

FINES, FEES AND PENALTIES

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I. The Court is Required to Itemize the Fines, Fees and Penalties On the Record

All fines and fees must be set forth in the abstract of judgment. (*People v. Sanchez* (1998) 64 Cal.App.4th 1329, 1332.) A classification of the fines and fees on the abstract of judgment assists the Department of Corrections and Rehabilitation to collect and forward deductions from prison wages to the appropriate agency based on the nature of the fine imposed. (*People v. Hong* (1998) 64 Cal.App.4th 1071, 1078-1079.) Including the break down of all fines and fees in the abstract also assists state and local agencies in their efforts to collect fines. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200.) Thus, when the trial court fails to announce the separation of the fines, the matter should be remanded to the trial court for a detailed recitation of the fines/fees. (*Ibid.*)

If it is determined on appeal that fines and fees should be corrected in a manner which might benefit appellant, a sample letter similar to the letter sent in a *Fares* (presentence credits) situation, is available at: www.capcentral.org/resources/motion/fines_correction/fares_non_credit_correction.pdf A proof of service is required in some courts (i.e., the Third District), other courts may accept a cc: copy.

Fines and fees are an area of concern on appeal because of the potential for adverse consequences should the trial court have failed to impose mandatory fines or fees. These fines can also yield issues on appeal if improper or excessive fines were imposed. CCAP's website has a comprehensive chart listing the applicable fines and fees in criminal cases and charting whether or not they are mandatory, at the following URL:

www.capcentral.org/resources/crim_fines.aspx

II. The Court Security Fee is Not a Penalty and May Be Applied Retroactively

On December 3, 2007, the California Supreme Court determined that the court security fee set forth in Penal Code section 1465.8, subdivision (a)(1) (\$20 per count of conviction) may be applied to a defendant who committed his offense before the fee went into effect. (*People v. Alford* (2007) 42 Cal.4th 749, 757-758.) Application of the fee to such defendants did not violate ex post facto prohibitions (U.S. Const., art. I, sec. 10, cl.1; Calif. Const., art. I, sec. 9) because the fee was enacted as part of an emergency budgetary measure for the nonpunitive purpose of funding necessary court security. (*Id.* at p. 756.)

III. The Imposition of the DNA Penalty Assessments Under Government Code section 70372 on Defendants Who Committed Their Offenses Prior to the Statute's Effective Date Violates Ex Post Facto Laws

In *People v. Batman* (2008) 159 Cal.App.4th 587, the court noted the similarity of the DNA assessment (Gov. Code, § 76104.6) to the state courts facilities construction penalty assessment (Gov. Code, § 70372), which was found to be an ex post facto law if imposed on defendants who committed their crimes prior to its operative date (*People v. High, supra*, 119 Cal.App.4th 1192); the *Batman* court concluded that the DNA assessment was intended as a penalty. The court observed that the DNA penalty is designated as such in the language of the statute, is based upon a percentage of any fine, penalty, or other forfeiture, and is primarily used for law enforcement. (*Id.* at p. 4.) Thus, imposition of the assessment on defendants whose offenses occurred before the operative date of the penalty was prohibited as an ex post facto law. (*Trop v. Dulles* (1958) 356 U.S. 86, 95-96 [2 L.Ed.2d 630].)