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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Ricardo Lara, Chair  
2017 - 2018 Regular Session

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### SB 185 (Hertzberg) - Crimes: infractions

**Version:** March 20, 2017

**Urgency:** No

**Hearing Date:** May 15, 2017

**Policy Vote:** T. & H. 12 - 1, PUB. S. 6 - 1

**Mandate:** Yes

**Consultant:** Shaun Naidu

**This bill meets the criteria for referral to the Suspense File.**

**Bill Summary:** SB 185 would reform court procedures and fine determinations related to infraction offenses and prohibit the suspension or hold of a driver license for a failure to pay fines, as specified.

#### **Fiscal Impact:**

- Courts: Major costs in the hundreds of millions of dollars annually (General Fund\*), to provide new reminder to appear, comprehensive collection program, promise-to-appear violation, and other notices and to conduct new indigency determination and willful failure to appear violation hearings.
- Fine / penalty assessment impact: Unknown major reductions in collections of fines, fees, and assessments, likely in the millions and potentially tens of millions annually, by requiring collections programs to offer payment plans based upon the debtors ability to pay and removing license suspensions as an incentive to pay court-ordered debt, to the extent license suspension incentives payment. Revenue reductions related to the former provision would be mitigated partially by some revenue gains for partial payments on debt that may not have otherwise been paid. (General Fund, various special funds, local funds)
- DMV: Significant one-time costs of \$330,000 (special fund\*\*) to implement program modifications and ongoing costs of \$380,000 (special fund\*\*) related to increase call volume at headquarters and in call centers to verify license and failure to appear status.

\*Trial Court Trust Fund

\*\*Motor Vehicle Account

**Background:** Existing law provides that in addition to any other penalty in an infraction, misdemeanor, or felony, the court may impose a civil penalty of up to \$300 against any defendant who fails to appear in court for any proceeding or fails to pay any portion of the fine ordered by the court. Existing law provides that if a person has failed to pay a fine within the time authorized by the court, the magistrate, or the clerk of the court may give notice to DMV for any violation. The court is required to inform DMV if the fine is later fully paid. Upon receipt of a notice from the courts, DMV is required to suspend the person's driver's license and may not issue or renew the license until the person's driving record is cleared. The DMV estimates that there are approximately 550,000 individuals whose driving privileges have been suspended as a result of a failure to pay, failure to appear, or failure to comply with court orders.

In addition to base fines for traffic violations, existing law imposes numerous additional penalty assessments, fees, and surcharges for convictions of these infractions, all of which significantly increase the total bail owed as a result of violations. For example, the total bail on a violation with a base fine of \$35 is \$238, and the total bail on a violation with a base fine of \$100 is \$490 (not including fees associated with traffic violator schools). Existing law specifies a complex process for the distribution of fine and fee revenues to numerous state and local funds. Some of these add-on fines and fees were enacted to fund specific activities, such as emergency medical services or DNA-related activities, while others support general court operations, court facilities construction, or state and local general funds.

The following assessments and fees are a flat charge per conviction: a \$4 Emergency Medical Air Transportation Penalty Assessment; a \$40 Court Operations Assessment; A \$30 Conviction Assessment Fee; and a \$1 Night Court Fee. The following charges, however, are dependent upon amount of the base fine:

- State Penalty Assessment: \$10 for every \$10 of a base fine\*
- County Penalty Assessment: \$7 for every \$10 of a base fine\*
- Court Construction Penalty Assessment: \$5 for every \$10 of a base fine\*
- Proposition 69 DNA Penalty Assessment: \$1 for every \$10 of a base fine\*
- DNA Identification Fund Penalty Assessment: \$4 for every \$10 of a base fine\*
- Emergency Medical Services Penalty Assessment: \$2 for every \$10 of a base fine\*
- State Surcharge: 20% of a base fine

(\*The base fines are rounded up to the next \$10 increment for purposes of calculating the assessment.)

**Proposed Law:** This bill would:

- Require the court, in any case involving an infraction filed with the court, to determine whether the defendant is indigent for purposes of determining what portion of the statutory amount of any associated fine, fee, assessment, or other financial penalties the person can afford to pay. Provide that the defendant can demonstrate that he or she is indigent by providing specified information.
- Require the court to reduce the base fine and associated fees by 80% if the court establishes that the defendant is indigent, and to provide alternatives to immediate payment of the sentence, including a payment plan option. Require the court to determine the amount a defendant can afford to pay per month by using a payment calculator developed by the Judicial Council, as specified. For persons not found to be indigent, the bill would require that the monthly payment not exceed 5% of the defendant's family monthly income, as provided. For defendants found to be indigent, require that monthly payments be \$0 until the defendant's financial circumstances change, and require the remaining amount owed to be discharged after 48 months in the interest of justice.
- Delete initiating suspensions or holds for driver licenses from the list of activities in which a county or court "comprehensive collection program" may engage. Require the program to provide a payment plan option based on the debtor's ability to pay and require the program to notify the defendant of his or her right to an indigency determination for infractions.
- Require the court to send the defendant a reminder notice, that includes specified information, of his or her promise to appear in court in certain situations.
- Require the court to issue a notice to the defendant that he or she must appear in court within 60 days, as specified, if the person has failed to appear, and authorizes

the court to notify DMV only when the defendant does not appear within those 60 days. Repeal the provisions authorizing the court to notify DMV of a failure to pay a fine or bail and provisions prohibiting the department from issuing or renewing a person's driver license upon receipt of a notice of a defendant's failure to pay, with respect to designated violations.

- Provide that a person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail is guilty of an infraction if it is on more than one case in the past 5 years. Require, for the first occurrence of any of these violations, the person to be instructed to appear before a judge or a clerk of the court to schedule a new hearing date within 60 days of the willful violation and make it an infraction to fail to appear within these 60 days. Repeal the misdemeanor for willfully failing to pay bail in installments or a lawfully imposed fine.
- Declare that its provisions do not alter existing law related to suspension of the privilege to operate a motor vehicle in connection with violations relating to reckless driving or driving under the influence of alcohol or drugs, as specified.

**Related Legislation:** The Governor's proposed 2017-18 budget includes three proposals related to the state's criminal fine and fee system:

- Eliminate the statutory formulas dictating how State Penalty Fund revenues are distributed and instead appropriate these revenues directly to specific programs (not necessarily the same programs that currently receive these revenues).
- Provide a \$1.1 million augmentation from the Court Collection Account for the Franchise Tax Board's Court-Ordered Debt Collection Program to maintain existing service levels and eliminate a backlog.
- Eliminate the ability to use driver's license holds and suspensions as a sanction for an individual's failure to pay.

The Governor's proposal is pending action by the Legislature.

**Staff Comments:** As stated by the Legislative Analyst's Office "[i]ndividuals convicted of criminal offenses, including traffic violations, are often required to pay various fines and fees. Collection programs operated by counties and trial courts are responsible for collecting payments and are able to make use of various collection tools and sanctions to do so. The collected revenues are then deposited into a number of state and local funds, such as the State Penalty Fund (SPF), to support various programs and services. In recent years, various funds that receive such revenue have faced operational shortfalls or fund insolvency."

Criminal fines and fees collection has declined by roughly \$200 million from the 2013-14 fiscal year to the 2015-16 fiscal year. A major recipient of these fines and fees is the State Penalty Fund. Absent new infusion of money, the State Penalty Fund is structurally imbalanced. Allowing the court to reduce the fines and fees defendants in infraction cases would owe, based on an ability-to-pay determination, could lead to less money deposited into the State Penalty Fund and other state and local funds.

Alternatively, receipt of penalty payments that otherwise would not have been realized could result if defendants fines and fees are set at a price that they realistically could afford to pay.

This bill would require the court perform additional tasks that it currently does not, including mailing notices via certified mail with return receipt to those issued infraction

citations and to determine indigency for each infraction case filed with the court. Taking Los Angeles County as an example, it sends out over 1.1 million notices annually, based on a three-year average, at the regular postage rate, which, totaled with the cost of the notice, comes out to \$0.56 per notice, \$616,000 total. The costs to send one notice by certified mail with return receipt is \$6.71. If required to mail each of these notices via the method required by this bill, the court in Los Angeles alone would see an increase in costs of around \$6.765 million (\$7.381 million - \$616,000).

As stated above, this bill would require the court to make an indigency determination for each infraction filed. In the 2014-15 fiscal year, the most recent year available, there were over 4.4 million infractions filed with the court. If the court were to spend an average of 10 minutes determining indigency for each defendant in these infraction cases, it would result in the increase of court workload costs of over \$640 million.

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