

# FIRST DISTRICT APPELLATE PROJECT

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## **New Limits on Raising Monetary Issues (Fees, Fines, Etc.) in the California Court of Appeal (New Pen. Code § 1237.2) (Plus: Clarification on Raising Credits Issues Under § 1237.1)**

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A new statute, Penal Code section 1237.2, governing the appeal of fines, penalty assessments, surcharges, fees, and costs takes effect January 1, 2016. The provision parallels [section 1237.1](#), which governs the appeal of credits issues. The same legislation also amended section 1237.1. (Stats. 2015, c. 194 ([A.B. 249](#))). As discussed below, there are differences between the provisions. The full text of both provisions is in the appendix.

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As will be explained in greater detail, under new section 1237.2, an error in the imposition or calculation of certain monetary penalties may not be raised on appeal unless either (1) the defendant first presents the claim to the superior court or (2) the monetary error is not the sole issue on appeal. But first it is helpful to get reacquainted with section 1237.1 and note the amendments made to that section.

### **Raising Calculation of Credits Issues on Appeal Under Section 1237.1**

Section 1237.1 has long required that errors in the calculation of credits be presented to the trial court before they are raised on appeal, barring the issue on appeal unless “the defendant first makes a motion for correction of the record in the trial court.”

AB 249’s first amendment to section 1237.1 modifies that provision to allow for informal requests: “the defendant first makes a motion for correction of the record in the trial court, which may be made informally in writing.” This amendment sanctions the long-standing practice of appellate counsel writing an informal letter to the trial court to request the correction, and effectively abrogates [People v. Clavel](#) (2002) 103 Cal.App.4th 516, 518-519 [holding that the statute requires a formal motion and that an informal letter does not satisfy requirements of section 1237.1].

In AB 249’s second amendment to section 1237.1, the Legislature added a statement that the trial court retains jurisdiction to rule on the request for a correction of credits: “The trial court retains jurisdiction after a notice of appeal has been filed to correct any error

in the calculation of presentence custody credits upon the defendant's request for correction." This new language appears to merely clarify or restate existing law.

Two noteworthy judicial interpretations of section 1237.1 are important to keep in mind in its application and in comparison with new section 1237.2.

First, as established by caselaw, when the credits issue is not the sole issue raised on appeal, the credits issue can be raised on appeal without first presenting it to the trial court. (*People v. Florez* (2005) 132 Cal.App.4th 314, 318, fn.12; *People v. Acosta* (1996) 48 Cal.App.4th 411, 427.)

Second, the requirement of first presenting the credits issue to the trial court applies only to errors in the "calculation" of credits, i.e. "a mere alleged mathematical or clerical error." (*People v. Delgado* (2012) 210 Cal.App.4th 761, 765.) A constitutional claim regarding which version of a credits statute applies could thus be raised on appeal without first presenting it to the trial court. (*Id.* at 766-767.) The same presumably goes for other legal issues regarding whether a particular custody period qualifies or which credits formula applies.

### **Raising Monetary Issues on Appeal Under New Section 1237.2**

Section 1237.2 is an entirely new provision governing the appeal of "fines, penalty assessments, surcharges, fees, and costs." It takes effect January 1, 2016, and requires that monetary issues be raised first in the trial court before they can be raised on appeal. Like section 1237.1, section 1237.2 provides the issue may be raised on appeal if the defendant either presented the claim at the time of sentencing or raised it in the trial court later by motion. Such motion "may be made informally in writing." Section 1237.2 governs criminal appeals only; there is no similar provision for delinquency appeals.

#### *Types of Issues*

The statute applies specifically to errors relating to "fines, penalty assessments, surcharges, fees, and costs." The specificity of this list suggests the Legislature purposefully excluded errors regarding other types of monetary charges imposed at sentencing, such as victim restitution.<sup>1</sup>

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<sup>1</sup> In contrast, it might be assumed that a "restitution fine" falls within "fines," which is listed in section 1237.2

Significantly, section 1237.1 (credits) applies to “an error in the *calculation* of presentence custody credits,” while section 1237.2 (fees, etc.) applies to “an error in the *imposition or calculation* of” the monetary penalties (emphasis. added). Legislative staff noted the difference and suggested section 1237.2 might be broader in application than 1237.1, applying to substantive claims, not just calculation errors:

Legal vs. Mathematical Errors: Penal Code section 1237.1 does not on its face make distinction between a mathematical miscalculation of credits and a substantive issue dealing with statutory interpretation of credits statutes, or an exercise of judicial discretion in applying a credits statute. The language of the statute broadly states its mandate applies to “an error in the calculation of presentence custody credits.” (Pen. Code, § 1237.1.) However, the error in question in *Fares*, was a minor, mathematical miscalculation which the Court of Appeal “deemed clerical, inadvertent, or at most negligent.” (*People v. Fares, supra*, 16 Cal.App.4th at p. 957.) Further, the legislative history of Penal Code section 1237.1 described the purpose of the new law as “to curtail misuse of the formal appellate process to correct minor sentencing errors when alternative forums for resolution exist.” (Sen. Com. on Criminal Procedure, Analysis of Assem. Bill No. 354 (1995-1996 Reg. Sess.).)

However, if there is a substantive legal issue involving the application of a credits statute, appellate courts have addressed the legal issue without reference to compliance with Penal Code section 1237.1. (See e.g., *People v. Delgado* (2012) 210 Cal.App.4th 761, 766-767.)

The provision of this bill directing correction of fines and fees in the trial court is broader than Penal Code section 1237.1 in that it directs an appellant not only to seek correction of miscalculations of fines and fees, but also to raise issues regarding their imposition, which may be strictly a legal issue.

[\(Assem. Com. on Pub. Safety, Analysis of Assem. Bill No. 249 \(2015-2016 Reg. Sess.\) as introduced](#), p. 4.) No additional guidance is yet available on this point. Further research on the legislative history may be required on (1) whether the committee report was correct that the difference was intentional and (2) if it was intentional, whether the phrase “error in the imposition” encompasses all monetary-penalty-related issues. In any event, in many cases there will be no downside to pursuing the issue in the trial court, even if it is not required.

### *Other Issues Raised*

Section 1237.2 expressly states, “This section only applies in cases where the erroneous imposition or calculation of fines, penalty assessments, surcharges, fees, or costs are the sole issue on appeal.”<sup>2</sup> Very often, the case will present other issues. In those situations, within the spirit of section 1237.2 and because it is sometimes more practical, appellate counsel might still first seek correction of the error in the trial court.

### *Pending Appeals*

If counsel has not yet filed the opening brief, section 1237.2 applies and counsel must present a monetary penalty issue to the superior court if it was not raised at sentencing.

If counsel has already filed an opening brief and it raises only a monetary penalty issue which was not presented to the sentencing court, we recommend that counsel discuss the matter with her or his consulting staff attorney at FDAP. In some instances, particularly with fully briefed cases, it may be appropriate to continue to pursue the issue only in the appeal. The purpose of section 1237.2 was to promote judicial economy. Specifically, the author of the bill noted that “[w]hen a fines or fees 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.” ([Assem. Com. on Pub. Safety, Analysis of Assem. Bill No. 249 \(2015-2016 Reg. Sess.\) as introduced](#), p. 3; see also *Delgado*, 210 Cal.App.4th at 767 [noting purpose of section 1237.1 was to promote judicial economy].) If the issue was already fully briefed on appeal by the parties prior to the effective date of section 1237.2, the goals of section 1237.2 cannot be fully served because judicial resources have largely already been expended, and the Court of Appeal may be willing to reach a monetary issue which was not first presented to the sentencing court.

As there is some uncertainty and because circumstances will vary (pre-RB, pre-ARB, etc.) contact your FDAP consulting attorney about how to proceed in post-AOB cases.

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<sup>2</sup> AB 249 did not add similar language about multiple-issue appeals to section 1237.1. This should not be taken as a signal of legislative intent to abrogate *Acosta's* holding that credits calculation issues may be raised on appeal without first returning to the sentencing court when other issues are raised on appeal. “[C]ourts should not presume the Legislature in the enactment of statutes intends to overthrow long-established principles of law unless that intention is made clearly to appear either by express declaration or by necessary implication” ([Campbell v. Regents of Univ. of Calif.](#) (2005) 35 Cal. 4th 311, 329 [internal quotation marks and citations omitted].)



## Credits

**PC 1237.1** [amended eff. Jan. 1, 2016; addition in red & underlined]

No appeal shall be taken by the defendant from a judgment of conviction on the ground of an error in the calculation of presentence custody credits, 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 of the record in the trial court, which may be made informally in writing. The trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the calculation of presentence custody credits upon the defendant's request for correction.



## Fees, Fines, Etc.

**PC 1237.2** [eff. Jan. 1, 2016]

An appeal may not 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, which may be made informally in writing. The trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs upon the defendant's request for correction. This section only applies in cases where the erroneous imposition or calculation of fines, penalty assessments, surcharges, fees, or costs are the sole issue on appeal.

