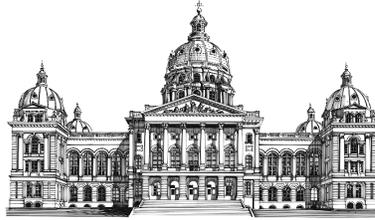

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Outstanding Court Debt

(Revised November 6, 2007)

ISSUE

This *Issue Review* provides information on outstanding court debt including various collection methods and possible alternatives to address the increasing debt.

AFFECTED AGENCIES

Judicial Branch
Department of Revenue
County Attorneys
County Treasurer's Offices
Department of Transportation

CODE AUTHORITY

Section 321.210A, Code of Iowa
Chapter 602, Code of Iowa
Section 909.10, Code of Iowa
Section 910.9, Code of Iowa

BACKGROUND

Over the past 10 years, enacted legislation has increased imposed judicial fine, penalty, fee, court cost, and surcharge amounts. Although additional revenue has been collected over this timeframe, collection rates have decreased. This is reflected by the increasing amount of outstanding court debt. Outstanding court debt does not include restitution, child support, or civil judgments. Currently, there is no way to estimate the amount of outstanding debt that is uncollectible since all debt is categorized as owed until paid regardless of any other extenuating circumstances; however, the Judicial Branch is developing methods for aging outstanding court debt. The following chart shows collection rates for the past three fiscal years.

Collection Rates

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>
Scheduled Traffic Fines	74%	72%	71%
Deferred Judgments	n/a	22%	39%
Fines, Simple Misdemeanors	52%	49%	45%
Fines, Serious Misdemeanors	29%	29%	29%
Fines, Aggravated Misdemeanors	19%	19%	17%
Fines, Operating While Intoxicated (OWI)	34%	34%	32%
Surcharge, 30.0% to 32.0%	40%	40%	37%

Source: Criminal and Juvenile Justice Planning (CJJP)

From FY 1998 to FY 2007, outstanding court debt increased \$310.3 million (216.4%). The average monthly increase in outstanding court debt is \$2.7 million per month. Prior to FY 1998, figures were entered by hand and scheduled traffic violations and civil cases were not reported, which resulted in the under-reporting of outstanding court debt. The following chart shows the historical increase in outstanding court debt from FY 1998 to present:

Outstanding Court Debt By Fiscal Year
(Dollars in Millions)

<u>Fiscal Year</u>	<u>Outstanding Court Debt</u>	<u>Annual Increase</u>	<u>Percent Increase</u>
FY 1998	\$143.4	-----	-----
FY 1999	\$171.5	\$28.1	19.6%
FY 2000	\$202.9	\$31.4	18.3%
FY 2001	\$237.7	\$34.8	17.2%
FY 2002	\$275.2	\$37.5	15.8%
FY 2003	\$298.5	\$23.3	8.5%
FY 2004	\$334.8	\$36.3	12.2%
FY 2005	\$371.4	\$36.6	10.9%
FY 2006	\$412.5	\$41.1	11.1%
FY 2007	\$453.7	\$41.2	10.0%

Source: Judicial Branch Generally Accepted Accounting Principles (GAAP) Report

Section 910.9, Code of Iowa, provides that victims shall be paid in full prior to the payment of any other debt. A fine, penalty, court cost, fee, or surcharge is deemed delinquent if it is not paid within six months after the date it is assessed.

Section 602.8107(4), Code of Iowa, allows a county attorney to collect delinquent debt and retain 35.0% of the amount collected for deposit into the county general fund; the State receives 65.0%.

Section 909.10, Code of Iowa, states that fines, court costs, or surcharges that are unpaid after two years from the date imposed that are not collected by the county attorney pursuant to Section 602.8107, Code of Iowa, will be remitted to the Treasurer of the State for deposit into the Jury and Witness Fee Revolving Fund. The Fund is used by the Judicial Branch to pay jury and witness fees and mileage.

During the 1991 Legislative Session, the General Assembly enacted HF 697 (Collection of Delinquent Criminal Fines and Court Costs Act), which provided the authority for county attorneys

to collect unpaid fines and court costs that were at least six months delinquent. 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.

During the 1992 Legislative Session, the General Assembly enacted SF 370 (OWI Fine Increase, Mandatory Minimum Fines, and Community Service Act), which shifted some of the responsibilities for the collection of delinquent fines, fees, and penalties to the Clerks of District Court and added private attorneys to the list of persons county attorneys could contract with for collection services. This Act also allowed the Department of Revenue to collect delinquent amounts when the county attorneys did not file a notice of intent to pursue the delinquent amounts and permitted offsets against tax refunds.

During the 1995 Legislative Session, the General Assembly enacted HF 549 (Collection of Taxes and Debts Owed to the State Act), which provided an administrative levy to seize certain accounts of the debtor; the denial, revocation, suspension, or renewal of licenses authorized by the State; the redistribution of debts collected; and the Act created a driver's license indebtedness clearance pilot project. The Centralized Collection Unit in the Department of Revenue was allowed to issue a levy against checking, savings, and share accounts of persons who are indebted to the State and delinquent. County treasurers were also allowed to refuse to renew the vehicle registration of an applicant with a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to, or being collected by the State. Approximately 82.0% of fines imposed in FY 1995 fell into five categories, including driving with a suspended driver's license (39.0%); OWI – First (21.0%); possession of a controlled substance (8.0%); OWI – Second (7.0%); and OWI – Third (7.0%).

CURRENT SITUATION

There are currently seven different ways to collect outstanding court debt, which includes the following:

Clerks' Noticing: Clerks of Court mail debtors three reminder notices. The first notice is the judgment entry or sentencing order, which is mailed at the time the fee is imposed if payment has not been made. The second notice is mailed if payment is not received within 20 days. The third and final notice is mailed at 30 days and states that if payment is not received within 10 days, the account will be transferred to the Department of Revenue for collection.

Centralized Collection Unit (CCU): The CCU is in the Department of Revenue. After 45 days from the date assessed, the CCU begins pursuing the debt. Debtors are charged a 10.0% fee when their case is transferred to the Department. According to the Department of Revenue, in FY 2007, \$18.7 million was collected through the CCU of which, \$1.7 million was retained by the Department of Revenue and \$17.0 million was remitted back to the Judicial Branch for deposit into the appropriate State fund. As of August 31, 2007, a total of approximately \$3.2 million has been collected for FY 2008.

Income Tax, Vendor Offset, and Lottery Winnings: The Department of Administrative Services (DAS) collects approximately \$4.0 million in outstanding court debt through these methods. Prior to FY 2006, most of this money was collected through income tax and vendor offset programs. However, in FY 2006, there was a temporary increase in lottery winnings and a corresponding increase in court debt collection, primarily due to Touchplay machines.

Vehicle Registration Renewals: When a person who owes money to the State attempts to renew their vehicle registration, the county treasurer's office notifies the person they need to see the clerk

of court to pay their fine. Unless the fine is paid in full, the person is unable to renew their vehicle registration.

Driver's License Reinstatement: When a person owes money to the State for a citation, the Judicial Branch notifies the Department of Transportation (DOT), which sends a suspension notice to the person that says payment to the Clerk of Court does not end the suspension. The DOT must receive acceptable proof of payment before the suspension will be ended. Unless the fine is paid in full or the person enters into a County Attorney payment plan, the person is unable to renew or reinstate their driver's license. (Section 321.210A, Code of Iowa)

County Attorney Collections: Section 602.8107(4), Code of Iowa, allows a county attorney to collect delinquent debt and retain 35.0% of the amount collected for deposit into the county general fund; the State receives 65.0%. The current threshold on the county attorney collection is \$1.2 million to the General Fund, which is the State's 65.0% share of the outstanding court debt. Once the threshold is met, the formula changes and the county retains 35.0%, the county attorney's office retains 33.0%, and the State's share is 32.0% (Section 602.8107(5), Code of Iowa).

In FY 2007, the \$1.2 million threshold was exceeded the last two months of the fiscal year by \$297,000, of which, the General Fund received an additional \$95,000 and the counties and county attorney offices received a total of \$202,000. Currently, there are 38 counties participating in this Program. Black Hawk County is the largest collector of delinquent debt by county attorneys. As of August 20, county attorney collections for FY 2008 are \$118,000.

Show Cause Hearings: Judges and magistrates can require a defendant to attend a show cause hearing and explain to the judge why payment on their court debt has not been made. In FY 2007, there were 4,551 show cause hearings; however, this figure includes all show cause hearings and not just those related to collections.

2007 Legislation

During the 2007 Legislative Session, HF 641 (Court Procedures and Fines Act) created installment agreements for people whose driver's license had been suspended pursuant to Section 321.210A, Code of Iowa, for failure to pay a fine, penalty, surcharge, or court cost related to a moving violation. The person may enter into an installment agreement through the County Attorney's Office for the purpose of paying off the delinquent obligation. The Department of Transportation (DOT) must reinstate the driver's license upon receipt of the executed agreement between the person and the County Attorney, if the driver's license of the person is not otherwise suspended, revoked, or barred under any other provision of the law.

Prior to the enactment of this legislation, a delinquent obligation had to be paid in full prior to the reinstatement of the driver's license. An installment agreement can not be executed in any county, except Polk and Linn County, until January 1, 2008. A person is limited to five installment agreements in a person's lifetime. Any money collected pursuant to the installment agreement, except the civil penalty, will be distributed as provided in Section 602.8107(4), Code of Iowa, for delinquent judgments collected by a county attorney.

In order to qualify for the Program, a person must have all their civil penalties paid, except for the civil penalty in Section 321.218A, Code of Iowa, which can be part of the payment plan. In addition, they must have auto insurance; they must be current on their child support payments; they must be employed and have a wage assignment; and their charges cannot be an indictable offense. As of September 14, there have been 22 people in Linn County and 106 people in Polk County

participating in the Program. The Judicial Branch is in the process of designing and developing computerized programs and interfaces to implement this Program statewide on January 1, 2008.

BUDGET IMPACT

Any court debt over two years old that is collected, and is not in a county attorney payment plan, is deposited into the Jury and Witness Fee Revolving Fund. The Fund is used to reimburse juror and witness fees and mileage. Senate File 563 (FY 2008 Judicial Branch Appropriations Act) increased the reimbursement rate for a juror from \$10 per day to \$30 per day. The fiscal impact was an estimated \$2.0 million cost to the Fund. In addition, \$2.0 million in one-time carry forward money was transferred from the Fund to the Judicial Retirement Fund. The following chart shows the carry forward balance in the Jury and Witness Fee Revolving Fund from FY 1998 to present.

Balance Carry Forward in the Jury and Witness Fee Revolving Fund

Fiscal Year	Ending Balance	Percent Increase
FY 1998	\$61,207	-----
FY 1999	\$219,941	259.3%
FY 2000	\$598,869	172.3%
FY 2001	\$1,280,368	113.8%
FY 2002	\$2,390,213	86.7%
FY 2003	\$2,219,379	-7.1%
FY 2004	\$3,401,313	53.3%
FY 2005	\$4,758,714	39.9%
FY 2006	\$6,351,582	33.5%
Est. FY 2007	\$7,193,308	13.3%
Est. FY 2008	\$5,874,033	-18.3%

Source: I/3 Budget System

NOTE: The FY 2008 figure includes the \$2.0 million reduction for increased juror pay and the \$2.0 million reduction for the Judicial Retirement Fund transfer, which is offset with an estimated \$2.7 million in receipts added to the carry forward balance.

ALTERNATIVES

The General Assembly may wish to consider the following alternatives for reducing court debt:

- **Age the Debt:** The General Assembly could require the Judicial Branch to age the debt in a manner that captures current outstanding obligations that could be collected apart from outstanding obligations that will never be collected due to death or incarceration.
- **Write Off Old Debt:** According to the Department of Public Health, the average life expectancy of an Iowan is 77 years of age. According to the Department of Corrections, the median age of an offender incarcerated in Iowa is 35 years of age. Starting July 1, 2008, the General Assembly could require the Judicial Branch to "write off" any debt prior to 1940. In order for the debt to be written off, the Judicial Branch would be required to clear the judgment from each person's record.

- **Fine Amnesty:** According to the National Center for State Courts (NCSC), fine amnesty is a practice in which the court offers an incentive for a period of time to delinquent fine debtors to encourage payment. The incentives can take various forms, such as waiving the interest, late fees, or court costs; allowing a payment of the fine itself with the remaining balances being forgiven; or forgiving debtors of a certain type of fine. This allows for a quick collection of cash in a short period and the closing of some delinquent cases, but according to NCSC, this also undermines the deterrence and punishment goals behind original sentences, as well as the credibility of the court.
- **Temporary Vehicle Registrations:** The General Assembly could allow the county treasurer's to issue temporary vehicle registrations as long as the debtor was making payments toward their outstanding court debt or if the debtor was enrolled in a payment plan with the State. Under current law, a debtor cannot receive a vehicle registration until their fine is paid in full.
- **Liens:** Liens placed on someone's taxes do not automatically transfer to that person's estate. The General Assembly may wish to consider legislation requiring the Judicial Branch to run a person's name against the ICIS system to verify all debt owed to the State has been paid prior to closing the estate.
- **Reduce Debt Collection Options:** By FY 2007, outstanding court debt had grown to \$453.7 million, while the number of collection methods had increased to seven. If the number of collection methods were reduced to two or three, more focus could be placed by those particular agencies on collecting outstanding court debt rather than spreading collection efforts among many.
- **Judicial Branch's On-line Fine Pay System:** Encourage county treasurer's and the DOT to utilize the Judicial Branch's On-line Fine Pay System at their respective offices to allow for the debt to be paid off. This will allow an individual to get their vehicle registration or their driver's license without having to run back and forth between the clerk of court and the county treasurer or DOT office.
- **Casino Winning Offset:** The General Assembly may wish to consider a casino winning offset program similar to the Lottery Winning Offset Program with the Iowa Lottery Authority. Prior to the payment of casino winnings, the person's name could be compared to the ICIS database to determine if there is any outstanding debt owed the State. When Touchplay machines were operating, Judicial Branch receipts experienced an increase of \$481,000 from lottery offset.
- **Eliminate Two Year Old Debt Deposits Into the Jury and Witness Fee Revolving Fund:** The General Assembly may wish to consider repealing this language and depositing all debt collected into the General Fund and appropriating money for jury and witness reimbursement. Prior to FY 2003, the Judicial Branch was authorized to transfer up to \$1.9 million from their operating budget into the Jury and Witness Fee Revolving Fund. From FY 2004 through FY 2007, expenditures from the Fund have averaged \$1.6 million. With the passage of SF 563 increasing juror reimbursement rates, this amount will likely increase to approximately \$3.6 million per year.

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<http://www.legis.state.ia.us/lsadoc/IssReview/2008/IRJDA000.pdf>

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