

I. This Court Should Direct the Superior Court to Modify the [Abstract of Judgment/Order of Probation] to Strike the [Describe Fee] Pursuant to Assembly Bill 1869.

New Penal Code section 1465.9 renders the [describe fee] imposed in this case unenforceable and requires that it be vacated. Although section 1465.9 is not effective until July 1, 2021, the issue is ripe because this Court's decision will not be final until after that date. Moreover, section 1465.9, on its face, is fully retroactive. Accordingly, appellant requests that the Court order the portion of the judgment imposing the [describe fee] vacated.

A. Assembly Bill 1869 Eliminated Fees Imposed in this Case.

On September 18, 2020, the Governor signed Assembly Bill No. 1869 (Stats. 2020, ch. 92 eff. July 1, 2021 ("AB 1869")) which amends several sections of the Government and Penal Codes to repeal the authority of counties to charge defendants for certain administrative fees and the authority of the court to order the defendant to pay the costs of the public defender. (Gov. Code, §§ 27712, 27753; Pen. Code, §§ 987.4, 987.5, 987.8, 987.81). AB 1869 eliminated fees related to producing a pre-plea or presentence report (Pen. Code, § 1203.1b); administering probation and mandatory supervision (Pen. Code, § 1203.1b); administering parole supervision following a county jail sentence (Pen. Code, § 1203.1e); processing arrests and citations (Gov. Code, §§ 29550.1, 29550.2, 29550.3); administering home detention programs (Pen. Code, § 1203.016), electronic monitoring programs (Pen. Code, §§ 1203.018, 1210.15, 3010.8), work furlough programs (Pen. Code, § 6266), and work release programs (Pen. Code, § 4024.2).

In passing AB 1869, the Legislature sought to address the "criminalization of poverty" and the deleterious effects of debt resulting from

criminal legal system fees. (Assem. Bill No. 1869 (2019-2020 Reg. Sess.) § 1.) The Legislature noted the discriminatory impacts of such fees, the lack of their “formal punitive or public safety function,” and the possibility that the use of criminal justice fees violates the Eighth Amendment’s prohibition against excessive fines. (*Ibid.*)

The Legislature also cited research that criminal legal system fees are an inefficient funding mechanism, as they are “difficult to collect and typically cost counties almost as much or more than they end up collecting in revenue.” (Assem. Bill No. 1869 (2019-2020 Reg. Sess.) § 1.) In order to maintain funding for counties’ criminal justice operations, AB 1869 replaces the revenues lost to counties by the repeal of these fees with appropriations from the State’s General Fund. (*Id.*, §§ 67, 68.)

These amendments will take effect July 1, 2021. (AB 1869, § 62, adding Pen. Code § 1465.9, subd. (b).) In addition, on that date, the unpaid balance of any fees assessed prior to July 1 will become unenforceable and uncollectible, and any judgment imposing such costs must be vacated. (Pen. Code, § 1465.9, subd. (a).) The Legislative purpose of the bill is clear: to “eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system and to eliminate all outstanding debt incurred as a result of the imposition of administrative fees.” (Assem. Bill No. 1869 (2019-2020 Reg. Sess.) § 2.)

B. Standard of Review.

The interpretation of statutory language in general and the specific question of whether an amended statute applies retroactively are reviewed *de novo*. (*People v. Arroyo* (2016) 62 Cal.4th 589, 593; *Murray v. Oceanside Unified School Dist.* (2000) 79 Cal.App.4th 1338, 1348.)

C. This Challenge to the Fees Imposed is Cognizable on Appeal.

Although appellant did not challenge the fee in the Superior Court, the claim is not forfeited because an unanticipated change in law excuses a failure to object in the trial court. (*People v. Perez* (2020) 9 Cal. 5th 1, 7.) Moreover, section 1237.2 does not bar this claim. That section states that “[a]n appeal may not be taken ... on the ground of an error in the imposition ... of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court” either at sentencing or later by post-judgment motion. However, that requirement does not apply to appeals such as this one, where the fees-related issue is not “the sole issue on appeal.” (Pen. Code, § 1237.2.)

For these reasons, this claim is cognizable on appeal.

D. The Issue Is Ripe Because this Court’s Decision in this Appeal Will Not Be Final Until After the Effective Date of AB 1869.

Although the amended statute will not become effective until July 1, 2021, the instant claim will be ripe for adjudication by May 2, 2021, because this Court’s judgment on appeal will not become final until the remittitur issues at least 60 days after this Court renders its decision. (See Cal. Rules of Court, rule 8.272(b)(1)(A) [governing the timing of the issuance of the remittitur]; see also *People v. Garcia* (2018) 28 Cal.App.5th 961, 973 [Court of Appeal elected to decide a claim involving an amended sentencing statute prior to the effective date].)

This Court vacating the fee(s) will further the interests of judicial economy and efficiency. If this Court does not order modification of the [Abstract of Judgment/Order of Probation], appellant must seek relief in the trial court after July 1, 2021. Because it is highly likely the judgment in

appellant's appeal will not be final, it would be more efficient for this Court to order the [Abstract of Judgment/Order of Probation] modified to reflect the change in the law. Moreover, allowing appellant to raise the claim in his opening brief will obviate the need for [him/her] to file a separate, supplemental brief after the statute takes effect. Accordingly, for the reasons set forth above, this Court should grant the requested relief.

E. Assembly Bill 1869 Is Retroactive to All Cases as of July 1, 2021.

In general, there is a “presumption that statutes operate prospectively absent a clear indication the voters or the Legislature intended otherwise. [Citations.] (*Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 230.) Here there is a clear indication the Legislature intended full retroactive application of the new law. The plain language of the new section 1465.9 and the Legislature's stated intent show that the new law applies retroactively to all cases. The bill contains a statement of intent that the Legislature intended to “eliminate all outstanding debt incurred as a result of the imposition of administrative fees.” (Assem. Bill No. 1869 (2019-2020 Reg. Sess.) § 2.) Eliminating “all outstanding debt” can only be accomplished by applying the new law fully retroactively.

Moreover, to effectuate the goal of eliminating debt associated with criminal legal system fees, AB 1869 added section 1465.9 to the Penal Code. (Assem. Bill No. 1869 (2019-2020 Reg. Sess.) § 62.) Section 1465.9 provides that, on July 1, 2021, the balance of any costs imposed pursuant to the code sections amended by AB 1869 “shall be unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated.” Had the Legislature intended prospective only application of the statute, it would have only provided that the fees could no longer be imposed. But the

Legislature instead provided that existing judgments imposing such fees be modified to vacate the fees.

Thus, by its own language, AB 1869 is retroactive to all cases, including this one, irrespective of the dates of conviction or sentencing, and irrespective of whether the case is final on appeal. Any individual, such as appellant, who was assessed these fees prior to July 1, 2021, is entitled to have the fees stricken from the judgment and any unpaid debt eliminated.

F. This Court Should Direct the Superior Court to Modify the [Abstract of Judgment/Order of Probation] to Strike Imposition of [Fees] and Order Vacated Any Judgment Requiring Appellant to Pay the Fees.

On [date], the trial court imposed the following administrative fees that will be repealed on July 1, 2021, pursuant to AB 1869: [describe fees].

Pursuant to new section 1465.9, subdivision (a), those fees are unenforceable and uncollectable, and the portion of the judgment imposing those fees must be vacated. Appellant thus requests that this Court order the [Abstract of Judgment/Order of Probation] amended to strike the fees and direct the trial court to vacate any portion of a judgment ordering collection of any unpaid debt related to these fees.