

COURTEX

Texas Judicial Branch News

Special Edition – Collection Program - August 2007

From the Office of Court Administration Director

When I came to OCA in April of 2005 – in fact even before I officially became director – I became immediately and rather intensely drawn into the legislature’s effort to make mandatory the OCA Model Collection Improvement Program. At that point in the 79th Legislature, it was S.B. 978 by Senator Gonzalo Barrientos, but because of the revenue-enhancing nature of the program, the bill was eventually rolled into S.B. 1863 by Senator Steve Ogden. I quickly came to realize that mandatory collection improvement was the most controversial program at OCA, and that impression has been reinforced over time. Despite the revenue-enhancing nature of the program for both the state and local government, and notwithstanding our pride and belief in the program, its mandatory nature can create friction between state and local government and among branches of government. In the 80th Legislature, our budget hearing in the House was dominated by discussion of this program, and several bills were introduced that would have dramatically affected, even gutted, the program. The bill that emerged and ultimately *almost* passed was [S.B. 280](#), a consensus effort from an informal working group assembled by Alison Brock, Chief of Staff for Representative Sylvester Turner. That bill changed the program from a mandate on larger cities and counties, with a penalty for non-compliance, to a voluntary program that any city or county may implement and develop, with a reward for doing so; I liked this approach, and so did those who have most vocally resisted and criticized the mandatory program. In the absence of this new approach, it seemed to me that we needed to reach out to our stakeholders to help chart a course for the next two years. This special edition of [CourTex](#) is offered in that spirit, as is our simultaneous publication in the *Texas Register* (see August 31 issue) for public comment, of rules governing the program for at least the time period through the passage of any further modifications by the 81st Legislature. For your convenience, this edition ends with the text of the proposed rules. Finally, continuing in the spirit of outreach, if you are keenly interested in this topic please mark your calendar for October 5 and let me know you intend to attend; we are planning a public meeting in Austin (4900 North Lamar Blvd., Brown Heatly Building, Room 1410) to discuss the proposed rules and any comments submitted.

- [Carl](#)

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The Story of the OCA Collection Improvement Program

The OCA Collection Improvement Program model has its origins in a program initially developed in Dallas County. In the early 1990s Dallas County took a hard look at their collections process in the county criminal courts, which handle Class A and B misdemeanors, and concluded that something was wrong. A significant source of county revenue was being neglected or ignored. Their answer was to take a private sector, proactive approach to the collection of court costs, fees, and fines. (This model and methodology, based largely on Colorado's Collection Investigator Program, was also later endorsed by the [National Center for State Courts](#).)

In February 1993, a court collections pilot program was launched in Dallas County with a two-person staff and a budget of \$75,000, serving three county criminal courts. The pilot had 12 months to produce an increase of \$250,000 in the collection of court costs, fees, and fines. The goal was realized 90 days after the program was started. The pilot is now a fully self-supporting department operating under the Dallas County Clerk's office, which serves all 13 county criminal courts. The program is credited with increasing collections approximately \$4.0 million per year, providing the county with an additional \$56 million in revenue from inception through FY 2006. As a result of the success with misdemeanor cases, Dallas County later implemented similar programs to handle district court cases and juvenile cases.

OCA tested the program model in a pilot project in the county-level courts in Brazoria County in 1996-1997. After the success of the Brazoria County pilot project, OCA began to assist cities and counties interested in improving compliance and revenue collections with the implementation of its model program. As of September 1, 2005, OCA assisted with the development and implementation of voluntary collection programs in 50 counties and 17 cities. In most of the counties, however, the voluntary program did not serve all levels of court within the county (i.e., district, county, and justice courts). In FY 2004, those voluntary programs reporting both a pre-program and a post-program collection rate averaged a 91% increase in their collection rate (from an average pre-program collection rate of 33% to an

average post-program collection rate of 63%), bringing in an additional, approximately \$39 million in revenue. Ultimately this success, coupled with the mounting estimates of uncollected court costs, fees, and fines, caught the attention of the legislature.

[Senate Bill 1863](#) (Article 10 in particular), 79th Legislature, requires the largest cities and counties in the state (cities with populations of 100,000 or more and counties with populations of 50,000 or more) to implement a program based on the OCA model program, specifically, the program must include "a component that conforms with a model developed by the office and designed to improve in-house collections through application of best practices." The mandate affects 54 counties and 24 cities. Approximately half of the affected counties and cities (26 counties and 12 cities) were required to implement a program by April 1, 2006, and the remainder (28 counties and 12 cities) were required to implement a program by April 1, 2007. The enactment resides in Art. 103.0033, [Texas Code of Criminal Procedure](#).

Emphasizing the Legislature's insistence on compliance, the law includes a financial penalty for a city or county that fails to implement a program that complies with the OCA model collections improvement program: they will not be able to retain a portion of certain fees they collect for the State until compliance is achieved. The law requires the Comptroller of Public Accounts (Comptroller) to determine pre-mandatory program collection rates for the cities and counties and to conduct periodic audits to confirm that the county or city is conforming with the requirements relating to the program. The enactment also provides the OCA director with the legal authority to grant a waiver to any mandated city or county that could demonstrate that implementing the program would not be cost effective.

In response to the legislation OCA divided the state into implementation regions and staffed each region with a Regional Collections Specialist who works with each affected city and county on implementation. A statewide stakeholder meeting was convened, and regional meetings were held to introduce those in the area to their new Regional Collections Specialist and to begin working on implementation schedules. OCA also worked with the Comptroller's office to coordinate implementation and compliance efforts. The program requirements were published on the [OCA webpage](#), but were not embodied in rule form until the current proposal.

The Benefits of the Program

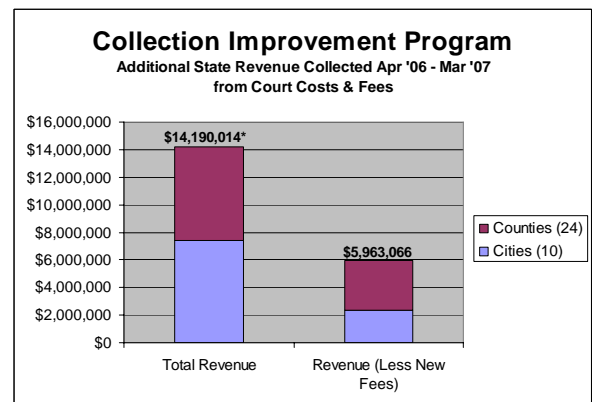
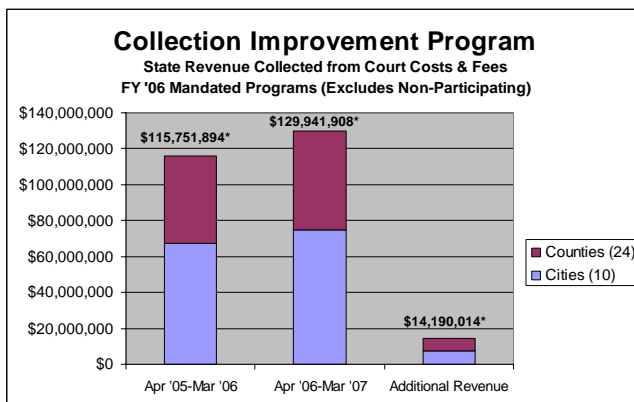
The Collection Improvement Program has two major benefits: it encourages personal responsibility through compliance with court orders, and it increases revenue. As stated on the [National Center for State Courts](#) website, "The courts' effectiveness in collecting such obligations is important to state and local jurisdictions for reasons of revenue; however, the enforcement of such court-imposed financial obligations, particularly fines, is even more essential to the integrity of the courts."

Financially, improving collections benefits both the local jurisdiction and the State. Most of the funds collected are retained locally and used to fund local programs (e.g., courthouse

security, court technology, and records management), and to increase local general revenue. A portion of what is collected is remitted to the State to fund numerous worthwhile programs (e.g., compensation to victims of crime, criminal justice planning, and indigent defense). Of the money that goes to the State, a large proportion is returned to cities and counties. For example, In FY 06, the Texas Compensation to Victims of Crime Fund received approximately \$78 million in state court cost revenue - from the allotted portion of the state Consolidated Court Cost. In FY 05, the CVC Program paid out approximately \$83 million in compensation benefits including hospital bills, medical provider payments, and funeral benefits. These payments were awarded directly to victims and the providers of those services (Hospital Districts, Medical Clinics, EMS providers, Funeral Homes, etc...), essentially returning millions of dollars generated from court cost revenue back to the cities and counties that provided the revenue.

67.18% of the payments awarded by the Crime Victims' Compensation Program are for medical expenses such as acute hospital care. Last year medical expense payments totaling \$57,109,309.08 were returned locally to cities and counties. For more information about the compensation program please access the Office of the Attorney General website for the [annual report](#).

OCA anticipates that 70 (or 90%) of the 78 cities and counties mandated to implement programs will have implemented programs by the end of September 2007. Excluding non-participating cities and counties, state revenues have increased approximately \$5.9 million for the period beginning April 1, 2006 to March 31, 2007 compared with the same period in the previous year for the 34 of 38 cities and counties that were mandated to implement, and did implement, a Collection Improvement Program by April 1, 2006. *This is a 5.1% increase in state revenue in a time frame when relevant case filings decreased by approximately 4%.*



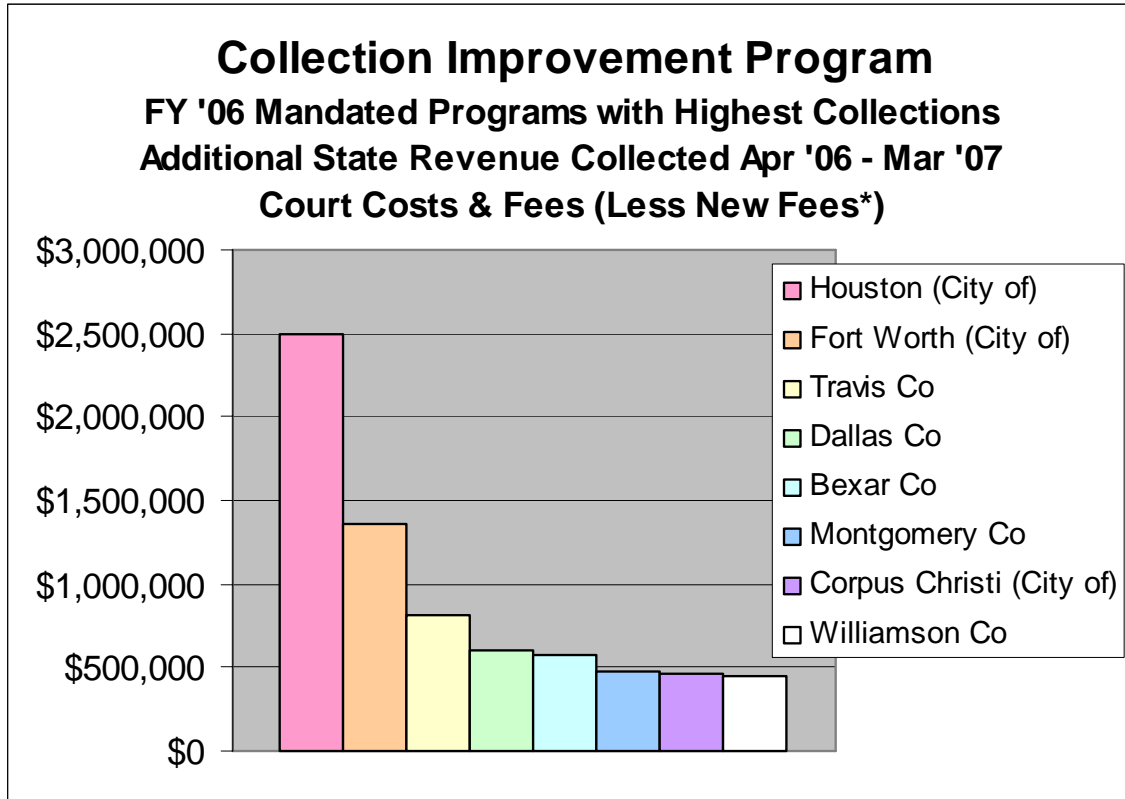
Source: Comptroller of Public Accounts, Revenue Accounting Division

* Includes: 1) \$4.00 Jury Reimbursement Fee, effective 9/1/05; and 2) \$4.00 Judicial Support Fee, effective 12/1/05

Excludes: Non-Participating Cities/Counties

The cities and counties that had the largest increases in state revenue from April 2006 through March 2007 as compared to the previous year are shown below. (Fees that went into

effect in 2005 were excluded so that the graph shows the increase due to improved collections and not due to an increase in fees.)



Source: Comptroller of Public Accounts, Revenue Accounting Division

* Excludes: 1) \$4.00 Jury Reimbursement Fee, effective 9/1/05; and 2) \$4.00 Judicial Support Fee, effective 12/1/05

These positive revenue figures are reinforced by the impressions of those at the local level who have seen their collection efforts succeed, as demonstrated in these testimonials:

“Having been the County Clerk for Hidalgo County for seven years, I had the privilege of seeing firsthand the successes that the collections program brought to Hidalgo County and its residents. Since its inception, nearly eight years ago, the program has collected over \$22 million in court costs and fines from District and County Courts.”

- Honorable J.D. Salinas III, Hidalgo County Judge

“This program has generated millions of additional dollars for Montgomery County and our citizens appreciate the emphasis it places on civil responsibility and accountability. From a more practical standpoint, it just makes sense to have a department that focuses on collecting the county’s money.”

- Honorable Ed Chance, Montgomery County Commissioner, Precinct 3

“The Montgomery County Collections program is the only way we have been able to stay current with an ever increasing caseload in my Precinct. Because the Program is directed by a person who has the ability to work with me to insure that the rights of the defendant and the State are protected while using considerable talent and resources to improve collections of money owed to the County, our Precinct has increased the collections every year. We anticipate receipting over \$3 million dollars this fiscal year.”

- Honorable Edie Connelly, Montgomery County Justice of the Peace, Precinct 3

“We began our Collections Department in January of 2005. The procedure prior to this date for collection of our criminal fines and fees was through the Community Supervision and Corrections Department. Since our Department was opened, we have collected over \$2,000,000.00. We have also begun collecting for the Justice Courts and the District Courts. Commissioners and the County Judge are ecstatic over the results. The collections process works and I believe all Counties should be mandated to proceed. The taxpayers are saved from higher taxes and the Counties are funded with the help of our collections with fines. I strongly believe in this system and I have been amazed at the rate at which we are able to collect.”

- Honorable Cathy Stuart, Victoria County District Clerk

“Tom Green County has benefited from increased revenue by defendants/clients paying their court ordered fines and fees in a timely fashion. By maintaining personal contact with the clients we are able to ensure their compliance with the Judges order. In retrospect, the role of our office is not collections or to generate revenue for either the county or the state of Texas, it is to help clients stay in compliance with their court orders; thus Tom Green County has officially changed the name of the Collections Office to the Court Compliance Office. Justice is not about the money, it is about enforcing the law in a fair and timely manner. Revenue is a by product of the justice system.”

-Dianna Spieker, Tom Green County Treasurer

“Pasadena went online with the OCA civilian model collections program in March, 2004 – not because it was required but because it seemed then to be the very best way to manage a collection effort. In March of 2004, the City began with two collectors and high hopes for the future. The gross revenue for that month was a very respectable \$777,582.00. Three years later, the City had three full-time collectors and collected over a million dollars for the first time in the history of the court. Gross revenue for March, 2007 was an amazing \$1,028,373.00!”

-Honorable Lester Rorick, Presiding Judge, Pasadena Municipal Court

“Our disposition rate went from 63% to 93% and revenues have more than doubled.”

- Ricardo Subia, Odessa Municipal Court Director

“During our first year of implementation we collected in excess of \$1,000,000 through our new central collections group. Not only did this increased collection efforts create additional revenue, but also increased justice and should in the long run increase compliance with the laws.”

-Leroy Nellis, Travis County Budget Manager

Local Spotlight: Travis County’s Centralized Criminal Fines and Fees Collection Program

Improving the collection of criminal fines and fees has been an important focus of Travis County long before the passage of S.B. 1863. Centralizing these efforts began in January 2003 with the establishment of the Central Collections Unit within the Travis County Tax Assessor-Collector’s Office. This unit was established to collect fine and fee payments for Criminal County Court-at-Law probation cases. Tax Assessor-Collector Nelda Wells Spears agreed to take on these additional responsibilities through an expansion of the existing collection programs already in place within the office. These efforts include the collection of property taxes for 92 local governments in Travis County. The office has historically had a 99% property tax collection rate, which is the highest among Texas urban counties.

The passage of S.B. 1863 provided an additional opportunity for the County to review its collection practices in order to comply with the statute. The Travis County Commissioners Court created a committee of stakeholder offices and departments chaired by Leroy Nellis, Travis County Budget Manager, to review current practices and make recommendations to improve the existing collection program and comply with S.B. 1863. Based on this review, the Commissioners Court approved recommendations from the committee that included expanding the Central Collections Unit of the Tax Assessor-Collector’s Office to include Justice Court cases for the required April 1, 2006 implementation date required by the statute. “The key stakeholders of the committee agreed to centralize the collection of criminal fines and fees for the Justice Courts in the Tax Assessor-Collector’s Office given their expertise and success in other collection efforts,” notes Committee Chair Leroy Nellis. Mr. Nellis also notes, “The successful implementation of S.B. 1863 would not have been

possible without the early planning and commitment of the Commissioners Court and Travis County Judiciary as well as the involvement of the other Elected and Appointed Officials impacted by the statute.”

Defendants that are not able to pay in full at the Justice Courts are directed to the Central Collections Unit in the Tax Assessor-Collector’s Office to establish a payment plan based on their ability to pay. The office is also able to accept credit card payments, which has resulted in 25% of all owed fines and fees collected on the first visit. Once the case is referred to the collection unit, the Tax Assessor-Collector’s Office works closely with the Justice of the Peace office in which the case originated to ensure that all internal procedures and state statutes are followed. Mr. Nellis notes: “We have been grateful from the support we have received from the Judiciary; . . . the hard work of Judge Barbara Bembry and the other Justices of the Peace has been critical as we all continue to improve our collection efforts.”

Travis County is beginning to see the impact of the program. As shown in the chart on the bottom of page 4, Travis County had the third highest increase in additional state revenue collected from April 2006 to December 2006 from the same period in 2005 compared to the other large counties and municipalities. The county remains committed to the enforcement of judicial orders by continuing to refine and expand its Criminal Fines and Fees Collection Program. A new component of this program, the third party collections of delinquent criminal fines and fees for all Justice Courts, is being developed. Travis County plans to solicit bids for this new component in the next several months.

Local Spotlight: 32nd Judicial District

In January of 2008, Nolan County Court Collections will begin collecting money for all Mitchell County felony and juvenile cases. Mitchell County is a small county (population 9,400) located 70 miles west of Abilene. Misdemeanor cases are collected by the Mitchell County Clerk, but no one collects delinquent felony or juvenile cases. After consulting with Judge Harrison, the 32nd Judicial District Judge who covers Nolan, Mitchell, and Fisher Counties, local collections specialist Bridger Anglin made a presentation to Mitchell County Commissioners Court and six months later they accepted the proposal. Bridger commented: “I worked for over 6 months just trying to get them to let us make a presentation. After our presentation, they voted unanimously to fund a collections/ compliance office. I know once they see the results, they will have no doubt about their decision. We have had great support from Jim Lehman, Russ Duncan, and Berny Schiff with many bumps along the path. If it were not for them as well as others from OCA, this would just not be possible. . . . many thanks to them from both Nolan County and Mitchell County.” OCA has been a proponent of clustering smaller county collections departments not only to share expenses but to enable them to afford a more experienced staff; the 32nd Judicial District effort will be a model program for other small jurisdictions to learn from.

Critiques of the Program

The publication of proposed rules for the Collection Improvement Program represents a response to a valid criticism, that the “rules of the road” had not been formally adopted after

an opportunity for public comment. OCA is not subject to the Administrative Procedures Act and rulemaking is not the norm, but it is not prohibited and the process should be a healthy one. (And the Judicial Council has reserved sections in the Administrative Code, which are currently used by the Task Force on Indigent Defense, and will be the site of proposed changes to the judicial activity reporting system, in the near future.)

Other criticisms of the Program were voiced at the May 3, 2006, Texas Senate Jurisprudence Committee heard testimony regarding their interim charge #4:

Monitor the implementation of SB 1863, 79th Legislature, Regular Session, specifically the Collection Improvement Program, which seeks to improve the collection of criminal court fees, fines and costs.

Make recommendations to increase the effectiveness of the Collection Improvement Program and determine if any statutory changes necessary.

During this hearing testimony was given that challenged the statute, OCA's implementation, and the Collections Improvement Program directly on several fronts. Among the critiques:

- Witnesses testified that the law may violate the separation of powers doctrine and that it interfered with judicial discretion especially as it related to defendants placed on community supervision.
- One witness testified that the Collections Improvement Program may violate the Texas *Fair Debt Collections Act* and the *Federal Fair Debt Collections Act*.
- One witness testified that OCA has not taken into account the size of caseloads, population, etc. in the counties and cities throughout the state, and that "one size does not fit all." This individual testified that the model components were too strict and that the OCA was inflexible.
- One witness testified that OCA's requirement that one full-time person be hired for each court was impractical and created a financial hardship on some counties. This individual also stated that the law amounted to an unfunded mandate and that it also created undue hardships on defendants by placing them in jail.

Based on this hearing the Texas Senate Jurisprudence Committee recommended to the 80th Legislature that:

- The Legislature should amend Article 103.0033 of the Code of Criminal Procedure to provide more detail regarding when a waiver may be granted based on a claim that implementing the Collection Improvement Program would not be cost-effective and require the Office of Court Administration to adopt guidelines to allow counties and municipalities more flexibility in complying with the model components.
- The Office of Court Administration should consider a municipality's or county's inmate population when determining if a municipality or county qualifies for the Collection Improvement Program.
- The Legislature should enact legislation to provide that a fine, fee or court cost assessed as a condition of community supervision may be collected by a collections program as long as the responsible court directs that such funds may be collected by that collections program.

There were five bills filed in the 80th Legislature that would revise the Collection Improvement Program statute, to one degree or another. Ultimately most of these issues appeared to be resolved in S.B. 280, containing language recommended by OCA and other stakeholders. S.B. 280 would have kept the model components intact but made the program voluntary rather than mandatory and incentive-based rather than penalty-for-non-compliance-based. But the measure failed to pass, leaving the mandated program in effect. Moving forward, this publication presents an opportunity to respond to the criticisms, as well as to offer up for public comment the rules that will govern the program.

Violation of Separation of Powers

“It seems to me that if the legislature can tell courts they have to impose certain conditions of probation in certain types of cases (DWI, hate crimes, sexual offenses against children) then they can tell courts they should, as a general rule, prioritize the collection of the government's money; that is essentially what our program does, and we have tried to craft the components carefully to avoid a conflict with the judiciary.”

-Carl Reynolds, responding in writing to the Senate Jurisprudence Committee testimony

“Separation of Powers is an important concept however it is misapplied in this circumstance. The legislature passes a number of bills every year that alter the jurisdiction of courts, alter substantive law, require courts to use certain forms and change the Texas Rules of Civil Procedure. Can those changes be argued to affect the “separation of powers” yes. However, a true separation of powers argument would be the executive branch ignoring a Court ruling aimed at a particular circumstance or the legislative branch failing to recognize a Governor’s veto of a bill. Regulation of the collection of costs, fees and fines is a matter subject to the action of the legislature just as mandatory fines or fine limits can limit a court’s sentencing ability.”

-Honorable Karen Matkin, McLennan County District Clerk

Violation of Texas Debt Collections Act and Federal Fair Debt Practices Act

“While the Texas Debt Collection Act and the federal Fair Debt Practices Act do not apply to government entities, and court costs, fees, and fines are not considered “debt” [see Texas A.G. Op. No. GA-0332 (2005)], OCA collections staff have always emphasized in their training that collection program staff should read and become familiar with those laws to avoid any inappropriate collection practices. We have no knowledge of, nor have we in any way encouraged or endorsed any abusive behavior on the part of any internal collections staff members, and do not believe any of the current collections supervisors or managers would tolerate those tactics. It is simply not part of the program.”

-Carl Reynolds, responding in writing to the Senate Jurisprudence Committee testimony

“Those laws were designed for private sector collections. Criminal costs, fees, and fines are not civil debts and are exempt from these acts. That being said, we’ve modeled our practice after the FDCPA to bring some professionalism to the process and, it being the standard guideline. With many Judges being elected officials the reality is that we do not want to be

overly aggressive to the point of harassing because the ramifications negatively impact their office and the county as a whole.”

- Nadine Jenkins, President, Governmental Collectors Association of Texas

The Program is Inflexible

“Our compliance measures are as flexible as they can be without corrupting the model. The critical components are exactly that. Alter those components and you risk negatively impacting the results.”

-Carl Reynolds, responding in writing to the Senate Jurisprudence Committee testimony

“All judges are reluctant to get involved in the collection of criminal fines and fees and restitution. This collection model is one of the best in the country. They are very sensitive that each county has a unique situation and they have the skills to help that county tweak their collection efforts to maximize returns.”

- Honorable Steve Ables, Presiding Judge, 216th District Court

Requires One Full Time Employee for Every Court

“Our compliance model does not require counties or cities to add staff or change job descriptions in order to comply.”¹

-Carl Reynolds, responding in writing to the Senate Jurisprudence Committee testimony

The Program Puts Poor People in Jail

“If someone is indigent, our program recommends that the person be given community service; we want people to comply either through paying or community service. Our compliance model is designed to give offenders every opportunity to comply without reliance on warrants or jail.”

-Carl Reynolds, responding in writing to the Senate Jurisprudence Committee testimony

The system of allowing partial payments should help poor people by allowing them to negotiate their payment schedule according to income level. Poor people have the same responsibility under the law to pay the fines and fees just as people who have more resources. Enforcement of the law has nothing to do with the ability to pay. Hopefully being required to pay fines and fees will encourage more people to obey the laws.

- Leroy Nellis, Travis County Budget Manager

“I can tell you that part of the reason I made it thru was because of the Collection Departments willingness to work with me...I was never pressured...”

-Anita Ryan, former felony defendant, Randall County

Inmate Collections

Defendants who are convicted of felonies and ordered to serve time in prison are almost always additionally ordered to pay a fine, fees and court costs. As is the case with a prison sentence, a fine is intended as punishment. Court costs and fees, on the other hand, are not intended as punishment. Rather, the rationale for the assessment of court costs is that law violators should help to pay for certain government activities. These activities include the operation of the court system, training of court and law enforcement personnel, victim restitution, and crime prevention programs. The amount of a fine (within a certain statutorily-prescribed range) is discretionary with the judge or jury. The amount of the court costs is largely dictated by the state legislature. Nearly all fines are retained by the county. Court costs are divided between the county and the state.

Historically, only a small percentage of prisoners have voluntarily paid their fines, fees and court costs. This fact has frustrated many district clerks who subscribe to the idea that a fine serves as punishment only if it is paid. These clerks have been equally disconcerted by the failure of prisoners to be responsible for their costs of court. The failure of prisoners to pay their fines, fees and court costs has also adversely affected state and county revenues. The

¹ This was true when I said it; later, however, the component was amended to allow for job description revision as a way to achieve compliance, a change by OCA out of a desire to provide additional flexibility. - Carl

money collected from state inmates has traditionally been only a fraction of the fines and court costs these individuals have been ordered to pay.

Upon arriving at a state prison, inmates turn over any money on their persons to the Texas Department of Criminal Justice (TDCJ). This money is placed in an inmate trust account. Any money that an inmate receives during confinement (from family and friends, etc.) is also placed in his or her inmate trust account. Relying on Section 501.014(e) of the Government Code, district judges ordered TDCJ to withdraw money from individual inmates' accounts to satisfy fines and court costs. Typically, judges would issue a separate order of withdrawal, independent of the judgment, several months after the date of sentencing.

The efforts to tap inmates' accounts to satisfy fines and court costs proved to be quite successful. In McLennan County, for example, judges had issued 1,522 orders of withdrawals from inmate accounts through last November. These orders resulted in the collection of over \$65,000 in fines and court costs. More than 70 inmates sentenced in McLennan County had satisfied their obligations in full through the inmate account withdrawals. Bolstered by the success of the effort in McLennan County and other counties, more and more clerks requested judges to issue withdrawal orders. But in January of this year, the movement to access inmate accounts to satisfy unpaid fines, fees and court costs came to a sudden halt.

On January 12, the Texarkana Court of Appeals issued its opinion in *Abdullah v. State*, 211 S.W.3d 938 (Tex.App.—Texarkana 2007, no pet.). The case involved inmate Zakee Abdullah's challenge of an order directing TDCJ to withdraw money from his inmate trust account to satisfy fines and court costs. Abdullah contended that the court order served to deprive him of his property without due process of law. The court of appeals agreed, holding that a judge cannot simply sign an order directing TDCJ to withdraw money from an inmate account. The court held that Abdullah was entitled to notice of the proposed withdrawal and an opportunity to respond. The court wrote that formal garnishment proceedings are necessary before withdrawals can be made from an inmate's account to satisfy a fine and court costs.

Two other appellate courts have recently addressed the *Abdullah* opinion. The Waco Court of Appeals chose to follow *Abdullah* in *In re Keeling*, ___ S.W.3d ___, 2007 Tex.App. LEXIS 4435 (Tex. App.-Waco June 6, 2007, orig. proceeding). The Waco Court of Appeals ordered that any funds withdrawn from inmate Keeling's inmate account "must be returned to his account":

We agree with the Texarkana court's analysis, and we hold that Keeling was not afforded due process in the trial court's entry of the Supplemental Order [withdrawing funds from an inmate account].

In *Gross v. State*, ___ S.W.3d ___, 2007 LEXIS 5780 (Tex.App.-Amarillo July 23, 2007), however, the Amarillo Court of Appeals declined to follow *Abdullah*. Specifically, the Amarillo Court of Appeals disagreed with the Texarkana Court of Appeals' determination

that formal garnishment proceedings were necessary before the trial court could issue inmate withdrawal orders. The court's disagreement was critical to its ultimate dismissal of the case for want of jurisdiction because the inmate's appeal was untimely.

Complicating matters further, all three of the courts of appeals that have written on the issue of inmate account withdrawal orders (Texarkana, Waco and Amarillo) have issued unpublished opinions dismissing the appeals of such orders because the appeals were determined to be untimely. *See Nichols v. State*, 2007 LEXIS 2156 (Tex.App.-Texarkana March 20, 2007); *Holley v. State*, 2007 LEXIS 5985 (Tex.App.—Amarillo July 25, 2007); *Martinez v. State*, 2007 LEXIS 6110 (Tex.App.-Waco August 1, 2007).

In response to *Abdullah*, TDCJ decided earlier this year to stop following district court orders to withdraw money from inmate accounts to satisfy outstanding fines, fees and court costs. (None of the orders in question have been issued pursuant to garnishment proceedings.) While subsequent cases on inmate account withdrawal orders have reached varying conclusions, TDCJ is maintaining its position and at this point in time is declining to honor withdrawal orders. The proposed OCA rules [175.3(c)(3)] acknowledge this implicitly by suggesting that payment terms for confined defendants should begin after release.

Tools for Collectors

Collection Software

OCA evaluates collections software to assist cities and counties in selecting collections software that provide the functionalities needed for a collections/compliance office. OCA staff currently reviews collection software against our [checklist](#). OCA does not endorse collection software products, but lists on the [website](#) only those products that it has knowledge of through vendor responses to bidding opportunities, vendor product demos, or other projects. Software products not listed on the website may have all the desired features but without the opportunity to review them, they are not listed.

DPS Failure to Appear Program

Chapter 706 of the Texas Transportation Code authorizes the Texas Department of Public Safety (DPS) to contract with political subdivisions to deny the renewal of an individual's driver license for failure to appear on certain traffic violations or failure to pay or satisfy court judgments. DPS has contracted with [OmniBase Services of Texas](#), a private company, to assist with the automation of the Failure to Appear Program. OmniBase places a hold on the renewal of a driver license until an individual fully resolves his/her case with the court. Services provided by OmniBase include:

- software for database entry at no charge
- automated database of violators
- letter to violator within 24 hours of DPS acceptance
- toll-free number to answer and resolve questions from persons who are subject to denial of his/her driver license
- maintenance of records on each person after compliance for five years and indefinitely on those who do not comply

- monthly training in Austin for system users

For more information about the Failure to Appear Program, visit the [website](#) or contact: Charles Brothers, OmniBase Services, at 512/346-6511, ext. 110.

TxDOT Scofflaw Program

Counties: Section 502.185 of the Texas Transportation Code provides that a county tax assessor-collector or the Texas Department of Transportation (TxDOT) may refuse to register a motor vehicle if the owner of the vehicle owes the county money for a fine, fee, or tax that is past due. A county may contract with TxDOT to “flag” motor vehicle records of such vehicles.

Cities: Section 702.003 of the Texas Transportation Code provides that a county assessor-collector or the Texas Department of Transportation (TxDOT) may refuse to register a motor vehicle, if the assessor-collector or TxDOT receives under a contract, information from a municipality that the owner of the vehicle has an outstanding warrant from that municipality for failure to appear or failure to pay a fine on a complaint that involves the violation of a traffic law. A city may contract with TxDOT to “flag” motor vehicle records of such vehicles. Before contracting with TxDOT, a city should seek an agreement of cooperation with the county assessor-collector.

For more information about the Scofflaw Program, contact: Jim Elizalde, TxDOT, at 512/465-7590.

National Perspective

According to the [National Center for State Courts](#) there are common characteristics or “best practices” among successful collection programs although there are often multiple practices by which a court program may acquire or achieve the desired characteristics. Probably the two most important guidelines, whatever the fine collection strategy adopted, is that (1) the court must minimize delay between sentencing and payment and (2) the court must practice consistent sentence enforcement and related policies so that similarly situated defendants are treated alike. In addition, the more successful collection programs that the National Center for State Courts has observed share some or all of the following characteristics:

- Showing judicial and administrative commitment to collecting fines and fees
- Clearly defining responsibility for collecting fines
- Setting short time periods for payment
- Communicating to a defendant what is expected
- Establishing and adhering to collection procedures
- Setting collection goals and monitoring performance
- Responding immediately to nonpayment or nonappearance
- Having a range of effective sanctions for noncompliance and using them similarly in all cases
- Maintaining strong financial controls
- Ensuring that procedures are understood by everyone, including judges, the prosecutor's office, court staff, defendants, and the bar

Finally, it is notable that collection of monetary penalties is one of the National Center's "[*CourTools*](#)," a set of ten trial court performance measures that offers court managers a balanced perspective on court operations. In designing the *CourTools*, the National Center integrated the major performance areas defined by the Trial Court Performance Standards with relevant concepts from successful performance measurement systems used in the public and private sectors. The definition of this particular performance measure is "payments collected and distributed within established timelines, expressed as a percentage of total monetary penalties ordered in specific cases." See more on this measure on the National Center's [website](#).

Analyzing the Collection Improvement Program Components

The 20 program components were developed from 10 “[Key Elements of the Model Concept](#)” designed to improve in-house collections through the application of best practices. The 20 components were formatted into the “[Collections Program Survey](#)” document that was to be used by the Comptroller’s auditors to determine whether a specific Collection Improvement Program is conforming to the program requirements. The 20 components included two legislatively mandated items that were not in the key elements: that all courts are participating, and that courts are reporting in an approved format to OCA. Eleven of the 20 components were asterisked indicating that these items were *critical* and failure on one of the *critical* components would indicate that the city or county was not conforming to the requirements of the program.

OCA, in coordination with the Comptroller, has reviewed the Comptroller’s participation in the Collection Improvement Program effort, and determined that it has taken much longer and required many more man-hours than estimated to accomplish the task of determining the pre-implementation collection rate for those cities and counties that had a mandated implementation date of April 1, 2006. Changes will be made in the audit processes used to determine the pre-implementation collection rate for those counties and cities with an April 1, 2007 implementation date, to speed the process and hopefully improve accuracy based on what was learned from the first group of audits. OCA staff has a better knowledge of the collections case-level data than the Comptroller’s auditors, who usually work with purely financial information. OCA will be coordinating with the next group of cities and counties (those with a mandated implementation date of April 1, 2007) to “pull” a population of collection data for the Comptroller’s auditors to select their sample to review and determine the pre-implementation collection rate. In addition, there may be a limited number of audits where OCA coordinates “pulling” of collection data from the first group (those with a mandated implementation date of April 1, 2006) for the Comptroller’s auditors to select their sample to review and determine the post-implementation collection rate.

The proposed rules are not identical to the published “[Collections Program Survey](#),” and the latter will be altered to conform to the rules that are adopted. The Comptroller auditors will focus only on the eleven critical components, which will save the auditors’ time. OCA believes that the non-critical items that are listed in the [Collection Program Survey](#) are important in running an efficient and effective Collection Improvement Program. The non-critical component about having uniform written policies and procedures for the collection or compliance department, when followed, will tend to improve the department. Other non-critical components on the front end, such as the expectation that all court costs, fees, and fines are generally due at the time of sentencing or pleading, and on the back end like warrant processing and taking advantage of statutorily permitted collection remedies (Omni and Scofflaw) will improve the effectiveness of the program.

To account for varying needs and conditions in local jurisdictions, OCA has structured its implementation rules and audit standards to allow the programs some flexibility while still incorporating each critical component. We continue to believe that when one of the *critical*

components is missing from the program, there will be an adverse effect on the collection of court costs, fees, and fines. In the following table, which is based on the numbering scheme of the Collections Program Survey, each component is noted as Critical or Non-Critical, the reasoning for the component is provided, as well as a comment on flexibility, discussing different ways that jurisdictions have complied and can comply.

<p><u>Full Participation: Critical</u></p> <p>1. Is every court participating?</p>	
<p>Why component is necessary</p> <ul style="list-style-type: none"> ▪ Based on statutory language, art. 103.0033(c). ▪ Revenue projections are based on full participation. ▪ Non-participation may “catch on.” 	<p>Flexibility of component</p> <p>Until now OCA has interpreted the statute strictly, that <u>all</u> courts must participate. However, to demonstrate increased flexibility, the rule proposal provides “either all courts in the county except one court, or ninety percent (90%) of all courts in the county, whichever is greater, must participate in the program. Partial percentages are rounded in favor of the county.”</p>
<p>Written Collections Procedures: Non-Critical</p> <p>2. Does this department/court have written policies and procedures for the collection of criminal court cost, fees, and fines?</p>	
<p>Why component is important</p> <ul style="list-style-type: none"> ▪ A written procedure ensures consistency and provides a blueprint that can be used regardless of changes in personnel. 	<p>Flexibility of component</p> <p>Some programs have created detailed procedure manuals.</p> <p>Some programs rely on internal memos and other written directives.</p>
<p><u>Dedicated Staff: Critical</u></p> <p>3. Is there a minimum of one full-time staff person or <u>staff time equivalent</u> in this court/department whose priority job function is collection activities? (This may include county, city, or contract employees.)</p>	
<p>Why component is necessary</p> <ul style="list-style-type: none"> ▪ Designed to ensure that the collection of court costs, fees, and fines is a priority. ▪ Without dedicated staff, collection activities tend to neglected or ignored; cases are not continuously monitored to ensure payments are made, phone calls and notices to delinquent defendants are not timely, and a large backlog of uncollected cases develops. ▪ Staff should have a basic understanding of collections (in this context, collections is not defined as 	<p>Flexibility of component</p> <p>The rule proposal states that the collection function need not require 40 hours per week, but must be a priority for someone.</p> <p>One county employs a single coordinator that makes sure the individual courts (i.e., district, county, and justice) implement at a minimum the 11 critical components.</p> <p>Forty-four (44) of the implemented mandatory programs are centralized, with staffs ranging from 2 to 15 employees.</p>

<p>receiving money or cashiering). The collections function is designed to facilitate payment/compliance by applying collections industry techniques to encourage the offender to pay (comply).</p> <ul style="list-style-type: none"> ▪ Historically, staff turnover rates in the collections industry lead all other professional categories. This reflects the difficulty of the job and why it can rarely be effective if attempted on a casual basis. 	<p>Twenty-nine (29) of the implemented mandatory programs are decentralized, with staffs ranging from 1 to 28 employees.</p>
<p>Immediate Payment Expectation: Non-Critical 4. Is there an expectation that all court costs, fees, and fines are generally due on the date of assessment?</p>	
<p>Why component is important</p> <ul style="list-style-type: none"> ▪ Immediate compliance reduces the court's costs associated with managing compliance, and it reduces the increased risk of arrest for the defendant. ▪ Human nature - if defendants have the opportunity to postpone compliance with the court's order, most of them will. ▪ Decreases staff workload - instead of processing many payments from each defendant, you only have to deal with one. ▪ Sends a clear message of compliance. 	<p>Flexibility of component</p> <p>Generally, the judge announces from the bench before court begins that court costs, fees, and fines will be due upon assessment.</p> <p>Some programs post notices in key areas around the courthouse and sometimes in the courtroom itself.</p> <p>Some programs advise criminal justice system stakeholders of this requirement through meetings and memos.</p>
<p><u>Application: Critical</u> 5. If a defendant is unable to pay in full on the day of sentencing or pleading, is an application used to determine a defendant's ability to pay or obtain current contact information?</p>	
<p>Why component is necessary</p> <ul style="list-style-type: none"> ▪ Designed to capture contact information and determine financial ability to pay. ▪ Defendants who need time to pay usually do not object to completing the application, while others who actually can pay in full will do so and leave because they do not want to spend unnecessary time and effort to 	<p>Flexibility of component</p> <p>Ideally, the application is taken immediately following court by the collections/compliance office or officer.</p> <p>One municipal court takes the application during court before the defendant sees the judge.</p> <p>One county takes the application during pre-sentence hearings for their criminal misdemeanor</p>

<p>complete the form.</p> <ul style="list-style-type: none"> ▪ Prevents setting a defendant up for failure. By having and reviewing a defendant’s financial status, collections staff can place the defendant on an appropriate payment plan. ▪ Without this process the defendant is placed on the “honor system.” Private companies and financial institutions do not extend credit without first obtaining contact and financial status information from the borrower, why should the courts? One need only look at the <u>FIRST</u> step taken by the private sector (<u>skip tracing</u>), when an account is referred to collections, to understand the importance of this component. ▪ Personal identifiers, such as social security numbers and bank account numbers, are not required or recommended on the application form. 	<p>defendants.</p> <p>Several counties take applications for justice court cases over the phone.</p> <p>One municipal court distributes applications at sentencing and defendants are given 10 days to return it or pay in full.</p>
<p><u>Verification of Application: Critical</u> 6. Is the information provided in the application verified?</p>	
<p style="text-align: center;">Why component is necessary</p> <ul style="list-style-type: none"> ▪ Simple verification of two key pieces of information (home/contact phone and employment/source of income) is essential. Experience shows that if these two pieces of information are correct, then the remaining information on an application is most likely correct. ▪ In the (different, but not unrelated) context of indigent defense, the Task Force on Indigent Defense recently released a <u>study</u> which concluded that “a comprehensive screening and verification program would generate financial benefits for those counties with a sufficient number of criminal arraignments.” 	<p style="text-align: center;">Flexibility of component</p> <p>Ideally, verification by a collections/compliance office or officer is completed while the defendant is at court.</p> <p>In one municipal court, the bailiffs verify the information on the application during court and before the defendant sees the judge.</p> <p>In one county, the application is forwarded to the collections/compliance office within 24 hours of appearance for verification.</p> <p>Several counties use an automated system to verify information on the application while the defendant is still in the courthouse.</p>
<p><u>Interview: Critical</u> 7. Does the court/department conduct a one-on-one review of the application with the defendant to determine an appropriate payment plan for the defendant or review terms for</p>	

compliance?	
<p>Why component is necessary</p> <ul style="list-style-type: none">▪ According to the American Collectors Association the number <u>one</u> reason for payment default is <u>confusion</u>; this problem can be magnified in the justice system. This component is designed to ensure the defendant knows his/her responsibility and the consequences of failure.▪ If this component is applied effectively, the defendant should always know what to do and who to contact if there is a problem.	<p>Flexibility of component</p> <p>Ideally, the interview is conducted by the collections/compliance office or officer before the defendant leaves courthouse.</p> <p>In one city, interviews are conducted by the judge after the application has been completed and verified.</p> <p>In one city, interviews are conducted by designated staff at the cashier's window following court.</p> <p>In several counties, interviews for justice courts are conducted by the collections staff over the phone within 48-72 hours following court appearance.</p>

Payment Terms: Critical

8. Does this court/department generally have strict payment terms/goals for defendants unable to pay in full on the day of sentencing or pleading?

Why component is necessary	Flexibility of component
<ul style="list-style-type: none"> ▪ Designed to expedite the payment process wherever and whenever possible. For example, a 48-month payment term for a \$250 assessment (or the equivalent of a \$5.20 payment per month) simply is impractical in most cases. Collections are reduced when a community supervision case is revoked and the full payment has not been received. ▪ The longer a defendant is in the system, the greater opportunity there is for default. ▪ The longer a defendant is in the system, the greater the expense burden to both the defendant and the system. ▪ The program is not designed to create court orders. It is designed to create a specific framework for the enforcement of court orders. 	<p>The key word in this component is generally. The application of this component must never conflict with judicial authority or discretion.</p> <p>One example is: For misdemeanors - 50% of the total amount due must be paid within 48 hours, 80% within 30 days, and 100% within 60 days. For felonies - the payment terms are generally shorter than the term of community supervision/deferred adjudication or parole. Payment terms for state jail felonies should be similar to other felonies except payment terms should generally begin after release. Please note these are examples only. Any payment terms established or ordered by the court acting within its statutory authority or discretion is acceptable.</p> <p>Ideally, payment terms are uniform and relatively short. They are established by the collections/compliance office or officer in individual cases, using the guidelines promulgated by the judge(s).</p> <p>One county requires non-probation misdemeanor defendants to pay in full within 30 days or face jail. Defendants on probation must pay within the term of probation.</p> <p>Several counties assign both probation and non-probation misdemeanors to the collections/compliance office, with payment terms established by the office – those terms do not generally exceed 90-120 days.</p> <p>One county court at law requires defendants to pay in full within 90 days of sentencing, but allows extended term payment plans if the defendant cannot pay in full within 90 days.</p> <p>One county requires payment in full within six months.</p>

Account/Case Management: Critical

9. Is a collections/compliance staff person assigned to monitor compliance with payment

<p>agreements?</p>	
<p>Why component is necessary</p> <ul style="list-style-type: none"> Designed to ensure effective case compliance management and timely follow-up of cases in which the offender defaults. Timely follow-up is crucial to the collections process. Poor follow-up is usually at the root of any troubled collections program. 	<p>Flexibility of component</p> <p>Ideally, cases are assigned to the collections/compliance staff to monitor for compliance.</p> <p>One county employs a single coordinator that monitors each court to ensure the court staff is monitoring compliance with payment agreements.</p> <p>Several cities and counties have court collection software programs that monitor cases for compliance automatically.</p>
<p><u>Phone Contact: Critical</u></p> <p>10. Is a phone call made to the defendant when a payment is not paid on the due date?</p>	
<p>Why component is necessary</p> <ul style="list-style-type: none"> This is generally the first step (along with sending a notice) in any standard collection process. It is standard operating practice to initiate phone contact as soon as possible following default. Timely follow-up is crucial to the collections process. Poor follow-up is usually at the root of any troubled collections program. 	<p>Flexibility of component</p> <p>Ideally, delinquent defendants are called immediately by the collections/compliance staff assigned to monitor their cases for compliance.</p> <p>One county utilizes a collection vendor to make calls to delinquent defendants.</p> <p>Several cities and counties use automated dialer systems to make calls to delinquent defendants.</p>
<p><u>Mail Contact: Critical</u></p> <p>11. Is a delinquency notice sent to the defendant?</p>	
<p>Why component is necessary</p> <ul style="list-style-type: none"> This is generally the first step (along with a phone call) in any standard collections process. It is standard operating practice to send out notification of delinquency as soon as possible following default. Timely follow-up is crucial to the collections process. Poor follow-up is usually at the root of any troubled collections program. 	<p>Flexibility of component</p> <p>Ideally, defendants are sent a delinquency notice immediately by the collections/compliance staff assigned to monitor their cases for compliance.</p> <p>One county utilizes a collection vendor to send delinquency notices to delinquent defendants.</p> <p>Several cities and counties use automated computer systems to send delinquency notices to delinquent defendants.</p>
<p><u>Pre-Warrant Notice: Critical</u></p> <p>12. Is a pre-warrant phone call made or notice sent to the defendant when the defendant fails to respond to the collection efforts as detailed in Question 11.?</p>	
<p>Why component is necessary</p> <ul style="list-style-type: none"> Notification that collection/compliance 	<p>Flexibility of component</p> <p>Ideally, defendants are called or sent a pre-</p>

<p>efforts are about to be escalated is generally a standard procedure in any collections process.</p> <ul style="list-style-type: none"> ▪ This notice also serves as a final courtesy attempting to give a defendant every opportunity to comply with the order of the court. 	<p>warrant notice when a defendant has not responded to previous attempts to be contacted by collections/compliance staff assigned to monitor their cases for compliance.</p> <p>One county utilizes a collection vendor to send pre-warrant notices to non-responsive delinquent offenders.</p> <p>Several cities and counties use automated dialers or systems to call or send pre-warrant notices to non-responsive delinquent offenders.</p> <p>One county uses a warrant specialist (actually a collections supervisor) to make final attempt pre-warrant calls to non-responsive delinquent defendants.</p> <p>Several cities and counties use warrant officers to make final attempt pre-warrant calls to non-responsive delinquent defendants.</p>
<p>Warrants: Non-Critical 13. Is a warrant generally issued when a pre-warrant phone call or delinquency notice has failed to bring a satisfactory response?</p>	
<p>Why component is important</p> <ul style="list-style-type: none"> ▪ The warrant is the ultimate consequence for failing to comply with an order of the court. It is designed to encourage personal accountability and respect for court orders. ▪ In situations where a defendant continues to fail to comply with a court order and has been notified that a warrant will be issued for non-compliance, a warrant should be issued so that defendants do not come to believe that the threat of a warrant is just that, a threat, and they do not have to comply. ▪ The threat of a warrant and the possibility of incarceration often produce compliance. 	<p>Flexibility of component</p> <p>Generally, programs work to identify hardcore cases – such as known repeat offenders - that require the court’s attention without the use of the warrant. But when all efforts fail, they will recommend issuing a warrant as a necessary next step in the enforcement process.</p> <p>Some courts have elected not to issue warrants for failure to pay court costs, fees, and fines.</p>
<p>Use of Law Enforcement: Non-Critical 14. Does this court/department use law enforcement officers to contact or serve warrants</p>	

<p>on defendants who have failed to make their payments?</p>	
<p style="text-align: center;">Why component is important</p> <ul style="list-style-type: none"> ▪ Once a warrant is issued it can become an extremely effective tool in encouraging compliance. Service of the warrant sends a strong and clear message to lawbreakers and the entire community that compliance is not optional. ▪ One of the most cost effective and successful uses of law enforcement officers in the collections process has been establishing contact with the defendant to arrange for resolution prior to field service. 	<p style="text-align: center;">Flexibility of component</p> <p>Some programs have warrant officers assigned to and working directly with the collections/ compliance office on warrant cases.</p> <p>Some programs use warrant officers, marshals, and in some instances constables assigned to law enforcement agencies to contact defendants or serve warrants.</p>
<p>Post Warrant Notices and Calls: Non-Critical</p> <p>15. Is a post-warrant phone call and/or a notice sent if there has been no response from defendant after issuance of the warrant?</p>	
<p style="text-align: center;">Why component is important</p> <ul style="list-style-type: none"> ▪ The collections process does not end with the issuance of a warrant, and notification sends this message. ▪ Notifying the defendant that an arrest warrant has been issued should be considered mandatory if previous notifications have advised of this intent; it would be mandatory if the Fair Debt Practices Act applied. ▪ A phone call or notice advising that a warrant has been issued may be the one contact that finally gets the attention of the defendant and results in compliance. 	<p style="text-align: center;">Flexibility of component</p> <p>Some programs use in-house staff to make these follow-up calls and send notices.</p> <p>Some programs use law enforcement officers to make these calls and send notices.</p> <p>Some programs rely on third party collection agencies or firms to make these calls and send notices.</p>
<p>Alternative Compliance Options: Non-Critical</p> <p>16. Does this court/department allow for alternative enforcement options, such as community service, for those who are unable to pay?</p>	

<p>Why component is important</p> <ul style="list-style-type: none"> Individuals who are unable to pay are not exempt from compliance with court orders. The Collections Improvement Program is designed to give those defendants a reasonable compliance option. This can be accomplished with an assignment to a community service or public works program in lieu of payment of court costs, fees, and fines. 	<p>Flexibility of component</p> <p>Some programs work with community service or public works programs managed and operated by the county or city.</p> <p>Some programs work with their Community Supervision and Corrections Departments who manage community service or public works programs.</p> <p>Some programs have created their own community service or public works programs.</p>
<p>Statutory Tools: Non-Critical</p> <p>17. Does this court/department use statutorily permitted collection remedies at least for Class C misdemeanors?</p>	
<p>Why component is important</p> <ul style="list-style-type: none"> Using statutes designed to assist with enforcing compliance with court orders for the payment of court costs, fees, and fines is strongly encouraged because it increases the opportunity for success. (See <i>Tools for Collectors</i>, p. 12) 	<p>Flexibility of component</p> <p>Ideally, programs use both the Texas Department of Public Safety's (DPS) Failure to Appear program for non-renewal of drivers licenses and the Texas Department of Transportation's (TxDot) Scoff program for non-renewal of vehicle registration, for defendants who fail to pay court costs, fees, and fines.</p> <p>Some programs use either the DPS program or the TxDot program, but not both.</p>
<p>Contracted Back-end Collections: Non-Critical</p> <p>18. Does the court/department use an outside vendor for collections activities after adjudication?</p>	
<p>Why component is important</p> <ul style="list-style-type: none"> It is important the collections process continues until there is resolution. In some instances, it is more cost effective to use contract vendors to work seriously delinquent cases after all internal efforts have been exhausted. 	<p>Flexibility of component</p> <p>There are statutory provisions for counties and cities to contract with private collection agencies and firms for the purpose of collecting court costs, fees, and fines.</p>
<p>In-House Back-end Collections: Non-Critical</p> <p>19. If this court/department does not use an outside vendor for serious delinquent cases, does the department have a process for locating and pursuing seriously delinquent defendants?</p>	
<p>Why component is important</p> <ul style="list-style-type: none"> It is important the collections process continues until there is resolution. 	<p>Flexibility of component</p> <p>Some programs have specific internal procedures to continue working delinquent cases until</p>

<p>There must be a plan in place to continue efforts to bring defendants into compliance and reduce the number of outstanding cases due to the non-payment of court costs, fees, and fines.</p>	<p>resolved. They use all available tools, including the DPS and TxDot programs. They also continue to search and make contact with defendants no matter where they are to try to reach resolution.</p>
<p><u>Reporting: Critical</u> 20. Is this court/department reporting in the approved format to the Office of Court Administration updated information regarding the collections activity?</p>	
<p>Why component is necessary</p> <ul style="list-style-type: none">▪ This component is required by statute.▪ By analyzing the information provided in the reports, OCA staff are in a better position to provide assistance to the collections/compliance office.▪ Collections/compliance offices can see how they are doing in relation to other counties or cities. Also, there is contact information should they want to contact another office on a casual basis.	<p>Flexibility of component</p> <p>OCA has implemented an “on-line” monthly reporting system in an effort to maximize efficiency and minimize inconvenience.</p>

TEXAS ADMINISTRATIVE CODE
TITLE 1. ADMINISTRATION
PART 8. TEXAS JUDICIAL COUNCIL

The Office of Court Administration of the Texas Judicial System (OCA) proposes a new Chapter 175, Sections 175.1-175.7 pertaining to its collection improvement program. The new rules would manifest the agency's compliance with legislative mandates to (1) cooperate with the Comptroller of Public Accounts (Comptroller) to develop a methodology for determining the collection rate of the designated local governments, (2) develop and publish on its website the program requirements, (3) develop and publish local government report requirements, and (4) cooperate with the Comptroller to develop audit standards and to provide a full explanation of the methodology, requirements and standards to the stakeholders.

Glenna Bowman, chief financial officer of OCA, has determined that for each year of the first five years that the rules will be in effect, the fiscal impact will be positive for both state and local governments.

Revenue and cost estimates were based on data provided by OCA and the Comptroller. This data includes information about projected collection program revenues, as well as the associated costs to staff this function at both agencies. Based on implementation of the program by all mandated entities, a total revenue gain to the state of approximately \$33.7 million per year is projected. This revenue would be distributed among 17 state funds, including General Revenue (\$2.1 million); Crime Victims Compensation (\$9.3 million), General Revenue – Dedicated Funds, various (\$21.2 million), and Other Funds, various \$1.1 million).

State costs for the program include four full-time equivalents (FTEs) plus operating costs at OCA, and eight FTEs at the Comptroller, totaling \$659,868 per year.

Implementing a collection program based on OCA's criteria could help local court jurisdictions improve the collection rate of court costs, fees, and fines at state and local levels. Typically, programs participating in OCA's court collection program have increased their collection rates by 16 percentage points.

Local governments would incur costs to implement the program, such as program staff and related operational expenses, which would vary depending on the size of the jurisdiction and the caseload volume. OCA anticipates that local governments could recoup program costs within the first year and experience a positive revenue gain, provided they are in compliance with program requirements.

Generally, counties and municipalities may retain 10 percent of certain state court fee amounts collected for the state as a service fee. Increasing the collection of state court fees increases the amount of the service fee that a county or municipality may retain. By implementing a collection program, these local jurisdictions could also improve the collection of local court costs, fees, and fines that would contribute to a positive revenue gain.

Ms. Bowman has determined that for each year of the first five years that the rules will be in effect, the public benefits would include improved compliance with court orders regarding payment of court costs, fees, and fines, as well as the collection of additional revenues owed to state and local government. The probable economic cost to persons required to comply

with the rules will vary by jurisdiction; however, experience with the program shows that the additional revenue generated by the program will exceed the cost of implementation within the first year.

There will be no economic effect on small businesses or on large businesses.

The agency requests comments on the proposed rules from any interested person; comments may be submitted to Margaret Bennett, General Counsel, Office of Court Administration, P.O. Box 12066, Austin, TX 78711-2066 no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

Statutory authority for the proposed rules and the statutory provision affected by the proposed rules is Article 103.0033 of the Code of Criminal Procedure.

No other statutes, articles, or codes are affected by the proposed new rules.

CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

SUBCHAPTER A. GENERAL COLLECTION IMPROVEMENT PROGRAM PROVISIONS

Section 175.1. Definitions, Source and Purpose.

(a) “Designated counties” are those with a population of 50,000 or greater. “Designated municipalities” are those with a population of 100,000 or greater.

(b) Article 103.0033 of the Code of Criminal Procedure requires designated counties and municipalities to comply with the program developed and implemented by the Office of Court Administration of the Texas Judicial System (OCA) to improve the collection of court costs, fees, and fines imposed in criminal cases. Designated counties’ programs must include district, county, and justice courts.

(c) The purpose of this chapter is to receive public comment on and to publish the results of OCA’s compliance with its legislative mandates to (1) cooperate with the Comptroller to develop a methodology for determining the collection rate of the designated local governments, (2) develop and publish on its website the program requirements, (3) develop and publish local government report requirements, and (4) cooperate with the Comptroller to develop audit standards.

Section 175.2. Methodology for Determining Collection Rate.

OCA and the Comptroller developed the following methodology for determining the collection rate of designated local governments. The Comptroller calculates the pre-implementation collection rate of a program by selecting a random sample of cases for a 12-month period beginning 16 months before implementation. The Comptroller tracks each case from the sample for 120 days from the date judgment is imposed to capture all information on payments, credits, and waivers. After the program is implemented, the Comptroller calculates a post-implementation collection rate using the same sampling methodology for a 12-month period beginning after implementation. The pre-program and post-program collection rates are then compared to measure collection program improvement. This provides a “snapshot” of a 120-day period and may not reflect the total collection effort over the life of the collection effort; thus, the collection rate may actually be higher than the amount reported. This methodology is used for cost-effectiveness purposes.

It treats everyone consistently and establishes a baseline for comparing to the collection rate after implementation of the model program.

Section 175.3. Collection Improvement Program Requirements.

(a) General Scope. OCA's Collection Improvement Program applies to criminal cases in which the defendant does not pay all court costs, fees, and fines at the time they are assessed and payment is requested. A payment plan may be established by program staff in communication with the defendant or by the judge in a hearing.

(b) Program Requirements. OCA has identified 11 critical components of its collection improvement program. Five of those critical components relate to the way the program itself should be implemented, staffed, and operated. The other six critical components relate to the way the program staff communicates with the defendants and documents those communications. In accordance with Article 103.0033(j), the Comptroller will periodically audit counties and municipalities to confirm compliance with the critical components of OCA's Collection Improvement Program; the audit standards are more fully described in Section 175.5 of these rules.

(c) Critical Components for Program Operations.

(1) Full Participation. Because each municipality consists of only one court, that court must participate in the program to achieve full participation. Each county has multiple district, county, and justice courts. For a county to achieve full participation, either all courts in the county except one court, or ninety percent (90%) of all courts in the county, whichever is greater, must participate in the program. Partial percentages are rounded in favor of the county.

(2) Dedicated Program Staff. Each program must designate at least one full-time equivalent employee (FTE) who has a written job description containing an essential job function of collection activities. The priority collection job function may be concentrated in one individual employee or distributed among two or more employees. The collection function need not require 40 hours per week of FTE time, but must be a priority.

(3) Specified Payment Terms. Payment plans shall be designed to have the highest payment amounts in the shortest period of time that the defendant can successfully meet, considering the amount owed, the defendant's ability to pay, and the defendant's obligations for payment of any other court-mandated fees, such as rehabilitation fees, probation fees, and parole fees. Payment terms should generally be shorter than the term of community supervision/deferred adjudication or parole. If a defendant is imprisoned or confined in a correctional facility, payment terms should begin after release.

(4) Monitoring of Payment Plan Compliance. Each program must assign an employee to monitor compliance with payment agreements, and the assignment must be documented in the employee's job description. The employee must document the ongoing monitoring by maintaining either an updated payment due list or a manual or electronic tickler system.

(5) Proper Reporting. The program shall report its collection activity data to OCA at least annually in a format approved by OCA, as described in Section 175.4 of this chapter.

(d) Critical Components for Defendant Communications.

(1) Application for Extended Payment. If defendants are unable to pay in full on the day judgment is imposed, program staff must document the defendants' applications for extended payment within 30 days of the judgment imposed date. For proper documentation, applications must contain the date of the application; defendant's home address; defendant's home or primary contact telephone number; the employer's or source of support's name, address and telephone number; financial institutions and account balances; creditors, debt balances and payment amounts; at least two personal references; and stated income. The application must either be signed by the defendant, or program staff must document that the defendant acknowledged consent in a telephone call.

(2) Verification of Applications. Within five days of receiving the application, program staff must verify both the home or contact phone number and the employer or source of support. Verification may be conducted by telephone or by use of a verification service and must be documented by identifying the person conducting it and the date.

(3) Interviews of Applicants. Within five days of receipt of an application, program staff must conduct an in-person or telephone interview with the defendant to review the application and determine an appropriate payment plan. Alternatively, within 30 days of a judge setting a payment plan, program staff must conduct an in-person or telephone interview with the defendant to review the payment plan and terms of compliance. Interviews must be documented by indicating the name of the interviewer and date of the interview.

(4) Telephone Contact for Past-Due Payments. Within 30 days of a missed payment, a phone call must be made to a defendant who has not contacted the program. Phone calls may be made by an automated system, but an electronic report or manual documentation of the telephone contact must be available on request.

(5) Mail Contact for Past-Due Payments. Within 30 days of a missed payment, a written delinquency notice must be sent to a defendant who has not contacted the program. Written notice may be sent by an automated system, but an electronic report or manual documentation of the telephone contact must be available on request.

(6) Pre-Warrant Contact. Within 30 days of the written delinquency notice, if no response was received, another phone call or written notice must be sent to the defendant before issuance of a warrant is requested. A pre-warrant phone call or written notice may be made or sent by an automated system, but an electronic report or manual documentation of the telephone contact must be available on request.

Section 175.4. Content and Form of Local Government Reports.

(a) General Scope. Article 103.0033(i) requires that each program submit a written report to OCA and the Comptroller at least annually that includes updated information regarding the program, with the content and form to be determined by OCA and the Comptroller.

(b) Reporting Format and Account Setup. In cooperation with the Comptroller, OCA has implemented a web-based Online Collection Reporting System for the program participants to enter information into the system which is accessible by both agencies. For good cause shown by a program, OCA may grant a temporary waiver from timely online reporting. Program participants shall provide OCA with information for the online reporting system to enable OCA to establish the program reporting system account. The information must include the program name, program start date, start-up costs, the type of collection and case

management software programs used by the program, the entity to which the program reports (e.g., district clerk's office, sheriff, etc.) the name and title of the person who manages the daily operations of the program, the mail and e-mail addresses and phone and fax numbers of the program, the courts serviced by the program, and contact information for the program staff with access to the system so user identifications and passwords can be assigned.

(c) Content and Timing of Reports.

(1) Annual Reports. By the 20th day of the month following the anniversary of program implementation, each program shall report the following information:

- (A) Number of full-time and part-time collection program employees
- (B) Total program budget
- (C) Salary budget for the program
- (D) Dollar amount of fringe benefits for the program
- (E) Areas other than court collections for which the program provides services
- (F) A compilation of 12 months of the monthly reporting information described

in paragraph (3) of this subsection, if not reported each month as requested.

(2) Additional information may be requested in the annual reports on a voluntary basis.

(3) Monthly Reports. By the 20th day of the following month, each program is requested to provide the following information regarding the previous month's program activities:

- (A) Number of cases in which court costs, fees, and fines were assessed.
- (B) For court costs and fees: the dollar amount assessed and collected; the dollar amount of credit given for jail time served; the dollar amount of credit given for community service performed; and, although costs and fees should not be waived, the dollar amount waived if this occurs.

(C) For fines: the dollar amount assessed, collected, or waived; the dollar amount of credit given for jail time served; and the dollar amount of credit given for community service performed.

(D) Aging information consisting of the time span from the date judgment is imposed through the date of payment, in 30-day increments up to 120 days, and for more than 120 days.

Section 175.5. Audit Standards.

OCA has cooperated with the Comptroller to develop the program audit standards described in this section.

(1) Audit Sample. In auditing a program, the auditor shall use random selection to generate an adequate sample of cases to be audited, and shall use the same sampling methodology as is used for programs with similar automation capabilities.

(2) Compliance Standards. In auditing a program, the auditor will review compliance with the critical components described in Sections 175.3(c) and (d) of this chapter.

(A) A program must be in full compliance with each program requirement described in Section 175.3(c)(1), (2), (4), and (5) of this chapter, and must meet the following standards for compliance with Section 175.3(c)(3) of this chapter: In municipal and justice court programs, at least 80% of the payment plans must provide for full payment within 120 days of the date judgment is imposed. In county and district court cases in which defendants are placed on community supervision, at least 80% of the payment plans must provide for full

payment at least 60 days before the expiration of the term of community supervision. In county and district court cases not involving community supervision, at least 65% of the payment plans must provide for full payment within 180 days of the date judgment is imposed or the defendant is released from confinement. Payment plans imposed by a judge are not subject to these requirements.

(B) For the defendant communication requirements described in Section 175.3(d) of this chapter, the auditor shall review a sample of cases at each stage of collection. To be in substantial compliance with a critical component of Section 175.3(d) of this chapter, the required documentation must exist for at least 80% of the cases at that stage of collection. To be in partial compliance with a critical component of Section 175.3(d) of this chapter, the required documentation must exist for at least 50% of the cases at that stage of collection. In order to designate a program as complying with OCA requirements, the Comptroller shall find a program in substantial compliance with at least five of the six critical components of Section 175.3(d) of this chapter. If a program is in substantial compliance with only five of these components, then it must be in at least partial compliance with the remaining critical component of Section 175.3(d) of this chapter.

SUBCHAPTER B. IMPLEMENTATION SCHEDULE AND WAIVERS

Section 175.6. Implementation Schedule.

In consultation with the Comptroller, OCA has developed and published on its website a prioritized implementation schedule for programs.

Section 175.7. Waivers.

Article 103.0033 provides that OCA may determine that it is not cost-effective to implement a program in a county or municipality and grant a waiver to the requesting entity.

(1) Criteria for granting waivers. OCA will grant a blanket waiver from implementation when the requesting entity demonstrates

(A) that the estimated costs of implementing the program are greater than the estimated additional revenue that would be generated by implementing the program; and

(B) that a compelling reason exists for submitting the waiver request after the entity's published implementation deadline. The requesting entity and OCA program staff each shall submit documentation supporting their cost and revenue projections to the administrative director for determination.

(2) Temporary waivers. OCA will consider a request to grant a temporary waiver for good cause that could not have been reasonably anticipated.

About OCA

Resources & Information
for the Efficient Administration
of the Judicial Branch of Texas

OCA provides **resources** for the
judicial branch:

- [technical assistance](#), training, and research on court administration;
- staffing for judicial branch regulatory boards and policymaking bodies;
- information technology solutions, including [Texas Courts Online](#);
- funding and standards for [indigent defense](#) services;
- fiscal and legal consultation for [appellate courts](#); and
- staffing and administration for [specialty courts](#).

OCA provides **information** about
the judicial branch:

- statistics and analysis of court information and case activity;
- descriptions of court system structure and jurisdiction;
- legislative responses and reports about the courts and judiciary; and
- comparative policy studies and recommendations.

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Please refer comments or questions about this newsletter or the
Office of Court Administration to:
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