

Guidelines and Standards for Cost Recovery



**JUDICIAL COUNCIL
OF CALIFORNIA**

GUIDELINES AND STANDARDS FOR COST RECOVERY

Guidelines and Standards for Cost Recovery

Comprehensive Collection Program Cost Recovery

Penal Code section 1463.007 provides the standards by which a court or county may recover the costs of operating a comprehensive collection program. Costs may be recovered from the collection of delinquent court-ordered fees, fines, forfeitures, penalties, and assessments before revenues are distributed to another government entity.

A comprehensive collection program must meet the following requirements:

- Be a separate and distinct revenue collection activity that identifies total collections received from qualifying accounts and their related operating costs;
- Identify qualifying accounts as accounts receivable, which must be distinguished from forthwith payments as referenced in the definition in the *Guidelines and Standards Definition: Delinquent Accounts/Payments* (Attachment A) approved by the Judicial Council;
- Satisfy at least 10 of the 17 collection activity components identified in Penal Code section 1463.007 (Attachment B); and
- File a report of its activities once each year with the Judicial Council.

Definitions and Interpretations

The following definitions and interpretations, as well as those in the Collection Cost Recovery template and glossary, use information taken directly from Penal Code sections 1463.007 and 1463.010. The interpretations presented are consistent with those made by the Collaborative Court-County Working Group on Enhanced Collections, the *Manual of Accounting and Audit Guidelines for Trial Courts*, the *Manual of Accounting Standards and Procedures of Counties*, and the *Trial Courts Policy and Procedures Manual*.

Documentation of Eligible Costs

It is advisable to maintain time sheets for employees who spend less than 100 percent of their working time on the collection of accounts in a comprehensive collection program. If a collecting entity does not use time sheets, it must be able to support personnel costs by using other means of documentation. Duty statements or other documentation are necessary to substantiate the percentage of time an employee spends performing qualifying collections. Allocation of supervisory time is allowable, provided that the cost can be supported by cost-allocation documentation. Estimated percentages are not an allowable method of substantiating the time an employee spends performing qualifying collections. Eligible costs include the following:

- Cost of salaries/wages and benefits of collection program staff, including supervisory staff. Time sheets are recommended for staff spending less than 100 percent of their time

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working on the collection program. Each time sheet must account for all hours worked by the employee. Time sheets are not necessary for employees working 100 percent of their time on the collection program.

- Costs of operating expenses and equipment associated with collection program staff (court/county). Allocation of operating expenses and equipment should be proportionate to the time worked on the collection program.
- Additional operating expenses and equipment, including costs for collection agency contracts.
- Indirect costs. (For details, refer to the AOC's Indirect Cost Rate Proposal procedure and OMB Circular A-87.) In lieu of developing an indirect cost rate, a program may use a standard indirect cost allowance equal to 10 percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits).

Capital expenditures are excluded by statute from costs that can be recovered in a comprehensive collection program.

Revenues Collected in a Comprehensive Collection Program

Cost recovery in a comprehensive collection program is limited to the revenues collected from the accounts in the program. Therefore, any revenue collected from accounts that qualify for a comprehensive collection program may be deposited in the court or county treasury, and costs may be recovered before revenues are distributed to other governmental entities or programs. Consequently, the court or county must be able to distinguish revenues collected from qualifying accounts and their related costs separately from those accounts that do not meet the statutory requirements for collection in a comprehensive collection program.

Separate and Distinct Revenue Collection Activity

A court or county that implements a comprehensive collection program must operate that program as a separate and distinct revenue collection activity. Such an activity is defined as one with the ability to identify and collect revenue of qualifying accounts and to document the related costs of collection on the qualifying accounts/revenue (delinquent accounts) on an ongoing basis. Failure to maintain separate and distinct revenue collection activity information may result in the disqualification of accounts collected by a court or county from inclusion in a comprehensive collection program.

Collection agencies other than a court or county may be used to perform collections on accounts that qualify for collection in a comprehensive collection program. These collection agencies may perform 1 or more of the 17 collection component activities performed by a court or county. A court or county must require that these collection agencies provide distinct revenue and cost information on the qualifying accounts referred. Failure to maintain separate and distinct revenue collection activity information may result in the disqualification of accounts collected by collection agencies under contract from inclusion in a comprehensive collection program.

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Distribution of Revenues

Revenues collected from accounts in a comprehensive collection program must be distributed monthly as required by other provisions of law and by Appendix C of the *Manual of Accounting and Audit Guidelines for Trial Courts* to the extent that the revenues exceed the eligible costs of operating the program during that month. However, if the program's operating costs for a given month exceed revenues collected, the excess costs may be carried forward until qualifying revenues are available to fully recover those eligible costs. The net revenues available for distribution should be allocated equitably to those accounts on which collections were made. Additionally, net revenues collected should be equitably prorated to each distribution component of the account. Therefore, distributions to state, county, city, and court should be reduced by the eligible comprehensive collection cost in proportion to their share of the total revenues. However, victims' restitution orders cannot be reduced and are *not* part of revenues that can be used for cost recovery.

As noted in the *Assembly Bill 3000 Court Surcharge Distribution Guidelines* of the State Controller's Office, comprehensive collection program costs can be recovered before the other distributions provided in Penal Code section 1203.1(d). Therefore, if a delinquent account is collected by installment payments, the costs associated with this program are not priority 4 distributions. However, as with all installment payment distributions, the remaining priorities specified in Penal Code section 1203.1(d) should be followed. Thus, after victim restitution is paid and the program costs are recovered, the installment payments are applied to distributions in the priority order mandated by that code section, as follows:

- Second priority—20 percent state surcharge
- Third priority—fines, penalty assessments, and restitution fines
- Fourth priority—all other reimbursable costs (such as court security fee, civil assessments, and costs unrelated to collection)*

* *Note:* First priority—that is, victim restitution order payments received—are distributed before any program costs are recovered or any distributions are made to other entities.

Cost Recovery—Prorated

Penal Code section 1463.010 mandates that each superior court and county develop a cooperative plan to implement a collection program pursuant to Judicial Council guidelines. If a court or county does not establish a qualifying comprehensive collection program defined in Penal Code 1463.007, with the exception of allowable fees permitted by statute, costs may not be recovered from collections.

A comprehensive collection program is permitted to deduct the cost of the program before distributing delinquent court-ordered fines, fees, forfeitures, penalties, and assessments to other governmental entities. An account is considered to be delinquent the day after the payment is due. Therefore, before it makes a distribution, a comprehensive collection program should first recover all documented collection program costs. Ideally, all revenue collected for the month

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would be placed in an account for future distribution; once the cost of the program for that month was determined and charged to the account, the remaining amount would then be distributed to the various governmental agencies.

However, if a comprehensive collection program is required to deposit revenue collected directly to the various governmental agencies on receipt, then the way to recover the cost of the program is to charge the cost of collections on a prorated basis, each month, to the revenue collected. See the example below.

Example

If the cost of collections for the month is \$85,807.30 and the total revenue collected is \$512,575.00, the recovery of cost on a prorated basis would be as follows:

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF _____
 COMPREHENSIVE COLLECTION CHARGES DISTRIBUTION
 FY _____
 FOR THE MONTH OF _____

Collection Charges \$85,807.30

Description Court-Ordered Debt	General Ledger Account No.		Percentage of Prorating	Total Revenue Collected	Cost of Collections
Alcohol Abuse Prevention	00806	007700	0.002%	\$ 10.00	\$ 1.67
Criminal Just Facilities Construction Fund	00810	007700	7.023%	\$ 36,000.00	\$ 6,026.56
Warrant Assessment	00811	007700	0.293%	\$ 1,500.00	\$ 251.11
Courthouse Construction Fund	00812	007700	8.779%	\$ 45,000.00	\$ 7,533.20
Domestic Violence Special Fund	00818	007700	0.059%	\$ 300.00	\$ 50.22
City General Fund	00819	317500	0.098%	\$ 500.00	\$ 83.70
City General Fund	00823	317500	0.234%	\$ 1,200.00	\$ 200.89
Booking Fee—City	00823	675801	0.351%	\$ 1,800.00	\$ 301.33
City General Fund	00824	317500	2.926%	\$ 15,000.00	\$ 2,511.07
Booking Fee—City	00824	675801	1.951%	\$ 10,000.00	\$ 1,674.04
Fingerprint ID Fund	00826	007700	1.171%	\$ 6,000.00	\$ 1,004.43
Criminal Lab Fee	00831	007700	0.195%	\$ 1,000.00	\$ 167.40
Proof of Correction	00941	007402	0.195%	\$ 1,000.00	\$ 167.40
State Penalty Fund	00941	007405	0.098%	\$ 500.00	\$ 83.70
State Sex Offender Fund	00941	007414	0.039%	\$ 200.00	\$ 33.48
Trauma Head Injury	00941	007419	0.020%	\$ 100.00	\$ 16.74
State Motor Vehicle Fund	00941	007420	0.049%	\$ 250.00	\$ 41.85
Restitution Fine	00941	007425	5.463%	\$ 28,000.00	\$ 4,687.32
State Penalty Fund	00941	007428	16.583%	\$ 85,000.00	\$ 14,229.37
Fish & Game	00941	007432	0.098%	\$ 500.00	\$ 83.70
Victim Indemnity	00941	007433	0.195%	\$ 1,000.00	\$ 167.40
State Health & Safety	00941	007434	0.390%	\$ 2,000.00	\$ 334.81
Fish & Game Preservation Fund	00941	007446	0.006%	\$ 30.00	\$ 5.02
Domestic Violence Fund	00941	007448	0.098%	\$ 500.00	\$ 83.70
Court Automation	00941	007450	1.463%	\$ 7,500.00	\$ 1,255.53

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State General Fund	00941	007452	0.137%	\$ 700.00	\$ 117.18
Criminal Fine Surcharge	00941	007481	5.463%	\$ 28,000.00	\$ 4,687.32
State Courthouse Const Pen	00941	007483	1.951%	\$ 10,000.00	\$ 1,674.04
County General Fund	20110	317500	2.926%	\$ 15,000.00	\$ 2,511.07
Base Fine—County	20110	317504	8.779%	\$ 45,000.00	\$ 7,533.20
County General Fund	20110	318500	0.683%	\$ 3,500.00	\$ 585.92
Penalty Assessment	20110	319101	7.804%	\$ 40,000.00	\$ 6,696.18
Civil Assessment—County	20110	675750	4.877%	\$ 25,000.00	\$ 4,185.11
Proof of Correction	20110	675771	0.176%	\$ 900.00	\$ 150.66
DUI Admin Fee	20110	675900	0.234%	\$ 1,200.00	\$ 200.89
Returned Check Svc Chg	20110	693010	0.137%	\$ 700.00	\$ 117.18
Public Defender Fees	20300	669100	1.853%	\$ 9,500.00	\$ 1,590.34
Alcohol Content Test	22700	317500	0.683%	\$ 3,500.00	\$ 585.92
DA Child Abduction	22706	692155	0.020%	\$ 100.00	\$ 16.74
Booking Fees—County	26000	675801	1.658%	\$ 8,500.00	\$ 1,422.94
Sub Abuse Fee	26302	318540	0.002%	\$ 10.00	\$ 1.67
Cost of Probation	26302	671600	4.877%	\$ 25,000.00	\$ 4,185.11
Probation/Summary Fee	26302	671670	0.195%	\$ 1,000.00	\$ 167.40
Adult Work Prog Fee	26302	692330	0.780%	\$ 4,000.00	\$ 669.62
Juvenile Cost Probation	26303	671600	0.878%	\$ 4,500.00	\$ 753.32
Fish & Game	29400	318700	0.098%	\$ 500.00	\$ 83.70
ALC Rehab Program	42200	317531	0.683%	\$ 3,500.00	\$ 585.92
Alcohol Abuse Prevention	42200	319150	0.034%	\$ 175.00	\$ 29.30
VC Admin Assessment	97015	675770	0.585%	\$ 3,000.00	\$ 502.22
Installment Collection Fee	97015	675790	1.834%	\$ 9,400.00	\$ 1,573.60
Civil Assessment—Court	97015	675901	4.877%	\$ 25,000.00	\$ 4,185.11

COLLECTIONS TOTAL

100.000%	\$512,575.00	\$ 85,807.30
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The example above is given for illustrative purposes only.

Each court or county, or both, must provide the description of accounts, the percentage of prorating based on relevant court and county accounting standards, and the guidelines and applicable statutes.

Reporting Requirements

Annual Report to the Judicial Council

Once each year a court or county that implements a comprehensive collection program must file a joint court -county report of program activities with the Judicial Council. The report is due on the first Monday of October. The report should present the activities of the program on a fiscal-year basis. The report should include, at a minimum, the dollar amount of revenues collected and distributed under the program, the related operating costs deducted from those revenues, and an accounting of accounts receivable activity for the same period.

Attachment: *Attachment A – Definition: Delinquent Accounts/Payments*
Attachment B – Penal Code section 1463.007

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ATTACHMENT A: *Guidelines and Standards Definition: Delinquent Accounts/Payments*

California Rule of Court 810 (CRC), Government Code section 77003, discusses "court operations". Rule of Court Function 5, Collections Enhancement, identifies collections enhancement as collections performed in the enforcement of court orders for fees, fines, forfeitures, restitutions, penalties, and assessments (*beginning with the establishment of the accounts receivable record*).

Forthwith payments/collections are received or performed by the court and the associated costs are solely incurred by the court and will not be reported as an enhanced or delinquent collection cost. This collections category involves payments on the same day as the court order and generally involves no 'extra' cost. This category also includes payments under an established collection agreement where there has been compliance with the terms and conditions of the collections agreement (also considered an account receivable). Certain courts include installment collections either fully or partially (installment collections with payment terms exceeding 30 days) within their collections program (enhanced/comprehensive). This would not be the case by this definition. Forthwith payments may be included as a separate category of the Penal Code section 1463.010 reporting to ensure total payments on court ordered debt are accumulated.

Cost of staff whose principal involvement is in collecting 'forthwith' payments are not part of the enhanced collections cost in function 5 and therefore not a county charge or cost unless considered as part of a comprehensive collection program. Forthwith payments are distinguished from enhanced collections primarily by the timing of the payments and who incurs the cost of the collection.

Enhanced collections are non-forthwith collections where costs are incurred and either paid directly by or reimbursed by the county. The collections may be part of a comprehensive collections program. These collections would be reported in the reporting required under Penal Code section 1463.010 as part of the collections program.

An account is considered to be delinquent the day after the payment is due. However, from strictly an operational perspective, accounts may not be transferred to a collections program until possibly 30 to 45 days after the account has been deemed delinquent.

Comprehensive collections programs (Penal Code 1463.007) by statute involve the collection of 'delinquent' fines and forfeitures. Fees and penalties will also be included here under current draft legislation. Delinquent payments will include all payments not received under the established collection agreement or court order. Installment payments are not included as delinquent if the terms and conditions of the collections agreement are met regardless of the length of the payment agreement.

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ATTACHMENT B: *Penal Code section 1463.007*

CALIFORNIA CODES PENAL CODE

1463.007. Notwithstanding any other provision of law, any county or court that implements or has implemented a comprehensive program to identify and collect delinquent fees, fines, forfeitures, penalties, and assessments with or without a warrant having been issued against the alleged violator, if the base fees, fines, forfeitures, penalties, and assessments are delinquent, may deduct and deposit in the county treasury or in the trial court operations fund the cost of operating that program, excluding capital expenditures, from any revenues collected thereby prior to making any distribution of revenues to other governmental entities required by any other provision of law. Any county or court may establish a minimum base fee, fine, forfeiture, penalty, or assessment amount for inclusion in the program. This section applies to costs incurred by a court or a county on or after June 30, 1997, and prior to the implementation of a time payments agreement, and shall supersede any prior law to the contrary. This section does not apply to a defendant who is paying fees, fines, forfeitures, penalties, or assessments through time payments, unless he or she is delinquent in making payments according to the agreed-upon payment schedule. For purposes of this section, a comprehensive collection program is a separate and distinct revenue collection activity and shall include at least 10 of the following components:

- (a) Monthly bill or account statements to all debtors.
- (b) Telephone contact with delinquent debtors to apprise them of their failure to meet payment obligations.
- (c) Issuance of warning letters to advise delinquent debtors of an outstanding obligation.
- (d) Requests for credit reports to assist in locating delinquent debtors.
- (e) Access to Employment Development Department employment and wage information.
- (f) The generation of monthly delinquent reports.
- (g) Participation in the Franchise Tax Board's Interagency Intercept Collections Program.
- (h) The use of Department of Motor Vehicle information to locate delinquent debtors.
- (i) The use of wage and bank account garnishments.
- (j) The imposition of liens on real property and proceeds from the sale of real property held by a title company.
- (k) The filing of a claim or the filing of objections to the inclusion of outstanding fines and forfeitures in bankruptcy proceedings.
- (l) Coordination with the probation department to locate debtors who may be on formal or informal probation.
- (m) The initiation of drivers' license suspension actions where appropriate.
- (n) The capability to accept credit card payments.
- (o) Participation in the Franchise Tax Board's Court-Ordered Debt Collections Program.
- (p) Contracting with one or more private debt collectors.
- (q) The use of local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.