

Improving the Collection Rate of Offender Fees

A Second Report to Appropriation Chairs

And

Subcommittee on Justice and Public Safety Chairs

Prepared by the Administrative Office of the Courts and the Department of Correction

April 1, 2004

COLLECTION OF OFFENDER FEES

SECTION 16.15. The Department of Correction and the Judicial Department shall report by April 1, 2004, to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the success of their efforts to improve the collection rate of offender fees for probationers and for nonprobationers sentenced to community service and on any recommendations for statutory or procedural changes that will improve the collection of financial obligations from offenders.

The report shall include a comparison of the percentage of offender fees collected in the most recent year compared to prior years, including the percentage of offenders who were ordered to pay fees and the percentage of offenders who actually paid those fees. The report shall also include the total offender fees collected, in dollars and as a percentage of the fees ordered, and the fees that could have been ordered based on the sentence and conditions imposed by the judge. If any of this information cannot be collected, the report shall include a description of the data collection issues and a plan for addressing those issues.

Overview

Representatives of the Department of Correction, Division of Community Corrections and the Administrative Office of the Courts met on several occasions to re-review and discuss the system of collecting offender fees. . The groups' primary goal was to review the recommendations from last year's report and to develop a reliable means of calculating a collection rate for offender fees and to make any additional recommendations for improving the collection rates.

Under the current process, offenders are assessed a supervision fee while on supervised probation and a community service fee if ordered to perform community service. Judges must, by statute, order probation supervision fees to offenders placed on supervised probation or assign the community service fee unless the offender is unable to pay. Supervision fees are assigned monthly and under the AOC's accounting system, are credited to DCC and the General Fund when paid. In practice, offenders not making payments to the clerk's office on a regular basis are not revoked for this violation of the condition of their probation but often judges will order modifications to the offender's probation and remit all supervision fees paid against other court imposed fees including victim restitution and attorney's fees. Thus, supervision fees actually paid by an offender are reposted as a victim restitution payment. It has also been the practice that offenders must pay the community service fee prior to performing their community service. There have been some recent changes in that practice, especially since the increase in the fee.

Collections of criminal court, probation, and community service fees have gone up each year since FY 2001-02. This fiscal year the AOC is projecting to collect \$75.7 million in criminal

court fees; \$16.9 million in probation supervision fees and \$8.2 million in community service fees. The total projected amount for FY2003-2004 is \$100,884,422 which is an 11% increase in fees collected over the \$91,133,010 collected in FY2002-2003. Fee collected and comparisons to previous years are illustrated on the following table.

Three-Year Comparisons of Selected Fees

	Actual 2003 as a % of Projected	Current Fee as % of 01-02	Projected Full Year 2003-04	2003-04 Through April 2004	Actual 2002-03	Actual 2001-02
Criminal court fees	90%	117%	\$ 75,747,396	\$ 63,122,830	\$69,989,561	\$66,744,747
Probation fees	133%	150%	\$ 16,892,370	\$ 14,076,975	\$14,337,121	\$10,832,056
Community Service fees	133%	200%	\$ 8,244,656	\$ 6,870,547	\$ 6,806,328	\$ 5,280,879

Collection Rates

There is some difficulty in calculating annual collection rates for offenders on supervised and unsupervised probation. The Financial Management System (FMS) is an accounts payable system used by AOC in the Clerks' of Superior Court Offices to disperse payments made by offenders as ordered by the court and outlined in the general statutes. There are two practices used by Clerks' offices to establish offender accounts in FMS. The first practice is to enter all offenders who are on probation and ordered by the court to pay fees and fines into the system. Approximately one fourth of all Clerks offices follow this practice. The remaining Clerks' offices establish the FMS account for an offender when the first payment is paid. Thus, if a payment is never paid, then the offender is never entered into FMS.

By comparing offenders who are in the AOC's Automated Criminal Information System (ACIS) to offenders in FMS and matching case numbers, the two practices become obvious. In cases in which offenders are currently on supervised probation, 80% of the over 99,000 cases were matched with an account in the FMS system. The matching ranged from a low of 40% to a high of 95% of all cases in the county. In about two thirds of the counties, 75% of active supervised probation cases were found in the FMS system. The numbers are quite different in unsupervised probation cases. Only 36% of the nearly 27,000 unsupervised probation cases were matched from ACIS to FMS. The matching ranged from low of only 1% to a high of 100%. In 51 of the counties, less than half of the unsupervised probation cases were found the FMS system. This is illustrated in the following table:

Probation Cases Matched in FMS from ACIS

Active Probation Cases	ACIS	FMS	% In FMS
Supervised Probation cases	99,318	79,909	80%
Unsupervised Probation cases	26,847	9,793	36%

Actual annual collection rates cannot be accurately calculated, as it is not readily clear what is to be and what can be measured. It is common practice for some or all fees and costs in supervised probation cases to be waived before the termination of supervision if all other conditions of probation have been satisfied. Thus, looking at the number of offenders on active probation who have made no payment in cases where fees and costs have been ordered can give an indication of rate of non payment. By comparing offenders on active probation in ACIS matched with accounts found in FMS in which no payment had been made, there is a inverse correlation to the number of cases matched and the number of non payments. The fewer cases found in FMS the

lower the non-payment rate and conversely, the more cases found in FMS the higher the non-payment rate.

Thus, to look at true non-payment rates, the focus should be placed on counties that place all offenders owing fees and costs into FMS. In active supervised probation cases, there are 26 counties that have a 90% or greater rate of offenders entered into FMS. These counties have a no payment rate of 47% of all of their cases. The rate for these counties ranges from a low of 33% to a high of 53%. The other 74 counties, which have rates of cases entered into FMS of less than 90% have a no payment rate of 49%. The rate for these counties ranges from a low of 34% to a high of 69%.

In looking at non-payment rates for cases of unsupervised probation, the focus should also be placed on counties that place all offenders owing fees and costs into FMS. In active unsupervised probation cases, there are 25 counties that have a 90% or greater rate of offenders entered into FMS. These counties have a no payment rate of 69% of all of their cases. The rate for these counties ranges from a low of 29% to a high of 88%. The other 75 counties, which have rates of cases entered into FMS of less than 90% have a no payment rate of 89%. The rate for these counties ranges from a low of 33% to a high of 100%.

The following table illustrates the non-payment rates.

Non-payment Rates in Supervised and Unsupervised Cases

Active Probation Cases	Number of Non-Payment Cases	Percent Non-Payment	Range
Supervised Probation cases in which counties have a 90% or greater rate of offenders entered into FMS	12,071	47%	33% - 53%
Supervised Probation cases in which counties have a less than 90% of offenders entered into FMS	33,989	49%	34% - 69%
Unsupervised Probation cases in which counties have a 90% or greater rate of offenders entered into FMS	3,306	69%	29% - 88%
Unsupervised Probation cases in which counties have a less than 90% rate of offenders entered into FMS	19,247	89%	33% - 100%

The non-payment rate can be impacted by a number of factors that are not obvious or apparent through these rates. These factors range from local culture, to resource issues to the economic well being of the county. However, it is clear that those on supervised probation have a lower percentage of non-payment cases than unsupervised probation. It is important to note that the vast majority of supervised probation cases in which fees and costs are due are in FMS and the variance of non-payment rate between those counties, which enter all cases into FMS versus those that generally only enter cases as they make payments, is not very great. The difference in non-payment rates in unsupervised probation rates is greater between the two practices but is very high in both. This could be partially explained by this analysis being only a snapshot of payment history and some unsupervised cases may have a date certain future payment date.

Recommendations

This section contains an update of the recommendations that were contained in last year's report. Some of these recommendations require statutory changes while others could be accomplished through the administrative processes of the two agencies. However, it was agreed by both agencies that caution should be noted in the enactment of means and methods aimed at increasing collection rates that might adversely affect the collection of other court mandated fees and costs

including victim restitution or that might increase length of stay on probation or revocation rates. There was a feeling among the committee that offenders have finite resources and thus an increase in the collection rate of supervision fees may cause a decrease in the collection of victim restitution or attorneys' fees. There was also agreement that increasing the length of time on probation or revocation rates would be counterproductive in that these methods cost more than they return.

The following is a list of the recommendations:

- **Consider changing monthly supervision fee to flat fee and adding program participation fees such as electronic monitoring, drug testing, drug assessment and drug treatment.** This recommendation would take a statutory change but this would make the supervision fee consistent with the Community Service fee and as such would be a definitive cost identified for the offender. The flat fee could be set as a fee of \$300 paid regardless of the number of months under supervision or regardless of the number of cases for which the offender is being supervised. This would eliminate the duplicative collection of fees from offenders under probation in more than one county and the subsequent remittance of those fees. Requiring offenders to pay a \$90 fee for participation in electronic monitoring, and a \$50 - \$150 fee for drug testing, assessment and treatment would parallel costs assessed in DWI cases. The current accounting system (FMS) could handle this but there are a number of forms and practices that would have to be changed.

Status: No action from last year.

- **Supervision fee not to be remitted after payment.** This would take a statutory change to prohibit what is becoming a common practice. Judges would no longer be able to remit fees paid to supervision to be paid as other fees or costs. However, judges would retain the discretion to waive supervision fees at the time of conviction or remit fees not already paid in a modification order or a termination of probation order. This would require training for judges and probation officers.

Status: No action from last year.

- **Revoke driving privileges for non-payment.** This would require statutory change. Currently, an offender's driving privilege is revoked for non-payment of court-imposed fees and fines for cases in Chapter 20. This would extend the revocations to all felonies and serious misdemeanors in which probation is ordered.

Status: No action from last year.

- **Tax offsets, wage garnishments.** This would require statutory change. Currently tax offsets and wage garnishments are used in child support and other selected cases. Some research would need to be done to determine the overall efficiency of this recommendation, as researching tax records and contacting employers can be very time and labor intensive.

Status: No action from last year.

- **Automated dunning letters and show cause orders.** The Division of Community Corrections or the Administrative Office of the Courts could adapt their information systems to generate dunning letters following periods of non payment as well as an automated show cause order for offenders to return to court. This is being done manually with some success in Mecklenburg County.

Status: After further review of the AOC's ACIS and FMS systems, it has been found to not be cost efficient nor readily feasible to adapt either system to an automated accounts receivable system with billing capabilities.

- **Unsupervised probationers to have date specific pay dates.** Judges should be encouraged to set a specific date due for those sentenced to unsupervised probation who have substantial fees and fines assessed. The automated dunning letters and show cause orders outlined previously could be used to assist in collections.
Status: No action from last year.
- **Cases continued until payment made.** Judges should be encouraged to continue cases in which offenders site a specific date in which they would be able to make a payment in full to satisfy their judgment.
Status: After further review of local court practices, this recommendation has been found to not be practical nor efficient.
- **Expand the use of criminal contempt.** Judges should be encouraged to use criminal contempt in cases in which offenders do not meet fee payment schedules. This could be done in lieu of revocation.
Status: No action from last year.
- **Training for probation officers on the use of the FMS system.** The ACO could conduct periodic training on the use of the FMS system for probation officers. Many officers have never received initial training and others could use refresher courses. The FMS system could then be used more efficiently by probation officers to monitor their caseloads. *Status: A train the trainer training session was planned and implemented with the AOC FMS staff training DCC training staff.*
- **Automate the origination of records in the FMS system.** Currently, all accounts in the FMS system must be manually entered which requires many hours of work. Bringing the information from judgments over from the criminal system would save the setup time and also provide for better monitoring of all cases. This would require funding for programming.
Status: After further review, it has been decided that it would be more cost efficient to build this feature into the replacement system that is currently under design.
- **Provide management information to probation officers and managers.** The AOC should attempt to provide periodic management reports to probation officers and managers in an electronic form that would provide probation officers with specific payment information on the offenders they supervise.
Status: The two agencies are continuing to explore the best means of providing useful management reports for probation officers.
- **Use of bankcards.** This was discussed and rejected as not a viable option for those offenders currently not paying.
Status: No action from last year.