

Staff Memorandum 2023-04

Selected Issues at the Intersection of Poverty and Criminal Law

At its June 2023 meeting, the Committee on Revision of the Penal Code will discuss issues related to the intersection of poverty and criminal justice, with a specific focus on welfare fraud prosecutions, court-ordered debt from fines and fees, and alternatives to arrest for lower-level offenses (i.e. LEAD programs). This meeting will explore policies around these issues that improve equity and public safety.

This memorandum gives general background and presents possible recommendations for the Committee's consideration. A supplement to this memorandum, which will be released shortly, will present written submissions from invited panelists.

Introduction

According to the U.S. Census Bureau, California has the highest poverty rate of all states.¹ About 4.5 million Californians live below the California Poverty Measure² which is about \$37,000 a year for a family of four.³ Poverty reaches across racial groups — about 14% of Latino families, 13% of Black families, and 10% of white families have incomes below the poverty line.⁴

Criminal justice involvement is recognized as both a cause and consequence of poverty. Research shows that people convicted of crimes disproportionately experience markers of socioeconomic disadvantage such as lower education levels, weaker employment histories, and higher incidence of substance abuse or mental health problems before their convictions and that criminal convictions exacerbate these disadvantages, most directly by reducing employment and earnings.⁵

¹ John Creamer et al., *Poverty in the United States: 2021*, United States Census Bureau (September 2022). The Supplemental Poverty Measure supplements the official poverty measure by considering federal and state taxes, work, and medical expenses.

² The California Poverty Measure is a joint project of the Public Policy Institute of California and the Stanford University Center on Poverty that incorporates state-specific factors like cost of living and amount of safety net benefits to measure poverty in a more comprehensive way. See Sarah Bohn et al., *The California Poverty Measure: A New Look at the Social Safety Net*, Public Policy Institute of California (October 2013).

³ Caroline Danielson, Patricia Malagon, and Sarah Bohn, *Poverty in California*, Public Policy Institute of California (October 2022).

⁴ Public Policy Institute of California, *Who's in Poverty in California?*

⁵ Alexis Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, *American Journal of Sociology*, Vol. 115, No. 6, 1756 (May 2010). See also Michael D. Tanner, *Poverty and Criminal Justice Reform*, Cato Institute, 2 (October 2021).

Incarceration can have a lasting impact on a person's ability to rise out of poverty — a Pew Charitable Trusts survey found that people released from prison in 1986 were still in the bottom 20% of income earners 20 years after completing their sentences.⁶ The criminal system also imposes a heavy burden on individuals and families even without incarceration due to collateral consequences related to child custody, employment, housing, immigration, and court-ordered debt.⁷

Organizations across the spectrum, from the United States Department of Justice to the Cato Institute, have recommended that states reduce the overcriminalization of low-level offenses and curtail the use of fines and fees.⁸

Welfare Fraud Prosecutions

California's social safety net programs, administered by the Department of Social Services, provide cash aid (CalWorks), food assistance (CalFresh), and health care benefits (Medi-Cal) to qualified people.⁹ A recent report by the Public Policy Institute of California found that nearly 4 million more Californians would have been in poverty without these programs.¹⁰ Research suggests that providing people with public benefits may reduce criminal activity.¹¹

Despite these benefits, some of California's safety net programs are underutilized — only approximately 4.8 million of the 6.5 million people eligible for CalFresh participate in the program each month.¹²

Fraud — when a person knowingly makes a false statement or fails to disclose a fact with the intent to wrongfully obtain a benefit¹³ — occurs in a small number of cases. For example, between October and December 2019, there were less

⁶ The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 16 (2010).

⁷ Council of Economic Advisors, *Economic Perspectives on Incarceration and the Criminal Justice System*, Executive Office of the President of the United States (April 2016).

⁸ See U.S. Department of Justice, *Dear Colleague Letter* (April 2023); Michael D. Tanner, *Poverty and Criminal Justice Reform*, Cato Institute, 1 (October 2021).

⁹ "Welfare" is a blanket term for a variety of government-funded programs that provide financial and other types of aid to individuals and families but the term is increasingly outdated due to the negative implications it has developed, as discussed below. See Language, Please, *Welfare*; Kaaryn Gustafson, *The Criminalization of Poverty*, 99 *Journal of Criminal Law and Criminology* 643, 644 (2009).

¹⁰ Caroline Danielson, Patricia Malagon, and Sarah Bohn, *Poverty in California*, Public Policy Institute of California (October 2022).

¹¹ See Manasi Deshpande and Michael G. Mueller-Smith, *Does Welfare Prevent Crime? The Criminal Justice Outcomes of Youth Removed from SSI*, Working Paper 29800, National Bureau of Economic Research (February 2022) (finding that removing youth from the Supplemental Security Income (SSI) program at age 18 increased the number of criminal charges by 20% over 20 years, and the likelihood of incarceration by 60%.)

¹² Caroline Danielson, Tess Thorman, and Patricia Malagon, *The Role of CalFresh in Stabilizing Family Incomes*, Public Policy Institute of California, 3 (September 2022).

¹³ Welfare and Institutions Code § 10980.

than 75,000 fraud investigations pending or concluded out of over 4 million people receiving CalFresh benefits.¹⁴ Less than 700 of those investigations led to a referral to an administrative disqualification hearing or criminal prosecution.¹⁵ Welfare fraud is a different crime than unemployment fraud,¹⁶ which surged during the COVID-19 pandemic and, according to the special counsel to the Fraud Task Force, was led by organized crime rings and incarcerated people using stolen or fake identities.¹⁷

While the number of welfare fraud prosecutions has declined in recent years, a significant number of people are arrested and convicted each year. Between 2012 and 2021, there were approximately 24,000 arrests on welfare fraud charges in California and more than two-thirds of the arrests were for felony charges.¹⁸ During this almost ten-year period, there were approximately 11,000 convictions for welfare fraud, with the balance of misdemeanors and felonies nearly evenly split.

¹⁴ Department of Social Services, Public Assistance Facts and Figures Report. See also Department of Social Services, Fraud Investigation Activity Report, Federal Fiscal Year 2019–20.

¹⁵ *Id.*

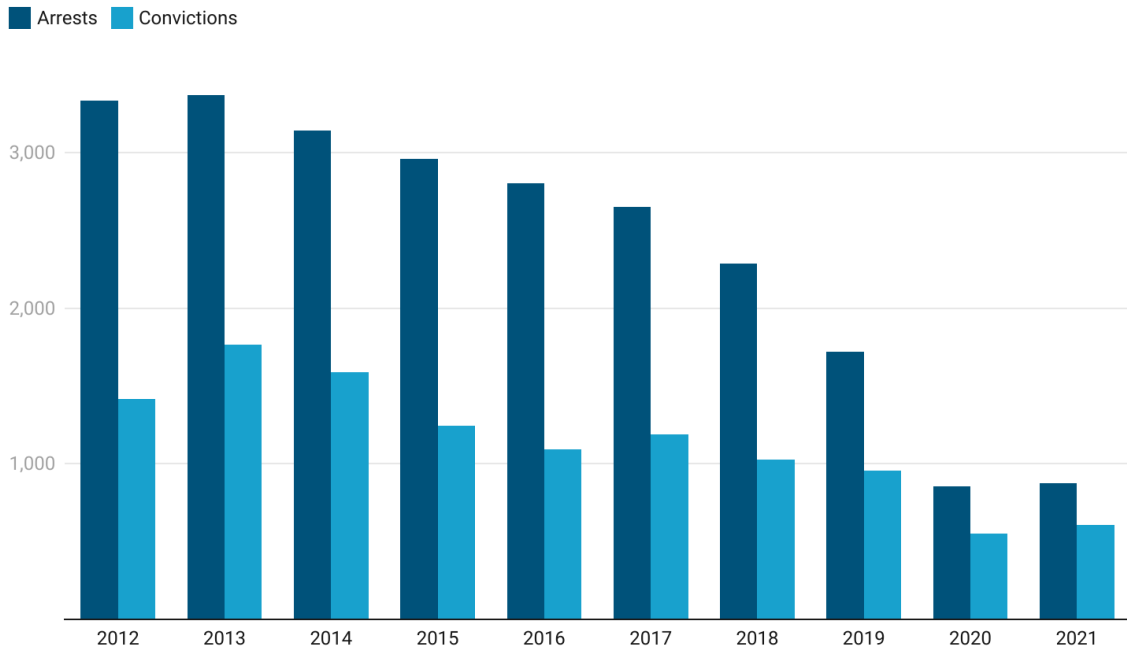
¹⁶ Unemployment Insurance Code § 2101.

¹⁷ See Eric Westervelt, *Pandemic-Related Fraud Totaled Billions. California is Trying to Get Some of it Back*, National Public Radio (October 18, 2022).

¹⁸ The data about welfare fraud convictions and arrests in this memorandum comes from analysis of the California Department of Justice Automated Criminal History System (ACHS) performed by the California Policy Lab. Welfare fraud offenses examined are in Welfare and Institutions Code § 10980, with the overwhelming majority (around 90%) of all arrests and convictions occurring under § 10980(c).

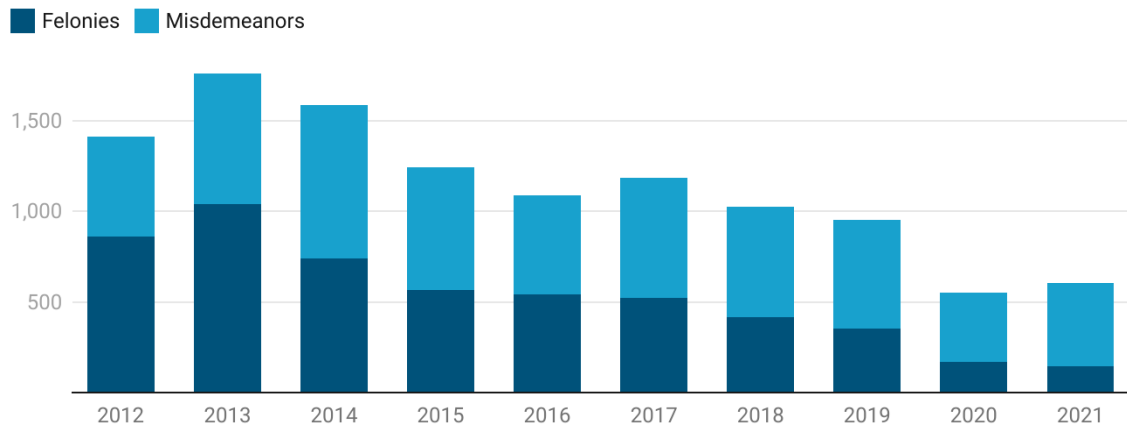
Annual welfare fraud arrests and convictions, 2012–2021

Misdemeanors and felonies combined.



Source: DOJ ACHS • Created with Datawrapper

Annual welfare fraud convictions, 2012–2021



Source: DOJ ACHS • Created with Datawrapper

Federal law requires states that use federal dollars to fund public benefit programs to investigate suspected fraud and either refer cases to criminal prosecution or administrative action to disqualify people from receiving benefits and force the repayment of any improper payments.¹⁹ Using the administrative

¹⁹ 7 Code of Federal Regulations § 273.16(a).

process, people can be disqualified from receiving benefits for a period of months, years, or even a lifetime ban if a hearing results in a finding that they committed an Intentional Program Violation.²⁰

State regulations allow counties to decide which cases to refer to prosecution and which to handle administratively.²¹ A person can be prosecuted for a felony if the amount of benefits in dispute is greater than \$950 (which can be less than one month of benefits),²² applications for benefits were submitted in more than one county, or a false or stolen identity was used to sign up for benefits.²³

In all cases, prosecutors must prove “intent to deceive.”²⁴ Evidence of a person’s intent often includes signed statements made in benefit applications or recertification forms in which recipients are required to report facts related to their family size, employment status, and income.²⁵ While applicants are warned that omissions or misrepresentations made on these forms can result in prosecution,²⁶ reporting requirements can be difficult to follow, especially for the many people receiving aid that are dealing with the additional stress of food and housing insecurity.²⁷

Recent reports from the Public Policy Institute of California found that fluctuating employment patterns and highly variable incomes among people receiving benefits further complicate their reporting requirements.²⁸

²⁰ California Department of Social Services Manual of Policies and Procedures §§ 20-200, 20-300.3; See also California Department of Social Services, Initial Application for CalFresh, Cash Aid, and/or Medi-Cal/Health Care Programs, 2.

²¹ See California Department of Social Services Manual of Policies and Procedures §§ 20-300.21, 20-352.12.

²² See Department of Social Services, *All County Information Notice No. 1-78-21* (indicating a maximum CalFresh benefit of \$992 per month for a family of 5).

²³ Welfare and Institutions Code § 10980(b), (c).

²⁴ Welfare and Institutions Code § 10980

²⁵ See California Department of Social Services, *Rights, Responsibilities and Other Important Information For the Cash Aid and CalFresh Programs, and/or Medi-Cal/34-County Medical Services Program*.

²⁶ *Id.*

²⁷ See U.S. Census Bureau *Week 55 Household Pulse Survey: March 1–March 13, Table 2. Food Sufficiency for Households with Children, in the Last 7 Days, by Select Characteristics* (reporting that over 300,000 people receiving CalFresh benefits sometimes or often did not have enough to eat). See also *Table 3b. Likelihood of Having to Leave this House in Next Two Months Due to Eviction, by Select Characteristics* (reporting that nearly 100,000 people receiving CalFresh benefits reported being somewhat or very likely to be evicted within the next two months.)

²⁸ Tess Thorman, Caroline Danielson, and Patricia Malagon, *Employment Patterns for CalFresh Adults*, Public Policy Institute of California (July 2022). See also Caroline Danielson, Tess Thorman, and Patricia Malagon, *The Role of CalFresh in Stabilizing Family Incomes*, Public Policy Institute of California, 3 (September 2022).

In addition, prosecutors treat these cases inconsistently. A 2009 report from the California State Auditor found that counties had inconsistent prosecution thresholds and recommended that DSS work with counties to implement more consistent prosecution methods.²⁹ But a 2015 follow-up report found that DSS had not taken action to implement these recommendations.³⁰

Equity concerns about welfare fraud prosecutions

Public policies related to welfare fraud have a deeply fraught racial history.³¹ The federal welfare system was originally intended to support widows of white working men but the number of Black families receiving welfare rose as they migrated from southern agricultural areas to northern industrial hubs.³² State welfare offices responded by developing “suitable parent” rules to exclude women of color, and conducting raids of recipients’ homes to enforce them.³³ The “welfare queen” caricature — one promoted by former California Governor (and later President) Ronald Reagan to portray low-income women of color as abusing public benefits — was widely used to promote ideas about government waste and crime control.³⁴ Over time, these racialized concerns led to more stringent income verification requirements, heightened scrutiny of administrative records, and increased administrative and criminal penalties.³⁵

Data from the California Department of Justice show significant race and gender disparities in the number of arrests and convictions for welfare fraud in California. Unlike most other criminal offenses, women comprise approximately 75% of welfare fraud arrests and convictions in the state and Hispanic women are particularly overrepresented, representing approximately one-third of all felony arrests and convictions.

²⁹ California State Auditor, *Department of Social Services: For the CalWorks and Food Stamp Programs, It Lacks Assessments of Cost-Effectiveness and Misses Opportunities to Improve Counties Antifraud Efforts* (November 2009).

³⁰ California State Auditor, *Follow-Up — California Department of Social Services: It Has Not Corrected Previously Recognized Deficiencies in Its Oversight of Counties’ Antifraud Efforts for the CalWorks and CalFresh Programs* (June 2015).

³¹ See Kaaryn Gustafson, *The Criminalization of Poverty*, 99 *Journal of Criminal Law and Criminology* 643, 648–64 (2009).

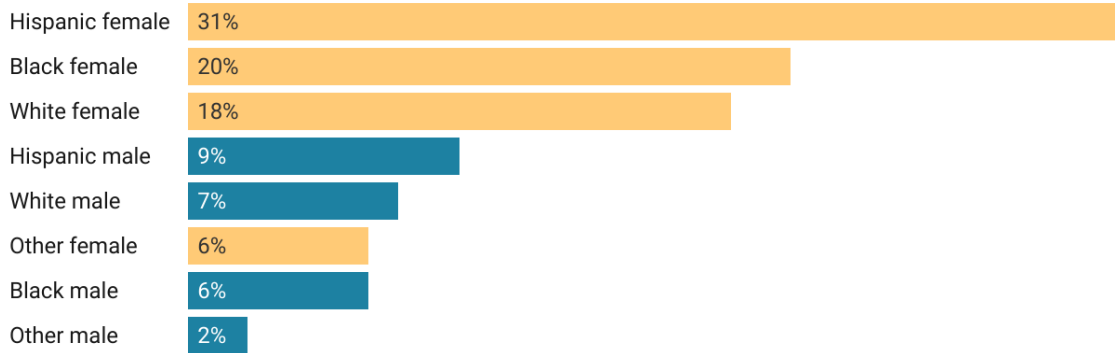
³² *Id.* at 648–49.

³³ *Id.* at 648–651.

³⁴ *Id.* at 655–658.

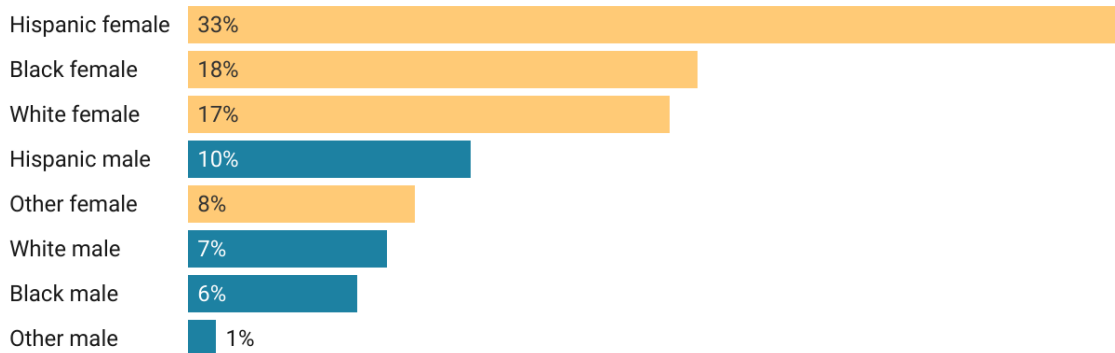
³⁵ *Id.* at 658–665.

Demographics of welfare fraud arrests, 2012–2021



Includes both misdemeanor and felony arrests.
 Source: DOJ ACHS • Created with Datawrapper

Demographics of welfare fraud convictions, 2012–2021



Includes both misdemeanor and felony convictions.
 Source: DOJ ACHS • Created with Datawrapper

In most cases, people convicted of welfare fraud do not have prior convictions — of those convicted between 2015–2021 on felony welfare fraud charges, 80% did not have any prior convictions and 92% did not have any prior felony convictions. Sentences to jail are not uncommon for welfare fraud convictions — approximately two-thirds of convictions include a jail sentence.

Fines, Fees, and Other Court-Imposed Monetary Sanctions

Court-imposed monetary sanctions are one of the many costs resulting from criminal legal involvement.³⁶ Fines have long been a feature of criminal punishment, but over time state legislatures have authorized courts to impose many additional fees and administrative costs to generate revenue.³⁷ In 2021–22, courts and statewide collections programs collected \$1 billion in court-ordered debt revenue.³⁸ In California, the additional fees resulted in significant increases in the total amount of court-ordered debt owed by convicted people — a 2019 report from the Legislative Analyst’s Office found that the total penalty for a stop sign violation had increased by 54% since 2005.³⁹ Data from the Judicial Council shows that 33% of fines and fees are in default.⁴⁰ While the courts and Legislature have taken significant steps in recent years to reduce the role that monetary sanctions play in the criminal system, judicial imposition of fines and fees remains a prominent feature of California law.⁴¹

How monetary sanctions are calculated

Trial courts are responsible for determining the total amount of fines and fees ordered after a conviction. If a court determines that a fine is appropriate, the calculation begins with the base fine, which judges set within a statutory range.⁴² Misdemeanor offenses generally carry fines up to \$1,000, and felonies up to \$10,000.⁴³ Once a judge determines the base fine, various additional fees are applied, as shown below.

³⁶ See Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, (2015).

³⁷ Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, *American Journal of Sociology*, Vol. 115, No. 6, 1758–59 (May 2010); Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry*, Brennan Center for Justice (2010).

³⁸ Report on Statewide Collection of Court-Ordered Debt for 2021–22, Judicial Council of California, 4 (December 2022).

³⁹ Legislative Analyst’s Office, *Overview of State Criminal Fines and Fees and Probation Fees*, 3 (February 5, 2019).

⁴⁰ Report on Statewide Collection of Court-Ordered Debt for 2021–22, Judicial Council of California, 14 (December 2022).

⁴¹ See Anjuli Verma and Bryan L. Sykes, *Beyond the Penal Code: The Legal Capacity of Monetary Sanctions in the Corpus of California Law*, *The Russell Sage Foundation Journal of the Social Sciences*, 8(1) 36–62 (January 2022) (finding that all of the state’s 29 legislative code sections contain statutes allowing courts to impose monetary sanctions, with the Penal Code having the highest proportion of them (19%).

⁴² Judges can typically sentence a person to pay a fine, incarceration, or both. Penal Code § 672. Though there is no statewide data on how often fines are imposed as part of a sentence, the Legislative Analyst’s Office reports that fines are typically imposed. Legislative Analyst’s Office, *Overview of State Criminal Fines and Fees and Probation Fees*, 5 (February 5, 2019).

⁴³ Penal Code §§ 19, 672.

Fine and Fees Schedule

Fine or Fee	Assessment	Example
Base Fine	Up to \$1,000 for misdemeanors, up to \$10,000 for felonies	\$1,000
State Penalty Assessment (PC § 1464)	\$10 for every \$10 of a base fine	1,000
County Penalty Assessment (GC § 76000)	\$7 for every \$10 of a base fine	700
Court Construction Penalty Assessment (GC § 70372)	\$5 for every \$10 of a base fine	500
Proposition 69 DNA Penalty Assessment (GC § 76104.6)	\$1 for every \$10 of a base fine	100
DNA Identification Fund Penalty Assessment (GC § 76104.7)	\$4 for every \$10 of a base fine	400
EMS Penalty Assessment (GC § 76000.5)	\$2 for every \$10 of a base fine	200
State Surcharge (PC § 1465.7)	20% of base fine	200
Court Operations Assessment (PC § 1465.8)	\$40 per conviction	40
Restitution Fine (PC § 1202.4)	\$150 minimum for misdemeanors and \$300 minimum for felonies	150
Total		\$4,290

Source: Legislative Analyst's Office, Overview of Criminal Fine and Fee System (May 2021) • Created with Datawrapper

The restitution fund fine, which courts are required to impose in most cases, ranges from \$300 to \$10,000 for a felony conviction, and from \$150 to \$1,000 for a misdemeanor conviction.⁴⁴ In addition to this restitution fine, courts are also constitutionally required to order convicted people to pay direct restitution to any crime victims based on the amount of loss claimed.⁴⁵

⁴⁴ Penal Code § 1202.4. The revenue from this fee is used to support an Emergency Medical Services Fund.

⁴⁵ Cal. Const. Art. I, § 28(a)(13). In its 2022 Annual Report and Recommendations, the Committee recommended the creation of a state-funded system for immediate payment of restitution orders

Unpaid legal debt accumulates interest at the rate of 10% per year and courts are authorized to order an additional \$100 civil assessment when a person fails to pay a fine.⁴⁶

Sentencing courts have some discretion to reduce the total amount owed by imposing fine amounts in the lower range of what is authorized or choosing not to impose fines as a punishment.⁴⁷ But current law directs courts to order certain fees like the state penalty assessment and the restitution fine in most cases.⁴⁸

A 50-state survey of supplemental fees conducted by the Fines and Fees Justice Center found that the amount of supplemental fees statutorily authorized is much higher in California than in other states.⁴⁹

Consideration of ability-to-pay

As noted, 33% of fines and fees ordered by courts are delinquent.⁵⁰ One explanation for this is that, except for cases involving infractions like traffic tickets, the Penal Code does not direct courts to consider a convicted person's ability to pay a fine or fee before imposing it. Nonetheless, some appellate courts have recently held that due process requires consideration of a person's ability to pay when imposing certain administrative fees.⁵¹ Other courts have declined to follow this reasoning and the issue is pending before the California Supreme Court.⁵²

Though the Penal Code does not authorize courts to consider a person's ability to pay a fine or fee in misdemeanor and felony cases, it does authorize courts to order an evaluation of a convicted person's ability to pay be included in the probation report,⁵³ but this information is only to be considered *after* a person has failed to pay and to determine if the failure was committed "willfully."⁵⁴

so that crime victims would not be subjected to uncertain and inconsistent payments. See Committee on Revision of the Penal Code, *2022 Annual Report and Recommendations*, 14–18.

⁴⁶ Code of Civil Procedure § 685.101. See also Penal Code § 1214.1(a). The civil assessment was recently reduced from \$300. See AB 199 (Stats. 2022, ch. 57).

⁴⁷ Misdemeanors and felonies that authorize fines as punishment typically allow judges to impose incarceration, a fine, or both.

⁴⁸ See Penal Code §§ 1202.4(3), 1464.

⁴⁹ *Assessments & Surcharges: A 50-State Survey of Supplemental Fees, Fines & Fees Justice Center, Appendix* (December 2022).

⁵⁰ *Report on Statewide Collection of Court-Ordered Debt for 2021–22*, Judicial Council of California, 14 (December 2022).

⁵¹ See *People v. Dueñas*, 30 Cal.App.5th 1157 (2019).

⁵² See *People v. Allen*, 41 Cal.App.5th 312 (2019). See also *People v. Kopp*, 38 Cal.App.5th 57 (2019) (review granted).

⁵³ A probation report, required in felony cases, describes the circumstances surrounding the crime and the prior history and record of the convicted person, which may be considered either in aggravation or mitigation of the punishment. Penal Code § 1203.

⁵⁴ Penal Code § 1203(j).

Similarly, courts are prohibited from considering a person's inability to pay as a reason not to impose a restitution fine but can consider ability to pay when setting the fine above the minimum.⁵⁵

Unlike the misdemeanor and felony context, courts are now required to inform people of their right to request an ability-to-pay determination in infraction cases — the most common type of criminal filing.⁵⁶ An online ability-to-pay application called “MyCitations” that allows people to request reductions to traffic citations without having to appear in court is currently in use in 16 counties and will be available statewide in June 2024.⁵⁷

Early results from MyCitations are promising. As of January 1, 2023, over 66,000 ability-to-pay requests were submitted online, accounting for \$41.5 million in outstanding criminal fines and fees, which has resulted in over \$20 million in reductions.⁵⁸ Analysis performed by the Judicial Council found that cases granted a reduction had a 61% success rate for full repayment while cases denied relief had a 29% success rate.⁵⁹ Data also indicated that repayment success increases when litigants are ordered to pay less.⁶⁰

Several European and Latin American countries use a “day fine” to determine fine amounts.⁶¹ A day fine is calculated by assigning a penalty unit to each offense based on its seriousness and multiplying that unit by the convicted person's adjusted daily income.⁶² Several jurisdictions in the United States have experimented with day fines with promising but unsustainable results. Research analyzing day fine pilot programs in several states including Arizona, New York, Oregon, and Wisconsin found that day fines can stabilize, and possibly even improve revenue, while also leading to reduced expenditures overall.⁶³ California passed legislation for a day fine pilot program in the 1990s but the project never materialized.⁶⁴

⁵⁵ Penal Code § 1202.4(c).

⁵⁶ Judicial Council of California, 2023 Court Statistics Report — Statewide Caseload Trends, Table 7b.

⁵⁷ See Report to the Legislature: Online Infraction Adjudication and Ability-to-Pay Determinations, Judicial Council of California (February 2023); AB 143 (2021 Committee on Budget).

⁵⁸ See *Report to the Legislature: Online Infraction Adjudication and Ability-to-Pay Determinations*, Judicial Council of California (February 2023).

⁵⁹ *Id.* at 4–5, Table 1 and Table 2.

⁶⁰ *Id.* at 6, Figure 2.

⁶¹ See Beth A. Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 Iowa Law Review 35, 437–38 (2017).

⁶² *Id.*

⁶³ *Id.* at 104–112.

⁶⁴ *Id.* at 11–112.

Collection practices and revenue

Fines and fees are a substantial source of revenue for the state — in 2021–22, California courts and counties (including through outsourced collections programs) collected just over \$1 billion in fine and fee revenue.⁶⁵ The state uses revenue from court-ordered debt to fund the courts, municipal governments, and a variety of state programs and funds.⁶⁶ Over 50 state funds and many additional local funds are eligible to receive fine and fee revenue, with some receiving much more than others.⁶⁷

But criminal fines and fees have proven to be an unreliable revenue source, as they are directly tied to the number of criminal filings and convictions, which have declined in recent years.⁶⁸ Despite the significant revenue the state collects, the amount of outstanding court-ordered debt remains high (nearly \$8 billion in 2021-22) and had been increasing for several years (peaking at \$10.6 billion in 2018-19) before the state took action to significantly reduce it by discharging and adjusting delinquent debt.⁶⁹ Counties spend a substantial sum — up to 40% of total revenue — on debt collection.⁷⁰ And each year, counties designate hundreds of millions of dollars in debt as uncollectable.⁷¹

Impact of fines and fees

Fines and fees can leave convicted people and their families in deep poverty and struggling to meet their basic needs.⁷² Estimates indicate that formerly

⁶⁵ *Report on Statewide Collection of Court-Ordered Debt for 2021–22*, Judicial Council of California (December 2022). Collection of nondelinquent payments is primarily a court responsibility, while several different collections agencies including courts (31%), counties (18%), private agencies (14%), and the Franchise Tax Board (35%) collect delinquent debt.

⁶⁶ Anita Lee, *Improving California’s Criminal Fine and Fee System*, Legislative Analyst’s Office, Figure 4, 8–9 (January 2016).

⁶⁷ *Id.* at 8–9, Figure 4. See also *Trial Court Revenue Distribution Guidelines, Revision 31*, California State Controller’s Office (January 2021).

⁶⁸ *Report on Statewide Collection of Court-Ordered Debt for 2021–22*, Judicial Council of California, 5, Charts 2 and 3 (December 2022).

⁶⁹ *Id.* at 9–13, Chart 11. An adjustment is any change in the total amount of debt due after the initial determination of the debt including through amnesty, suspension or dismissal of a fine amount, ability-to-pay determinations, and alternative payments such as community service in lieu of cash payment for fines. Discharge refers to the ability of collections programs to discharge delinquent debt that is unlikely to be collected if certain statutory provisions are met. The discharge process releases collections agencies from responsibility to collect the debt but it does not release the debtor from responsibility for payment. *Id.*

⁷⁰ *Id.* at 9, Chart 7.

⁷¹ *Id.* at 11–12, Chart 9. In 2021–22, court and county collections programs discharged over \$230 million in uncollectable debt. *Id. Id.*

⁷² See Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, 12–15 (2015).

incarcerated people owe as much as 60% of their annual income in legal debt.⁷³ In many cases, families of convicted people, specifically women and mothers, bear the burden of paying court-ordered debt.⁷⁴ Since people of color are disproportionately arrested and convicted of crimes, imposition of court-ordered debt has a disparate impact on communities of color.⁷⁵ And like welfare fraud prosecutions, the imposition of criminal legal fines and fees has a troubling racial history, with roots in the convict leasing system that arose after the abolition of slavery.⁷⁶

While a person generally cannot be jailed for failure to pay a fine,⁷⁷ failure to pay, comply with payment schedules, or attend court dates associated with court-ordered debt can lead to several negative consequences.⁷⁸ Unpaid legal debt limits access to opportunities and resources such as housing, credit, transportation, and employment.⁷⁹ It also increases the likelihood of ongoing criminal justice involvement through frequent court appearances to show progress on payment,⁸⁰ and the possibility of arrest warrants and new charges if court dates are missed.⁸¹ People ordered to complete classes meant to improve public safety such as those related to batterer's intervention or driving under the influence are often unable to do so because of court-ordered debt.⁸²

⁷³ Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, *American Journal of Sociology*, Vol. 115, No. 6, 1776 (May 2010).

⁷⁴ See Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, 14 (2015).

⁷⁵ Brittany Friedman et al., *What is wrong with Monetary Sanctions? Directions for Policy, Practice, and Research*, *The Russell Sage Foundation Journal of the Social Sciences*, Vol. 8, Iss. 1, 226–28 (January 2022).

⁷⁶ Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, *American Journal of Sociology*, Vol. 115, No. 6, 1758 (May 2010).

⁷⁷ *Bearden v. Georgia*, 461 U.S. 660 (1983).

⁷⁸ See Brittany Friedman et al., *What is wrong with Monetary Sanctions? Directions for Policy, Practice, and Research*, *The Russell Sage Foundation Journal of the Social Sciences*, Vol. 8, Iss. 1 (January 2022).

⁷⁹ *Id.*; See also Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, *American Journal of Sociology*, Vol. 115, No. 6, 1756 (May 2010).

⁸⁰ See Karin D. Martin et al., *Pay or Display: Monetary Sanctions and the Performance of Accountability and Procedural Integrity in New York and Illinois Courts*, *The Russell Sage Foundation Journal of the Social Sciences*, Vol. 8, Iss. 1, 129 (January 2022).

⁸¹ Penal Code §§ 853.7, 853.8, 978.5; Vehicle Code §§ 40508, 40510.5(e). A bill that would eliminate a court's authority to issue a warrant for failure to pay, or to appear in court on an infraction is moving forward in the Legislature. AB 1266 (Karla).

⁸² Brittany Friedman et al., *What Is Wrong With Monetary Sanctions? Directions for Policy, Practice, and Research*, *The Russell Sage Foundation Journal of the Social Sciences*, Vol. 8, Iss. 1, 233 (January 2022).

Requiring people convicted of crimes to pay money also has little or negative impact on recidivism. In a randomized controlled trial in Oklahoma, researchers paid all criminal justice debt for a group of people convicted of misdemeanors in Oklahoma.⁸³ People who had their debt paid were no more likely to have new arrests, charges, or convictions than the control group.⁸⁴ Another study of juveniles in Florida found that fees increased recidivism and were set at disproportionately higher amounts for Black and Hispanic youth.⁸⁵ And research conducted in Pennsylvania found that youth ordered to pay restitution had higher recidivism rates, that the amount of debt was positively correlated with higher recidivism, and that non-white youth were more likely to still owe debt upon case closure.⁸⁶

Recent reforms

Over the last decade, California's Legislature and courts have implemented several reforms to reduce court-ordered debt:

- Two traffic amnesty programs were authorized by the Legislature (in 2010 and 2015).⁸⁷
- In 2017, with Senate Bill 190, California became the first state to abolish all administrative fees in juvenile delinquency cases.⁸⁸
- In 2018, the MyCitations pilot program allowing people to request ability-to-pay deductions was established.⁸⁹ The program has since been expanded to apply to all counties by June 2024.⁹⁰
- In 2019, a bill requiring courts to make a finding that a person has the ability to pay a fine, fee, or assessment before imposing them in

⁸³ Devah Pager et al., *Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment*, *American Sociological Review*, 87(3)(2022).

⁸⁴ *Id.* at 15–19.

⁸⁵ Alex R. Piquero, Michael T. Baglivio, and Kevin T. Wolff, *A Statewide Analysis of the Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity*, *Youth Violence and Juvenile Justice* 0(0) (2023). After controlling for other factors that contribute to recidivism, researchers found that 19.4% of youth ordered to pay fees recidivated within 1 year compared to 15.7% of youth who were not ordered to pay fines. *Id.* at 16.

⁸⁶ Alex Piquero and Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, *Youth Violence and Juvenile Justice*, 15(3), 235–340 (2017).

⁸⁷ SB 857 (2010 Committee on Budget and Fiscal Review); SB 85 (2015 Committee on Budget and Fiscal Review).

⁸⁸ SB 190 (2017 Mitchell).

⁸⁹ SB 847 (2018 Committee on Budget and Fiscal Review).

⁹⁰ See AB 143 (2021 Committee on Budget).

misdemeanor or felony cases was passed by the Legislature but vetoed by the Governor.⁹¹

In his veto message, Governor Newsom wrote that he supported the bill's intent — and in particular that California “must tackle the issue of burdensome fines, fees and assessments that disproportionately drag low-income individuals deeper into debt and away from full participation in their communities” — but that the issue should be handled in the budget process.⁹²

- In 2020, as part of the state budget process, Assembly Bill 1869 repealed 23 administrative fees and costs related to the processing of criminal cases.⁹³
- In 2021, as part of the state budget process, Assembly Bill 177 eliminated 18 criminal fees and any outstanding debt associated with them.⁹⁴

As of 2021–22, counties reported nearly \$3 billion in dismissed or vacated criminal administrative fees eliminated by AB 1869 and AB 177.⁹⁵ In the same year, a total of nearly \$700 million in delinquent debt was adjusted.⁹⁶ But counties reported nearly \$8 billion in outstanding court-ordered debt. And current law continues to direct courts to impose fines and fees on people convicted of crimes without clear goals and standards.⁹⁷

Other states and the federal government are exploring robust reforms to their fine and fee systems. Washington state recently passed a bill eliminating all mandatory court-ordered debt for indigent people and juveniles.⁹⁸ And in April 2023, the United States Department of Justice issued guidance to state and local courts cautioning that the imposition of fines and fees on individuals who cannot afford to pay them can erode trust in government, increase recidivism, undermine rehabilitation and reentry, and generate little or no net revenue.⁹⁹

⁹¹ AB 927 (2019 Jones-Sawyer).

⁹² Governor Newsom veto message on AB 927 (October 9, 2019).

⁹³ AB 1869 (2020 Committee on Budget)

⁹⁴ AB 177 (2021 Committee on Budget)

⁹⁵ *Report on Statewide Collection of Court-Ordered Debt for 2021–22*, Judicial Council of California, 10 (December 2022).

⁹⁶ *Id.*

⁹⁷ See Anita Lee, *Improving California's Criminal Fine and Fee System*, Legislative Analyst's Office (January 2016).

⁹⁸ Washington House Bill 1169 (2023–24 Regular Session).

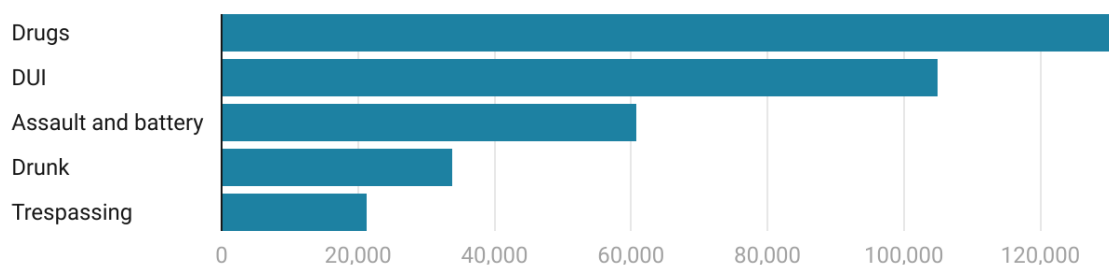
⁹⁹ U.S. Department of Justice, *Dear Colleague Letter* (April 2023).

Addressing Minor Offenses with LEAD (Law Enforcement Assisted Diversion)

Arrests for low-level offenses are the most common arrests in California and consume significant police and other resources. Many of these arrests are of people who have multiple prior arrests and often have underlying behavioral health, substance abuse, or housing needs. A new model – Law Enforcement Assisted Diversion – has shown promising results for addressing this group of people and improving public safety.

In 2021 alone, there were more than 130,000 arrests in California for misdemeanor drug offenses – the most common type of misdemeanor arrest. Police officers seek a criminal filing in 90% of all misdemeanor arrests.¹⁰⁰

Most frequent adult misdemeanor arrests, 2021

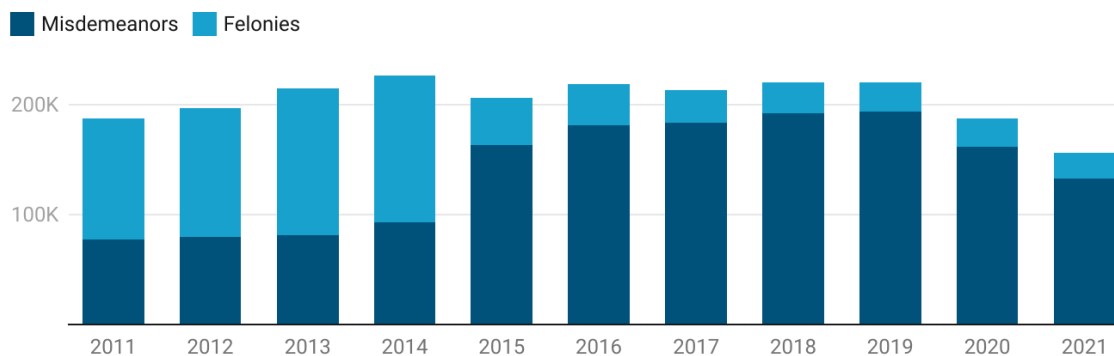


Source: California Department of Justice, *Crime in California 2021*, Table 28 • Created with Datawrapper

As shown below, drug arrests for both misdemeanor and felony charges continue to make up a large proportion of all arrests. Even after Proposition 47, passed by voters in 2014, reduced the penalty for simple drug possession from a felony to a misdemeanor the total number of yearly arrests for drug-related offenses was largely unchanged and only declined significantly during the COVID-19 pandemic.

¹⁰⁰ California Department of Justice, *Crime in California 2021*, Table 28.

Arrests for drug offenses, 2011–2021



Source: California Department of Justice, *Crime in California 2016*, Tables 19 & 25; *Crime in California 2021*, Tables 19 & 25 • Created with Datawrapper

Many of these arrests are from the same people being arrested repeatedly.¹⁰¹ For example, a 2019 study by the Prison Policy Initiative found that of the 5 million people arrested and jailed each year, 1 in 4 were arrested multiple times.¹⁰² The analysis found that the vast majority of people with multiple arrests were arrested for nonviolent offenses and were more likely to have serious mental health and medical needs.¹⁰³

The LEAD Model

Law Enforcement Assisted Diversion (LEAD) — a pre-arrest diversion program first developed in Seattle, Washington in 2011¹⁰⁴ — is a promising program for addressing highly-vulnerable populations with frequent criminal justice involvement.

In LEAD, police officers divert people to intensive case management and supportive services instead of arresting them for low-level offenses related to mental illness, addiction, homelessness, or poverty.¹⁰⁵ After a person is referred to LEAD, prosecutors and police officers work with case managers to ensure a

¹⁰¹ Arnold Ventures, *Early Lessons from Data-Driven Justice Pilot Sites*, 1 (June 2021); Elsa Augustine & Evan White, *High Utilizers of Multiple Systems in Sonoma County*, California Policy Lab, 3, 7 (July 2020); Long Beach Justice Lab, *The Justice Lab 2019 Year End Report*, 2 (2019); Sonya Shadravan, Dustin Stephens, Oona Appel, & Kristen Ochoa, *Cross-Sectional Study of Homeless High Service Utilizers in Los Angeles County Jails: Race, Marginalization and Opportunities for Diversion*, *Ethnicity & Disease* 30:3, 505 (Summer 2020); Caroline Cawley et al, *Signals of Distress: High Utilization of Criminal Legal and Urgent and Emergency Health Services in San Francisco*, California Policy Lab, 8–9 (September 2022).

¹⁰² Alexi Jones and Wendy Sawyer, *Arrest, Release, Repeat: How Police and Jails are Misused to Respond to Social Problems*, Prison Policy Initiative (August 2019).

¹⁰³ *Id.*

¹⁰⁴ LEAD National Support Bureau, *LEAD Bureau Fact Sheet 2020*.

¹⁰⁵ *Id.*

coordinated response to any future arrests and prosecutions that does not disrupt the supportive services the person has been connected with.¹⁰⁶

A 2015 evaluation of the Seattle program by researchers at the University of Washington found that people referred to LEAD were 58% less likely to be arrested than people not in the program.¹⁰⁷ According to the LEAD National Support Bureau, over 50 jurisdictions across the country are now operating LEAD programs and several other jurisdictions are in the process of launching or developing them.¹⁰⁸

California's experience with LEAD

In 2016, Senate Bill 843 established the LEAD Pilot Program which allocated \$15 million to the Board of State and Community Corrections to establish up to three LEAD pilots.¹⁰⁹ The pilot programs were limited to low-level drug and prostitution offenses.¹¹⁰ Los Angeles County and the City and County of San Francisco were awarded 2.5-year grants to develop LEAD programs.

Researchers from California State University Long Beach evaluated these two programs — which each had over 200 participants overall — and found that LEAD participants in both sites had significantly lower rates of future misdemeanor and felony arrests and felony charges than the comparison group.¹¹¹ In San Francisco, felony arrests were about 2.5 times lower, misdemeanor arrests were over 6 times lower, and felony cases were 3.5 times lower for LEAD participants than individuals in the comparison group.¹¹² In Los Angeles, felony arrests were over 5 times lower, misdemeanor arrests were about 1.5 times lower, and felony cases were almost 5 times lower for LEAD participants than individuals in the comparison group.¹¹³

Despite its successes in San Francisco, the LEAD pilot was discontinued at the end of the pilot period. An evaluation of the program concluded that the most significant barrier the program faced was lack of buy-in from law

¹⁰⁶ *Id.*

¹⁰⁷ Susan E. Collins, Heather S. Lonczak, and Seema L. Clifasefi, *LEAD Program Evaluation: Recidivism Report*, University of Washington Harm Reduction Research and Treatment Lab (March 2015).

¹⁰⁸ LEAD National Support Bureau.

¹⁰⁹ Penal Code §§ 1001.85–1001.88.

¹¹⁰ Penal Code § 1001.87(b).

¹¹¹ Aili Malm, Dina Perrone, and Erica Magaña, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature*, 14, 55 (2020).

¹¹² *Id.* at 118.

¹¹³ Aili Malm and Dina Perrone, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature — 2020 Addendum*, 13–14 (2021).

enforcement.¹¹⁴ Researchers found that LEAD represented a significant culture shift from traditional policing practices, and many officers expressed doubts about the effectiveness of harm-reduction policies.¹¹⁵

In contrast to San Francisco's experience, Los Angeles County's LEAD program has expanded to serve more people.¹¹⁶ Other jurisdictions in California have experimented with LEAD-type models, including Contra Costa County and the Glendale Police Department, but there is limited information about the outcomes of those programs.¹¹⁷

Areas for Further Exploration

The Committee may wish to consider the following proposals to address the issues raised in this memorandum:

- **Limit welfare fraud prosecutions.** Require that allegations of fraud based on failure to accurately report information on government forms be pursued administratively, except in the most egregious cases such as when a person intentionally submits multiple applications or uses a fictitious name. Alternatively, raise the threshold for a felony offense above the current \$950.
- **Reduce the scope of monetary sanctions.** Building on significant progress California has made in reducing the scope of monetary sanctions in recent years, end the use of some or all of the remaining monetary sanctions in misdemeanor and felony cases. Alternatively, provide guidance to courts on when to impose fines, and require ability-to-pay determinations in all cases.
- **Expand LEAD.** Because LEAD has proven to be a more effective and efficient model for addressing minor offenses than arrest and prosecution, increase the use of LEAD in California, including expanding the offenses eligible for LEAD and encouraging additional funding for treatment programs.

¹¹⁴ Aili Malm, Dina Perrone, and Erica Magaña, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature*, 114–115 (2020).

¹¹⁵ *Id.* at 86–111.

¹¹⁶ Aili Malm and Dina Perrone, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature — 2020 Addendum*, 32 (2021).

¹¹⁷ See Sara Bastomski, Lindsey Cramer, and Emily Reimal, *Evaluation of the Contra Costa County Law Enforcement Assisted Diversion Plus Program*, Urban Institute (August, 2019).

Conclusion

Much of the criminal legal system is intertwined with poverty. Reforms targeted at these intersections have the potential to reduce poverty while improving equity in the criminal legal system and public safety.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Rick Owen
Senior Staff Counsel