

**DNA PENALTY ASSESSMENT
(PROPOSITION 69) DISTRIBUTION
GUIDELINES**



California State Controller

DIVISION OF ACCOUNTING AND REPORTING

DECEMBER 2004

DNA Penalty Assessment (Proposition 69) Distribution Guideline

Proposition 69 (DNA Initiative) was passed on November 2, 2004, and became effective the next day. In addition to retroactively expanding the scope of DNA Data Bank collections, the DNA Initiative added Government Code (GC) section 76104.6 which provides for a \$1 penalty for every \$10 or fraction thereof upon every fine, penalty and forfeiture levied on criminal offenses including traffic offenses, but excluding parking offenses. This DNA Identification Penalty Assessment was effective November 3, for violations that occurred on or after November 3, 2004. The DNA Identification Penalty Assessment is levied and collected in the same manner as the State Penalty imposed per Penal Code (PC) section 1464.

This Guideline only addresses distribution issues related to the DNA Identification Penalty Assessment and does not address the technical aspects of the DNA program. The DNA Identification Penalty is imposed in the same manner as the State Penalty; however, the distribution procedures used are different from the State Penalty and other penalty assessments. Therefore, this Guideline provides guidance to counties and courts concerning the distribution of the DNA Identification Penalty.

The State Controller's Office is responsible for establishing a uniform accounting system to ensure that trial court revenues (fines, penalties, fees etc.) are properly and uniformly accounted for and distributed to all levels of government. Information on this distribution and other new laws will be available in January 2005 in our annual update of the Distribution Tables (Appendix C) at www.sco.ca.gov/pubs/index.shtml#guides.

Distribution:

The DNA Identification Penalty Assessment is required to be deposited in a new interest earning county fund called the DNA Identification Fund. The distribution from this fund is made on the last day of the calendar year quarter beginning on March 31, 2005.

The distribution is as follows:

In Calendar Years 2005 and 2006 (on the last day of the quarter: March 31, June 30, September 30 and December 31):

- 70% of the amounts collected **including interest** to the State DNA Identification Fund which is administered by the State Department of Justice.
- The remaining 30%, **including interest**, can be used for specific local DNA related activities

In Calendar Year 2007:

- 50% of the amounts collected, **including interest**, to the State DNA Identification Fund.
- The remaining 50%, **including interest**, can be used for specific local DNA related activities.

In Calendar Year 2008 and in each calendar year thereafter:

- 25% of the amounts collected, **including interest**, to the State DNA Identification Fund.
- The remaining 75%, **including interest**, can be used for specific local DNA related activities.

Distribution Issues:

The county DNA Identification Fund will need to segregate new collections and any interest earned thereon from funds remaining in the fund after each quarterly distribution to the State. After distribution to the State, only the remaining funds and interest earned on those remaining funds can be used for local DNA purposes.

The State Remittance Form (TC-31) will be updated to include the State's portion of the county DNA Identification Fund.

Two-percent Automation Fee:

The 2% automation fee will apply to the DNA Identification Penalty Assessment similar to other penalty assessments.

Traffic Violator School Fee Distribution:

For traffic school violations, the DNA Identification Penalty Assessment is part of the total bail. Therefore, it is part of the traffic violator school fee pursuant to Vehicle Code (VC) section 42007. There is no specific distribution to the DNA Identification Fund from the traffic violator school fee; thus, it is like PC section 1464, part of the VC section 42007 distribution to the county general fund.

Red Light Violations:

The DNA Identification Penalty Assessment is not reduced by the 30% red light distribution (PC section 1463.11) or railroad crossing distribution (PC section 1463.12). These distributions only reduce the base fine and the penalty assessments imposed pursuant to PC section 1464 and GC section 76000.

Juvenile Fines:

The DNA Identification Penalty Assessment is levied, like other penalty assessments, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses. PC section 1463(h) defines 'offense' as "any infraction, misdemeanor, or felony, and any act by a juvenile leading to an order to pay a financial sanction by reason of the act being defined as an infraction, misdemeanor, or felony."

However, the Court of Appeals in *Egar vs. Superior Court* (16 Cal. Repr.3d 613 - Cal App. 2 Dist 2004) found that the court security fee (PC section 1465.8) cannot be levied on juvenile ward of the court cases because wards of the court are not convicted of a crime. While this case only applies to the court security fee which is levied on every conviction for a criminal offense, it has generated several inquiries concerning what penalties can be levied on these juvenile fines. We are reviewing whether this court case applies to juvenile fines and will provide additional information once a determination is made.

Contacts:

Questions concerning eligible DNA Fund expenditures should be directed to Stacy Fox of the Department of Justice at PC296.PC296@doj.ca.gov or at (510) 620-3300.

Questions concerning the DNA Identification Penalty Assessment distribution should be directed to Bob Stonehouse at (916) 327-2289 or Jim Reisinger at (916) 322-9105 both of the State Controller's Office.

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