

Restructuring the Court-Ordered Debt Collection Process

LEGISLATIVE ANALYST'S OFFICE



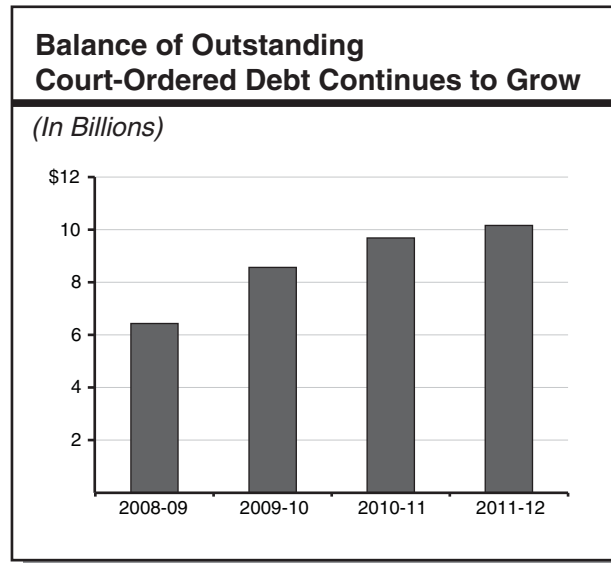


Overview of Court-Ordered Debt Collection Process

- Traffic and Other Criminal Offenses Result in Court-Ordered Debt.*** Upon conviction of a traffic violation or criminal offense, individuals are typically required by the court to make certain monetary payments as part of their punishment. In addition to a base fine, each debtor is generally required to pay additional assessments and fees. The total amount owed by the individual is known as “court-ordered debt.” Such debt is classified as *nondelinquent* (not overdue) or *delinquent* (not been paid on time).
- Various Entities Collect Debt.*** Counties are statutorily responsible for the collection of court-ordered debt. However, collection duties are often delegated to the courts. State law requires courts and counties to maintain the structure of their collection programs unless both agree to change it. Thus, the actual division of collection responsibilities varies across the state. In addition, collection programs often work with other public and private entities to collect debt.
- Various Tools to Collect Debt.*** Debtors must either provide full payment or set up installment payment plans immediately upon conviction. If an individual does not pay on time, collections programs have the flexibility to use various tools (such as additional fines or wage garnishments) to motivate individuals to make payments.
- Only Delinquent Collection Costs Reimbursed.*** Collection programs that engage in a certain number and type of collection activities identified in state law are allowed to recover most operating costs (also known as cost-recovery) related to the collection of delinquent court-ordered debt.



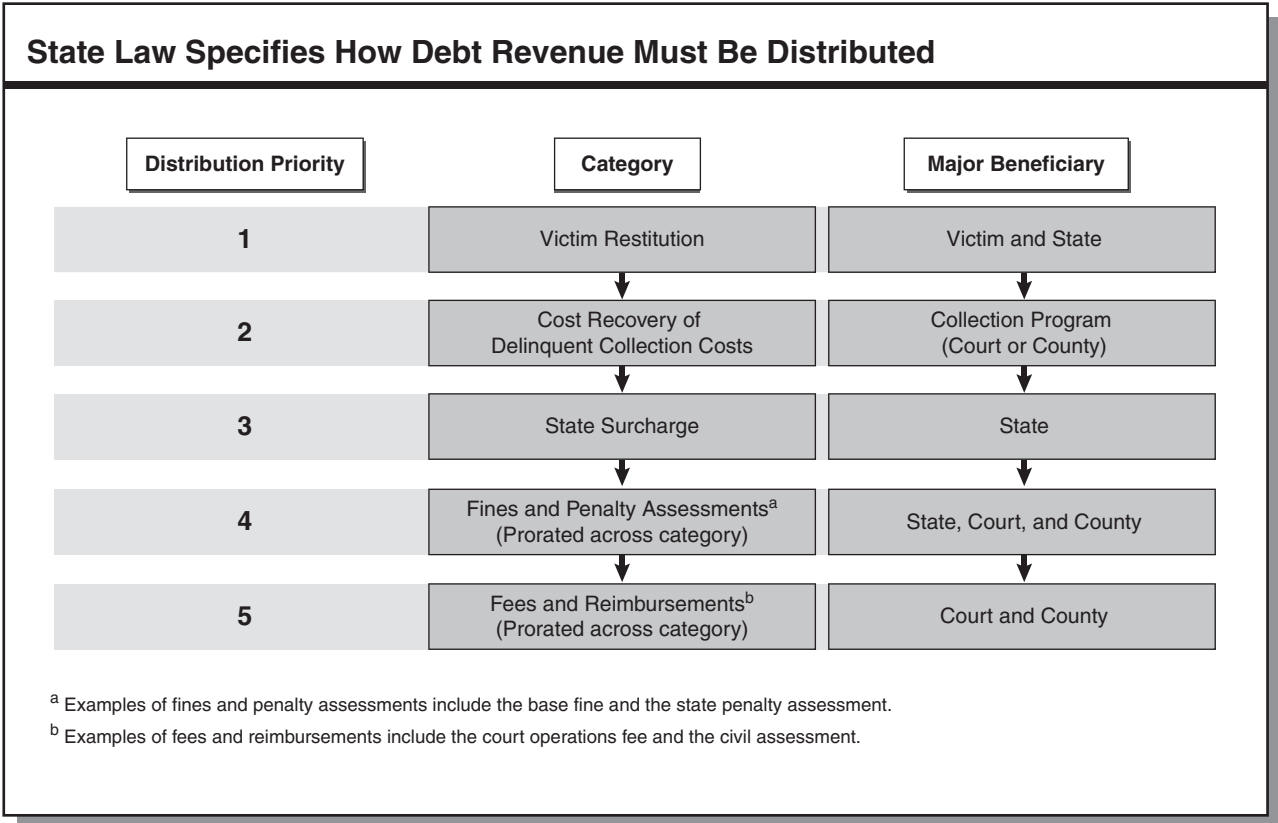
Much Debt Remains Uncollected



- ☑ **Total Collections Increased Steadily in Recent Years. . .**
 Total collections increased steadily since 2008-09. In 2011-12, about \$1.8 billion was collected including about \$1.1 billion (59 percent) in nondelinquent debt and about \$750 million (41 percent) in delinquent debt. However, because of incomplete data collection, this likely understates the total amount collected.
- ☑ **. . .But Amount of Outstanding Debt Continues to Grow.**
 As shown in the figure, at the end of 2011-12, an estimated \$10.2 billion in court-ordered debt remained outstanding. However, the cost of collecting much of this debt likely exceeds the amount owed.
- ☑ **Not All Outstanding Debt Should Be Pursued.** While state law authorizes collection programs to “discharge” debt when the amount they are pursuing is too small to justify the cost of collection, a number of programs refuse to do so. When debt is discharged, debtors are still liable for the debt but the program is no longer obligated to actively pursue it. This reduces how much outstanding court-ordered debt is “on the books”—providing a more accurate sense of how much debt is collectible.



Majority of Court-Ordered Debt Revenue Goes to the State



☑ As shown in the figure, state law specifies the order in which payments are credited against the various fines, assessments, and fees owed by a debtor. For example, when partial payments are made, victim restitution and state surcharge obligations must be completely addressed before payments can be used to address fines and penalty assessments on a prorated basis.

☑ State law further specifies how each of the various fines, assessments, and fees will be distributed among various state and local funds. For example, state law specifies that 70 percent of the state penalty assessment (which is addressed when funds are prorated across distribution priority category 4) must be deposited into the State Penalty Fund for further distribution to nine state funds.



Majority of Court-Ordered Debt Revenue Goes to the State *(Continued)*

- Based on the limited available data that is available (and excluding revenues offset for cost-recovery), roughly 60 percent of total revenue from court collections in 2011-12 was distributed to the state, while roughly 40 percent was distributed to local governments (primarily counties) where the underlying offenses occurred.



Lack of Clear Fiscal Incentives for Cost-Effective Collections

- Limited Fiscal Incentive for Counties to Collect Debt.** With the majority of debt revenue going to the state, counties have more incentive to focus on collecting other forms of debt that they keep a greater share of (such as probation fees). In addition, because the payments distributed to benefit counties have a lower priority, counties often invest in collection activities over a lengthy period of time before they even begin to benefit from their collection activities—further reducing their incentive to collect court-ordered debt.
- Even Less Fiscal Incentive for Courts to Collect Debt.** Like counties, payments distributed to benefit courts also have a lower distribution priority. Additionally, a court's incentive to collect is further reduced because the amount of revenue it receives from collections is only partially tied to its performance as reflected in how much revenue it collects.
- Little Fiscal Incentive to Collect Nondelinquent Debt.** Because collection programs are not reimbursed for collecting nondelinquent debt, they have little fiscal incentive to pursue such debt. This is problematic because nondelinquent debt is less expensive to collect than delinquent debt and activities related to collecting nondelinquent debt increase the likelihood of collecting delinquent debt.
- Current Cost-Recovery Approach Does Not Incentivize Efficiency.** The current cost-recovery approach allows collection programs to recover operational costs related to delinquent collections regardless of how high those costs are and how much debt is actually collected. This provides no incentive to operate efficiently and reduces the amount of revenue available for distribution to the state and local governments.



Lack of Clear Fiscal Incentives for Cost-Effective Collections

(Continued)



Current Incentive Structure Can Penalize Cost-Effective Collection Programs. Cost-effective programs that spend less but collect more because they focus on nondelinquent collections can receive less revenue under the cost-recovery model than programs that focus on delinquent collections and therefore collect less and spend more.



Difficult to Comprehensively Evaluate Performance of Collection Programs

- Incomplete and Inconsistent Reporting of Total Collections and Distributions.*** The state currently lacks complete and consistent data on the collection and distribution of court-ordered debt revenue, which makes it difficult for the state to conduct fiscal oversight of collection programs.
- Minimal Reporting of Nondelinquent Collection Costs and Revenues.*** Collection programs are not required to report on nondelinquent collection, despite the fact that these activities impact the overall success of collection programs. This makes it difficult to comprehensively and accurately evaluate the performance of programs.
- Miscalculation and Lack of Performance Measures for Delinquent Collections.*** The judicial branch systematically miscalculates the two industry-standard performance metrics it uses to evaluate the effectiveness of collection programs. Furthermore, there is a lack of other performance metrics—such as cost-effectiveness measures—that are essential in comprehensively evaluating the effectiveness of collection programs.
- Lack of Evaluation of Collection Practices.*** The various practices used by programs to collect debt have not been evaluated. Without such an analysis, it is difficult to determine whether the practices are cost-effective or should be promoted statewide.
- Lack of Data on Collectability of Outstanding Debt.*** No analysis has been conducted to determine what portion of the outstanding balance of court-ordered debt is collectible in a cost-effective manner. Without such an analysis, it is unknown what portion of the total balance programs should actively pursue.



Recommend Realigning Court-Ordered Debt Collection Process



Shift Collections Responsibility to Trial Courts

- Recommend consolidating responsibility for collections with the trial courts—the entity best positioned to interact with debtors. This would also allow for greater oversight by the Judicial Council and Legislature.
- Courts could continue to contract with counties or other entities for actual collection duties.



Pilot New Collections Incentive Model

- Recommend replacing the existing cost-recovery model with a new incentive-based model that provides courts with greater flexibility in how and when they collect debt and rewards them for collecting cost-effectively or increasing the total amount collected.
- Under the new model, each court would be able to retain their actual costs of collecting—up to the amount they received under the current cost-recovery model in a fixed base year. Once a court collects the same amount of *total* debt (both delinquent and nondelinquent) it collected in the base year, the court would be able to retain a set percentage of the amount of *new* revenue it collects for its own discretionary use.
- Because of the current lack of data on collections, we propose a three-year pilot program to test the new incentive model prior to implementing it statewide.



LAO Incentive Model Provides Incentive to Be Cost-Effective

(In Millions)

	Current Law	LAO Incentive Model
Collections		
Nondelinquent	\$35.0	\$60.0
Delinquent	65.0	40.0
Total Collections	\$100.0	\$100.0
Costs of Collections		
Nondelinquent collection costs	-\$3.5	-\$6.0
Delinquent collection costs	-15.0	-9.2
Collection cost payment	15.0	15.0
Net Cost to Collection Program	-\$3.5	-\$0.2

- The proposed incentive model provides various incentives for courts to operate cost-effective collection programs. Most importantly, the model effectively eliminates the distinction between nondelinquent and delinquent debts. This would encourage programs to reduce collection costs by focusing more on less expensive nondelinquent collections.

- The above figure illustrates how a program that shifts its focus to nondelinquent collections would be better off than under current law. Specifically, the program is able to collect the same amount of revenue in a more cost-effective manner resulting in a lower total cost for collections. This leaves more funds available for other purposes.



LAO Incentive Model Provides Incentive to Increase Collections

(In Millions)

	Current Law	LAO Incentive Model
Collections		
Nondelinquent	\$35.0	\$66.0
Delinquent	65.0	44.0
Total Collections	\$100.0	\$110.0
Impact on Collections Program		
Nondelinquent collection costs	-\$3.5	-\$6.6
Delinquent collection costs	-15.0	-10.1
Collection cost payment	15.0	15.0
Incentive payment	—	2.5 ^a
Net Cost to Collection Program	-\$3.5	\$0.8

^a Incentive payment is equal to 25 percent of increased collections of \$10 million.

- The new model also provides courts with an incentive to increase the amount of debt revenue collected. Specifically, the proposed model rewards the court directly for its ability to increase total collections and provides it with complete discretion in how it uses the revenue it retains.

- As illustrated in the figure above, by increasing the amount collected in a cost-effective manner, the court is able to earn an incentive payment that it can use to cover its total costs of collections—which would not be possible under current law.



Recommend Improving Data Collection and Measurements of Program Performance

- Require Consolidated and Complete Reporting on Collections.*** Recommend (1) making the Judicial Council responsible for coordinating the collection and consistent reporting of statewide data on court-ordered debt and (2) requiring reporting on nondelinquent collections. This would help ensure that the data necessary for oversight and accountability is available.

- Improve Performance Measures.*** Recommend Judicial Council improve its collection performance measures by (1) calculating those metrics already being used in accordance with industry standards and (2) implementing additional measures to allow for a better assessment of each collection program's effectiveness and enable comparison of performance across courts.

- Comprehensively Evaluate Collections Best Practices.*** Recommend Judicial Council conduct a comprehensive evaluation of collection practices to determine which are most cost-effective and should potentially be used more widely across the state.

- Conduct a Collectability Analysis.*** Recommend Judicial Council work with collection programs to conduct an analysis to determine the collectability of outstanding court-ordered debt. This analysis could provide a more accurate understanding of how much of this outstanding balance could potentially be collected and at what cost.