal, Executive Officer, Commission on Peace Officers Standards and Training, regarding use of the State Penalty Assessment Fund. September 15, 2005.

[13] Telephone interview with Nathan Reed, Officer of the Day, Corrections Standards Authority, regarding use of the Penalty Assessment Fund. December 5, 2005.

[14] *California Association of Safety Education v Brown* (1994, 6th Dist) 30 Cal App 4th 1264, 36 Cal Reporter 2nd 404.

[15] Legislative Analyst Office (LAO), *Penalty Assessments, A Review of Their Use As A Financing Mechanism*. Sacramento: LAO, 1988.

[16] Interview with Eraina Ortega, Governmental Affairs Office, Judicial Council of California, regarding implementation of guidelines for counties to collect court-ordered debt, December 2005.

[17] *Government Code Sections 76000 and 70372.*

[18] *Penal Code Section 1203.1 (d).*

[19] *Penal Code Section 1203.1 (d).*

[20] Chief Justice Ronald M. George. "State of the Judiciary" Anaheim, California, September 6, 2003. http://www.courtinfo.ca.gov/reference/soj090603.htm.

[21] Telephone conversation with Jessica Sonora, Administrative Office of the Courts, regarding court-ordered debt collection, as required by *Chapter 275, Statutes of 2003* (Senate Bill 940).

[22] National Center for State Courts, "Collection of Monetary Penalties," *CourTools*, Williamsburg, Virginia, 2005.

[23] Telephone interview with Kenneth G. Riley, Internal Auditor, Butte County Auditor-Controller, regarding collecting debt from criminal offenders, October 25, 2005.

[24] *Penal Code Section* 1463.007.

[25] Telephone conversation with Gail Fasciola, Restitution Fund Program Manager, regarding financial grants awarded to providers of care for victim, January 17, 2006.