

CCAP's Fines & Fees Chart—Introduction

Reviewing the financial obligations imposed on your client can be daunting. As one appellate court justice noted: “[T]he patchwork nature of the ever-growing financial penalties in criminal actions has created a system that begins to match the complexity of the federal income tax.” (*People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1533 (conc. opn. of Kriegler, J.)) The following charts are intended to make the appellate attorney’s review easier.

In addition to the charts, the discussion below provides, in the context of court-imposed financial obligations, an overview of ex post facto violations, a look at terms used and which are punishment, and the impact of Penal Code section 654.

Ex Post Facto

An ex post facto violation generally refers to a criminal statute that impermissibly punishes actions retroactively, thereby criminalizing conduct that was legal when originally performed. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 288; see Cal. Const., art. I, § 9; U.S. Const., art. I, § 10, cl. 1.) An ex post facto violation can occur in the context of court-imposed financial obligations where the Legislature increases the amount of a financial obligation that may or must be imposed and the trial court imposes the new amount on conduct that occurred before the change in the law. Thus, the appellate attorney must be vigilant when dealing with changes in the law related to court-imposed financial obligations.

Whether a court-imposed financial obligation violates ex post facto depends on whether the financial obligation is punitive in nature. Unfortunately, the terms used to describe court-imposed financial obligations are not always dispositive. For example, the California Supreme Court has held that the term “fee,” as used in court security fee (Pen. Code, § 1465.8, subd. (a)(1)), refers to an obligation that is nonpunitive. (*People v. Alford* (2003) 42 Cal.4th 749, 756–757.) The court has also come to the opposite conclusion, holding that the term “fee,” as used in criminal laboratory analysis fee (Health & Saf. Code, § 11372.5, subd. (a)) and the drug program fee (Health & Saf. Code, § 11372.7, subd. (a)), refers to an obligation that is punitive. (*People v. Ruiz* (2018) 4 Cal.5th 1100, 1109–1111.)

The next section discusses the various terms describing court-imposed financial obligations and which are considered punishment.

Terms Used for Court-Imposed Financial Obligations and Which Are Punishment

Generally speaking, court-imposed financial obligations fall into one of three categories: (1) punitive (fines), (2) nonpunitive (fees), and (3) parasitic (penalty assessments).

Fines

“Fines are imposed for retribution and deterrence” (*People v. Vega* (2005) 130 Cal.App.4th 183, 195.) Thus, they are generally punitive. (*Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 748.)

- Pen. Code, § 1202.4, subd. (b): Restitution fine (*People v. Zito* (1992) 8 Cal.App.4th 736, 740–741 [determining the restitution fine is punishment for ex post facto purposes]; *People v. Valenzuela* (2009) 172 Cal.App.4th 1246, 1248 [concluding that the prohibition against ex post facto laws applies to restitution fines].)

Fees

The term “fee” typically refers to financial obligations that “cover a particular governmental program or administrative cost.” (*People v. Watts* (2016) 2 Cal.App.5th 223, 228.) They can also be “adopted as [a] component of [an] effort to address a budget shortfall.” (*People v. Castillo* (2010) 182 Cal.App.4th 1410, 1413.) Thus, most fees are nonpunitive. However, there are exceptions:

- Health & Saf. Code, § 11372.5: Criminal laboratory analysis fee (*People v. Ruiz* (2018) 4 Cal.5th 1100, 1110 [interpreting statutory language as making “clear that the Legislature considered the \$50 payment under [Health and Safety Code section 11372.5] to be a ‘fine’ ” and thus finding support for an intent to punish]).
- Health & Saf. Code, § 11372.7: Criminal drug program fee (*People v. Ruiz* (2018) 4 Cal.5th 1100, 1118 [“postenactment revisions to section 11372.7 and their legislative history further indicate that the Legislature understands and intends the section’s ‘drug program fee’ to constitute a fine, a penalty, a punishment”]).

Penalty Assessments

Penalty assessments have been characterized as “parasitic” due to their nature of being imposed on top of an already imposed base fine, thus increasing that fine. (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1374.) Typically, “penalty assessments are legislatively expressed as a certain dollar amount ‘for every ten dollars (\$10), or part of (\$10),’ for the particular fine, penalty, or forfeiture that is subject to the assessments.” (*People v. Watts* (2016) 2 Cal.App.5th 223, 228.) As noted, penalty assessments “inflate the total sum imposed on the defendant” (*Ibid.*) Most penalty assessments are considered punitive:

- Gov. Code, § 70372: State court construction penalty (*People v. High* (2004) 119 Cal.App.4th 1192, 1198 [reasoning that this penalty violated state and federal ex post facto clauses because, “[a]lthough the Legislature enacted Government Code section 70372 as a method of increasing the funds available to remodel, renovate and construct new state court facilities, the structure, operative principle, and descriptive language chosen reflect a penal purpose as well”]);
- Gov. Code, § 76000: County penalties (*People v. Soto* (2016) 245 Cal.App.4th 1219, 1240 [concluding that the Government Code section 76000 penalty assessment is punitive]);
- Gov. Code, § 76000.5: Penalties supporting EMS (*People v. Soto* (2016) 245 Cal.App.4th 1219, 1240 [concluding that the Government Code section 76000.5 penalty assessment is punitive]);
- Gov. Code, § 76104.6: DNA identification fund implementation penalty assessment (*People v. Batman* (2008) 159 Cal.App.4th 587, 590–591); [concluding that this DNA penalty assessment (Gov. Code, § 76104.6) is punitive within the meaning of the ex post facto prohibition]);
- Gov. Code, § 76104.7: DNA identification fund operations penalty assessment (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1374 [describing this DNA penalty assessment (Gov. Code, § 76104.7) as one of a group of “punitive fundraising measures [that] impose punishment and cannot be constitutionally applied retroactively” per ex post facto principles]);
- Pen. Code, § 1464: State penalty (*People v. High* (2004) 119 Cal.App.4th 1192, 1197 [noting that Penal Code “section 1464, is a ‘garden variety’ fine calculated on the size and severity of the base fine imposed. It does not purport to reimburse government]).
- Pen. Code, § 1465.7: State surcharge on fines (*People v. High* (2004) 119 Cal.App.4th 1192, 1197 [determining that “imposition of the Penal Code

section 1465.7 . . . state surcharge on fines . . . violates state and federal constitutional protections against statutes that make the punishment for a crime more burdensome after its commission” where increase in surcharge occurred after commission of crime]).

Pen. Code, § 654

If the punishment for any of your client’s convictions was stayed under Penal Code section 654, check that any associated punitive financial obligations imposed were also stayed. Section 654 “prohibits the use of a conviction for any punitive purpose if the sentence on that conviction is stayed.” (*People v. Pearson* (1986) 42 Cal.3d 351, 361.) Thus, “[p]unitive fines cannot be imposed on counts that are stayed pursuant to section 654” and are properly stricken. (*People v. Gonzales* (2017) 16 Cal.App.5th 494, 504.) For example, in *People v. Sharret* (2011) 191 Cal.App.4th 859, the court held that because it “is punitive in nature, the criminal laboratory analysis fee [(Health & Saf. Code, § 11372.5)] imposed as to count 1 must be stayed under section 654 along with the charge of which defendant was convicted.” (*Id.* at p. 870.) (See the discussion in the previous section as to which court-imposed financial obligations are considered punishment, and thus properly stayed under section 654.)