

**ASSEMBLY BILL**

**No. 131**

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**Introduced by Assembly Member Evans**

January 20, 2009

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An act to amend Section 68085.1 of the Government Code, and to amend Sections 317, 903.1, and 903.45 of the Welfare and Institutions Code, relating to juvenile court costs.

LEGISLATIVE COUNSEL'S DIGEST

AB 131, as introduced, Evans. Juvenile proceedings: costs.

Existing law provides for the appointment of counsel to represent a parent or guardian of a child, or the child, in juvenile court proceedings if the parent or guardian is unable to afford counsel. Existing law also provides that the father, mother, spouse, or other person liable for the support of the minor shall be liable to the county for those costs, except as specified, and, more generally, for specified other costs, including the reasonable costs of support of the minor while the minor is placed, detained in, or committed to, any institution pursuant to an order of the juvenile court or pursuant to the authority of a peace officer to take a minor into temporary custody.

Existing law authorizes the board of supervisors to designate a county financial evaluation officer to make financial evaluations of liability for reimbursement of the costs described above, as specified, and authorizes that officer to petition the court for an order requiring the person who is determined to be financially responsible to pay the costs.

This bill would expand the provisions described above to specifically provide that the persons who are liable for the support of the minor shall also be liable for the cost to the county or the court for the cost of legal services rendered to the minor. The bill would additionally

authorize the court to designate a financial evaluation officer who would have the same authority described above.

The bill would require the Judicial Council to establish a cost recovery program to collect reimbursements for counsel appointed by the court to represent parents or minors, as specified. The bill would also make related and technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 68085.1 of the Government Code is  
2 amended to read:  
3 68085.1. (a) This section applies to all fees and fines that are  
4 collected on or after January 1, 2006, under all of the following:  
5 (1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150,  
6 704.750, 708.160, 724.100, 1134, 1161.2, 1218, and 1993.2 of,  
7 subdivision (g) of Section 411.20 and subdivisions (c) and (g) of  
8 Section 411.21 of, and Chapter 5.5 (commencing with Section  
9 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.  
10 (2) Section 3112 of the Family Code.  
11 (3) Section 31622 of the Food and Agricultural Code.  
12 (4) Subdivision (d) of Section 6103.5, Sections 68086 and  
13 68086.1, ~~subdivision (d) of Section 68511.3~~ *Article 6 (commencing*  
14 *with Section 68630) of Chapter 2*, Sections 68926.1 and 69953.5,  
15 and Chapter 5.8 (commencing with Section 70600).  
16 (5) Section 103470 of the Health and Safety Code.  
17 (6) Subdivisions (b) and (c) of Section 166 and Section 1214.1  
18 of the Penal Code.  
19 (7) Sections 1835, 1851.5, ~~2343~~, 7660, and 13201 of the Probate  
20 Code.  
21 (8) Sections 14607.6 and 16373 of the Vehicle Code.  
22 (9) Section 71386 of this code, Sections 304, 7851.5, and 9002  
23 of the Family Code, ~~and~~ Section 1513.1 of the Probate Code, *and*  
24 *Section 903.1 of the Welfare and Institutions Code*, if the  
25 reimbursement is for expenses incurred by the court.  
26 (10) Section 3153 of the Family Code, if the amount is paid to  
27 the court for the cost of counsel appointed by the court to represent  
28 a child.

(b) On and after January 1, 2006, each superior court shall deposit all fees and fines listed in subdivision (a), as soon as practicable after collection and on a regular basis, into a bank account established for this purpose by the Administrative Office of the Courts. Upon direction of the Administrative Office of the Courts, the county shall deposit civil assessments under Section 1214.1 of the Penal Code and any other money it collects under the sections listed in subdivision (a) as soon as practicable after collection and on a regular basis into the bank account established for this purpose and specified by the Administrative Office of the Courts. The deposits shall be made as required by rules adopted by, and financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206. Within 15 days after the end of the month in which the fees and fines are collected, each court, and each county that collects any fines or fees under subdivision (a), shall provide the Administrative Office of the Courts with a report of the fees by categories as specified by the Administrative Office of the Courts. The Administrative Office of the Courts and any court may agree upon a time period greater than 15 days, but in no case more than 30 days after the end of the month in which the fees and fines are collected. The fees and fines listed in subdivision (a) shall be distributed as provided in this section.

(c) (1) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the Administrative Office of the Courts shall make the following distributions:

(A) To the small claims advisory services, as described in subdivision (f) of Section 116.230 of the Code of Civil Procedure.

(B) To dispute resolution programs, as described in subdivision (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

(C) To the county law library funds, as described in Sections 116.230 and 116.760 of the Code of Civil Procedure, subdivision (b) of Section 68085.3, subdivision (b) of Section 68085.4, and Section 70621 of this code, and Section 14607.6 of the Vehicle Code.

(D) To the courthouse construction funds in the Counties of Riverside, San Bernardino, and San Francisco, as described in Sections 70622, 70624, and 70625.

(2) If any distribution under this subdivision is delinquent, the Administrative Office of the Courts shall add a penalty to the distribution as specified in subdivision (i).

(d) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the amounts remaining after the distributions in subdivision (c) shall be transmitted to the State Treasury for deposit in the Trial Court Trust Fund and other funds as required by law. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund or other fund to which it is to be deposited. Upon the receipt of any delinquent payment required under this subdivision, the Controller shall calculate a penalty as provided under subdivision (i).

(e) From the money transmitted to the State Treasury under subdivision (d), the Controller shall make deposits as follows:

(1) Into the State Court Facilities Construction Fund, the Judges' Retirement Fund, and the Equal Access Fund, as described in subdivision (c) of Section 68085.3 and subdivision (c) of Section 68085.4.

(2) Into the Health Statistics Special Fund, as described in subdivision (b) of Section 70670 of this code and Section 103730 of the Health and Safety Code.

(3) Into the Family Law Trust Fund, as described in Section 70674.

(4) Into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5, as described in Sections 68085.3, 68085.4, and 70657.5, and subdivision (e) of Section 70617.

(5) The remainder of the money shall be deposited into the Trial Court Trust Fund.

(f) The amounts collected by each superior court under Section 116.232, subdivision (g) of Section 411.20, and subdivision (g) of Section 411.21 of the Code of Civil Procedure, Sections 304, 3112, 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of Section 6103.5, ~~subdivision (d) of Section 68511.3 Article 6 (commencing with Section 68630) of Chapter 2,~~ and Sections 68926.1, 69953.5, 70627, 70631, 70640, 70661, 70678, and 71386 of this code, and Sections 1513.1, 1835, and 1851.5, ~~and 2343~~ of

1 the Probate Code shall be added to the monthly apportionment for  
2 that court under subdivision (a) of Section 68085.

3 (g) If any of the fees provided in subdivision (a) are partially  
4 waived by court order or otherwise reduced, and the fee is to be  
5 divided between the Trial Court Trust Fund and any other fund or  
6 account, the amount of the reduction shall be deducted from the  
7 amount to be distributed to each fund in the same proportion as  
8 the amount of each distribution bears to the total amount of the  
9 fee. If the fee is paid by installment payments, the amount  
10 distributed to each fund or account from each installment shall  
11 bear the same proportion to the installment payment as the full  
12 distribution to that fund or account does to the full fee. If a court  
13 collects a fee that was incurred before January 1, 2006, under a  
14 provision that was the predecessor to one of the paragraphs  
15 contained in subdivision (a), the fee may be deposited as if it were  
16 collected under the paragraph of subdivision (a) that corresponds  
17 to the predecessor of that paragraph and distributed in prorated  
18 amounts to each fund or account to which the fee in subdivision  
19 (a) must be distributed.

20 (h) Except as provided in Sections 470.5 and 6322.1 of the  
21 Business and Professions Code, and Sections 70622, 70624, and  
22 70625 of this code, no agency may take action to change the  
23 amounts allocated to any of the funds described in subdivision (c),  
24 (d), or (e).

25 (i) The amount of the penalty on any delinquent payment under  
26 subdivision (c) or (d) shall be calculated by multiplying the amount  
27 of the delinquent payment at a daily rate equivalent to  $1\frac{1}{2}$  percent  
28 per month for the number of days the payment is delinquent. The  
29 penalty shall be paid from the Trial Court Trust Fund. Penalties  
30 on delinquent payments under subdivision (d) shall be calculated  
31 only on the amounts to be distributed to the Trial Court Trust Fund  
32 and the State Court Facilities Construction Fund, and each penalty  
33 shall be distributed proportionately to the funds to which the  
34 delinquent payment was to be distributed.

35 (j) If a delinquent payment under subdivision (c) or (d) results  
36 from a delinquency by a superior court under subdivision (b), the  
37 court shall reimburse the Trial Court Trust Fund for the amount  
38 of the penalty. Notwithstanding Section 77009, any penalty on a  
39 delinquent payment that a court is required to reimburse pursuant  
40 to this section shall be paid from the court operations fund for that

1 court. The penalty shall be paid by the court to the Trial Court  
2 Trust Fund no later than 45 days after the end of the month in  
3 which the penalty was calculated. If the penalty is not paid within  
4 the specified time, the Administrative Office of the Courts may  
5 reduce the amount of a subsequent monthly allocation to the court  
6 by the amount of the penalty on the delinquent payment.

7 (k) If a delinquent payment under subdivision (c) or (d) results  
8 from a delinquency by a county in transmitting fees and fines listed  
9 in subdivision (a) to the bank account established for this purpose,  
10 as described in subdivision (b), the county shall reimburse the Trial  
11 Court Trust Fund for the amount of the penalty. The penalty shall  
12 be paid by the county to the Trial Court Trust Fund no later than  
13 45 days after the end of the month in which the penalty was  
14 calculated.

15 SEC. 2. Section 317 of the Welfare and Institutions Code is  
16 amended to read:

17 317. (a) (1) When it appears to the court that a parent or  
18 guardian of the child desires counsel but is presently financially  
19 unable to afford and cannot for that reason employ counsel, the  
20 court may appoint counsel as provided in this section.

21 (2) When it appears to the court that a parent or Indian custodian  
22 in an Indian child custody proceeding desires counsel but is  
23 presently unable to afford and cannot for that reason employ  
24 counsel, the provisions of subsection (b) of Section 1912 of the  
25 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section  
26 23.13 of Title 25 of the Code of Federal Regulations are applicable.

27 (b) When it appears to the court that a parent or guardian of the  
28 child is presently financially unable to afford and cannot for that  
29 reason employ counsel, and the child has been placed in  
30 out-of-home care, or the petitioning agency is recommending that  
31 the child be placed in out-of-home care, the court shall appoint  
32 counsel for the parent or guardian, unless the court finds that the  
33 parent or guardian has made a knowing and intelligent waiver of  
34 counsel as provided in this section.

35 (c) If a child is not represented by counsel, the court shall  
36 appoint counsel for the child unless the court finds that the child  
37 would not benefit from the appointment of counsel. The court shall  
38 state on the record its reasons for that finding. A primary  
39 responsibility of any counsel appointed to represent a child  
40 pursuant to this section shall be to advocate for the protection,

1 safety, and physical and emotional well-being of the child. Counsel  
2 for the child may be a district attorney, public defender, or other  
3 member of the bar, provided that the counsel does not represent  
4 another party or county agency whose interests conflict with the  
5 child's interests. The fact that the district attorney represents the  
6 child in a proceeding pursuant to Section 300 as well as conducts  
7 a criminal investigation or files a criminal complaint or information  
8 arising from the same or reasonably related set of facts as the  
9 proceeding pursuant to Section 300 is not in and of itself a conflict  
10 of interest. The court may fix the compensation for the services  
11 of appointed counsel. The appointed counsel shall have a caseload  
12 and training that ensures adequate representation of the child. The  
13 Judicial Council shall promulgate rules of court that establish  
14 caseload standards, training requirements, and guidelines for  
15 appointed counsel for children and shall adopt rules as required  
16 by Section 326.5 no later than July 1, 2001.

17 (d) The counsel appointed by the court shall represent the parent,  
18 guardian, or child at the detention hearing and at all subsequent  
19 proceedings before the juvenile court. Counsel shall continue to  
20 represent the parent, guardian, or child unless relieved by the court  
21 upon the substitution of other counsel or for cause. The  
22 representation shall include representing the parent, guardian, or  
23 the child in termination proceedings and in those proceedings  
24 relating to the institution or setting aside of a legal guardianship.

25 (e) The counsel for the child shall be charged in general with  
26 the representation of the child's interests. To that end, the counsel  
27 shall make or cause to have made any further investigations that  
28 he or she deems in good faith to be reasonably necessary to  
29 ascertain the facts, including the interviewing of witnesses, and  
30 he or she shall examine and cross-examine witnesses in both the  
31 adjudicatory and dispositional hearings. He or she may also  
32 introduce and examine his or her own witnesses, make  
33 recommendations to the court concerning the child's welfare, and  
34 participate further in the proceedings to the degree necessary to  
35 adequately represent the child. In any case in which the child is  
36 four years of age or older, counsel shall interview the child to  
37 determine the child's wishes and to assess the child's well-being,  
38 and shall advise the court of the child's wishes. Counsel for the  
39 child shall not advocate for the return of the child if, to the best of  
40 his or her knowledge, that return conflicts with the protection and

1 safety of the child. In addition counsel shall investigate the interests  
2 of the child beyond the scope of the juvenile proceeding and report  
3 to the court other interests of the child that may need to be  
4 protected by the institution of other administrative or judicial  
5 proceedings. The attorney representing a child in a dependency  
6 proceeding is not required to assume the responsibilities of a social  
7 worker and is not expected to provide nonlegal services to the  
8 child. The court shall take whatever appropriate action is necessary  
9 to fully protect the interests of the child.

10 (f) Either the child or the counsel for the child, with the informed  
11 consent of the child if the child is found by the court to be of  
12 sufficient age and maturity to so consent, which shall be presumed,  
13 subject to rebuttal by clear and convincing evidence, if the child  
14 is over 12 years of age, may invoke the psychotherapist-client  
15 privilege, physician-patient privilege, and clergyman-penitent  
16 privilege; and if the child invokes the privilege, counsel may not  
17 waive it, but if counsel invokes the privilege, the child may waive  
18 it. Counsel shall be holder of these privileges if the child is found  
19 by the court not to be of sufficient age and maturity to so consent.  
20 For the sole purpose of fulfilling his or her obligation to provide  
21 legal representation of the child, counsel for a child shall have  
22 access to all records with regard to the child maintained by a health  
23 care facility, as defined in Section 1545 of the Penal Code, health  
24 care providers, as defined in Section 6146 of the Business and  
25 Professions Code, a physician and surgeon or other health  
26 practitioner, as defined in former Section 11165.8 of the Penal  
27 Code, as that section read on January 1, 2000, or a child care  
28 custodian, as defined in former Section 11165.7 of the Penal Code,  
29 as that section read on January 1, 2000. Notwithstanding any other  
30 law, counsel shall be given access to all records relevant to the  
31 case which are maintained by state or local public agencies. All  
32 information requested from a child protective agency regarding a  
33 child who is in protective custody, or from a child's guardian ad  
34 litem, shall be provided to the child's counsel within 30 days of  
35 the request.

36 (g) In a county of the third class, if counsel is to be provided to  
37 a child at county expense other than by counsel for the agency,  
38 the court shall first utilize the services of the public defender prior  
39 to appointing private counsel, to provide legal counsel. Nothing  
40 in this subdivision shall be construed to require the appointment

1 of the public defender in any case in which the public defender  
2 has a conflict of interest. In the interest of justice, a court may  
3 depart from that portion of the procedure requiring appointment  
4 of the public defender after making a finding of good cause and  
5 stating the reasons therefor on the record.

6 (h) In a county of the third class, if counsel is to be appointed  
7 for a parent or guardian at county expense, the court shall first  
8 utilize the services of the alternate public defender, prior to  
9 appointing private counsel, to provide legal counsel. Nothing in  
10 this subdivision shall be construed to require the appointment of  
11 the alternate public defender in any case in which the public  
12 defender has a conflict of interest. In the interest of justice, a court  
13 may depart from that portion of the procedure requiring  
14 appointment of the alternate public defender after making a finding  
15 of good cause and stating the reasons therefor on the record.

16 (i) *The Judicial Council shall establish a cost recovery program*  
17 *to collect reimbursements for counsel appointed by the court to*  
18 *represent parents or minors as authorized by Section 903.1. All*  
19 *funds recovered by this program shall be utilized to reduce*  
20 *caseloads, for attorneys appointed by the court, to the caseload*  
21 *standard approved by the Judicial Council. Priority shall be given*  
22 *to those courts with the highest attorney caseloads that also*  
23 *demonstrate the ability to immediately improve outcomes for*  
24 *parents and children as a result of lower attorney caseloads.*

25 SEC. 3. Section 903.1 of the Welfare and Institutions Code is  
26 amended to read:

27 903.1. (a) The father, mother, spouse, or other person liable  
28 for the support of a minor, the estate of that person, and the estate  
29 of the minor, shall be liable for the cost to the county *or the court,*  
30 *whichever entity incurred the expenses,* of legal services rendered  
31 to the minor by ~~the public defender or other public~~ *an attorney*  
32 pursuant to an order of the juvenile court, ~~or for the cost to the~~  
33 ~~county for the legal services rendered to the minor by an attorney~~  
34 ~~in private practice appointed pursuant to an order of the juvenile~~  
35 ~~court.~~ The father, mother, spouse, or other person liable for the  
36 support of a minor and the estate of that person shall also be liable  
37 for any cost to the county *or the court* of legal services rendered  
38 directly to the father, mother, or spouse, of the minor or any other  
39 person liable for the support of the minor, in a dependency  
40 proceeding by ~~the public defender or other public~~ *an attorney*

1 appointed pursuant to an order of the juvenile court, ~~or by an~~  
2 ~~attorney in private practice appointed pursuant to order of the~~  
3 ~~juvenile court~~. The liability of those persons (in this article called  
4 relatives) and estates shall be a joint and several liability.

5 (b) Notwithstanding subdivision (a), the father, mother, spouse,  
6 or other person liable for the support of the minor, the estate of  
7 that person, or the estate of the minor, shall not be liable for the  
8 costs of any of the legal services provided to any person described  
9 in this section if a petition to declare the minor a dependent child  
10 of the court pursuant to Section 300 is dismissed at or before the  
11 jurisdictional hearing.

12 SEC. 4. Section 903.45 of the Welfare and Institutions Code  
13 is amended to read:

14 903.45. (a) The board of supervisors *or the court* may  
15 designate a ~~county~~ financial evaluation officer pursuant to Section  
16 27750 of the Government Code to make financial evaluations of  
17 ~~parental~~ liability for reimbursement pursuant to Sections 207.2,  
18 903, 903.1, 903.2, 903.25, 903.3, and 903.5 and other reimbursable  
19 costs allowed by law, as set forth in this section.

20 (b) In any county where a board of supervisors *or the court* has  
21 designated a ~~county~~ financial evaluation officer, the juvenile court  
22 shall, at the close of the disposition hearing, order any person liable  
23 for the cost of support, pursuant to Section 903, the cost of legal  
24 services as provided for in Section 903.1 or probation costs as  
25 provided for in Section 903.2, or any other reimbursable costs  
26 allowed under this code, to appear before the financial evaluation  
27 officer for a financial evaluation of his or her ability to pay those  
28 costs; and if the responsible person is not present at the disposition  
29 hearing, the court shall cite him or her to appear for such a financial  
30 evaluation. In the case of a parent, guardian, or other person  
31 assessed for the costs of transport, food, shelter, or care of a minor  
32 under Section 207.2 or 903.25, the juvenile court shall, upon  
33 request of the county probation department, order the appearance  
34 of the parent, guardian, or other person before the financial  
35 evaluation officer for a financial evaluation of his or her ability to  
36 pay the costs assessed.

37 If the ~~county~~ financial evaluation officer determines that a person  
38 so responsible has the ability to pay all or part of the costs, the  
39 ~~county~~ financial evaluation officer shall petition the court for an  
40 order requiring the person to pay that sum to the county *or court*.

1 In evaluating a person's ability to pay under this section, the ~~county~~  
2 financial evaluation officer and the court shall take into  
3 consideration the family's income, the necessary obligations of  
4 the family, and the number of persons dependent upon this income.  
5 Any person appearing for a financial evaluation shall have the  
6 right to dispute the ~~county~~ financial evaluation officer's  
7 determination, in which case he or she shall be entitled to a hearing  
8 before the juvenile court. The ~~county~~ financial evaluation officer  
9 at the time of the financial evaluation shall advise such a person  
10 of his or her right to a hearing and of his or her rights pursuant to  
11 subdivision (c).

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

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

32 (1) That he, she, or they have a right to a statement of the costs  
33 as soon as it is available.

34 (2) His, her, or their procedural rights under Section 27755 of  
35 the Government Code.

36 (3) The time limit within which his, her, or their appearance is  
37 required.

38 (4) A warning that if he, she, or they fail to appear before the  
39 ~~county~~ financial evaluation officer, the officer will recommend  
40 that the court order him, her, or them to pay the costs in full.

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

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

18 (c) At any time prior to the satisfaction of a judgment entered  
19 pursuant to this section, a person against whom the judgment was  
20 entered may petition the rendering court to modify or vacate the  
21 judgment on the basis of a change in circumstances relating to his  
22 or her ability to pay the judgment.

23 (d) Execution may be issued on the order in the same manner  
24 as on a judgment in a civil action, including any balance remaining  
25 unpaid at the termination of the court's jurisdiction over the minor.