

BOARD of SUPERVISORS



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MEMORANDUM

TO: Vicki Hennessy, Sheriff, Sheriff's Department
William Scott, Police Chief, Police Department
Jeff Adachi, Public Defender, Office of the Public Defender
George Gascón, District Attorney, Office of the District Attorney

FROM:  Alisa Somera, Legislative Deputy Director
Rules Committee

DATE: February 13, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced by Supervisor Breed on February 6, 2018:

File No. 180132

Ordinance amending the Administrative Code to abolish fees associated with probation costs, restitution, booking, the Sheriff's Work Alternative Program, the automated county warrant system, the Sheriff's Home Detention Program, and to abolish local penalties associated with alcohol testing and court-ordered penalties for misdemeanor and felony offenses.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Theodore Toet, Sheriff's Department
Katherine Gorwood, Sheriff's Department
Eileen Hirst, Sheriff's Department
Rowena Carr, Police Department
Kristine Demafeliz, Police Department
Cristine Soto DeBerry, Office of the District Attorney
Maxwell Szabo, Office of the District Attorney

1 [Administrative Code - Criminal Justice System Fees and Penalties]

2
3 **Ordinance amending the Administrative Code to abolish fees associated with probation**
4 **costs, restitution, booking, the Sheriff's Work Alternative Program, the automated**
5 **county warrant system, the Sheriff's Home Detention Program, and to abolish local**
6 **penalties associated with alcohol testing and court-ordered penalties for misdemeanor**
7 **and felony offenses.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Findings and Purpose.

17 (a) When people are convicted of a crime, they are often charged thousands of dollars
18 in fines, fees, or financial penalties related to their conviction, sentence, or incarceration – in
19 addition, in many cases, to their serving time in jail or prison. These financial exactions are
20 intended to generate revenue for public programs and to fund their operations. But there is
21 often an insidious, unintended consequence of this practice – to push people into poverty, or
22 push them even deeper into poverty if they already were there. These fines, fees, and
23 penalties can trap people in a cycle of debt, and low-income people and people of color are
24 often hit the hardest. Under this system, government becomes a driver of inequality, creating
25 additional layers of punishment for those moving through the criminal justice system.

1 (b) More specifically, these financial burdens frequently hit individuals at the precise
2 moment they are trying to turn their lives around. The vast majority of people exiting jail or
3 prison are unemployed, have unstable housing, have no steady source of income, and find
4 work difficult or nearly impossible to obtain after release. Approximately 80% of individuals in
5 jail are indigent. Yet, after someone has already served their time, they frequently receive a
6 bill for a long list of fines and fees to pay for probation, fingerprinting, and mandated user fees.
7 According to a report by the Ella Baker Center, the average debt incurred for court-related
8 fines and fees of over 700 people surveyed was \$13,607, nearly equal to the annual income
9 for respondents in the survey.

10 (c) In San Francisco, people who have spent time in jail or prison or have been
11 involved in the criminal justice system are charged a long list of fines and fees. The Public
12 Defender's Office found that people participating in its Clean Slate Program have received
13 bills for approximately 25 fees for administrative functions such as automated record keeping,
14 a court operations assessment, a DNA identification program, state court construction penalty,
15 an automated fingerprint fund, and emergency medical services. The monthly probation fee
16 appears to impose the most debt on those who have been involved in the criminal justice
17 system in San Francisco, where people are charged \$50 a month to be on probation. These
18 individuals are charged \$1,800 up-front when they start their probation, as probation typically
19 lasts for three years.

20 (d) The fines and fees incurred by those involved in the criminal justice system in San
21 Francisco are substantial. People in the Clean Slate program typically owe \$3,000 to \$5,000
22 in criminal justice fines and fees, according to a sample of clients examined by the Clean
23 Slate Program. The men and women paying these fines and fees are typically unemployed,
24 and earn wages, if at all, well below the federal poverty level. Clean Slate participants are
25 disproportionately people of color. Indeed, the burden of these fines and fees falls heaviest

1 on the African-American community, which accounts for less than 6% of the population in San
2 Francisco, but makes up over half the population in the county jail.

3 (e) Left unpaid, these fines and fees can grow in size, and can result in wage
4 garnishment and levies on bank accounts, to the extent there are wages to garnish or a bank
5 account to draw upon. The fines and fees make it harder for people to cover their expenses
6 and therefore can create burdens for others. For example, the Ella Baker Center study stated
7 that family members often pay the fines and fees on behalf of their loved ones, and over 20%
8 of families had to take out a loan to cover the costs of these fines and fees.

9 (f) Furthermore, research shows that these fines and fees are often an inefficient
10 source of revenue. Researchers at the University of California, Berkeley, among other
11 researchers, have found that some criminal justice fines and fees are “High Pain” (hitting poor
12 people particularly hard) and “Low Gain” (bringing in very little revenue), as the fees are
13 charged to people who often cannot afford to pay them. Both the White House Council of
14 Economic Advisors and the Conference of State Court Administrators have found that these
15 legal financial obligations are often an ineffective and inefficient means of raising revenue.

16 (g) San Francisco has a long history of leadership in this area: It is the only county that
17 has never charged fees to parents of children who have been incarcerated in Juvenile Hall,
18 and was the first county court in the state to stop suspending driver’s licenses for unpaid fines
19 and fees. With this ordinance, San Francisco becomes the first county in California to
20 eliminate the criminal justice fines, fees, and financial penalties under its control, that so
21 disadvantage the most vulnerable in our society. By removing these financial burdens and the
22 outstanding debt they create that hangs over thousands of families, San Francisco hopes to
23 inspire other jurisdictions to lift this burden off of low-income families, and to find more fair and
24 just ways to fund their criminal justice systems.

1 (h) The City urges the San Francisco Superior Court to modify any prior orders to
2 eliminate the fine, fees, and penalties included in this ordinance, and to discharge all debt
3 associated with the same, to the extent permitted by law. The City urges the Public Defender
4 to assist individuals in seeking modification of court orders to pay fines, fees, and penalties
5 covered by this ordinance. Finally, to the extent permitted by law, the City urges all City
6 departments to stop collecting the fines, fees, and penalties covered by this ordinance.
7

8 Section 2. The Administrative Code is hereby amended by deleting Section 8.14-1,
9 adding Section 8.29, deleting Sections 8.31, 8.31-1, 8.36, and 8.38, revising Section 8.42, and
10 deleting Sections 10.39-4 and 10.100-280, to read as follows:

11 **~~SEC. 8.14-1. PENALTY ASSESSMENT FOR TESTING FOR ALCOHOL CONTENT.~~**

12 ~~(a) Pursuant to Penal Code Section 1463.14(b), there shall be an additional penalty of fifty~~
13 ~~dollars (\$50.00) for criminal convictions for violation of Vehicle Code Sections 23152 or 23153, in~~
14 ~~addition to any other fines and forfeitures provided by law.~~

15 ~~(b) All penalties collected under this Section shall be deposited with the Treasurer and shall be~~
16 ~~used to defray the costs incurred by the Medical Examiner in performing for the City and County~~
17 ~~analysis of blood, breath, or urine for alcohol content, or for services related to that testing.~~

18 **SEC. 8.29. NO AUTHORIZATION TO COLLECT FEES FOR PROBATION COSTS.**

19 Notwithstanding any prior ordinance enacted to make operative Penal Code Section 1203.1b,
20 there is no authorization to collect fees for probation costs, pre-sentence report costs, or any other
21 costs authorized under Penal Code section 1203.1b.

22 **~~SEC. 8.31. ADULT PROBATION DEPARTMENT—RESTITUTION COLLECTION FEE.~~**

23 ~~(a) The Adult Probation Department is hereby authorized to collect a fee to cover the actual~~
24 ~~administrative cost of collecting any victim restitution included in an order of the court. The~~
25 ~~administrative fee shall be paid in addition to the restitution payment and shall be 10 percent of the~~

1 *amount ordered to be paid to the victim. The proceeds of the fee collection shall be deposited in the*
2 *general fund for appropriation by the Board of Supervisors.*

3 ***SEC. 8.31-1. ADULT PROBATION DEPARTMENT—RESTITUTION FINE***

4 ***ADMINISTRATIVE FEE.***

5 *(a) The Adult Probation Department is hereby authorized to charge a fee to cover the actual*
6 *administrative cost of collecting any restitution fine and shall be 10 percent of the amount ordered to*
7 *be paid, pursuant to Section 13967 of the Government Code. The fee shall be added to the restitution*
8 *fine and included in the order of the court. The fee collection proceeds shall be deposited in the general*
9 *fund and appropriated by the Board of Supervisors.*

10 ***SEC. 8.36. JUVENILE PROBATION DEPARTMENT—RESTITUTION COLLECTION***

11 ***FEE.***

12 *The Juvenile Probation Department is hereby authorized to collect a fee to cover the actual*
13 *administrative cost of collecting any victim restitution fine included in an order of the court pursuant to*
14 *Welfare and Institutions Code Section 730.6. The administrative fee shall not exceed 10 percent of the*
15 *restitution amount ordered to be paid. The administrative fee shall be added to the restitution fine and*
16 *included in the court order. Any administrative fees so collected shall be deposited in the general fund*
17 *and shall be used to defray the costs incurred by the Juvenile Probation Department in collecting such*
18 *restitution.*

19 ***SEC. 8.38. ADULT PROBATION BOOKING FEE.***

20 *(a) Subject to the conditions and limitations of Section 29550.3 of the Government Code, the*
21 *City and County of San Francisco elects to establish and collect an administrative fee pursuant to the*
22 *standards and procedures set forth in Section 29550.1 of the Government Code to be collected from*
23 *persons arrested, convicted, and subsequently placed on probation. This fee shall be established by the*
24 *Controller in consultation with the Sheriff's Department, and shall be collected by the Adult Probation*
25 *Department.*

1 ~~(b) The fee authorized by Subsection (a) shall reflect but not exceed the actual administrative~~
2 ~~costs, including applicable overhead costs, incurred in processing arrested persons. The fee shall be set~~
3 ~~initially at \$125. The Controller shall, not later than January 1st of each year, reexamine and if~~
4 ~~necessary, adjust the fee to ensure that it continues to reflect the costs of the services provided, except~~
5 ~~that the fee shall in no event exceed \$150. Proceeds received from collection of the fee shall be~~
6 ~~deposited in the General Fund.~~

7 ~~(c) At the time the court grants probation, the Adult Probation Department shall request that~~
8 ~~the defendant be ordered to pay the fee authorized by Subsection (a). However, a defendant shall not be~~
9 ~~required to pay the fee if the court determines, based upon the following criteria, that the defendant~~
10 ~~lacks the ability to pay. A defendant's ability to pay shall mean his or her overall capability to pay the~~
11 ~~fee authorized by Subsection (a). Evaluation of a defendant's ability to pay shall include, but shall not~~
12 ~~be limited to, the individual's:~~

13 ~~—— (1) Present financial position; —— (2) Reasonably discernible future financial~~
14 ~~position. In no event shall the court consider a period of more than six months from the date that~~
15 ~~probation is granted for purposes of determining reasonably discernible future financial position;~~

16 ~~—— (3) Likelihood that the defendant shall be able to obtain employment within six months~~
17 ~~from the date probation is granted;~~

18 ~~—— (4) Any other factor or factors that may bear upon the defendant's financial capability~~
19 ~~to reimburse the County for the costs.~~

20 **SEC. 8.42. PENALTY ASSESSMENT FOR EMERGENCY MEDICAL SERVICES.**

21 ~~(a)~~ Pursuant to California Government Code Section 76000.5, there is hereby
22 established an additional penalty of ~~two dollars (\$2.00)~~ over that currently levied under
23 California Penal Code Section 1464 for every ~~ten dollars (\$10.00)~~ or fraction thereof upon
24 every fine, penalty, or forfeiture imposed and collected by the courts for non-misdemeanor and
25 non-felony eriminal offenses, including violations of the California Vehicle Code or local

1 ordinances adopted pursuant to the Vehicle Code, as authorized by Penal Code Sections
2 1464 and 1465, with the exceptions noted therein. The revenues from this assessment shall
3 go to the Public Health Emergency Medical Services Fund established in Section 10.100-195
4 of this Code. Pursuant to Government Code Section 76000.5(b), these increased penalties
5 shall not offset or reduce the funding of other programs from other sources, but shall result in
6 increased funding to those programs. ~~(b) This section shall expire on January 1, 2009, unless the~~
7 ~~Legislature deletes or extends the expiration date for Government Code Section 76000.5 adopted as~~
8 ~~part of Chapter 841 of the Statutes of 2006.~~

9 **~~SEC. 10.39-4. SHERIFF'S WORK ALTERNATIVE PROGRAM FEES.~~**

10 ~~The Sheriff is hereby authorized to assess and collect from all Sheriff's Work Alternative~~
11 ~~Program (S.W.A.P.) participants a fee which shall not exceed the pro rata cost of administering that~~
12 ~~program, pursuant to California State Penal Code Section 4024.2. The Sheriff shall make inquiry into~~
13 ~~the ability of each program participant to pay all or a portion of the costs of participation in S.W.A.P.,~~
14 ~~develop a schedule or formula for determining a participant's ability to pay such costs, develop~~
15 ~~payment schedules, receive payments, and deposit all funds received into the general fund through the~~
16 ~~Treasurer.~~

17 ~~The Sheriff shall determine the costs of S.W.A.P. participation, which determination shall be~~
18 ~~approved by the Controller and reviewed annually by the Board of Supervisors.~~

19 ~~Nothing contained in this Section shall be deemed to supersede or conflict with any other~~
20 ~~provisions of this Code for recovering the costs of incarceration in any local detention facilities.~~

21 **~~SEC. 10.100-280. SAN FRANCISCO AUTOMATED COUNTY WARRANT SYSTEM.~~**

22 ~~(a) Establishment of Fund. The San Francisco Automated County Warrant System is~~
23 ~~established as a category two fund to accept any assessment of \$7 on any person convicted of violating~~
24 ~~Vehicle Code Section 40508 or Penal Code Section 853.7.~~

1 ~~(b) Use of Fund. Monies in the fund shall be used exclusively for the development and~~
2 ~~operation of an automated County warrant system.~~

3
4 Section 3. The Administrative Code is hereby amended by revising Sections 2A.301
5 and 13.63, to read as follows:

6 **SEC. 2A.301. HOME DETENTION AND ELECTRONIC MONITORING AS A**
7 **SANCTION FOR VIOLATION OF POSTRELEASE COMMUNITY SUPERVISION.**

8 The Chief Probation Officer of the Adult Probation Department is authorized to develop
9 and maintain a Home Detention and Electronic Monitoring program for supervision purposes
10 and as an intermediate sanction for persons who violate the conditions of their postrelease
11 community supervision program pursuant to the Postrelease Community Supervision Act of
12 2011. The Adult Probation Department shall not charge fees for participation in the Home Detention
13 and Electronic Monitoring program.

14 **SEC. 13.63. HOME DETENTION PROGRAM.**

15 The Sheriff is authorized to offer a Home Detention Program, as specified in California
16 Penal Code Section 1203.016 of the California Penal Code, in which minimum security prisoners
17 and low-risk offenders committed to the County Jail or other County correctional facility or
18 inmates participating in a Work Furlough program may voluntarily participate in a Home
19 Detention Program during their sentence in lieu of confinement in the County Jail or other
20 County correctional facility. The Sheriff shall not charge fees for participation in the Home
21 Detention Program.

22
23 Section 4. Effective and Operative Dates.

24 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
25 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not

1 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
2 Mayor's veto of the ordinance.

3 (b) This ordinance shall become operative on July 1, 2018.
4

5 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
6 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
7 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
8 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
9 additions, and Board amendment deletions in accordance with the "Note" that appears under
10 the official title of the ordinance.

11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13 By:

14 
15 JANA CLARK
16 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Criminal Justice System Fees and Penalties]

Ordinance amending the Administrative Code to abolish fees associated with probation costs, restitution, booking, the Sheriff's Work Alternative Program, the automated county warrant system, the Sheriff's Home Detention Program, and to abolish local penalties associated with alcohol testing and court-ordered penalties for misdemeanor and felony offenses.

Existing Law

Existing law authorizes fees associated with probation costs, restitution collection, restitution fine administration, booking, the Sheriff's Work Alternative program, the automated county warrant system, and home detention and electronic monitoring, and penalties associated with alcohol testing. In addition, under existing law, persons convicted of Vehicle Code violations may be charged additional penalties to fund emergency medical services.

Amendments to Current Law

This ordinance abolishes fees associated with probation costs, restitution collection, restitution fine administration, booking, the Sheriff's Work Alternative program, the automated county warrant system, and home detention and electronic monitoring. In addition, it abolishes penalties associated with alcohol testing. Finally, it abolishes penalties charged to persons for non-misdemeanor, non-felony Vehicle Code violations.

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