

**List of Efficiencies that Department of Finance intends to include in  
Trailer Bill Language for fiscal year 2013-14.**

**1. Improved tools for collection of court-ordered debt**

*Description of the Proposal*

This proposal would prohibit the Franchise Tax Board (FTB) and the State Controller from conditioning submission of court-ordered debt to the Tax Intercept Program on the court or county providing the defendant's social security number (SSN). Currently, a court or county collecting court-ordered debt must submit the defendant's social security number when submitting a case to the intercept program, which allows the intercept of taxes, lottery winnings, and unclaimed property. FTB has authority to get social security numbers from the Department of Motor Vehicles. The courts have no such authority. Therefore, if the court does not have the SSN, the court loses out on this valuable collection tool. This proposal would additionally require the FTB and Controller, if necessary to confirm the identity of a person before offsetting a tax refund, for example, to use the authority it has to obtain a social security number from the Department of Motor Vehicles.

*Statutory Change*

Government Code section 12419.10 would be amended to read:

12419.10. (a)(1) The Controller shall, to the extent feasible, offset any amount overdue and unpaid for a fine, penalty, assessment, bail, vehicle parking penalty, or court-ordered reimbursement for court-related services, from a person or entity, against any amount owing the person or entity by a state agency on a claim for a refund from the Franchise Tax Board under the Personal Income Tax Law or the Bank and Corporation Tax Law, from winnings in the California State Lottery, or a cash payment of a claim for unclaimed property held by the state. Standards and procedures for submission of requests for offsets shall be as prescribed by the Controller. ~~Neither the Controller nor the Franchise Tax Board shall condition a request for offset on submission of a person's social security number.~~ Whenever insufficient funds are available to satisfy an offset request, the Controller, after first applying the amounts available to any amount due a state agency, may allocate the balance among any other requests for offset.

(2) Any request for an offset for a vehicle parking penalty shall be submitted within three years of the date the penalty was incurred. This three year maximum term for refund offsets for parking tickets applies to requests submitted to the Controller on or after January 1, 2004.

(b) Once an offset request for a vehicle parking penalty is made, a local agency may not accrue additional interest charges, collection charges, penalties, or other charges on or after the date that the offset request is made. Payment of an offset request for a vehicle parking penalty shall be made on the condition that it constitutes full and final payment of that offset.

(c) The Controller shall deduct and retain from any amount offset in favor of a city or county an amount sufficient to reimburse the Controller, the Franchise Tax Board, the California State Lottery, and the Department of Motor Vehicles for their administrative costs of processing the offset payment.

(d) When necessary to confirm the identity of a person before making an offset, an authorized agency shall obtain a social security number from the Department of Motor Vehicles, as authorized by section 1653.5(f) of the Vehicle Code. Notwithstanding Chapter 3.5 (commencing

10 with Section 6250) of Division 7 of Title 1, or any other provision of law, the social security number of any person obtained pursuant to Section 4150, 4150.2, or 12800 of the Vehicle Code is not a public record and shall only be provided by the Department of Motor Vehicles to an authorized agency for the sole purpose of making an offset pursuant to this section for any unpaid vehicle parking penalty or any unpaid fine, penalty, assessment, or bail of which the Department of Motor Vehicles has been notified pursuant to subdivision (a) of Section 40509 of the Vehicle Code or Section 1803 of the Vehicle Code, responding to information requests from the Franchise Tax Board for the purpose of tax administration, and responding to requests for information from an agency, operating pursuant to and carrying out the provisions of, Part A (Aid to Families with Dependent Children), or Part D (Child Support and Establishment of Paternity) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. As used in this section, "authorized agency" means the Controller, the Franchise Tax Board, or the California Lottery Commission.

### *Fiscal Impact*

We were not able to estimate the amount of additional collections attributable to this proposal, or how much of that would be distributed to the branch. Courts note, however, that collectors spend a considerable amount of time trying to ascertain social security numbers, and if this activity no longer needs to occur, that would increase the available time to engage in more fruitful collection activities, further increasing collections of court-ordered debt.

## **2. Search Fees**

### *Description of the Proposal*

Current law provides a \$15 fee for a search for records or files when the search requires more than 10 minutes of court clerk time. Courts have noted for the last several years that allowing the fee only for searches requiring more than 10 minutes has proven troublesome in practice. It is common practice for data miners and others to request a large number of files at once. Can the court charge at all, for example, if each file takes less than 10 minutes to retrieve? Is the court's time being properly compensated if the court may only assess one \$15 fee when the requester is asking for 50 or more files? These questions have caused considerable confusion. This proposal would clearly address those questions and more properly account for labor costs involved in retrieving files, especially when there are requests by data miners for large numbers of files.

### *Statutory Change*

Government Code section 70627(c) would be amended to read:

(c) The fee for a search of records or files conducted by a court employee ~~that requires more than 10 minutes is fifteen dollars (\$15)~~ is ten dollars (\$10) for each search name, file, or other information for which a search is requested. This fee shall not be charged when a person requests one search for records of a case in which that person is a party, but if the party requests more than one search at a time, \$10 shall be charged for each search after the first search.

### *Fiscal Impact*

The amount of revenue this proposal will bring in is impossible to estimate. However, it will better account for court costs in retrieving files, which was the intent of the fee.

### **3. Destruction of records relating to possession or transportation of marijuana**

#### *Description of Proposal*

This proposal would eliminate the requirement that courts destroy records relating to conviction, or arrest if there was no conviction, for possession or transport of marijuana. Under the existing requirement, “destruction” is to be accomplished by “permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. ...” It is incredibly burdensome to separately mask these individual items in the court’s docket. Eliminating this requirement will save significant court time.

#### *Statutory Change*

Health and Safety Code section 11361.5 would be repealed:

~~11361.5. (a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (e). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.~~

~~(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:~~

~~(1) Any violation of Section 11357 or a statutory predecessor thereof.~~

~~(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.~~

~~(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.~~

~~(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof. Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (e), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form may be made available at every local police or sheriff’s department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification. The department may request, but not require, the applicant to include a self-~~

administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars (\$10). Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (e) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(e) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

### *Fiscal Impact*

Based on data provided by the San Diego and Shasta courts, this proposal could result in a savings to courts ranging from \$548,029 to \$2,192,113. These courts provided data on the number of non-traffic misdemeanor and non-traffic infraction cases in their courts that would be impacted by the proposal. Using these numbers, it was established that 5.63 percent of infraction cases and 27.5 percent of misdemeanor cases statewide would be impacted. Assuming 225 records could be destroyed per hour in infraction cases (based on information from San Diego) and destruction of these records in misdemeanor cases taking 15 minutes, and using the average statewide hourly clerk salary, the total savings was calculated. To account for the limited sources

of data (2 courts), the low range calculation of costs savings for not using clerk time to destroy these records was divided by 2, and the high estimate was multiplied by 2.

#### **4. Preliminary hearing transcripts**

##### *Description of Proposal*

This proposal would clarify that preliminary hearing transcripts must be produced only when a defendant is held to answer the charge of homicide. In all other cases, transcripts would be produced upon request. This amendment would be consistent with the apparent intent of the section, which requires that “testimony of each witness in cases of homicide shall be reduced to writing. . .,” and in other cases, on the demand of a party. Although the statute appears to be addressing homicide matters only, subdivision (e), which is proposed to be amended, confusingly states that preliminary hearing transcripts must be provided if the defendant is being held to answer the charge of a felony, or in any other case if the defendant or the prosecution order the transcript. As a result, preliminary hearing transcripts are being produced, and purchased by the courts, in more cases than anticipated by the statute.

Most defendants are held to answer at the preliminary hearing. That means that the court must produce the transcripts in nearly all felonies that haven’t settled before the preliminary hearing. In practice, the transcripts are mostly used by the defense to prepare a motion to dismiss under Penal Code section 995, which asks a subsequent court to review the preliminary hearing court’s probable cause finding anew. Penal Code section 995 motions should include line-by-line references to the preliminary hearing transcripts. Because most felony cases settle after preliminary hearing, often with no section 995 motions filed, production of the transcripts in many cases is unnecessary, so requiring a party to request the transcript would eliminate waste without impairing the parties’ access to transcripts.

The existing requirement to produce the transcripts in every felony appears to have been a drafting error. Courts report that a sizeable number of transcripts are never picked up by parties. Parties wishing to obtain a transcript will still be able to ask for one under this proposal. To pay for a product or service that is of no use to participants in the court process is a gross misuse of the courts’ limited resources.

##### *Statutory Change*

Penal Code section 869 would be amended to read:

869. The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his or her counsel. The magistrate before whom the examination is had may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witness shall be authenticated in the following form:

(a) It shall state the name of the witness, his or her place of residence, and his or her business or profession; except that if the witness is a peace officer, it shall state his or her name, and the address given in his or her testimony at the hearing.

(b) It shall contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her.

(c) If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, shall be stated.

(d) The deposition shall be signed by the witness, or if he or she refuses to sign it, his or her reason for refusing shall be stated in writing, as he or she gives it, except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

(e) The reporter shall, ~~within 10 days after the close of the examination,~~ if the defendant be held to answer the charge of a felony homicide, or in any other case if upon request of either the defendant or the prosecution ~~orders the transcript,~~ transcribe his or her shorthand notes within 10 days following the close of the examination where the defendant was held to answer on a homicide, or within 10 days following the request in all other cases, making an original and one copy and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the clerk of the superior court in the county in which the defendant was examined. The reporter shall, before receiving any compensation as a reporter, file his or her affidavit setting forth that the transcript has been delivered within the time herein provided for. The compensation of the reporter for any services rendered by him or her as the reporter in any court of this state shall be reduced one-half if the provisions of this section as to the time of filing said transcript have not been complied with by him or her.

(f) In every case in which a transcript is delivered as provided in this section, the clerk of the court shall file the original of the transcript with the papers in the case, and shall deliver a copy of the transcript to the district attorney immediately upon his or her receipt thereof and shall deliver a copy of said transcript to each defendant (other than a fictitious defendant) at least five days before trial or upon earlier demand by him or her without cost to him or her; provided, that if any defendant be held to answer to two or more charges upon the same examination and thereafter the district attorney shall file separate informations upon said several charges, the delivery to each such defendant of one copy of the transcript of the examination shall be a compliance with this section as to all of those informations.

(g) If the transcript is delivered by the reporter within the time hereinbefore provided for, the reporter shall be entitled to receive the compensation fixed and allowed by law to reporters in the superior courts of this state.

### *Fiscal Impact*

Based on information received from three courts, it was determined that 2.5 percent of preliminary hearings relate to homicide cases, and all homicide cases are held to answer at the preliminary hearing. Using data from 2009–2010, that would mean that annually 33,671 nonhomicide cases are held to answer. The low range estimate provided by the courts of cost of a transcript in such matters is \$85, with a high range of \$194. Eliminating the requirement that courts purchase a transcript in these non-homicide matters results in a savings of \$2,862,000 to \$6,532,106. Even assuming a request for a transcript is made in some percentage of these cases, the savings to the courts is significant.



## **5. Refining procedure for pursuing reimbursement for court-appointed dependency counsel**

### *Description of the Proposal*

This proposal would modify the process for evaluating the ability of a parent or guardian to reimburse the court for the cost of court-appointed counsel in dependency matters. Current law provides that parents will not be required to reimburse the court if doing so would interfere with their ability to support the child if the family had been reunified, or if reunification is ongoing and repayment would interfere with the reunification process. Current law allows the court financial evaluation officer to decline to petition the court for an order of repayment in the former situation, but not in the latter. This proposal would authorize the court financial officer not to petition the court for a repayment order in either situation, thereby preventing the court from having to hold a hearing to determine if repayment is appropriate in those cases in which reunification is ongoing. It will streamline the process for determining whether repayment is necessary by providing court evaluation officers with the tools they need to screen cases and not forward them to the court when doing so would be inconsistent with the reunification of the family.

### *Statutory Change*

Subdivision (b) of Welfare and Institutions Code section 945 would be amended as follows: 903.45. (b) In any county where a board of supervisors has designated a county financial evaluation officer, the juvenile court shall, at the close of the disposition hearing, order any person liable for the cost of support, pursuant to Section 903, the cost of legal services as provided for in Section 903.1, probation costs as provided for in Section 903.2, or any other reimbursable costs allowed under this code, to appear before the county financial evaluation officer for a financial evaluation of his or her ability to pay those costs; and if the responsible person is not present at the disposition hearing, the court shall cite him or her to appear for such a financial evaluation. In the case of a parent, guardian, or other person assessed for the costs of transport, food, shelter, or care of a minor under Section 207.2 or 903.25, the juvenile court shall, upon request of the county probation department, order the appearance of the parent, guardian, or other person before the county financial evaluation officer for a financial evaluation of his or her ability to pay the costs assessed.

If the county financial evaluation officer determines that a person so responsible has the ability to pay all or part of the costs, the county financial evaluation officer shall petition the court for an order requiring the person to pay that sum to the county or court, depending on which entity incurred the expense. If the parent or guardian is liable for costs for legal services pursuant to Section 903.1, the parent or guardian has been reunified with the child pursuant to a court order, and the county financial evaluation officer determines that repayment of the costs would harm the ability of the parent or guardian to support the child, then the county financial evaluation officer shall not petition the court for an order of repayment, and the court shall not make that order. In addition, if the parent or guardian is currently receiving reunification services, and the court finds or the county financial officer determines that repayment by the parent or guardian will pose a barrier to reunification with the child because it will limit the ability of the parent or guardian to comply with the requirements of the reunification plan or compromise the parent's or guardian's current or future ability to meet the financial needs of the

child, or in any case in which the court finds that the repayment would be unjust under the circumstances of the case, the county financial officer shall not petition the court for an order of repayment and the court shall not order repayment by the parent or guardian. In evaluating a person's ability to pay under this section, the county financial evaluation officer and the court shall take into consideration the family's income, the necessary obligations of the family, and the number of persons dependent upon this income. Any person appearing for a financial evaluation shall have the right to dispute the county financial evaluation officer's determination, in which case he or she shall be entitled to a hearing before the juvenile court. The county financial evaluation officer at the time of the financial evaluation shall advise such a person of his or her right to a hearing and of his or her rights pursuant to subdivision (c).

At the hearing, any person so responsible for costs shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, to confront and cross-examine adverse witnesses, to disclosure of the evidence against him or her, and to receive a written statement of the findings of the court. The person shall have the right to be represented by counsel, and, when the person is unable to afford counsel, the right to appointed counsel. If the court determines that the person has the ability to pay all or part of the costs, including the costs of any counsel appointed to represent the person at the hearing, the court shall set the amount to be reimbursed and order him or her to pay that sum to the county or court, depending on which entity incurred the expense, in a manner in which the court believes reasonable and compatible with the person's financial ability.

If the person or persons, after having been ordered to appear before the county financial evaluation officer, have been given proper notice and fail to appear as ordered, the county financial evaluation officer shall recommend to the court that he, she, or they be ordered to pay the full amount of the costs. Proper notice to him, her, or them shall contain all of the following:

- (1) That he, she, or they have a right to a statement of the costs as soon as it is available.
- (2) His, her, or their procedural rights under Section 27755 of the Government Code.
- (3) The time limit within which his, her, or their appearance is required.
- (4) A warning that if he, she, or they fail to appear before the county financial evaluation officer, the officer will recommend that the court order him, her, or them to pay the costs in full.

If the county financial evaluation officer determines that the person or persons have the ability to pay all or a portion of these costs, with or without terms, and he, she, or they concur in this determination and agree to the terms of payments, the county financial evaluation officer, upon his or her written evaluation and the person's or persons' written agreement, shall petition the court for an order requiring him, her, or them to pay that sum to the county or the court in a manner which is reasonable and compatible with his, her, or their financial ability. This order may be granted without further notice to the person or persons, provided a copy of the order is served on him, her, or them by mail.

However, if the county financial evaluation officer cannot reach an agreement with the person or persons with respect to either the liability for the costs, the amount of the costs, his, her, or their ability to pay the same, or the terms of payment, the matter shall be deemed in dispute and referred by the county financial evaluation officer back to the court for a hearing.

### *Fiscal Impact*

Giving authority to the financial evaluation officer not to petition the court for an order of repayment where reunification services are ongoing would result in savings of \$3 million to \$5 million annually. In 2009, the most recent year for which data are available, there were 33,573 original dependency petitions filed in California. Using the prior three years of data, it is assumed that 82.5 percent of those cases, or 27,698, reach disposition, and are thus potentially liable for the cost of appointed counsel. It is estimated that 80 percent, or 22,158, of the cases reaching disposition would receive family reunification of services. Using data provided by the Contra Costa court, the cost of providing a judicial officer and court to determine whether ordering a parent or guardian currently receiving reunification services to pay would pose a barrier to reunification or compromise the parent's or guardian's current or future ability to support the child is \$327, whereas it would cost \$55 per case for a financial evaluation officer to make the same determination—a savings of \$280 per case. Estimating that the compensation rates in Contra Costa County are 125 percent of the statewide average results in a projected statewide annual savings of \$225 per case. Multiplying the number of cases receiving reunification services by the projected savings per case (22,158 x \$225) yields a projected annual statewide savings of \$4,985,550.00.

If only those counties known to have collections programs take advantage of this statutory change, an estimated 14,018 cases receive reunification services at disposition. At a savings of \$225 per case, the total savings would be \$3,154,050.

## **6. Trial by written declaration**

### *Description of Proposal*

This proposal authorizes courts to collect an administrative fee for processing a request for trial by written declaration. Increasingly, trials by written declaration are being used by those who live locally. In some counties, a trial de novo is requested in 40 to 50 percent of cases where the defendant has not prevailed on the written declaration. Rather than providing a convenient way for a traffic violator who lives an impractical or inconvenient distance from the court to contest matters, the process is being used to give a second bite at the apple to win a case. This proposal recognizes the administrative costs to the court for processing the cases, while retaining the violators' rights.

### *Statutory Change*

Vehicle Code section 40902 would be amended to read:

40902.(a)(1) The court, pursuant to this section, shall, by rule, provide that the defendant, upon payment of a nonrefundable administrative fee of fifty dollars (\$50) to process the request, may elect to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of this code or any local ordinance adopted pursuant to this code, other than an infraction cited pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11.

(2) The Judicial Council may adopt rules and forms governing trials by declaration in accordance with this section. Any rule or form adopted by the Judicial Council pursuant to this paragraph shall supersede any local rule of a court adopted pursuant to paragraph (1).

(b) If the defendant elects to have a trial by written declaration, the defendant shall, at the time of submitting that declaration, submit the fee required pursuant to paragraph (1) of subdivision (a) and bail in the amount established in the uniform traffic penalty schedule pursuant to Section 40310. If the defendant is found not guilty or if the charges are otherwise dismissed, the amount of the bail shall be promptly refunded to the defendant.

(c)–(d) \*\*\*

### *Fiscal Impact*

Based on this information provided by four courts of varying sizes, it is estimated that the number of trials by declaration equates to 1 percent of all traffic dispositions, or 63,603 trials by declaration. Imposing a \$50 fee for each of those matters would result in new revenue of \$3.2 million.

## **7. Increase the fee for exemplification of a record**

### *Description of the Proposal*

This proposal would increase the fee from \$20 to \$50 for exemplification of a record or other paper on file with the court. The proposed fee increase is justified because such requests involve more special handling than certifications (which have a \$25 fee), since these matters require signatures from both the clerk of the court and the judicial officer. This proposal will help courts recover their actual costs in performing this service.

### *Statutory Change*

Government Code section 70628 would be amended to read:

70628. For an exemplification of a record or other paper on file, the fee is ~~twenty dollars (\$20)~~ fifty dollars (\$50) in addition to the charges allowed for copying or comparing each page of the record or other paper.

### *Fiscal Impact*

Averaging the remittances from the trial courts for the last three fiscal years for exemplifications, staff determined that 5,489 remittance fees were paid annually. If that number remains constant, this increase would yield \$164,660.

## **8. Copy fees and comparison fees**

### *Description of the Proposal*

This proposal would increase the fee imposed for copies of court records from 50 cents per page to \$1 per page, and would also increase the fee for comparing a copy with an original in the court's file from \$1 to \$2 per page. These fees have not been raised for many years while the costs to the court for materials and labor continue to rise.

### *Statutory Change*

Government Code section 70627 would be amended to read:

70627. The fees collected under this section shall be distributed to the court in which they were collected.

(a) The clerk of the court shall charge ~~fifty cents (\$0.50)~~ one dollar (\$1) per page to cover the cost of preparing copies of any record, proceeding, or paper on file in the clerk's office. 12

(b) For comparing with the original on file in the office of the clerk of any court, the copy of any paper, record, or proceeding prepared by another and presented for the clerk's certificate, the fee is ~~one dollar (\$1)~~ two dollars (\$2) per page, in addition to the fee for the certificate.

(c) [Amendments to subdivision (c) are described below in proposal 2, above.]

### *Fiscal Impact*

Examining the most recent three years' remittances under Government Code section 70627(a) (totaling between \$5.8 million and \$6 million), AOC staff determined there are an average of 11,884,769 pages copied each year statewide. Increasing the cost of copies by 50 cents will result in additional annual revenue estimated at \$5,942,385. The estimated revenue for increasing the comparison fee is \$13,000 annually.

**9. Fee for clerk mailing service of a claim and order on defendant in small claims actions**

*Description of the Proposal*

This proposal would increase the statutory fee from \$10 to \$15 for a clerk mailing service of a claim and order on a defendant in small claims actions. The proposed \$5 increase in the fee amount is necessary to address increases in postal rates for restricted service and the court costs associated with performing this service. Courts estimate that the increases in postal rates, along with the associated labor costs, exceed the \$10 the court is authorized to collect as reimbursement for this service. As a result, the courts are losing revenue with every transaction.

*Statutory Change*

Code of Civil Procedure section 116.232 would be amended to read: 13

116.232. A fee of ~~ten~~ fifteen dollars (~~\$10~~) (\$15) shall be charged and collected from the plaintiff for each defendant to whom the court clerk mails a copy of the claim under Section 116.340. This fee shall be distributed to the court in which it was collected.

*Fiscal Impact*

Revenue derived from collection of the \$10 fee over the last four years has ranged from \$406,515 to \$467,196. This proposal would result in increased revenue of approximately \$200,000.

**10. Court costs for deferred entry of judgment**

*Description of Proposal*

This proposal would clarify that the court can recoup its costs in processing a request or application for diversion or DEJ. The AOC Legal Services Office (formerly the Office of the General Counsel) has previously opined that the statute currently allows the court to recoup its costs, but presumably because the statute is silent on this and the State Controller's manual directs distribution of such collections to counties, thus rendering the collection of "court costs" moot. Existing law allows the county to recoup its costs, but not the courts. This anomaly may be a vestige of the laws prior to state trial court funding, as there is no apparent rationale to allow counties to recoup their costs, but not courts. This amendment would make clear that court costs can be collected.

*Statutory Change*

Penal Code section 1001.15 would be amended to read:

1001.15 (a) (1) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of a felony to cover the actual cost of any criminalistics laboratory analysis, the county's actual cost of processing a request or application for diversion, and the actual cost of supervising the divertee pursuant to Chapter 2.5 (commencing with Section 1000), not to exceed five hundred dollars (\$500). The fee shall be payable at the time of enrollment in the diversion program.

(2) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee payable to the court by a defendant accused of a felony to cover the court's actual costs of processing a request or application for diversion.

(3) The court shall take into consideration the defendant's ability to pay, and no defendant shall be denied diversion because of his or her inability to pay these fees.

(b) \*\*\*

(c) (1) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of an act charged as, or reduced to, a misdemeanor to cover the county's actual cost of processing a request or application for diversion pursuant to Chapter 2.6 (commencing with Section 1000.6), the county's actual costs of reporting to the court on a defendant's eligibility and suitability for diversion, the actual cost of supervising the divertee, and for the actual costs of performing any duties required pursuant to Section 1000.9, not to exceed three hundred dollars (\$300). The fee shall be payable at the time of enrollment in the diversion program. ~~The fee shall be determined on a sliding scale according to the defendant's ability to pay, and no defendant shall be denied diversion because of his or her inability to pay.~~

(2) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee payable to the court by a defendant accused of a felony to cover the court's actual costs of processing a request or application for diversion.

(3) The fees shall be determined on a sliding scale according to the defendant's ability to pay, and no defendant shall be denied diversion because of his or her inability to pay these fees.

(d) The fees established pursuant to this section may not exceed the actual costs incurred by the court or required for the programs authorized to be reimbursed by these fees ~~this fee~~. All proceeds from the fees established pursuant to this section shall be allocated only to the court or for the programs authorized to be reimbursed by these ~~this~~ fees.

(e) \* \* \*

Penal Code section 1001.16 would be amended to read:

1001.16(a) (1) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of a misdemeanor to cover the actual cost of any criminalistics laboratory analysis in a case involving a violation of the California Uniform Controlled Substances Act under Division 10 (commencing with Section 11000) of the Health and Safety Code, the county's actual cost of processing a request or application for diversion, and the actual cost of supervising the divertee, not to exceed three hundred dollars (\$300). The fee shall be payable at the time of enrollment in the diversion program.

(2) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee payable to the court by a defendant accused of a felony to cover the court's actual costs of processing a request or application for diversion.

(3) The court shall take into consideration the defendant's ability to pay, and no defendant shall be denied diversion because of his or her inability to pay these fees.

(b) \* \* \*

(c) \* \* \*

(d) The fees established pursuant to this section may not exceed the actual costs incurred by the court or required for the programs authorized to be reimbursed by these fees this fee. All proceeds from the fees established pursuant to this section shall be allocated only to the court or for the programs authorized to be reimbursed by these fees. this fee.

#### *Fiscal Impact*

The proposal could allow courts to recoup between 19,000 and \$1,047,600 in court costs. Using data from 2009–2010, it was determined that there 1,746 cases with dismissal after diversion. Assuming that 50 percent of these would meet eligibility standards for a waiver of court costs, and assuming an average time of 20 minutes to process each case, results in a total of 291 hours of case processing time for which the proposal would result in a recovery of costs. Using the average hourly clerk salary and the maximum amount of \$300 in court costs that may be charged results in a low and high estimate of fiscal impact. Accounting for the fact that the estimates are based on data from a limited set of courts, and the use of the high estimate of fee waiver eligible defendants, the low and high estimates were doubled, resulting in an estimated cost recovery of \$19,000 to \$1,047,600.

### **11. Administrative assessment for maintaining records of convictions under the Vehicle Code**

#### *Description of Proposal*

This proposal would clarify that courts are required to impose the \$10 administrative assessment for each conviction of a violation of the Vehicle Code, not just upon a "subsequent" violation. The amount of court staff work involved in checking for subsequent convictions is as burdensome as checking for the first conviction. It is reasonable and consistent to impose this fee on all violators.

#### *Statutory Change*

Vehicle Code section 40508.6 would be amended to read:

40508.6. The superior court in any county may establish administrative assessments, not to exceed ten dollars (\$10), for clerical and administrative costs incurred for the following activities:

- (a) An assessment for the cost of recording and maintaining a record of ~~the defendant's~~ prior convictions for violations of this code. The assessment shall be payable at the time of payment of a fine or the fee under section 42007 for traffic violator school or when bail is forfeited for any ~~subsequent~~ violations of this code other than parking, pedestrian, or bicycle violations.
- (b) An assessment for all defendants whose driver's license or automobile registration is attached or restricted pursuant to Section 40509 or 40509.5, to cover the cost of notifying the Department of Motor Vehicles of the attachment or restriction.

#### *Fiscal Impact*

Using estimates provided by two courts of additional revenue this proposal would yield to estimate the percentage of traffic filings that are first violations and thus would be subject to this assessment, and reducing this number to address the fact that some unknown number of courts are currently collecting this fee because their automated system does not distinguish between first and subsequent violations, it is estimated that this statutory change may yield \$1.1 million in new revenue.