



Court Fine and Fee Collections Can Increase

at a glance

Fines, fees, service charges and court costs are important sources of revenue for the state courts system. Chapter 2003-402, *Laws of Florida*, specifies that judges are responsible for assessing and enforcing these obligations and court clerks are responsible for collecting them; cooperation between these parties is essential for the process to work.

Successful collections are related to defendants' ability to pay. Traffic fines typically have relatively high collection rates, while criminal case fines and fees generally have low collection rates as these defendants typically have few financial resources. Based on their experience, judges and clerks caution that many fines and fees will not be collectable. However, revenues should increase in many counties as judges and clerks work together to enhance collection processes.

From a business perspective, decisions on collection techniques should be based on expected returns. Promising collection models include structured payment plans, notification of debt, collection courts, private collection agencies, and clerks acting as collection agencies. Other options that appear less viable include electronic fund transfers, liens against defendants, garnishment, driver license sanctions for criminal offenses, and the intercept of tax returns. Due to variations in caseloads and available resources, counties should have flexibility to determine the most cost-effective approaches.

Accurate collection and assessment data is not yet available to evaluate court financial operations.

Scope

Pursuant to s. 11.511, *Florida Statutes*, the Interim Director of OPPAGA initiated this project in response to a legislative request to conduct a review of the collection of court fines and fees.

Background

Article V of the Florida Constitution establishes the judicial branch of state government. The constitution also delineates the courts system's key participants, including judges, state attorneys, public defenders, and clerks of the court. These elected independent officials interact as a part of a complex interdependent system.

In 1998, voters approved a revision to Article V, referred to as Revision 7, which allocates more costs to the state, effective July 1, 2004. To implement this constitutional revision, the Legislature adopted Ch. 2000-237 and 2003-402, *Laws of Florida*, which direct the state to pay for certain enumerated elements of the state courts system.

Court fines, fees, service charges and court costs are important sources of revenue for the state courts system.¹ These fines and fees may be assessed in both civil and criminal court cases. In Fiscal Year 2001-02, Florida county and circuit

¹ For purposes of this report, reference to fees includes court costs and service charges.

courts disposed of 952,009 criminal cases and 1,413,285 civil cases.² Of the civil cases, 61% were traffic cases that went to court.³

Chapter 2003-402, *Laws of Florida*, specifies that judges are responsible for assessing and enforcing these amounts while the court clerks are responsible for collections. The law provides an incentive for clerks to effectively collect these funds by directing that two-thirds of the funds collected be retained to fund the clerks' offices.⁴ The law also requires each clerk to maintain an accounts receivable system to compare the rate of collections against assessments.

The Auditor General is currently reviewing the extent to which judges have assessed fines, fees, service charges, and court costs as authorized by law and whether assessed amounts have been more effectively collected by in-house collection processes, collection courts, or collection agencies.

This OPPAGA information brief identifies key challenges in assessing and collecting court fines and fees, the perspectives of Florida judges and clerks of the court on collection initiatives, and promising models for collecting assessed fines and fees.

Ongoing Assessment and Collection Challenges

Effectively assessing, collecting, and enforcing court fines and fees has been a long-standing issue in both Florida and other states. National studies have identified four key challenges in this area, including

- establishing a cooperative collections process,
- defendants' ability to pay affects collections,
- implementing cost-effective collection methods, and

- obtaining reliable information about outstanding fine and fee balances.

To examine assessment and collection issues in Florida, we interviewed a sample of judges and clerks of the court, including some members of the Trial Court Budget Commission and the Clerk of Court Operations Conference; administrators of the Association of Court Clerks and Comptrollers; and staff of the Office of the State Court Administrator and the Department of Revenue.⁵

Establishing cooperative collection processes

Effective administration of fines and fees requires coordination among judges, clerks of the court, public defenders, state attorneys, local law enforcement, and the Department of Corrections.

Public defenders and state attorneys must cooperate with each other to negotiate plea agreements, including fine and fee amounts that are presented to the judge for approval. Judges assess and enforce fines and fees, while clerks record and collect them. In some counties, local law enforcement officers assist with collection enforcement by delivering notices warning defendants of potential repercussions for failure to appear in court to explain non-payment of fines and fees. Finally, the Department of Corrections supervises offenders on probation and collects and submits court fines and fees. If probationers fail to comply with payment requirements, probation officers alert the court so that enforcement action can be taken.

The best collection model appears to be a cooperative one in which the judge issues final orders, informs defendants of their financial obligations, and then sends them to the clerk's office to either pay the fine or set up a structured payment plan.⁶ This is consistent with the

² These figures exclude domestic relations, probate, and juvenile court cases.

³ This excludes traffic cases such as traffic tickets in which there was no court appearance.

⁴ The remaining third of collected funds is to be deposited to the Clerks of the Court Trust Fund within the Department of Revenue.

⁵ Our sample included 16 judges and 18 clerks of the court.

⁶ Several clerks asserted that it complicates collection efforts when judges establish payment due dates rather than simply assessing the fines and fees amount and allowing the clerk's office to arrange payment specifics. However, judges countered that it is important to establish a payment plan and dates to help ensure payment. The proposed model balances these perspectives.

division of responsibility provided in Ch. 2003-402, *Laws of Florida*.

Both judges and clerks reported that collection rates will improve if assessed fines and fees are realistically within the defendant's means to pay, contact and payment arrangements are made immediately following sentencing, and a payment plan is set up and explained to the defendant.

Defendants' ability to pay affects collections

A key factor in collecting court fines and fees is the defendants' ability to pay. The Florida Constitution prohibits imprisonment for unpaid debt, so a collection system that recognizes a defendant's ability to pay is essential.

The type of case also may affect the likelihood that fines will be paid. Collection rates are relatively high for traffic cases, as persons receiving traffic tickets generally are employed or have the chance to become employed, which increases their ability to pay.⁷ Individuals who have the ability to pay frequently do so in order to conclude the case and their contact with the court. In contrast, criminal defendants often have limited financial resources. Defendants who are incarcerated for an extended period of time generally have difficulty paying because few inmates earn money while in prison. Those who cannot pay their fines and fees upon sentencing may enter into a payment plan or ask the court for some alternative remedy or relief.

Although statutes authorize judges to assess fines and fees against defendants who are found guilty, judges do not always do so. Proposals have been made to require that judges assess such fines and fees in all cases. However, judges assert that assessing fines and fees against defendants who clearly cannot pay results in misleading data about the potential revenues that could be collected and consumes the court's and clerk's time without financial benefit.

Based on their experience, judges and clerks cautioned that while fines and fees are important sources of revenue, many will not be collectable. However, these revenues can be

increased if judges and clerks work together to enhance collection processes.

Using cost-effective collection methods

Prior to the passage of Ch. 2003-402, *Laws of Florida*, not all clerks actively collected assessed court fines and fees. Four of the 18 clerks we contacted had no formal in-house collection procedures and, for the most part, simply accepted money when defendants came to pay.

As the courts prepare to fully implement Ch. 2003-402, *Laws of Florida*, more clerks and judges are developing collection strategies. It is too early to determine which methods will be most effective throughout the state. However, we surveyed clerks and judges about which methods they believed would and would not work.

Five methods appear to hold the most promise for improving collections: structured payment plans; effective defendant notification; collection courts; using collection agencies; and clerks acting as collection agencies. Other potential collection tools, including electronic fund transfer, liens, garnishment of wages or bank accounts, driver license sanctions, intercept of IRS tax returns, and mandatory fines and fees were considered less viable at this time.

From a business perspective, decisions on which of these practices to use in particular cases should be based on the expected return. Due to differences among counties in the types of cases and defendants, there should be flexibility for counties to determine the most cost effective approaches.

Payment plans. There was general consensus that one of the most successful collection methods is for clerks to work with defendants who cannot pay their obligations at sentencing to set up realistic payment plans. Payment plans work well because they make clear to defendants how much they owe and allow them to meet their financial obligations over time. Structured payment plans also allow clerks to monitor defendants' payments and immediately notify the court of the need for enforcement action should the defendant fail to pay based on

⁷ Persons may also be motivated to pay traffic fines so that the state does not take action against their driver's licenses.

agreed-upon terms. The probation system uses structured payment plans.

Effective defendant notification. Some counties have effectively used brightly colored postcards reminding defendants of fine payments that are due or past due and that arrest warrants may be issued for failure to appear to explain non-payment. Clerks reported that minimal expense is involved in such notifications, and that cooperation with local law enforcement is helpful because the sheriff's authority can induce recipients to respond quickly. According to clerks in counties that use postcard notifications, this system improves collection rates.

A related practice would be to notify defendants prior to their court date that any imposed fines or fees are to be paid in full or in part at the time of sentencing. This would help ensure that defendants arrive more prepared to pay at least a portion of any assessed fines or fees. None of the clerks that we interviewed were currently using this technique.

Collection court. Judges reported that collection courts, which require defendants to pay or appear before a judge, work well in the counties that use this technique. These courts hold defendants accountable to the court—if a defendant pays his or her fines and fees according to the agreed-upon terms, the case is closed; if a defendant fails to pay, he or she must appear before a judge to explain why or risk issuance of a warrant for the failure to appear violation. Counties that use this method report that minimal resources are needed to generate revenue in collection court, but judges and clerks from counties with fewer resources are concerned that the costs would exceed the amount of revenue that would be generated.

Private collection agencies. Collection agencies have proven effective in some counties for collecting outstanding traffic fines and fees. This success has been attributed to the fact that traffic offenders are generally more likely to pay fines and fees than criminal defendants and are also more likely to be concerned about their credit ratings. Clerks have not had to pay for private collection agency services because under

s. 938.35, *Florida Statutes*, the agency was authorized to add a fee of up to 40% of the total fine and fee amount.⁸ Collection agencies generally are not used to collect fines outside of traffic court.

Clerks report that collection agencies obtain much of the outstanding debt simply by writing a letter reminding offenders of their obligations and potential credit report ramifications for not paying; frequently no further action is necessary. Some clerks favor the use of private collection agencies because they collect money that would otherwise not be collected. However, other clerks are concerned that collection agencies frequently specify a financial threshold and overdue period for the cases they will pursue, thereby taking only the easiest cases and generating little additional income beyond that which would be paid without collection agency action. Both clerks and judges voiced concern that the additional cost of up to 40% in addition to assessed fines and fees was excessive.

Clerks as collection agents. Several clerks expressed frustration that, given sufficient resources, the clerk's office could perform the same function as a private collection agency at a lower cost and thereby retain additional revenue for the court system. Unlike collection agencies, clerks are not authorized to impose an additional fee for collecting overdue funds. Some clerks are currently using their existing resources to send collection letters and retain the funds returned.

Electronic fund transfer. Clerks were split in their opinions as to whether obtaining defendants' permission to automatically debit their accounts on a scheduled basis would increase collection rates. None of the clerks we interviewed were currently using this technique. Some clerks cautioned that many defendants likely do not have a regular checking account balance that could be debited each month. In addition, this method would require clerks to establish a clearing account with their banks and pay a fee based on the amount of funds processed. Therefore, this option may not prove

⁸ Chapter 2003-402, *Laws of Florida*, amended that section which currently does not include language allowing collection agencies to charge defendants an additional fee. This question will be revisited by the 2004 Legislature.

cost-effective for many clerks, and all clerks reported that they would need additional office resources to implement the technique.

Liens against defendants. Financial penalties reduced to liens are authorized by law but rarely collected. Judges indicate that defendants appearing for failure to pay frequently ask for more time and are granted payment extensions. In some cases, the defendant simply cannot pay and the debt is either converted to community service or reduced to a judgment. The clerk then records a lien, which is a record of the individual's debt to the court. The court may later collect on the outstanding amount should the individual sell real property, for example. Both judges and clerks reported that little monies are collected as a result of judgment liens. Instead, liens create paperwork for clerks and are used as a last resort by judges to record outstanding financial obligations for collection in case the defendant's circumstances change.

Garnish wages or bank accounts. Clerks and judges were split in their opinions of using wage and bank account garnishments to fulfill court fine and fee obligations.⁹ Though many clerks were in favor of the idea, most reported that they do not currently have the resources to implement such actions and are unsure about what additional defendant information would be required. Some clerks who agreed with the concept suggested that garnishment be used as a last resort. Likewise, judges in favor of the concept recognized that it would take additional court and attorney time as an order of garnishment must be issued. However, judges and clerks expressed concern that employers must bear the burden of garnishment by deducting the appropriate amount from the employee/defendant's pay, and that job termination could result from revelation of the individual's conviction, thereby reducing the ability to collect. The clerks and judges were also skeptical that the typical defendant with outstanding debt would have either a bank

account with a sufficient balance or regular wages to garnish.

Driver license sanctions. Offenders in certain cases are currently subject to having their drivers' licenses suspended if they fail to pay monies owed by court order.¹⁰ Most clerks of the court we interviewed believed that suspending drivers' licenses or delaying renewal for failure to pay fines in other types of court cases would increase fine and fee collection rates, although judge's opinions were split. Most clerks reported that these mechanisms would require additional defendant information such as driver license number and could readily be expanded to other types of cases, although it would require additional office resources to implement. Some judges recommended that they be authorized to suspend or delay renewal of drivers' licenses as an option to induce defendants pay court fines and fees.

However, some clerks and approximately half of the judges asserted that imposing penalties against defendants' drivers' licenses for non-traffic offenses would not be appropriate. They stated that drivers' licenses are already overburdened with penalties; that the punishment would not fit the crime, and that suspending drivers' licenses would result in more unlicensed drivers and potentially more court cases. Judges noted that in some counties, geographic location and the lack of public transportation dictate that defendants drive, whether or not they have an active license.

Intercept IRS tax returns. While the Department of Revenue's child support enforcement unit is authorized to intercept IRS tax returns to collect outstanding child support, this option is not currently available to the state courts system. Federal legislation would be required to authorize the state to use this mechanism, so clerks' offices are not currently set-up to intercept and apply tax refund monies to outstanding defendant debts. Some clerks questioned whether this remedy would be appropriate to that defendant population, noting that many defendants may not file

⁹ Garnishment is a legal device used by a creditor to take a debtor's property that is held by a third person, or money owed to the debtor from a third person, and use it to pay the debt to the creditor.

¹⁰ Judges are authorized to suspend drivers' licenses in child support enforcement actions and prostitution cases, for example.

federal tax returns and receive refunds. Therefore, this mechanism would likely require additional resources for little return.

Mandatory fines and fees. Given the fact that court clerks are recording deviations from the maximum amount in a range of fines as waivers, we asked judges about the option of eliminating the current statutory range of fine amounts that may be imposed and establishing a requirement to assess a fixed amount of fines and fees for each offense. Although a few judges advocated a flat fine amount for all cases or asserted that a mandatory fine was better than an appearance of discretion if none existed, most judges opposed the principle of mandatory fines and fees as applied to most cases and strongly advocated for the exercise of judicial discretion. They noted that they work to balance punishing defendants with the need to avoid imposing such large penalties that defendants give up or resort to further criminal activity to meet outstanding financial obligations.

One unintended consequence of establishing a mandatory fine and fee schedule could be increased docket size, as defendants who are unable to pay the higher assessed amounts must come before the court to explain or ask for alternative remedies.

Flexibility using collection mechanisms. Due to the differences among counties in the types of cases filed in the courts and the characteristics of defendants, both clerks and judges asserted that establishing a uniform collection model that used specific collection mechanisms for all cases should be avoided. Judges and clerks reported that smaller counties generally have fewer resources to devote to collection efforts but frequently have the advantage of knowing people in their communities. The resulting community peer-pressure can assist collection efforts. Larger counties likely have more resources for collection efforts but are also more likely to have larger dockets. Generally, clerks believe they should have authority to use several collection mechanisms and identify those that best fit with their court's resources and prove to be most effective in their community.

Obtaining reliable information

Operating a successful collection system requires reliable information. Ch. 2003-402, *Laws of Florida*, requires clerks to shift from a case-based data collection system to an accounts receivable system. This shift is necessary to provide the Legislature, judges and court clerks with reliable financial information, but requires a realignment of resources. It will take time for the clerks to accurately capture the data needed by the Legislature to meaningfully analyze court financial operations. Achieving accurate and reliable data will, most likely, require multiple data revisions.

Recorded waivers. Current data on fines and fees that have been assessed against defendants does not accurately reflect what some judges and clerks consider to be collectable amounts. According to the business rules clerks are following to report assessed fines and fees, any amount assessed below the maximum amount allowable is identified as waived/discharged. For example, if a judge was statutorily authorized to impose a fine between \$500 and \$1,000 and assessed a fine of \$600, the remaining \$400 would be recorded as waived. Judges and clerks both asserted that non-assessed fines within a range authorized in law are not the same as waived fees. Instead, the variation reflects the exercise of judicial authority to assess an appropriate penalty in each case. Currently reported data based on maximum assessments in every case will thus present an erroneous picture of potential revenue.

Comparing assessments and collections. It will be a number of years before data on annual assessments and collections can be used as performance measures. Collections could include monies collected from monthly payment plans or outstanding traffic fines that were assessed in prior years. Since prior to Ch. 2003-402, *Laws of Florida*, court clerks did not maintain an assessment data base by year imposed, it will be several years before assessment data and collection data can be compared to determine how much money is annually collected versus how much was actually assessed in the same year.

Assessment documentation. Judges reported that they generally document the amount they assess, but not the reasons for a specific amount within the lawful range. Judges asserted that they exercise judicial discretion, as authorized by law, and have neither the time nor resources to provide additional documentation. They further cautioned that over-documenting decisions could create additional grounds for future appeals and increased court dockets.

Fines and fees spread throughout statutes. Judges noted that fines and fees are spread throughout the *Florida Statutes*, and this dispersion hampers judges' ability to make assessments according to statutory requirements. Some judges reported that it is difficult to stay current on the many mandatory versus discretionary fines and fees. Prior studies have recommended that fines and fees be consolidated in statute for quick and easy reference.¹¹ While court costs have been compiled in Ch. 938, *Florida Statutes*, fines and fees continue to appear throughout law and are subject to change each legislative session.

Several chief judges have worked with their court clerks to compile a list of mandatory and discretionary fines and fees as a reference tool or to create sentencing forms that include the relevant fines, fees and costs. However, there is no unified statewide system for compiling changes to statutory fines and fees each year to ensure that judges have reliable information for sentencing. As a result, both clerks and judges expressed concern at judges' over-reliance on the clerks' offices for correct current fine and fee information.

Other options considered

We explored the option of placing responsibility for collecting court fines and fees with the Department of Revenue, which performs collections functions related to child support and business tax obligations. However, we concluded that this option is not practical because it would require federal approval and it

appears that it would not enhance the fine and fee collection process.

The department's Child Support Enforcement Program is the designated administrator of federal child support funds for Florida, and it has established data systems and enforcement tools to collect and disburse these funds. However, using these resources for court collections would require federal approval. According to department administrators, an approval request would entail a detailed business plan with a cost allocation methodology for computer system use, as well as identification of a discrete funding source for all personnel expenses and overhead related to court fine and fee recovery to ensure that federal child support collection monies would not be used for other purposes. Therefore, DOR could not use existing staff and resources to assist with court collections but would instead need to hire new employees and set up discrete computer operations. In contrast, the clerks' offices are integrating collections efforts into their ongoing work loads.

Department officials also reported that the Child Support Enforcement Program's computer system would not support collecting monies for the court system. The system is not set up to transmit case information nor is it connected to court criminal information systems.

While using the department's General Tax Administration Program employees to collect court fines and fees would not require federal approval, department administrators reported that it would require additional staff and the focus of the work would be different. This program collects delinquent sales taxes, as well as unemployment taxes and corporate income taxes from business owners. The program works with corporations rather than individuals and their enforcement actions reflect this difference. Past due taxpayers receive mail notices and contact from a centralized calling center before those cases are referred to either regional offices if the amount is large, or to private collection agencies for amounts less than \$250. The program usually pursues collection actions against business assets by filing tax warrants and freezing bank accounts.

¹¹ *Performance Audit of the Assessment of Required Criminal Fees Administered by the State Courts System of Florida*, Report No. 11757, November 13, 1991.

Department administrators reported that they would need more information to provide accurate cost estimates of undertaking court collection activities.

Conclusions

Fines, fees, service charges, and court costs are important sources of revenue for the state courts system. Ch. 2003-402, *Laws of Florida*, specifies that judges are responsible for assessing and enforcing these obligations and clerks are responsible for collecting them; cooperation between these parties is essential for the process to work effectively.

Success in collecting assessed fines and fees is related to defendants' ability to pay. Traffic fines typically have relatively high payment rates, while the criminal defendant population is, in general, one of little financial means. Based on their experience, judges and clerks caution that many fines and fees will not be collectable. However, revenues should increase as judges and clerks work together to develop and improve collection processes.

From a business perspective, decisions on the amount of resources to dedicate to collections should relate to the expected return. Due to differences among counties in the types of cases and defendants, there should be flexibility for counties to determine the most cost-effective approaches.

Promising options include structured payment plans, notification of due or overdue debt, collection courts, private collection agencies, and clerks acting as collection agents. Other options that appear less viable at this time include electronic fund transfers, liens against defendants, wage or bank account garnishment, driver license sanctions for criminal offenses, and the intercept of tax returns.

Accurate data is not yet available to evaluate court assessments and collections. Ch. 2003-04, *Laws of Florida*, directs clerks to shift from a case-based data collection system to an accounts receivable system. It will take time for the clerks to accurately capture this data. Data users should be aware of two caveats. First, data for making accurate year-to-year comparisons of assessed and collected fines will not be available for a number of years. And second, the methodology clerks are using to track judicial waivers will not differentiate between cases in which judges waive the amount specified by statute from cases when the judge imposes a fine within a range, but at less than the maximum allowable under law. As a result, the data will present an erroneous picture of potential revenue.

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475).

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