



FURTHER THE WORK
Building better justice.

Criminal Justice Fees in Contra Costa County

Documents, 2019

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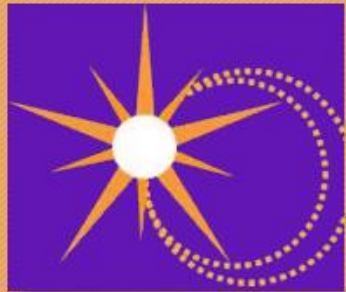


What the Numbers Tell Us:

Money and Justice in Contra Costa County

Reentry Solutions Group
February 26, 2019

Debt-Free Justice: Adult Criminal Justice Fees

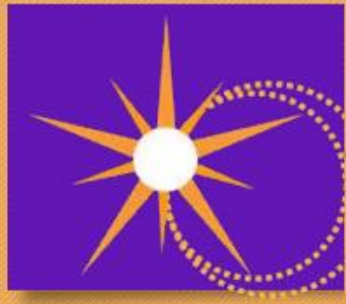


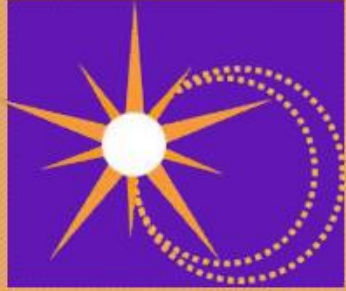
Rebecca Brown

According to one study,* California's adult criminal justice statutes codify **two hundred and sixty-nine** court fees, fines, surcharges, penalty assessments, and forfeiture (more on forfeiture, later).



Because there are so many different fees,
imposed by both the state **and** the county,
and allocated to multiple different entities, remedying
the problem of adult criminal justice fees
is really complicated.





So, to begin to tackle this complex situation,
Reentry Solutions Group
has been working with UC Berkeley School of Law
to analyze the use of adult criminal justice fees
in Contra Costa County.

We Started with Public Records & PRA Requests



BerkeleyLaw
UNIVERSITY OF CALIFORNIA
POLICY ADVOCACY CLINIC

October 19, 2018

VIA EMAIL
Public Information Officer
Superior Court of California
County of Contra Costa
725 Court Street
Contra Costa, CA 94504
mediator@contracosta.courts.ca.gov

Re: Request for Judicial Administrative Records
To Whom It May Concern,

I am writing on behalf of UC Berkeley Law School's Policy Advocacy Clinic to request a copy of the records detailed below. Where available, please provide records in electronic form. We are researching how the Superior Court of Contra Costa County ("Court") assesses and collects fees against adults ("adult fees") in the criminal justice system. To the extent that you are aware of records that may be directly related or relevant to this request, but which we do not specifically describe, we request that you provide these records as well. We request all records from January 1, 2012 through the present.

For purposes of this request, adult fees may include fees imposed for pre-charge investigation reports, representation by counsel, detention, incarceration, placement, probation supervision, drug and/or alcohol testing, electronic monitoring (GPS), treatment programs, alternative custody or diversion programs, and court administration or operations. Adult fees also include any penalty or civil assessments, surcharges, or other costs imposed on adults in the criminal justice system. To be clear, we are not requesting personally identifying information for any persons.

Please include the following information:

1. **Demographics of adults:** Records relating to the demographics of adults in the justice system, including but not limited to age, sex, race, education status, household size, and income level, described annually.
2. **Number of adults assessed fees:** Records relating to the number of adults who have been assessed and/or charged adult fees, described annually and where available by crime convicted of, age, sex, race, education status, employment status, household size, and income level.
3. **Amounts of adult fees assessed, reduced/waived, collected, and outstanding:** Records relating to the total amount (in dollars) of adult fees, described annually by fee type and numbers of adults/accounts.
 - a. Amount assessed,
 - b. Amount reduced/waived due to inability to pay,
 - c. Amount collected, and

Superior Court

BerkeleyLaw
UNIVERSITY OF CALIFORNIA
POLICY ADVOCACY CLINIC

October 19, 2018

VIA EMAIL
ATTN:
Sharon L. Anderson
Contra Costa County Counsel
Sharon.Anderson@cccounty.ca.gov

Re: Public Records Act Request
To Whom It May Concern:

I am writing on behalf of UC Berkeley Law School's Policy Advocacy Clinic to request a copy of the records detailed below. Where available, please provide records in electronic form. We are researching how Contra Costa County assesses and collects fees against adults ("adult fees") in the criminal justice system. To the extent that you are aware of records that may be directly related or relevant to this request, but which we do not specifically describe, we request that you provide these records as well. We request all records from January 1, 2012 through the present.

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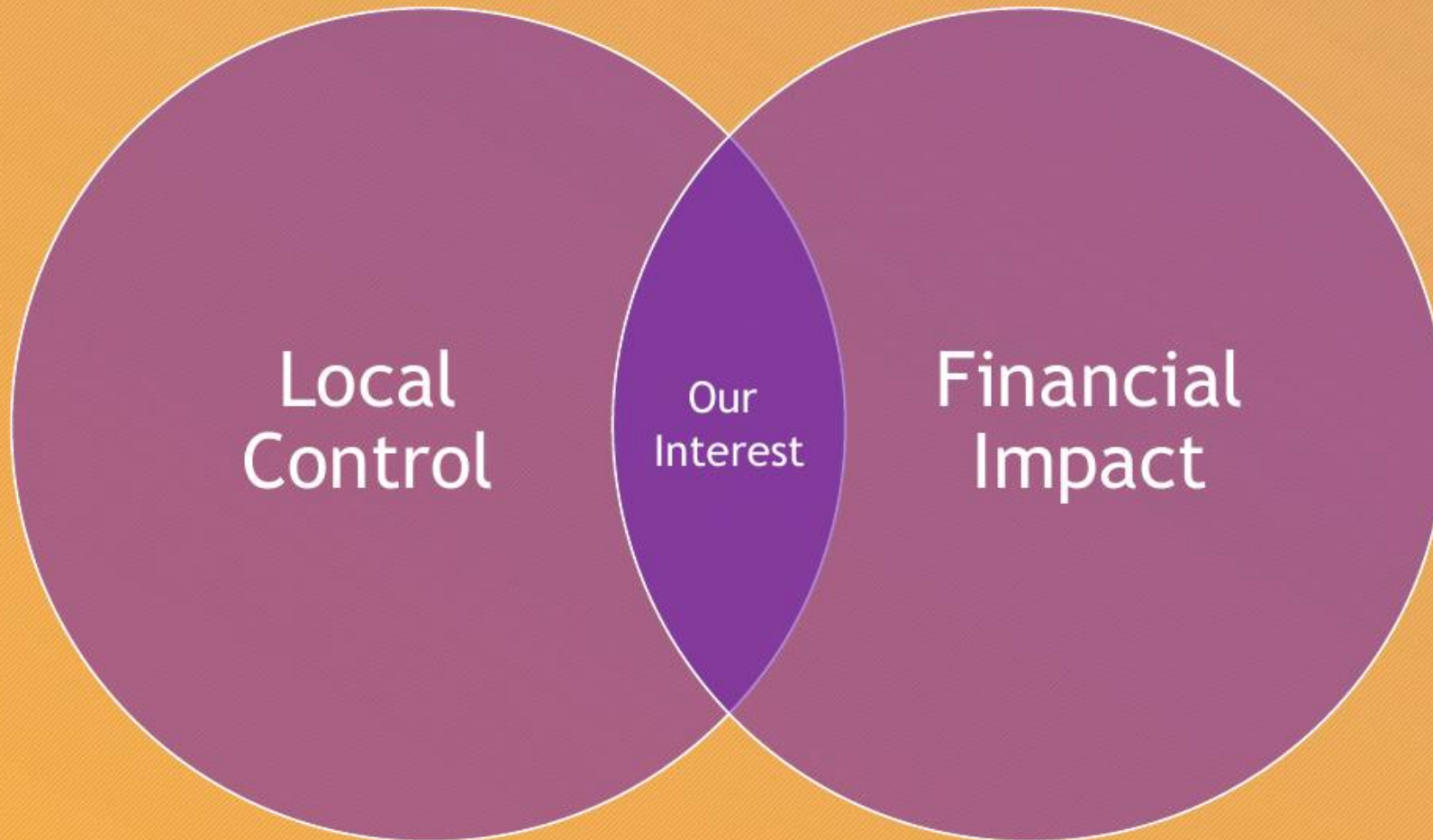
1. **Demographics of adults:** Records relating to the demographics of adults in the justice system, including but not limited to age, sex, race, education status, household size, and income level, described annually.
2. **Number of adults assessed fees:** Records relating to the number of adults who have been assessed and/or charged adult fees, described annually and where available by crime convicted of, age, sex, race, education status, employment status, household size, and income level.
3. **Amounts of adult fees assessed, reduced/waived, collected, and outstanding:** Records relating to the total amount (in dollars) of adult fees, described annually by fee type and numbers of adults/accounts.
 - a. Amount assessed,
 - b. Amount reduced/waived due to inability to pay,

Contra Costa County



CA Office of Attorney General

Our Focus: Local Control and Financial Impact



First, RSG conducted a financial analysis of fines and fees in CoCo in FY 17-18



Code	Nondelinquent receipts	Delinquent receipts	Code rate	PC 1463.007 Revenue	Cost of Collections	Net Delinquent Receipts	Net Revenue Distribution	Cost of collections % of revenue
Alcohol Prevention APPA 23196 VC PC1463.25	\$ 49,113.77	\$ 36,411.86	0.0023255	\$ 36,411.86	\$ 6,647.37	\$ 29,764.49	\$ 78,878.26	8.43%
Courts Accts Receivable PC1205d PC 1202.4	\$ -	\$ -	0	\$ -	\$ -	\$ -	\$ -	
10% Fee PC1203.1	\$ 8,003.69	\$ 24,570.15	0.001260917	\$ 24,570.15	\$ 4,213.81	\$ 20,356.34	\$ 28,360.03	14.86%
California Fingerprint ID Penalty (GC 76102)	\$ 4,940.16	\$ 3,047.01	0.000201583	\$ 3,047.01	\$ 585.91	\$ 2,461.10	\$ 7,401.26	7.92%
Domestic Violence PC 1203.097(a)5	\$ 26,271.31	\$ 26,369.28	0.001721083	\$ 26,369.28	\$ 5,083.19	\$ 21,286.09	\$ 47,557.40	10.69%
Adult DA Diversion PC 1001.16	\$ 67,097.33	\$ 1,917.98	0.00011225	\$ 1,917.98	\$ 379.44	\$ 1,538.54	\$ 68,635.87	0.55%
Drug diversion PC 1000	\$ 36,334.13	\$ 7,974.38	0.000456333	\$ 7,974.38	\$ 1,465.60	\$ 6,508.78	\$ 42,842.91	3.42%
Alcohol test (pc1463.14)	\$ 53,578.54	\$ 40,759.84	0.002408592	\$ 40,759.84	\$ 7,437.14	\$ 33,322.70	\$ 86,901.24	8.56%
C.A.P. (PC 1463.16)	\$ 53,579.07	\$ 42,010.83	#VALUE!	\$ 42,010.83	\$ 7,682.55	\$ 34,328.28	\$ 87,907.35	8.74%
DNA penalty GC76104.5	\$ 47,549.32	\$ 37,884.84	0.0024155	\$ 37,884.84	\$ 6,944.81	\$ 30,940.03	\$ 78,489.35	8.85%
CITE Fee PC 1463.07	\$ 1,129.15	\$ 3,731.05	0.0002465	\$ 3,731.05	\$ 709.69	\$ 3,021.36	\$ 4,150.51	17.10%
OR Fee 1463.07	\$ 1,893.17	\$ 3,474.19	0.000220667	\$ 3,474.19	\$ 626.33	\$ 2,847.86	\$ 4,541.03	13.79%
Drug program fee H&S 11372.7	\$ 1,496.86	\$ 41,683.26	0.002733167	\$ 41,683.26	\$ 7,639.72	\$ 34,043.54	\$ 35,540.40	21.50%
Probation dept. drug diversion PC 1001.9	\$ 771.00	\$ 620.96	3.70833E-05	\$ 620.96	\$ 142.81	\$ 478.15	\$ 1,249.15	11.43%
Cost of probation PC1203.1(b)	\$ 56,940.24	\$ 510,589.74	0.03314775	\$ 510,589.74	\$ 91,956.88	\$ 418,632.86	\$ 475,573.10	19.34%
Probation cost of drug test (PC1203.1AB)	\$ 5,000.31	\$ 67,970.45	0.004386417	\$ 67,970.45	\$ 12,332.37	\$ 55,638.08	\$ 60,638.39	20.34%
Alcohol/drug assessment fee AB1916 PC1463.13 VC23646	\$ 4,851.98	\$ 22,377.70	0.00139075	\$ 22,377.70	\$ 4,095.12	\$ 18,282.58	\$ 23,134.56	17.70%
Probation report fee PC 1203.1(b)	\$ 106,773.41	\$ 76,309.85	0.004847883	\$ 76,309.85	\$ 13,923.26	\$ 62,386.59	\$ 169,160.00	8.23%
B&P 7028.2 county	\$ 6,550.96	\$ 25,335.36	0.001617333	\$ 25,335.36	\$ 4,553.64	\$ 20,781.72	\$ 27,332.68	16.66%
Public defender fees	\$ 3,791.62	\$ -	0	\$ -	\$ -	\$ -	\$ 3,791.62	0.00%
Annual Totals	\$ 447,137.09	\$ 973,038.73		\$ 973,038.73	\$ 176,419.64	\$ 796,619.09	\$ 1,169,888.16	15.08%
Annual Gross Total Receipts		\$ 1,420,175.82					82.38%	82.38%

What Did We Find?

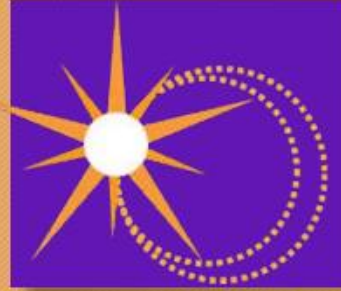
At Least 22 Criminal Justice Revenues for CoCo



22 Adult Criminal Justice Fees that Generate Revenue for Contra Costa County

Alcohol Prevention Fee: APPA 23196 VC PC1463.25	C.A.P. Fee: PC 1463.16
Courts Accts Receivable Fee: PC 1205d PC 1202.4	DNA Penalty Fee: GC76104.5
10% Fee: PC1203.1	CITE Fee: PC 1463.07
California Fingerprint ID Penalty: GC 76102	Own Recognizance Fee: 1463.07
Domestic Violence Fee: PC 1203.097(a)5	Drug Program Fee H&S 11372.7
Courts Administration Costs/Fee: VC 40508.6	Probation Drug Diversion Fee: PC 1001.9
Booking Fee: GC 29550.1	Probation Supervision Fee: PC1203.1(b)
Adult DA Diversion Fee: PC 1001.16	Probation Drug Test Fee: PC1203.1AB
Drug Diversion Fee: PC 1000	Alcohol/Drug Assessment Fee: AB1916 PC1463.13 VC23646
Alcohol Test Fee: PC 1463.14	Probation Report Fee PC: 1203.1(b)
B&P 7028.2 (County share)	Public Defense Fee

Remember, that's not all of them:



These 22 fees DON'T include dozens of other costs imposed by the criminal justice system, such as fines, court fees, restitution, restitution fees, program fees, interest, partial payment fees, debt collector fees, state-imposed fees...

...or “civil asset forfeiture.” (We'll talk about that next.)

Criminal Justice Fines and Fees for Contra Costa



And these amounts do NOT include
restitution paid to victims or to the state victim fund.

In addition, collections agencies
and programs ordered by the Court
may charge additional, direct fees
that generate revenue for themselves.

Contra Costa Revenue from Criminal Justice Fees

Partial list from July 2017-June 2018*



How much was generated
by these fees for Contra Costa County
from July 1, 2017 through June 30, 2018?

Contra Costa Revenue from Criminal Justice Fees

Partial list from July 2017-June 2018*



Fee	Amount	Revenue Distribution
Probation Drug Test Fee (PC 1203.1(ab))	\$72,971	Probation
Probation Supervision Fee (PC 1203.1(b))	\$567,530	Probation
Probation Report Fee (PC 1203.1(b))	\$183,083	Probation
Alcohol Test Fees (PC 1463.14)	\$94,338	General Fund
Special Vehicle Code Fee (just for CoCo!) (PC 1463.16(c))	\$95,590	General Fund/Special AODS Fund
Drug Program Fee (H&S 11372.7)	\$43,180	General Fund/Special AODS Fund
Alcohol/Drug Assessment Fee (PC 1463.13)	\$27,230	General Fund/Special AODS Fund
Additional such fees (not detailed here, available on request)	\$336,254	Miscellaneous
Total such fees collected by Contra Costa 7/17-6/18	\$1,420,176	

Data source: Contra Costa County Superior Courts Financial Report FY 2017-18, Comprehensive Collection Charges Distribution, Collection & Compliance Unit, provided in response to PRA Request 10.18.18 by UCB School of Law Policy Advocacy Clinic, data analysis by Reentry Solutions Group

Contra Costa Revenue from Criminal Justice Fees

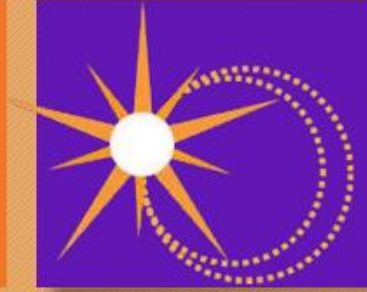
Partial list from July 2017-June 2018*



It's all pretty automatic.
The Court serves as the financial manager,
collecting these fees
and distributing the revenues to the right accounts.

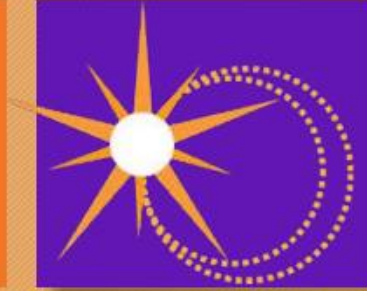
Other than the numbers-crunchers (and the public defenders),
nobody in authority has really noticed these fees,
their cumulative impact, or their inequity.

Problems with How Fees Are Imposed, Assessed, and Collected



- **“Ability to Pay” is overlooked:** Many fees are governed by statutory “Ability to Pay” (ATP) protections. But these protections often operate more in theory than in practice, so many people go without proper assessment.
- **Improper assessments = excessive fees:** Because ATP is often improperly assessed, people are burdened with excessive fees.
- **Excessive fees turn into crushing debt:** When people struggle to pay, these fees are reported to a debt collector, the Franchise Tax Board (for wage garnishment and tax refund intercept), and credit bureaus.
- **Debt collection:** In 2018, the Court contracted with a new debt-collector - Linebarger, Goggan, Blair & Sampson, a for-profit law firm that is known as one of the nation’s most intimidating debt collectors.
- **Profit-motive moves in:** Linebarger receives 18%-25% of all the debt it collects. And it intercepts tax refunds, garnishes wages, levies bank accounts, and files liens.

Problems with How Fees Are Imposed, Assessed, and Collected

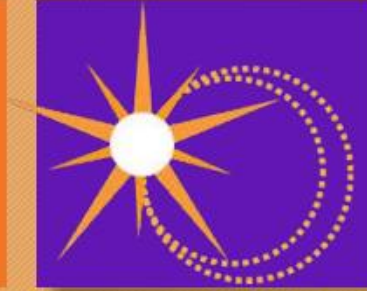


And, remember, the County benefits.

In FY 17/18, Contra Costa reaped \$1,420,176 from criminal justice fees.

Debt collectors earned \$250,279.

One Example: Probation Fees

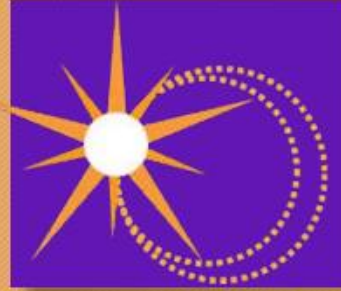


In January 2018, Probation implemented a new Ability to Pay process and sliding scale.

This was expected to substantially reduce Probation fees for the great majority of people on probation supervision.

But has it worked?

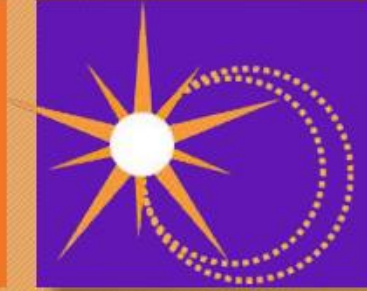
One Example: Probation Fees



We've analyzed the Probation-related revenue generated in the six months prior to the new policy and the six months following the new policy.

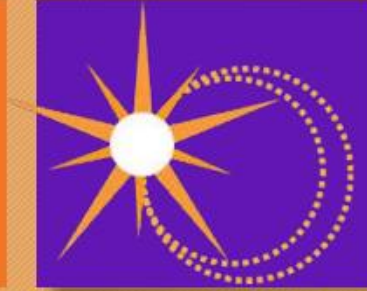
What did we find?

Adult Fees: Probation as One Example



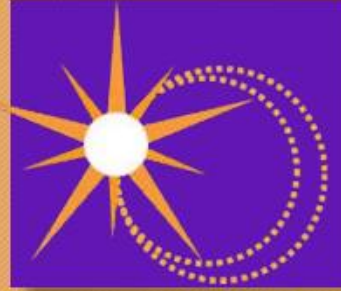
Fee	July-Dec 2017 (before change)	Jan-June 2018 (after change)	% Change
Prob. Dept. Drug Diversion fee (PC 1001.9)	\$189	\$1,203	538.1% increase
Cost of Probation (PC 1203.1(b))	\$263,112	\$304,418	15.7% increase
Cost of Probation Drug Test (PC 1203.1AB)	\$32,452	\$40,518	24.9% increase
Probation Report Fee (PC 1203.1(b))	\$13,494	\$18,392	36.3% increase
Total	\$309,247	\$364,532	17.9% increase

What Caused These Increases?



- Was it an increase in the # of people on probation?
- How is an increase consistent with Probation's new Ability to Pay?
- Was it increased debt collection efforts under the new contract with Linebarger?
- Was it a change in how or when judges have imposed fees?
- Did probationers suddenly get a whole lot richer, increasing ability to pay?
- Bottom line? There's lots that the County should analyze.

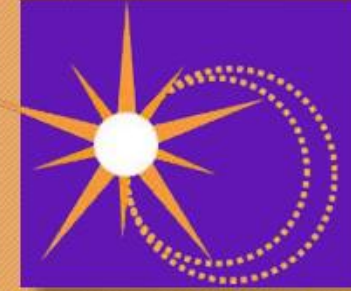
What Caused These Increases?



At the moment, nobody really knows.

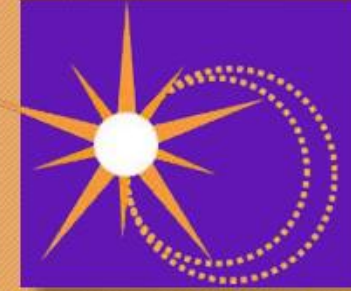
And probation fees are just one example.
So....

Fix This System: End All Criminal Justice Fees



- **Produce analysis:** Ask BOS to direct County Administrator to produce complete accounting of justice fees and associated unpaid debts in Contra Costa County.
- **Terminate collections contract:** Withdraw from Master Agreement with Linebarger
- **Eliminate all criminal justice fees in all departments:** Probation, Sheriff, District Attorney, Public Defender
- **Discharge all debt:** Much of this debt may have been unlawfully assessed and imposed.
- **Repeal criminal justice fees in Contra Costa County.**

Remedying Adult Criminal Justice Fees



Today, in response to persistent advocacy by RSG and others, Supervisor Gioia submitted a request to the Board of Supervisors to “refer” the matter of adult criminal justice fees to the Public Protection Committee (PPC).

This referral will allow ongoing oversight by the PPC for analysis, review, and improvement related to the use of money in the adult justice system in CoCo.

Twelve months of criminal justice fee revenue, July 2017 to June 2018

From Rebecca Brown's working spreadsheet "Contra Costa County financial analysis" (Excel, February 2019), sheet "12-month CJ fees total," compiled from twelve monthly sheets in the same workbook. Selected columns; figures as entered in the spreadsheet.

Fee	Non-delinquent receipts	Delinquent receipts	Cost of collections	Net revenue	Collections cost as % of revenue
Alcohol Prevention APPA 23196 VC PC1463.25	\$49,114	\$36,412	\$6,647	\$78,878	8%
Courts Accts Receivable PC1205d PC 1202.4	\$0	\$0	\$0	\$0	
10% Fee PC1203.1	\$8,004	\$24,570	\$4,214	\$28,360	15%
California Fingerprint ID Penalty (GC 76102)	\$4,940	\$3,047	\$586	\$7,401	8%
Domestic Violence PC 1203.097(a)5	\$26,271	\$26,369	\$5,083	\$47,557	11%
Courts Administration Costs/Fees VC 40508.6	\$0	\$0	\$0	\$0	
Booking fees GC 29550.1		\$0	\$0		
Martinez School District Truancy Fine		\$0	\$0		
Mt. Diablo School District Truancy Fine		\$0	\$0		
Adult DA Diversion PC 1001.16	\$67,097	\$1,918	\$379	\$68,636	1%
Drug diversion PC 1000	\$36,334	\$7,974	\$1,466	\$42,843	3%
Alcohol test (pc1463.14)	\$53,579	\$40,760	\$7,437	\$86,901	9%
C.A.P. (PC 1463.16)	\$53,579	\$42,011	\$7,683	\$87,907	9%
DNA penalty GC76104.5	\$47,549	\$37,885	\$6,945	\$78,489	9%
CITE Fee PC 1463.07	\$1,129	\$3,731	\$710	\$4,151	17%
OR Fee 1463.07	\$1,693	\$3,474	\$626	\$4,541	14%
Drug program fee H&S; 11372.7	\$1,497	\$41,683	\$7,640	\$35,540	21%
Probation dept. drug diversion PC 1001.9	\$771	\$621	\$143	\$1,249	11%
Cost of probation PC1203.1(b)	\$56,940	\$510,590	\$91,957	\$475,573	19%
Probation cost of drug test (PC1203.1AB)	\$5,000	\$67,970	\$12,332	\$60,638	20%
Alcohol/drug assessment fee AB1916 PC1463.13 VC23646	\$106,773	\$76,310	\$13,923	\$169,160	8%
Probation report fee PC 1203.1(b)	\$6,551	\$25,335	\$4,554	\$27,333	17%
B&P; 7028.2 county	\$3,792	\$0	\$0	\$3,792	0%
Public defender fees	\$3,792	\$0	\$0	\$3,792	0%
Annual Totals	\$534,406	\$950,661	\$172,325	\$1,312,742	13%

Checking the County's numbers against RSG's

From Rebecca Brown's working spreadsheet "Comparative analysis of county calculations and RSG calculations" (Excel, June 27, 2019). Selected columns; figures as entered in the spreadsheet.

Fee	RSG net revenue	County Administrator figure	Difference
Alcohol Prevention APPA 23196 VC PC1463.25	\$78,878	\$78,328	\$-550
Courts Accts Receivable PC1205d PC 1202.4	\$0		\$0
10% Fee PC1203.1	\$28,360	\$75,246	\$46,886
California Fingerprint ID Penalty (GC 76102)	\$7,401	\$170,986	\$163,585
Domestic Violence PC 1203.097(a)5	\$47,557	\$32,269	\$-15,288
Courts Administration Costs/Fees VC 40508.6	\$0		\$0
Booking fees GC 29550.1		\$39,464	\$39,464
Martinez School District Truancy Fine			\$0
Mt. Diablo School District Truancy Fine			\$0
Adult DA Diversion PC 1001.16	\$68,636	\$111,085	
Drug diversion PC 1000	\$42,843		\$-394
Alcohol test (pc1463.14)	\$86,901	\$129,975	\$-44,834
C.A.P. (PC 1463.16)	\$87,907		
DNA penalty GC76104.5	\$78,489	\$235,130	\$156,641
CITE Fee PC 1463.07	\$4,151	\$458,756	\$450,064
OR Fee 1463.07	\$4,541		
Drug program fee H&S; 11372.7	\$35,540	\$15,314	\$-20,226
Probation dept. drug diversion PC 1001.9	\$1,249	\$1,273	\$-24
Cost of probation PC1203.1(b)	\$475,573	\$488,374	\$12,801
Probation cost of drug test (PC1203.1AB)	\$60,638	\$65,921	\$5,283
Alcohol/drug assessment fee AB1916 PC1463.13 VC23646	\$169,160	\$207,529	\$38,369
Probation report fee PC 1203.1(b)	\$27,333	\$27,995	\$662
B&P; 7028.2 county	\$3,792	\$373	\$-3,419
Public defender fees	\$24,530	\$28,499	\$3,969
Annual Totals	\$1,333,481	\$2,166,517	\$832,988



Contra
Costa
County

To: Board of Supervisors
From: PUBLIC PROTECTION COMMITTEE
Date: February 26, 2019
Subject: Criminal Justice Fees

RECOMMENDATION(S):

REFER to the Public Protection Committee the issue of criminal justice system fees charged to individuals.

FISCAL IMPACT:

No fiscal impact. This action refers the issue of justice system fees to the Public Protection Committee.

BACKGROUND:

Existing law allows the County to impose various criminal justice fees for the cost of administering the criminal justice system. This referral is being requested to review the current programs, policies and practices related to criminal justice fees.

CONSEQUENCE OF NEGATIVE ACTION:

The issue will not be referred to the Public Protection Committee for review.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **02/26/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

ABSENT: Diane Burgis, District III Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 26, 2019

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Paul Reyes,
925-335-1096

September 16, 2019

Contra Costa County Board of Supervisors
651 Pine Street
Martinez, CA 94553

Re: Moratorium on Criminal Justice Fees (Item D.4, Board Agenda 9/17/19)

Dear Members of the Board of Supervisors:

We the undersigned write in support of the proposed moratorium on the assessment and collection of criminal justice administrative fees currently imposed by Contra Costa County; this moratorium is to be considered at the Board of Supervisors' meeting on Tuesday, September 17, 2019. We support this moratorium and call on the Supervisors to end this practice.

As you know, under California state law counties are permitted, but not mandated, to impose certain administrative fees on justice-involved people. Administrative fees, which are different from fines and restitution, include fees for supervision, investigation reports, drug tests, electronic monitoring, participation in work alternative programs, and even for representation by the Public Defender's Office (all of whose clients are considered indigent).

For people with limited resources, these fees can have substantial, long-term and counter-productive impacts: People may be denied release from probation until all fees have been paid; their paychecks may be garnished or tax refunds intercepted for decades; they may be subjected to harsh and unreasonable demands by for-profit debt collectors hired to compel payment; and such fees may render them ineligible to clear their records as permitted by law.

A growing body of research demonstrates that such fees inflict high pain for low gain: They impose significant and disproportionate financial hardships on low-income people and people of color and on their families while adding minimal revenue to county coffers.

A statistical analysis of national and state-level court data conducted by researchers at the University of Washington found that "if the policy goal is to improve the lives of victims, recoup state expenditures, and reduce crime...the imposition of monetary sanctions is very likely a policy failure."¹

The United States Council of Economic Advisers found that "fines and fees are regressive payments that disproportionately impact the poor,"² while the Brookings Institute has found that "the fact that monetary sanctions from the criminal justice system result in a substantial number of reincarcerations suggests these penalties are generating important costs to society ranging from the most direct (increasing corrections costs) to those that are broader (e.g., interrupting careers and housing, disrupting families, and harming job prospects)."³

¹ Harris, A., Evans, H., & Beckett, K. (2010). "Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States." *American Journal of Psychology*, 115, 1753-99.

² US Council of Economic Advisers. (12/2015). "Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor." *Issue Brief*, Office of the President of the United States

³ Liu, P., Nunn, R., & Sambaugh, J. (2019). "Nine Facts about Monetary Sanctions in the Criminal Justice System." *The Hamilton Project*. Brookings Institute.

Further, the burden of paying these fees disproportionately falls on women, with one study finding that of the family members primarily responsible for these costs, 83% were women.⁴

With increasing attention to the unintended, detrimental, and lasting consequences of money-based justice systems, counties across the country are now seizing the opportunity to reconsider and reform such past practices. The decision to suspend both new fees and the collection of fee-related debt would be a major stride towards a more just and equitable Contra Costa County, and we urge you to vote for this moratorium.

Respectfully,

Contra Costa Public Defenders Association

Central Labor Council of Contra Costa County

SEIU 1021

Lift Up Contra Costa

Contra Costa County Racial Justice Coalition

Contra Costa Immigrant Rights Alliance

BWOPA Richmond/Contra Costa Chapter

Safe Return Project

Monument Impact

ACCE

Immigration Institute of the Bay Area

Organizing for Action – Contra Costa

SURJ (Showing Up for Racial Justice) Contra Costa County

Douglas Leich, Racial Justice Working Group of Multi-faith ACTION Coalition

Ensuring Opportunity Campaign

Asian Americans Advancing Justice – Asian Law Caucus

Reentry Solutions Group

California Nurses Association

⁴ deVuono-powell, S., Schweidler, C., Walters, A., and Zohrabi, A. (2015). “Who Pays? The True Cost of Incarceration on Families.” Ella Baker Center.

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA
and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 09/17/2019 by the following vote:

AYE: ☐
NO: ☐
ABSENT: ☐
ABSTAIN: ☐
RECUSE: ☐



Resolution No. 2019/522

IN THE MATTER OF a proposed moratorium on the assessment and pursuit of collection of certain adult criminal justice fees.

WHEREAS, criminal justice financial obligations, such as fees for probation, indigent defense, and work release programs, can have long-term effects that can undermine successful societal reentry goals of the formerly-incarcerated, such as attaining stable housing, transportation, and employment.

WHEREAS, criminal justice debt levied against low income or indigent adults compromises key principles of fairness in the administration of justice in a democratic society and engenders deep distrust of the criminal justice system among those overburdened by such debt.

WHEREAS, according to a report by the Ella Baker Center for Human Rights, the average debt incurred for court-ordered fines and fees line was roughly equal to the annual income for low-income respondents.

WHEREAS, a national survey of formerly incarcerated people found that families often bear the burden of fees.

WHEREAS, on July 21, 1994, Contra Costa County Board of Supervisors approved a resolution pursuant to California Penal Code § 1203.1 to charge up to a ten percent fee ("10% Fee") of the amount of restitution ordered by the Superior Court.

WHEREAS, Contra Costa County is currently authorized by Resolution No. 88/565 and California Government Code § 76102 to establish a County Automated Fingerprint Identification Fund in Contra Costa County and to charge a fifty cent (\$0.50) assessment ("California Fingerprint ID Penalty") for each \$10 fine, penalty, or forfeiture imposed and collected by the Superior Court for all criminal offense and certain violations of the Vehicle Code for the purpose of assisting the County in the establishment and maintenance of adequate fingerprint facilities and suspect booking identification facilities.

WHEREAS, Contra Costa County is currently authorized by Ordinance No. 2011-13 and California Government Code § 29550 to recover any criminal justice administration fee ("Booking Fee") imposed by the County from the arrested person if the person is convicted of any criminal offense related to the arrest.

WHEREAS, Contra Costa County is currently authorized by California Penal Code § 1211 and resolution approved by the Board of Supervisors on July 21, 1994 to charge a fee ("Drug Diversion fee") for the administrative and laboratory analysis costs incurred in processing a drug diversion case.

WHEREAS, Contra Costa County is currently authorized by Resolution No. 88/28 and California Penal Code § 1463.14 and § 1463.16 to charge two separate \$50 assessments (the "Alcohol Test fee" and "C.A.P. fee") on defendants convicted of violating California Vehicle Code § 23152 or § 23153 (driving a motor vehicle under the influence of alcohol or drugs).

WHEREAS, on September 14, 1995, the Contra Costa County Board of Supervisors authorized a Probation Drug Diversion administrative fee ("Probation Department Drug Diversion fee") for the Probation Department's processing of clients into a drug diversion program pursuant to Penal Code § 1001.15.

WHEREAS, Contra Costa County's Probation Department is currently authorized by Resolution No. 2010/262 and Penal Code § 1203.1b to charge a Probation Supervision Fee ("Cost of Probation fee") to recover the cost of probation supervision.

WHEREAS, Contra Costa County's Probation Department is currently authorized by Penal Code § 1203.1ab to charge a Probation Drug Test fee ("Probation Drug Testing fee") to recover the cost of drug testing required as a condition of one's probation.

WHEREAS, Contra Costa County's Probation Department is currently authorized by Ordinance 2009-28 and Penal Code § 1203.1b and § 1203.7 to charge a Probation Report Fee ("Probation Report Fee") to recover the cost to conduct a preplea investigation of a criminal defendant and prepare a preplea report.

WHEREAS, Contra Costa County is currently authorized by Resolution 99/347 and Penal Code § 1463.13 to charge an Alcohol and Drug Assessment Fee ("Alcohol and Drug Assessment Fee") to recover the cost of providing community substance abuse services for those convicted of driving under the influence.

WHEREAS, Contra Costa County is currently authorized by Penal Code § 987.81 to charge Public Defender Fees ("Public Defender Fees") to recover the cost of court appointed counsel.

WHEREAS, the Contra Costa County Office of the Sheriff is currently authorized by Resolution 2008/303 and Penal Code § 4024.2 and § 1203.016 to charge fees to participate in the Custody Alternative Program to recover the cost of administering the program.

WHEREAS, the Board of Supervisors referred to the Public Protection Committee the matter of whether the County should continue to assess and collect certain adult criminal justice fees in light of the financial hardship and social impact of such fees on individuals and their families.

WHEREAS, the Public Protection Committee received testimony from the community expressing concern that these fees are assessed without a consistent ability-to-pay determination.

WHEREAS, the Board of Supervisors finds that it is in the best interest of the County, justice-involved adults, and the larger community to place a moratorium on the assessment and collection of the above-named adult fees.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Effective September 17, 2019, and until further action by the Board of Supervisors, the Office of the Sheriff's authority to assess Custody Alternative Facility program fees is temporarily suspended. In addition, the Office of the Sheriff will not pursue collection of such fees on existing accounts.
2. Effective September 17, 2019, and until further action by the Board of Supervisors, the Probation Department's authority to assess and collect the following fees is temporarily suspended: Probation Report Fee, Cost of Probation fee, Probation Drug Testing fee, and Probation Department Drug Diversion fee. In addition, the Probation Department will not pursue collection of such fees on existing accounts.
3. Effective September 17, 2019, and until further action by the Board of Supervisors, Contra Costa County will temporarily suspend the assessment and collection of the following fees: 10% Fee, California Fingerprint ID Penalty, Booking Fee (collected from arrestee), Drug Diversion fee, Alcohol Test fee, C.A.P. fee, Alcohol and Drug Assessment Fee, and Public Defender Fees.
4. The County Administrator will notify the Superior Court of this moratorium on the assessment and collection of the above adult criminal justice fees that are collected by the Superior Court. This includes a moratorium on the collection of such fees on existing accounts.
5. The County Administrator will report back to the Board of Supervisors on this matter on or before December 31, 2019.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: September 17, 2019

David J. Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Paul Reyes, 925-335-1096

By: , Deputy

cc:

To Every Thing, There is a Season

After more than eight years, this is RSG's final meeting!

Reentry Solutions Group
October 1, 2019



2019



- January: RSG conducts original research and financial analysis of criminal justice fees in Contra Costa County; coalition requests County end these fees.
- January: RSG conducts original research and financial analysis of the DA's civil asset forfeitures in Contra Costa County and asks DA Becton to change these policies.
- February: In response to two years of research and advocacy, District Attorney Becton ends what I call “pay to play” private “courts” in Contra Costa.
- September: In response to our requests, DA Becton agrees to develop new policies for Civil Asset Forfeiture.
- September: Contra Costa County becomes the third county in the nation to end criminal justice fees.



Report on Criminal Justice Fees in Contra Costa

Prepared by Rebecca Brown, Member, Contra Costa County Criminal Justice Fees Work Group
Presented to the Public Protection Committee of the Contra Costa County Board of Supervisors
November 4, 2019

Note: All documents referenced in this report are available upon request.

“We found it difficult to access the data we needed to understand the basics of fines and fees and how they impact individuals, as well as our city and county bottom lines.

After working diligently with various city and county departments to better understand their fines and fees, we realized that most cities and counties, including San Francisco, lack answers to basic questions, such as how many people receive various fines, fees, tickets; collection and delinquency rates, penalties for nonpayment as well as the cost of collection to the city and county.”¹

San Francisco Financial Justice Project

1. Context

In Contra Costa County, attention to the use of administrative fees in the adult criminal justice system was preceded by the County’s decision to end such fees in the juvenile justice system. In October 2016, the Board of Supervisors unanimously voted to impose a moratorium on juvenile fees, which they followed with another unanimous vote in October 2017, permanently repealing these such fees.^{2,3} In the aftermath of these historic votes, Contra Costa went on to become the first county in the nation to identify and reimburse families who had been unlawfully charged such fees.⁴

This interest in juvenile fee reform - both locally and statewide - dovetailed with increasing public attention to the use of similar fees in the adult criminal justice system. Across California, demand has been growing to remedy the disproportionately punitive consequences of money-based sanctions.

In July 2018, the Board of Supervisors of the City and County of San Francisco - with the support of the San Francisco Chief of Probation, District Attorney, Public Defender, Sheriff, and more than a dozen community organizations - unanimously passed an ordinance to end its adult criminal justice fees, thus eliminating more than \$32.7 million in outstanding debt levied against more than 21,000 people. In November 2018, Alameda County also voted to eliminate their county-controlled criminal justice fees.

In January 2019, Senators Mitchell and Hertzberg introduced Senate Bill 144 (SB144), to substantially amend or end the use of state and local justice fees; it has been turned into a two-year bill and will be considered in the 2020 legislative session.

In September 2019, Contra Costa County voted to impose a moratorium on the use of locally imposed criminal justice fees, becoming only the third county in the nation to end or suspend such fees.

2. San Francisco Financial Justice Project

In late 2016, the City and County of San Francisco established the Financial Justice Project (FJP), housed in the Office of the Treasurer. San Francisco is the first city in the nation to launch such an entity to assess and reform fines, fees, and financial penalties that disproportionately impact low-income people, communities of color, people struggling with homelessness, and people exiting the criminal justice system.⁵

The FJP is directed by Anne Stuldreher, MBA, who was previously a Senior Program Manager for The California Endowment, Senior Policy Fellow for New America, and Senior Policy Advisor for Governor Arnold Schwarzenegger. The FJP is managed by Christa Brown, who previously served as Director of the SparkPoint Initiative for the United Way of the Bay Area and who holds a Master's in Public Administration from the Goldman School of Public Policy at the University of California, Berkeley.

Over the course of its first two years, the FJP convened and facilitated the work of a Fines and Fees Task Force comprised of community members, ten governmental departments, and the courts. With the support of FJP, the Task Force examined best practices, reviewed evidence related to the use and impact of monetary sanctions, and received expert testimony, while the FJP worked with the Budget Office to conduct an audit of San Francisco's fines and fees. At the conclusion of its work, the Task Force recommended 40 reforms to both policy and process.⁶

In late 2018, San Francisco's Financial Justice Project issued a new report, *Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government*.⁷ Subtitled *A Call to Action for California Counties*, the report called on all counties in the state of California to undertake substantial reforms.

3. Summary of Local Research Process

In Contra Costa County, much of the original research and analysis into the county's criminal justice fees was undertaken by Reentry Solutions Group (RSG), working in primary partnership with the UC Berkeley School of Law Policy Advocacy Clinic (UCB), along with other local stakeholders.

In December 2017, RSG requested that the Office of the Sheriff establish a work group to remedy the County's failure to comply with California state statutes regarding the policies and procedures for Electronic Monitoring in Lieu of Bail (California Penal Code 1203.018(e)); Home Detention in Lieu of Confinement (PC 1203.016(b) and 1203.016(d)(1)); and Work Release in Lieu of Confinement (PC 4024.2(c)).

In response to this request, in January 2018 the Office of the Sheriff approved a Work Group proposal submitted by RSG, and a Work Group was formed, comprising representatives of the Sheriff's Office along with Donté Blue, Deputy Director of the County's Office of Reentry and Justice; Ellen McDonnell, Chief Assistant Public Defender; and Rebecca Brown, Director of RSG.

Over the past 20 months, this Work Group has made incremental progress, and the Sheriff's Office has largely suspended the use of application or administrative fees for the programs delegated to its administration by the Board of Supervisors. However, new policies have not yet been drafted, reviewed, or approved by the Board of Supervisors, and the County remains out of compliance with state law.

In October 2018, in partnership with local Contra Costa stakeholders, UCB submitted a Public Records Act Request to Sharon Anderson, County Counsel for Contra Costa County, seeking information on "how Contra Costa County assesses and collects fees against adults...in the criminal justice system." In response to this request, Contra Costa County provided a seven (7) page document that included, in its totality, a cover letter, two administrative forms, and one Administrative Bulletin. In the document's cover letter, Chief Assistant County Administrator Tim Ewell wrote, "We have reviewed the remainder of your request," deemed it "overly broad," and requested greater specificity.

In November 2018, through a series of emails between UCB and Mr. Ewell, Contra Costa County provided four web addresses that link to webpages offering summary information and various Fee Schedules used by the Office of the Sheriff: Civil Unit fees, Records Unit fees, Custody Alternative Facility fees, and Coroner's Division fees. It should be noted that three of these web sources do not pertain to criminal justice fees, and that the one that does - for fees related to the Custody Alternative Facility (CAF), operated by the Sheriff's Office as authorized by the Board of Supervisors - the link simply connects to the CAF handbook, which is substantially out of date.

In sum: Contra Costa County provided no administrative data that would have allowed analysis of the County's use of criminal justice fees.

In October 2018, again in partnership with local stakeholders, UCB similarly submitted a Public Records Act Request for fee-related judicial records to Matthew Kitson, Public Information Officer of the Superior Court of California, Contra Costa County. In his response of November 2018, Mr. Kitson wrote that the Court:

- "does not maintain any non-adjudicative 'records relating to the demographics of adults in the justice system'" and has "no records responsive" to this request;
- "does not track the aggregate number of adults who are assessed and/or charged fees annually [and has] no responsive records";
- "does not track the total amount of adult fees assessed per year, reduced or waived due to inability to pay per year, and/or total amount currently owed [and] no responsive records exist";
- has "no aggregated data concerning" adjudicative records pertaining to individual cases
- "keeps no data or records specifically 'relating to the amount spent on collecting adult fees' although "the monthly Financial Report spreadsheets may contain relevant information."

However, to his response Mr. Kitson attached a 362-page PDF document containing hundreds of pages of scanned financial accounting and tracking spreadsheets used by the Court in its role as financial administrator for state and local justice-related fees. It should be noted that these data do not provide information related to individual cases, and the document contained no individual or identifying information. Instead, this document provides a month-by-month financial detail of the funds associated with each criminal justice fee collected by the Court as authorized by either state statutes or local ordinances.

In November and December 2018, on behalf of a coalition of stakeholders, Rebecca Brown, Director of RSG, conducted extensive analysis of the data embedded in this document. From it, she produced a comprehensive, month-by-month, item-by-item categorical report on every criminal justice fee collected and distributed by the Courts on Contra Costa County's behalf in each month from July 2017 through June 2018. Capturing all the Contra Costa County data provided in the Court's document, this analysis included line-by-line accounting for each fee type, recording Non-delinquent Receipts, Delinquent Receipts, and Net Revenue Distribution, among other data.

In December 2018, Ms. Brown, along with Carson Whitelemons from UCB, engaged in a telephone interview with Mr. Kitson and Fae Li, Financial Services Director for the Superior Court, to seek additional information about the document provided by the Court. During this interview, Ms. Li explained various administrative processes as they relate to the tracking, accounting, and distribution of such fees, and the production of the Court's financial reports. She also discussed the contract with the Court's debt collector, Linebarger Goggan Blair & Sampson, LLP (Linebarger). It may be of interest that Linebarger is the subject of multiple class action lawsuits across the United States.^{8,9,10,11}

In December 2018, Ms. Brown obtained a copy of, and closely reviewed, Linebarger's Master Agreement for Collection Services, which is a contract between Linebarger and the Judicial Council/Administrative Office of the Courts, effective as of January 1, 2014. Although neither California's 58 counties nor its 58 Superior Courts is required to enter into this Master Agreement, both Contra Costa County and the Superior Court of Contra Costa County are named as Participating Entities in this Agreement.

The Agreement contains provisions for Obligation (Section 2.2), Non-Exclusivity (Section 2.3), Franchise Tax Board Transfer Services (Section 3.7), Termination for Convenience (Section 4.2), and Termination for Cause (Section 4.3).

The Statement of Work that accompanies the Master Agreement obligates Linebarger to provide a "list of old cases...annually, or as specified by the Participating Entity. The Participating Entity may request a list of cases...[to] determine eligibility for discharge." Section 1.5.1 requires Linebarger to "supply an account payment history for each Account on the Participating Entity's request."

The Fee Schedule that accompanies the Agreement reveals that the bulk of Linebarger's commissions range from 18% to 25% of all debt collected. The commission percentage rises with the age of the debt, with the maximum percentage charged against debt that is two years old or more.

In February 2019, Ms. Brown disseminated the results of her financial and administrative analyses of Contra Costa County's justice fees and the Linebarger contract (along with her analysis of the

Contra Costa County DA's civil asset forfeiture practices) at a public meeting of Reentry Solutions Group. Entitled *What the Numbers Tell Us: Money and Justice in Contra Costa County*, this public presentation was also immediately published on RSG's website.¹²

In February 2019, the Board of Supervisors formally referred the matter of criminal justice fees to the Board's Public Protection Committee (PPC). In its meetings in April and July 2019, the PPC reviewed information provided by RSG and by staff of the CAO, heard public testimony, and considered potential options for action. At its July meeting, the PPC determined to recommend to the Board of Supervisors that it enact a moratorium on adult criminal justice fees heretofore authorized or imposed by Contra Costa County.

On September 17, 2019, the Board of Supervisors considered this recommendation, voted to authorize a moratorium, and referred the matter of criminal justice fees for continuing attention by the PPC, requesting that the PPC attempt to identify and provide to the BOS additional available and relevant data. In response to the September 2019 request by the BOS, Rebecca Brown has drafted this report for submission to the PPC to advance its research and for consideration at its meeting on November 4, 2019. (It is our understanding that the County Administrator's Office is preparing a summary report on the policies and administrative practices of relevant Contra Costa agencies; we encourage the PPC and the Board to review that summary.)

On October 21, 2019, the Superior Court of California, County of Contra Costa (Court), provided a letter to the CAO regarding administrative measures related to implementing the moratorium. In the letter, the Court estimates \$63,570 as the administrative cost to implement the moratorium. Although in the letter the Court acknowledges its difficulties in providing specific dollar amounts related to any of the outstanding fee amounts, three points of interest are mentioned:

- In terms of public defense fees (which, it should be noted, do not contribute to the budget of the Public Defender), it has identified 25,240 accounts with a balance of approximately \$5.54 million in collections with Linebarger, and it has notified Linebarger to suspend collections on these accounts.
- In terms of booking fees, which may be ordered in the amount of \$564, it has identified 3,684 accounts with a balance of \$901,092, and it has notified Linebarger to suspend collections on these accounts.
- In terms of probation fees – which, by RSG's analysis, represent 54% of the revenues generated by criminal justice fees in Contra Costa in the year studied – the Court has not yet been able to identify the total amount of unpaid debt and it has not yet suspended collections on such fees, pending an administrative revision to its vendor data system.

4. A Body of Evidence

Local and national research has widely and consistently shown that criminal justice fees are harmful, that they undermine successful reentry, and that they increase the chance of recidivism. For those who are convicted in criminal court, fees for probation supervision, drug and alcohol testing, representation by a public defender and non-custodial sentencing options are assessed in addition to

other costs and can quickly add up to thousands of dollars. In Contra Costa County, an individual with a three-year term of supervised probation is assessed \$2,700 in Probation supervision fees alone.

Research shows that the vast majority of people charged such costs cannot afford to pay them and that counties typically net very little or even lose revenue after accounting for collections costs.¹³ Fees make reentry harder, hurting credit scores, making it harder for people to find housing or open a bank account, and discouraging people from seeking formal employment out of fear that their wages will be garnished, bank accounts levied, or tax refunds intercepted.”¹⁴

National research is unanimous on this point: Given the endemic racial bias present throughout our justice systems, administrative fees are disproportionately imposed on communities of color, who are further disproportionately likely to have difficulty paying them. In California, close to half of Black and Latinx families struggle to put food on the table and pay for housing.¹⁵ And research has found that the burden of such fees is typically felt by family members; in a national survey by the Ella Baker Center for Human Rights, 63% of respondents reported that family members were primarily responsible for covering conviction-related costs, and 83% of those paying such costs are women. Nearly half also reported that their families could not afford to pay these fines and fees, and 1 in 5 families across income levels reported that they had to take out a loan to cover conviction-related costs.¹⁶

It should be noted that a report released in May 2019 by the Board of Governors of the Federal Reserve System drives home the devastating havoc that can result from costs such as criminal justice fees. *Entitled Report on the Economic Well-Being of U.S. Households in 2018*, the report found that “many adults are financially vulnerable and would have difficulty handling an emergency expense as small as \$400.”¹⁷ The study found that 17% of adults are forced to leave some bills unpaid each month, while another 12% said that an additional expense of \$400 would leave them unable to meet their basic needs. A full 42% of people who have no college education would be pushed into financial hardship by such an expense, with an even higher percentage of African Americans (58%) affected in this way. Even African Americans with some college or an associate’s degree find significant harm; 46% report that they would not be able to pay their monthly bills if hit with an additional \$400 expense. And rather than constituting a one-time expense, criminal justice fees tend to recur - probation fees, drug testing fees, and partial payment fees all accrue month after month.

5. Contra Costa County Implications

According to the American Bar Association, the vast majority of people accused in criminal courts are considered indigent, unable to afford their own attorney and eligible therefore for the constitutional protections for public defense. The ABA estimates that 85 to 95 percent of people accused of crimes cannot afford their own lawyer;¹⁸ however, Contra Costa County collects no local data on this point.

Data provided by the Contra Costa County Office of the Sheriff can serve as a sufficient proxy for the racial implications of our local criminal justice system; according to the Office of the Sheriff, 71% of people currently incarcerated in our county jails are people of color.¹⁹

In Contra Costa County, the Probation Department, the Sheriff's Office, and the Courts are authorized to impose local criminal justice fees. Each of these entities is governed by a different set of internal policies and practices with regard to the fees in question, and our research suggests that Contra Costa County has thus far failed to develop consistent, transparent, or equitable practices; has not engaged in meaningful oversight or analyses of the implementation and impacts of these fees; and indeed both expanded and increased these fees in the immediate aftermath of the economic recession of 2007-2009, a time when unemployment was at near record levels and millions of families across the nation found themselves bankrupt, foreclosed on, evicted, and out of work.²⁰

6. Summary

The policy implications from national and local research are clear: "We should end the practice of assessing criminal administrative fees. Eliminating administrative fees will allow formerly incarcerated people to devote their limited resources to critical needs like food, education, housing and health insurance. Repealing criminal fees will also result in improved employment prospects for formerly incarcerated people and put more money in the pockets of economically insecure families, aiding successful reentry and reducing California's recidivism rate."²¹

Contra Costa County is not unique in its past practices with criminal justice fees, and there is a way forward. By establishing a governmental entity to recognize and begin to redress this endemic American reality, the Financial Justice Project in San Francisco has been a trailblazer, but the research conducted in Contra Costa County is equally uncommon; we know of no other county in California in which non-governmental agencies have undertaken this level of detailed local analysis. And of course, as the third county in the nation to end or suspend such fees, Contra Costa County now stands as one of the leading lights committed to such opportunities for change.

¹ https://drive.google.com/file/d/1gUo96d0ldfa6qdFj5QhGY-cdI61MZ_9q/view

²

http://64.166.146.245/agenda_publish.cfm?dsp=agm&seq=27510&rev=0&id=&form_type=AG_MEMO&beg_meet_mth=10&beg_meetyr=2016&end_meetmth=10&end_meetyr=2016&mt=ALL&sstr=juvenile&dept=ALL&hartkeywods=&sortby=f.form_num,%20f.rev_num&fp=ADVSRCH&StartRow=1

³ http://reentrysolutionsgroup.org/meeting_materials/Press_release_and_moratorium_letters_10-28-16_english_and_spanish.pdf

⁴ <https://www.themarshallproject.org/2018/01/07/the-check-is-in-the-mail-for-real>

⁵ <https://sftreasurer.org/sites/default/files/2019-08/Overview%20of%20the%20Financial%20Justice%20Project%202012.11.18.pdf>

⁶ https://drive.google.com/file/d/1gUo96d0Idfa6qdFj5QhGY-cdI61MZ_9q/view, including: Eliminate all criminal justice administrative fees charged by the City and County of San Francisco. allow lower-income people non-monetary options to clear their Quality of Life citations, reduce or waive fees related to parking tickets and other citations for lower-income people, adopt court reforms to substantially reduce the cost of state-imposed traffic fines and fees for lower-income people, reduce the city's steep towing and "boot" fees for lower-income San Franciscans, develop a pilot program to relieve parents of debt paid to the government instead of to child support payments, reduce use of money bail

⁷ http://test-sfttx.pantheonsite.io/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019.pdf

⁸ <https://texasmonitor.org/lawsuit-against-collection-firm-raises-questions-on-tax-judgments/>

⁹ http://www.abajournal.com/news/article/debt_collection_law_firm_to_pay_3.4m_to_settle_class_action/

¹⁰ <https://www.classaction.org/media/guerra-v-miami-dade.pdf>

¹¹ http://www.hoysettlement.com/media/2115094/stipulation_of_class_action_settlement.pdf

¹² http://reentrysolutionsgroup.org/meeting_materials/2_26_19_RSGFinalV2.pdf

¹³ East Bay Community Law Center, *Pay or Prey* (2018); Berkeley Law Public Advocacy Clinic, *Making Families Pay* (2017).

¹⁴ <https://ebclc.org/cadebtjustice/policy-platform/>

¹⁵ Insight Center for Community Economic Development, *Cost of Being Californian* (2018).

¹⁶ Ella Baker Center, *Who Pays? The True Cost of Incarceration on Families* (2015).

¹⁷ <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>

¹⁸ Laurence A . Benner, *Eliminating Excessive Public Defender Workloads*, 2011 A .B .A, Criminal Justice Vol . 2, [https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsu11_benner.authcheckdam .pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsu11_benner.authcheckdam.pdf).

¹⁹ Assistant Sheriff Mathew Schuler, email communication to Rebecca Brown, October 25, 2019.

²⁰ Contra Costa County Resolutions No. 2010/251, 2010/252, 2010/253, 2010/262. Originally research into bureaucratic and administrative history in Contra Costa County, produced by Reentry Solutions Group in February 2018, unpublished and available upon request.

²¹ <https://ebclc.org/cadebtjustice/policy-platform/>



Contra
Costa
County

To: Board of Supervisors
From: PUBLIC PROTECTION COMMITTEE
Date: September 17, 2019

Subject: Criminal Justice Adult Fees

RECOMMENDATION(S):

1. ACCEPT a report on the issue of certain fees assessed by the County related to criminal justice system.
2. CONSIDER adopting Resolution No. 2019/522 to place a moratorium on the assessment and collection of certain criminal justice fees and DIRECT staff to return to the Board of Supervisors with an update no later than December 31, 2019.
3. PROVIDE further direction to staff regarding next steps.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/17/2019** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: September 17, 2019

Contact: Paul Reyes,
925-335-1096

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc:

FISCAL IMPACT:

Should the Board of Supervisors enact a temporary moratorium on the collection of certain criminal justice fees, the net county cost would be approximately \$550,000 based on collections experienced during fiscal year 2018/19. This reflects the cost during the period September 17, 2019 through December 31, 2019 (the proposed date identified in the Resolution for staff to return to the Board on this issue). The annualized fiscal impact is approximately a \$1.8 million reduction in County revenue.

BACKGROUND:

On February 26, 2019, the Board of Supervisors referred to the Public Protection Committee the issue of criminal justice system fees charged to individuals. Existing law allows the County to impose various criminal justice fees for the cost of administering the criminal justice system. The referral requested a review of the current programs, policies and practices related to criminal justice fees.

On April 1, 2019, the Public Protection Committee accepted an introductory report on the issue of criminal justice fees assessed in the County. The report provided during this meeting focused on criminal justice fees that had been positively identified as being local and discretionary fees (ones not mandated by California law): Probation Fees, Public Defender Fees, and Sheriff Custody Alternative Facility Fees.

On July 1, 2019, the Public Protection Committee accepted an a follow-up report on this issue which included a review of a wider range of criminal justice fees, including those that are mandated by state legislation. The Public Protection Committee voted unanimously to refer to the full Board of Supervisors a temporary moratorium on the assessment and collection of criminal justice fees currently authorized by the Contra Costa County Board of Supervisors.

During both of these meetings, the Public Protection Committee considered a number of concerns revolving around adult criminal justice fees, including concern over the inequity of criminal justice fees in that these fees are often disproportionately imposed on communities of color. There was also concern that criminal justice fees are regressive in that these fees hurt the poorest the most. It was also discussed that these fees can be impoverishing in that large monetary sanctions translate to large levels of debt that reinforce poverty and make it difficult for individuals to lead financially stable lives. Criminal fees could potentially undermine public safety. The goal of a successful post-incarceration period is to reintegrate into the community, yet these fees can create significant barriers to successful reentry.

There was also significant concern brought up regarding the ability-to-pay process. The majority of criminal fees include provisions that allow for either a waiver or reduction of the fee based on one's ability to pay. However, the Public Protection Committee received public comment from members of the public, defense attorneys, and a former judge that the ability-to-pay determinations are not being administered in a consistent and legal manner. There was also concern expressed that assessing fees without considering one's ability to pay violates constitutional guarantees against "excessive fines".

The Public Protection Committee's consideration of the above concerns ultimately led to the determination that it is in the best interest of the County, justice-involved adults, and the larger community to place a moratorium on the assessment and collection of adult criminal justice fees.

Collection of Fees

For several years, the Superior Court of California - County of Contra Costa (Court) has been responsible for processing and collecting the majority of the criminal justice fees, fines and other assessments due to the County. The Court processes and collects the fees included in this report, with the

exception of the Custody Alternative Facility fees, which are processed and collected by the Office of the Sheriff.

Revenue

The estimated revenue of the fees under consideration is approximately \$1.8 million for Fiscal Year 2019/2020. The table below shows a summary of the estimated fee revenue for Fiscal Year 2019/2020, by impacted department.

Impacted Department	FY 19/20 Est. Revenue
Sheriff - Custody Alternative Facility Fees	\$400,000
Sheriff - General Lab	\$120,000
Sheriff - Central Admin	\$40,000
Probation Department	\$521,000
Trial Court Programs (General Fund)	\$280,000
Alcohol & Other Drugs	\$230,000
Special Revenue Fund - Automated Fingerprint ID	\$180,000
Total	\$1,771,000

Attachment A shows the estimated fee revenue for Fiscal Year 2019/2020, by fee type.

Additional Information on Each Fee

10% Fee – California Penal Code § 1203.1 provides counties the ability to charge an administrative fee of up to ten percent (10%) of the amount of restitution ordered to be paid through the court. In 1994, Contra Costa County Board of Supervisors approved a resolution establishing a fee up to 10% of the amount of restitution ordered.

California Fingerprint ID Penalty – In 1988, the Board of Supervisors approved Resolution No. 88/565 pursuant to California Government Code § 76102 to establish a County Automated Fingerprint Identification Fund in Contra Costa County and to charge a fifty cent (\$0.50) assessment for each \$10 fine, penalty, or forfeiture imposed and collected by the courts for all criminal offense and certain violations of the Vehicle Code. The purpose of this fee was to assist the County in the establishment and maintenance of adequate fingerprint facilities and suspect booking identification facilities.

Booking Fee – Contra Costa County is currently authorized by Ordinance No. 2011-13 and California Government Code § 29550 to recover any criminal justice administration fee (“Booking Fee”) imposed by the County from the arrested person if the person is convicted of any criminal offense related to the arrest.

Drug Diversion Fee – In 1994, the Board of Supervisors approved a resolution pursuant to California Penal Code § 1211 to charge a fee for the administrative costs incurred in processing a drug diversion case.

Alcohol Test & C.A.P Fee – Contra Costa County is currently authorized by Resolution No. 88/28 and California Penal Code § 1463.14 and § 1463.16 to charge two separate \$50 assessments on defendants convicted of violating California Vehicle Code § 23152 or § 23153 (driving a motor vehicle under the influence of alcohol or drugs). Alcohol Test Fee revenue and fifty percent (50%) of C.A.P. fee revenue is used to offset the cost of laboratory testing performed by the Office of the Sheriff.

Probation Drug Diversion Fee – In 1995, the Contra Costa County Board of Supervisors authorized an administrative fee for the Probation Department’s processing of clients into a drug diversion program pursuant to Penal Code § 1001.15.

Probation Supervision Fee - The Probation Department is currently authorized by Resolution No. 2010/262 and Penal Code § 1203.1b to charge a Probation Supervision Fee to recover the cost of probation supervision.

Probation Drug Test Fee – The Probation Department is currently authorized by Penal Code § 1203.1ab to charge a Probation Drug Test Fee to recover the cost of drug testing required as a condition of one’s probation.

Probation Report Fee – The Probation Department is currently authorized by Ordinance 2009-28 and Penal Code § 1203.1b and § 1203.7 to charge a Probation Report Fee to recover the cost to conduct a preplea investigation of a criminal defendant and prepare a preplea report.

Alcohol and Drug Assessment Fee - Contra Costa County is currently authorized by Resolution 99/347 and Penal Code § 1463.13 to charge an Alcohol and Drug Assessment Fee to recover the cost of providing community substance abuse services for those convicted of driving under the influence. The revenue generated from this fee funds community substance abuse services.

Public Defender Fees - Contra Costa County is currently authorized by Penal Code § 987.81 to recover the cost of court appointed counsel. The revenue generated from this fee are used to offset the County’s cost for court appointed counsel. The Contra Costa Public Defender does not assess, process, or collect this fee.

Custody Alternative Facility Fees - the Contra Costa County Office of the Sheriff is currently authorized by Resolution 2008/303 and Penal Code § 4024.2 and § 1203.016 to charge fees to participate in the Custody Alternative Program to recover the cost of administering the program.

CONSEQUENCE OF NEGATIVE ACTION:

The County would continue with its billing and collections practices related to criminal justice fees.

ATTACHMENTS

Attachment A - Estimated Fee Revenue by Fee Type

ESTIMATED FEE REVENUE BY FEE TYPE

Fee Description	Funded Department/Program	FY 19/20 Est. Revenue
10% Fee	Trial Court Programs	\$ 80,000
California Fingerprint ID Penalty	Automated Fingerprint ID	\$ 180,000
Booking Fee	Sheriff Central Admin	\$ 40,000
Drug Diversion Fee	Trial Court Programs	\$ 60,000
Alcohol Test Fee	Sheriff - General Lab	\$ 80,000
C.A.P. Fee	Sheriff - General Lab	\$ 40,000
C.A.P. Fee	Alcohol & Other Drugs	\$ 40,000
Probation Drug Diversion Fee	Probation - Adult	\$ 1,000
Probation Supervision Fee	Probation - Adult	\$ 430,000
Probation Drug Test Fee	Probation - Adult	\$ 60,000
Probation Report Fee	Probation - Adult	\$ 30,000
Alcohol/Drug Assessment Fee	Alcohol & Other Drugs	\$ 190,000
Public Defense Fee	Trial Court Programs	\$ 140,000
Work Alternative	Custody Alternative Facility	\$ 360,000
Electronic Home Detention/Alcohol Monitoring	Custody Alternative Facility	\$ 40,000
	Total	\$ 1,771,000

County Administrator

County Administration Building
651 Pine Street, 10th Floor
Martinez, California 94553-1229
(925) 335-1080

David J. Twa
County Administrator

Contra Costa County



Board of Supervisors

John M. Gioia
1st District
Candace Andersen
2nd District
Diane Burgis
3rd District
Karen Mitchoff
4th District
Federal D. Glover
5th District

October 11, 2019

Hon. Barry Baskin, Presiding Judge
Kate Bieker, Court Executive Officer
Superior Court of California, Contra Costa County
725 Court Street, 4th Floor
Martinez, CA 94553

Hon. Judge Baskin & Ms. Bieker,

Thank you for your October 8, 2019, letter regarding Resolution 2019/522 approved by the Board of Supervisors of Contra Costa County and effective as of September 17, 2019. The purpose of the Board's action was to impose a moratorium on the assessment and collection of certain County fees that are currently assessed and collected by the Court. Through this resolution, and until further review by the Board of Supervisors, Contra Costa County has requested that the Court temporarily suspended the assessment and collection of the following fees from new and existing accounts:

10% Fee
California Fingerprint ID Penalty
Sheriff Booking Fee (Sheriff only, not city booking fees)
Drug Diversion Fee
Alcohol Test Fee
C.A.P. Fee
Alcohol/Drug Assessment Fee
Probation Department Drug Diversion Fee
Cost of Probation Fee
Probation Cost of Drug Test
Probation Report Fee
Public Defender Fees

The County understands and appreciates the fact that some of these fees may be programmatically difficult for the Court to separate, particularly for existing accounts. We are also aware that the County entered into a mutual agreement for the Court to administer the collection of the County's fees, and that the costs are the responsibility of the County.

We recognize that any costs associated with the identification, separation, or programing necessary to accomplish this request would be charged to the County. Because of this, we are requesting the Court

provide the County an estimate that would detail the feasibility, costs, and a proposed timeline for the identification of the impacted accounts and the suspension of the collection of these fees.

For those fees where it is not programmatically difficult to separate, the County is requesting that the Court cease the assessment and collection of those fees effective as of September 17, 2019 and that the Court notify the appropriate agency to cease the assessment and collection of those fees.

To the extent possible, for any fee suspended by this moratorium that is built into a different single fee, we are asking that the Court reduce the fee by the amount equal to the suspended portion of the fee.

For any fee that the Court determines that the assessment and/or collection is mandated by state law, it is expected that the Court will continue the Court's existing assessment and/or collection practices. As to those fees, we ask that you notify the County Administrator's Office of the specific fee so that we can bring this matter back to the Board of Supervisors for further discussion and clarification.

We appreciate and respect our relationship with the Courts and will provide whatever assistance you require to accomplish this request.

Respectfully,



Paul R. Reyes
Senior Deputy County Administrator

CC: Board of Supervisors
David J. Twa, County Administrator
Timothy M. Ewell, Chief Assistant County Administrator
Lisa Driscoll, County Finance Director
Julie Enea, Senior Deputy County Administrator

Kate Bieker
Court Executive Officer

Superior Court of California

COUNTY OF CONTRA COSTA
725 COURT STREET
P.O. BOX 911
MARTINEZ, CA 94553-0091



October 21, 2019

Paul Reyes
Senior Deputy County Administrator
Contra Costa County
County Administrator's Office
651 Pine Street, 10th Floor
Martinez, California 94553

Dear Mr. Reyes:

Attached please find an analysis and cost estimation the Court has completed for the identification, separation and programming necessary to complete the 2019/522 approved Board of Supervisors' moratorium on the assessment and collection of certain County fees.

Again, we stress the importance of communicating, once these fees are waived or suspended, they cannot later be re-imposed if the temporary moratorium is lifted.

The Court will await written approval of County to move forward on further work on the current collection cases for the necessary programming.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kate Bieker", with a long horizontal line extending to the right.

Kate Bieker
Court Executive Officer
Contra Costa Superior Court

Attachment

cc: Hon. Barry Baskin, Presiding Judge
David Twa, County Administrator
Timothy M. Ewell, Chief Assistant County Administrator
Lisa Driscoll, County Finance Director
Julie Enea, Senior Deputy County Administrator

Superior Court of California

COUNTY OF CONTRA COSTA
725 COURT STREET
P.O. BOX 911
MARTINEZ, CA 94553-0091



Memorandum

DATE: October 21, 2019

TO: Paul Reyes, Senior Deputy County Administrator

FROM: Kate Bieker, Court Executive Officer 

RE: Board of Supervisor Resolution 2019/522 Analysis

The purpose of this analysis is to assess the impact to the Contra Costa Superior Court resulting from the Contra Costa County Board of Supervisor's Resolution No. 2019/522 to authorize a moratorium on certain fees and assessments that are distributed to the County.

The resolution authorized a moratorium on the imposition and collection of the following fees and assessments:

Name of Fee/ Assessment	Statutory Authority	County Authority	Case Type(s) Affected	Court Imposed	Court Collected
10% Fee	PC 1203.1(l)	BOS Res 7/21/94	Criminal	Y	Y
Ca Fingerprint ID Penalty	GC 76102	BOS Res 88/565	Criminal & Traffic	Y	Y
Booking Fee	GC 29550	Ord 2011-13	Criminal	Y	Y
Drug Diversion Fee	PC 1211	BOS Res 7/21/94	Criminal	Y	Y
Alcohol Test Fee	PC 1463.14(b)	BOS Res 88/28	Criminal (DUI & Reckless)	N	N
CAP Fee	PC 1463.16(c)	BOS Res 88/28	Criminal (DUI & Reckless)	N	N
Prob Drug Diversion Fee	PC 1001.15	BOS Res 9/14/95	Criminal	N	N
Cost of Probation	PC 1203.1b	BOS Res 2010/262	Criminal	N	Y
Probation Drug Test Fee	PC 1203.1ab			N	Y
Probation Report Fee	PC 1203.1b / PC 1203.7	Ord 2009-28	Criminal	N	Y
Alcohol and Drug Assessment Fee	PC 1463.13(d)	BOS Res 99/347	Criminal	N	N
Public Defender Fee	PC 987.81		Criminal	N	Y
Sheriff Custody Alt Program	PC 4024.2 / PC 1203.016	BOS Res 2008/303	Criminal	N	N

The Court currently collects and distributes 8 of the 13 fees and assessments identified above. As the Court relies on legacy case management systems to collect and distribute criminal fines and fees, significant resources and time will be needed to update its legacy systems and procedures to fully implement the County's moratorium. Refer to the attached Estimated Costs to Implement County Fees Moratorium for a list of activities needed to implement the moratorium and associated costs. These costs are estimates only; actual costs may vary.

The following is an analysis of each fee or assessment affected by the moratorium, in order of difficulty to implement, from most difficult to least:

California Fingerprint ID Penalty:

The California Fingerprint ID Penalty is automatically imposed on all criminal and traffic offenses where a base fine is imposed. This penalty is calculated as \$0.50 per every \$10, or part of \$10, of base fine imposed on the violation. Since the penalty is not a standalone flat fee, it is part of the total fine amount imposed on the violation. Although the intent of the moratorium is to reduce the court-ordered fines and fees for criminal convictions, elimination of this penalty would not actually reduce the total fine imposed.

GC 76000(a)(1) establishes an additional penalty in each county in the amount of \$7 for every \$10, or part of \$10, upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. GC 76000(e) reduces this penalty to \$5 in Contra Costa County when the money in the local courthouse construction fund established by Section 76100 as of January 1, 1998 is transferred to the state under Section 70402. GC 76106 further specifies that, with respect to any fund established pursuant to this chapter, the penalty amounts to be deposited in the fund shall be specified by resolution adopted by the Board of Supervisors. The Contra Costa County Board of Supervisors has established the following county funds and corresponding local penalty assessments:

GC 76100 – Courthouse Construction Fund: \$2 per \$10

GC 75101 – Criminal Justice Facilities Construction Fund: \$2.5 per \$10

GC 76102 – Automated Fingerprint ID Fund: \$0.50 per \$10

GC 76104 – Emergency Medical Services Fund: \$2 per \$10

Total local penalties: \$7 per \$10

GC 76102 authorizes the Board of Supervisors to establish by resolution an Automated Fingerprint Identification and Digital Image Photographic Suspect Booking Identification System Fund (Automated Fingerprint ID Fund), and the County passed Resolution 88/565 to approve the \$0.50 California Fingerprint ID Penalty. Although the moratorium eliminates the Automated Fingerprint ID Fund and associated \$0.50 per \$10 California Fingerprint ID Penalty, GC 76000 requires the Court to continue to impose a \$7 per \$10 additional penalty pursuant to GC 76000(a).

There are two options to implement the moratorium on the California Fingerprint ID Penalty. The first option is for the Court to continue imposing, collecting, and distributing the \$0.50 per \$10 additional penalty to the same County-designated account, and the County may deposit the funds in this account into another local fund authorized under GC 76000(a). The Court would not incur any implementation costs with this option.

The second option is for the County to designate a new local fund for the \$0.50 per \$10 additional penalty to be deposited to. To implement the second option, the Court will need to update 27 traffic violation fee schedules in its traffic case management system, C-Track, as well as all criminal violation distribution tables. The Court is unable to discontinue the distribution of the

California Fingerprint ID Penalty for existing traffic cases through configuration changes in C-Track. As a work-around, the Court may manually adjust the monthly distribution reports to redistribute the Automated Fingerprint ID Fund to the new County-specified fund going forward.

Probation Fees

The Court may impose and collect the following fees for cases where the defendant is sentenced to probation:

- Cost of probation fee in the amount of \$75 per month pursuant to PC 1203.1b
- Probation drug test fee in the amount of \$10 per month pursuant to PC 1203.1ab
- Probation report fee in the amount of \$176 pursuant to PC 1203.1b

The Court only imposes these probation fees if charged by the County Probation Department. Since County Probation suspended performing ability to pay evaluations and setting up new accounts to charge these fees earlier this year, the Court has not imposed these fees since then. The Court still has a number of existing accounts with probation fees ordered, but these accounts also include other Court-ordered fines and fees, so the Court cannot easily separate out and waive just the balance owed on probation fees ordered. The Court has requested its CUBS vendor to programmatically identify and waive only the probation fees portion of the account balance for all existing criminal accounts. Furthermore, to prevent future probation fees from being set up, the Court will require programming by its LJIS programmer to discontinue the integration between LJIS and CUBS for fee set up.

Drug Diversion Fee

The Court imposes a drug diversion fee of \$200 for cases where the defendant is sentenced to a drug diversion program. Since the case may have other Court-ordered fines and fees, the Court cannot separate out and waive just the balance owed on drug diversion fees. The Court has requested its CUBS vendor to programmatically identify and waive only the diversion admin fees portion of the account balance for all existing criminal accounts with drug diversion sentences. Furthermore, to prevent future drug diversion fees from being set up, the Court will require programming by its LJIS programmer to discontinue the integration between LJIS and CUBS for fee set up. The Court has also requested its judges to stop imposing drug diversion fees.

10% Fee

The County Board of Supervisors authorized an administrative fee equal to 10% of the victim's restitution ordered pursuant to PC 1203.1 and by resolution in 1994. This fee was increased to 15% in 2010. The Court currently imposes the 15% fee on any restitution ordered but not yet paid at the time of account set-up. Since the 15% fee is added to the same account as the restitution order and other court-ordered fines and fees, the Court cannot easily separate out and waive just the 15% fee owed. The Court has requested its CUBS vendor to programmatically identify and waive only the 15% fee portion of the account balance for all existing criminal accounts. The Court has suspended adding 15% fees on new accounts with restitution orders.

Public Defender Fee

The Court may impose a public defender fee for cases where the defendant had a court-appointed public defender, and the defendant either waived the right to an ability to pay evaluation or were determined to have the ability to pay the fee. The amount of the fee ranges from \$200 to \$500 and depends on the complexity of the trial. The Court took over the collection of public defender fees from the County Probation Collections Unit (PCU) in 2017. Of the accounts transferred from PCU, the Court has identified 25,240 accounts with a balance of approximately \$5.54 million currently with Linebarger. The Court has notified Linebarger to immediately suspend collections of these accounts.

Any public defender fees imposed after the PCU transition, however, have been added to the same account set up for the defendant's other court-ordered fines and fees, so the Court cannot easily separate out and waive just the public defender fee owed. The Court has requested its CUBS vendor to programmatically identify and waive only the public defender fees portion of the account balance for all existing criminal accounts. Furthermore, to prevent future public defender fees from being set up, the Court will require programming by its LJIS programmer to discontinue the integration between LJIS and CUBS for fee set up. The Court has also discontinued ability to pay evaluations for public defender fees and has requested its judges to stop imposing public defender fees.

Booking Fee

The Court may order an arrestee to pay a booking fee in the amount of \$564 as requested by the arresting agency. The Court collects and distributes these booking fees on behalf of the County and several city arresting agencies. We interpret this County moratorium affects the booking fee imposed for Contra Costa County Sheriff, but not booking fees imposed for local arresting agencies.

The Court sets up unique accounts for collection and distribution of booking fees. The Court has identified 3,684 accounts with a balance of \$901,092 set up to collect booking fees for the Contra Costa Sheriff and has notified Linebarger to immediately suspend collections on these accounts. The Court will need to automate the cancellation of these accounts in CUBS and with Linebarger. Furthermore, to prevent future County booking fees accounts from being set up, the Court will require programming by its LJIS programmer to discontinue the integration between LJIS and CUBS for account set up. Lastly, the Court has also requested its judges to stop imposing booking fees.

Fees neither Imposed nor Collected by Court

The following fees and assessments identified in the moratorium are neither imposed nor collected by the Court:

- **Alcohol Test Fee:** PC 1463.14(b) authorizes an additional penalty of up to \$50 to be imposed for convictions of VC 23152 or 23153 (DUI violations). The Board of Supervisors passed resolution 88/28 authorizing the \$50 assessment. Although the Court distributes \$50 of each fine collected for DUI and Reckless Driving violations to the special County account used for alcohol testing pursuant to PC 1463.14(a), the Court does not impose an additional \$50 penalty pursuant to PC 1464.14(b) and resolution 88/28.
- **CAP Fee:** PC 1463.16(c) authorizes Contra Costa to impose a \$50 assessment to be imposed for convictions of VC 23152 or 23153 (DUI violations). The Board of Supervisors passed resolution 88/28 authorizing the \$50 assessment. Although the Court distributes \$50 of each fine collections for each DUI and Reckless Driving violations to the County Alcohol Program pursuant to PC 1463.16(a), the Court does not impose an additional \$50 assessment pursuant to PC 1463.16(c) and resolution 88/28.
- **Alcohol and Drug Assessment Fee:** PC 1463.13(d) requires the Court to impose an assessment of no more than \$150 upon court order to participate in the County's alcohol and drug problem assessment program, if the Board of Supervisors passes a resolution to subject the County to this section and the Court has determined that the defendant has the ability to pay this assessment. The County passed resolution 99/347 authorizing the Alcohol and Drug Assessment Fee for DUI convictions. Although the Court imposes an Alcohol Drug Problem Assessment Fee of \$100 for DUI violations pursuant to VC 23649,

the Court does not impose an Alcohol and Drug Assessment Fee of up to \$150 for DUI violations pursuant to PC 1463.13(d).

- Custody Alternative Program Fee: Resolution 2008/303 and PC 4024.2 and 1203.016 authorizes the Contra Costa Sheriff to charge fees to participate in the Custody Alternative Program to recover the cost of administering the program. This fee is neither imposed nor collected by the Court.

**Contra Costa Superior Court
Estimated Costs to Implement County Fees Moratorium**

Description of Activity	Resource	Cost of Hourly Rate	Estimated Number of Hours	Total Estimated Cost
Update 27 traffic violation fee schedules in C-Track and criminal distribution tables to replace the California Fingerprint ID Penalty with a new County-specified fund.	Court Finance Director	\$108.52	80	\$8,681.60
Programmatically waive balances owed on Probation Fees, Diversion Admin Fees in Drug Diversion accounts, 15% Fee, and Public Defender Fee for all existing criminal accounts.	Columbia Ultimate Vendor (CUBS) Collections System Programming	\$170.00	70	\$11,900.00
First year of annual maintenance associated with above CUBS enhancements.	Columbia Ultimate Vendor Collections System Programming			\$1,428.00
Testing to validate fee balances owed were correctly waived.	Court Financial Services Analyst	\$73.97	80	\$5,917.60
Programming in Law & Justice to discontinue the integration between LJIS and CUBS for the account set up of the following fees: Probation Fees, Diversion Admin Fees in Drug Diversion accounts, Public Defender Fee, and Booking Fee.	Criminal Case Management System - Mainframe Programming Department of Information Technology (DoIT) Programmer (Cost to the Court)	\$136.50	80	\$10,920.00
Testing to validate Law & Justice to CUBS integration has been successfully discontinued for the fees identified above.	Court Financial Services Analyst	\$73.97	80	\$5,917.60
Automate the cancellation of existing County Sheriff Booking Fee Accounts.	Court Business Analyst	\$63.45	80	\$5,076.00
Review and validate cancellations were correctly performed.	Court Financial Services Analyst	\$73.97	80	\$5,917.60

Total Direct Costs	\$55,758.40
Indirect Costs (24.82% of Salaries and Benefits)	\$7,820.88
TOTAL COSTS	\$63,579.28
	Estimate

****This is an estimated amount only. The Court will submit monthly invoices to the CAO's Office until project is complete.****



EXECUTIVE SUMMARY

In September 2019, Contra Costa County Board of Supervisors (Board) voted to impose a moratorium on the use of locally imposed criminal justice fees, becoming only the third county in the nation to end or suspend such fees. The Board also referred this issue to the Public Protection Committee (PPC) to provide the Board with additional data and information.

It is important to distinguish the common types of monetary payments in the criminal justice system:

- **Administrative Fees** are imposed to offset the administrative costs of court activities, supervision, or incarceration.
- **Fines and restitution** are monetary punishments for infractions, misdemeanors or felonies. Fines and restitution are intended to deter crime, punish offenders, and compensate victims for losses.
- **Bail** is a bond payment for a defendant's release from jail prior to court proceedings, and the majority of a bail payment is returned to a defendant after case disposition. Bail payments are intended to incentivize defendants to appear at court and, in some cases, to reduce the criminal risk of returning a defendant to the community.

The moratorium affects only locally-imposed criminal justice administrative fees and excludes fines, restitution, bail and state-imposed administrative fees. Such administrative fees are imposed on individuals who have already faced other consequences for their crime. They have often served time in jail, paid other fines, or are paying victim restitution. The goals of these local criminal justice fees are to generate revenue to cover costs, not create an additional layer of punishment.

In regard to criminal justice fees in Contra Costa County, several key findings emerge:

- **From early 2018 through the present, substantial research and analysis into locally-imposed administrative fees was conducted** by Reentry Solutions Group (RSG) in partnership with UC Berkeley School of Law Policy Advocacy Clinic (UCB) and other stakeholders. This comprehensive process included the collection and analysis of all existing and relevant financial records provided by the Superior Court of Contra Costa County. In its scope and depth, this local process was commensurate with similar research undertaken by the City and County of San Francisco's Financial Justice Project.
- **Vast majority of criminal-justice involved individuals are indigent.** As a proxy method to determine the percentage of justice-involved people in Contra Costa who are legally indigent, the Contra Costa County Probation Department conducted a review of its records and found that 93% of probationers are represented by the Public Defender or the Alternate Defender's Office. A further review of Probation cases found that approximately 88% of Probationers had income levels below 200% of the federal poverty guideline.
- **Vast majority of criminal-justice involved individuals are people of color.** A snapshot report conducted in October 2019 by the Contra Costa County Office of the Sheriff found that 71% of the people incarcerated in Contra Costa County's jails are people of color.
- **Moratorium's implementation is incomplete, as the Court awaits further direction from the County.** The Court has largely stopped imposing locally-controlled fees on new cases, but it continues to collect and attempt to collect fees previously imposed. Due to limitations with the



Court's current data system the Court cannot fully implement the moratorium. Estimating the cost of such changes as \$63,750, the Court is awaiting the County's direction to undertake necessary data-system changes and incur these expenses on behalf of the County.

From our review of national research, our key findings include:

- **Criminal justice fees disproportionately harm the poor and people of color.** African Americans are more likely to be arrested than people from any other racial/ethnic group. Administrative fees are disproportionately imposed on communities of color, who are further disproportionately likely to have difficulty paying them. Demographic analysis confirms that in California, close to half of Black and Latinx families struggle to put food on the table and pay for housing.
- **Families bear the brunt of the financial costs of justice involvement.** A study by the Ella Baker Center found that family members, usually women, often pay criminal justice fines and fees on behalf of their loved ones.
- **Benefit of collecting these fees is outweighed by the cost of imposing them.** Research shows that the vast majority of people charged such costs cannot afford to pay them and that counties typically net very little or even lose revenue after accounting for collections costs. Fees make reentry harder, hurt credit scores, make it harder for people to find housing or open a bank account, and discourage people from seeking formal employment out of fear that their wages will be garnished, bank accounts levied, or tax refunds intercepted.



1. INTRODUCTION

In September 2019, Contra Costa County Board of Supervisors (Board) voted to impose a moratorium on the use of locally imposed criminal justice fees, becoming only the third county in the nation to end or suspend such fees. The Board also referred the matter of criminal justice fees to the Public Protection Committee (PPC), requesting that the PPC attempt to identify and provide to the Board additional available and relevant data.

On September 30, 2019, the Public Protection Committee accepted an update on the implementation of the moratorium on the collection of adult criminal justice fee. The PPC directed staff to assemble a small work group to identify and provide to the PPC any additional available and relevant data.

2. SAN FRANCISCO FINANCIAL JUSTICE PROJECT

In late 2016, the San Francisco Board of Supervisors called for the creation of the Financial Justice Project (FJP) within the Office of The Treasurer and Tax Collector to assess and reform how fines and fees impact low-income San Franciscans and people of color. The Board of Supervisors also initiated a Fines and Fees Task Force, composed of staff from city and county departments and community organization representatives. The Task Force was directed to study the impact of fines, fees, tickets, and various financial penalties that disproportionately impact low-income San Franciscans, and propose reforms. The Board of Supervisors directed the newly-created FJP to staff the Task Force.

Since its creation, the FJP has had two full-time staff members, including a Director and a Program Manager. The FJP is directed by Anne Stuldreher, who was previously a Senior Program Manager for The California Endowment, Senior Policy Fellow for New America, and Senior Policy Advisor for Governor Arnold Schwarzenegger. The FJP is managed by Christa Brown, who previously served as Director of the SparkPoint Initiative for the United Way of the Bay Area and who holds a Master's in Public Administration from the Goldman School of Public Policy at the University of California, Berkeley.

For approximately one year, the Fines and Fees Task Force held seven meetings researching and discussing the impact of fines and fees on the San Francisco community. The Fines and Fees Task Force was supported by funding partners, including the Citi Community Development and the Walter & Elise Haas Fund. In October of 2017, the FJP released a report on the Task Force's findings. The report proposed 40 reforms of both policy and practice, including implementing an ability to pay system for court fees, reducing reliance on quality of life crime fines, and decreasing the rate of suspending driver's licenses.

On February 6, 2018, London Breed, the Mayor of San Francisco, announced she was introducing legislation to eliminate all criminal justice administrative fees authorized by local government. In April of 2018, the Financial Justice Project released a report, *Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government*, detailing the impact of criminal justice administrative fees on the community.¹

In the report, the FJP found that approximately 21,000 people owed approximately \$32.7 million in outstanding debt. The majority of outstanding debt was for Probation-related fees. The report estimated that the elimination of fees would result in at least \$1 million in decreased annual revenue.

¹ http://test-sfttx.pantheonsite.io/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019.pdf



An evaluation of the Public Defender's Clean Slate Program showed that most of their clients were living in extreme poverty.

In June of 2018, legislation eliminating the local administered fees was unanimously passed with support from the San Francisco Board of Supervisors, the Chief of Probation, District Attorney, Public Defender, and the Sheriff. The ordinance was scheduled to become effective on July 1, 2018.

While the fees included in the legislation are authorized by the county, the San Francisco Superior Court serves as the financial administrator for collecting fees. Because the courts are independently governed, the San Francisco Board of Supervisors does not have the authority to direct the court to clear past judgments. To resolve this issue, the Public Defender's Office, the District Attorney's Office, and the Financial Justice Project worked to submit a petition to the court to clear all debts associated with the fees included in the legislation, along with a list of associated account numbers. The UC Berkeley Law School Public Advocacy Clinic assisted with the process of collecting information on outstanding debt. Two months later, in August of 2018, the San Francisco Superior Court announced they had eliminated more than \$32.7 million in outstanding debt stemming from these fees.

3. SUMMARY OF LOCAL RESEARCH PROCESS

Similar research and analysis have been conducted in Contra Costa County over the past two years, largely by Reentry Solutions Group (RSG) in partnership with UC Berkeley School of Law Policy Advocacy Clinic (UCB) and other stakeholders, as follows:

In partnership with the Office of the Sheriff, the Public Defender's Office, and the Office of Reentry and Justice, RSG established a work group to improve the policies and procedures for Electronic Monitoring in Lieu of Bail, Home Detention in Lieu of Confinement, and Work Release in Lieu of Confinement. Over the past 20 months, the Work Group has made incremental progress, and the Sheriff's Office has largely suspended the use of application or administrative fees for the programs delegated to its administration by the Board of Supervisors.

In October 2018, UCB submitted a public records request to County Counsel for Contra Costa County, seeking information on how the County "assesses and collects fees against adults...in the criminal justice system. In response to this request, Contra Costa County provided several procedural forms, with no further administrative data, policy documents, or analyses.

In October 2018, UCB submitted to the Superior Court a public records request for fee-related judicial records. The Court replied that it had no responsive records regarding the numbers, demographics, amounts imposed, fees waived, or cost of collections related to such fees. The Court did provide a 362-page PDF of financial accounting and tracking spreadsheets used by the Court in its role as financial administrator for state and local justice-related fees. It should be noted that these data do not provide information related to individual cases, and the document contained no individual or identifying information. Instead, this document provides a month-by-month financial detail of the funds associated with each criminal justice fee collected by the Court as authorized by either state statutes or local ordinances.

In November and December 2018, RSG's Director, Rebecca Brown, conducted an extensive analysis of the data embedded in this document. From it, Ms. Brown produced a comprehensive, month-by-month, item-by-item categorical report on every criminal justice fee collected and distributed by the Courts on Contra Costa County's behalf in each month throughout from July 2017 through June 2018. Capturing all the Contra Costa County data provided in the Court's document, this analysis included line-by-line



accounting for each fee type, recording Non-delinquent Receipts, Delinquent Receipts, and Net Revenue Distribution, among other data.

In December 2018, Ms. Brown and a law student from UCB's Policy Advocacy Clinic engaged in a telephone interview with the Court to seek additional information related to the financial data provided. Also in December, Ms. Brown obtained a copy of, and closely reviewed, the Master Agreement for Collection Services, which is a contract between the Court and its debt collector, Linebarger Goggan Blair and Sampson, LLP. The Fee Schedule that accompanies the Agreement reveals that the bulk of Linebarger's commissions range from 18-25% of all debt collected, with financial incentives to collect debt that is at least two years old.

In February 2019, RSG disseminated the results of the financial and administrative analyses of Contra Costa County's justice fees and the Linebarger contract (along with an analysis of the Contra Costa County DA's civil asset forfeiture practices) at a public meeting. Entitled *What the Numbers Tell Us: Money and Justice in Contra Costa County*, this public presentation was also published on RSG's website.²

4. CONTRA COSTA COUNTY PROCESSES

Each agency that assesses and/or collects adult criminal justice fees— the Probation Department, the Office of the Sheriff, and the Superior Court- is governed by a different set of internal policies and practices. Each of these will be laid out in the following sections: (1) Probation Department, (2) Sheriff's Office, and (3) the Superior Court of California, County of Contra Costa (Court).

A. PROBATION DEPARTMENT

In January 2018, the Probation Department updated their ability-to-pay determination process. All adults who have been ordered to formal Probation, which includes mandatory supervision, and who are ordered to pay Probation fees, drug testing fees and/or the cost of their various reports, should be assessed for their ability to pay said fees. However, the Chief Probation Officer has acknowledged that enforcement of this policy is inconsistent, and that requiring Deputy Probation Officers to engage in questions about money and fees is contrary to their mission of rehabilitation. The Probation's Department's official fee assessment process is as follows:

- Once the probationer has been out of custody for three (3) months, or if the probationer was sentenced from out of custody, the Deputy Probation Officer (DPO) is to provide him or her with the Application for Financial Evaluation.
- The probationer is instructed to complete the evaluation form and return it to the DPO within 20 business days or sooner. If the probationer fails to return the completed evaluation or returns an incomplete evaluation form, the DPO is to give the probationer a warning that the evaluation needs to be completed within 10 business days or the amount of fees will be set at the maximum allowed.
- Once the probationer returns the completed application, the DPO is to send the application and the order for Probation to the Probation Account Clerk to review the application and determine the probationer's ability to pay based on net income and Probation's Fee Reduction schedule.

² http://reentrysolutionsgroup.org/meeting_materials/2_26_19_RSGFinalV2.pdf



- Once this determination has been made, the Probation Account Clerk is to respond to the DPO with the total amount the probationer is determined able to pay over the duration of their time on Probation.
- Upon receipt of the determination of the probationer's ability to pay, the DPO reviews the ability to pay determination with the probationer; the probationer has the option to agree to the amount or to request a hearing.
- If the probationer agrees to the determined amount, the DPO prepares and sends the Determination of Ability to Pay memo to the Court along with a copy of the Ability to Pay Determination/Waiver/Instructions. The DPO also informs the probationer that in the event of changed financial circumstances, the probationer may request an updated Ability to Pay review or may request that the Court modify or vacate an existing court judgement for payment of fees.
- If the probationer disagrees with the amount determined by the Probation Department, the DPO is to contact the court clerk and calendar a hearing and to notify the probationer of the hearing date, time and location. The Defense Attorney and the District Attorney shall be notified and provided copies of all documents provided to the Court, including the Determination of Ability to Pay Memo, the Application for Financial Evaluation, the Ability to Pay Determination/ Waiver/ Instructions and any other supporting documentation.

B. OFFICE OF THE SHERIFF

The Office of the Sheriff is responsible for the administration of Custody Alternative Facility (CAF) programs, which includes Work Alternative Program (WAP), Electronic Home Detention (EHD)/Alcohol Monitoring (SCRAM), and County Parole. Assessment and collection of fees is the responsibility of the Office of the Sheriff.

With respect to WAP, PC 4024.2(c) authorizes the county's board of supervisors to "prescribe reasonable rules and regulations under which a work release program is operated." With respect to EHD, PC 1203.016(d) (1) specifies that the rules, regulations, and administrative policy of the Electronic Home Detention Program shall be written and reviewed on an annual basis by the County Board of Supervisors and the Correctional Administrator. The Board of Supervisors last conducted an annual review of the policies and procedures of the Custody Alternative Facilities programs in 2010.

- Office of the Sheriff Ability to Pay Process

Beginning in mid-2018, the Office of the Sheriff revised its practices to assess and set application and daily fees for CAF. Under the new guidelines, CAF participants apply to and are enrolled in CAF prior to any discussion of fees or ability to pay. Upon enrollment, participants review and complete the personal budget form with their assigned CAF Specialist. The participant may request a reduction/waiver of fees based on their stated ability to pay. A CAF Sergeant is to review and approve the Personal Budget form. By statute, a participant's inability to pay all or a portion of any fee(s) shall not preclude them from being enrolled or completing any program offered by the Custody Alternative Facility.

- Office of the Sheriff Process of Collections

CAF fees are collected by CAF staff after participants are enrolled in CAF. Fees can be paid in the manner which is most appropriate for the participant. Participants can pay their total program fees at one time or over a pre-determined length of time. There is no process established to collect payment from participants who complete the program, but do not pay. A participant's ability to



successfully complete a CAF programs is not impacted by lack of payment. Because the Sheriff's Office has historically collected no data on assessments, collections, or ability to pay, it is not possible to provide accurate information regarding these considerations.

- Office of the Sheriff CAF Workgroup

The Office of the Sheriff has worked with representatives from the Office of Reentry and Justice, the Public Defender's Office, and Reentry Solutions Group to review the CAF policies and procedures, including develop Ability to Pay processes and forms.

- Cross-County Comparison: Work Alternative Program Fees

In September 2018, Alameda Sheriff's Office provided a presentation on their Sheriff's Work Alternative Program.³ Included in that presentation was a cost comparison of Work Alternative Programs among twelve different counties (see Figure 1). Contra Costa County's Administrative Fee for the Work Alternative Program was the highest amongst the county's included in this comparison.

Figure 1. Work Alternative Cost Comparison

COUNTY	DAILY COST	ADMIN FEE
Alameda County	\$12.00	\$65.00
Butte County	\$7.00	\$75.00
Contra Costa County	\$16.00	\$125.00
El Dorado County	\$20.00	\$40.00
Fresno County	\$10.00	\$60.00
Marin County	\$12.00	35.00
Mendocino County	\$10.00	\$35.00
San Francisco County	\$20.00	\$100.00
San Joaquin County	\$10.00 (or 1 hour gross wage, whichever is greater)	\$75.00
San Luis Obispo County	\$14.00	\$75.00
Santa Clara County	Based on hours of work, not a daily rate	N/A
Tulare County	\$7.00	\$75.00

- Superior Court

The Court currently collects and distributes eight of the 13 fees and assessments identified in the moratorium. In response to a request made by the County Administrator's Office, on October 21, 2019, the Superior Court of California, County of Contra Costa (Court) provided a letter summarizing the administrative/technological processes required to suspend collection of past-due fees, as directed by the moratorium.

Figure 2 summarizes the Court's role the imposition and collection of the referenced fees, along with the current status related to moratorium's implementation.

Figure 2. Summary of Court Fees

³ Sheriff's Work Alternative Program (SWAP) Presentation, Alameda County Sheriff's Office, September 13, 2018



Name of Fee/Assessment	Case Type(s) Affected	Court Imposed	Court Collected	Continued Collection	Continued Imposition
<i>10% Fee</i>	Criminal	Y	Y	Pending	N
<i>CA Fingerprint ID Penalty</i>	Criminal & Traffic	Y	Y	N/A	Y
<i>Booking Fee</i>	Criminal	Y	Y	N	N
<i>Drug Diversion Fee</i>	Criminal	Y	Y	Pending	N
<i>Alcohol Test Fee</i>	Criminal (DUI & Reckless)	N	N	N/A	N/A
<i>CAP Fee</i>	Criminal (DUI & Reckless)	N	N	N/A	N/A
<i>Probation Drug Diversion Fee</i>	Criminal	Y	Y	Pending	N
<i>Cost of Probation</i>	Criminal	N	Y	Pending	N
<i>Probation Drug Test Fee</i>	Criminal	N	Y	Pending	N
<i>Probation Report Fee</i>	Criminal	N	Y	Pending	N
<i>Alcohol and Drug Assessment Fee</i>	Criminal	N	N	N/A	N/A
<i>Public Defender Fee</i>	Criminal	N	Y	Pending	N

The Court's current data system is not sufficient to conduct the data analysis required to enact the moratorium; it estimates that the necessary modifications will cost an estimated \$63,750. The Court's letter also emphasized that the data system does not have the capacity to temporarily suspend fees for potential future reinstatement.

Given the cost of technological modifications and the inability to suspend (but not eliminate) unpaid debt, the Court requests further direction from the County.

In its letter, the Court reports that its current data system does not allow it to quantify the total unpaid amount for each fee type. However, its letter includes three points of interest:

- For public defense fees, the Court has identified 25,240 accounts with a balance of approximately \$5.54 million in collections with Linebarger. It has notified Linebarger to suspend collections on these accounts.
- For booking fees, the Court has identified 3,684 accounts with a balance of \$901,092. It has notified Linebarger to suspend collections on these accounts.
- For probation fees – which, by RSG's analysis, represent 54% of the revenues generated by criminal justice fees in Contra Costa in the year studied – the Court has not yet been able to identify the total amount of unpaid debt.



5. AVAILABLE DATA

In addition to the body of evidence and contra costa county implications, included in Reentry Solutions Group's Report on Criminal Justice Fees in Contra Costa, there was limited data provided by the Sheriff's Office and the Probation Departments on race and income levels.

A. RACIAL DEMOGRAPHICS

Data provided by the Contra Costa County Office of the Sheriff can serve as a sufficient proxy for the racial implications of our local criminal justice system; according to the Office of the Sheriff, 71% of people currently incarcerated in our county jails are people of color (39% Black, 25% Latino, 7% Other)⁴ Given that approximately 8.8% of the population in Contra Costa County is Black,⁵ the per capita incarceration rate for African Americans in Contra Costa County is 4.4 times its overall representation in the larger population.⁶

According to data from the State of California DOJ CJSC, in both 2013 and 2014, African Americans were more likely to be arrested than individuals from any other racial/ethnic group in all but one city in Contra Costa County. While the specific rate of the disparity varied by city, the disparity tended to be higher in cities with smaller African American populations (see Appendix B for more information). Across the County, African American adults were more than three times more likely to be arrested than adults from any other racial/ethnic group, and African American youth were more than seven times more likely to be arrested than youth from any other racial/ethnic group.⁷

B. INCOME DEMOGRAPHICS

To assess indigency in the county's criminal justice system, the Probation Department conducted a review of 115 Probation cases from March 2018 to March 2019. It found that approximately 88% of Probationers had income levels below 200% of the federal poverty guideline (\$49,200 for a family of four). For reference, the median family income in Contra Costa is \$113,973.⁸

⁴ Contra Costa County Sheriff's Office, email communication to Rebecca Brown, October 25, 2019.

⁵ 2018 American Community Survey, ACS DEMOGRAPHIC AND HOUSING ESTIMATES, https://data.census.gov/cedsci/table?q=contra%20costa%20&hidePreview=false&table=DP05&tid=ACSDP1Y2018.DP05&g=0500000US06013&vintage=2018&layer=county&cid=DP05_0001E&lastDisplayedRow=93

⁷ Racial Justice Task Force Final Report, http://64.166.146.245/docs/2018/BOS/20180724_1121/34430_FINAL%20CCC-RJTF_BoS-memo_20180710_STC.pdf

⁸ 2018 American Community Survey 1-Year Estimates https://data.census.gov/cedsci/table?q=contra%20costa%20county%20income&hidePreview=false&table=DP03&tid=ACSDP1Y2018.DP03&t=Income%20and%20Earnings&g=0500000US06013&vintage=2018&layer=county&cid=DP03_0001E&lastDisplayedRow=105



Figure 3. Probation Fee Reduction Sample (March 2018 - March 2019)

Accounts	% of Total	Federal Poverty Level	Fee Reduction
79	69%	At or Below 100%	100%
5	4%	Up to 125%	80%
3	3%	Up to 150%	60%
11	10%	Up to 175%	40%
3	3%	Up to 200%	20%
14	12%	Above 200%	0%
115	100%		

Figure 4. Contra Costa County Probation Fee Reduction Schedule

Contra Costa County Probation Fee Reduction						
Poverty Level*	At or Below 100%	125%	150%	175%	200%	Above 200%
Number Dependent on Income	Fee Waived	80% Discount	60% Discount	40% Discount	20% Discount	No Discount
1	\$0-\$12,060	\$12,061-\$15,075	\$15,076-\$18,090	\$18,091-\$21,105	\$21,106-\$24,120	\$24,121+
2	\$0-\$16,240	\$16,241-\$20,300	\$20,301-\$24,360	\$24,361-\$28,420	\$28,421-\$32,480	\$32,481+
3	\$0-\$20,420	\$20,421-\$25,525	\$25,526-\$30,630	\$30,631-\$35,735	\$35,736-\$40,840	\$40,841+
4	\$0-\$24,600	\$24,601-\$30,750	\$30,751-\$36,900	\$36,901-\$43,050	\$43,051-\$49,200	\$49,201+
5	\$0-\$28,780	\$28,781-\$35,975	\$35,976-\$43,170	\$43,171-\$50,365	\$50,366-\$57,560	\$57,561+
6	\$0-\$32,960	\$32,961-\$41,200	\$41,201-\$49,440	\$49,441-\$57,680	\$57,681-\$65,920	\$65,921+
7	\$0-\$37,140	\$37,141-\$46,425	\$46,426-\$55,710	\$55,711-\$64,995	\$64,996-\$74,280	\$74,281+
8	\$0-\$41,320	\$41,321-\$51,650	\$51,651-\$61,980	\$61,981-\$72,310	\$72,311-\$82,640	\$82,641+

* Based on 2017 Federal Poverty Guidelines

* Fee reduction is applied to net (after-tax) income

The Probation Department also reviewed 197 cases that were referred to the Probation Department for a probation report. Out of 197 cases, 184 cases were represented by the Public Defender or Alternate Defender Office, meaning that 93% of the people in this sample were legally considered indigent.

6. NATIONAL BODY OF RESEARCH

Local and national research has widely and consistently shown that criminal justice fees are harmful, that they undermine successful reentry, and that they increase the chance of recidivism. For those who are convicted in criminal court, fees for probation supervision, drug and alcohol testing, representation by a public defender and non-custodial sentencing options are assessed in addition to other costs and can quickly add up to thousands of dollars. In Contra Costa County, an individual with a three-year term of supervised probation is assessed \$2,700 in Probation supervision fees alone.



Research shows that the vast majority of people charged such costs cannot afford to pay them and that counties typically net very little or even lose revenue after accounting for collections costs.⁹ Fees make reentry harder, hurting credit scores, making it harder for people to find housing or open a bank account, and discouraging people from seeking formal employment out of fear that their wages will be garnished, bank accounts levied, or tax refunds intercepted.”¹⁰

Given the endemic racial bias present throughout our justice systems, administrative fees are disproportionately imposed on communities of color, who are further disproportionately likely to have difficulty paying them. In California, close to half of Black and Latinx families struggle to put food on the table and pay for housing.¹¹ And research has found that the burden of such fees is typically felt by family members; in a national survey by the Ella Baker Center for Human Rights, 63% of respondents reported that family members were primarily responsible for covering conviction-related costs, and 83% of those paying such costs are women. Nearly half also reported that their families could not afford to pay these fines and fees, and 1 in 5 families across income levels reported that they had to take out a loan to cover conviction-related costs.¹²

It should be noted that a report released in May 2019 by the Board of Governors of the Federal Reserve System drives home the devastating results from costs such as criminal justice fees. Entitled Report on the Economic Well-Being of U.S. Households in 2018, the report found that “many adults are financially vulnerable and would have difficulty handling an emergency expense as small as \$400.”¹³ The study found that 17% of adults are forced to leave some bills unpaid each month, while another 12% said that an additional expense of \$400 would leave them unable to meet their basic needs. A full 42% of people who have no college education would be pushed into financial hardship by such an expense, with an even higher percentage of African Americans (58%) affected in this way. Even for African Americans with some college or an Associate’s degree find significant harm; 46% report that they would not be able to pay their monthly bills if hit with an additional \$400 expense. And rather than constituting a one-time expense, criminal justice fees tend to recur - probation fees, drug testing fees, and partial payment fees all accrue month after month.

According to the American Bar Association (ABA), the vast majority of people accused in criminal courts are considered indigent, unable to afford their own attorney and eligible therefore for the constitutional protections for public defense. The ABA estimates that 85 to 95 percent of people accused of crimes cannot afford their own lawyer; however, Contra Costa County collects no local data on this point.¹⁴

⁹ East Bay Community Law Center, Pay or Prey (2018); Berkeley Law Public Advocacy Clinic, Making Families Pay (2017).

¹⁰ <https://ebclc.org/cadebtjustice/policy-platform/>

¹¹ Insight Center for Community Economic Development, Cost of Being Californian (2018).

¹² Ella Baker Center, Who Pays? The True Cost of Incarceration on Families (2015).

¹³ <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>

¹⁴ Laurence A . Benner, Eliminating Excessive Public Defender Workloads, 2011 A .B .A, Criminal Justice Vol . 2, [https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsu11_benner.authcheckdam .pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsu11_benner.authcheckdam.pdf).