

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
Hon. Marvin R. Baxter, Chair
Collaborative Court-County Working Group on Enhanced Collections
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SUBJECT: Enhanced Collections (Pen. Code, §§ 1463.007 and 1463.010, and Rev. &
Tax. Code § 19280) (Action Required)

Issue Statement

In 2003 the Chief Justice appointed representatives of courts, counties, and state agencies to the Collaborative Court-County Working Group on Enhanced Collections (working group). For two years the working group has reviewed nearly all aspects of collection programs and made several recommendations for improving the enforcement of court-ordered fines and penalties. This report recommends legislative proposals that will further improve collection efforts across the state. In 2005 the Judicial Council approved these proposals for sponsored legislation in 2006; however, the proposals were not included in legislation in 2006, and staff requests that the council reconsider the proposals for sponsored legislation in 2007.

Recommendation

The Policy Coordination and Liaison Committee and the Collaborative Court-County Working Group on Enhanced Collections recommend that the Judicial Council sponsor legislation to amend Penal Code sections 1463.007 and 1463.010, and Revenue and Taxation Code section 19280 to:

1. Establish a task force on criminal fines and penalties that will make recommendations for simplifying California's criminal-justice-related court-ordered debt assessment, collection, and distribution system and address issues such as priority of payments, cost recovery practices pursuant to Penal Code section 1463.007, and the expansion of comprehensive collection programs;

2. Reduce the minimum fine required for submission to the Franchise Tax Board's Court-Ordered Debt Collection Program from \$250 to \$100;
3. Expand the Franchise Tax Board's Court-Ordered Debt Collection Program to include collections for registration, pedestrian, and bicycle violations; and
4. Expand the use of enhanced collection programs as defined in Penal Code section 1463.007 to allow the programs to collect public defender fees, booking fees, and other criminal-justice-related fees.

The recommendations are intended to improve court and county collection programs. The text of the proposed legislation is attached at pages 4-8.

Rationale for Recommendation

1. Create a task force on criminal fines and penalties. The criminal fine structure has become so complicated with the various add-ons, surcharges, and penalty assessments that an offense with a \$100 base fine can result in an actual fine owed of nearly \$400. This often leaves the public wondering why the system is so complicated and places judges and courtroom staff in the difficult position of calculating elaborate fines and justifying a confusing system. The working group recommends legislation to establish a task force on criminal court-ordered fines and penalties that will make recommendations for simplifying California's criminal fine and penalty assessment, collection, and distribution system and address issues such as priority of payments, cost recovery practices pursuant to Penal Code 1463.007, and the expansion of comprehensive collection programs.

2. Reduce the minimum fine required for submission to the Franchise Tax Board's Court-Ordered Debt Collection Program from \$250 to \$100. As mentioned above, a base fine of \$100 can result in a total fine of nearly \$400. By reducing the minimum fine to be submitted to the Franchise Tax Board's (FTB) Court-Ordered Debt Collection Program from \$250 to \$100, there is the potential to substantially increase the amount of debt collected. It is likely that the \$250 minimum was set prior to the dramatic increases in add-ons, penalty assessments, and surcharges of recent years. This proposal could result in a significant workload increase for the FTB. Prior to going forward with legislation, staff will consult with the FTB. Section 19280(c) gives the FTB authority to establish criteria for referral, including setting a minimum dollar amount; this section may be sufficient to ensure that the FTB is not overburdened by referrals. Another potential remedy to the FTB workload problem is to draft the legislation to make the submission of delinquent accounts at the lower amount permissive and only to the extent that the FTB authorizes the court or county to submit the additional accounts.

3. Expand the Franchise Tax Board's Court-Ordered Debt Collection Program to include collections for registration, pedestrian, and bicycle violations. The FTB's Court-

Ordered Debt Collection Program has proven to be one of the most effective ways for courts and counties to recover debt. Fees for certain municipal code offenses are prohibited from being submitted to the FTB even if they are delinquent. It would be administratively efficient and result in increased revenue if court and county collection programs were able to submit their delinquent court-ordered debt to the FTB regardless of the type of violation. This proposal could result in a significant workload increase for the FTB. Prior to going forward with legislation, staff will consult with the FTB. As with the proposal above, this legislation could be drafted to allow the expanded use of the program contingent on FTB's ability to process the caseload.

4.. Apply Penal Code section 1463.007 to public defender fees, booking fees, and other criminal-justice-related fees. Penal Code section 1463.007 defines the elements of an enhanced collection program and sets the parameters for deducting the costs of collections prior to distribution of the collected amounts. Penal Code section 1463.007 applies to all fees, fines, forfeitures, penalties, and assessments. The working group recommends clarifying legislation that allows section 1463.007 to also apply to public defender fees, jail booking fees, and other criminal-justice-related fees.

Alternative Actions Considered

N/A

Comments From Interested Parties

N/A

Implementation Requirements and Costs

The cost of establishing a task force to undertake a complete review of the criminal fine structure may be significant; however, funds for travel and incidental costs that were previously used to support the Collaborative Court-County Working Group on Enhanced Collections can now be directed to this new task force. Recommendations 2–4 should not result in additional costs, because the costs of collections can be offset against the collected fees and fines to the extent that courts and counties operate comprehensive collection programs.

Attachments

Penal Code sections 1463.007 and 1463.010 would be amended to read:

1 **§ 1463.007.**

2 Notwithstanding any other provision of law, any county or court that implements or has
3 implemented a comprehensive program to identify and collect delinquent fees, fines,
4 forfeitures, penalties, and assessments, including but not limited to, public defender and
5 jail booking fees, with or without a warrant having been issued against the alleged
6 violator, if the base fees, fines, forfeitures, penalties, and assessments are delinquent, may
7 deduct and deposit in the county treasury or in the trial court operations fund the cost of
8 operating that program, excluding capital expenditures, from any revenues collected
9 thereby prior to making any distribution of revenues to other governmental entities
10 required by any other provision of law. Any county or court may establish a minimum
11 base fee, fine, forfeiture, penalty, or assessment amount for inclusion in the program.
12 This section applies to costs incurred by a court or a county on or after June 30, 1997, and
13 prior to the implementation of a time payments agreement, and shall supersede any prior
14 law to the contrary. This section does not apply to a defendant who is paying fees, fines,
15 forfeitures, penalties, or assessments through time payments, unless he or she is
16 delinquent in making payments according to the agreed-upon payment schedule. For
17 purposes of this section, a comprehensive collection program is a separate and distinct
18 revenue collection activity and shall include at least 10 of the following components:

- 19 (a) Monthly bill or account statements to all debtors.
20 (b) Telephone contact with delinquent debtors to apprise them of their failure to meet
21 payment obligations.
22 (c) Issuance of warning letters to advise delinquent debtors of an outstanding
23 obligation.
24 (d) Requests for credit reports to assist in locating delinquent debtors.
25 (e) Access to Employment Development Department employment and wage
26 information.
27 (f) The generation of monthly delinquent reports.
28 (g) Participation in the Franchise Tax Board's Interagency Intercept Collections
29 Program.
30 (h) The use of Department of Motor Vehicle information to locate delinquent debtors.
31 (i) The use of wage and bank account garnishments.
32 (j) The imposition of liens on real property and proceeds from the sale of real
33 property held by a title company.
34 (k) The filing of a claim or the filing of objections to the inclusion of outstanding
35 fines and forfeitures in bankruptcy proceedings.
36 (l) Coordination with the probation department to locate debtors who may be on
37 formal or informal probation.
38 (m) The initiation of drivers' license suspension actions where appropriate.
39 (n) The capability to accept credit card payments.
40 (o) Participation in the Franchise Tax Board's Court-Ordered Debt Collections
41 Program.

- (p) Contracting with one or more private debt collectors.
- (q) The use of local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.

§ 1463.010.

Uniform imposition and enforcement of court-ordered debts is recognized as an important element of California’s judicial system. The enforcement of court orders is recognized as an important element of collections efforts. The Prompt, efficient, and effective imposition and collection of court-ordered fees, fines, forfeitures, penalties, restitution, and assessments ensures the appropriate respect for court orders. To provide for this prompt, efficient, and effective collection:

(a) The Judicial Council shall establish a task force to evaluate the effectiveness of criminal court-ordered debts imposed against adult and juvenile offenders. The task force shall consist of the following members:

- (1) Two members appointed by the California State Association of Counties.
- (2) Two members appointed by the League of California Cities.
- (3) Two court executives, two judges, and two Administrative Office of the Courts employees appointed by the Judicial Council.
- (4) One member appointed by the State Controller.
- (5) One member appointed by the Franchise Tax Board.
- (6) One member appointed by the Victim Compensation and Government Claims Board.
- (7) One member appointed by the Department of Corrections and Rehabilitation.
- (8) One member appointed by the Department of Finance.
- (9) One member appointed by each house of the Legislature.

The Judicial Council shall designate a chairperson for the task force. The task force shall, among other activities: identify all criminal and traffic-related court-ordered fees, fines, forfeitures, penalties, and assessments imposed under law; identify the distribution of revenue derived from those fines; consult with state and local entities that would be affected by a simplification and consolidation of criminal court-ordered debts; and evaluate and make recommendations to the Judicial Council for consolidating and simplifying the imposition of criminal-justice-related court-ordered debts and the distribution of the revenue derived from them. These recommendations shall be developed with the goal of improving the process for those entities that benefit from the revenues, but with no intention to redistribute funds that will have a detrimental effect on those entities. The task force also shall evaluate and make recommendations to the Judicial Council no later than December 31, 2009, regarding the priority in which court-ordered debts should be satisfied and the implementation of comprehensive collection programs authorized pursuant to section 1463.0007, including associated cost-recovery practices.

~~(a)~~ (b) The Judicial Council shall adopt guidelines for a comprehensive program concerning the collection of moneys owed for fees, fines, forfeitures, penalties, and assessments imposed by court order. after considering the recommendations of the

1 ~~collaborative court county working group established pursuant to subdivision (b).~~
2 As part of its guidelines, the Judicial Council may establish standard agreements for
3 entities to provide collection services. As part of its guidelines, the Judicial Council
4 shall include provisions that promote competition by and between entities in
5 providing collection services to courts and counties. The Judicial Council may
6 delegate to the Administrative Director of the Courts the implementation of the
7 aspects of this program to be carried out at the state level.

8 ~~(b) The Judicial Council shall establish a collaborative court county working group on
9 collections. The California State Association of Counties shall appoint eight
10 members of the working group. The Judicial Council shall appoint four court
11 executives, two judges, and two employees of the Administrative Office of the
12 Courts as members of the working group, and shall designate a chair of the working
13 group. The working group shall, among other activities, survey courts and counties
14 regarding current collection efforts and evaluate a variety of methods to enhance
15 future collections, including, but not limited to, referring accounts to private
16 agencies for collection, develop a strategy for court and county cooperation in
17 collection plan discussions, consult with groups other than courts and counties that
18 are affected by collection programs, and evaluate and make recommendations to the
19 Judicial Council concerning current and future collection methods.~~

20 (c) The courts and counties shall maintain the collection program which was in place on
21 January 1, 1996, unless otherwise agreed to in writing by the court and county. The
22 program may wholly or partially be staffed and operated within the court itself, may
23 be wholly or partially staffed and operated by the county, or may be wholly or
24 partially contracted with a third party. In carrying out this collection program, each
25 superior court and county shall develop a cooperative plan to implement the Judicial
26 Council guidelines. In the event that a court and a county are unwilling or unable to
27 enter into a cooperative plan pursuant to this section, prior to the arbitration required
28 under section 1214.1, the court or the county may request the continuation of
29 negotiations with mediation assistance as mutually agreed upon and provided by the
30 Administrative Director of the Courts and the California Association of Counties.

31 (d) Each superior court and county shall jointly report to the Judicial Council, as
32 provided by the Judicial Council and not more than once a year, on the effectiveness
33 of the cooperative superior court and county collection program. The Judicial
34 Council shall report to the Legislature, as appropriate, on the effectiveness of the
35 program.

36 (e) The Judicial Council may, when the efficiency and effectiveness of the collection
37 process may be improved, facilitate a joint collection program between superior
38 courts, between counties, or between superior courts and counties.

39 (f) The Judicial Council may establish, by court rule, a program providing for the
40 suspension and nonrenewal of a business and professional license if the holder of
41 the license has unpaid fees, fines, forfeitures, penalties, and assessments imposed
42 upon them under a court order. The Judicial Council may provide that some or all of
43 the superior courts or counties participate in the program. Any program established

1 by the Judicial Council shall ensure that the licensee receive adequate and
2 appropriate notice of the proposed suspension or nonrenewal of his or her license
3 and has an opportunity to contest the suspension or nonrenewal. The opportunity to
4 contest may not require a court hearing.

- 5 (g) Notwithstanding any other provision of law, the Judicial Council, after consultation
6 with the Franchise Tax Board with respect to collections under Section 19280 of the
7 Revenue and Taxation Code, may provide for an amnesty program involving the
8 collection of outstanding fees, fines, forfeitures, penalties, and assessments,
9 applicable either statewide or within one or more counties. The amnesty program
10 shall provide that some or all of the interest or collections costs imposed on
11 outstanding fees, fines, forfeitures, penalties, and assessments may be waived if the
12 remaining amounts due are paid within the amnesty period.

13
14 Revenue and Taxation Code section 19280 would be amended to read:

15
16 **§19280.**

17 (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or
18 any other amounts imposed by a superior or municipal court of the State of
19 California upon a person or any other entity that is due and payable in an amount
20 totaling no less than ~~two hundred fifty~~ one hundred dollars ~~(\$250)~~ (\$100), in the
21 aggregate, for criminal offenses, including all offenses involving a violation of the
22 Vehicle Code ~~except offenses relating to parking or registration or offenses by~~
23 ~~pedestrians or bicyclists~~, may, no sooner than 90 days after payment of that
24 amount becomes delinquent, be referred by the superior court, the county, or the
25 state to the Franchise Tax Board for collection under guidelines prescribed by the
26 Franchise Tax Board.

27 (2) For purposes of this subdivision:

28 (A) The amounts referred by the superior court, the county, or state under this
29 section may include any amounts that a government entity may add to the
30 court-imposed obligation as a result of the underlying offense, trial, or
31 conviction. For purposes of this article, those amounts shall be deemed to be
32 imposed by the court.

33 (B) Restitution orders may be referred to the Franchise Tax Board only by a
34 government entity, as agreed upon by the Franchise Tax Board, provided that
35 all of the following apply:

36 (i) The government entity has the authority to collect on behalf of the state
37 or the victim.

38 (ii) The government entity shall be responsible for distributing the
39 restitution order collections, as appropriate.

40 (iii) The government entity shall ensure, in making the referrals and
41 distributions, that it coordinates with any other related collection
42 activities that may occur by superior courts, counties, or other state
43 agencies.

- 1 (iv) The government entity shall ensure compliance with laws relating to the
2 reimbursement of the State Restitution Fund.
- 3 (C) The Franchise Tax Board shall establish criteria for referral, which shall
4 include setting forth a minimum dollar amount subject to referral and
5 collection.
- 6 (b) The Franchise Tax Board, in conjunction with the Judicial Council, shall seek
7 whatever additional resources are needed to accept referrals from all 58 counties
8 or superior courts.
- 9 (c) Upon written notice to the debtor from the Franchise Tax Board, any amount
10 referred to the Franchise Tax Board under subdivision (a) and any interest thereon,
11 including any interest on the amount referred under subdivision (a) that accrued
12 prior to the date of referral, shall be treated as final and due and payable to the
13 State of California, and shall be collected from the debtor by the Franchise Tax
14 Board in any manner authorized under the law for collection of a delinquent
15 personal income tax liability, including, but not limited to, issuance of an order
16 and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of
17 Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner
18 provided for earnings withholding orders for taxes.
- 19 (d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with
20 Section 21001), and Part 11 (commencing with Section 23001) shall apply to
21 amounts referred under this article in the same manner and with the same force
22 and effect and to the full extent as if the language of those laws had been
23 incorporated in full into this article, except to the extent that any provision is either
24 inconsistent with this article or is not relevant to this article.
- 25 (2) Any information, information sources, or enforcement remedies and capabilities
26 available to the court or the state referring to the amount due described in
27 subdivision (a), shall be available to the Franchise Tax Board to be used in
28 conjunction with, or independent of, the information, information sources, or
29 remedies and capabilities available to the Franchise Tax Board for purposes of
30 administering Part 10 (commencing with Section 17001), this part, Part 10.7
31 (commencing with Section 21001), or Part 11 (commencing with Section 23001).
- 32 (e) The activities required to implement and administer this part shall not interfere
33 with the primary mission of the Franchise Tax Board to administer Part 10
34 (commencing with Section 17001) and Part 11 (commencing with Section 23001).
- 35 (f) For amounts referred for collection under subdivision (a), interest shall accrue at
36 the greater of the rate applicable to the amount due being collected or the rate
37 provided under Section 19521. When notice of the amount due includes interest
38 and is mailed to the debtor and the amount is paid within 15 days after the date of
39 notice, interest shall not be imposed for the period after the date of notice.
- 40 (g) In no event shall a collection under this article be construed as a payment of
41 income taxes imposed under Part 10 (commencing with Section 17001) or Part 11
42 (commencing with Section 23001).
- 43