



Study of the Effectiveness of Collections in the Florida Courts

*A Report to the Florida Clerks of Court
Operations Corporation*

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Executive Summary

Introduction

The Florida Legislature tasked the Clerk of Court Operations Corporation (CCOC) to conduct a collection study and provide its findings to the Legislature by December 1, 2012. The focus of this report is to assess the effectiveness of the Florida State Courts System in the collection of court-ordered financial obligations. The question of whether the revenues collected are adequately and appropriately being distributed is beyond the scope of this request.¹ The National Center for State Courts (NCSC) was selected to assist the CCOC in its task of assessing the current state of collections in Florida, as well as providing information that will help Florida courts prepare for possible passage of federal tax intercept legislation. The NCSC has based its evaluation on nearly twenty years of research and consulting on the topic of court collections. The evaluation is guided by the following key elements of effective collection programs which have been identified by the NCSC in its research:

- Judicial and administrative support
- Clear roles and lines of responsibility
- Short time periods for compliance
- Clear expectations for compliance
- Establishment and adherence to procedures
- Goals and performance monitoring
- Immediate responses to non-compliance
- Using a range of effective sanctions
- Communication between clerks, judges, and other stakeholders

Greater attention has been given to the enforcement of court-ordered financial obligations in recent years due to tight operating budgets, the search for additional funding, and a continuing desire for court orders to command the respect of defendants. Over the years, the Florida State Courts System (clerks and courts) have assessed and collected hundreds of millions of dollars in fines, costs, fees, and restitution. These revenues support not only the operation of courts and clerks' offices, but provide state general fund revenue and support numerous state trust funds. Assessments and collections for the most recent four county fiscal years are as follows:

	County Fiscal Year			
	2007-2008	2008-2009	2009-2010	2010-2011
Assessments	\$1,265,518,970	\$1,520,581,687	\$1,552,853,063	\$1,320,633,359
Collections	\$885,491,309	\$1,028,022,000	\$1,106,098,965	\$909,713,375

Source: Annual Report per s. 28.246(1), Florida Statute

¹ See "Stabilization Revenues for the State Courts System and Clerks of Court; Recommendations of the Revenue Stabilization Workgroup," November 1, 2011.

The Florida State Court System includes 20 judicial circuits and 67 counties. There are wide differences in population and philosophy across the state between large metropolitan counties such as Miami-Dade and more rural counties such as Liberty. Regardless of the size of the court, however, the key elements of a successful collection program apply in any jurisdiction. This report relied on detailed responses from 16 Florida clerks to gain insight on current practices, challenges, and opportunities for improvement in the area of collections. Since performance data on collection rates is readily available from the CCOC, this report has focused on the extent to which clerk's offices are utilizing best practices as identified in the research and their perception of the effectiveness of various collection efforts that they currently employ.

Performance Standards

Through the leadership of the CCOC, Florida clerks have established collection standards as a yardstick for measuring performance. Data for the most recent two fiscal years shows that state-wide collection rates for criminal traffic substantially exceed standards. The state-wide averages for county criminal and civil traffic are just under the standard but showed improvement in 2011/12. Circuit criminal cases appear to be the most difficult to collect, mirroring the experience in other states:

Court Division	<i>Average Collection Rate</i>		CCOC Standard
	2010-2011	2011-2012	
Circuit Criminal	7.10%	7.00%	9%
County Criminal	38.50%	38.70%	40%
Criminal Traffic	58.10%	56.50%	40%
Civil Traffic	85.10%	87.20%	90%

Note: Assessments were made 15 months prior to year collected.

Florida continues to be a leader in collecting and publishing performance data. This information helps the CCOC and individual clerks determine where to focus their efforts to improve compliance rates, as well as identifying factors that contribute to more effective collections. The CCOC is encouraged to collect additional data that would assist with performance evaluation, such as the information captured in this report concerning payment plans.

Barriers to Success

Clerks participating in the survey were asked to identify what they perceive as various barriers to success. Their responses indicated that greater coordination is needed between clerks and judges, and with other criminal justice agencies, in particular state and county probation. More robust information systems are needed in some jurisdictions to improve the efficiency of collection management and enforcement. The responses also show that some jurisdictions have unique problems. One clerk reported that over 30 percent of the county criminal cases involve

homeless individuals. Many counties have large migrant populations that pose unique challenges.

Consistency of Practice

This study shows that while many local courts have implemented key elements for a successful collection program, there is still substantial variation across the state in collection policy and practice. These variations are likely due to a number of factors, including the relative priority given to collection efforts, the availability of local resources, quality of information systems, and the philosophy of court leadership. Through its website and direct technical assistance, the CCOC identifies and promotes practices that have been proven to be successful. The CCOC should continue to work with clerks to implement policies and procedures consistent with these best practices, keeping in mind the unique circumstances that exist in many jurisdictions.

State and Local Coordination

NCSC consultants and researchers have found that issues with state and local coordination between clerks, judges, and other justice system agencies continue to be an inhibiting factor. The need for greater coordination with probation and parole regarding enforcement of financial orders, as well as information on prison releases from the Department of Corrections are noted in this report. Discussions at both the state and local level should be initiated to address these issues. Clerks are encouraged to take the leadership in their own jurisdictions by convening local collection work groups that include judges, probation, prosecution, the defense bar, and other stakeholders who play a role in the enforcement of court orders. The CCOC should take the lead at the state level to discuss policy and legislation with executive branch agencies that will help improve communication and information sharing.

Demonstrating Success

The adoption of best practices by itself does not guarantee success. As a prior OPPAGA report noted, collection methods are sometimes difficult to link to performance results.² The manner in which these practices and policies are implemented, however, often makes the difference between success and failure. Pilot projects are one method for testing and documenting the impact of policy implementation. Soliciting participation from counties that are using, or considering the use of, innovative practices would be one place to start. Jurisdictions that can serve as potential pilots should also be selected on the basis of their ability to provide accurate data for evaluation. The results of pilot or demonstration project outcomes can be the basis for the creation of collections practice models for adoption by other jurisdictions.

Better Tools

The availability of effective tools to aid clerks and judges in the enforcement of court orders is an important factor. There are a number of collection enforcement methods not currently authorized in Florida statute that have proven to be successful in other states. These include vehicle registration holds, professional and recreational license holds, enhanced civil enforcement procedures, fine amnesty, and warrant sweeps. It is recognized that many of these proposals impact agencies other than the courts and clerks' offices, therefore the need for state-

² "Clerks of Court Generally are Meeting the System's Collections Performance Standards," Office of Program Policy Analysis & Government Accountability, Report No. 07-21, March 2007.

level policy discourse prior to adoption. Specific recommendations for legislative action that would expand the available tools are included in this report.

The passage of federal legislation authorizing the collection of court-ordered financial obligations through tax offset or intercept would give Florida's clerks and courts additional leverage. A number of states have successfully implemented similar programs to offset state income taxes. Should the federal legislation be enacted, Florida will need to develop a system for the exchange of data between the clerks' case management and financial systems and the U.S. Department of Treasury. It is likely that the state will be required to designate a single agency to coordinate this exchange. Local expenditures will be needed in some counties to modify or enhance court software to capture, transmit, and record the required offender and financial information. A system or process will very likely have to be developed at the court and/or state level to identify and screen indigent offenders.

Additional Research

The CCOC functions as a clearinghouse for collection information, including performance data, best practices, publications, and collection technical assistance. The clerks' best practice document recommends that clerks "evaluate the cost and benefits of each of the collection tools and emphasize those that have the greatest net benefit." The NCSC fully supports this recommendation. The CCOC is in a unique position to coordinate further research into successful practices and share this information with its constituency.

1 Introduction

1.1 Purpose

This study has been prepared by the National Center for State Courts (NCSC) at the request of the Florida Clerk of Court Operations Corporation (CCOC). The current Florida appropriations act includes language directing the CCOC to prepare a report (1) identifying and assessing the effectiveness of collection methods for court-related fines and fees owed the state, and (2) assessing the feasibility of participation in the federal treasury offset program (pursuant to 31 U.S.C. § 3716), at a minimum identifying the benefits and obstacles to participation and the potential returns from participation in the program. The CCOC is required to provide its report to the chairs of the Senate Budget and House Appropriations Committees no later than December 1 of this year.

1.2 Authority and Duties of Clerks, Courts, and the CCOC

Florida Statutes authorize the courts to assess various fines, court costs, and fees to persons convicted of crimes. Fines are typically assessed as a penalty for violating the law, while fees and court costs recover a portion of the clerk costs and support certain state programs and trust funds. While the statutes provide the courts with discretion in assessing fines, statutes also require courts to assess specific fees, service charges, and court costs. Statutes also provide that fines and fees are due at the time of assessment unless an alternate time period is prescribed by the courts.³ In order to comply with court orders, the collection and enforcement of fines and fees involves the courts, Clerks of the Circuit Court, county probation organizations, and the Florida Department of Corrections.

Florida Statutes established the Clerk of Court Operations Corporation (CCOC) as a state entity with responsibilities for establishing collection standards for the Clerk's criminal, civil, and traffic court divisions, monitoring their performance, and reporting corrective action plans to the Legislature and the Supreme Court when the standards are not achieved. Additionally, the CCOC as part of its technical assistance provides collection training and identifies best collection practices.

1.3 Study Methodology

After discussions with legislative staff, members of the CCOC determined that the study would include reviewing the collection processes for circuit criminal; county criminal; criminal traffic; and civil traffic court divisions for 14 large counties (Escambia, Miami-Dade, Volusia, Hillsborough, Broward, Duval, Pinellas, Lee, Orange, Brevard, Seminole, Pasco, Polk, and Palm Beach) along with Lake and Sarasota Counties. An eight-part survey instrument was developed with the assistance of representatives from each of the counties. A list of participants who contributed to the survey is found in Appendix A.

³ Performance Audit of the Collection of Fines and Fees Assessed to Convicted Offenders by the State Court System of Florida, January 6, 1992, report no. 11780

The survey is divided into the following topics:

- 1) Background information
- 2) Circuit court criminal cases
- 3) County court criminal and criminal traffic cases
- 4) Civil traffic cases
- 5) Collection agency utilization
- 6) Payment plan administration
- 7) Collection courts (Orange, Polk and Sarasota Counties only)
- 8) Collection toolbox

The first section asked clerks about the staff resources dedicated to collections in their respective offices, as well as their opinions about the feasibility of outsourcing collection activities. Sections 2-4 solicited information regarding the collection of criminal, criminal traffic and civil traffic cases, including the role of probation, tools utilized to collect cases, judicial practices, and payment patterns. Respondents provided information on the amount of debt referred to and collected by collection agencies in section 5. Section 6 provided insight into how clerk's offices administer payment plans. In three counties where the courts currently run a special collection docket, clerks were asked to describe how these dockets work and rate their effectiveness. The last section solicited views from all participating clerks on what collection techniques are most effective, what additional tools that are available in other states would be worth considering in Florida, and what implementation issues should be considered.

The NCSC team worked closely with the CCOC to develop the survey. The process included frequent consultation with survey participants during development. The survey was released online for participants to complete during September 2012. In addition to analysis of the survey results, the NCSC team has provided information on collection programs in other jurisdictions, highlighting successful models, and where available, citing collection performance data. Based on a review of the survey results, available information from the CCOC, and comparative programs and data in other states, the NCSC team has provided findings and recommendations for further consideration. The complete survey results can be found on the CCOC website at www.flccoc.org.

2 Summary of Findings

The NCSC presents the following findings from the CCOC survey administered to 16 selected clerks across the state of Florida and collection performance data. The survey was designed to solicit information from clerks regarding the assessment and collection of fines, costs, and restitution for circuit court criminal cases, county criminal and traffic cases, and civil infraction traffic cases. The survey also focused on the administration of payment plans, utilization of collection agencies, and the effectiveness of various sanctions currently available to the courts. Clerks were asked if they would support additional sanctions not currently available in Florida and identify potential implementation issues.

2.1 Assessment and Enforcement Circuit Court Criminal Cases

- Almost half of the courts in the survey met or exceeded the collection standards in SFY 11/12 for circuit court criminal cases.
- Most judges do not inform defendants that fines are due on day of sentence.
- Very few defendants make any initial payment to the clerk at sentencing.
- Most clerks report that over half of the defendants placed on probation have not paid in full at the time probation is terminated.
- Clerks receive regular payments from probation for defendants who are in compliance.
- Over half the clerks in the survey indicate that payment plans are not established for probation cases
- A majority of clerks do not issue a license suspension notice for failure to pay according to a payment plan in criminal court cases.

2.2 Assessment and Enforcement of County Criminal and Traffic Cases

- All courts in the survey met or exceeded performance standards for criminal traffic cases and over half did for county criminal cases in the most recent two fiscal years.
- There are considerable differences between the surveyed courts in sentencing practices when it comes to use of probation, however, it is estimated that most courts impose jail as the only sanction in less than ten percent of the cases.
- Over half of the clerks report that violation of probation orders, lien entries, driver's license suspension notices and collection agency referrals are used to compel compliance.
- Only a small number of courts schedule show cause hearings or issue warrants.
- Clerks are generally responsible for setting up payment plans when defendants are sentenced to unsupervised probation.
- There is wide variation in who has responsibility for setting payment plan terms.
- Two thirds of the clerks use collection agencies for county cases and generally refer cases at 90 days past either the due date or end of probation.

2.3 Assessment and Enforcement of Civil Traffic Cases

- Five of the 16 surveyed clerks met or exceeded performance standards for civil traffic cases in the two most recent years.
- Less than half of the judges and hearing officers follow standard practices in sentencing.
- There are wide variances in the number of cases that are contested, continued and dismissed
- Most defendants are asked if they need time to pay at sentencing, although many are informed that full payment is due.

- Most of the surveyed clerks do not send reminder notices.
- The majority of clerks send delinquent accounts to collection agencies and generally wait 90 days from the due date, or in some cases from the offense date.

2.4 Use of Collection Agencies

- Fifteen of the 16 clerks surveyed report that delinquent accounts are sent to collection agencies.
- A majority send all case types to collections.
- Aggregate collection rates for the most recent three years range from 11.24 percent to 19.93 percent.

2.5 Administration of Payment Plans

- The majority of clerks surveyed report that they base payment plan amounts on clerk guidelines; a small number use the two percent rule pursuant to F.S. 28.246.
- The percentage of accounts estimated to become delinquent each month varies between courts, with about a third reporting delinquency rates in the 26 to 35 percent range.
- One clerk estimated that over half the payment plans become delinquent in an average month.
- Most clerks collect limited personal information, though several report collecting employment and financial information.
- All clerks impose the \$25 payment plan fee.
- Most clerks take enforcement action as soon as a payment is missed.
- Generally defendants are allowed to reschedule their payment plan, though one clerk reports nonpayment directly to a collection agency.
- Over half issue notices after a due date is missed.
- A small number of clerks report issuing notices before the due date, skip tracing or automated phone reminders.

2.6 Collection Courts

- Two of the three clerks in courts with specialized collection dockets believe that the collection docket is not effective.
- The clerk that gave collection court a positive rating reported relatively low staff costs to support the docket.

2.7 Evaluation of Collection Activities

- In assessing the value of various collection tools, clerks primarily consider the amount collected and return on dollar as primary criteria, with secondary considerations being the ease and cost of administration.
- Clerks ranked license suspension sanctions, warrants, cash bonds and credit card payments as moderately to very effective methods of encouraging compliance.
- Availability of internet payment options was ranked high for civil traffic cases.
- Clerks ranked collection agency effectiveness as moderate to very effective.
- Other methods of collection not currently available that clerks would support included vehicle registration suspensions, wage or bank account assignments, and automatic civil judgments.
- Opinions were split on the value of warrants, warrant sweeps, and vehicle impoundment.

3 Recommendations

3.1 Assessment of Financial Penalties

The continuum of activities that constitute court collections involve two phases: assessment and enforcement. The assessment phase includes setting reasonable penalties, screening defendants for payment plan eligibility, making payment as easy as possible, setting expectations for payment, and ensuring that defendants understand the consequences of non-compliance. These efforts involve judges, clerks, defense counsel, and probation officers.

Recommendation 1: **Develop More Consistent Assessment Practices**

Comment: Although the focus of collection programs is often on the enforcement of non-compliance, coordination between judges and clerks at the time of sentencing or assessment can make a substantial difference in compliance outcomes. The CCOC and local clerks are encouraged to promote a dialog with trial judges regarding best practices in this area, including:

- What should be said and what should not be said during sentencing, to promote payment of financial obligations.
- Suggested payment schedules based on the amount of the obligation.
- Methods for educating the public and providing public notice of payment policies and fine schedules.
- Strategies for getting cooperation of state attorneys and defense attorneys in preparing defendants to make at least some payment on day of sentencing.
- Requiring defendants who request a payment plan to provide financial information in support of their request when practical.
- Methods of notifying defendants at the time of sentencing of the consequences for non-compliance.

3.2 Enforcement of Non-Compliance

A good deal of attention has been focused on compelling the enforcement of court-ordered obligations through the timely and consistent application of increasingly coercive sanctions. The survey results suggest that consistency is an issue and that available tools are not being fully utilized.

Recommendation 2: **Develop More Consistent Enforcement Practices**

Comment: Responses to the survey reveal a lack of consistency in the application of some compliance tools between courts and different types of cases. There are no doubt a variety of reasons for this as there are for different assessment practices. Nevertheless, there appears to be room for improvement and the CCOC is encouraged to continue its leadership in this area through further research, training and outreach, encouragement of innovative approaches, and inter-branch collaboration.

3.3 State Leadership and Cooperation

Florida is an acknowledged leader among the states in its emphasis on court collections. The Legislature recognized the importance of collections when it created the CCOC and authorized the Corporation to establish collection performance standards, monitor and report performance,

and require corrective action plans when standards are not attained. The CCOC provides education and training and has developed an abundance of collection best practices from around the state and country which is available at www.flccoc.org.

Recommendation 3: Establish State-Level Policy Work Group(s)

Comment: Many of the problems with coordination can be resolved at the local level; however, there remain issues that will require state-level leadership and decisions. This is particularly the case with policies that impact executive branch agencies. The CCOC is encouraged to establish a state-level work group to address interdepartmental issues relating to collections.

3.4 Local Leadership and Coordination

Florida clerks have a leading role in helping courts enforce their judgments; however, as noted throughout this report, the best programs feature cooperation and coordination among the bench, the clerk's office, and other justice system stakeholders. Convening representatives from these groups to reach consensus on practices and policies, where possible, can substantially improve performance.

Recommendation 4: Convene Local Collection Policy Work Groups

Comment: Coordination of efforts by judicial system stakeholders can greatly enhance the effectiveness of collections programs. The survey results show that this continues to be an issue for Florida clerks. The CCOC should encourage clerks to take the lead in promoting greater cooperation and collaboration with judges, prosecutors, probation, and law enforcement through local work groups or more informal communication.

3.5 Adoption of Best Practices

The relatively decentralized nature of the Florida courts makes it difficult, but not impossible, to achieve greater uniformity in the management of collection programs. As noted in this report, similar states such as Texas have substantially increased compliance through the implementation of state-wide programs that establish minimum standards, supported by expert assistance and resources from a central entity. A stronger role for the CCOC is needed to move to the next level.

Recommendation 5: Encourage the Development of Local Pilot Programs

Comment: Pilot programs are an effective way to test various policy and procedural changes in a controlled environment. Effective pilot projects serve as models for other organizations to adopt. CCOC should work with volunteer clerks and courts to set up pilot projects and monitor their effectiveness.

Recommendation 6: Develop Court Collection Plans

Comment: The NCSC team recognizes that the resources and community characteristics vary among the counties, and that one size doesn't necessarily fit all when it comes to policy; however, there are certain basic principles and activities that can be adopted on a state-wide

basis, supplemented by practices that are specific to individual jurisdictions. To achieve greater consistency as well as encourage local innovation and initiative, some states have required courts to adopt a local collection plan. The CCOC should be authorized and receive funding to require local collection plans in each circuit. At a minimum, plans should ensure that clerks are following statutory requirements for enforcement using the tools at their disposal in a timely and effective manner. Appendix B illustrates the components of a collection plan for Florida clerks to follow and the extent to which these components are utilized by the surveyed clerks' offices.

Recommendation 7: Conduct Further Research into Effective Practices

Comment: The survey has given some insight into the effectiveness of specific enforcement activities. This information is however, primarily anecdotal. The CCOC should follow up the survey with additional research to document return on investment for various collection efforts. A good example is the responses to the effectiveness of collection courts in the survey, where there is a clear difference of opinion. Further research may reveal what factors make a particular activity successful, or not.

Recommendation 8: Provide Incentives for Improvement

Comment: The CCOC should explore the possibility of providing incentives in the budget process for clerk's offices that implement innovative or comprehensive collection programs.

3.6 Goals and Performance Monitoring

Florida, and the CCOC in particular, has taken the lead in setting performance standards and providing regular performance data at both the local and state level. This information has helped guide the CCOC in its efforts to work with clerks to improve compliance rates. The study prepared for this report provides additional information on the range of practices across the state and compares these with performance data. CCOC should receive support to further encourage effective practices through the establishment of model collection programs in cooperation with local clerks, and continue research into the effectiveness of various practices and policies.

Recommendation 9: Continued Monitoring and Adjustment of Standards

Comment: The CCOC should continue to provide regular monitoring and reporting of collection performance. Performance standards should be reviewed regularly and adjusted if appropriate. The CCOC should encourage clerks to set local goals to achieve higher levels of compliance and work with those clerks to accomplish them.

Recommendation 10: Develop Additional Performance Measures

Comment: The regular collection and publication of collection performance data is laudable. This information provides a good yardstick for assessing the effectiveness of collection programs; however, there are a number of factors that impact collection rates, and additional information on other contributing factors, such as the percentage of defendants determined to be indigent, will provide a better picture of the overall collections environment. Other measures of court and clerk performance should be considered, such as the percentage of cases paid in full or part at assessment, payment plan compliance, etc.

Recommendation 11: Ongoing Technical Assistance

Comment: The CCOC is in a unique position to provide direct assistance to clerks and has the tools and information to help in this area. Funding should be designated for this purpose.

3.7 Additional Tools

This report provides examples of successful collection enforcement methods that other state court systems are authorized to use but are not currently available in Florida. The clerks participating in the study gave their opinions about the feasibility of several of these methods and also identified potential implementation issues. The following additional methods that have proven to be effective in other states would require authorizing legislation or court rules:

Recommendation 12: Payment of Fines and Costs as Condition of Probation/ Plea Agreements and Continuing Jurisdiction

Comment: The survey responses indicate that defendants are often placed on probation without payment plans being included as a condition of probation. In addition, there are concerns about the lack of jurisdiction to enforce an overdue account once the term of probation has expired and a violation of probation has not been entered. It may be necessary to request legislation to clarify the court's continuing jurisdiction over collection after the term of probation has expired, as well as require that compliance with a financial assessment be included as a term of probation or a plea agreement.

Recommendation 13: Non-renewal of Vehicle Registration for Failure to Pay

Comment: In addition to existing statutes authorizing suspension of driving privileges, legislation authorizing putting a concurrent "hold" on renewing a vehicle registration if the owner of the vehicle has an outstanding court-ordered financial obligation and the vehicle owner owes court debt should be proposed. Experiences in other states indicate that the one year cycle of vehicle registration and visible non-compliance make this an effective sanction.

Recommendation 14: Wage and Bank Account Garnishment

Comment: Clerks should be able to request a wage or bank account assignment order from defendants who are given time to pay but are employed and have some financial resources. It has been the experience in many courts that requiring a wage assignment order encourages defendants to pay in full rather than risk the chance of their employer becoming involved. In some cases, defendants actually prefer to have regular deductions from their pay. Legislation may be needed to clarify the authority of clerks to use this process without paying the filing fee currently required.

Recommendation 15: Deny Application for Professional License

Comment: Legislation authorizing professional licensing bodies to notify licensees held in contempt of court for nonpayment of court debt of the licensing body's intent to suspend or to

withhold issuance or renewal of the licensee's authorization to practice the profession should be considered.

Recommendation 16: Authorization for Prison Account Sweeps

Comment: Several states have followed the child support model by allowing the attachment of prisoner accounts to satisfy outstanding fines, costs, fees, and restitution.

Recommendation 17: Denial or Suspension of Recreational Licenses

Comment: Legislation authorizing denial or suspension of a person's hunting and/or fishing license if the person has an outstanding court-ordered financial obligation, unless the person is in compliance with a payment plan should be considered.

Recommendation 18: Fine Amnesty Program

Comment: Although the results of fine amnesty programs have been mixed, the CCOC should conduct further analysis of the potential impact of an amnesty program and propose legislation if appropriate.

Recommendation 19: Adopt Debt Write-Off Standards

Comment: At a certain point efforts to collect debt reaches a point of diminishing returns. A policy that designates debt as uncollectable does not preclude its collection but recognizes that for debt that has reached a certain age or status, further efforts by the clerk are likely to yield little result.

Recommendation 20: Allow Credit Bureau Referrals

Comment: Clerks responding to the survey supported the idea of allowing overdue accounts to be referred to credit reporting agencies. In some states third party collection agencies perform this function as part of the collection process. There currently does not appear to be authorization for referrals by Florida courts.

4 Federal Tax Offset Program Implementation

4.1 Background

The Crime Victim Restitution and Court Fee Intercept bill, H.R. 1416, would allow for the interception of federal tax refunds for unpaid court debt. Federal law currently permits the interception for child support debts, state tax debts, and other federal debts, but currently does not include other court-ordered state debts, such as fines, costs, fees, and restitution arising from criminal judgments.

Under this legislation, these intercepts would be made against refunds that would otherwise be returned to the taxpayer. As such, there is no loss to the Federal budget. Additionally, court-owed debts would follow in priority after child support and the other currently authorized debt priorities, and would not affect other recipients now intercepting funds. Finally, this tax intercept proposal would be a revenue-generating mechanism that is not a tax increase. This proposal has been endorsed by a number of national organizations such as the Conference of Chief Justices, Conference of State Court Administrators, National Association of Counties, American Bar Association, the Government Finance Officers Association and the American Probation and Parole Association.

4.2 Brief History and Current Status of Legislation⁴

Senator Gordon Smith (R-OR) of the Senate Finance Committee agreed to be the sponsor of the tax refund intercept proposal. Senator Smith, along with Senator Charles Schumer (D-NY), introduced the tax refund offset bill (S 3512) on June 15, 2006. In the 110th Congress, the tax offset legislation was reintroduced by Senator Smith. Congressmen Ron Kind (D-WI) and Jim Ramstad (R-MN) introduced the House companion bill (HR 6172) on June 3, 2008.

Previous bill sponsors, Senator Smith and Representative Ramstad did not return to the 111th Congress. On April 2, 2009, Representatives Artur Davis (D-AL) and Henry Paulsen (R-MN) introduced the Crime Victim Restitution and Court Fee Intercept Act, (HR 1956).

Efforts are also underway to secure resolutions from state legislatures in support of this legislation. Chief Justices Sue Bell Cobb (AL), Charles Daniels (NM), Paul De Muniz (OR), Jim Hannah (AR), and Myron Steele (DE) have secured such resolutions. Representative Paulsen, a prior original sponsor of the bill, has been elevated to the Ways/Means Committee.

The Crime Victim Restitution and Court Fee Intercept Act was reintroduced in the 112th Congress in the House and Senate on April 7, 2011 (HR 1416/S. 755). Supporters are picking up co-sponsors for the legislation as well as other organizations joining in support of the bill. There are no major tax bills coming out of the Congress that could serve as a vehicle bill. Groups concerned about the impact of the bill on the indigent may delay implementation pending the adoption of requirements to ensure indigent individuals are exempt from the offset.

⁴ Source: National Center for State Courts Government Relations Office

4.3 Criteria for Participation by Florida Courts

Based on existing state tax intercept programs and the federal child support offset process, there are a number of conditions that will need to be in place:

Authorizing statute – Legislation will be required to authorize participation in the program and can likely be modeled after existing statutes for child support offsets. Some of the issues that may need to be addressed in legislation include:

- Definitions of fines, fees and costs that qualify for offset
- Designation of agency or entity responsible for collection and transmission
- Minimum amount which can be transferred
- Minimum requirements for enforcement by court prior to referral
- Aging of debt prior to referral
- Frequency of referral
- Priority of debt referred
- A processing or penalty fee, if any, to offset program costs
- Requirements for notifying debtors of pending action to offset
- Process for determination of indigent status
- Procedures for debtor appeal of pending offset, such as right to an administrative hearing or other procedure
- Requirement for intergovernmental agreements

State coordination – Transmission of eligible debt will very likely be through a central state entity which will be responsible for receiving files from individual counties for transmission to the federal system. An intergovernmental agreement or letter of understanding will need to be developed that outlines responsibilities of participating clerk's offices and the central processing unit. This will include such details as frequency of submission, minimum data requirements and formats for submission.

Court information systems and procedures - The courts will need to develop processes and procedures for submitting debt, including what debt to submit and frequency of submission, adjustments, and recalling debt. One of the challenges in Florida is the lack of a single state-wide case management system. Each clerk will need to address these requirements individually with their respective provider. Systems will be required to collect the minimum data necessary for reporting in a standard format, and be able to transmit and receive information electronically. Other software functionality will likely include the ability to flag referred cases, merge account information for the same individual if required, apply priorities, update payment status and adjustments, process rejected submissions, and maintain a transaction history. Systems will also need to be in place for adding/removing warrants and license suspensions, as well as updating third party collection agency records if accounts are also in collections. Clerks will need to ensure that bookkeeping systems maintain proper audit trails for intercept transactions.

Clerks will also need to be prepared to respond to the additional work generated by tax offset. One urban court in Michigan which decided to forward all debt to the state treasury in a single transmission was overwhelmed with calls from debtors, as well as the large volume

of financial transactions the court was suddenly processing. Typically, collection volume reaches its peak during tax season, and courts should be prepared for this. Clerks may decide to implement quality control checks to ensure the accuracy of accounts submitted for intercept to reduce the number of potential appeals and rejected submissions.

Provisions for Determination of Indigent Status – As noted in the comments regarding the current status of the legislation, concerns about the impact of offsets on indigent persons are a potential impediment to passage. It is presumed that the federal government does not have access to information that would support screening upon submission to the Treasury Department. This means that participating states will need to address this issue in their overall program design. One option is to require the state coordinating agency to determine if individuals who have offset-qualified debt are indigent on the basis of participation in state benefit programs such as food stamps or Medicaid. The alternative is to put the burden on the defendant to raise this issue upon receiving notification of pending intercept. A combination of the two approaches is also a possibility. Most likely this process will be managed by the state coordinating agency or entity.

4.4 Program Impact

Although it is difficult to predict the financial impact of participation in the program with any certainty, the experience with state tax intercepts provide some idea of the potential returns. During the first year following enactment of a treasury intercept program, Colorado courts recovered \$3 million. In 2010, more than \$6 million was collected and almost \$41million has been collected since program inception in 2005. Last year payments were received for 40,000 cases. Posting of these payments is handled through an automated posting process at the state court administrator's office.⁵ A study in Michigan found that approximately 26 percent of referred civil traffic cases were collected in the first year of the program either through direct payments to the court and intercepts. Three courts participating in the study reported direct intercepts by the Department of Treasury of between 7.7 and 9.9 percent. It was noted that a higher rate of return could have been realized had social security numbers been provided by the participating courts.⁶

⁵ Litschewski, Paul. Fines and Restitution – Collecting by Investing. The Court Manager, Volume 26, Issue 1.

⁶ Raaen, Nial. The State as a Collection Agency: An Evaluation of the Michigan Treasury Intercept Program. The Court Manager, Volume 11, Number 1.

5 Survey Results and Analysis

The following section is a summary of highlights from the collections survey prepared as part of this project. A table comparing responses summarizing the number of responses to key assessment, monitoring and enforcement practices is available in Appendix B.

5.1 Dedicated Staff and Resources

In the first part of the survey, participants were asked if staff in their offices are dedicated to collection tasks and to estimate what portion of their budget can be attributed to collection-related activities. This section also explored opinions regarding the use of third party resources to perform collection-related functions.

Staff Allocation and Training. Six of the surveyed clerk's offices have staff specifically dedicated to collections, ranging from one position in Volusia County to nine in both Palm Beach and Polk Counties. Collectively, these combined positions represent over \$1,767,000 in dedicated personnel expenditures for collections among the six offices. These staff are primarily devoted to management of circuit, county, and traffic criminal cases. In three cases staff resources are also devoted to civil traffic case collections and one includes juvenile cases. Three report that staff has attended specialized training and one has also had prior private sector collection experience.

Outsourcing. Many jurisdictions across the country have opted for outsourcing a portion or all of their collection activities. The survey asked about the willingness of clerks to consider several collection activities for outsourcing. Seven of the respondents indicated that they would consider outsourcing payment plan monitoring and follow up phone calls; six would consider an outside resource for sending reminder letters or notices, and three for setting up payment plans. Six of the responding jurisdictions did not view outsourcing any of these activities as a desirable option.

5.2 Sentencing and Enforcement in Circuit Court

5.2.1 Performance Data for Circuit Criminal Collections

The CCOC provided the following data for collection performance during a two year period in the participating jurisdictions for circuit court criminal cases. Half of the counties experienced an increase in their collection rate. Collection rates that meet or exceed the nine percent standard for the most recent two fiscal years are shaded and shown in **bold**: (source Quarterly Performance Report required by F.S. 28.35)

<u>County</u>	Average SFY 2010-11	Average SFY 2011-2012
Polk	8%	10%
Orange	8%	12%
Volusia	7%	5%
Dade	7%	6%
Pasco	10%	10%
Lee	5%	7%
Duval	6%	5%
Sarasota	9%	7%
Lake	6%	9%
Escambia	6%	7%
Seminole	20%	27%
Broward	8%	9%
Pinellas	8%	7%
Palm Beach	6%	7%
Hillsborough ⁷	2%	1%
Brevard	12%	9%

Table 1: Circuit Court Criminal Collection Rates

A total of 163 judges are assigned circuit criminal cases in the 16 counties participating in the survey, with the number of judges per court ranging from three to 27. Half of the respondents reported that collection processes vary by judge, and half report that practices were consistent. There did not appear to be a direct relationship between consistency and number of judges in any given court.

How courts approach the imposition of financial penalties on the front end can have a significant impact on compliance. Although many defendants may not be able to pay a large fine at the time of sentencing or assessment, firm and consistent policies regarding requests for time to pay and the management of payment plans can substantially increase compliance. Best practices include expecting all or a portion of fines to be paid at sentence.

In this section of the survey respondents were asked to provide details on how judges handle the imposition of financial penalties at sentence, how payment plans are established, the enforcement of non-compliance, administering collections for defendants sent to prison, and barriers to more effective performance.

Sentencing. A majority of respondents (13) reports that judges order specific terms of payment at sentencing in state cases. A third of them report that judges ask the defendant

⁷ Mandatory assessment by local administrative order.

about their ability to pay and if they need additional time, although four reported that judges state that fines are due on the day of sentencing. Many judges in this survey (9) also direct the defendant to the clerk’s office for further instructions.

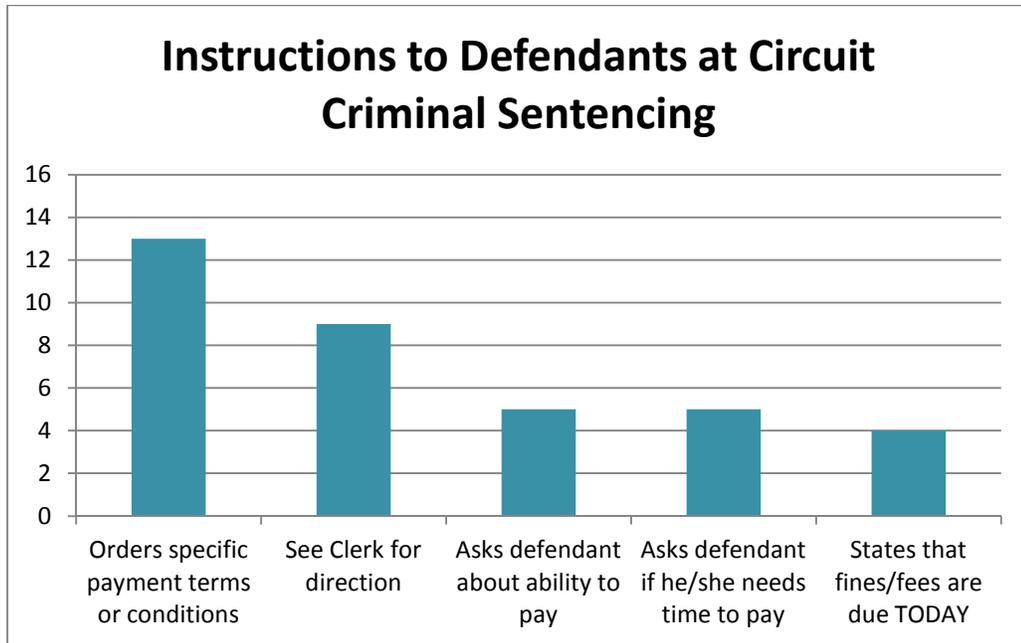


Figure 1: Instructions to Defendant at Sentence

It is estimated that less than ten percent of defendants make either a partial or full payment of their fines and fees on the day of sentencing.

As the following table reveals, there is considerable variation between jurisdictions in terms of sentencing circuit criminal cases. The occurrence of “probation only” sentences varies across the spectrum from three to 100 percent, according to respondents:

County	Typical Sentencing Patterns - Circuit Court Criminal			
	Probation Only	Prison Only	Prison with probation and/or community control	Released without supervision
Polk	70%	20%	8%	2%
Orange	40%	10%	10%	40%
Volusia	60%	25%	5%	10%
Dade	50%	28%	10%	12%
Pasco	60%	20%	15%	5%
Lee	48%	10%	40%	2%
Duval	25%	30%	15%	30%
Sarasota	41%	31%	28%	0%
Lake	50%	25%	5%	20%
Escambia	3%	77%	15%	5%
Seminole	50%	15%	30%	5%
Broward	39%	41%	7%	13%
Pinellas	39%	41%	7%	13%
Palm Beach	50%	10%	30%	10%
Hillsborough	75%	10%	14%	1%
Brevard	65%	15%	15%	5%

Table 2: Circuit Court Criminal Sentencing Patterns

Payments and payment plans. There appears to be considerable variation in how payments are handled for state probation cases. Over half (10) report that payments are made to the probation department, and most of those payments are made at the end of the probation term with very few (2) reporting that payments are made on a monthly basis. Of those offices where payments are made to the probation department, slightly over half receive those payments on a weekly basis from probation, and the remainder receive them on a monthly basis. None report that payments are held to the end of probation.

Non-Payment. A majority (10) of respondents report that over half of the defendants who are placed on probation supervision have not paid their financial obligations at the time of discharge. In only two counties is the clerk directed to take further action to collect.

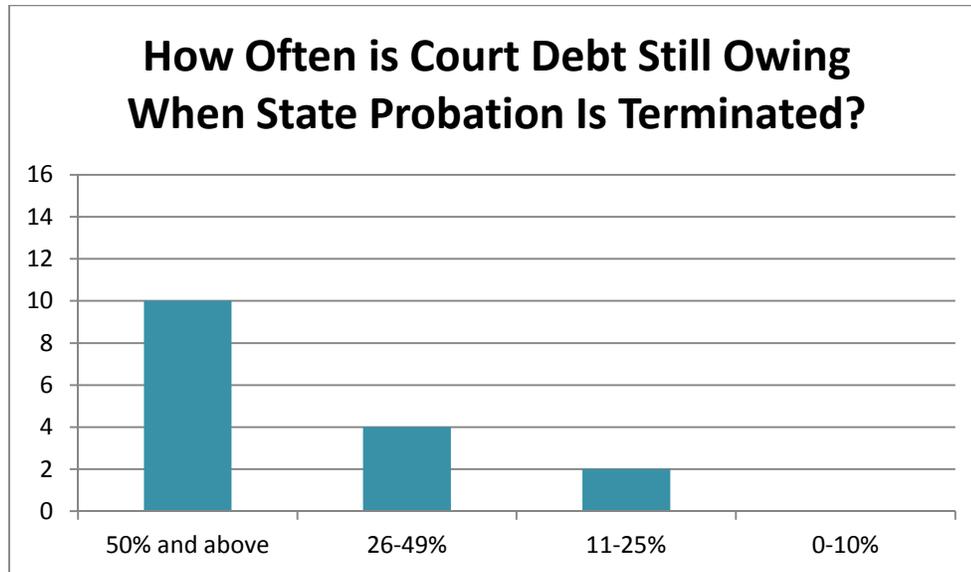


Figure 2: Percentages of Probation Cases Still Owing at Discharge

Payment plan conditions and enforcement. Half of the clerks report that payment plans are not set up by their office for state probation cases. In a majority, though not all, of the cases, the plans coincide with the probation term.

When a defendant on state probation has failed to comply with the financial order, over half (9) of the respondents reported that they do not report non-compliance for license suspension after failure to comply with a payment plan. Of those that do, there is wide variation in how quickly this action is taken, from one to 91 days. Various reasons were given for not reporting, including workload priorities, lack of staff, and lack of automation. Half the respondents reported that they refer cases to a third party collection agency, and all of them do so at 90 or 91 days past the due date.

Prison commitment. When a defendant is sentenced to prison, a majority of the respondents (12) indicate that they record a lien. Seven also report that they send the case to a collection agency at the end of the prison term and two at sentencing. Obtaining release information is apparently a problem, as all but one county indicated that they are not usually notified of the defendant's release. Two counties report that they actively check for releases.

Barriers to effective collection. Barriers to more effective collection of circuit court criminal probation cases include lack of coordination with probation, limited staff resources, and timeliness in receiving payments from probation.

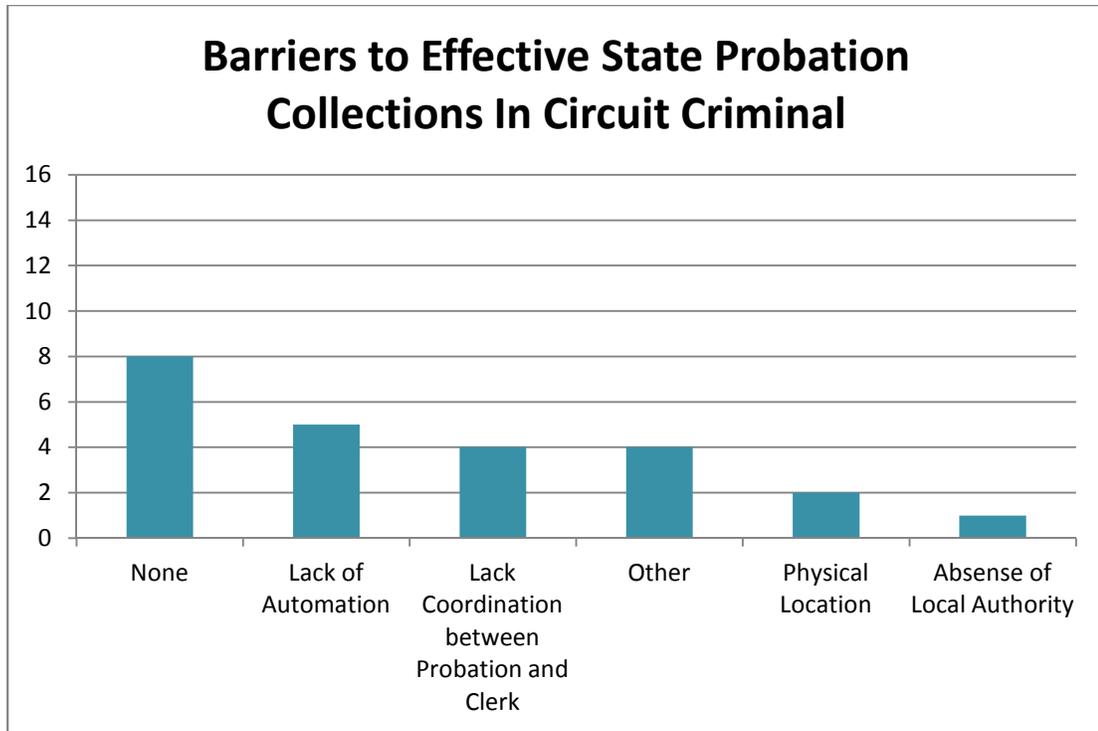


Figure 3: Barriers to Probation Collections in Circuit Court

In addition, the following barriers were identified as inhibiting compliance with collection standards:

One-year collection time window

State probation sets orders and controls collections of all costs; state probation takes out all of their costs first with no incentive to expedite court assessment due

Cases sentenced to probation where costs are not part of probation conditions; jail cases defendants inability to pay (indigent)

Automation system requires manual collection efforts; staffing shortages; judicial order delays collections, judicial orders allow community service in lieu of fines; and notification of prison releases

High dollar amount of drug court fines as part of incarceration sentence; only 5 calendar quarters to collect for prison terms; delayed receipt of payments from DOC

Lack of admonishment from the bench

High fines imposed; costs reduced to judgment; incarceration

High assessments impossible to be paid off; incarceration for several years, so payment cannot be collected until release; then clerk not aware of release

High fines on drug cases, prison confinement, DOC collects cost of supervision and does not monitor payment of fines and costs

Economy, inability to pay, no repercussions in not paying

Prison sentences, loss of income/property, other priorities, restitution paid first, impact of economy, defendant released but has lost all income and property assets

Prison sentences, high fines and costs, poor economic situation; difficulty to find meaningful work upon release

Lack ability to pay, high drug case assessments and associated long periods of incarceration

Incarceration, not making the assessment due immediately, and the economy

5.3 Sentencing and Enforcement of County Criminal and Traffic Cases

5.3.1 Performance Data for County Criminal Collections

Collection rates for county criminal and criminal traffic are substantially higher, which is similar to results in other jurisdictions across the country. Collection rates that meet or exceed the CCOC standard of 40 percent for county criminal and criminal traffic are shaded and shown in **bold**. Data is for the most recent two fiscal years: (source Quarterly Performance Report required by F.S. 28.35)

County	County Criminal Collections Performance		Criminal Traffic Collections Performance	
	Average SFY 2010-11	Average SFY 2011-2012	Average SFY 2010-11	Average SFY 2011-2012
Polk	41%	40%	56%	56%
Orange	32%	37%	47%	52%
Volusia	28%	28%	66%	65%
Dade	17%	17%	48%	45%
Pasco	38%	38%	57%	55%
Lee	47%	45%	75%	74%
Duval	27%	28%	55%	52%
Sarasota	36%	33%	64%	65%
Lake	34%	44%	49%	51%
Escambia	48%	45%	56%	49%
Seminole	70%	70%	84%	85%
Broward	46%	45%	54%	54%
Pinellas	36%	33%	61%	62%
Palm Beach	27%	27%	54%	54%
Hillsborough	28%	29%	69%	n/a
Brevard	40%	42%	56%	57%

Table 3: County Criminal & Traffic Collection Rates

The surveyed counties have 174 judges assigned to county criminal and criminal traffic cases, ranging from two in Lake County to 31 in Orange County. The variance in practices among these judges is greater than for circuit criminal, with collection processes differing in 11 of the counties.

This section also solicited information about sentencing practices, payment plan administration, enforcement of financial obligations for defendants placed on unsupervised probation, the use of license suspension notification and collection agencies, and barriers to more effective performance.

Sentencing. Although many clerks report that less than ten percent of cases are “jail only” sentences, there is quite a bit of variation in the proportion of cases that are placed on probation. All courts in the survey utilize probation services, with half relying on the county probation department and half on private probation services. The following table shows typical sentencing patterns as reported by the clerk’s office in each county:

County	Typical Sentencing Pattern County Criminal & Criminal Traffic		
	Probation Only	Jail Only*	Released without supervision
Polk	60%	10%	30%
Orange	10%	10%	80%
Volusia	50%	15%	35%
Dade	20%	10%	70%
Pasco	50%	10%	40%
Lee	30%	5%	65%
Duval	30%	20%	50%
Sarasota	26%	26%	48%
Lake	50%	2%	48%
Escambia	75%	10%	15%
Seminole	50%	0%	50%
Broward	21%	9%	70%
Pinellas	39%	19%	42%
Palm Beach	20%	10%	70%
Hillsborough	40%	10%	50%
Brevard	50%	7%	43%

*Some jail time could include probation.

Table 4: County Court Sentencing Patterns

The instructions given to defendants at sentence vary:

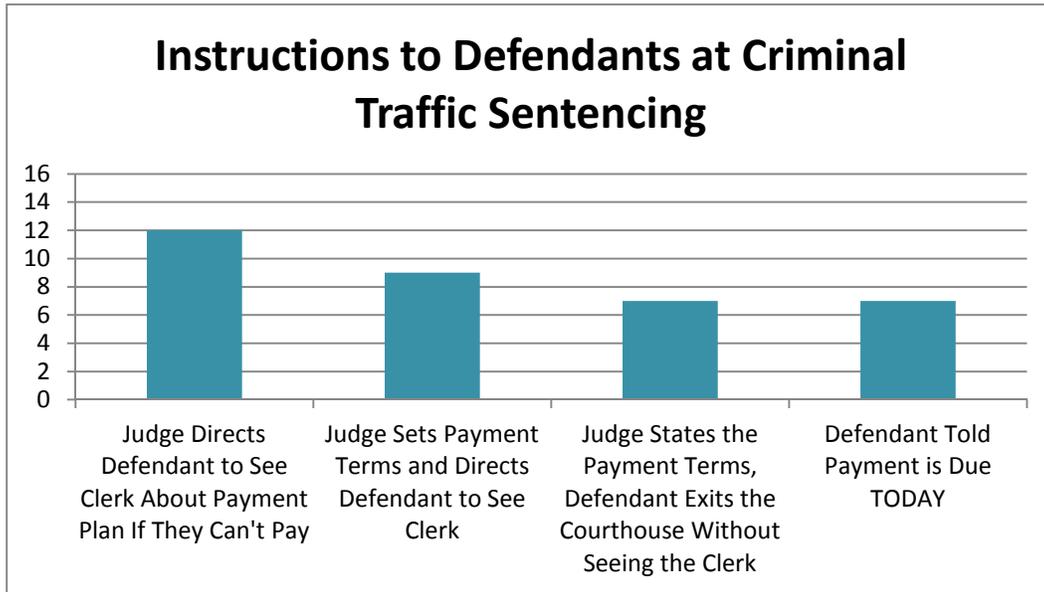


Figure 4: Instructions to Defendants at Sentencing in Criminal Traffic Cases

Payment Plans. The probation officer sets up the payment plan in most cases (11) when payment is ordered as a condition of probation in county cases. There are a variety of sanctions which may be applied when a probationer fails to comply with the financial terms of probation. In well over half the counties that participated in the survey the sanctions include the issuance of a violation of probation, entry of a lien, driver’s license suspension notice, and referral to a collection agency. A small number order a show cause hearing or go directly to a warrant.

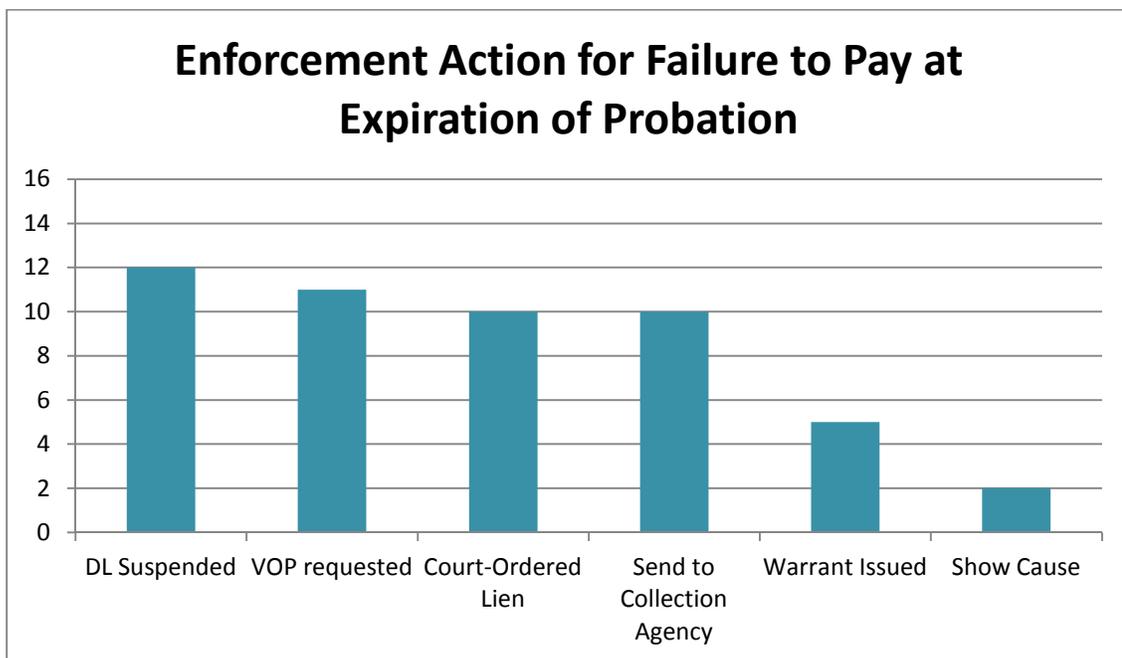


Figure 5: Enforcement of Payment Plans

Unsupervised Probation. Many defendants who do not require direct supervision of a probation officer are placed on unsupervised probation to ensure monitoring compliance with terms of the sentence. In these cases, payment plans are set by the clerk's office. While two counties reported that payment plans are set at 30 days, the remainder report that payment plan periods and conditions vary depending on such factors as the defendant's financial situation, total amount due, and judicial preference.

Payment Plans. Payment plan terms are handled by the clerk in over a third of the counties (6), with judges or probation officers setting the rest. Just over half of the plans coincide with the term of probation, as in many cases this depends on the circumstances of the case.

License suspensions. Over two thirds (12) report issuing notices to suspend driver's licenses for failure to pay. There is considerable variation regarding the elapsed time between a due date and issuance of a suspension notice. Many issue the notice within 90-92 days from either the due date or end of probation; one office issues them immediately, others wait a week.

Use of collection agencies. Two thirds also report delinquent accounts to collection agencies. The majority (8) report the case for collection 90-91 days past the due date, while three do so based on the date that probation expires.

Barriers to effective collection. Regarding compliance with financial conditions in county criminal and criminal traffic cases where probation supervision (supervised or unsupervised) is ordered, respondents offered the following regarding barriers to more effective collection in these cases:

Only have one year to collect when many times, the payment plan extends past that due to time in jail, etc. A majority of jailed defendants pay after one-year.

Hearing officer extends due date quite frequently, which impacts the ability to collect within one year. The defendant can also write letter to the judge who will extend the due date. The judges often pull cases back from collection agency and put defendant back on payment plan. The economy does play a part in this effort.

Homeless population makes about 30% of all county criminal cases difficult to collect. Conversion to community service on these cases is also hard. Need a way to quickly assess achievable collections and find a way to transfer a write-off remaining debt. Need more training of staff or contract staff with professional training would help. Also stronger enforcement by the courts for failure actions would help.

Demographics--poverty rate and undocumented individuals unable to get a driver's license. Payment plans extend time for full collection. Payment as a condition of probation up to 6 months or 1 year. Limited in-house collection resources.

Automation system requires manual collection efforts. Staffing shortages and cuts have contributed to the inability to concentrate efforts in this area. Judicial orders delay collection efforts by providing defendants with additional time to pay and at times allows community service in lieu of fines/fees/costs. On VOP cases judge gives defendant time served in lieu of all monetary obligations.

Currently meet standard. However, in the past judges provided due dates far out in the future (beyond 30 days) which prevented referrals to collection agency in a timely manner, and delayed the payments beyond the 5 quarters. There is not a penalty for non-payment of ordinance violations.

Lack of admonishment from the bench. Reluctance to see the defendant subsequent to sentencing and economy.

Homeless defendants. Required due date for defendant to report to clerk to set up a payment plan is set well into the future. Set aside of DUI and Drug Court costs by judge.

The economy is the largest factor today along with the migrant workers. They have no license so there is nothing to suspend and no address to contact them.

County probation collects their costs first and rarely violates defendants for failure to pay fines and costs, no enforcement by judge once defendant is placed on partial payment plan.

Automation issues.

The state of the economy, no job or income, homeless, sentenced to prison on other charges, incorrect address information, other defendant payment priorities.

Statutory--we cannot suspend a driver's license unless they have defaulted on a payment plan.

The economy and not having the assessment due immediately.

5.4 Civil Traffic Enforcement

5.4.1 Performance Data for Civil Traffic Collections

Minor civil traffic violations have higher rates of collection overall. Five of the participating jurisdictions met or exceeded the CCOC standard of 90 percent in the most recent two fiscal years and several came very close to the standard. Those counties that met or exceeded the standard are highlighted and shown in **bold**: (source Quarterly Performance Report required by F.S. 28.35)

<u>County</u>	Average Collections 2010-2011	Average Collections 2011-2012
Polk	91%	90%
Orange	83%	87%
Volusia	91%	93%
Dade	74%	84%
Pasco	89%	88%
Lee	81%	83%
Duval	85%	83%
Sarasota	91%	90%
Lake	86%	89%
Escambia	87%	87%
Seminole	89%	89%
Broward	84%	87%
Pinellas	96%	94%
Palm Beach	90%	90%
Hillsborough	80%	no data

Table 5: Civil Traffic Collection Rates

The 16 surveyed courts have 132 judges and 80 hearing officers assigned to conduct civil traffic offenses. Judicial resources range from one hearing officer and judge in Lake County to 31 judges and three hearing officers in Orange County.

This section solicited information on the consistency of sentencing practices, the relative rates of dismissals, continuances and contested violations; the frequency of request for payment plans; and enforcement practices. Respondents were also asked to identify barriers to performance.

Case processing highlights. In the surveyed counties 132 judges and 80 hearing officers are responsible for the adjudication of civil traffic cases. Over three million cases were filed in these courts during fiscal year 2011/12. In six of the counties judges are reported to have adopted similar practices for processing traffic cases, and in nine the hearing officers follow standard processes.

Case characteristics. Respondents were asked to estimate the percentage of cases which are contested, dismissed, and continued in their courts. There is a wide range of responses. For instance three counties report that less than ten percent of cases are contested, while two report over 50 percent. Others are distributed in between. The majority of respondents (10) indicate that fewer than 25 percent are dismissed, although two report dismissal rates over 50 percent. Half report that between 11 and 25 percent of the cases are continued, with others reporting higher and lower percentages. “Judicial discretion” was the primary reason given for continuances.

Assessment. A majority of respondents indicate that defendants are asked if they need time to pay at sentence, although about half the clerks indicate that defendants are also notified that fines and costs are due on the date of sentencing.

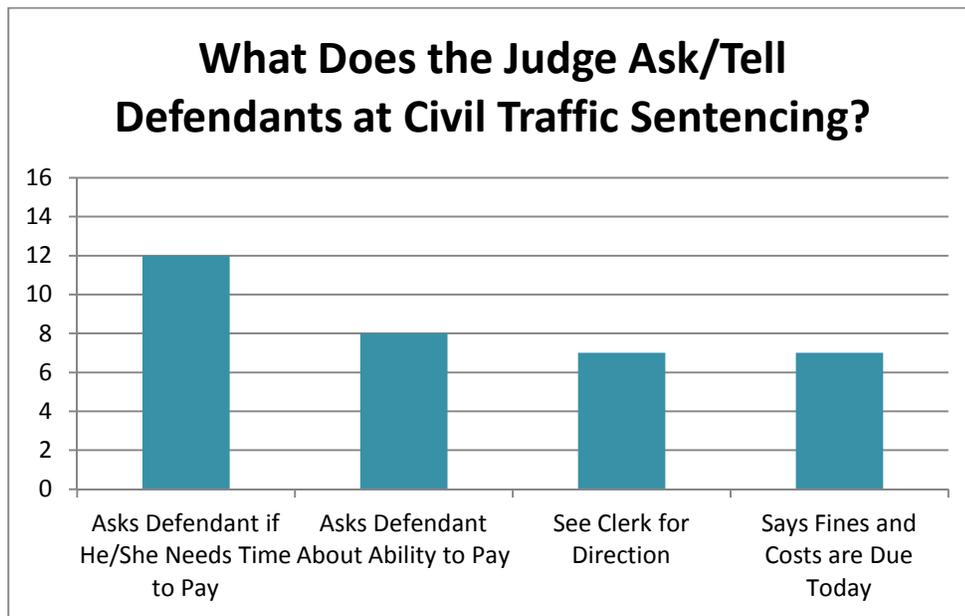


Figure 6: Instructions to Defendant at Sentence - Civil Traffic

Enforcement. Over half the reporting jurisdictions do not send reminder notices to defendants who are in default. Among those that do, three send them prior to the payment date, and four after a payment has been missed. Most of the counties (13), however, report that they send accounts to collection agents. Those that do not either view third party collections as ineffective or are satisfied with their current collection rates. Although all clerk's offices that utilize collection agencies generally wait 90 days before sending them, two report that the clock is based on the offense date as opposed to the date of delinquency. Of those that report based on the delinquency date, most make exceptions on a case-by-case basis if necessary.

Barriers. The following barriers to the effective collection of civil traffic cases included the following:

Judge/hearing officer extends due date and pulls cases back from collection agency

Extended due dates from judge/magistrates, too many payment plans with extended dates, allowing too many payment plan (repeat defaults)

Seasonal residents

Toll violations are never paid within the due date and could be a year later before the defendant notifies clerk office. Then a payment contract is started. Because of economy, 90% std. seems unreasonable.

Judges impose community service in lieu of fine.

Migrating to a new case management system which will allow sending all outstanding traffic citations to collection agencies.

The economy

Actions to improve compliance with civil traffic cases. Participants also identified activities or conditions that would improve defendant compliance:

Need staffing resources and currently upgrading automation

Enhanced collection methods

Upgrading automation

Place limits and terms on payment plans

Upgrading on-line payment

Need staffing resources and automation for voice response system

Court needs to enforce repeat defendants

No clerk control

Need additional staffing and technology upgrades

Increase funding/staffing

Currently upgrading automation

5.5 Utilization of Collection Agencies

The 15 clerk's offices that refer overdue accounts to collections reported the following data for the total amount referred and collected during the most recent three year period:

	2009-2010	2010-2011	2011-2012	TOTAL
Total Referred	\$ 291,119,089	\$ 249,762,958	\$ 464,226,941	\$ 1,005,108,988
Total Remitted	\$ 41,190,011	\$ 47,290,476	\$ 52,183,824	\$ 140,664,311
Collection Rates	14.15%	18.93%	11.24%	13.99%

Table 6: Three Year Collection Agency Rates - Survey Clerks

Five of the jurisdictions reported only aggregate data. Among those they were able to break data out by case types, seven are sending overdue accounts to collections for all case types. Dade County reported that circuit criminal and civil traffic cases are referred, Broward refers county criminal and traffic cases, and Pasco County refers only civil traffic cases. Larger jurisdictions, such as Dade County, utilize more than one collection agency.

Although the effectiveness of collection agency referrals varies with the age and type of debt, the rates of third party collection for the participating jurisdictions are generally in line with results in other jurisdictions across the country.

5.6 Payment Plan Processing

This section deals more specifically with the administration of payment plans. Florida statute 28.246(4) requires that clerks establish payment plans for defendants who cannot afford to pay fines, fees, service charges, and costs at the time service is delivered or the fines and costs are imposed. Effective management of payment plans, including the determination of need at sentencing and follow up enforcement has a substantial impact on collection performance.

Characteristics of plans. The following chart illustrates the estimated volume of new payment plans created by the clerks' offices participating in the survey.

Estimated NEW Payment Plans Monthly Average

County	Circuit Criminal	County Criminal	Criminal Traffic	Civil Traffic	Total
Polk	350	400	400	100	1,250
Orange	1,000	1,000	750	500	3,250
Volusia	0	360	360	0	720
Dade	180	150	500	5,000	5,830
Pasco	0	390	520	300	1,210
Lee	0	18	131	522	671
Duval	33	115	563	230	941
Sarasota	27	55	168	108	358
Lake	170	170	215	415	970
Escambia	28	18	29	133	208
Seminole	50	200	200	0	450
Broward	140	55	150	440	785
Pinellas	20	357	500	288	1,165
Palm Beach	25	70	300	900	1,295
Hillsborough	43	71	0	5	119
Brevard	33	50	60	240	383
Total	2,099	3,479	4,846	9,181	19,605

Table 7: Estimated New Payment Plans per Month by County & Case Type

Clerks primarily base payment amounts on clerk guidelines. Only two report that the payment amount is based on the two percent rule for plans authorized pursuant to §28.246 F.S.

The percentage of these accounts that are estimated to become delinquent on a monthly basis varies among the respondents. A little over a third report that 26 to 35 percent are delinquent, with slightly smaller numbers reporting lower delinquency rates (25 percent or less) and higher (36 – 50 percent). One response indicated that delinquency rates for partial payments exceed 50 percent a month.

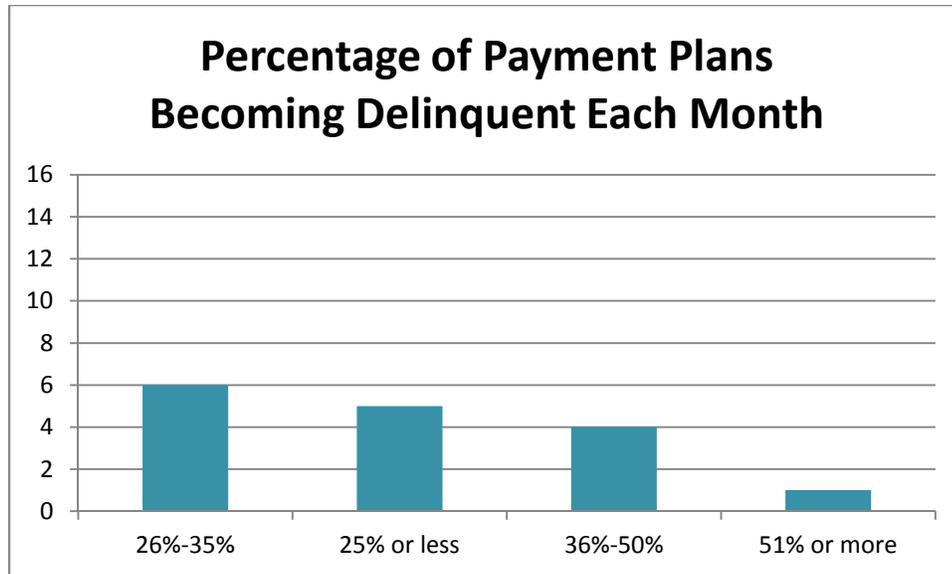


Figure 7: Frequency of Payment Plan Delinquency

Collection of defendant data. Having current and complete information regarding defendants who have been granted time to pay assists the clerk when follow-up enforcement is necessary. Personal contact information, as well as employment and banking information improve the chances of recovering overdue debt. The following table illustrates what information is currently being collected when defendants are placed on a payment plan:

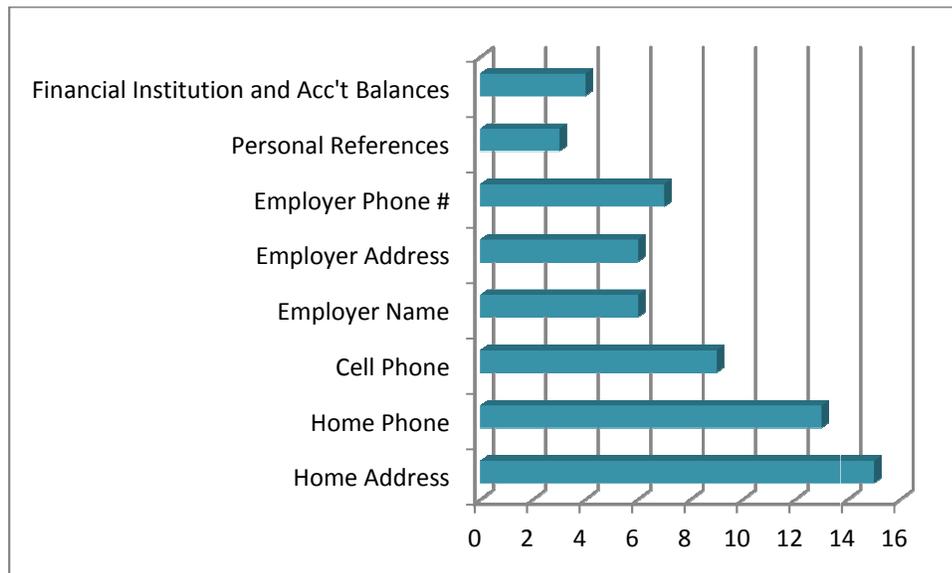


Table 8: Collection of Defendant Information at Sentencing

All respondents indicate that the defendant’s signature is required; however, very few report that the information is verified. Almost two thirds interview the defendant, usually at sentencing.

Roles. Setting up payment plans is primarily the responsibility of the clerks' offices among those responding to the survey. Half of them base the schedule on the defendant's financial situation, with a small number having standard payment periods of 30 or 60 days, or base the schedule on the total amount due. Ten report that minimum payments of \$50 or less are required, the remaining six do not require a minimum payment.

Assessment of fees. All participants reported that they impose the \$25 payment plan fee, and all but two do so on a case-by-case basis. Two jurisdictions assess the fee on a per defendant basis and one does both. Less than a third of the courts indicate that the fee is not assessed when waived by the court, and in one case the fee is waived if the payment plan is set within 48 hours of sentencing.

Frequency of payments. Most clerks (11) in the group do not allow a payment to be missed without a response, with two reporting that they allow one missed payment and three allowing multiple missed payments. Most allow defendants to re-establish their plan, although one court refers cases immediately to collections and the other does not allow defendants to "game the system." A majority (11) limit the number of times a defendant can re-establish their payment plan.

Enforcement follow-up. As the following chart illustrates, issuing late notices to compel compliance remains the primary method of clerk office enforcement in addition to referral to collections.

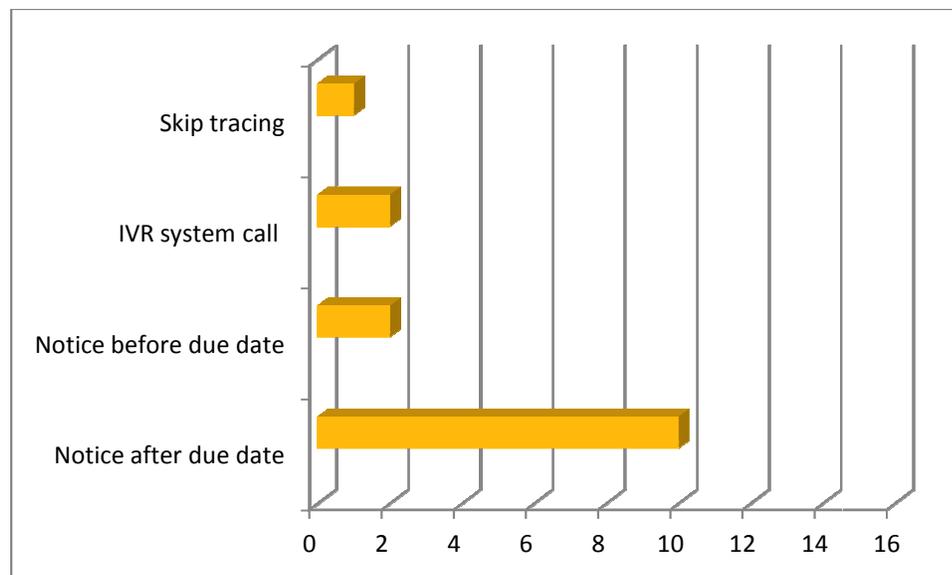


Table 9: Enforcement Actions for Non-Payment

Most of those respondents who issued notices found them to be effective, as did those who used interactive voice response (IVR) notification systems. The respondent who has used skip tracing did not rate the procedure as effective in compelling compliance.

5.7 Collection Courts

Clerks' offices in the counties of Polk, Orange, and Sarasota reported on the administration of collections "courts" or specialized dockets to compel compliance. The following chart illustrates the estimated percentage of appearances, payments in full, and the actions taken for failure to appear for the collection docket:

County	Notification to Appear				
	Monthly Estimate Writs/Warrants /Notices	Estimate Writs/ Warrants/ Notices	Estimated Writs, Warrants/Notices that Pay in Full and do NOT have to appear in court	Estimated Defendants that appear in court	Estimate Defendants that appear pay in full
Polk	1,000	Not available	20%	11-25%	1-10%
Orange*	1,100	11-25%	1-10%	50% and above	0%
Sarasota**	47	26%-49%	1-10%	50% and above	1-10%

*Writs are served by police officers

**Warrants/Notices are sent via mail

Table 10: Selected Data on Collection Courts

These offices were also asked to estimate the personnel costs for each court session. In all three counties, sessions are scheduled twice per month; however, the staff resources vary considerably. Polk County reports only \$50 per session in clerical staff costs, while Sarasota reports that each session requires \$937 in clerical staff resources. One reason Polk has less costs is their use of in-house staff instead of judges and hearing officers. Orange County estimated clerk resources at \$720 per session, plus \$160 for "other" staff. Orange also estimated the cost of the hearing officer's time at \$110 per session. Respondents from both Orange and Sarasota Counties do not view the collection docket in their jurisdictions as cost-effective at this time.

5.8 "Tool Box" Recommendations

The various activities and techniques used to collect court-ordered debt are often referred to as the collections "tool box." This set of questions was designed to solicit opinions about the effectiveness of current methods employed by clerks, as well as methods used in other jurisdictions that might be applied to Florida.

Evaluation criteria. Survey respondents were asked to comment on the criteria they believe are most important in evaluating the effectiveness of various collection activities. The results are illustrated below:

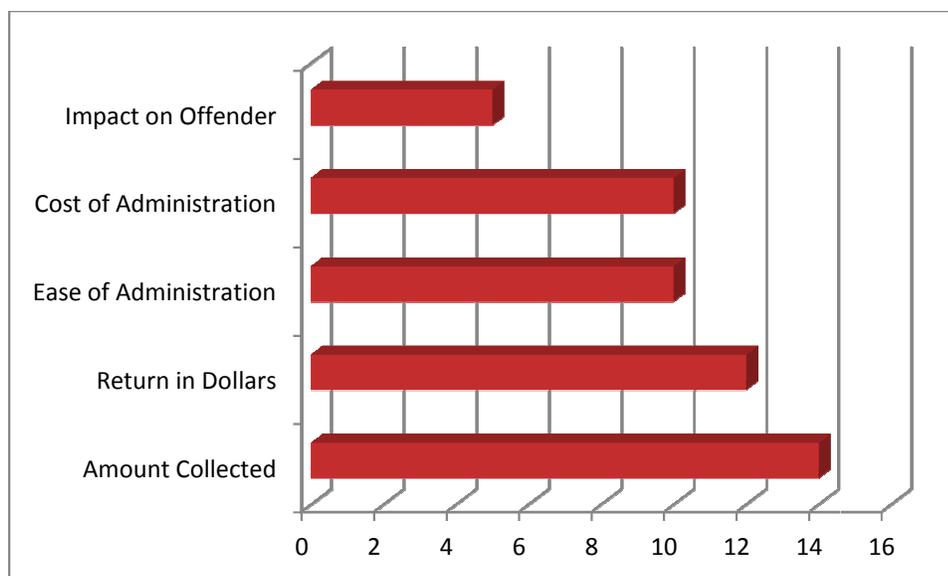


Table 11: Criteria for Selection of Enforcement Actions - Clerks

Effectiveness of various tools and payment methods. The surveyed clerks were asked for their opinions regarding the relative effectiveness of current enforcement tools at their disposal.

For circuit and county criminal cases a majority (13) ranked license suspension sanctions as *very effective*. The impact of late fees was split between *not effective* or *moderately effective*, with the exception of one respondent who rated them as *very effective*. Clerks using collection agencies were evenly split in rating their effectiveness as *moderate* or *very effective*. A majority rated entry of liens as *ineffective*. Two courts where warrants are used rated them as *very effective* and show cause proceedings as *moderately effective*. None of the respondents are currently using other civil procedures to collect on delinquent accounts.

All respondents are utilizing credit card payments and rank this method of payment as *moderately* or *very effective*, as are cash bonds. Just over half are equipped for internet payments for criminal court cases, which receive high ratings from most of those that use them. Seven of the offices have dedicated collection staff and six rate them as *very effective*. Although only three report using IVR systems, two rate this payment method as *very effective* and the other as *moderately effective*.

For civil traffic collections driver's license sanctions were also rated as *very effective*, with the exception of one response. All respondents also rated collection agencies as *moderately* or *very effective*, but opinions were split on the imposition of late fees to compel appearance.

The participating clerk's offices all allow credit card payments for civil traffic, and nearly all rate it as *very effective*. The use of internet payments is higher for this case type, and a large majority also rate this as *very effective*. The few that have dedicated collection staff

also rate them as *moderately (1) or very effective (4)*. Telephone reminders are used by only one office who rates this as *moderate* on the effectiveness scale.

Other methods of enforcement. Participants in the survey were also asked what additional tools they would consider using to improve collections based on similar programs in other states, as well as identify potential implementation issues. The clerks surveyed showed general support for adoption of legislation to allow vehicle registration holds, wage and bank account assignment, federal tax offset, and credit bureau reporting. Over half indicated support for the remainder, including commercial and motor vehicle impoundment, warrant sweeps fine amnesty, and authority to issue warrants in traffic cases. Other suggestions included:

- Contracting for professional services in the “front end” of collections
- Requiring debtors to pay from monies acquired through inheritance, settlement agreements, insurance benefits, real estate income, etc.
- Criminal penalties for failure to disclose assets
- Publication notice
- Suspension of professional licenses.

A table summarizing these responses along with comments on implementation issues is in Appendix C.

6 Principles and Practices

6.1 Collection Principles

The increasing attention that has been focused on the enforcement of court-ordered financial obligations in recent years has encouraged policy makers to identify policies and techniques that lead to more effective outcomes. As courts and other government agencies continue to struggle with providing mandated services in the face of limited appropriations, knowing what works and what doesn't has become more critical. Drawing on experiences in both the courts and the public sectors, the NCSC has identified the following core principles as a tool for evaluating collection programs:

Collections Program Core Principles
Show judicial and administrative commitment to collecting fines and fees
Clearly define responsibility for collecting fines
Set short time periods for payment
Communicate to defendant what is expected
Establish and adhere to collection procedures
Set collection goals and monitoring performance

Respond immediately to nonpayment or nonappearance
Apply a range of effective sanctions for noncompliance and use them similarly in all cases
Maintain strong financial controls
Ensure procedures are understood by everyone including judge, prosecutors, defendants, court staff and the bar

6.2 Effective Practices

Drawing from these principles, there are specific policies and practices that have been proven to enhance the effectiveness of collection programs:

- Assess fines at amounts that can be paid
 - Take into account defendant's income and assets
 - Take into account total monetary sanctions
 - Create the expectation that payment will be made at sentencing
- Grant time payments on the basis of real need
 - Require a minimum payment
 - Minimize the number of installment payments
 - Keep the total period as short as possible
- Tell the defendant what is expected
 - Where and how to pay
 - Consequences of non payment
 - Provide details in writing
- Use incentives to encourage prompt payment
 - Surcharge for late payment
 - Suspend sentence conditioned on timely payment
 - Provide multiple payment methods (cash, credit card, internet)
- Use effective collection systems and procedures
 - Reminder letters/calls
 - Automated processes
 - Integration of financial and case management functions
- Define staff roles and responsibility
 - Setting payment plan terms
 - Determining eligibility
- Set goals and monitor performance
 - Regular review of individual cases
 - Publication of aggregate performance data
- Immediate response to non-payment
 - Notice to defendant by phone, text, mail and/or email

- Use graduated responses and sanctions to respond to non-payment
 - Warning letter
 - Phone call
 - Show cause
 - License sanctions, if authorized
 - Bench warrant
 - Third party collection referral
- Establish sound financial controls
 - Schedule regular financial audits
 - Document and distribute policies
- Develop effective information systems
 - Complete assessment and payment information
 - Automated reminder and responses to non-compliance
 - Aggregate and case level reporting
 - Interface capability with third party vendors
 - Flexible partial payment account scheduling
 - Collection of defendant personal and financial information
- Develop management reports
 - Pending caseload of open accounts
 - Accounts opened and closed monthly
 - Compliance trends
 - Assess impact of various collection methods
- Collaboration with external agencies
 - Coordinate collections with probation and parole
 - Educate prosecution and defense regarding expectations

The term “collections” sometimes contains a negative connotation in the courts, leading to statements from the judiciary such as “the courts aren’t collection agencies,” which suggest that the responsibility for enforcement of monetary judgments is an executive branch function. A broader view recognizes that collection activities are part of an overall effort to achieve higher levels of compliance with court orders. Just as judges and clerk staff expect that jail sentences, community service, and treatment orders will be complied with, there should be a similar expectation that fines, restitution, and other penalties and reimbursements will be paid unless the defendant is legitimately unable to comply due to indigence.

Another important observation is that an effective collection program involves a continuum of methods beginning with the defendant’s first contact with the court and clerk’s office. As these best practices illustrate, there are a number of activities and behaviors that can be adopted by judges and court support staff in the *assessment phase* that increase the probability of compliance. Paramount is creating the expectation that compliance is mandatory and that sanctions will be applied. In the *enforcement phase* the focus is on applying the right tools to compel compliance in a timely manner.

The view of collections as a continuum includes the recognition that collection is not just the domain or responsibility of the clerk's office. Actions taken by judges at sentencing, involvement and coordination with probation and parole, information systems support, and collaboration with other justice agencies all figure into the equation.

7 Comparative Collection Rates and Standards

The success that individual clerks and courts have in collecting court-ordered financial sanctions depends on a number of variables, including:

- Local socioeconomic conditions
- Type of case
- Type of debt
- Transient or mobile population
- Available program resources
- Proportion of “waivable” or dismissed cases

Research has generally revealed that compliance with less serious misdemeanor and civil infraction penalties is higher, while rate of collection of felony financial orders is considerably lower. This is likely attributable to a variety of factors. Restitution is ordered more frequently and at higher amounts in felony cases than misdemeanors, making full compliance more difficult. Defendants with serious charges are less likely to have the economic means to pay large fines and restitution, and many will serve jail or prison terms before being required to begin making payment.

In areas with significant migrant populations or a large proportion of out-of-state defendants, there may be challenges in compelling appearance or compliance, particularly with minor offenses. The nature of some case types, such as toll or parking infractions, may result in high percentages of dismissals which tend to result in lower collection rates. Although local economic conditions should intuitively be a factor in lower collection rates, courts which follow the principles of setting reasonable penalties and practice early and consistent enforcement, can still show positive results.

As awareness of the effectiveness of collection techniques has increased and more emphasis has been placed on the development of performance measures across the public sector, jurisdictions have started to evaluate their performance in this area. As noted in this report, the CCOC has taken the lead in establishing and publishing performance data. The following are some examples of reported collection rates for various types of debt across the country, though it should be noted that Florida has structural and statutory differences:

Arizona – The data from misdemeanor criminal cases in eight limited jurisdiction courts found an overall compliance rate was 70 percent for the collection of monetary penalties with a due date for final payment within the established timeline. An overall compliance rate of 33 percent was found for cases with final due dates falling outside the established timeline. Restitution payments compliance was 44 percent. Interestingly, the court with the highest overall compliance rate showed cases were paid in full at the time of sentencing.⁸

Colorado – Courts report that 50 percent of restitution is paid in full within three years and another 20 percent partially paid. Over a five to six year period the percentage of

⁸ Dybas, Julie Application of CourTools Measure 7. Institute for Court Management Court Executive Development Program research paper, May 2007.

payment in full reached 65 percent. A ten year analysis of all offenses (infractions to felonies) found that 70 percent of total amount assessed had been collected. Payment rates for traffic-related cases were 82 percent.⁹

Michigan – The Michigan State Court Administrator’s Office is currently studying collection rates in the state’s district and circuit courts as part of a state-wide program. The study is measuring cumulative collection rates over 18, 30, 42, 66, and 78 month periods. Preliminary results indicate that over a period of 78 months, district courts collect over 90 percent of assessments for misdemeanors and civil infractions. In the circuit courts, the 78 month collection rate is just below 30 percent, according to the data currently available.

Federal Courts – A General Accounting Office study revealed that criminal debt collection in the federal courts averaged about seven percent over a five year period. Two thirds of the outstanding amount was restitution.¹⁰

⁹ Litschewski, Paul. Fines and Restitution, Collecting by Investing. The Court Manager, Volume 26, Issue 1.

¹⁰ GAO-01-664 Criminal Debt Collection

8 Enforcement Tools and Their Impact

8.1 Third Party Contracts

Numerous state and municipal trial courts utilize third party services to enforce outstanding financial obligations, as do many of the Florida clerks. Authorizing statutes generally allow third parties to recover the costs of collection from the defendant, rather than the referring jurisdiction.

Colorado courts report that approximately \$5 million is being recovered annually, representing payments on 15 percent of the referred accounts. Cases are referred to agencies on the Judicial Department list of eligible providers after the courts have exhausted internal collection efforts. A limited number of jurisdictions have outsourced a substantial portion of the collection function to the private sector, including ticket entry and most post-judgment activities such as reminder notices, work that would normally be performed by court clerical staff.

According to the Association of Credit and Collections Professionals¹¹ by comparison, the auto market has the highest recovery rate of 65 percent, with the lowest rate being two percent for child support collection. One of the issues for many courts using third party services is when to refer cases to collections. The Association also reported that the average recovery rate for accounts referred within 30 to 60 days is just under 28 percent, compared with half that amount, just under 14 percent, for those referred after 181 days. Many jurisdictions, however, prefer to send notices and fulfill statutory requirements, such as license suspensions for traffic offenses, before referring cases for third party enforcement.

8.2 Vehicle Registration Hold

The states of Delaware, Iowa, and Ohio (among others) deny renewal of a vehicle registration for non-payment of outstanding fines. Because renewal of vehicle registration occurs annually, unlike renewal of a driver's license which may occur every five or ten years, placing a "hold" on a vehicle registration motivates people to pay or begin payment annually. Most people need a vehicle for personal use, and most people have a vehicle, so this sanction applies to a large percentage of the population who has court financial obligations.

One objection to this approach may be that the registered owner would be denied registration if the entire amount was not paid in full. An exception can be drafted that allows registration if the defendant enters into a payment plan, and begins payment of the obligation. Failure to continue to pay according to the plan would result in reinstatement of the hold, as well as additional sanctions recommended in this report.

8.3 Professional and Recreational License Hold

The states of Idaho, Iowa, Minnesota, Missouri, Pennsylvania, and Wisconsin deny issuance or suspend a hunting license for non-payment of fines. If the judgment is unpaid, the person's hunting, fishing, or trapping privileges are automatically revoked without hearing until the judgment is paid in full.

¹¹ Government Collections Fact Sheet, ACA International, 2002.

One objection to this approach may be that the person would be denied hunting or fishing privileges if the entire amount was not paid in full. An exception can be drafted that allows licensing if defendant enters into a payment plan, and begins payment of the obligation. Failure to continue to pay according to the plan would result in denial or suspension the following year, as well as additional sanctions recommended in this report. A prerequisite to this process is the development of a seamless system of reporting and updating information from and to the courts from the various licensing agencies.

8.4 Scheduled Reviews and Show Cause Dockets

Scheduled review hearings have been implemented to ensure that defendants who are allowed to make payments on a scheduled plan are being regularly reviewed by the court. Typically, the court will set an appearance date that coincides with the monthly payment date and defendants who pay on time do not need to appear. Those who do not pay as scheduled must appear before the judge and offer an explanation. Non-appearance results in the issuance of a bench warrant for contempt.

Show cause dockets are specially scheduled hearings in which defendants who have missed a payment are noticed to appear and explain the reason for their non-compliance. Notices are usually issued informing the defendant of the requirement to appear, and as in a review hearing, the court usually proceeds to issue a warrant for non-appearance. If the defendant appears they will usually be required to make an immediate payment, and the terms of the payment order may be modified if required by the defendant's financial situation. A limited number of courts may also refer defendants to employment resources and job skills programs.

The 47th District of Farmington Hills, Michigan was able to reduce a backlog of cases by implementing a show cause docket in 2002. The court found that approximately 30 percent of those summoned pay before the show cause date, ten percent show for the hearing, and 60 percent fail to appear and bench warrants are issued. When bench warrants are issued, bonds are set at amounts to cover fines and costs due.

In the Memphis, Tennessee General Sessions Court, magistrates preside over weekly show cause dockets. Defendants are usually required to make a minimum payment before being allowed to leave. A special seating area is provided for defendants to make phone calls to friends or relatives if necessary. Sheriff's deputies escort defendants to the payment office to ensure that they do not abscond.

Lyon County, Kansas, conducts a collection docket twice a month, with approximately 60 cases set per session. Court staff work with defendants who are summoned to appear and their attorneys to encourage payment and resolve any issues that do not require judicial involvement. Once the preliminary screening is complete, the judge takes the bench and handles the remainder of the cases, which is typically about 10% of those who appear.

8.5 Stakeholder Coordination & Collaboration

Florida clerks play a key role in the enforcement of court-ordered financial sanctions; however, as highlighted in the best practices, an effective collection program is a continuum of activities. It is crucial that there be collaboration and coordination among clerks, judges, probation and parole officers, prosecution, defense, law enforcement, and information system providers. Many

jurisdictions have convened local work groups to address better coordination of information and resources.

The 7th Circuit Court in Genesee County, Michigan, called a “financial summit” with key stakeholders in attendance. The court took the lead and ownership of the responsibility to impose and enforce financial sanctions. A number of collection activities were agreed upon and data was collected. A collection comparison showed that the court increased overall collections from \$653,494 in 2005 to \$953,045 in 2006.

8.6 Fine Amnesty

Amnesty programs are a way of encouraging compliance with payment of overdue fines for minor offenses. Courts may offer various incentives, such as waiving interest, late fees, or certain costs associated with the penalty. The benefits of fine amnesty are usually short-term as defendants will be granted a limited window of opportunity to take advantage of the program. Amnesty is most effective when the incentive is generous enough to encourage compliance but does not substantially reduce revenue.

One of the concerns with this approach has been that unless the program is coupled with enhanced enforcement efforts, courts are sending the message that if one ignores a court order long enough they may get a better deal. For that reason amnesty should only be offered as a one-time event or on a very infrequent basis. Before deciding to allow an amnesty period, it is wise to assess the potential loss of revenue and the costs of operating the program against the potential returns. Further, there may be more effective program enhancements that offer better return on the effort.

A temporary fine reduction program was conducted by the state of Arizona involving two courts in late 2010. Defendants with amounts owing on civil traffic cases in collections three years or more were offered a 50 percent reduction in the total amount due. The program collected \$62,915 or one percent of total eligible receivables. The 395 cases that were closed represented approximately three percent of eligible cases. The evaluation report noted that “even though the amount collected fell within the expected range, the costs incurred to develop and implement this pilot project, compared to the final collection results, suggest further implementation in other courts is not warranted.”¹²

The California Judicial Council approved a state-wide amnesty program for six months beginning January 1, 2012, including both mandatory and optional programs. The statute authorizes and sets general guidelines for a one-time mandatory amnesty program in each county for vehicle code and non-vehicle code infractions meeting eligibility requirements. The bill allows, upon court and county agreement, a one-time amnesty program for specified vehicle code misdemeanors. The unreimbursed costs of operating the amnesty program, excluding capital expenditures, were deducted from the revenues collected by the court or county program that incurred the expense. All adult vehicle code and non-vehicle code infraction violations, as well as adult vehicle code misdemeanor violations with specified exceptions were eligible for the

¹² Report on the Results of the Arizona Judiciary Pilot Collections Project. Arizona Administrative Office of the Courts. March 2011.

amnesty program. The optional amnesty program included all vehicle code misdemeanor violations, with the exception of parking violations and violations of vehicle code.

In the first three months, the Superior Court in Fresno County had collected about \$92,000; the Tulare Court about \$266,000; the Kings Court about \$64,000; the Madera Court about \$17,000; and the Stanislaus Court generated approximately \$194,000 in revenue. A full report to the California Assembly is due shortly.¹³

8.7 Civil Process (liens, attachments, execution and garnishment)

Statutes in many states provide for civil remedies to collect court debt. Criminal fines, costs, and restitution are automatically converted to civil judgments, while others require the entry of a civil judgment and additional notice to the defendant. Authorization for civil enforcement provides additional tools in the enforcement tool box such as wage and bank account garnishments, executing against property and on wage assignments, and filing property liens.

Effective utilization of these tools requires obtaining sufficient defendant information to proceed with garnishments or execution, as well as staff resources to complete the necessary paperwork and notification. Resources of law enforcement or process servers may be needed. As a result, these methods may not be appropriate for every case; however, for larger overdue amounts where the defendant is known to have assets, these can be an effective method of collection. Wage assignments can be implemented with less effort. Depending on enabling statutes, some clerks require defendants who are employed to sign a wage assignment order as a condition of being allowed time payments. In practice, many defendants will pay up front rather than have their employer involved. Others find that regular payroll deduction is an easy way to stay current with their obligations.

Colorado statutes authorize the issuance of an “attachment of earnings” to recover court debt. Up to 50 percent of a defendant’s earnings are subject to attachment, although collection investigators set a lower percentage based on the defendant’s circumstances. The Colorado courts issue approximately 25,000 attachments of earnings orders annually, with returns estimated between \$3 and \$5 million.¹⁴

8.8 Collection Investigators

Collection investigator programs are established to improve decision-making when granting defendants time to pay and to better manage compliance by moving determination of a defendant’s ability to pay and suitability for a deferred or installment payment schedule out of the courtroom to clerks or court staff who are better able than the judge on the bench to make that determination. Typical duties of investigators include interviewing defendants who request time to pay, investigating or verifying the defendant’s financial situation, recommending a payment schedule, and following up with delinquent defendants.

When a defendant indicates that they cannot pay fines and fees in full, they will be referred to the investigator to complete a financial affidavit. The investigator will use this information to verify the defendant’s financial status and may have guidelines for determining eligibility and the terms

¹³ California Judicial Branch Home at <http://www.courts.ca.gov/partners/941.htm>

¹⁴ Litschewski, Paul. Fines and Restitution – Collecting by Investing. The Court Manager, Volume 26, Issue 1.

of the payment plan. An important task of the investigator is ensuring that the defendant understands the terms of the payment plan, their obligations, and the consequences of non-compliance. Charging a modest fee for the privilege of making installment payments, and submitting to scrutiny of one's financial circumstances, is sufficient motivation for about 40 percent of defendants who initially ask for time to pay, to go ahead and pay the obligation in full.

Collection investigator programs in some jurisdictions have paid for themselves through increased revenue collection. Other benefits include court time saved by freeing judges from having to determine the terms of payment in the courtroom, as well as reducing the number and length of payment plans and the resulting savings in clerical time.

The state of Colorado has taken the lead in establishing dedicated collection staff in the courts. The program manages over 200,000 defendants each year through 83 full-time equivalent investigators in each of the 22 judicial districts. Program costs are offset by specific assessments earmarked for this purpose.

8.9 Financial Management Counseling

A few jurisdictions have implemented programs that assist defendants who lack the means to pay fines with employment referral services and financial counseling. These are often in coordination with probation departments. The success of these programs depends on the availability of employment resources in the community, and requires monitoring and follow-up by court or probation staff to be effective. In some jurisdictions collection enforcement officers provide employment resources as part of their responsibilities.

8.10 Warrant Sweeps

Many courts have scheduled warrant "sweeps" where law enforcement and court resources are dedicated to a mass effort to arrest defendants with outstanding warrants for failure to pay or appear. A number of courts have reported that the sweeps have resulted in a significant increase in voluntary appearances, in addition to those individuals arrested as a direct result of the sweep.

Different approaches include conducting unannounced sweeps with concentrated law enforcement resources, as well as programs that notify defendants and the community in advance of pending enforcement. These programs require proper advanced coordination to ensure that resources are in place to handle the increased workload that results. In Lehigh County, Pennsylvania, the probation department and Bureau of Criminal Collections collaborate with law enforcement to conduct quarterly roundups. These roundups include advance meetings to coordinate notification to defendants and schedule their appearances to resolve outstanding balances.¹⁵

8.11 Voluntary Surrender

Voluntary or "safe" surrender programs have been offered in jurisdictions as a way of encouraging defendants who have an outstanding bench warrant, including those for failure to pay, to turn themselves in at an appointed time and location. Defendants who take advantage of the program will generally have an opportunity to take care of their non-compliance without the

¹⁵ Matthias, John and Klaversma, Laura. Current Practices in Collecting Fines and Fees in State Courts. National Center for State Courts, 2009.

need for incarceration. The program requires coordination among courts, law enforcement, corrections, prosecution and the defense bar for processing and adjudication.

A program sponsored by the U.S. Marshals Service had its start in Cleveland and became a national program resulting in the voluntary surrender of more than 34,000 people in 19 U.S. cities through 2011. The program began at Mount Sinai Church in Cleveland in 2005 and involved the participation of local clergy. The first Safe Surrender in Cleveland drew 838 fugitives. Since then, thousands more have surrendered at other programs across the country, including a record of 6,578 surrenders in Detroit in 2008. That was later topped by 7,431 in Cleveland.¹⁶ Although the Marshals Service announced that it was discontinuing funding in 2011, programs continue to be implemented in many local jurisdictions. Courts in a number of districts of New Mexico, where the issuance of bench warrants is a primary method of enforcing non-payment, hold Safe Surrender events several times a year.¹⁷

8.12 Prison Account Garnishments

A number of states authorize courts to garnish or sweep prisoner accounts. In Michigan, courts collected 51 percent of court orders issued to the Department of Corrections, yielding over \$3.5 million in fines and fees during a three-year period. The system relies on the automated exchange of account information between the DOC inmate accounting system and an interface developed by the State Court Administrator's Office.¹⁸

8.13 Debt Write-Off

One of the problems facing most jurisdictions is a substantial backlog of aging receivables. Once the clerk has complied with statutory enforcement requirements and performed any additional activities to compel compliance, these cases become essentially inactive. Some may be turned over to third party agencies, but otherwise they do not receive further attention. Courts are often subject to criticism for having large amounts of fines, costs, fees and restitution. Some outstanding obligations are uncollectable in any court.

In the private sector it is not uncommon for companies to "write off" uncollectable debt from their books. In essence, the debt is still owed but administratively segregated and classified as uncollectable. This concept may also be applied to court debt. Information about payment probabilities can help determine at what point a financial obligation is no longer collectable.

Court debt write-off can be based on a variety of factors. The debt can simply be classified as inactive based on the age of the debt, from date of last payment or last enforcement action. Different ages can be applied to different case types, if appropriate. Debt may also be considered inactive based on certain events specific to the case or debtor, such as death or bankruptcy. In bankruptcy, write-off would apply only to civil fees and costs that have been discharged through bankruptcy, so they are no longer owed. Fines and other non-dischargeable obligations such as restitution are not discharged in bankruptcy, but they may be uncollectable.

¹⁶ Cleveland Plain Dealer, U.S. Marshals Service Ends National Safe-Surrender Program, March 6, 2011.

¹⁷ New Mexico Safe Surrender web page at: <http://www.nmsafesurrender.org/nmss/inactiveeventpage>

¹⁸ Information provided by Collections Program Manager Beth Barber, Michigan State Court Administrative Office.

8.14 Model Plans

One approach to increasing awareness of collections and ensuring that courts are meeting basic statutory requirements for enforcement of court-ordered financial sanctions is to require the development of a local collection plan. Two examples are Missouri and Michigan.

In Missouri Rule 21.11, *Administrative Plan for Collection of Court Debt*, requires circuit courts to develop formal administrative plans for collection of court debt. The plans are reviewed and evaluated annually to ensure results are consistent with the plan objectives. The plans are required to address at a minimum: settlement agreements, payment plans, coordination with probation and parole, collection of board bills, review and write-off of accounts receivables deemed uncollectable, and sanctions for non-payment of debt.¹⁹

Michigan trial courts were directed by the Supreme Court to develop a program that conforms to the model developed by the State Court Administrative Office. Courts which did not meet minimum requirements were directed to prepare an action plan with a timetable to implement program components that did not exceed one year. Additional progress reports were required to ensure follow up. Assistance was provided by the SCAO to help courts meet these standards with minimum expenditure of additional time or resources.

8.15 State-Wide Programs

Several states have developed standards, best practices, or principles to implement successful collection programs on a state-wide basis. Texas officials encourage the development of successful collection programs with their key elements. California uses a comprehensive set of collection components to guide courts in determining successful collection programs. Michigan provides a publication called “trial court standards and guidelines” to assist courts in implementing successful processes. The following is a brief description of some of these programs and their key elements:²⁰

Arizona – The Arizona Administrative Office of the Courts initiated the Arizona Fines/Fees and Restitution Enhancement (FARE) program in response to a state budget crisis in 2003. The program features a public/private partnership between the courts, Department of Revenue, Motor Vehicle Division and a private vendor. The emphasis is on compliance with court orders and increased revenues through a variety of activities:

- Reminder notices
- State tax refund intercept program
- Delinquency notices
- Vehicle registration holds
- Web-based and IVR credit card payment capability
- Credit-bureau reporting
- Electronic skip tracing
- Outbound phone calls

¹⁹ Missouri Rules of Court accessed at: <http://www.courts.mo.gov/page.jsp?id=731>

²⁰ Matthias, John and Klaversma, Laura. Current Practices in Collecting Fines and Fees in State Courts. National Center for State Courts, 2009.

California – The California Judicial Council established a Collaborative Court-County Working Group on Enhanced Collections and in 2004 adopted policies to enhance collections based on recommendations from the working group. These included:²¹

- Establishment of definitions
- Standards for discharging debt
- Creation of trial court and county committees
- Requiring courts to submit mid-year and annual reports on activities
- Drafting and support for legislation to enhance collections
- Development of standards and guidelines for fee waivers

In addition, California established a program that allows a court or county with a collection program to deduct certain expenses for collection effort if they meet at least ten of the following 17 criteria:

1. Issue monthly billing statements
2. File liens on real property and proceeds of sale
3. Make telephone contact with debtor
4. File claims of objection in bankruptcys
5. Issue warning letters
6. Coordinate with probation department to locate debtors
7. Request credit reports to assist in locating debtors
8. Suspend driver's licenses
9. Access employment development department data
10. Accept credit-card payments
11. Generate monthly delinquent reports
12. Participate in court-ordered debt program
13. Participate in tax-intercept program
14. Contract with private debt collectors
15. Use department of motor vehicles information to locate debtors
16. Use local and national skip-tracing locator resources
17. Use wage and bank-account garnishments

As noted the previous section, the California courts implemented a six-month amnesty program in the first half of this year. An evaluation of the final results is pending.

Michigan - In mid-2004, Chief Justice Corrigan appointed a Court Collections Advisory Committee to develop a statewide strategy for improving collections. The strategy was to include methods to promote cultural change, improve data collection, identify training needs of judges and court staff, and implement cost-effective collection practices. Sub-committees were convened in each of the state's administrative regions. The committee

²¹ Sanora, Jessica. California's Enhanced Collections Unit, Judicial Council of California, Administrative Office of the Courts at http://www.victimsofcrime.org/docs/Report/2011_RestitutionReport_5-CaliforniaEnhancedCollections.pdf?sfvrsn=0

collaborated with the State Court Administrative Office to develop a survey of court collection practices and analyze the findings. The survey responses confirmed the need for direct technical assistance to the courts. This included the development programs, instructions, and data collection worksheets to be used for on-site collection reviews to evaluate and document courts' assessment, collection, and enforcement of financial penalties and obligations.

The Collections Advisory Committee identified nearly three dozen additional changes to statute and court rule that have the potential to further enhance collections. Courts were encouraged to develop pilot projects and best practices were identified for replication.

Texas – The Texas Office of Court Administration launched a voluntary model Collection Improvement Program in 1998. The principal elements were information and technical assistance for counties and courts to encourage improvement of local collection programs. The program promoted these principles:

- Staff or staff time dedicated to collection activities, local and contract
- Expectation that all court assessments are generally due at sentencing or pleading.
- Defendants are required to complete an application for extension of time to pay if payment in full is not made immediately.
- Application information is verified and evaluated to establish an appropriate payment plan for the defendant.
- Payment terms are usually strict (e.g., 50 percent of the total amount due must be paid within 48 hours; 80 percent within 30 days; and 100 percent within 60 days).
- Alternative enforcement options (e.g., community service) are available for defendants who can demonstrate their inability to pay.
- Defendants are closely monitored for compliance, and action is taken promptly for noncompliance. Actions include telephone contact, letter notification, and possible issuance of a warrant.
- Local staff may contract with private collection agencies or firms for the provision of collection services on seriously delinquent cases (61+ days), after in-house collection efforts are exhausted.
- Application of statutorily permitted collection remedies, such as programs for nonrenewal of driver's license or vehicle registration.
- Issuance and service of warrants, as appropriate.

In 2005, the Texas legislature enacted legislation that requires cities with a population of 100,000 or more, and counties with a population of 50,000 or more, to adopt a collection improvement program based on the voluntary model. The Texas Office of Court Administration estimates that in the five-year period from 2006 through 2010, the mandatory collections improvement program has generated over \$340 million in additional revenue.²²

²² Texas Office of Court Administration at: <http://www.courts.state.tx.us/oca/collections/collections.asp>

APPENDIX A – Study Participants

The NCSC team and CCOC wish to thank the following individuals for their contributions to the study survey:

Lake County

- Kevin McDonald; Budget Officer; 22 years of service
- Susan Hartman; Supervisor Deputy Clerk; 23 years of service

Broward County

- Dian Diaz; Chief Director, 23 years of service
- Mary Mossie; Chief Director, 30 years of service
- Becky Eckert; Senior Internal Auditor, 32 years of service
- Celestine Joseph; Court Operations Manager, 12 years of service
- Shawn Clutter; Business Analyst, 27 years of service
- Michael Wargin; Business Analyst, 22 years of service
- Melissa Proulx; Business Analyst, 22 years of service
- Elizabeth Szmekiewicz; Programmer Analyst, 14 years of service
- Jeffery Sutton; Chief Financial Officer, 12 years of service

Lee County

- Mary Kay Ditch; Court Services Manager, 4 years of service
- Kimberly Tester; Court Fiscal Analyst, 2 years of service
- Janice Bunting; Criminal & Traffic Court Manager, 6 years of service

Brevard

- Charlene Amos; Assistant Compliance & Collections Supervisor, 21 years of service
- Kim Booth; Criminal Law and Compliance Supervisor, 27 years of service
- Pam Lanier; Chief Deputy Court Operations and Judicial Liaison, 25 years of service
- Laurie Rice; Chief Deputy Official Records/IT/Clerk to the Board, 29 years of service
- Kimberly Thomas; Assistant Clerk's Finance Supervisor, 9 years of service

Miami-Dade

- Liza Saboya-Fernandez; Courts Financial Analyst, 20 years of service
- Margaret Enciso; Deputy Comptroller, 17 years of service
- Manuel Carames; Director, Traffic & Misdemeanor Courts, 31 years of service
- Diane Pattavina; Senior Court Operations Officer, Circuit Criminal, 22 years of service

Volusia

- Don Murphy; Director of Court Operations; 18 years of service
- Bonnie O'Keefe; Director of Fiscal Operations, 17 years of service
- Diane Bramer; Senior Project Specialist, 20 years of service

Palm Beach

- Louis Tomeo; Director; Criminal Court Service, 31 years of service
- Jessica Jefferys; Supervisor, 9 years of service
- Joseph Valentino; Director, Finance Services, 5 years of service

Hillsborough

- Shirley Eade; Director, Court Business Analytics, 26 years of service
- Douglas Bakke; Chief Deputy, 18 years of service

Duval

- Rose Devoe; Director of Criminal Court Operations, 30 years of service
- Jerry Benson; Chief Financial Officer, 6 years of service
- Tom Hiers; Assistant to the Clerk, 21 years of service

Pasco

- Paula S. O’Neil; Ph. D., Clerk & Comptroller, 10 years of service
- Nichole Alvarez-Sowles; Chief Operations Officer, 5 years of service
- Kimberly Collins; Director of Criminal Courts, 2 years of service
- Carol Condry; Assistant Director of Criminal Courts, 14 years of service
- Sandy Mercer; Operations Supervisor, 40 years of service
- Ginny Clemons; Operations Supervisor, 21 years of service
- Kelly Karppe; Operations Supervisor, 26 years of service
- Jackie Booth; Operations Supervisor, 8 years of service
- Len Mattison; Operations Supervisor, 5 years of service
- Cindy Flack; Operations Specialist, 32 years of service
- Audrey Canfora; Lead Criminal Celrk, 24 years of service
- Debbie Pierman-Quinones; Lead Criminal Clerk, 7 years of service
- Marta Calidonio; Customer Service Cashier Specialist, 8 years of service
- Patty Waller; Traffic Specialist, 13 years of service
- Pat Pamula; Trial Specialist, 15 years of service
- Barbara McGregor; Technical Support Technician, 23 years of service
- Sheila Jones; Criminal Specialist, 29 years of service

Escambia

- Cindy Rhodes; Administrator, 25 years of service
- Donna Oquist; Senior Director, 19 years of service
- Shirley Davis; Director, 33 years of service
- Mark Lowe; Director, 19 years of service
- Marilyn Taylor; Director, 18 years of service
- Bill Matthews; Information Systems Analyst, 22 years of service

Sarasota

- Susan Higel; Compliance Manager, 22 years of service
- Erin Cooper; Manager, Court Services (Criminal), 22 years of service
- Deborah Hoagland; Manager of Clerk Finance, 4 years of service
- Steve McElroy; Manager, Court Services (Traffic & Fines), 1 year of service

Pinellas

- Teresa Del Rio; Manager, Court Assistance Department, 27 years of service
- Brenda Church; Criminal Customer Service, 24 years of service
- Cathy Moore; Business Analyst, 22 years of service
- Connie Daniels; Director Court and Operational Services, 32 years of service
- Colleen Ford; Director Court and Operational Services, 25 years of service
- David J. Bateman; Director, Court and Operational Services

Polk

- Stacy Butterfield; Director of Finance and Accounting, 26 years of service
- Dan Bowden; Clerk’s Accounting Manager, 14 years of service
- Lyle Bulman; Director Criminal Division, 15 years of service
- Kristi Wagstaff; Collections Department Manager, 7 years of service

Orange

- Mike Murphy; Chief Financial Officer, 9 years of service
- Melissa Geist; Director, Court Operations, 20 years of service
- Kathryn Farynowski; Manager, Data Quality and Forecasting, 5 years of service
- Patti Wismer; Manager, Traffic Division, 23 years of service
- Karen Yanik; Manager, Criminal Division, 14 years of service
- Jodi Hurtado; Assistant Manager, Traffic Division, 15 years of service

Seminole

- Maryanne Morse, Clerk of the Circuit Court; 24 years of service

APPENDIX B – Example of State-Wide Florida Plan

<u>Consistency of Practices</u> Assessment, Monitoring and Enforcement	Circuit Criminal	County Criminal & Traffic	Civil Traffic
Assessment Practices			
One collection process for all judges that adjudicate	8	5	6
Statement at sentencing - consistent procedure	9	12	7
Payment Plans/Schedule			
created	16	16	14
home address	15	15	13
home phone	13	13	11
employer information	7	7	7
data verification	3	3	3
typical payment schedule 30-90 days	n/a	n/a	8
coincides with probation term	6	7	n/a
notification prior to default	0	0	3
Probation Process			
payment made to clerk directly	6	9	n/a
payment a condition of probation all cases	4	5	n/a
payment plans for probationers	8	5	n/a
payment plan terms made by clerk	4	6	n/a
monthly/regular payments	2	3	n/a
Enforcement			
Driver License suspended	7	12	16
Suspension date 90 days from due date	2	2	16
Collection agency used for delinquent accounts	8	10	13
Collection agency referral 90 days from due date	8	7	n/a
Collection agency referral 90 days from delinquency with exceptions	n/a	n/a	9
prison cases sent to collection agency	9	n/a	n/a
Prison Cases			
lien filed	12	n/a	n/a
clerk notified of prison release	2	n/a	n/a
Civil Traffic Cases			
contested cases 25% or less	n/a	n/a	7
dismissed cases 25% or less	n/a	n/a	10
continued cases 25% or less	n/a	n/a	13

APPENDIX C – Other Collection Methods

SUMMARY OF OPINIONS OF THE EFFECTIVENESS OF ENFORCEMENT METHODS NOT CURRENTLY AVAILABLE IN FLORIDA	
<u>Enforcement Method</u> (# clerks who would support)	<u>Implementation Issues</u>
Vehicle Registration Suspension/Hold (16)	<ul style="list-style-type: none"> • coordination with DHSMV • technology issues • cost to clerk • need support of courts
Federal Tax Offset (14)	<ul style="list-style-type: none"> • funding for programming • data issues for IRS • need data elements for case management systems • interface clerk systems with Treasury
Wage or Bank Account Assignment (14)	<ul style="list-style-type: none"> • coordination issues • technology issues • accounting issues • consistency issues • impact on employer • confidential information
Credit Bureau Reporting (14)	<ul style="list-style-type: none"> • automation • credit bureau prompts only if person wants to improve credit score
Automatic Civil Judgment (12)	<ul style="list-style-type: none"> • coordination of data to recorders • liens not effective and most defendants don't own property
Commercial Vehicle Impoundment (10)	<ul style="list-style-type: none"> • coordination • cost to clerk • cost effectiveness • impact on company • consistency issues • support of courts needed

<p style="text-align: center;">Fine Amnesty (10)</p>	<ul style="list-style-type: none"> • reduced revenues to state • cost to clerk • need standards and consistency • similar issues to compromise debt
<p style="text-align: center;">Warrant Sweeps (9)</p>	<ul style="list-style-type: none"> • jail impacts • courts and DOC will not support • cost to clerk • coordination issues with jail and DOC • currently do not issue warrants • legal implications for false arrest
<p style="text-align: center;">Motor Vehicle Impound (8)</p>	<ul style="list-style-type: none"> • coordination with DHSMV • cost to clerk • impact on defendants ability to work • may not be cost beneficial
<p style="text-align: center;">Warrants for Failure to Pay (8)</p>	<ul style="list-style-type: none"> • jail impacts • revolving door potential unless enforced by courts • doing so would create a criminal record for a civil infraction • budget/resource impact - more work • automation issues
<p style="text-align: center;">Compromising Debt 938.30(9), F.S. (authorized effective July 1, 2012)</p>	<ul style="list-style-type: none"> • reduced revenues to state • need standards and consistency • need to prioritize what trust fund is shortened • need court support