

Court Debt Collection

ISSUE

This **Issue Review** provides background regarding the collection of outstanding court debt and highlights changes made in SF 2428 (Delinquent Debt Collection Act)¹ beginning in FY 2009.

AFFECTED AGENCIES

Judicial Branch
 Departments of Administrative Services, Corrections, Revenue, and Transportation
 County Attorneys
 County Treasurers

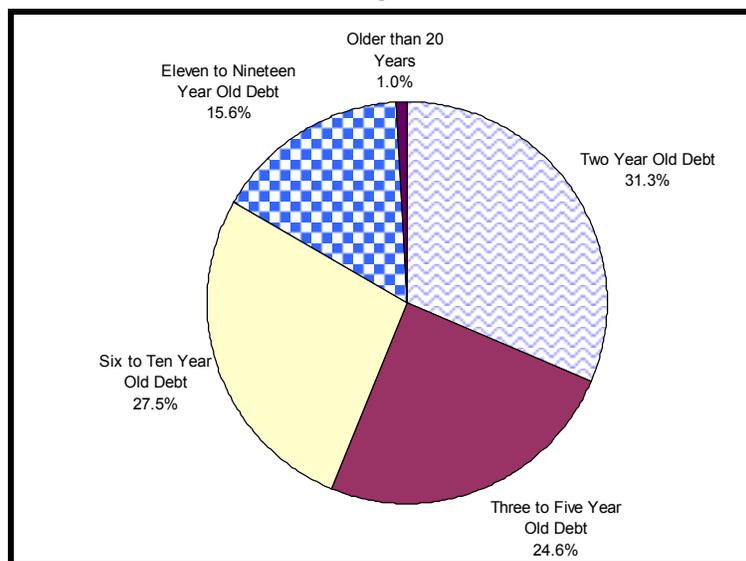
CODE AUTHORITY

Sections 8A.504, 232.142, 272D, 321.210A, 321.210B, 321A.32A, 321J.17

BACKGROUND

As of October 31, 2009, the total outstanding court debt was \$518.0 million. This is an increase of \$33.3 million (6.9%) compared to FY 2008 and does not include restitution or any debt included in a county attorney collection program. The Judicial Branch is allowed to write off old debt that remains uncollected after 65 years from the date of imposition; however, to date, no debt has been written off. The following chart shows the breakout of outstanding debt by age.

Outstanding Court Debt



¹ Chapter 1172, 2008 Iowa Acts

Of the \$518.0 million, \$162.2 million (31.3%) is less than two years old. This is an increase of \$7.3 million of debt less than two years old compared to FY 2008. Debt is easiest to collect in the first two years after assessment.

Court debt in Iowa is owed and payable to the clerk of court (except for restitution) and is deemed delinquent if not paid within 30 days after being assessed. The assessment date is the date the judgment is entered. Fifteen days after the judgment is entered, the clerk of court sends a notice to the defendant.² After 30 days, the debt (at the discretion of the clerk of court) may be assigned to the Centralized Collection Unit (CCU) in the Department of Revenue. If assigned, the debt remains at the CCU for the next 60 days. Once the debt is 90 days delinquent, it can be sent to the county attorneys or their designee for collection.

Court Debt Collection Methods

Court debt is collected via one of the following methods:

- **Centralized Collection Unit (CCU) – Department of Revenue.** The CCU began court collections in 1996. Since that time, the CCU has collected 21.1% of all court debt placed for collection. The CCU charges a 10.0% collection fee to each account to cover collection costs (personnel, accounting, data processing, auto-dialer, collection software upgrades, and printing). The fee is applied only when funds are actually collected. However, the fee is added to each account by the Judicial Branch when the account is placed with the CCU. Monthly collections average \$1.7 million. In FY 2009, 249,818 cases were placed with the CCU totaling \$131.3 million. Of this amount, the CCU collected \$19.8 million for FY 2009 with \$4.6 million paid directly to the CCU and \$15.2 million received through the clerk of court offices. Prior to the enactment of SF 2428, debt was placed with the CCU at 45 days after assessment for a period of six months (until it was eligible for county attorneys to receive it). Under current law, debt may be placed with the CCU at 30 days for a period of two months. For additional information see **Attachment A**.
- **Income Tax Offset.** The Department of Administrative Services (DAS) collects money through the Income Tax Offset Program, Vendor Offset Program, Lottery Winnings, and Casino and Racetrack Winnings. The Department charges an additional \$7 to the debtor for each offset held. The fee is used to cover all the expenses for the offset program so no appropriations are necessary. In FY 2009, the DAS collected \$25.3 million in income offsets. Of this total, \$6.9 million (27.3%) was collected on behalf of the Judicial Branch.
- **County Attorneys.** The county attorneys began court collections in 1992 (Chapter 192, 1991 Iowa Acts). County attorneys collected unpaid fines and court costs that were delinquent at least six months. The legislation provided an incentive for county attorneys by allowing 35.0% of the amount collected, after payment of court costs, to be retained by the county. Once the counties collected \$1.2 million, the formula changed and the counties retained 35.0%, the county attorney's office retained 33.0%, and the State General Fund received 32.0%. The enactment of SF 2428 created a threshold based on county population and changed the formula. The State receives 60.0% and the counties receive 40.0% of debt collected. After the threshold is met, the State receives 48.0% and the counties receive 52.0%. In FY 2009, 45 counties participated in debt collection efforts. For additional information see **Attachment B**.
- **Cash and Check Payments.** The clerk of court offices accept cash and check payments for court debt.
- **Internet E-pay and Credit Cards.** Payment options are also available via the internet and using a credit card.

² Current Court practice

Priority Order of Payments

By statute, all court debt payments received by the State are to be applied in the following priority order:

1. Restitution (pecuniary damages).
2. Fines or penalties and Criminal Penalty and Law Enforcement Initiative Surcharges.
3. Crime Victim Compensation Program.
4. Court costs, including correctional fees assessed pursuant to Code Section 356.7 (sheriffs' fees), Code Section 904.108 [Department of Corrections (DOC) fees], court-appointed attorney fees, and public defender expenses.

The clerk of court offices prorate and apply debt collection funds received. The Iowa Court Information System (ICIS) program automatically apportions any payment received toward all amounts owed within that grouping. For example, if \$20 was paid and two items were owed (such as a fine and Criminal Penalty Surcharge), \$10 (50.0%) would be applied to each item. However, the clerks have the ability to override the default system to apply the credit to individual penalties. For example, if community service is ordered in lieu of restitution, or if a payment was received that covered the remainder of the surcharge owed, the clerk could override the system and apply the money to the surcharge. Per statute, clerks are required to apply payments to the oldest judgment first in the priority order of payment listed above. This requires the clerk of court offices to research the outstanding debt. However, if the case number is identified, the debt is applied to that case.

Memorandum of Understanding

Because of confusion at the local level regarding the priority of payments, the Judicial Branch signed a memorandum of understanding (MOU) with the county attorneys on July 1, 2009. The following is the priority order of payment listed in the Questions and Answer portion of the MOU. This MOU reflects the Judicial Branch attempt to clarify the priority. However, it also has an impact on the entity that ultimately receives the funds collected for debt payments and may not represent the General Assembly's intent in statute.

1. Restitution (pecuniary damages).
2. \$200 Department of Transportation (DOT) Civil Penalty.
3. Fines or civil penalties.
4. Criminal Penalty and Law Enforcement Initiative Surcharges.
5. Crime Victim Compensation Program.
6. Court costs.
7. Correctional fees [sheriffs' fees (Code Section 356.7) and fees (Code Section 904.108)].
8. Court appointed attorney fees, or public defender expenses.

CURRENT SITUATION - CHANGES IMPLEMENTED IN SF 2428 (DELINQUENT DEBT ACT)***Jury and Witness Fee Revolving Fund***

Senate File 2428 required receipts from court debt more than two years old to be deposited in the General Fund rather than the Jury and Witness Fee Revolving Fund beginning in FY 2009. This change increased judicial revenue being deposited in the General Fund, but will require a General Fund appropriation to pay jury and witness expenses beginning in FY 2011.

Centralized Collections Unit (CCU)

Since the enactment of SF 2428, the CCU has invested approximately \$11.2 million (of collection proceeds) to increase the collection of debt in Iowa. New account scoring software was installed that analyzes historical and current data elements to determine the likelihood of payments being received in 120 days. An upgrade to the auto-dialer (an automatic dialing program that calls every court account) was completed. In addition, the CCU is currently developing a web-based system upgrade to the collection software required by SF 2428 that will provide new tools to help increase collections. The implementation date for the collection software is anticipated to be August 2010.

The most active collection period for the CCU is the first 12 to 15 months of the debt assignment. The CCU has two collectors working court legal actions and four collectors concentrating on other segments of court debt collection, such as calling, correspondence, locating people, and handling walk-ins. In addition, NCO Financial Systems, the private debt collector for the CCU, has hired eight temporary employees to work only on court debt. The CCU also expanded the work day until noon on Saturdays to provide more potential contact time with debtors.

Another new provision of SF 2428 allows taxpayers to establish payment plans with the CCU to obtain the reinstatement of their driver's license.³ There have been 113 payment plans for the reinstatement of driver's licenses in 37 counties. Of these, 57 have already paid in full (50.4%), 15 defaulted, and four are being monitored for failure to comply. The remaining 37 (32.7%) are making the agreed payments. The Department of Revenue reports the success rate for this project was higher than anticipated.

Professional License Sanction Project

Another provision of SF 2428 (Code Section 272D) allows the Department of Revenue to apply professional license sanctions for taxpayers that owe more than \$1,000 in debt and are placed with the CCU for collection. The administrative rules for this program were adopted in February 2009 and took longer than anticipated due to the required coordination between multiple licensing agencies. In FY 2009, 81 accounts were selected for a total liability of \$192,806. Of those selected, two paid in full totaling \$2,576, five are on payment plans, one account requested a hardship provision, three people quit their job so their license was no longer valid, and 31 Certificates of Non-Compliance were sent to the issuing agency to suspend, deny, or revoke the individual's license.

Racing and Gaming Offset Program

Code Sections 99D.28 and 99F.19 require the DAS to create and operate a Racing and Gaming Offset Program at casinos, riverboats, and racetracks for the collection of outstanding debt owed to the State of Iowa on winnings of \$10,000 or greater. This Program has been in operation since January 5, 2009. From January through June 2009, \$98,970 was collected. Of this amount, funds owed the Judicial Branch for outstanding court debt totaled \$12,900 (13.0%) of the total. From July 1 through October 31, 2009, the Program collected \$64,886. Of this amount, \$14,963 (23.1%) of the total was court debt.

Private Debt Collector

The Judicial Branch completed a Request for Information (RFI) to contract with a private debt collector in January 2009 and anticipates issuing a Request for Proposal (RFP) sometime in FY 2010. Case law (*Hauge Associated, Inc. v. McGriff*, 666 NW 2d 151 and Iowa Supreme Court Commission on Unauthorized Practice of Law, 623 NW2d 803) states that private debt

³ Iowa Code § 321.210B

collectors cannot take cases to court and are required to hire a law firm to represent them in judicial proceedings.

County Attorney Collections

Senate File 2428 increased the incentive for county attorney collections by implementing a debt collection threshold formula based on the county population. The new formula allows county attorneys to retain 40.0% of the amount collected and the remaining 60.0% is deposited in the State General Fund. Once the county's threshold is met, the county retains an additional 12.0% (total of 52.0%) of the funds collected.⁴ Below is a list of the thresholds:

- Population greater than 150,000 - \$500,000
- Population greater than 100,000 to 150,000 - \$400,000
- Population greater than 50,000 to 100,000 - \$250,000
- Population greater than 26,000 to 50,000 - \$100,000
- Population greater than 15,000 to 26,000 - \$50,000
- Population less than or equal to 15,000 - \$25,000

From FY 2008 to FY 2009, there was an increase of \$1,175,787 (42.6%) in the total amount collected through the County Attorney Collections Program. The County portion increased by \$794,596 or 82.3% and the State portion increased by \$381,191 or 21.3%.

For FY 2010, there are 47 counties participating in collections. Crawford and Carroll counties and Decatur and Wayne counties have entered into 28E agreements. As of December 31, 2009, six counties exceeded the threshold. In addition, there was one county that has not collected any money and six counties that have collected less than \$1,000. For additional information see **Attachment C**.

BUDGET IMPACT

Court fines, fees, and surcharge amounts have increased in recent years. For example, court costs for a simple misdemeanor/scheduled violation increased \$43 (252.9%) from FY 2004 to present. Senate File 478 (FY 2010 Standing Appropriations Act) increased fine, fee, and surcharge amounts. For the first four months of FY 2010, receipts from court fees and the criminal penalty surcharge increased \$1.2 million (14.1%) and the amount imposed increased \$2.6 million (14.1%) primarily due to the larger fine amounts. When comparing the overall amount imposed to the amount collected between FY 2009 and FY 2010, the percent collected has remained at approximately 46.0% with the remainder being outstanding court debt.

Also, in SF 478, the Judicial Branch received an additional General Fund operating appropriation of \$11.0 million. Of this, \$350,000 was to be used for programming costs for the delinquent debt program. As a result of the self-imposed across-the-board (ATB) reduction of 7.1%, the Judicial Branch's FY 2010 General Fund operating appropriation was reduced by \$11.4 million. Prior to the ATB reduction, some programming had been implemented but the ATB reduction has slowed the project. With layoffs, reduced hours, and furlough days in the clerk of court offices, deposits to the State General Fund for debt collection may be reduced.

General Fund Receipts from Court Debt Collections

In FY 2009, General Fund receipts collected by the Judicial Branch totaled \$131.0 million, an increase of \$2.9 million (2.3%) compared to FY 2008. The following chart compares the collection methods and amounts for FY 2008 and FY 2009.

⁴ Iowa Code § 602.8107(4)

FY 2008 vs. FY 2009 Debt Collections
(Dollars in millions)

	FY 2008	FY 2009
County Attorneys	\$ 2.8	\$ 4.0
Income Tax Offset - Department of Administrative Services (DAS)	5.8	6.9
Centralized Collection Unit (CCU) - Department of Revenue	20.4	19.8
Internet E-pay	22.2	22.8
Credit Card	3.1	3.2
Cash and check payments - clerk of court offices	73.8	74.3
Total	\$ 128.1	\$ 131.0

FINDINGS

Multiple court debt collection methods conducted through various State and local agencies creates confusion and may impede payment. Inconsistent interpretation and application of debt collection methodologies across the State also impacts collections.

The biggest factor driving where and when payments are applied is the financial code in the ICIS System. The clerk of court offices determine the financial code and apply the payments to the appropriate collection entity. However, this is a workload issue and not all clerk of court offices have time to properly research where payments are applied. This may result in some payments being credited to the county attorney when it should be paid to the State General Fund. It could also result in payments not being applied in the statutory priority order of payment.

The Judicial Branch has discretion over the debt sent to the CCU. At the end of FY 2009, the Judicial Branch did not send debt to the CCU from a county active in the county attorney collections program. This decision was later revised. In FY 2010, the Courts were not sending any debt to either the CCU or the county attorneys for 90 days. This decision was also later revised. However, once the automated system is in place in FY 2010, debt will go to the CCU at 30 days, except for debt from a county with a collecting county attorney. This may result in some debt going uncollected due to county attorneys signing up for the collections program and then not actively collecting the debt.

ALTERNATIVES

The General Assembly may wish to consider the following alternatives:

- Streamline the debt collections program to reduce the possibility of multiple groups collecting the same debt from the same people.
- Require the Judicial Branch to submit an annual report to the Legislative Fiscal Committee regarding the status of court debt collection.
- Review the length of time debt is placed with the CCU.
- Review the length of time debt remains uncollected before being transferred to a county attorney collection program.
- Clarify in statute that the Judicial Branch has the authority to decline county participation in delinquent court debt collection based on previous results. Clerks have the responsibility to change the financial code in ICIS making a case eligible for a county attorney collections program.

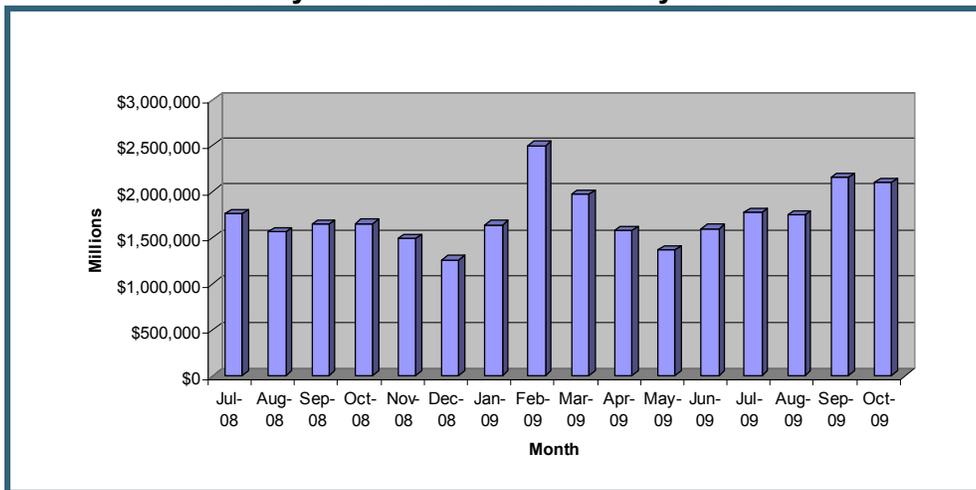
- Require a minimum dollar amount or a minimum percentage of debt collected through the county attorney program to ensure active debt collection measures are pursued.
- Review the Code and current practice to clarify the General Assembly's preference in situations where the Code does not mirror current practice under Code Section 602.8107(4).
- The DOC fees listed on the statutory priority order of payment are not collected by the Judicial Branch but rather they are collected by the DOC (Code Section 904.108). The General Assembly may wish to amend Code Section 602.8107(2)(c) to reflect current practice.
- Review Code Section 909.3 to clarify the docketing date for payment plans set up through a Judge.
- Review the priority order of payment. The Judicial Branch MOU priority order conflicts with statute.
 - Clarify that only traffic tickets can be included in the CAPP Program payment plans.
 - If a ticket included in the CAPP Program requires a restitution payment, clarify the \$200 DOT Civil penalty [Code Section 321.210B(7)(b) and (c)] or restitution [Code Section 910.1(3)] is paid first.
- Require each county attorney office to provide a report on the number of new cases, the number of existing cases, and the dollar amounts received. This would allow the State to keep better track of the outstanding debt and allow the Judicial Branch to intervene when debt is not actively being pursued.
- Require county attorney offices with uncollectable debt (wrong social security number, someone is incarcerated, etc.) to return those accounts to the State for collection rather than maintaining it at the county level. This debt could be referred to the private debt collector or to the CCU and prevent debt from accumulating at the county level.
- Review the private debt collector language to allow the Judicial Branch to negotiate a fee up to 25.0% rather than requiring an add-on fee of 25.0%.

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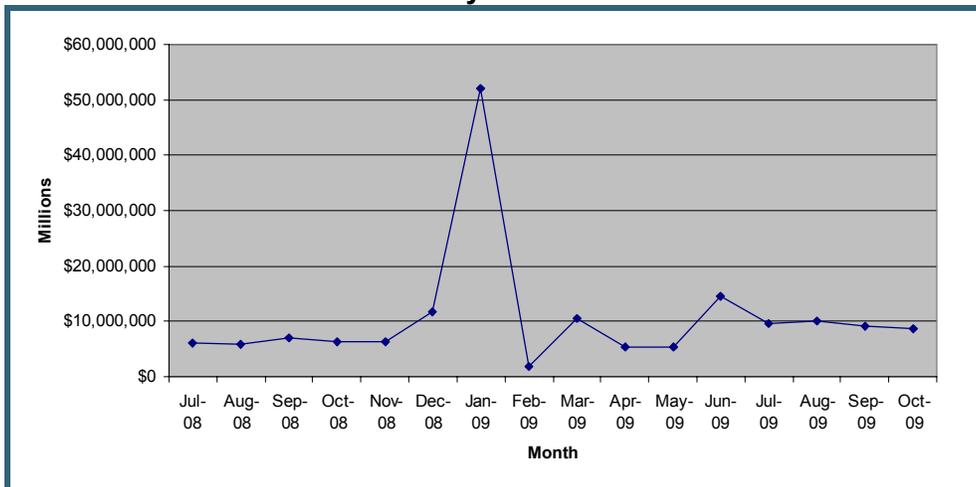
Court Debt Collected by the Centralized Collection Unit (CCU)

The charts below show Judicial Branch collections by the CCU by month from July 2008 through October 2009, the dollar amount of the monthly placements of cases, and the number of cases placed. The average monthly collection for this time period is \$1.7 million. The average dollar amount of monthly placements is \$10.7 million and the average number of cases placed is 19,800 cases. However, this includes 66,363 cases in January 2009 totaling \$52.1 million that caused a spike in collections in February 2009. For FY 2010, collections are averaging \$1.9 million per month.

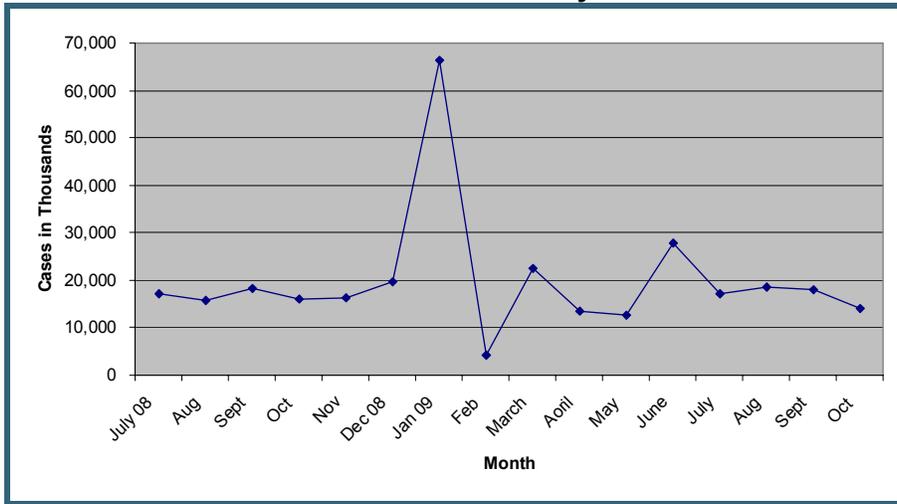
Monthly Court Debt Collections by the CCU



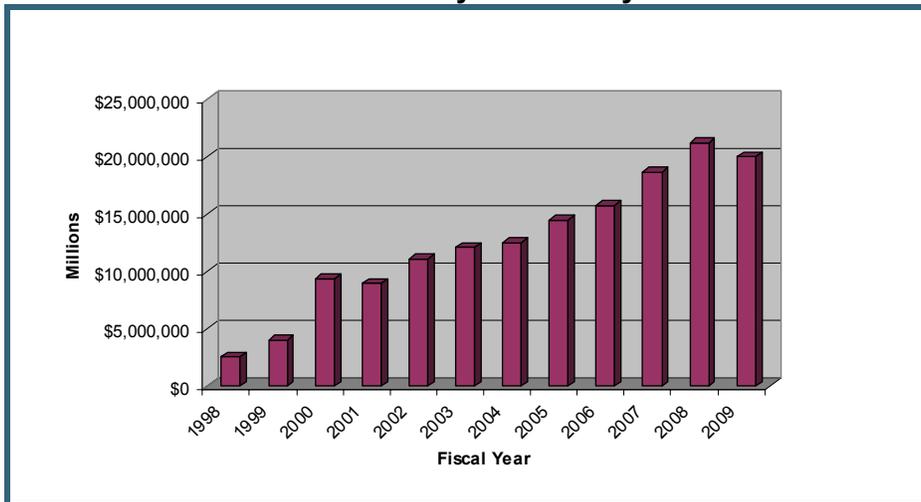
Dollar Amount of Monthly Cases Placed with the CCU



Number of Cases Placed Monthly with the CCU



Court Debt Collected by the CCU by Fiscal Year



County Attorney Court Debt Collections

In May 1992, a total of 38 counties were participating in the original Program. In FY 2009, there were 45 counties participating in collections. This was an increase of 10 counties compared to a year ago. Counties are allowed to enter into a 28E agreement for the purposes of collecting delinquent debt but in FY 2009, no counties entered into an agreement. The combined counties will be treated as a single county but the threshold will be attributed to the county with the largest population.

FY 2009 County Attorney Collections

Below is a list of the number of counties per threshold that participated in the program in FY 2009.

- Population greater than 150,000 - \$500,000 – Two counties participated
- Population greater than 100,000 to 150,000 - \$400,000 – Four counties participated
- Population greater than 50,000 to 100,000 - \$250,000 – Three counties participated
- Population greater than 26,000 to 50,000 - \$100,000 – Seven counties participated
- Population greater than 15,000 to 26,000 - \$50,000 – 12 counties participated
- Population less than or equal to 15,000 - \$25,000 – 17 counties participated

Of the 45 counties that participated in the program in FY 2009, 15 counties (33.3%) exceeded the threshold including 10 counties in March, one in April, two in May, and two in June of 2009. Three counties did not collect any money, one county collected less than \$1,000, and seven counties collected more than \$1,000 but less than \$5,000.

The following shows the top five counties that exceeded the threshold and how much additional money was collected and retained by the county:

- Black Hawk County - \$454,000
- Warren County - \$97,000
- Carroll County - \$63,000
- Cherokee County - \$42,000
- Jackson County - \$39,000

The chart below shows actual collections by county attorneys broken out by the portion the county received and the portion received by the State. County attorney collections through October 31, 2009, reflect an overall increase of 22.6% compared to FY 2009.

County Attorney Collections Report Year To Date Actual

	2005	2006	2007	2008	2009*	2010**
County Portion	\$ 606,377	\$ 646,765	\$ 701,757	\$ 965,301	\$ 1,759,897	\$ 658,587
State Portion	\$ 1,126,128	\$ 1,201,135	\$ 1,303,263	\$ 1,792,701	\$ 2,173,892	\$ 948,680
Total	<u>\$ 1,732,505</u>	<u>\$ 1,847,900</u>	<u>\$ 2,005,020</u>	<u>\$ 2,758,002</u>	<u>\$ 3,933,789</u>	<u>\$ 1,607,267</u>

* In the 2008 Legislative Session, the formula was changed from 35.0% counties and 65.0% State with a threshold of \$1.2 million to 40.0% counties and 60.0% State and thresholds based on population. Once a county meets their threshold, the formula changes to 52.0% counties and 48.0% State. The FY 2009 figure includes \$952,244 at 40.0% and \$807,653 at 52.0% for the counties and \$1,428,367 at 60.0% and \$745,525 at 48.0% for the State.

** Collections as of October 31, 2009. The FY 2010 figure includes \$590,641 at 40.0% and \$67,946 at 52.0% for the counties and \$885,961 at 60.0% and \$62,719 at 48.0% for the State.

Source: Judicial Branch

County Attorney Payment Plan (CAPP) Installment Agreements For Driver's License Reinstatement and Regular County Attorney Payment Plans

The only way a person is eligible for a driver's license reinstatement program is if the driver's license has been suspended. The only debt eligible for this program is outstanding traffic tickets. If a person's fine, penalty, surcharge, or court costs are deemed delinquent resulting in the suspension of their driver's license, the person may execute an installment agreement with the county attorney, their designee, or the CCU. A vehicle registration hold remains until the debt is paid in full or until it is lifted by the Clerk of Court.¹ Upon receipt of an executed installment agreement and after the first installment payment has been received, the Clerk of the District Court will report the receipt of the executed installment agreement to the Department of Transportation (DOT).

Once the DOT receives the notice and the \$20 reinstatement fee, the Department will immediately reinstate the person's driver's license unless it is otherwise suspended, barred, revoked, or denied under another provision of law such as an Operating While Intoxicated (OWI) charge. This fee must be paid at the DOT. The Clerks will not accept this payment. In order to have a driver's license reinstated, the person also needs to present proof of financial liability. After the reinstatement fee is paid, the Clerk of the District Court will transmit from the first money collected, an amount equal to the \$200 DOT Civil Penalty and added to the installment agreement. Except for the \$200 DOT Civil Penalty, any amount collected under the installment agreement by the county attorney or their designee is distributed according to Iowa Code Section 602.8107(4). Some counties do not start a CAPP until a receipt for the \$200 Civil penalty is provided by the defendant. Each ticket may have the \$200 civil penalty resulting in hundreds of dollars in civil penalties. Other counties are starting a CAPP but not including the \$200 civil penalty up front and instead adding it at a later date, after money has already been collected. This was addressed in the MOU stating the Clerk will reprioritize payments so that the next payment is for the \$200. Clerks are instructed not to move money that has already been receipted but instead apply future payments to the civil penalty.

If a person was already making payments through a regular payment plan but had delinquent debt that resulted in the suspension of their driver's license, the original payment plan would be suspended and the new CAPP Program would take precedent until paid off. The original payment plan would not go into default because the person was paying on another type of payment plan. Under the CAPP Program, of the first money received, \$200 would be applied to the DOT Civil Penalty and then the priority order of payment would apply. Once the CAPP is completed, the original payment plan would resume.

According to the July 1, 2009, MOU, if the county attorney has a regular payment plan (not a CAPP driver's license reinstatement payment plan) already established with a defendant, the county attorney can include new cases which are less than 90 days past the date of assessment on an existing regular payment plan provided the Court or defendant requests that the fines and fees be included. However, the county attorney will not receive any payment of the newly added fines or fees until the debt becomes delinquent.

¹ Current Court practice

If a new fine or fee is imposed on a person already in a CAPP driver's license reinstatement payment plan, then the person must enter into a second or new plan.² A person can enter into no more than five driver's license installment agreements in their lifetime.

\$200 Department of Transportation (DOT) Civil Penalty

The \$200 DOT Civil Penalty for regular driver license suspensions funds the county Juvenile Detention Homes.³ In FY 2009, the civil penalty under Code Sections 321.32A and 321.218A generated \$3.8 million, an increase of \$9,000 compared to FY 2008. Of the funds collected for the \$200 DOT Civil Penalty for OWI license suspensions, 50.0% is deposited in the Victim Compensation Fund and 50.0% is deposited in the State General Fund. In FY 2009, the civil penalty in Code Section 321J.17 generated \$2.9 million (\$1.4 million for the Victim Compensation Fund and \$1.4 million for the State General Fund). This was an increase of \$71,000 compared to FY 2008.

Judges have discretion to allow an installment plan or to fix a date no more than 120 days into the future for payment of a fine.⁴ For good cause, the Judge may extend the payment more than 120 days. This affects the docketing of a case and differs from county to county which affects the date used in determining the debt's delinquency and creates unnecessary delays in collection efforts. If a payment plan established through a judge becomes delinquent, it can be added to a county attorney or CCU payment plan.

² Iowa Code § 321.210B(11)

³ Iowa Code § 232.142

⁴ Iowa Code § 909.3