



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 23, 2011

Title

Criminal Fines and Fees: Court-Ordered Debt Task Force Report to the Judicial Council and Legislature

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June 23, 2011

Submitted by

Court-Ordered Debt Task Force
Hon. Mary Ann O'Malley, Chair
Hon. David S. Wesley, Cochair

Date of Report

June 2, 2011

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Executive Summary

The Judicial Council Court-Ordered Debt Task Force presents this interim report, as required by Penal Code section 1463.02, to the Judicial Council and to the Legislature on its efforts to evaluate and explore means to streamline the existing structure for imposing and distributing criminal and traffic fines and fees in the state of California. The task force makes initial recommendations regarding the priority in which court-ordered debts should be satisfied and the use of comprehensive collection programs authorized pursuant to Penal Code section 1463.07, including associated cost-recovery practices.

Previous Council Action

At its April 29, 2011 meeting, the Judicial Council established the 21-member Court-Ordered Debt Task Force in accordance with the requirements of Penal Code section 1463.02 and appointed the chair, cochair, and four members¹ of the task force, with the remaining 15 members appointed by other government entities as specified in the legislation.

¹ The Judicial Council also added an advisory task force member.

Methodology and Process

The Court-Ordered Debt Task Force was created by Penal Code section 1463.02 and is charged with evaluating and exploring means to streamline the existing structure for imposing and distributing criminal and traffic fines and fees in the state of California.

The task force will present preliminary recommendations to the Judicial Council and to the Legislature regarding the priority in which court-ordered debt should be satisfied and the use of comprehensive collection programs authorized pursuant to Penal Code section 1463.007, including associated cost-recovery practices.

At the initial task force meeting, two working groups were established to address issues concerning collections activities and to evaluate the priority in which court-ordered debt may be satisfied. The Collections Working Group and Priorities Working Group have undertaken their tasks concurrently, researching and compiling information of significance in each of these areas and reporting their findings to the task force.

Based on these efforts, this initial report presents preliminary recommendations concerning the priority in which court-ordered debt should be satisfied as well as preliminary recommendations concerning comprehensive collection programs, as specified in Penal Code section 1463.02(d).

Possible Recommendations

The Court-Ordered Debt Task Force is considering recommending:

- That a minimum of three full fiscal years pass before formulating statewide recommendations in order to collect a suitable and compelling amount of data on which to base changes;
- That the current penalty assessment fund's percentage distributions be evaluated for possible modification, such as being statutorily reduced or redirected given that they are outdated;
- That revenue beneficiaries be reprioritized after an in-depth analysis of how monies are applied within each existing category;
- That a pilot program be initiated in three counties/courts (one small, one medium, one large) to further examine the individual efficacy of the current 25 Judicial Council–approved best collections practices; and
- That a ceiling be placed on cost-recovery charges.

Next Steps

The task force will continue to meet and refine their tentative recommendations as more survey information is collected and analyzed by the working groups. The task force anticipates that it will present its final report with recommendations to the Judicial Council and Legislature in 18 to 24 months.

Attachments

1. Attachment A: Court-Ordered Debt Task Force Membership Roster
2. Attachment B: Pen. Code, § 1463.02
Attachment C: *Criminal Fines and Fees: Court-Ordered Debt Task Force Report to the Judicial Council and Legislature* (June 2011)

Court-Ordered Debt Task Force Membership

Hon. Mary Ann O'Malley, Chair
*Judge of the Superior Court of California,
County of Contra Costa*

Hon. David S. Wesley, Cochair
*Judge of the Superior Court of California,
County of Los Angeles*

**Hon. J. Richard Couzens (Ret.), Advisory
Member**
*Judge of the Superior Court of California,
County of Placer*

Ms. Melissa Fowler-Bradley
*Court Executive Officer
Superior Court of California, County of Shasta*

Mr. David H. Yamasaki
*Court Executive Officer
Superior Court of California, County of Santa
Clara*

Ms. Jody Patel
*Regional Administrative Director, AOC
Northern/Central Regional Office*

Mr. Curt Soderlund
*Director of the AOC Trial Court Administrative
Services Division*

Mr. Jim Saco
*Budget Director
County of San Mateo*

Mr. Bruce Robert
*Chief of Central Collections
County of San Bernardino*

Mr. Greg Larson
*Town Manager
Town of Los Gatos*

Mr. Darren Hernandez
*Deputy City Manager
City of Santa Clarita*

Mr. Scott Taylor
*Fiscal Analyst
State Controller's Office*

Ms. Michelle Frazier
*Senior Program Manager
COD Collection Program
Franchise Tax Board*

Mr. Wayne Strumpfer
*Chief Counsel
California Victim Compensation and Government
Claims Board*

Mr. Lee Seale
*Deputy Chief of Staff
Department of Corrections and Rehabilitation*

Mr. Zlatko Theodorovic
*Assistant Program Budget Manager
Department of Finance*

Hon. Mike Davis
*Assembly Member
District 48, County of Los Angeles*

Mr. Jose H. Varela
*Public Defender
County of Marin*

Ms. Jennifer Handzlik
*Deputy City Attorney
City of Los Angeles*

Mr. Stephen A. Munkelt
*Defense Attorney
Munkelt Law Offices*

Hon. Carl V. Adams
*District Attorney, County of Sutter
California District Attorneys Association*

Vacant—*Awaiting appointment, Senator*

Penal Code Section 1463.02

1463.02. (a) On or before June 30, 2011, the Judicial Council shall establish a task force to evaluate criminal and traffic-related court-ordered debts imposed against adult and juvenile offenders. The task force shall be comprised 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 Controller.
- (5) One member appointed by the Franchise Tax Board.
- (6) One member appointed by the California 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.
- (10) A county public defender and a city attorney appointed by the Speaker of the Assembly.
- (11) A defense attorney in private practice and a district attorney appointed by the Senate Committee on Rules.

(b) The Judicial Council shall designate a chairperson for the task force. The task force shall, among other duties, do all of the following:

- (1) Identify all criminal and traffic-related court-ordered fees, fines, forfeitures, penalties, and assessments imposed under law.
- (2) Identify the distribution of revenue derived from those debts and the expenditures made by those entities that benefit from the revenues.
- (3) Consult with state and local entities that would be affected by a simplification and consolidation of criminal and traffic-related court-ordered debts.
- (4) Evaluate and make recommendations to the Judicial Council and the Legislature for consolidating and simplifying the imposition of criminal and traffic-related court-ordered debts and the distribution of the revenue derived from those debts with the goal of improving the process for those entities that benefit from the revenues, and recommendations, if any, for adjustment to the court-ordered debts.

(c) The task force also shall document recent annual revenues from the various penalty assessments and surcharges and, to the extent feasible, evaluate the extent to which the amount of each penalty assessment and surcharge impacts total annual revenues, imposition of criminal sentences, and the actual amounts assessed.

(d) The task force also shall evaluate and make recommendations to the Judicial Council and the Legislature on or before June 30, 2011, regarding the priority in which court-ordered debts should be satisfied and the use of comprehensive collection programs authorized pursuant to Section 1463.007, including associated cost-recovery practices.

Court-Ordered Debt Task Force

REPORT TO THE JUDICIAL COUNCIL
AND LEGISLATURE

JUNE 24, 2011



ADMINISTRATIVE OFFICE
OF THE COURTS

TRIAL COURT ADMINISTRATIVE
SERVICES DIVISION



Court-Ordered Debt Task Force

REPORT TO THE JUDICIAL COUNCIL AND LEGISLATURE

JUNE 24, 2011



ADMINISTRATIVE OFFICE
OF THE COURTS

TRIAL COURT ADMINISTRATIVE
SERVICES DIVISION

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This report has been submitted to the California Legislature pursuant to Penal Code section 1463.02.

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Court-Ordered Debt Task Force Membership

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*Judge of the Superior Court of California,
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Introduction

This Report to the Judicial Council and the Legislature is submitted by the Court-Ordered Debt Task Force pursuant to Penal Code section 1463.02 (see Attachment A). Penal Code section 1463.02 (hereafter “Section 1463.02”) requires the Judicial Council to establish this task force “to evaluate criminal and traffic-related court-ordered debts imposed against adult and juvenile offenders.”¹

Subdivision (d) of Section 1463.02 requires the task force to “evaluate and make recommendations to the Judicial Council and the Legislature on or before June 30, 2011, regarding the priority in which court-ordered debts should be satisfied and the use of comprehensive collection programs authorized pursuant to Section 1463.007, including associated cost recovery practices.”

In addition, subdivisions (b) and (c) of Section 1463.02 require the task force to do all of the following:

(b)(1) Identify all criminal and traffic-related court-ordered fees, fines, forfeitures, penalties, and assessments imposed under law.

(2) Identify the distribution of revenue derived from those debts and the expenditures made by those entities that benefit from the revenues.

(3) Consult with state and local entities that would be affected by a simplification and consolidation of criminal and traffic-related court-ordered debts.

(4) Evaluate and make recommendations to the Judicial Council and the Legislature for consolidating and simplifying the imposition of criminal and traffic-related court-ordered debts and the distribution of the revenue derived from those debts with the goal of improving the process for those entities that benefit from the revenues, and recommendations, if any, for adjustment to the court-ordered debts.

(c) The task force also shall document recent annual revenues from the various penalty assessments and surcharges and, to the extent feasible, evaluate the extent to which the amount of each penalty assessment and surcharge impacts total annual revenues, imposition of criminal sentences, and the actual amounts assessed.

This report presents the first phase of the task force’s charge – recommendations required by subdivision (d) that are due by June 30, 2011. The remainder of the task force’s charge will be carried out over the next two to three years, as the task force continues to meet and additional information is obtained.

Background

Assembly Member Kevin De León, who authored the original legislation creating the task force, described his concerns as follows:

¹ Membership of the task force includes those entities and organizations that play a role in the imposition and administration of criminal and traffic-related fines, fees, and surcharges, including representatives of cities and counties, the state Controller, the Franchise Tax Board, the state Department of Finance, district attorneys and criminal defense attorneys, along with judges and court administrators. See roster at (this we will ascertain when finalizing).

[T]he 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 of nearly \$400. . . . [T]his 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 first penalty assessment was enacted in 1953 to fund driver training programs and was equal to \$1 for each \$20 of the county base fine for Vehicle Code violations. Since then, the Legislature has enacted numerous fees, surcharges, assessments, and formula changes to support an assortment of programs and activities at the state and local levels, including the DNA Identification Fund, the Emergency Medical Services Fund, the State Court Construction Fund, the Emergency Medical Air Transportation Fund, court security, county and state General Funds, the State Penalty Fund, and the Trial Court Improvement Fund. Today, therefore, a \$100 red light violation results in an actual fine of at least \$479 (not including a traffic violator school fee of \$49).

Task Force Activities

In March 2011, counties and courts statewide were surveyed regarding revenue and expenditures as part of the longer-term requirements specified by the statute. Nearly 90 percent of survey recipients responded (51 of 58), with the remaining respondents agreeing to complete their surveys over an extended period. Revenue sources reported in response to the March survey are summarized in the table below.

State and Local Revenue Totals for Fiscal Year (FY) 2008–2009 and FY 2009–2010²

Revenue	FY 2008–2009	FY 2009–2010	Number of Courts/Counties Reporting
Total State Revenue	\$610,765,374	\$789,361,510	51
Total County/City Revenue	608,819,670	589,676,994	51
Total Revenue	\$1,219,585,044	\$1,379,038,504	51

Source: *List of Distribution Agencies and Funds for Traffic and Criminal Distribution Survey*

At the initial meeting in March 2011, the task force formed two working groups to address issues concerning collections activities and to evaluate the priority in which court-ordered debt should be satisfied. The Collections Working Group and the Priorities Working Group have undertaken their tasks concurrently, researching and compiling information of significance in each of these areas and reporting their findings to the task force. This report presents recommendations

² Excludes civil assessment revenue; traffic misdemeanors and infractions account for approximately 85% of all civil assessments; the Administrative Office of the Courts receives this revenue data directly from the courts.

concerning the priority in which court-ordered debt should be satisfied, as well as recommendations concerning comprehensive collection programs.

Prioritization of Debt Satisfaction

Current law prioritizes the order in which delinquent court-ordered debt received in installment payments is to be satisfied³: The priorities are (1) victim restitution; (2) state surcharge ordered pursuant to Penal Code section 1465.7; (3) restitution fine, penalty assessments, base fine; (4) state/county/city reimbursements; and (5) special revenue items. The task force is required to evaluate and make recommendations “regarding the priority in which court-ordered debt should be satisfied...”

Recommendations

In examining the priorities regarding how court-ordered debt should be satisfied, the task force has started to evaluate these issues and, as an example, has begun to focus on the manner in which special revenue items (priority #5) are administered. Prioritization has many nuances and complexities, and in the interest of avoiding inadvertent negative consequences, the task force will require additional time for analyses and discussion among the members and for consultation with state and local representatives.

In the interim, however, the task force presents the following preliminary recommendations pertaining to other aspects of distribution policies pertaining to court-ordered debt.

Recommendation 1: The task force should consider a reprioritization of revenue beneficiaries after an in-depth analysis of how monies are applied within each category, and may make recommendations to the Legislature as necessary with more complete information.

Recommendation 2: The task force should examine the efficacy of programs funded by the revenue derived from criminal and traffic-related fines and fees, and recommend potential areas to restructure, consolidate, or eliminate those found to be outdated or ineffective.

Recommendation 3: The task force should re-examine the revenue and programmatic impacts specifically associated with priority 5 (see Appendix B) with respect to the order in which court-ordered debt is prioritized. (The establishment of priority 5 may have had some unintended consequences that were unknown to the Legislature and had negative implications, for example, for domestic violence programs. Additionally, the administrative burden of tracking and allocating priority 5 revenue appears to be extremely costly.)

Comprehensive Collection Programs and Cost-Recovery Practices

Comprehensive collection programs, as defined by Penal Code section 1463.007, have been established in 57 of 58 counties and courts. Since 2004, the AOC has been engaged in a statewide initiative to improve the collection of fines, fees, penalties, and assessments imposed by the courts. Recommended methods or tools for improving the performance of collection programs statewide include, but are not limited to, the following:

³ Penal Code section 1203.1d.

1. The development of cost recovery guidelines;
2. A definition of a delinquent payment or account;
3. Standards for discharge from accountability;
4. Procedures for the collection of attorney sanctions;
5. A statewide collections reporting template;
6. Awarding of statewide collections contracts to private vendors;
7. The permanent establishment of the Franchise Tax Board Court-Ordered Debt collection program, expanding its capacity to accept cases from all 58 courts and counties, and the Franchise Tax Board Interagency Intercept Program; and
8. The creation of a tool to assist judicial officers in sentencing relating to fines, fees, penalties, and assessments.

Under current law, costs of operating delinquent collection programs are recoverable from the revenue collected as long as the criteria listed in Penal Code section 1463.007 are met and the guidelines are followed.

In addition, current law⁴ requires the Judicial Council to develop performance measures and benchmarks to review the effectiveness of the cooperative superior court and county programs in the collection of delinquent court-ordered debt and to report to the Legislature on:

- The extent to which each court or county collection program is following identified best practices;
- The performance of each collection program; and
- Any changes necessary to improve the performance of collection programs statewide.

The first collections report to the Legislature was submitted in 2006 and can be viewed online at www.courts.ca.gov/jccollabgroup-enhanced0306.pdf. The most current report (2010) can also be viewed online at <http://www.courts.ca.gov/collection-courtordereddebt-dec2010.pdf>.

Recommendations

The following preliminary recommendations pertain to the collection efforts of court-ordered debt.

Recommendation 4: The task force should continue to evaluate collection programs for a minimum of three full fiscal years in order to compile sufficient data on which to base recommendations. (Given the scope and complexity of the requirements included within Penal Code section 1463.02 as it pertains to collections, the work of the Court-Ordered Debt Task Force may take approximately three years to satisfy all the goals of the statute.)

Recommendation 5: The task force should initiate a limited targeted study in nine counties or courts (a combination of small, medium, and large) in different geographic regions—using filings as an additional selection criterion to ensure a representative volume of cases to track—to further examine the individual efficacy of the 25 best collections practices and the effect of changes to Penal Code section 1463.007, that becomes effective July 2012. It would be beneficial to determine which of the best practices and components of Penal Code section

⁴ Penal Code section 1463.010

1463.007 has the greatest impact on improving the performance of collection programs i.e., comparative effectiveness.

Recommendation 6: The task force should determine if cost-recovery practices are reasonable based on the findings resulting from analysis and evaluation of cost-recovery practices as stated in Penal Code section 1463.007 regarding the methodology used for calculating allowable expenditures for offset.

Next Steps

The task force will continue to meet to carry out the remainder of the requirements of Penal Code section 1463.02. The task force will also review and evaluate recently-enacted changes in the law that require the creation of a one-time six-month mandatory statewide infraction amnesty program, effective January 1, 2012; modify the components of the comprehensive collection program; and authorize courts to discharge uncollectible debt from accountability.⁵

In addition, with the assistance of the California State Association of Counties (CSAC), the survey described above that the task force distributed to courts and counties at the end of March 2011 was adequate as to revenue information, but nearly all the courts and counties struggled to provide expenditure information. The task force staff will continue to work with CSAC representatives to refine the survey in an attempt to collect this information.

The data gathered thus far will be further analyzed, but initial observations and findings are already proving informative. For example, with the State Penalty Assessment Fund, revenue flows to 18 different funds from the \$10 penalty assessment per \$10 base fine, but one of the funds, the Driver Training Penalty Assessment Fund, acts as a “pass-through,” with 25.7 percent of these revenues redirected to the Victim-Witness Assistance Fund, the Peace Officers’ Training Fund, the Corrections Training Fund, and the General Fund. This transfer of funds occurs because driver training is no longer offered in the public schools. The task force will continue to review the policy implications of this redirection of funds, and may consider recommending the statutory elimination of the Driver Training Penalty Assessment Fund and a percentage adjustment for the other funds or, alternatively, the reduction of the statewide penalty assessment total by 25.70 percent.

The task force anticipates that it will present its final report with recommendations to the Judicial Council and Legislature in approximately 24 to 36 months.⁶

Collection Reports Available Upon Request

Number and Identity of Most/Least Used PC 1463.007 Components, by Program, as reported on the Contact and Other Information Sheet of the FY2008–09 and FY2009–10 Collections Reporting Template

Data as Reported on the Annual Financial Report of the FY2004–05 to FY2006–07 and FY2008–09 to 2009–10 Collections Reporting Template

⁵ Sen. Bill 857; Stats. 2010, ch. 720, sections 6-12, 23, 30-32, and 38

⁶ Because it will take time to evaluate the statutory changes, an extension of the task force may be required.

Collection Program to Which Delinquent Debt is Initially Referred, as reported on the Contact and Other Information Sheet of the FY2008–09 and FY2009–10 Collections Reporting Template

Copies of these reports can be obtained by contacting Jessica Sanora at jessica.sanora@jud.ca.gov.

Attachments

Attachment A: Penal Code Section 1463.02 – Court-Ordered Debt Task Force

Attachment B: Penal Code Section 1203.1d – Court-Ordered Debt Installment Payment
Legislative Priorities

Penal Code Section 1463.02

1463.02. (a) On or before June 30, 2011, the Judicial Council shall establish a task force to evaluate criminal and traffic-related court-ordered debts imposed against adult and juvenile offenders. The task force shall be comprised of the following members:

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- (1) Identify all criminal and traffic-related court-ordered fees, fines, forfeitures, penalties, and assessments imposed under law.
- (2) Identify the distribution of revenue derived from those debts and the expenditures made by those entities that benefit from the revenues.
- (3) Consult with state and local entities that would be affected by a simplification and consolidation of criminal and traffic-related court-ordered debts.
- (4) Evaluate and make recommendations to the Judicial Council and the Legislature for consolidating and simplifying the imposition of criminal and traffic-related court-ordered debts and the distribution of the revenue derived from those debts with the goal of improving the process for those entities that benefit from the revenues, and recommendations, if any, for adjustment to the court-ordered debts.

(c) The task force also shall document recent annual revenues from the various penalty assessments and surcharges and, to the extent feasible, evaluate the extent to which the amount of each penalty assessment and surcharge impacts total annual revenues, imposition of criminal sentences, and the actual amounts assessed.

(d) The task force also shall evaluate and make recommendations to the Judicial Council and the Legislature on or before June 30, 2011, regarding the priority in which court-ordered debts should be satisfied and the use of comprehensive collection programs authorized pursuant to Section 1463.007, including associated cost-recovery practices.

Court-Ordered Debt Installment Payment Priorities

Penal Code Section 1203.1d

Priority	Description	Examples	Comments
1	Victim restitution	Direct restitution for victims of violent crimes	Status quo
2	State surcharge	20% of base fine	Status quo
3	Restitution fine, penalty assessments, base fine	Victim-Witness Assistance Fund, Peace Officers' Training Fund, County General Fund	State/local interests
4	State/county/city reimbursements	Booking fees, administration fees, lab fees	County/city interest in moving to priority 3; competition for funds
5	Special revenue items	DNA assessments, domestic violence assessments	Complicated and costly administration