

FINES THAT APPLY IN (NEARLY) ALL CRIMINAL CASES					
Authorizing Statute	Applies To	Amount	Ability to Pay Provision?	Fine Mandatory?	Original Effective Date / Most Recent Amendment
Gov. Code, § 70373 (court facilities / criminal conviction assessment ¹)	Every conviction for a criminal offense, including traffic offenses, excluding parking offenses, as defined.	\$30 for felonies and misdemeanors, \$35 for infractions. ^{2, 3}	No ⁴	Yes	2009
Pen. Code, § 1202.4, subd. (b) (restitution fine)	Every case where a person is convicted of a crime.	Felonies: \$300-\$10,000 ^{5, 6, 7} Misdemeanors: \$150-\$1,000 ⁸	No – if minimum fine. ⁹ Yes – if amount greater than minimum.	Yes ¹⁰ – unless compelling & extraordinary reasons for not imposing. (Inability to pay not compelling & extraordinary.) (Pen. Code, § 1202.4, subd. (c).)	1984/2014
Pen. Code, § 1202.44 (probation revocation restitution fine)	All crimes where a conditional sentence or a sentence that includes a period of probation is imposed.	Same amount imposed for restitution fine (Pen. Code, § 1202.4, subd. (b)). ^{11, 12} Suspended unless probation / conditional sentence revoked.	No	Yes – absent compelling & extraordinary reasons stated on the record.	2004

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<p>Pen. Code, § 1202.45 (parole revocation restitution fine)</p>	<p>All crimes in which sentence includes parole term or defendant subject to postrelease community supervision (Pen. Code, § 3451) or mandatory supervision (Pen. Code, § 1170, subd. (h)(5)(B)).</p>	<p>Same as amount imposed for restitution fine (Pen. Code, § 1202.4, subd. (b)).¹³ Suspended unless parole, postrelease community supervision, or mandatory supervision revoked.</p>	<p>No</p>	<p>Yes¹⁴</p>	<p>1995</p>
<p>Pen. Code, § 1203.1b (cost of postconviction supervision, investigation, reporting, and transfer processing)</p>	<p>REPEALED (AB 1869) Anyone convicted of an offense where: a preplea / presentence investigation and report is prepared; or probation is granted; or a conditional sentence is given; or mandatory supervision is ordered.</p>	<p>Repealed</p>	<p>n/a</p>	<p>n/a</p>	<p>1981/2021</p>
<p>Pen. Code, § 1465.8 (court operations assessment/court security fee¹⁵)</p>	<p>Every conviction for a criminal offense, including traffic offenses, excluding parking offenses, as defined.¹⁶</p>	<p>\$40^{17, 18, 19}</p>	<p>No²⁰</p>	<p>Yes²¹</p>	<p>2003/2010</p>

FEES AND PENALTY ASSESSMENTS

Authorizing Statute	Applies To	Amount	Ability to Pay Provision?	Fine Mandatory?	Original Effective Date / Most Recent Amendment
<p>Gov. Code, § 29550, subd. (c)²²</p> <p>(booking fee – arrest by county officer or agent)</p>	<p>REPEALED (AB 1869)</p> <p>Any person arrested by a specified entity who is subsequently convicted of a criminal offense relating to the arrest.</p>	Repealed	n/a	n/a	1991/2021
<p>Gov. Code, § 29550.1</p> <p>(booking fee – arrest by non-county agency, e.g., school district, community college district, college, university, etc.)</p>	<p>REPEALED (AB 1869)</p> <p>Any person booked into county jail by a specified entity who is subsequently convicted of a criminal offense relating to the arrest.</p>	Repealed	n/a	n/a	1991/2021
<p>Gov. Code, § 29550.2, subd. (a)</p> <p>(booking fee – arrest by any government entity not listed in Gov. Code, § 29550 or § 29550.1)</p>	<p>REPEALED (AB 1869)</p> <p>Any person booked into county jail by a specified entity who is subsequently convicted of a criminal offense relating to the arrest.</p>	Repealed	n/a	n/a	1992/2021

Authorizing Statute	Applies To	Amount	Ability to Pay Provision?	Fine Mandatory?	Original Effective Date / Most Recent Amendment
<p>Gov. Code, § 29550.3</p> <p>(booking fee – arrest by a city’s officer or agent)</p>	<p>REPEALED (AB 1869)</p> <p>An arrested person if he or she is convicted of any criminal offense related to the arrest.</p>	<p>Repealed</p>	<p>n/a</p>	<p>n/a</p>	<p>1995/2021</p>
<p>Gov. Code, § 70372</p> <p>(state court construction penalty)</p>	<p>Every fine, penalty, or forfeiture, except restitution fines and parking-related penalties.²³</p>	<p>\$5 for every \$10 or part of \$10 imposed.</p>	<p>No – but if in prison, court can waive as hardship.</p>	<p>Yes</p>	<p>2003</p>
<p>Gov. Code, § 76000</p> <p>(county assessment)</p>	<p>Every fine, penalty, or forfeiture, <i>except</i> restitution, Pen. Code, §§ 1464, 1465.7, parking-related (all per code section), Gov. Code, § 70373 (per subd. (b) of that code section [“penalties commencing with Gov. Code, § 76000”]).</p>	<p>\$7 for every \$10 or part of \$10 imposed.</p> <p>(In lieu of \$7 per \$10 rate, option for county-specific rate where money in county’s courthouse construction fund transferred to state; see code section for by-county rates.)</p>	<p>No</p>	<p>Yes</p>	<p>1991</p>

Authorizing Statute	Applies To	Amount	Ability to Pay Provision?	Fine Mandatory?	Original Effective Date / Most Recent Amendment
Gov. Code, § 76000.5 (funds emergency medical services)	Every fine, penalty, or forfeiture, <i>except</i> restitution, Pen. Code, §§ 1464, 1465.7, parking-related (all per code section), Gov. Code, § 70373 (per subd. (b) of that code section [“penalties commencing with Gov. Code, § 76000”]).	\$2 for every \$10 or part of \$10 imposed.	No	Yes – if county has elected to levy.	2007/2017 ²⁴
Gov. Code, § 76104.6 (funds the implementation of DNA Fingerprint, Unsolved Crime, and Innocence Protection Act)	Every fine, penalty, or forfeiture, <i>except</i> restitution, Pen. Code, §§ 1464, 1465.7, parking-related (all per code section), Gov. Code, § 70373 (per subd. (b) of that code section [“penalties commencing with Gov. Code, § 76000”]).	\$1 for every \$10 or part of \$10 imposed. ²⁵	No	Yes	2004
Gov. Code, § 76104.7 (funds the operation of DNA Fingerprint, Unsolved Crime, and Innocence Protection Act and DOJ forensic labs)	Every fine, penalty, or forfeiture, <i>except</i> restitution, Pen. Code, §§ 1464, 1465.7, parking-related (all per code section), Gov. Code, § 70373 (per subd. (b) of that code section [“penalties commencing with Gov. Code, § 76000”]).	\$4 for every \$10 or part of \$10 imposed.	No	Yes	2006/2012 ²⁶

Authorizing Statute	Applies To	Amount	Ability to Pay Provision?	Fine Mandatory?	Original Effective Date / Most Recent Amendment
<p>Pen. Code, § 987.5 (appointed counsel registration fee)</p>	<p>REPEALED (AB 1869) Any defendant provided with appointed legal assistance.</p>	<p>Repealed</p>	<p>n/a</p>	<p>n/a</p>	<p>1996/2021</p>
<p>Pen. Code, § 987.8, subd. (b) (appointed counsel legal fees)</p>	<p>REPEALED (AB 1869) Any defendant provided with appointed legal assistance.²⁷</p>	<p>Repealed</p>	<p>n/a</p>	<p>n/a</p>	<p>1983/2021</p>
<p>Pen. Code, § 1463.13 (assessment for court-ordered participation in alcohol and drug assessment program)</p>	<p>Anyone convicted of a crime where alcohol or substance abuse was substantially involved who has been ordered to participate in the assessment program. <u>Note</u>: Those convicted of DUI-related offenses are excluded from the program.</p>	<p>≤\$150 on every fine, penalty, forfeiture imposed and collected.</p>	<p>Yes</p>	<p>No</p>	<p>2001</p>

Authorizing Statute	Applies To	Amount	Ability to Pay Provision?	Fine Mandatory?	Original Effective Date / Most Recent Amendment
<p>Pen. Code, § 1464 (state penalty)</p>	<p>Every fine, penalty, or forfeiture, <i>except</i> restitution fines, Pen. Code, § 1465.7 penalty, parking-related penalties, penalties commencing with Gov. Code, § 76000 (per code section), Gov. Code, § 70373 (per Gov. Code, § 70373, subd. (b)).</p>	<p>\$10 for every \$10 or part of \$10 imposed.</p>	<p>No – but after imposed, court can waive all or part if it works a hardship on convicted person or immediate family.</p>	<p>Yes</p>	<p>1981/1991²⁸</p>
<p>Pen. Code, § 1465.7 (state surcharge)</p>	<p>Every fine, penalty, or forfeiture, <i>except</i> restitution fines, Pen. Code, § 1464 penalty, parking-related penalties, penalties commencing with Gov. Code, § 76000 (per code section), Gov. Code, § 70373 (per Gov. Code, § 70373, subd. (b)).</p>	<p>20% of any applicable fine, penalty, or forfeiture.</p>	<p>No</p>	<p>Yes</p>	<p>2002</p>

¹ Gov. Code, § 70373 is titled “Court facilities funding; assessments on criminal convictions.” Thus, it is referred to as either “court facilities assessment” or “criminal conviction assessment” in the trial courts and in opinions, per local custom.

² Gov. Code, § 70373 is imposed in addition to the assessment under Pen. Code, § 1464, and may not be included in the base fine to calculate the assessment under that statute.

³ Imposition of the Gov. Code, § 70373 assessment for crimes committed before the statute’s enactment does not necessarily violate ex post facto principles. (*People v. Castillo* (2010) 182 Cal.App.4th 1410, 1413.) This is because the event upon which this statute operates is a criminal conviction, be it by guilty verdict or guilty plea, which must occur after the statute’s enactment date for this fee to apply. (*People v. Davis* (2010) 185 Cal.App.4th 998, 1000–1001.)

⁴ Although Gov. Code, § 70373 has no ability-to-pay provision and uses the phrase “shall be imposed,” *People v. Dueñas* (2019) 30 Cal.App.5th 1157 held that due process requires the trial court to conduct an ability-to-pay hearing and ascertain a defendant’s present ability to pay before imposing a court facilities/criminal conviction assessment (Gov. Code, § 70373). No PFR was filed in *Dueñas*. Since then, a split has developed in the Courts of Appeal regarding whether *Dueñas* was wrongly decided under any doctrine or whether an Eighth Amendment analysis is doctrinally preferable to a due process analysis. Subsequent to the development of the split in authority, the California Supreme Court granted review in *People v. Kopp* (granted November 13, 2019, S257844) , which applied the *Dueñas* due process analysis to imposition of the court assessments and an Eighth Amendment analysis to the restitution fines. The Court limited review to: “Must a court consider a defendant’s ability to pay before imposing or executing fines, fees, and assessments? If so, which party bears the burden of proof regarding defendant’s inability to pay?”

⁵ The court may calculate the felony restitution fine by multiplying the minimum fine x years ordered served in prison x number of felony convictions.

⁶ Multiple amendments have affected the restitution fine. The relevant dates are:

- Jan. 1, 1984–Sept. 11, 1992: \$100–\$10,000 (felony offenses)
- Sept. 12, 1992–Sept. 27, 1994: \$200–\$10,000 (felony offenses)
- Sept. 28, 1994–Dec. 31, 2011:
 - \$200–\$10,000 (felony offenses)
 - \$100–\$1,000 (misdemeanor offenses)
- Jan. 1, 2012–Dec. 31, 2012:
 - \$240–\$10,000 (felony offenses)
 - \$120–\$1,000 (misdemeanor offenses)
- Jan. 1, 2013–Dec. 31, 2013:
 - \$280–\$10,000 (felony offenses)
 - \$140–\$1,000 (misdemeanor offenses)
- After Jan. 1, 2014:

\$300–\$10,000 (felony offenses)

\$150–\$1,000 (misdemeanor offenses)

These historic, and any future, increases to the minimum and/or maximum restitution amounts raises the possibility of ex post facto violations. The amount properly imposed is the amount in effect at the time the crime was committed, not at the time of sentencing. (*People v. Souza* (2012) 54 Cal.4th 90, 143.) (For a discussion of ex post facto considerations related to the restitution fine (Pen. Code, § 1202.4, subd. (b)), see ADI’s article “Increase in Minimum Restitution Fines: Watch for Ex Post Facto Violations” [http://www.adi-sandiego.com/news_alerts/pdfs/2012/INCREASE_IN_MINIMUM_RESTITUTION_FINES.pdf].)

⁷ The Pen. Code, § 1202.4, subd. (b), restitution fine is not subject to penalty assessments. (See Pen. Code, § 1202.4, subd. (e).)

⁸ Previously, this fine was subject to a 10% collection fee if the county adopted such a fee. (See former Pen. Code, § 1202.4, subd. (l).) The language in subdivision (l) was removed by Assembly Bill No. 177 (Stats. 2021, ch. 257), effective 1/1/2022. For cases where the 10% collection fee was imposed, the balance of this court-imposed cost became unenforceable and uncollectible on and after 1/1/2022. “[A]ny portion of a judgment imposing those costs shall be vacate[d].” (Pen. Code, § 1465.9, subd. (b).)

⁹ Although the trial court is not required to hold an ability-to-pay hearing if it imposes minimum restitution fine (Pen. Code, § 1202.4, subd. (c)), *People v. Dueñas* (2019) 30 Cal.App.5th 1157 held that the execution of *any* restitution fine must be stayed unless and until the trial court concludes the defendant has the present ability to pay the fine. No PFR was filed in *Dueñas*. Since then, a split has developed in the Courts of Appeal regarding whether *Dueñas* was wrongly decided under any doctrine or whether an Eighth Amendment analysis is doctrinally preferable to a due process analysis. Subsequent to the development of the split in authority, the California Supreme Court granted review in *People v. Kopp* (granted November 13, 2019, S257844), which applied the *Dueñas* due process analysis to imposition of the court assessments and an Eighth Amendment analysis to the restitution fines. The Court limited review to: “Must a court consider a defendant’s ability to pay before imposing or executing fines, fees, and assessments? If so, which party bears the burden of proof regarding defendant’s inability to pay?”

¹⁰ The trial court has the authority to suspend, dismiss, or otherwise eliminate the unpaid portion of a Pen. Code, § 1202.4, subd. (b) restitution fine when it grants a defendant’s motion to “expunge” the conviction (Pen. Code, § 1203.4) or when relief from payment of the restitution fine was a material term of the defendant’s plea bargain. (*People v. Holman* (2013) 214 Cal.App.4th 1438, 1467–1476.)

¹¹ Where the trial court fails to impose the probation revocation restitution fine (Pen. Code, § 1202.44) and the prosecution does not object, the prosecution cannot raise the issue on appeal. (*People v. Tillman* (2000) 22 Cal.4th 300.) Query: Does this mean the appellate court cannot impose the fine on appeal on its own motion in, for example, a *Wende* review? (See *People v. Williams* (1997) 17 Cal.4th 148, 161, fn. 6, suggesting that the waiver rule binds only the parties.)

¹² If the execution of a defendant’s prison sentence is suspended and he or she is placed on probation, the trial court should impose the Pen. Code, § 1202.44 probation revocation restitution fine and not the Pen. Code, § 1202.45 parole revocation restitution fine. (*People v. Hunt* (2013) 213 Cal.App.4th 13, 16–20.) Nor should the trial court impose both fines. (*Id.* at pp. 19–20.)

¹³ The Pen. Code, § 1202.45, parole revocation restitution fine is not subject to Pen. Code, §§ 1464, 1465.7, or Gov. Code, § 76000, *et seq.* penalty assessments. (Pen. Code, § 1202.45, subd. (c).)

¹⁴ Where the trial court imposes a restitution fine (Pen. Code, § 1202.4, subd. (b)) but omits or imposes an erroneous parole revocation fine (Pen. Code, § 1202.45), the error can be corrected even if the prosecution fails to object because it results in an unauthorized sentence. (*People v. Smith* (2001) 24 Cal.4th 849, 851–852.)

¹⁵ “Court operations assessment” is how this assessment is often referred to in the trial courts and in opinions, because its current stated purpose is the funding of court operations. However, when this code section was first enacted, its stated purpose was to provide funding for court security. Thus, it is still referred to as the “court security fee.”

¹⁶ In the case of juvenile adjudications of wardship, a court operations assessment/court security fee (Pen. Code, § 1465.8) cannot be imposed because these proceedings do not result in “criminal convictions.” (*Egar v. Superior Court* (2004) 120 Cal.App.4th 1306, 1308–1309.)

¹⁷ Multiple amendments have affected the Pen. Code, § 1465.8 fee. The relevant dates are: Aug. 17, 2003–July 27, 2009 = \$20; July 28, 2009–Oct. 18, 2010 = \$30; after Oct. 19, 2010 = \$40.

¹⁸ Because the court operations assessment/court security fee (Pen. Code, § 1465.8) is not punitive in nature, it does not implicate *ex post facto* principles. (*People v. Alford* (2007) 42 Cal.4th 749, 752, 759; *People v. Wallace* (2004) 120 Cal.App.4th 867, 870, 878–879.)

¹⁹ Pen. Code, § 1465.8 is not subject to penalty assessments under Gov. Code, § 76000, *et seq.* and Pen. Code, § 1465.7. (Pen. Code, § 1465.8, subd. (b).)

²⁰ Although Pen. Code, § 1465.8 has no ability-to-pay provision and uses the phrase, “shall be imposed,” *People v. Dueñas* (2019) 30 Cal.App.5th 1157 held that due process requires the trial court to conduct an ability-to-pay hearing and ascertain a defendant’s present ability to pay before imposing a court operations assessment (Pen. Code, § 1465.8). No PFR was filed in *Dueñas*. Since then, a split has developed in the Courts of Appeal regarding whether *Dueñas* was wrongly decided under any doctrine or whether an Eighth Amendment analysis is doctrinally preferable to a due process analysis. Subsequent to the development of the split in authority, the California Supreme Court granted review in *People v. Kopp* (granted November 13, 2019, S257844), which applied the *Dueñas* due process analysis to imposition of the court assessments and an Eighth Amendment analysis to the restitution fines. The Court limited review to: “Must a court consider a defendant’s ability to pay before imposing or executing fines, fees, and assessments? If so, which party bears the burden of proof regarding defendant’s inability to pay?”

²¹ The court operations assessment/court security fee must be imposed on a conviction even where the punishment for that conviction is stayed (Pen. Code, § 654), both because the assessment/fee itself is not punishment and because the trigger for imposition is the conviction, which remains despite the application of Pen. Code, § 654. (*People v. Crittle* (2007) 154 Cal.App.4th 368, 369, 370–371.)

²² Prior to SB 1869 (2021), subdivision (c) of Gov. Code, § 29550 read “Any county whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, including applicable overhead costs incurred in booking or otherwise processing arrested persons.” SB 1869 eliminated this language.

²³ The Gov. Code, § 70372 “penalty may not be imposed against a juvenile ward.” (*In re Gabriel T.* (2016) 3 Cal.App.5th 952, 961–962.)

²⁴ Gov. Code, § 76000.5 is to remain in effect until January 1, 2027. (Gov. Code, § 76000.5, subd. (e).)

²⁵ Imposition of the DNA penalty assessment (Gov. Code, § 76104.6) on offenses that occurred prior to the statute’s effective date is a violation of the constitutional prohibition against ex post facto laws. (*People v. Batman* (2008) 159 Cal.App.4th 587.)

²⁶ At the time of its original 2006 enactment, Gov. Code, § 76104.7 provided for \$1 for every \$10 or part of \$10 imposed; in 2010, it increased to \$3 for every \$10 or part of \$10 imposed; in 2012, it increased to \$4 for every \$10 or part of \$10 imposed.

²⁷ Payment of imposed appointed counsel legal fees (Pen. Code, § 987.8) cannot be made a condition of probation. (*People v. Bradus* (2007) 149 Cal.App.4th 636, 641–642; *People v. Hart* (1998) 65 Cal.App.4th 902, 906–907.)

²⁸ Several amendments have affected the state penalty amount. At enactment: \$ 5 for every \$10; September 27, 1987: \$ 7 for every \$10; June 30, 1991: \$10 for every \$10.