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City Attorney's Office

FILED
OFFICE OF THE CITY CLERK
OAKLAND

17 MAY 18 PM 4:00

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

RESOLUTION IN SUPPORT OF CALIFORNIA SENATE BILL (SB) 355 (SENATORS MITCHELL AND LARA), THAT WOULD ELIMINATE FEES FOR COUNT-APPOINTED COUNSEL FOR PEOPLE WHO ARE FOUND NOT GUILTY OF A CRIME

WHEREAS, under existing criminal law, a person who is accused of a crime they did not commit, refuses to accept a plea bargain, goes to trial, and is found not guilty may still be ordered to pay the court for the costs of the court-appointed attorney who represented them during the erroneous prosecution; and

WHEREAS, existing law requires a court to assign counsel to a defendant who desires the assistance of counsel and cannot afford to pay for it. Upon conclusion of the proceedings against the defendant, or withdrawal of counsel, existing law authorizes the court to determine the defendant's ability to pay all or a portion of his or her defense costs, and to require the defendant to reimburse the county for that portion he or she has been determined to be able to pay; and

WHEREAS, these provisions apply whether the defendant has been found guilty of the crime charged or completely innocent. People who were falsely arrested, wrongly imprisoned, wrongly prosecuted, and ultimately exonerated, may still be subject to penalties of thousands of dollars for daring to assert their constitutional right to a trial and attorney in the first place; and

WHEREAS, in some instances courts have been known to induce defendants to enter into plea bargains under a threat of the defendant having to pay "attorney's fees". Consequently, innocent people, who should not be convicted, are induced to plead guilty to time-served offers in exchange for an agreement to waive such fees; and

WHEREAS, the system is fundamentally unfair, placing yet another insuperable burden on the already poor; and

WHEREAS, SB 355 is supported by Alliance for Boys and Men of Color, California Attorneys for Criminal Justice, Friends Committee on Legislation, Reentry Solutions Group, Courage Campaign, National Employment Law Center, and the Conference of California Bar Associations; now therefore, be it

RESOLVED: that the Oakland City Council supports Senate Bill (SB) 355 (Senators Mitchell and Lara), that would eliminate fees for court-appointed counsel for people who are found not guilty of a crime; and be it

FURTHER RESOLVED: that the City Administrator is directed to forward a copy of this adopted Resolution to state legislative elected officials representing Oakland, Governor Jerry Brown, to the authors of SB 355, and to the lobbyist for the City of Oakland to advocate for passage of SB 355.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB,
KAPLAN AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California



Senators Holly J. Mitchell and Lara

SB 355 Ending Court Fees for the Innocent

17 MAY 18 PM 4:00

THIS BILL

SB 355 will remove an unjustified burden on the innocent, and also removes an improper inducement (the threat of such fees) from pre-trial plea negotiations. This bill will amend the California Penal Code provisions (§§987.8 and 987.81) that provide for criminal defendants to reimburse the courts for appointed counsel to cases only where the defendant is actually convicted of the charged crime.

ISSUE

Under existing criminal law, a person who is accused of a crime he or she did not commit, refuses to accept a plea bargain, goes to trial, and is found not guilty, may still be ordered to pay the court for the costs of the court-appointed attorney who represented them during the erroneous prosecution.

In these cases, a likely-impooverished person who was falsely arrested, wrongly imprisoned, wrongly prosecuted, and ultimately exonerated, is still subject to a penalty of thousands of dollars for daring to assert their constitutional right to a trial and attorney in the first place. Such a penalty, placed on the backs of the already-poor, makes financial problems even worse.

Existing law requires a court to assign counsel to a defendant who desires the assistance of counsel and cannot afford to pay for it. Upon conclusion of the proceedings against the defendant, or withdrawal of counsel, existing law authorizes the court to determine the defendant's ability to pay all or a portion of his or her defense costs, and to require the defendant to reimburse the county for that portion he or she has been determined able to pay. These provisions apply whether the defendant has been found guilty of the crime charged or completely innocent.

The effect of these statutes is to make individuals who are wrongly prosecuted and ultimately exonerated still subject to a penalty of thousands of dollars for defending their innocence in court. Such a penalty imposes yet another insuperable burden on the already poor, increasing the chances they will be unable to meet family and other societal obligations and may run afoul of the system as a result. The system is fundamentally unfair – particularly as there is no “reverse fees” provision whereby the prosecution or court is required to pay the costs of the wrongly accused.

In addition, in some instances courts have been known to use the threat of the defendant having to pay “attorney’s fees” whether he or she wins or loses, to induce defendants to enter into plea bargains. Consequently, innocent people, who should not be convicted, are induced to plead guilty to time-served offers in exchange for an agreement to waive such fees.

SUPPORT

Conference of California Bar Associations (sponsor)
Alliance for Boys and Men of Color
California Attorneys for Criminal Justice
Courage Campaign
Fair Chance Project
Friends Committee on Legislation of California
National Employment Law Center
Reentry Solutions Group
Root and Rebound

FOR MORE INFORMATION

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Office of Senator Holly J. Mitchell
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FILED
OFFICE OF THE CITY CLERK
OAKLAND
17 MAY 18 PM 4:00

Introduced by Senators Mitchell and Lara

February 14, 2017

An act to amend Sections 987.8 and 987.81 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 355, as introduced, Mitchell. Reimbursement for court-appointed counsel.

Existing law requires a court to assign counsel to defend a defendant if the defendant desires the assistance of counsel and cannot afford to pay for counsel. Upon conclusion of the proceedings against the defendant, or withdrawal of counsel, existing law authorizes the court to make a determination of the ability of a defendant to pay all or a portion of his or her defense. Existing law authorizes the court to order a defendant to reimburse the county for the costs of counsel and other legal assistance.

This bill would make the reimbursement for counsel and other legal assistance applicable only in cases where the defendant is convicted of a felony or a misdemeanor.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 987.8 of the Penal Code is amended to
- 2 read:
- 3 987.8. (a) ~~Upon a finding by~~ If the court finds that a defendant
- 4 is entitled to counsel but is unable to employ counsel, the court
- 5 may hold a hearing or, in its discretion, order the defendant to

1 appear before a county officer designated by the court, to determine
2 whether the defendant owns or has an interest in ~~any~~ real property
3 or other assets subject to attachment and not otherwise exempt by
4 law. The court may impose a lien on any real property owned by
5 the defendant, or in which the defendant has an interest to the
6 extent permitted by law. The lien shall contain a legal description
7 of the property, shall be recorded with the county recorder in the
8 county or counties in which the property is located, and shall have
9 priority over subsequently recorded liens or encumbrances. The
10 county shall have the right to enforce its lien for the payment of
11 providing legal assistance to an indigent defendant in the same
12 manner as other lienholders by way of attachment, except that a
13 county shall not enforce its lien on a defendant's principal place
14 of residence pursuant to a writ of execution. No lien shall be
15 effective as against a bona fide purchaser without notice of the
16 lien.

17 ~~(b) In any case in which~~ *If* a defendant is provided legal
18 assistance, either through the public defender or private counsel
19 appointed by the court, upon conclusion of the criminal proceedings
20 in the trial ~~court~~, *court* or upon the withdrawal of the public
21 defender or appointed private counsel, the court may, after notice
22 and a hearing, make a determination of the present ability of the
23 defendant to pay all or a portion of the cost thereof. The court may,
24 in its discretion, hold one such additional hearing within six months
25 of the conclusion of the criminal proceedings. The court may, in
26 its discretion, order the defendant to appear before a county officer
27 designated by the court to make an inquiry into the ability of the
28 defendant to pay all or a portion of the legal assistance provided.

29 ~~(c) In any case in which~~ *(1) If* the defendant hires counsel
30 replacing a publicly provided attorney; in which the public defender
31 or appointed counsel was required by the court to proceed with
32 the case after a determination by the public defender that the
33 defendant is not indigent; or, in which the defendant, at the
34 conclusion of the case, appears to have sufficient assets to repay,
35 without undue hardship, all or a portion of the cost of the legal
36 assistance provided to him or her, by monthly installments or
37 otherwise; the court shall make a determination of the defendant's
38 ability to pay as provided in subdivision (b), and may, in its
39 discretion, make other orders as provided in that subdivision.

40 ~~This~~

1 (2) This subdivision applies to a county only upon the adoption
2 of a resolution by the board of supervisors to that effect.

3 (d) If the defendant, after having been ordered to appear before
4 a county officer, has been given proper notice and fails to appear
5 before a county officer within 20 working days, the county officer
6 shall recommend to the court that the full cost of the legal
7 assistance shall be ordered to be paid by the defendant. The notice
8 to the defendant shall contain all of the following:

9 (1) A statement of the cost of the legal assistance provided to
10 the defendant as determined by the court.

11 (2) The defendant's procedural rights under this section.

12 (3) The time limit within which the defendant's response is
13 required.

14 (4) A warning that if the defendant fails to appear before the
15 designated officer, the officer will recommend that the court order
16 the defendant to pay the full cost of the legal assistance provided
17 to him or her.

18 (e) (1) At a hearing, the defendant shall be entitled to, but shall
19 not be limited to, all of the following rights:

20 (1)

21 (A) The right to be heard in person.

22 (2)

23 (B) The right to present witnesses and other documentary
24 evidence.

25 (3)

26 (C) The right to confront and cross-examine adverse witnesses.

27 (4)

28 (D) The right to have the evidence against him or her disclosed
29 to him or her.

30 (5)

31 (E) The right to a written statement of the findings of the court.

32 ~~If~~

33 (2) If the court determines that the defendant has the present
34 ability to pay all or a part of the cost, the court shall set the amount
35 to be reimbursed and order the defendant to pay the sum to the
36 county in the manner in which the court believes reasonable and
37 compatible with the defendant's financial ability. Failure of a
38 defendant who is not in custody to appear after due notice is a
39 sufficient basis for an order directing the defendant to pay the full
40 cost of the legal assistance determined by the court. The order to

1 pay all or a part of the costs may be enforced in the manner
2 provided for enforcement of money judgments generally but may
3 not be enforced by contempt.

4 ~~Any~~

5 (3) An order entered under this subdivision is subject to relief
6 under Section 473 of the Code of Civil Procedure.

7 (f) Prior to the furnishing of counsel or legal assistance by the
8 court, the court shall give notice to the defendant that the court
9 may, after a hearing, make a determination of the present ability
10 of the defendant to pay all or a portion of the cost of counsel. The
11 court shall also give notice that, if the court determines that the
12 defendant has the present ability, the court shall order him or her
13 to pay all or a part of the cost. The notice shall inform the defendant
14 that the order shall have the same force and effect as a judgment
15 in a civil action and shall be subject to enforcement against the
16 property of the defendant in the same manner as any other money
17 judgment.

18 (g) As used in this section:

19 (1) "Legal assistance" means legal counsel and supportive
20 services including, but not limited to, medical and psychiatric
21 examinations, investigative services, expert testimony, or any other
22 form of services provided to assist the defendant in the preparation
23 and presentation of the defendant's *his or her* case.

24 (2) "Ability to pay" means the overall capability of the defendant
25 to reimburse the costs, or a portion of the costs, of the legal
26 assistance provided to him or her, and shall include, but not be
27 limited to, all of the following:

28 (A) The defendant's present financial position.

29 (B) The defendant's reasonably discernible future financial
30 position. In no event shall the court consider a period of more than
31 six months from the date of the hearing for purposes of determining
32 the defendant's reasonably discernible future financial position.
33 Unless the court finds unusual circumstances, a defendant
34 sentenced to state prison, or to county jail for a period longer than
35 364 days, including, but not limited to, a sentence imposed pursuant
36 to subdivision (h) of Section 1170, shall be determined not to have
37 a reasonably discernible future financial ability to reimburse the
38 costs of his or her defense.

39 (C) The likelihood that the defendant shall be able to obtain
40 employment within a six-month period from the date of the hearing.

1 (D) Any other factor or factors that may bear upon the
2 defendant's financial capability to reimburse the county for the
3 costs of the legal assistance provided to the defendant.

4 (h) At any time during the pendency of the judgment rendered
5 according to the terms of this section, a defendant against whom
6 a judgment has been rendered may petition the rendering court to
7 modify or vacate its previous judgment on the grounds of a change
8 in circumstances with regard to the defendant's ability to pay the
9 judgment. The court shall advise the defendant of this right at the
10 time it renders the judgment.

11 (i) This section shall apply to all proceedings, including
12 contempt proceedings, in which the party is represented by a public
13 defender or appointed ~~counsel~~ *counsel and is convicted of a felony*
14 *or a misdemeanor.*

15 SEC. 2. Section 987.81 of the Penal Code is amended to read:

16 987.81. (a) ~~In any case in which~~ *If* a defendant is provided
17 legal assistance, either through the public defender or private
18 counsel appointed by the court, upon conclusion of the criminal
19 proceedings in the trial court, or upon the withdrawal of the public
20 defender or appointed private counsel, the court shall consider the
21 available information concerning the defendant's ability to pay
22 the costs of legal assistance and may, after notice, as provided in
23 subdivision (b), hold a hearing to make a determination of the
24 present ability of the defendant to pay all or a portion of the cost
25 thereof. Notwithstanding the above, ~~in any case where~~ *if* the court
26 has ordered the probation officer to investigate and report to the
27 court pursuant to subdivision (b) of Section 1203, the court may
28 hold such a hearing. The court may, in its discretion, hold one such
29 additional hearing within six months of the conclusion of the
30 criminal proceedings.

31 (b) Concurrent with the ~~furnishing of~~ counsel or legal assistance
32 *being furnished* by the court, the court ~~shall~~ *may* order the
33 defendant to appear before a county officer designated by the court
34 to make an inquiry into the ability of the defendant to pay all or a
35 portion of the legal assistance provided. Prior to the furnishing of
36 counsel or legal assistance by the court, the court shall give notice
37 to the defendant that the court ~~shall~~ *may*, after a hearing, make a
38 determination of the present ability of the defendant to pay all or
39 a portion of the cost of counsel. The court shall also give notice
40 that, if the court determines that the defendant has the present

1 ability, the court shall order him or her to pay all or a part of the
2 cost. The notice shall inform the defendant that the order shall
3 have the same force and effect as a judgment in a civil action and
4 shall be subject to enforcement against the property of the
5 defendant in the same manner as any other money judgment.

6 (c) The provisions of this section shall apply only in a county
7 in which the board of supervisors adopts a resolution which elects
8 to proceed under this section.

9 (d) *This section shall apply only when the defendant is convicted*
10 *of a felony or a misdemeanor.*