



August 18, 2020

The Honorable Gavin Newsom  
 Governor, The State of California  
 California State Capitol Building  
 Sacramento, CA 95814

The Honorable Holly J. Mitchell  
 Chair, Senate Budget & Fiscal Review  
 Committee  
 California State Senate, Room 5050  
 Sacramento, CA 95814

The Honorable Nancy Skinner  
 Chair, Senate Budget Committee Sub 5  
 California State Senate, Room 5094  
 Sacramento, CA 95814

The Honorable Phil Ting  
 Chair, Assembly Budget Committee  
 California State Assembly, Room 6026  
 Sacramento, CA 95814

The Honorable Dr. Shirley Weber  
 Chair, Assembly Budget Committee Sub 5  
 California State Assembly, Room 3123  
 Sacramento, CA 95814

**RE: Eliminating Criminal Fees Through the Budget (AB 1869/SB 824) - SUPPORT**

Dear Budget Leaders:

We are writing as members of Debt Free Justice California to request that you support the legislature's budget action to eliminate specified fees in the final negotiated budget (AB 1869/SB824). As a coalition, we have worked for years to move local, state, and federal policies to eliminate fees in the criminal system.

Our organizations have been co-sponsors of legislation, introduced in 2019 by Senators Holly J. Mitchell and Robert Hertzberg, co-authored by Senator Nancy Skinner, and prioritized by the California Legislative Black Caucus, which would end the assessment and collection of all fees imposed against people in the criminal system. By eliminating these fees, we believe California would

dramatically reduce the suffering caused by court-ordered debt and enhance the economic security of system-involved populations, taking the first step towards ushering in an era of more just criminal policies that do not rely on stripping wealth from Black and Brown communities. By ensuring this action also ends the collection of and writes-off all previously assessed fees, we believe that you can undo decades of racially biased policing and court decisions and have an immediate impact on California's ability to weather the current economic crisis by strengthening the economic security of low-income communities of color.

While we are disappointed that neither the Governor nor the Legislature included a full repeal of criminal fees in their budgets, we wholly support and endorse the policy established in Trailer Bill AB 1869/SB 824. The fees proposed for repeal represent months of consultation with our community, specifically directly impacted people, to identify the most widespread and harmful fees to be eliminated in this significant first step. We are not only grateful for their inclusion in this budget action, we are grateful to Budget Chairwoman Mitchell for centering this work around impacted communities of color and ensuring their inclusion in the process at each and every step.

### ***Background on Criminal Fees in California***

At every point in the criminal legal process, California state law authorizes counties to charge administrative fees. From booking and arrest to representation by a public defender and probation supervision, an individual can face a host of fees, including for the collection of such fees. Some fees are mandatory under state law. Other fees can be imposed at the discretion of counties. Four counties have stopped charging fees within their discretion but 54 of 58 California counties continue to charge even discretionary fees. Fee types, amounts, and burdens on individuals vary widely by county and even courtroom.

Once imposed, the court or probation department can set monthly payments or order amounts to be paid in full.<sup>1</sup> "Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action."<sup>2</sup> An order shall not be enforced by contempt,<sup>3</sup> but if an individual fails to repay their debt in full or make payments on time, a county can refer the debt to the state Franchise Tax Board which can intercept tax refunds, levy bank accounts, and garnish wages until paid in full.<sup>4</sup>

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<sup>1</sup> Cal. Penal Code § 1203.1b.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Court-Ordered Debt Collections*, St. Cal. Franchise Tax Bd., <https://www.ftb.ca.gov/pay/collections/court-ordered-debt/index.html> (last updated July 10, 2020); *Interagency Intercept Collection Program-Update*, St. Cal. Franchise Tax Bd., <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/february-2019/interagency-intercept-collection-program.html> (last updated July 10, 2020).

## **Barriers to Employment for the Re-Entry Population Make Fee Payment Difficult**

Over 70 percent of the people in the criminal system were poor before they entered it. If they are incarcerated, they will lose many of their possessions and assets,<sup>5</sup> and if they work while incarcerated, they will earn pennies per hour.<sup>6</sup> Once they return home, people with prior convictions face significant barriers to employment. This is both due to the fact that they have spent significant time away from the workforce and because employers, in most states, are allowed to deny jobs to people who were arrested but never convicted of any crime.<sup>7</sup> California is one of 29 states that allow conviction records of applicants for occupational licenses, meaning occupational licensing agencies can deny licenses based on any criminal conviction, regardless of history, circumstance or business necessity.<sup>8</sup>

With fewer options and little protection against employer discrimination based on prior conviction, these workers have much higher unemployment and underemployment rates and experience unemployment for longer periods than people without a prior criminal conviction. Research shows that unemployment among formerly incarcerated people hovers around 27% and is much higher within the first year of release, approximately 60%.<sup>9</sup>

## **Criminal Fees Have a Racially Disparate Impact**

Six years ago, after a police officer murdered Michael Brown, the Department of Justice investigated the Ferguson, Missouri Police Department and brought to light the regressive and racially discriminatory practice of charging fines and fees to people in the criminal legal system. Black and Brown communities were seen less as constituents to be protected and more as potential “offenders” and sources of revenue. A more recent study found that the lack of Black

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<sup>5</sup> See Paola Scommegna, *Studies Document Mass Incarceration's Toll on Families*, Population Reference Bureau (Mar. 9, 2017), <https://www.prb.org/mass-incarcerations-toll-on-families/>.

<sup>6</sup> See Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, Prison Pol'y Initiative (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/>. See also Daniel Moritz-Rabson, ‘Prison Slavery’: Inmates Are Paid Cents While Manufacturing Products Sold to Government, *Newsweek* (Aug. 28, 2018), <https://www.newsweek.com/prison-slavery-who-benefits-cheap-inmate-labor-1093729>; David Fathi, *Prisoners Are Getting Paid \$1.45 a Day to Fight the California Wildfires*, ACLU (Nov. 15, 2018), <https://www.aclu.org/blog/prisoners-rights/prisoners-are-getting-paid-145-day-fight-california-wildfires>; Vicky Peláez, *The Prison Industry in the United States: Big Business or a New Form of Slavery*, *Glob. Res.* (June 14, 2020), <https://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>.

<sup>7</sup> Thirty-seven states have laws permitting all employers and occupational licensing agencies to ask about and consider arrests that never led to conviction in making employment decisions. Legal Action Ctr., *After Prison: Roadblocks to Reentry* (2004), <http://www.november.org/resources/LACReportCard.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> Lucius Couloute & Daniel Kopf, Prison Pol'y Initiative, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People* (2018). See also Christopher Zoukis, *Nearly Half of Prisoners Lack Access to Vocational Training*, *Huffington Post* (Mar. 10, 2017), [https://www.huffingtonpost.com/entry/nearly-half-of-prisoners-lack-access-to-vocational\\_us\\_58c32447e4b0c3276fb784d0](https://www.huffingtonpost.com/entry/nearly-half-of-prisoners-lack-access-to-vocational_us_58c32447e4b0c3276fb784d0); Shelah Moody, *California Reentry Program Gives Ex-cons a Second Chance*, *SF Gate* (Feb. 11, 2012), <https://www.sfgate.com/style/article/California-Reentry-Program-gives-ex-cons-a-second-3300222.php>.

representation in local government is correlated with the prevalence of fees in a jurisdiction.<sup>10</sup>

This year, the nation has been gripped by organizing efforts to dismantle systemic racism and stop police violence. Violence felt by Black and Brown communities is not limited to the murders and physical assaults by law enforcement caught on camera. The inequities and indignities that these communities face every day result in their overrepresentation in the criminal system, perpetuate ongoing racialized wealth extraction, and limits the ability of people of color to provide for their families' safety and financial needs.

In California, low-income people of color are overrepresented at every stage in the criminal system, even when controlling for alleged criminal behavior. According to data from the California Department of Justice, Black and Brown people are grossly overrepresented in our criminal system.<sup>11</sup> Due to over policing and targeted policing in communities of color, Black and Brown people are punished more frequently and harshly at a variety of discretion points. They are more likely to be arrested, incarcerated, and put on probation, and they serve longer jail and probation terms. As a result, they are more likely to face higher fee burdens and the collateral consequences that stem from being unable to pay off related debt.

### ***Criminal Fees Cause High Harm and Result in Low Gain***

Years of research on fines and fees in California, including a review of state law, county policies and practices, state and local data, and the experiences of individuals in the criminal system, have found that these fees are unjust, high pain, and low gain.

Fees are incredibly burdensome, create financial hardship, and limit employment prospects for individuals seeking to reenter their communities.<sup>12</sup> The fees disproportionately harm low-income people and Black and Brown people. Studies have found that criminal legal debt correlates with a greater likelihood of recidivism, even after controlling for case characteristics and demographics.<sup>13</sup> These negative outcomes only make reentry harder.

Counties are authorized to charge administrative fees to pay for costs associated with the criminal system. Yet counties net little revenue from these fees. For

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<sup>10</sup> See Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. Pol. 1090 (2017), <https://www.journals.uchicago.edu/doi/10.1086/691354>.

<sup>11</sup> Cal. DOJ, *Crime in California* (2017), <https://data-openjustice.doj.ca.gov/sites/default/files/2019-06/cd17.pdf>.

<sup>12</sup> Ella Baker Ctr., *Who Pays? The True Cost of Incarceration on Families* (2016), <https://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>.

<sup>13</sup> See Alex Piquero & Wesley Jennings, Research Note, *Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 Youth Violence & Juv. Just. 1 (2016), [https://www.researchgate.net/publication/308127980\\_Research\\_Note\\_Justice\\_System-Imposed\\_Financial\\_Penalties\\_Increase\\_the\\_Likelihood\\_of\\_Recidivism\\_in\\_a\\_Sample\\_of\\_Adolescent\\_Offenders](https://www.researchgate.net/publication/308127980_Research_Note_Justice_System-Imposed_Financial_Penalties_Increase_the_Likelihood_of_Recidivism_in_a_Sample_of_Adolescent_Offenders).

example, in Alameda County, the rate of collection on probation supervision fees was just four percent.<sup>14</sup> Similarly, in San Francisco, the Office of the Treasurer and Tax Collector found that more than 80 percent of the fees went unpaid.<sup>15</sup> Because of the high costs and low returns associated with trying to collect fees from low-income people, most of the fee revenue pays for collection activities.<sup>16</sup> Further, a benefit-cost analysis by researchers at U.C. Berkeley found that fee debt can cause families to spend less on positive social goods, such as education and preventative healthcare, which imposes long term costs on families, communities, and society by prolonging and exacerbating poverty and its multiple, long and short-term, harms.<sup>17</sup>

### **The Use of Criminal Fees Are Legally Problematic**

In 2018, the U.S. Commission on Civil Rights issued a report regarding such fees, finding:

[S]ome municipalities across the nation target low-income communities to raise revenue. Even when not intentionally targeted, low-income individuals are disproportionately affected by the growing use and increased cost of fines and fees because an inability to pay fines and fees can have severe consequences, including driver's license suspensions, bad credit reports, and jail time.<sup>18</sup>

The targeted imposition of fines and fees on low-income communities and communities of color not only impacts the individuals within those communities, but also impacts the efficacy of and public confidence in the judicial system as a whole. Courts have also raised concerns about administrative fees. For example, the United States Supreme Court recently warned that when local governments depend on fines and fees to generate revenue, those financial penalties can become unconstitutionally excessive, and “[e]xcessive tolls undermine other constitutional liberties.”<sup>19</sup>

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<sup>14</sup> Theresa Zhen & Brandon Greene, E. Bay Cmty. L. Ctr., *Pay or Prey: How the Alameda County Criminal Justice System Extracts Wealth from Marginalized Communities* (2018), [https://ebclc.org/wp-content/uploads/2018/10/EBCLC\\_CrimeJustice\\_WP\\_Fnl.pdf](https://ebclc.org/wp-content/uploads/2018/10/EBCLC_CrimeJustice_WP_Fnl.pdf).

<sup>15</sup> The Fin. Just. Project S.F., *Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government* (2018), [https://sfgov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL\\_04-24-2019\\_1.pdf](https://sfgov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019_1.pdf).

<sup>16</sup> See Pol'y Advocacy Clinic, Berkeley Law, Univ. of Cal., *Making Families Pay: The Harmful, Unlawful, and Costly Practice of Charging Juvenile Administrative Fees in California* (2017), <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf>.

<sup>17</sup> Ezra Cohn, Debbie Mayer, Caitlin O'Neil, Khalia Parish & Jenny van der Heyde, *An Economic Analysis of Charging Administrative Fees to Justice-Involved Youth* (2016) (unpublished manuscript) (on file with authors).

<sup>18</sup> U.S. Comm'n on Civ. Rts., *Targeted Fines and Fees Against Communities of Color: Civil Rights and Constitutional Implications* (2017), [https://www.usccr.gov/pubs/2017/Statutory\\_Enforcement\\_Report2017.pdf](https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf).

<sup>19</sup> *United States v. Timbs*, 586 U.S. \_\_\_ (2019), <https://supreme.justia.com/cases/federal/us/586/17-1091/>.

**Taking the First Steps toward Divestment by Eliminating Fees**

Eliminating criminal fees will allow former system-involved people and their families to devote their already limited resources to critical needs like food, education, housing and health insurance. This budget action offers a first step toward that goal. In doing so, California can expect to see improved employment prospects for former system-involved people and put more money in the pockets of economically insecure families as well as towards Black and Brown families that are disproportionately suffering from the impact of COVID-19 due to the historical and current disadvantages brought about by unchecked racial bias and discrimination in the rules of our economy, criminal system and our courts.

The overinvestment in law enforcement and simultaneous disinvestment in communities cannot continue. Eliminating criminal fees moves us in the right direction.

Because AB 1869/SB 824 reflects the requests of the impacted community, our organizations are proud to support and urge your “Aye” vote.

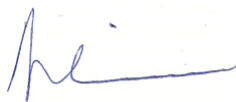
Sincerely,



Jess Bartholow  
Western Center on Law and Poverty



Esteban Nunez  
Anti-Recidivism Coalition



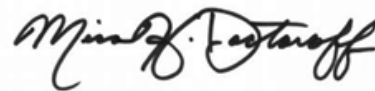
Anand Subramanian  
PolicyLink



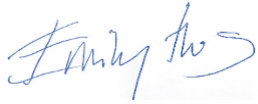
Jhumpa Bhattacharya  
Insight Center for Community  
Economic Development



Asher Waite-Jones  
East Bay Community Law Center



Mica Doctoroff  
ACLU of California



Emily Harris  
Ella Baker Center



Anthony Robles  
Youth Justice Coalition



Donna Harati  
Homeboy Industries



Manohar Raju  
San Francisco Public  
Defender's Office



Manuel Galindo  
A New Way of Life



Anne Stuhldreher  
San Francisco Financial Justice  
Project



Dorsey Nunn  
All of Us or None  
Legal Services for Prisoners with Children

cc: Members of the Budget Committee and Governor's Cabinet  
Honorable Toni Atkins, California Senate Pro-Tempore  
Honorable Anthony Rendon, California Assembly Speaker