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<http://www.lao.ca.gov/reports/2014/criminal-justice/debt-collection/court-ordered-debt-collection-111014.aspx>

[http://www.thestar.com/news/canada/2014/10/02/supreme\\_court\\_strikes\\_down\\_court\\_fees\\_for\\_barring\\_access\\_to\\_justice\\_system.html](http://www.thestar.com/news/canada/2014/10/02/supreme_court_strikes_down_court_fees_for_barring_access_to_justice_system.html)

Fair Courts E-lert: Washington State Supreme Court Holds Legislature in Contempt, Court Fees and Fines Impact State Budgets

### BRENNAN CENTER FOR JUSTICE

*at New York University School of Law*

**The Fair Courts E-lert summarizes news related to the independence of judges and the courts, including material attacking, defending, and concerning the judiciary.**

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## **COURT FUNDING**

### **Changes to Court Fees and Fines Will Have Impact on State Budgets**

The City Council in Ferguson, Missouri recently proposed a series of changes to court fees and fines aimed at “improv[ing] trust within the community and increas[ing] transparency, particularly within Ferguson's courts and police department,” according to a quote by Councilman Mark Byrne in a *Governing* [article](#). “One of the ordinances . . . ensures court fine revenue stays at or below 15 percent of the city's total revenue, and that any court revenue over that amount is used for special community projects instead of general revenue uses,” writes author Valerie Schremp Hahn. Among other changes, the City Council proposed the repeal of “failure to appear” fines, warrant recall fees, and a “\$25 administrative fee that goes along with towing costs.” [KMOV.com](#) reports that these changes were approved by the City Council on September 23.

Court fees and fines are also making headlines in Michigan. In June, the state Supreme Court [ruled](#) in *People v. Cunningham* that local courts cannot charge a defendant unspecified costs not provided for by

statute. A bill introduced in response to this ruling, [HB 5785](#), which would amend the Code of Criminal Procedure to “allow a court to impose any reasonable cost on a defendant found guilty of a crime,” has garnered mixed reactions. In a *Grand Haven Tribune* [op-ed](#), Jon Campbell, an Allegan County commissioner, urges passage of the bill, saying the state’s district and circuit courts could fall millions of dollars short as a result of the Cunningham decision. HB 5785 has passed in the House and is now before the Senate. In a radio interview for [WKAR](#), Thomas Boyd, chief judge of the 55th District Court in Ingham County, Michigan, argues that funding the judiciary by levying court costs could create conflicts of interest for judges and “may be inappropriate for a court of justice.” He encourages a “much broader dialogue” about this issue before any court funding decisions are made.



**By [TERI SFORZA](#)**

STAFF COLUMNIST

[tsforza@ocregister.com](mailto:tsforza@ocregister.com)

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## **CALIFORNIA TRAFFIC CONVICTIONS**

| <b>Year</b> | <b>Number of convictions</b> | <b>Number of licensed drivers</b> | <b>Percentage of drivers convicted</b> |
|-------------|------------------------------|-----------------------------------|--|
| 2013        | 4,629,390                    | 24,290,288                        | 19.1%                                  |
| 2012        | 5,006,261                    | 24,200,997                        | 20.7%                                  |
| 2011        | 5,674,194                    | 23,857,000                        | 23.8%                                  |

Source: California Department of Motor Vehicles

In the next year, about 20 percent of drivers will be convicted of speeding, rolling through stop signs or failing to stop at red lights, while another 8 percent will likely get off with a warning, and many more will be ticketed for parking illegally, having expired tags or some other bit of minor motor malfeasance.

Drivers will pay millions in fines and those millions may mingle in a kitty with fines and restitution paid by criminals. But California’s courts and counties are doing a spotty job of collecting this money, and the Legislative Analyst’s Office isn’t even sure it’s being counted correctly.

California’s crooks and scofflaws – including drivers who haven’t paid off tickets – owe, according to the LAO, \$10.2 billion in court-ordered fines and fees.

The more sobering news, perhaps, is not necessarily that officials have collected only a fraction of the total – a comparably wee \$1.8 billion – but that it’s hard to know precisely how much they’ve collected, due to “incomplete and inconsistent reporting ... minimal data ... miscalculation of performance measures ... and a lack of evaluation,” the LAO said.

The county of Orange and its superior court did better than many on this front, hauling in \$40.1 million in court-ordered debt in 2013 (from 510,371 delinquent cases), according to the Judicial Council of California.

Still, that leaves \$355 million in scofflaw debt outstanding in O.C., on 381,515 delinquent cases.

## **'WEAKNESSES'**

“(W)e identified a number of weaknesses in the current court-ordered debt collection process,” the LAO said. “First, there is a lack of clear fiscal incentives for programs to collect debt in a cost-effective manner or to maximize the total amount of debt they collect.

“Second, we find that it is difficult to comprehensively evaluate and compare the performance of existing collection programs due to a lack of complete, consistent, and accurate reporting on how programs collect debt.”

Since the majority of court-ordered debt goes to the state, counties and courts have little incentive trying to collect it. They’d rather focus on collecting money they can keep a greater share of – such as probation fees or medical billings, the LAO said.

Many courts and counties also fixate on delinquent accounts, as opposed to what’s currently owed, because they’re not reimbursed for the costs of collecting non-delinquent debt, the LAO found. Yet it costs a lot more to collect delinquent debts.

Now, \$10.2 billion is real money and it can also be argued that the government would do well to collect what’s owed and that we scofflaws would do well to fork it over.

## **FIX THIS**

So how to increase collections, which would also increase the amount of money going to state and local governments, and, presumably, pay for programs for Joe Citizen?

The LAO says:

- **Let the trial courts do it.** One entity needs to be responsible.
- **Use a carrot.** The existing “cost-recovery” approach should be replaced with an incentive-based approach, and each court should keep a portion of the revenue it collects.
- **A dollar is a dollar.** Eliminate the distinction between non-delinquent and delinquent debt, and try to collect it all, especially at the beginning, when it’s easier.
- **Measure.** Improve data collection so comprehensive evaluations of collection performance can be done.

### **‘WE’RE TRYING’**

Orange County Superior Court began working on this conundrum several years ago.

In 2009-10, it recovered 40 percent of outstanding debt. And in 2012-13, it recovered 85 percent of outstanding debt, according to state figures. How?

“Back in the old days, a person came in with a traffic ticket, and the court charged a fine,” explained Judge Thomas Borris. “Then and there, the court would decide in a quick question-and-answer session how much can you afford to pay: \$100 a month? \$50 a month? It became a bargaining session.”

But people weren’t following up, and the courts weren’t doing much about it. So in 2007, Orange County decided to crack down. “You ran the red light, your punishment is to pay the fine,” Borris said.

The court set up a collections unit. Scofflaws who can’t pay in full must now fill out a form that resembles a loan document, which specialists review to determine a monthly payment figure. Once folks get a gander at the length and detail required on the form, about half who said they couldn’t pay in full decide to pay in full.

Especially at the Newport Beach courthouse, Borris said.

There are ATM machines at all court houses. Credit cards and checks are accepted. The court does automatic debt payments from your bank account. Scofflaws can pay online and by phone. “Time to pay” reminders go out 12 days before due dates. If an emergency arises, collections people have the authority to let people skip one to two months. “The whole theory behind it is: We want you to pay,” Borris said.

Right now, in rough dollars: There are about 531,000 Orange County residents paying off \$172.5 million of non-delinquent debt, Borris said. That’s about one out of every six local people – and doesn’t include felony-case fines collected by the Probation Department.

**Contact the writer:** [tsforza@ocregister.com](mailto:tsforza@ocregister.com), Twitter: @ocwatchdog