

# Poor South Dakota residents hit hardest by state debt collection efforts

Nick Lowrey, South Dakota News Watch Published 9:06 p.m. CT Sept. 2, 2019 | Updated 11:53 a.m. CT Sept. 6, 2019



Under state law, anyone who owes \$50 or more to a government agency shall not be issued a hunting license, fishing license, state park entrance pass or be able to make a state park camping reservation. (Photo: Getty Images)

Thousands of South Dakotans have lost their privileges to hunt, fish, or drive in the state since 2016 because they owe money to government agencies for unpaid fines, fees or even college tuition, but often the people hardest hit by state debt collection efforts are low-income residents who are the least able to pay up.

The license and registration suspensions were implemented by the state debt Obligation Recovery Center, known as the ORC, as part of its efforts to collect money owed to government agencies.

Under state law, anyone who owes \$50 or more to a government agency shall not be issued a hunting license, fishing license, state park entrance pass or be able to make a state park camping reservation. Driver's licenses and annual vehicle registrations can be suspended if the debt is greater than \$1,000.

State officials say the license and vehicle registration suspensions are a necessary tool to collect more than \$80 million owed to state agencies and departments for debts due to outstanding fees, fines and unpaid taxes.

Scott Bollinger, commissioner of the state Bureau of Administration that oversees the ORC, said debt sanctions are a way for state government to pressure people who owe money to pay up and can help keep costs down for those who do not owe money. For example, Bollinger said that collecting debts owed to the Board of Regents, one of the top recipients of ORC debt collections, can help keep down the price of tuition at public universities.

"Ideally, if everyone paid their debts we'd probably have lower tuition rates, sales tax rates, whatever," Bollinger said.

Created after a tough fight by the 2015 state Legislature, the ORC acts as state government's central debt collector. By June 30, 2019, state agencies had sent 122,353 individual debt accounts to the ORC. So far, since beginning operations in 2016, the center has brought more than \$8.7 million worth of recovered debt into state coffers, according to its most recent annual report. Meanwhile, debtors owing millions more dollars to the state have entered payment plans to satisfy their debts.

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During the 2019 fiscal year running from July, 1 2018 to June 30, 2019, the ORC informed 18,000 people they'd be blocked from purchasing a hunting or fishing license in the state. Additionally, 3,000 people were notified that they wouldn't be able to renew their driver's licenses and vehicle registrations that year unless they paid their debt in full or started a payment plan.

Bollinger is responsible for keeping tabs on ORC operations. He said the center has helped boost the state's fiscal bottom line without costing taxpayers a dime because the independent contractor that operates the ORC doesn't get paid unless the state does first.

"If you look at the raw numbers, we collect a lot more than we used to," Bollinger said.

The South Dakota court system has, so far, been the largest beneficiary of the ORC's efforts. A total of around \$3.67 million has been collected for the courts since 2016. In fiscal 2019 alone, \$1.48 million worth of court-ordered debts was collected. A large portion of that total was court-ordered restitution and was paid to crime victims.

The state Board of Regents, which is responsible for South Dakota's public universities, has received the second-largest amount of collections. Collectively, the state's six public universities have received a little over \$3.5 million in collected debts since 2016. The state Department of Corrections received the third-highest amount of collections, with more than \$1.17 million paid over the last three fiscal years. The Department of Revenue has seen around \$950,000 of debt collected through the ORC.

The average debt referred to the ORC in 2019 was about \$670, meaning most of the state's debtors couldn't be hit with its toughest sanctions.

Still, many who have faced ORC enforcement actions are among the state's poorest residents who struggle to repay their debts and can least afford to lose the right to drive legally, according to critics who say the debt collection system is biased against poor people.

"Wealth-based suspensions create a two-tiered system of justice where rich and poor people with otherwise identical records receive different punishments solely because of their ability to pay, said Libby Skarin, policy director for American Civil Liberties Union of South Dakota. "Criminalizing poor people and balancing budgets on the backs of the poor is inherently unfair and it undermines the fairness and legitimacy of our legal system."

Tomia Valdez, 42, of Rapid City, is on disability for a degenerative genetic condition and has custody of her 17-year-old son who is on the autism spectrum. She said her driver's license has been suspended since 2017 because she owes the state \$4,000.



After settling a separate legal issue in 2017, Tomia Valdez, 42, of Rapid City, was told she couldn't renew her driver's license because she owed the state of South Dakota \$4,000. Valdez said she hadn't been notified of the debt until then. Now, she is disabled due to a degenerative disease and can't afford to pay the debt, so therefore she cannot legally drive. (Photo: Submitted)

The debt arose from a 2014 legal battle for which Valdez said she was assigned a public defender. She said she had been accused of neglecting and abandoning her son after they were evicted from their residence. She says the incident was a misunderstanding that took nearly two years to overcome in order to regain custody of her son.

In 2017, Valdez said she went to get her driver's license reinstated after settling a separate legal issue but was denied and told of the \$4,000 debt for the first time. Valdez said the debt would be nearly impossible to settle given her limited income.

"I can't take my son fishing, I can't take myself to the grocery store, I can't take myself to medical appointments and my son is disabled," Valdez said. "I can't do anything."

## Boost government revenue without a tax hike

There are no government employees tracking down debtors and making annoying phone calls or writing threatening letters for the Obligation Recovery Center. Instead, South Dakota hired a private contractor to do the work. The center is, largely, a software system managed by a contractor called CGI Technologies and Solutions. Many of its debt collection functions are automated, but CGI also operates a call center for customer service and debt-collection phone calls. Debtors also can use the system to make payments and enter into payment plans on their own.

Now headquartered in Virginia, CGI has become a global entity offering a wide variety of services including information technology outsourcing, business process outsourcing and consulting services to governments all over the world. The company says it has successfully worked with 20 states on successful debt collection and has generated \$3.5 billion in revenue by improving collection of unpaid taxes and debts.

Over the past 10 years, CGI has been involved in some high-profile failures. The company helped build the originally troubled federal healthcare.gov website created as part of the 2009 Affordable Care Act. More recently, in 2018, CGI was awarded no-bid contracts as part of a failed effort to privatize and outsource the Information Technology arm of the Kansas Department of Revenue.

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Through its consulting arm, CGI was an integral part of the creation of the South Dakota Debt Obligation Recovery Center in 2015. A year earlier, then-Gov. Dennis Daugaard was looking for a way to boost state revenues without raising taxes. As it turns out, an analysis conducted by CGI found the state was owed more than \$120 million, ranging from unpaid taxes and fines to college tuition and court-ordered restitution.

At the time, state government agencies were individually responsible for collecting unpaid debts. For example, if a student dropped out of a state university two-thirds of the way through a semester and didn't pay their tuition bill prior to 2015, the university would solely have been responsible for collecting the debt. Often, this meant employees who spent time on other duties were stuck making collection calls or sending letters. If that didn't work, the school would have been forced to absorb the loss or contract with a private collection agency and then write off a healthy portion of the debt.

In the case of court-ordered debts, such as for criminal restitution, fines and court fees, which cannot be written down, the debts often went uncollected altogether. The state's court system didn't employ full-time debt collectors.

Daugaard Administration officials — with the help of CGI — devised a central collections center to which the state's agencies could refer debts they were unable to collect. The governor told the legislature in 2015 that centralizing the debt collection process would be more efficient and successful by putting it into the hands of professional debt collectors.

To pay for the operations of the new debt collection center, any debts referred to it would be assessed a 20% surcharge. The debtor would be responsible for the extra 20 percent charge in addition to their original debt. Part of the sales pitch given to legislators in 2015 was that the ORC would be entirely self-sustaining due to the 20 percent charge.

Another piece of the sales pitch was that creating the ORC would not require more state employees. The process would mostly be automated and third parties could be contracted to handle debts that needed a more traditional collections approach. Responsibility for keeping tabs on the ORC and managing the state's relationship with the contractor would be tacked onto the duties of the Bureau of Administration.

Still, the ORC was a tough sell. The bill that created the ORC was written late in the session and narrowly passed the state senate. Some legislators argued that the ORC was being given too heavy a hand with the ability to suspend licenses and vehicle registration. Others argued that the ORC would represent unfair public competition with private debt collectors. But, eventually, the bill passed and Daugaard signed it.

Once money is collected, it gets deposited in the state general fund and is then sent to the agency that is supposed to have it, Bollinger said. The 20 percent surcharge also gets deposited into the general fund and is then used to pay the ORC contractor. Bollinger said CGI only gets paid if and when a debt is collected. So far, tax dollars haven't been used on the program, he said.

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In states bordering South Dakota, most of which have a state income tax, governments use the threat of not sending out all or part of an annual tax return to compel residents who owe debts to pay up. No neighboring states, including Wyoming, which like South Dakota does not have an income tax, use the threat of loss of licenses to push debtors to pay up.

In South Dakota, debtors who think they've been wrongly targeted or weren't properly notified that they had a debt can ask for a due-process hearing in front of the state Board of Hearing Examiners.

Bollinger said the hearings are fairly limited in scope but the referring agency does need to present evidence. From fiscal 2017 through fiscal 2019, debtors requested a total of 46 due-process hearings. In all, 16 hearings were dismissed or withdrawn, according to the ORC 2019 annual report.

## Some debtors refuse to pay

Laurie Amundson said she got her first letter from the ORC in 2017. The letter said she owed more than \$3,500. She had to call the customer service number listed in the letter to discover that the debt originated from about six years earlier. Her son had been sent to Star Academy, the former Department of Corrections juvenile treatment facility outside of Custer, for around seven months, Amundson said.

The boy had been convicted of assaulting Amundson and stealing from her after committing a string of other crimes, Amundson said. At the end of her son's sentence, Amundson was required to pay \$1,200 in restitution for damage her son had caused to a car before he could be released from the detention facility. At the time, no one mentioned anything about an additional \$3,500 charge for room and board at the facility, Amundson said.

When Amundson found the ORC's first notification letter in her mailbox in 2017, she said she was shocked and more than a little angry.



News Watch logo (Photo: Submitted)

"They told me that if I didn't pay the bill, they would take my [driver's] license away," she said. "I told them, 'Go ahead, I don't drive anymore.'"

As a result, her driving privileges have been suspended since 2017. Amundson said the suspension doesn't affect her much because she stopped driving a while ago and now lives in Vermillion, where she can get around town fairly well using public transit. The debt Amundson owes has been sent to Texas-based Municipal Services Bureau, the third-party collections contractor the state uses if the ORC's efforts prove unsuccessful.

Amundson said she has so far refused to pay the bill both because she doesn't think she should have to pay for a crime that her son committed against her and because she simply can't afford it. She's out of work, partially because she suffers from chronic fatigue and fibromyalgia. Her husband, a truck driver, also owes money to the Internal Revenue Service.

"My life shouldn't be destroyed for something my son did. My privileges shouldn't be taken away for something I didn't even do," Amundson said.

For now, Amundson said, she'll keep throwing away her collection letters. She figures there isn't much more the state can do to compel her to pay.

In the private sector, debt collection agencies are typically hired to collect "bad debt" — money owed but uncollected for 60 or more days — on behalf of the organization to which the money is owed. They are used by everything from credit card companies to hospitals and local government utility departments. Often the collections agency will take up to 45 percent of the money it collects.

A private collections agency is limited in what it can do by the federal Fair Debt Collections Practices Act. They can't, legally, call at odd hours, contact someone else about the debt, use threats or intimidation or lie to a debtor. Collection agencies can make deals to satisfy debts at lower costs to debtors. They can also work with credit bureaus and limit a person's access to credit. But that's about all they can do, short of filing a lawsuit.

South Dakota's ORC can do nearly everything a private collections agency can do plus ask the Game, Fish & Parks Department to suspend a debtor's hunting privileges if the debt is over \$50. The ORC can ask the Department of Public Safety to suspend a debtor's driver's license and ask the Department of Revenue to restrict someone from renewing their license plates.

The 20 percent collection fee wouldn't cover the cost of legal action, so the ORC doesn't file lawsuits to recover debts, Bollinger said.

The ORC cannot negotiate with debtors who have been ordered by South Dakota courts to pay restitution, fines or court fees, which can make collections on those debts more difficult, Bollinger said. Court-ordered debts also cannot legally be written off, unlike most other debts.

Another problem is that roughly a quarter of the debt that has been referred to the ORC, roughly \$20 million, is owed by more than 26,000 people who don't live in South Dakota. Outside of reporting the debt to credit bureaus and barring someone from getting a non-resident hunting or fishing license, there's not much the state can do to force a non-resident to pay, Bollinger said.

If a debt hasn't been collected after the ORC has tried for at least six months and a third-party debt collection contractor has tried for at least one year, the debt can be sent back to the referring agency. The agency can then ask the state Board of Finance to write the debt off of its books.

Debt write-offs have been on the agenda for three Board of Finance meetings so far in 2019. Most of the write-offs were for debts owed to the Department of Transportation for property damage and had been returned to DOT uncollected. One debt to the South Dakota School of Mines & Technology in Rapid City was written off because the debtor died, while another debt to Black Hills State University in Spearfish was written-off due to a bankruptcy, according to documents filed with the Board of Finance.

## SOUTH DAKOTA DEBT COLLECTIONS

Here is a look at some key data points regarding money owed to the state of South Dakota and the state's attempts to collect it through the Obligation Recovery Center.

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itions due to unpaid debts in fiscal 2019.

**18,000** — Number of people who lost their ability to buy a hunting or fishing license due to unpaid debts in fiscal 2019.

**110,571** — Number of active debt accounts referred to the Obligation Recovery Center, including from 84,256 state residents and from 26,258 non-residents (some of the total accounts referred are no longer active.)

**\$8.7 million** — Amount of money collected by the South Dakota Debt Obligation Recovery center since 2017.

**\$81.8 million** — Amount of debt owed on accounts held by the Obligation Recovery Center.

**\$57.3 million** — Amount owed by South Dakota residents on accounts referred to the Obligation Recovery Center.

**\$24.4 million** — Amount of debt owed by non-residents on accounts referred to the Obligation Recovery Center.

**\$27 million** — Amount of debt referred to the ORC by June 30, 2019 that was 10 or more years old, meaning it likely will be difficult to collect.

Source: State of South Dakota

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