



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 12, 2014

Title

Judicial Council–Sponsored Legislation:
Appeals of the Imposition or Calculation of
Fines and Fees

Agenda Item Type

Action Required

Effective Date

December 12, 2014

Rules, Forms, Standards, or Statutes Affected

Amend Pen. Code, § 1237; add § 1237.2

Date of Report

October 29, 2014

Recommended by

Policy Coordination and Liaison Committee
Hon. Kenneth K. So, Chair
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

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Executive Summary

The Policy Coordination and Liaison Committee and Criminal Law Advisory Committee propose adding Penal Code section 1237.2 and amending section 1237 to prohibit appeals in felony cases based solely on the grounds of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim to the trial court. (All subsequent statutory references are to the Penal Code.) This proposal was developed at the request of courts to reduce the burdens associated with formal appeals and resentencing proceedings stemming from a common sentencing error.

Recommendation

The Policy Coordination and Liaison Committee and Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to:

1. Add section 1237.2 to prohibit appeals based solely on the grounds of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or, if the

error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court; and

2. Amend section 1237 to include new section 1237.2 in the list of statutory exceptions to the appellate procedure set forth in that section.

The text of the proposed amendment to section 1237 and new section 1237.2 is attached at page 5.

Previous Council Action

As part of the Judicial Council's legislative priorities for 2012, the council directed the Policy Coordination and Liaison Committee (PCLC) to consider various legislative proposals developed by court representatives to advance judicial branch cost savings, new revenue, and operational efficiencies. This proposal was originally developed by the Joint Legislation Working Group of the Trial Court Presiding Judges Committee and Court Executives Advisory Committee but referred to the Criminal Law Advisory Committee by PCLC for consideration, with the benefit of appropriate subject matter expertise and public comment.

Rationale for Recommendation

The statutory scheme that governs the imposition and calculation of fines and other monetary penalties in California criminal cases is vast, complex, and frequently modified by the Legislature. As a result, appellate courts are often called upon to correct the erroneous imposition or calculation of fines and other monetary penalties on appeal. (See, e.g., *People v. Hamed* (2013) 221 Cal.App.4th 928, 939.)

When this sentencing error is the sole issue on appeal, trial and appellate courts incur significant costs and burdens associated with preparation of the formal record on appeal and resulting resentencing proceedings. By requiring that this sentencing error be first raised in the trial court, which has ready access to the court records and other information necessary to review and resolve such issues, this proposal would promote judicial economies and efficiencies by avoiding the costs and burdens associated with a formal appeal.

Because those economies would not be achieved if the defendant also raises other issues on appeal, this proposal is limited to instances in which this sentencing error is the *sole* issue on appeal. The proposal is modeled after section 1237.1, which similarly limits appeals based on errors in the calculation of presentence custody credits. Although not expressly stated in section 1237.1, the appeal limitations of that section apply only to cases in which a claim of an error concerning a custody credit calculation is the sole issue on appeal. (*People v. Acosta* (1996) 48 Cal.App.4th 411, 426–427 [Limiting section 1237.1 to cases in which a custody credits calculation is the sole issue on appeal makes “sound economic sense” and limits unwarranted expenditures of public money].)

On October 2, 2014, the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee's Joint Legislation Working Group voted to recommend sponsorship of this proposal.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2014 cycle, yielding a total of seven comments. Of those, five agreed with the proposal, including the Superior Courts of Los Angeles, Riverside, and San Diego Counties, as well as the Court of Appeal, Second Appellate District; one agreed with the proposal if modified; and one did not agree with the proposal. A chart with all comments received and committee responses is attached at pages 6–7.

In addition, the Appellate Advisory Committee (AAC) reviewed the proposal and provided informal feedback as explained below. Generally, the AAC expressed support for providing trial courts the opportunity to initially correct this type of sentencing error, both because of the trial court's familiarity with its cases and because it would save the resources otherwise required to prepare the record on appeal.

Notable alternatives considered

The committees considered the following notable alternatives:

- ***Discovery of error after sentencing.*** As explained above, the proposal includes a provision that would allow the defendant to raise the issue after sentencing if the error was not discovered until later. One commentator and a member of the AAC expressed concern that this provision could be interpreted as requiring litigation to establish the circumstances surrounding the defendant's discovery of the error. The proposal is not intended to condition a defendant's ability to raise a claim of an erroneous imposition of a fine or other monetary penalty postsentencing on any showing about the circumstances surrounding the discovery of the error. The committee declined to modify the proposal as the commentator suggested to avoid confusion and promote consistency with section 1237.1, which includes an identical provision that has not been interpreted as requiring any special showing about the discovery of the error.
- ***Inclusion of "forfeitures" in the proposal.*** On its own accord and as suggested by a member of the AAC, the committee considered but declined to include "forfeitures" in the list of monetary penalties included in proposed section 1237.2. In the felony context, "forfeitures" often involve the seizure of property involved in the commission of a crime, which can trigger complicated procedural requirements, including appellate issues more complex than those pertaining to the miscalculation or erroneous imposition of fines and other monetary penalties that the proposal is intended to address.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are expected. As described above, the proposal is designed to reduce the costs and burdens associated with

appeals and resentencing proceedings by promoting resolution of minor sentencing disputes in the sentencing courts.

Attachments

1. Proposed amendment to Penal Code section 1237 and new section 1237.2, at page 5
2. Chart of comments, LEG14-05, at pages 6–7

Add Penal Code section 1237.2, effective January 1, 2016; amend section 1237, effective January 1, 2016, to read:

§ 1237.2. Imposition or calculation of fines, penalty assessments, surcharges, fees, or costs

No appeal shall be taken by the defendant from a judgment of conviction on the ground of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or, if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court. This section shall only apply in cases where the erroneous imposition or calculation of fines, penalty assessments, surcharges, fees, or costs is the sole issue on appeal.

§ 1237. An appeal may be taken by the defendant:

(a) From a final judgment of conviction except as provided in Section 1237.1, Section 1237.2, and Section 1237.5. A sentence, an order granting probation, or the commitment of a defendant for insanity, the indeterminate commitment of a defendant as a mentally disordered sex offender, or the commitment of a defendant for controlled substance addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment the court may review any order denying a motion for a new trial.

(b) From any order made after judgment, affecting the substantial rights of the party.

LEG14-05

Proposed Legislation: Criminal Procedure: Appeals of the Imposition or Calculation of Fines and Fees (add Penal Code section 1237.2; amend Penal Code section 1237)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Court of Appeal, Second Appellate District	A	<p>This proposed statute would provide that there is no appeal from the imposition of a fine or fee, <i>if that is the only appellate issue</i>, unless the matter was first raised in the trial court.</p> <p>Comments</p> <p>1. We strongly support this proposal.</p> <p>2. We agree with the Committee that there will be no implementation requirements or costs as a result of this proposal. It will, however, promote efficiency by giving the trial court an opportunity to correct any errors and it will eliminate unnecessary appeals.</p>	No response required.
2.	Orange County Bar Association by Thomas Bienert, Jr., President	N	The Proposed change would deprive defendants of an additional venue for appealing sentencing errors.	The committee disagrees. The proposal requires only that defendants first provide the trial court—at sentencing or post-sentencing—the opportunity to correct the alleged error, when the error is the sole issue on appeal. The proposal does not prohibit defendants from raising the issue <i>after</i> the trial court’s disposition of the claim, nor limit the ability of defendants to initially raise the issue on appeal in conjunction with other issues.
3.	Mr. Ronald L. Porter	AM	This is a good idea, except the provision as to when it was discovered. It should only require a motion be filed before the trial court for correction before an appeal is filed. Requiring it be brought up to the trial court at sentencing will only cause numerous possible claims to [be] presented unnecessarily at sentencing to protect the possible need for a challenge in the future and will do nothing to cure the stated	<p>The committee believes the language of the proposal as drafted is sufficient and declines to make any changes suggested by this comment.</p> <p>First, the proposal does not <i>require</i> that claims of an error in the imposition or calculation of fines, etc., be raised at the time of sentencing — although that is encouraged. Rather, it directs that this type of error may be raised in the trial court</p>

LEG14-05

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	Commentator	Position	Comment	Committee Response
			<p>problem.</p> <p>Eliminating the question of when it was discovered and requiring only a motion before the trial court before [filing] an appeal will make the correction sought without creating the possibility of unnecessary litigation over the question as to when it was discovered.</p>	<p>post-sentencing if it was not discovered at the time of sentencing, when it is the sole issue on appeal.</p> <p>Second, the proposal is not intended to condition a defendant's ability to raise a claim of an erroneous imposition of a fine or other monetary penalty post-sentencing on any showing about the circumstances surrounding the discovery of the error. The committee, however, declined to modify the proposal to avoid confusion and promote consistency with section 1237.1, which includes an identical provision that has not been interpreted as requiring any special showing about the discovery of the error.</p>
4.	Superior Court of Los Angeles County	A		No response required.
5.	Superior Court of Riverside County by Daniel Wolfe, Managing Attorney	A	Agree with proposal.	No response required.
6.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comments.	No response required.
7.	Hon. Peter B. Twede Superior Court of Glenn County	A	Leg 14-04, 05, 06 and 07 appear to be appropriate changes that are necessitated by the circumstances outlined in those proposals.	No response required.