COST RECOVERY

REVENUE DISTRIBUTION TRAINING
MAY 2021

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LEARNING OBJECTIVES

Relevant Statutes	Direct and Indirect Costs	Cost Recovery through Distribution
What Costs are Eligible	Audit Risks	Scenarios

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SENATE BILL 940

Required each superior court or county to implement or enhance a collections program

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PENAL CODE § 1463.010

"The enforcement of court orders is recognized as an important element of collections efforts. The prompt, efficient, and effective collection of court-ordered fees, fines, forfeitures, penalties, and assessments ensures the appropriate respect for court orders….."

Court and County MOU

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COMPREHENSIVE COLLECTION PROGRAM
PENAL CODE § 1463.007

A separate and distinct revenue collection activity that meets the following requirements:

1. Identifies and collects amounts arising from delinquent court-ordered debt, whether or not a warrant has been issued against the alleged violator.
2. Complies with requirements of subdivision (b) of Penal Code section 1463.010.
3. Engages in all of the following activities:
   - Attempts telephone contact with delinquent debtors for whom the program has a phone number to inform them of their delinquent status and payment options.
   - Notifies delinquent debtors for whom the program has an address in writing of their outstanding obligation within 95 days of delinquency.
   - Generates internal monthly reports to track collections data, such as age of debt and delinquent amounts outstanding.
   - Uses Department of Motor Vehicles information to locate delinquent debtors.
   - Accepts payments of delinquent debt by credit card.

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COMPREHENSIVE COLLECTION PROGRAM, *CONT.*

4. The program also engages in at least five of the following activities:

- (A) Sends delinquent debt to the Franchise Tax Board's Court-Ordered Debt Collections Program.
- (B) Sends delinquent debt to the Franchise Tax Board's Interagency Intercept Collections Program.
- (C) Initiates driver's license suspension or hold actions when appropriate for a failure to appear in court.
- (D) Contracts with one or more private debt collectors to collect delinquent debt.
- (E) Sends monthly bills or account statements to all delinquent debtors.
- (F) Contracts with local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.
- (G) Coordinates with the probation department to locate debtors who may be on formal or informal probation.
- (H) Uses Employment Development Department employment and wage information to collect delinquent debt.
- (I) Establishes wage and bank account garnishments where appropriate.
- (J) Places liens on real property owned by delinquent debtors when appropriate.
- (K) Uses an automated dialer or automatic call distribution system to manage telephone calls.

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PENAL CODE § 1463.007

(a)"Notwithstanding any other law, a county or court that operates a comprehensive collection program may deduct the costs of operating that program, excluding capital expenditures, from any revenues collected under that program. The costs shall be deducted before any distribution of revenues to ***other governmental entities*** required by any other law. A county or court operating a comprehensive collection program may establish a minimum base fee, fine, forfeiture, penalty, or assessment amount for inclusion in the program."

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PENAL CODE § 1463.007

- (b) Once debt becomes delinquent, it continues to be delinquent and may be subject to collection by a comprehensive collection program. Debt is delinquent and subject to collection by a comprehensive collection program if any of the following conditions is met:
- (1) A defendant does not post bail or appear on or before the date on which he or she promised to appear, or any lawful continuance of that date, if that defendant was eligible to post and forfeit bail.
- (2) A defendant does not pay the amount imposed by the court on or before the date ordered by the court, or any lawful continuance of that date.
- (3) A defendant has failed to make an installment payment on the date specified by the court.

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DIRECT AND INDIRECT COSTS

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DIRECT COSTS

- Staffing Costs
  - Costs of salaries/wages and benefits of collection program staff, including supervisory staff
- Operating Expenses and Equipment
  - Costs of operating expenses and equipment associated with collection program staff.
  - Allocation of these expenses must be proportionate to the time worked on the collection program.
- Commission Costs
  - Private Collections Vendor, Franchise Tax Board, or an intra-branch program.

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STAFFING COSTS

How to Calculate Staffing Costs:

- One or more employees are dedicated 100% to delinquent collections:
  - Allocate 100% of salary and benefits to the program
- One or more employees are dedicated LESS than 100% to delinquent collections:
  - Use duty statements, time sheets, or other means of documentation to substantiate the percentage of time an employee or supervisor spends performing eligible comprehensive collection activities.

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OPERATING EXPENSES AND EQUIPMENT

Examples of Operating Costs that can be included:

- Travel/Training
- Printing
- Collection Agency Contracts
- Equipment/Supplies
- Data Processing/computers/software (under $5,000)

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OPERATING EXPENSES AND EQUIPMENT

Examples of What You *Can't Include:*

- Capital Expenditures (courts are required to use the $5,000 capitalization threshold):
  - Land
  - Structures
  - Improvements
  - Equipment
- Costs not associated directly with delinquent collections

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INDIRECT COSTS

Indirect costs include costs which are frequently referred to as:

- Overhead expenses
  - rent and utilities
- General and Administrative expenses
  - Officer's salaries
  - Accounting department costs
  - Human Resources department costs.

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INDIRECT COSTS

Indirect Cost Rates:

- Judicial Council's Indirect Cost Rate Proposal (ICRP) procedure
- Countywide Cost Allocation Plans
  - OMB Circular A-87
  - Handbook of Cost Plan Procedures for California Counties, issued by the State Controllers Office.

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INDIRECT COSTS

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.

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INDIRECT COSTS

10% Allowance Calculation

1.	Salaries and Wages	$ 4,500.00
2.	Benefits (vacation, shift differential,…)	150.00
3.	Operating Expenses and Equipment	5,332.12
4.	County Costs	0.00
5.	Departmental Costs (10% of line 1)	450.00
	Total	$ 10,432.12

The 10% is calculated only on salary and wages not Benefits as defined

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RECOVER THROUGH DISTRIBUTION

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COST RECOVERY THROUGH DISTRIBUTION

- 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.
- Cost Recovery Report Template
- Cost Recovery Distribution Template
- Guidelines and Standards for Cost Recovery

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COST RECOVERY REPORT TEMPLATE

NAME - COURT/COUNTY
COST RECOVERY
FOR THE PERIOD ENDING MM/DD/YYYY

Description		Cost of Collections
SALARIES & BENEFITS:		
Salaries and Wages - Regular	$ -	
Temporary Help	$ -	
Overtime	$ -	
Total Salaries and Wages		$ -
Social Security Insurance & Medicare	$ -	
Group Insurance	$ -	
Retirement (non-judicial)	$ -	
Worker's Compensation	$ -	
Unemployment Insurance	$ -	
Other Benefits	$ -	
Total Fringe Benefits		$ -
TOTAL SALARIES & BENEFITS		$ -

OPERATING EXPENSE & EQUIPMENT		
Moving and Relocation	$ -	
Dues & Memberships-Legal Staff	$ -	
Dues & Memberships-Other	$ -	
Miscellaneous Office Supplies	$ -	
EDP Repairs & Supplies	$ -	
EDP Software & Licensing	$ -	
EDP Equipment Rental/Lease	$ -	
Other EDP Expenditures	$ -	
Judgments, Settlements & Claims	$ -	
**Electronic Data Processing (EDP)		
TOTAL OPERATING EXPENSE & EQUIPMENT		$ -
Administrative Services		
*(10% of Salaries and Wages as permitted under Trial Court Financial Policies and Procedures Manual and OMB Circular A-87)	Column E row 67	$ -
Total Costs subject to recovery prior to any revenue distribution		$ -

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COST RECOVERY DISTRIBUTION TEMPLATE

COUNTY OF _____
ANALYSIS OF COLLECTION CHARGES DISTRIBUTION
FOR THE MONTH OF _____ 20__

Cost: $464,140

	Column A Percent	Column B PC 1463.007 Delinquent Revenue	Column C Cost of Collections	Column D Net Revenue Collected
Alcohol Abuse Prevention	0.0%	$ 77	$14	$ 63
Criminal Just Construction Fund	7.1%	$ 177,176	$32,806	$ 144,370
Warrant Assessment	0.2%	$ 6,212	$1,150	$ 5,062
Courthouse Construction Fund	8.2%	$ 206,377	$38,213	$ 168,164
Domestic Violence Special Fund	0.1%	$ 3,592	$665	$ 2,927
City General Fund - City A	0.0%	$ 1,004	$186	$ 818
City Base Fine - City A	0.0%	$ 976	$181	$ 795
City General Fund - City A	0.3%	$ 7,870	$1,457	$ 6,412
City Base Fine - City A	0.3%	$ 8,521	$1,578	$ 6,943
City General Fund - City A	0.0%	-$ 11	-$2	-$ 9
City General Fund - City A	0.0%	$ 623	$115	$ 508
City General Fund - City B	0.3%	$ 6,469	$1,198	$ 5,271
City Base Fine - City B	0.3%	$ 6,413	$1,187	$ 5,225

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WHAT AUDITORS MAY ASK YOU…

Be Audit Prepared

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SHOWING YOU FOLLOWED THE RULES

What are auditors looking for?

A clear connection between the costs claimed and the collection activities performed.

1.) Direct personnel costs pertain to individuals who conduct collection activities

2.) Proof of collection activities pertaining to eligible delinquent accounts

3.) Collection costs incurred (but not recovered) are not carried into next fiscal year

Indirect cost expenses that follow Judicial Council's rules (ICRP or other)

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DOCUMENTATION – PERSONNEL COSTS

What auditors would ideally like to see…

- Direct personnel costs not estimated (must be based on actual work)
- For 100% funded employees, position duty statements showing link to collections
- Timesheets or similar method used for employees who split time between the collections program and other activities.
- Salaries and benefits of employees charged to the collections program are reasonable and necessary given the work performed (no unrelated personnel costs).

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LESS IDEAL SCENARIO

Mary (a JCC auditor) interviews the Court's CFO and hears the following "red flags" during the interview:

"Based on program experience, our accounting clerks spend 60% of their time engaging in collections activity and 40% supporting other court accounting functions. Therefore, we consistently recover this 60% share of costs (roughly $400k each month) from all the criminal collections received each month. Additionally, we recover 20% of our CEO's salary and 30% of a subordinate judicial officer's salary from collections revenue because these individuals periodically advise on the Court's collections activity."

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LESS IDEAL SCENARIO– WHAT ARE THE RED FLAGS?

- Phrases like "based on experience" and the use of percentages can create the impression that the direct costs of collection activities are estimates. No discussion of timesheets or data to demonstrate costs are accurate (or how costs are recorded / tracked).
- You cannot recover costs from all criminal collections. Only the costs associated with collecting on ***delinquent*** accounts are eligible. ("Delinquent" defined in Penal Code 1463.007(b)).
- Partially recovering the salaries of the CEO's office, an SJO, or other high-ranking or unrelated court officials can raise concerns over reasonableness. ***Direct costs for the comprehensive collections program should not include costs for personnel not directly associated with collections.***

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MORE IDEAL SCENARIO

Mary the auditor would have much rather heard the CFO say:

"Most in-house collections are performed by court employees who work in our *collections recovery unit. The unit's costs are tracked in Phoenix using a designated cost center* and post to the enhanced collections fund. For other employees who don't work 100% on collecting delinquent accounts, they complete monthly timesheets and the applicable proportion of their personnel costs are then moved to the enhanced collections fund through monthly journal entry. Thus, our actual costs of collections slightly varies each month."

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PERSONNEL COSTS – WHY IS THIS BETTER?

- Creating a job classification (and job duty statement) specific to collections activities adds clarity over who is doing the collections work.
- Monthly timesheet reporting process to document actual personnel costs (hours) that distinguishes between recoverable/eligible activities and other collection costs.
- If cost of collections are not originally posted to the Enhanced Collections Fund (and later moved by journal entry), using a cost center in Phoenix may help explain to the auditor what costs you're claiming for recovery (and where the costs came from).

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PROOF OF COLLECTION ACTIVITIES FOR ELIGIBLE DELINQUENT ACCOUNTS

The Judicial Council's cost recovery guidelines require courts/contractors to engage in ***at least*** 10 different collection activities. Courts should be prepared to explain:

- Which steps your comprehensive collections program follows (who/how?)
  - Court versus Contractor/County roles?
  - Examples of what court employees do (to show the auditor)?
  - Clear linkage to delinquent criminal accounts (eligible accounts) versus ineligible accounts.

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NO CARRYOVER OF LAST YEAR'S COLLECTIONS COSTS FOR RECOVERY IN CURRENT FISCAL YEAR

Some red flags auditors might look for or ask about:

- Prior year's expenses exceeded revenues (i.e., court did not fully recover its costs).
- Current year's revenues greatly exceed expenses
- Significant CY operating transfers out (from enhanced collections fund to court operations)
  - In FY 19-20, three courts had operating transfers out equal to 9%, 11% and 43% of collection cost recoveries (money transferred out of fund #120007 to court ops. fund #110001).
  - These courts cited "court share of revenues", "temporary hold for future reconciliations" or "correcting interfund transfers from prior year."

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INDIRECT COSTS – ENHANCED COLLECTIONS FUND

- Courts must use either the JCC-approved indirect cost rate (see FIN 15.02) or may use a standard 10% rate (applied to direct salaries and wages of those paid from fund 120007)
- Auditors are likely to review indirect cost charges posted in Phoenix and inquire about how those amounts were determined. Be prepared to show your JCC-approved ICRP and explain how it resulted in the expenses posted in Phoenix.
- SCO auditors have recently reviewed indirect costs in the enhanced collections fund, and this may continue to be an area of focus.

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AUDIT PREPAREDNESS –FINAL THOUGHTS

- ***Can you demonstrate direct costs pertain to collections on eligible accounts?*** (only delinquent criminal-related accounts;…and direct expenses for people/equipment/vendor costs are clearly associated with collection activities).
- ***Cannot recover last year's collections costs with current year revenue.*** (are you recovering more than you should be? Significant positive fund balance at year end?)
- ***Red Flags***– reducing fund balance through significant operating transfers out and/or excessive indirect cost charges. (Be prepared to explain significant items).

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ASSEMBLY BILL 3000

Victim Restitution

Cannot be reduced and are not part of revenues that can be used for cost recovery.

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PENAL CODE § 1202.4

- (f) Except as provided in subdivisions (q) and (r), in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Chapter 8 (commencing with Section 11469) of Division 10 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.

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PENAL CODE § 1203.1d

With respect to installment payments … the board of supervisors shall provide that disbursements be made in the following order of priority:

- (1) Restitution ordered to, or on behalf of, the victim pursuant to subdivision (f) of Section 1202.4.
- (2) The state surcharge ordered pursuant to Section 1465.7.
- (3) Any fines, penalty assessments, and restitution fines ordered pursuant to subdivision (b) of Section 1202.4. Payment of each of these items shall be made on a proportional basis to the total amount levied for all of these items.
- (4) Any other reimbursable costs.

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STATE REBATE – GC 13963(f)

- A County agency collecting restitution fee owed to the Restitution Fund will receive 10% of the funds.
- Funds must be deposited into the Restitution Fund within 45 days of the end of the month in which the funds are collected.
- This rebate is considered an incentive for collection efforts.
- Monies received from the rebate shall be used to augment collection programs, it shall ***NOT*** be used to supplant county funding.

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POTENTIAL CHANGE TO COST RECOVERY

- Ability to Pay determination
  - Administrative fee for payment plans, Penal Code § 1205(e)

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SCENARIOS

WHAT WOULD YOU DO?

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WHAT'S RECOVERABLE – SCENARIO A

Staff are working on workflows, configuration and SOP's for the comprehensive collection's unit during the transition to a new CMS.

- What other information might be helpful?
- What would you do?

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WHAT'S RECOVERABLE – SCENARIO B

Are retirement benefits recoverable under PC § 1463.007?

- Additional information:
  - Payout may include vacation, comp time, holiday.
  - Retiring employee did not spend 100% working on delinquent accounts?
- What would you do?

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WHAT'S RECOVERABLE – SCENARIO C

Cost carry-over: during March – May 2020 our collections program was "closed"; how do I recover my costs?

Additional Information:

- Collections staff worked on other tasks that did not include collections.
- Very little delinquent revenue was generated during this time period.
- Can costs for these employees be carried over into the next fiscal year?
- What would you do?

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