

Court-Ordered Fines and Fees

Office of Performance Evaluations
Idaho Legislature





Office of Performance Evaluations

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Senator Mark Harris (R) and Representative Mat Erpelding (D) cochair the committee.

From the director

Members
Joint Legislative Oversight Committee
Idaho Legislature

In response to our data request, the Administrative Office of the Courts advised us that its new data management system, Odyssey, was not ready to provide the data we needed.

Despite limited data, we decided not to postpone the evaluation. We believed even a limited scope evaluation with preliminary conclusions would give policymakers substantially more information about court-ordered fines and fees than what had been available.

Instead of striving to arrive at definite conclusions about collection policy and practice, we used data from alternative sources to identify potential indicators of success and trends.

We found that in addition to better data collection, monitoring, and reporting, Idaho would benefit from a statewide system of accountability for the assessment and collection of fines and fees. Such a system must include a formal process for measuring performance and improving policy and practice.

We thank the Idaho Tax Commission, judges, trial court administrators, and county-elected clerks for assisting us with this evaluation.



Sincerely,



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**Formal
responses from
the Governor and
the Idaho
Supreme Court
are in the back of
the report.**



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Executive summary



Why we were asked to do this study

To help offset the costs of operating its justice system, Idaho relies on filing fees from civil lawsuits and on fines, fees, and court costs from juvenile and criminal cases. The courts collected and distributed \$53 million in fines and fees from civil and criminal cases in fiscal year 2017. When fines and fees are not enough to cover program costs, other sources, such as property tax or general fund dollars, are used.

Much of the interest in this evaluation stems from a perceived lack of accountability for the collection of court-ordered financial obligations. This perception was heightened by the limited information that the Administrative Office of the Courts had been able to provide to policymakers about the assessment and collection of fines, fees, and court costs.

What we found

Overall, we found that counties and the state have implemented various aspects of the strategies and practices recommended in national literature. However, we also found strong indications that aspects of Idaho's approach to the assessment and collection of fines and fees could be strengthened. Based on our findings, we conclude that Idaho would benefit from a statewide system of accountability that includes a formal process for measuring performance and improving policy and practice.



Estimated waiver rate in fiscal year 2016 was 7% or \$821,000 in waived civil fine fees.

Filing fees in civil cases

The courts' data systems have not been capable of reporting statewide information about waivers for civil filing fees. As a result, there has been little systematic monitoring, analysis, or reporting on criteria used to grant filing fee waivers or how often waivers are granted.

With limited data that were available, we estimated that the overall waiver rate was about 7 percent in fiscal year 2016. The equivalent value of waived civil filing fees was about \$821,000. However, the data did not allow us to capture criteria used to waive individual civil filing fees nor did it allow us to answer key questions about the percentage of filing fees automatically waived, waivers judges have granted, or waivers judges have denied.

Answers to these questions are important for projecting and accounting for revenue, for informing the Legislature when it considers proposals to add or adjust fees, fines, and other obligations, and for ensuring access to the courts. Clearly, additional data and analysis are necessary to fully account for the use of filing fee waivers in civil lawsuits.

Financial obligations in criminal cases

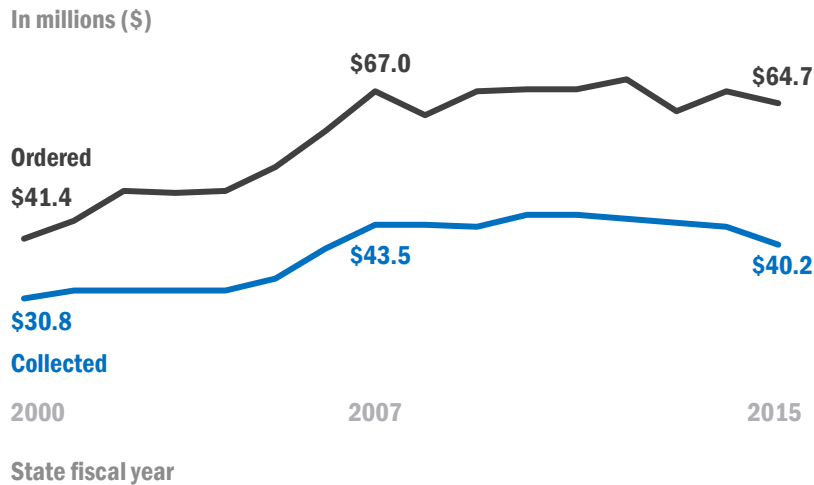
Overall, the dollar amount of fines and fees ordered has outpaced the dollar amount collected (see exhibit E1). The gap between the amount ordered and the amount collected has, on average, increased during state fiscal years 2000–2015. In fiscal year 2015 counties collected on average about 62 percent of the total financial obligations ordered as compared with 74 percent in fiscal year 2000.

Some judicial districts had substantially higher misdemeanor collection rates than did other districts (see exhibit E2). We identified several district practices that partly explain the difference in collection rates. All counties share a basic set of tools to collect on judgments. They have also developed their own procedures. Over the past several decades, each county's elected clerk, judges, administrative judge, and trial clerk administrator, have determined procedures to follow when a defendant does not pay.

We found that certain collection procedures appear to partly explain differences in district collection rates. Knowledge about

Exhibit E1

Total fines, fees, and costs ordered increased faster than the amount collected in state fiscal years 2000–2015.

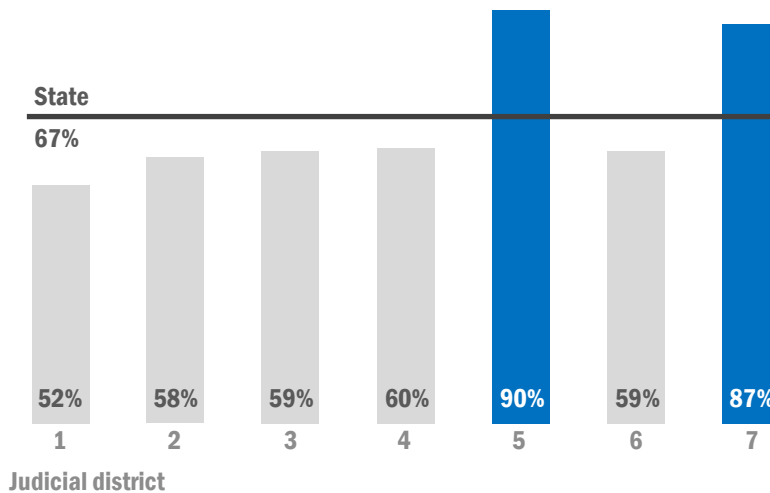


Source: Idaho Judiciary Annual Reports, Collections Appendices 2005–2015.

In FY15 counties collected on average about 62% of the total financial obligations ordered as compared with 74% in FY00.

Exhibit E2

Misdemeanor collection rates in a sample of 2016 and 2017 cases were highest in the 5th and 7th judicial districts.



Source: iCourt data from a sample of 291 misdemeanor cases initiated in calendar years 2016 or 2017.

The statewide average for misdemeanor collection rates was 67% for our sample cases.

**As of July 2018,
statewide unpaid
claims totaled
\$195 million.**

**Idaho has no
statewide
process for
writing off
unpaid fines and
fees.**

**Historic ►
Payette County
Courthouse**

these procedures can help improve Idaho’s overall system of fines and fees. The procedures we discuss include communication with defendants, use of collection agencies, use of payment agreements, use of scheduled review hearings, and several probation practices.

Even within the same judicial district, views differ about the roles of judges and administrators in fostering compliance with court-ordered fines and fees. The input we received from administrators, judges, and elected clerks showed that the level of commitment and leadership for collections vary considerably among administrators and judges across the state.

Decades of unpaid fines and fees have added up to a substantial backlog. Despite collection efforts, some portion of financial obligations have gone unpaid. As of July 1, 2018, there were at least 206,289 unpaid claims statewide totaling \$195 million. The unpaid fines and fees in these claims date back at least three decades.

It is not reasonable to assume that all \$195 million in past due court-ordered obligations can be recovered or should be actively pursued for collection. There will always be a group that cannot or will not pay, regardless of what additional sanctions are applied.



The National Center for State Courts suggests that courts determine a “reasonable level of uncollectible accounts suitable for write-off after appropriate time and effort has been expended.” Uncollectible accounts that remain on the books for active collection serve no useful purpose and create a public-relations problem for courts. Accounting for uncollectible accounts separately from debts being pursued by active collection efforts more accurately reflects the actual balance of uncollected fines and fees and enhances accountability and public confidence.

Statute and court rule require that infractions be written off after three years. However, Idaho has no statewide process for writing off or inactivating unpaid fines and fees in misdemeanor or felony cases.

What to do next

Odyssey, the courts’ new data management system, was not capable of reporting on the data we requested during fieldwork. However, the courts have indicated that they are working to provide the data. At this point, we cannot say, with any degree of certainty, if or how Odyssey will be capable of reporting on the data identified in the request (appendix C) or if the data will be sufficient to address questions policymakers and justice system partners have posed to the courts.

Additional data can certainly improve accountability and help the Legislature better evaluate Idaho’s system of fines and fees in both civil and criminal cases. However, lessons from the experiences of other states and recommendations from best practice literature show that data reporting alone is not enough to significantly improve assessment and collection of fines and fees.

Creating the most effective system for assessing and collecting fines and fees requires a statewide system of accountability. The National Center for State Courts points out that “the most visible means of demonstrating accountability is developing collection procedures with mechanisms for measuring success.” Research has also found that compliance with court-ordered financial obligations improves when the courts focus on processes by developing, executing, and monitoring goals and a strategy for the collections process.

Creating the most effective system for assessing and collecting fines and fees requires a statewide system of accountability.



Recommendation

We recommend that the Joint Legislative Oversight Committee ask the courts to provide to the committee a plan that identifies next steps and timelines for establishing a system of statewide accountability for the assessment and collection of court-ordered financial obligations. This information should be provided in a timeframe that facilitates completion of a comprehensive OPE follow-up by the start of the 2020 legislative session.

The court's plan should identify next steps in the following areas:

Ensure data collection and reporting capabilities are comprehensive and readily accessible for internal and external use, and meet the needs of collection partners.

Establish a method for identifying and resolving gaps in data collection or reporting.

Establish accountability for the backlog of past due obligations by regularly reporting on total past due obligations, establishing criteria and procedures for identifying debts that should be considered uncollectible, and reporting on debts considered uncollectible separately from debts that should be actively pursued.

Establish and communicate minimum collection program requirements that promote effective practices while adhering to constitutional limitations.

Clarify roles and expectations for all justice partners such as judges, state and district administrators, elected clerks, and probation officers.

Establish a formal process for measuring performance and improving policy and practice statewide. The process should include a way to ensure all data are collected that are necessary for monitoring performance of collection practices, and to the degree possible, collection costs.

Facilitate problem-solving among justice system partners to strengthen coordination.

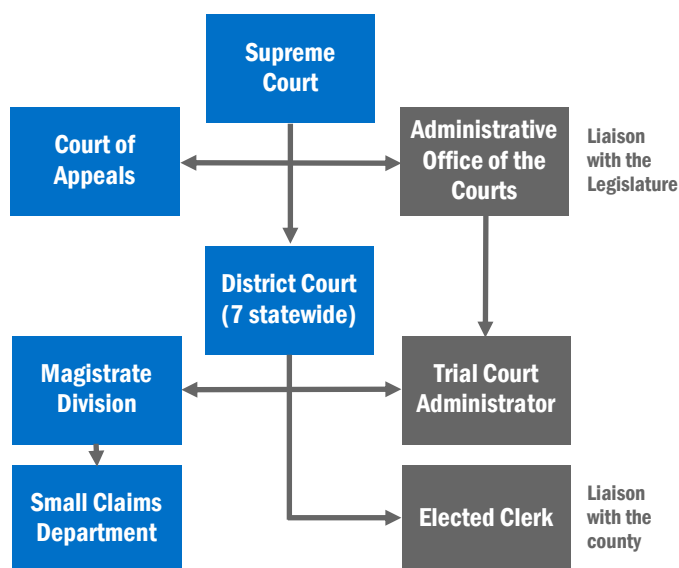
Introduction 1

To help offset the costs of operating its justice system, Idaho relies on fines, fees, and court costs from juvenile and criminal cases and on filing fees from civil lawsuits. Fines are monetary punishments for criminal offenses. Fees help offset costs for civil and criminal cases. Fees also help offset costs for state and local services such as peace officer training and probation and parole.

In criminal cases, the Legislature sets the amount for most fees and court costs. It also sets the maximum for fines. In some instances, counties collect additional fees (e.g., pretrial release and juvenile probation supervision). In each individual case, judges order fees and court costs and set the dollar amount for fines. In civil lawsuits, filing fees are set by statute and court rule. County-elected clerks oversee the collection of these fines and fees. See exhibit 1 for the supervisory structure of the court system.

Exhibit 1

Supervisory structure of the Idaho court system



Source: Idaho Supreme Court, *Overview of the Idaho Court System*.

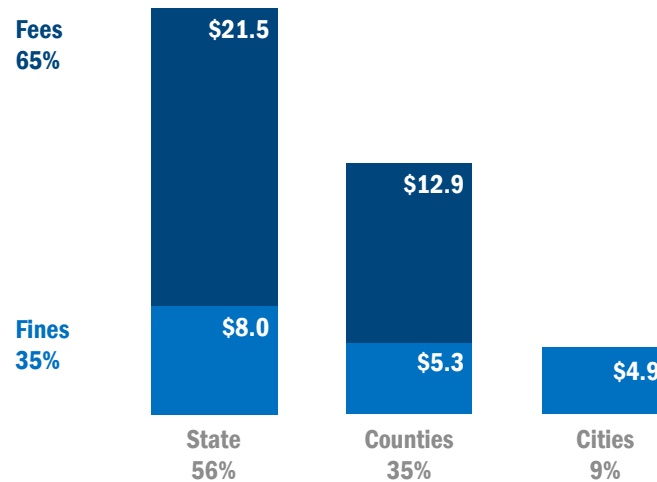
In this report, the term “courts” refers to judges, the Idaho Supreme Court, the Court of Appeals, the Administrative Office of the Courts, and the seven district courts and their magistrate divisions, small claims departments, and trial court administrators.



As shown in exhibit 2, the courts collected and distributed \$52,667,887 in fines and fees from civil and criminal cases in 2017.

Exhibit 2
\$52.7 million in fines and fees were distributed among the state, counties, and cities in county fiscal year 2017.

In millions (\$)



Source: Idaho Supreme Court, Trial Court Financing: Court revenue for the year ended September 30, 2017, court revenue distribution from Odyssey.

Legislative interest

Growing pressures on court and county resources have increased attention on court funding. Over the past few years, the Legislature has looked for ways to meet the rising strain on these resources. Some legislators have pointed to collection practices as an opportunity for improving resources. The courts have indicated that collection resources are already stretched thin. They explained that collection practices are inefficient and financial obligations can be difficult to enforce.

Much of the interest in this evaluation stems from a perceived lack of accountability for the collection of court-ordered financial obligations. This perception was heightened by the limited information that the Administrative Office of the Courts had been able to provide to policymakers.

In March 2018, the Joint Legislative Oversight Committee directed us to identify ways that would help counties optimize court funding from fines, fees, and costs. The request for this evaluation is in appendix A.

Evaluation approach

The initial scope for this evaluation was designed to look at multifaceted issues:

What is the state of court collections in Idaho?

What practices underlie the state of court collections?

Can court collections be improved, and if so, to what extent?

What practices are likely to lead to the best results in collection success rates?

To answer these questions, we required current and historical data from the courts' data management systems, ISTARs and Odyssey. We compiled a list of data points needed to meaningfully answer questions in the study request. See appendix B for the evaluation scope and appendix C for the data request to the courts.

In response to our request for data, the Chief Justice indicated a desire to answer the Legislature's questions and provide

Even with limited data and information sources, we were able to identify potential indicators of success and areas needing more work or further investigation.

necessary data. However, at the time, Odyssey was not completely implemented in 30 counties and reporting capabilities were not sufficiently developed to provide the data necessary to answer many of the questions in the study request with precision and depth. Without data from the courts, we were not able to fully quantify the effectiveness of counties' collection practices or the degree to which judges waive or reduce fines and fees.

We were advised that the courts planned to contract with a third-party software vendor to extract data from the Odyssey system by the 2019 legislative session.

Although requested data were not available, we decided to complete the evaluation for at least three reasons:

Even a limited scope evaluation with preliminary conclusions would give policymakers substantially more information about fines, fees, and collections than what had been available.

The counties we talked with while developing the initial scope expressed a high level of interest in the evaluation and in identifying ways to improve collections.

We believed the evaluation would be valuable for the courts while developing Odyssey's data collection and reporting capabilities. The information and observations provided by the evaluation could help the courts ensure that the additional data and reporting capabilities planned for Odyssey would be sufficient for evaluating court-ordered fines and fees and measuring and analyzing collections.

In order to move forward, we revised our approach. Instead of focusing on definite conclusions about the effectiveness of specific practices, we used the data and information sources available to identify potential indicators of success and determine which areas, if any, warrant further investigation after complete data and reporting are available.

We interviewed and surveyed key stakeholders and analyzed data from three available sources:

Tax intercept records from the State Tax Commission

2000–2015 reports on the collection of fines and fees from annual reports of the Supreme Court

Random sample of misdemeanor cases from the courts' public portal, iCourt

The methodology for the evaluation is discussed in appendix D.

Across the country, the role of fines and fees in court funding has been the subject of ongoing debate. Idaho has made a policy decision to rely on fines and fees as an important source of funding to offset the cost of administering the justice system.



To be responsive to the study requester's questions, we focused on policies and practices under Idaho's current approach to court funding. We did not evaluate or explore alternative funding approaches.



◀ **Ada County Courthouse**

2

Filing fees in civil cases

Litigants in civil cases are required to pay filing fees which have been set in statute and court rule. In some cases, the courts may assess a litigant's ability to pay and waive fees. Costs of filing fees are defined in statute, and revenue from the fees are assigned to dedicated state and county funds.

We were asked to analyze how many and which types of fees were waived in the past three years, and to answer whether the state has standards that outline criteria for when fees may be waived.

Historically, the courts' data system had not been designed to monitor or report on filing fee waivers for civil cases. As a result, there has been little statewide accountability, reporting, or systematic analysis of fee waivers.

To provide legislators with the most complete answers possible, we analyzed filing fee data that the courts had presented publicly to the Joint Finance-Appropriations Committee in 2017. In addition, we considered input from elected clerks, judges, and administrative officials in the seven judicial districts.

Our analysis was not intended to draw definitive conclusions about filing fee waivers in civil cases. Our goal was to learn as much as possible from data that were available and the policies that were in place.

In civil cases, a litigant is responsible for paying filing fees. A litigant can be a plaintiff, a defendant, or an appellant.



Filing fees are used to offset costs of various programs.

Filing fees are allocated to a variety of state and county funds. Statutes and court rules specify the allocation of filing fees. Exhibit 3 shows the allocation of filing fees for initial case filings in district and magistrate courts. Some types of civil filings have different rates than those set for general district and magistrate filings, and some filings are not charged any fee. Idaho Rules of Civil Procedure lists the fee schedule for various civil actions and filings.

Exhibit 3

Fees for an initial case filing are allocated to state and county funds.

Fund	Fee (\$)
State distribution of allocation	
Court technology	135 district court 80 magistrate court
Idaho code	10
Judges retirement	26
Senior magistrate judges	6
State	17
State subtotal	194 district court 139 magistrate court
County distribution of allocation	
District court	17
Facility	10
County subtotal	27
Total initial filing fee	\$ 221 district court \$ 166 magistrate court

Source: Idaho Rules of Civil Procedure, Civil Case Filing Fees, Appendix A, 2018.

Statute sets no standard for determining whether a litigant is unable to pay.

Statute allows for judges to waive civil filing fees for indigent litigants but gives no standard for determining whether a litigant is unable to pay.

Litigants are required by Idaho Code § 31-3220 to pay filing fees before the courts may hold a proceeding. If litigants feel they are unable to pay, they may apply for a fee waiver. Statute requires them to file an affidavit with the following information:

- Litigant's identity
- Nature and amount of income
- Spouse's income
- Real and personal property owned
- Cash or checking accounts
- Dependents
- Debts
- Monthly expenses
- Nature of the action
- Litigant's belief that he or she is entitled to redress

According to statute, courts may waive fees and continue with civil proceedings if, after an informal inquiry, the courts determine the litigant is unable to pay. However, statute sets no standard for determining whether a litigant is unable to pay. In effect, the statute ensures that judges have the information needed to determine a litigant's ability to pay but leaves individual criteria up to the judge's discretion.

According to Idaho Rules of Civil Procedure, fees are automatically waived for litigants who are represented by an attorney from the Idaho Law Foundation Volunteer Lawyers Program, the University of Idaho Legal Aid Clinic, the Concordia University School of Law Housing Clinic, the Idaho Legal Aid Program, or an attorney under a private contract with Legal Aid. To qualify for free legal help, litigants must meet certain poverty standards. For example, services offered by Idaho Legal Aid Services are limited to individuals whose income is at or below 125 percent of the federal poverty level.

Approximately 7 percent of civil filing fees were waived in fiscal year 2016.

During a 2017 budget hearing of the Joint Finance-Appropriations Committee, the courts requested additional funds to cover a projected shortfall in civil filing fees. In response to questions about the cause of the shortfall, the courts noted that initial civil case filings had decreased by 18 percent in district courts and by 15 percent in magistrate divisions since 2014. They also pointed out that declining civil filings was a trend occurring nationwide. According to the National Center for State Courts, civil caseloads decreased nationally by 21 percent from 2009 to 2015.

Despite data limitations, the Administrative Office of the Courts provided the committee with estimates of the number of waivers granted in several civil filing categories for fiscal years 2014–2016. Because the courts' estimates are the most recent data available, we used these data to estimate the total rate of civil filing fee waivers.

We found the overall waiver rate to be 7 percent in fiscal year 2016. We estimated the equivalent value of the waived civil filing fees to be \$821,242. Exhibit 4 lists fee categories reported by the courts and shows that the estimated rate of waivers varies considerably among filing categories.

We asked county-elected court clerks about their experience with waivers for civil filing fees. Most elected clerks we spoke with reported that they were unconcerned about filing fee waivers. Many said waivers were rare, which raised doubt that 85 percent of civil appeals to the Supreme Court or 36 percent of civil appeals to district courts (as shown in exhibit 4) had been waived. In contrast, officials in some counties said civil filing fees had been waived too often.

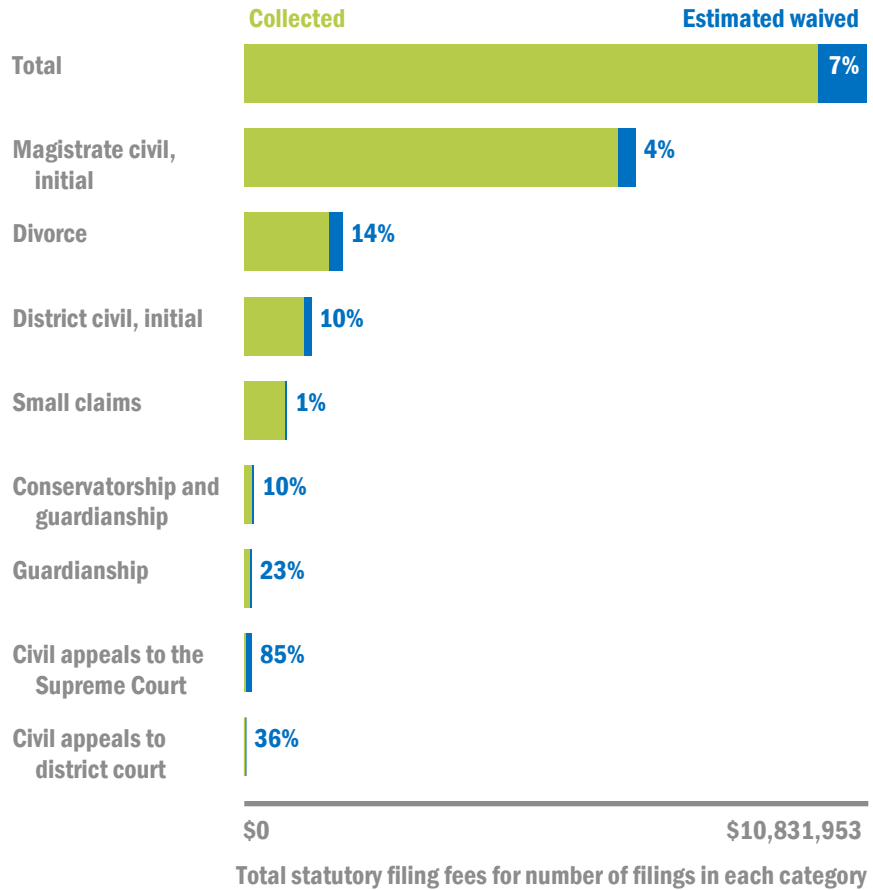
We were not able to capture criteria used to waive individual civil filing fees nor were we able to quantify what percentage of filing fees were automatically waived. Clearly, additional data and analysis are necessary to fully account for the use of filing fee waivers in civil lawsuits.

The courts' data systems have not been capable of reporting statewide information about waivers for civil filing fees.

Additional data and analysis are necessary to fully account for the use of filing fee waivers in civil lawsuits.

The total estimated value of waived civil filing fees was **\$821,242** in 2016.

Exhibit 4
The estimated rate of waivers by filing fee category varied from 1% to 85% in fiscal year 2016.



Source: Estimate based on data provided to the Joint Finance-Appropriations Committee by the Supreme Court in February 2017.

Based on the small amount of data available and the input we received from counties, the frequency with which filing fee waivers were granted do not appear to be a statewide concern. However, without detailed statewide information we could not answer key questions about waivers judges have granted, waivers judges have denied, and the criteria judges have used for making determinations about waivers.

Answers to these questions are important for projecting and accounting for revenue, informing the Legislature when it considers proposals to add or adjust fees, fines, and other obligations, and for ensuring access to the courts.

Financial obligations in criminal cases

3

We were asked to determine how successfully court-ordered financial obligations have been collected, what practices best ensure compliance with financial sanctions, and how well those practices have been implemented across the state.

Unfortunately, we found that current and historical reporting has not been sufficient to draw strong conclusions about collection success or which practices are most important for successful programs.

Given the lack of data and reporting, we worked with counties and surveyed judges and district administrations to identify which indicators could explain our observed differences in counties' collection rates. We also analyzed a sample of 291 misdemeanor cases from across the state.

Our goal was to identify potential indicators and determine which areas, if any, warrant further investigation after complete data and reporting are available.

In criminal cases, a defendant is often responsible for paying court-ordered financial obligations.



In practice, fines, fees, and costs can have a punitive effect on defendants and have all been used to offset costs for various programs.

In fiscal year 2015, Idaho judges ordered about \$65 million in fines, fees, and costs.

Many programs depend on fines and fees to offset costs, but judges' decisions on fines and fees must be made without consideration of program budgets.

In criminal cases, judges often order defendants to pay financial obligations at sentencing. Financial obligations can include fines, fees, court costs, restitution, or forfeiture. These obligations can also include costs not paid through the courts such as drug testing, ankle bracelet, counseling, and drug treatment.

Generally, fines are intended to be punitive and serve as sanctions for offenses. In contrast, fees and costs are intended to help offset the cost of administering the criminal justice system. In practice, fines, fees, and costs can have a punitive effect on defendants and have all been used to offset costs for various programs.

The Legislature sets fixed amounts for fees. The Legislature also sets the distribution of revenue from fees. For most offenses, statute allows judges to waive fees and costs for indigent defendants.

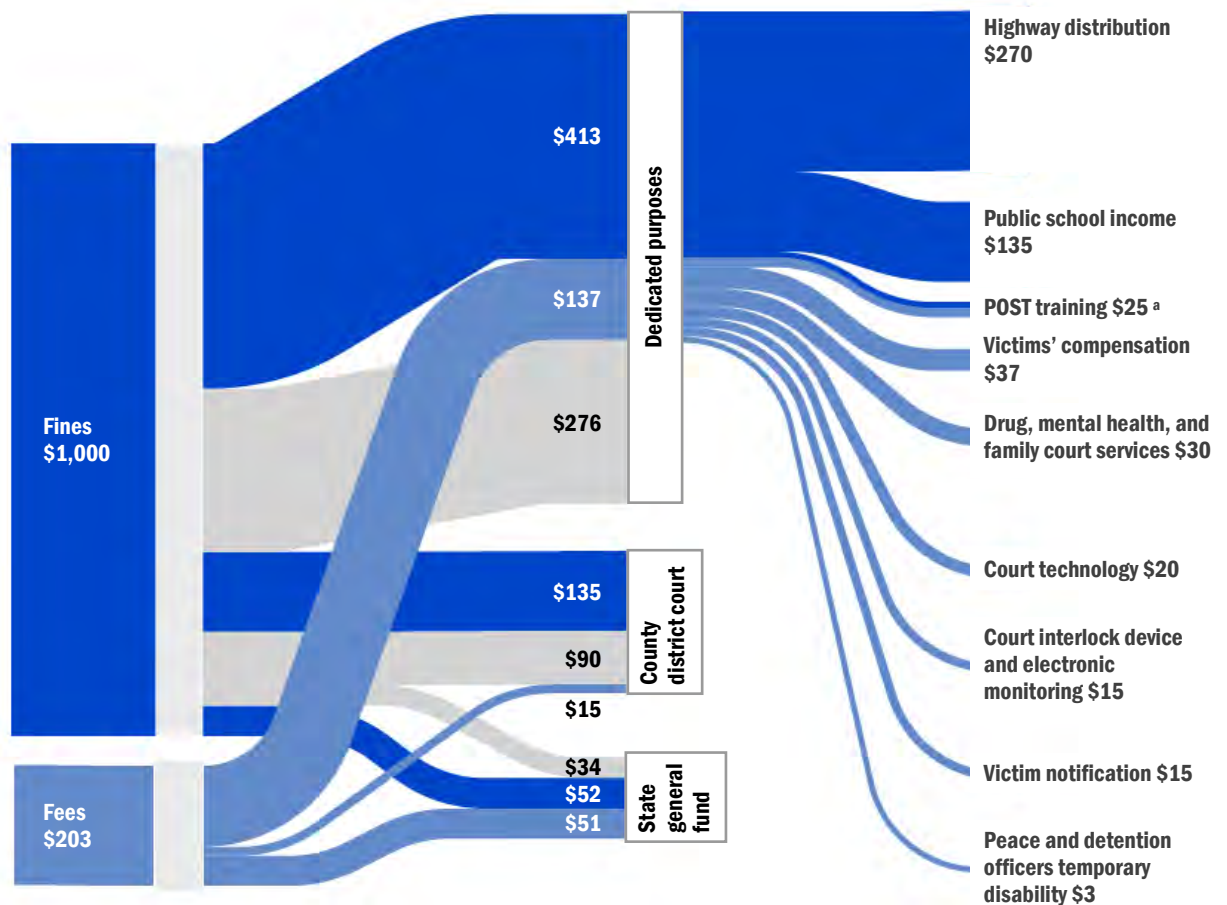
Statute specifies the distribution of revenue collected from fines but does not set fixed amounts for offenses. Statute sets the maximum fine amount that can be ordered for each offense type.

The fine distribution varies by offense, and the jurisdiction of the citing officer. If a citation for driving under the influence (DUI) is issued by a city officer, the city keeps 90 percent, Peace Officer Standards and Training (POST) gets 1.4 percent, and the state general fund gets 8.6 percent. In contrast, if a citation is issued by a state or county officer, 45 percent of the fine distribution goes to the highway distribution account, 22.5 percent county district court fund, 22.5 percent to the public school income account, 8.6 percent to the state general fund, and 1.4 percent to POST.

In fiscal year 2015, Idaho judges ordered about \$65 million in fines, fees, and costs. Exhibit 5 shows an example of how fines and fees were distributed from a misdemeanor case of DUI that was initiated from a county or state officer citation. It also shows where suspended fines would have been distributed.

Exhibit 5

Paid fines and fees of a DUI case were distributed across 11 funds; some fines were suspended.



a. POST received \$8 in fines and \$17 in fees.

Note: Dollar amounts may not sum because of rounding.

Source: Data from iCourt.

In addition to the fines and fees shown in exhibit 5, the judge ordered 18 months of probation with a \$720 (\$40 per month) misdemeanor probation fee. Of that amount, \$18 was distributed to the POST fund. The remaining \$702 was distributed to the county to offset misdemeanor probation costs.

Judicial decisions can affect the balance of who bears the cost of the criminal justice system.

Boundary County Courthouse

When fines and fees are not enough to cover program costs, other sources, such as property tax or general fund dollars, are used. Elected clerks acknowledged that collection practices affected the amount of fines and fees available to offset program costs. However, elected clerks also expressed concern that judicial decisions on fines and fees had an equally important effect on the amount of fines and fees available to offset program costs.

Judicial decisions can affect the balance of who bears the cost of the criminal justice system. However, best practice literature, court administrators, judges, and elected clerks agree that judicial decisions about fines and fees should be made independent of any consideration to offset program costs.



Fine-based sanctions are not likely achieving their potential as a deterrent.

Although fines have been used as a source of revenue, they are primarily expected to achieve the goals of deterrence, rehabilitation, or retribution. We were asked to determine whether Idaho's fine-based sanctions are a deterrent that effectively replaces jail time, particularly for defendants who are limited in their ability to pay.

Research identifies two types of deterrence. The first type, general deterrence, uses strategies for preventing the general population from violating laws. The second type, special deterrence, involves the effect of a specific sanction on a specific offender.

We focused our review of literature on the effectiveness of fines as a special deterrent. Our review of literature found mixed results. Isolating the effectiveness of fines as a deterrent is especially problematic given that fines are rarely the only sanction offenders face. However, the literature identified several factors that have been found to strengthen the deterrent effect of fines:

Consistently assess and enforce. A punishment that is applied and enforced consistently for each offense is more likely to deter crime than a punishment that is applied or enforced intermittently.

Set sufficiently high fines. If fines are set too low relative to defendants' ability to pay, the fine will not have a substantial punitive or deterrent effect. For a fine to be effective as a deterrent, the potential cost (penalty) of committing a crime must be greater than the offense is worth to the offender.

Set fines at a level that is realistically achievable for offenders. If fines are set too high relative to defendants' ability to pay, they will be unable to pay and may perceive the system as unfair or illegitimate and give up attempting to pay. In which case, an offender may go unsanctioned or additional sanctions would be necessary for a deterrent effect.

Our review of literature found mixed results about whether fines were an effective deterrent.

We surveyed judges to get a better sense of their use of fines in sentencing decisions. Judges' responses showed two key points about their views and approaches to fines.

1. They reported often ordering very low or no fines because mandatory court costs were already substantial and difficult for offenders to pay. For example, we asked judges to give a rough estimate of the portion of cases that they reduce, suspend, or waive fines or fees. They responded with the following:

“ I almost never impose fines because most people have a hard enough time paying costs and fees. I rarely reduce costs and fees.

“ I never waive mandatory court fees. Where fines are discretionary, I rarely impose the maximum. I generally suspend the majority of fines as the mandatory court costs are usually significant.

“ I order fees and court costs in almost all cases. I usually only waive them in prison-imposed cases—so in 5–10 percent of cases are they waived. However, I do not order fines in many cases because I am at the felony level. People are indigent or unable to maintain steady employment, and potential punishment is so much greater.

“ It is rare to waive court costs, very common to suspend a portion of a fine, and common to order reimbursement for public defender costs and lab costs.

2. A few judges specifically said that fines are not an effective deterrent for felons:

“ There are so many other things going poorly in their lives that “unsuspending” a fine really has no deterrent value. This may be a different analysis for the magistrates since they tend to work with defendants who are more prosocial and having a larger fine may have some deterrent effect.

“ Are fine-based sanctions a deterrent that effectively replaces jail time? For felons, the answer is no. It is a poor punishment because few ever pay and it can be counterproductive to rehabilitation. Collection is expensive for the system (certainly if the consequence of nonpayment is incarceration).

In our sample of 291 misdemeanor cases initiated in 2016 and 2017, we found judicial decisions on fines align with judges’ responses. Judges often did not order a fine, ordered a relatively small fine, or ordered a fine but suspended a large portion of the amount ordered.

More data and research would be needed to determine how effectively fines can be used as a deterrent in Idaho. However, the limited use of fines described by judges and the state of the compliance system in Idaho as described in the following sections indicate that fine-based sanctions as currently applied are not likely achieving their potential as a deterrent.



◀ **Fremont
County
Courthouse**

We found that about 23 percent of defendants paid in full on the same day judgment was issued.

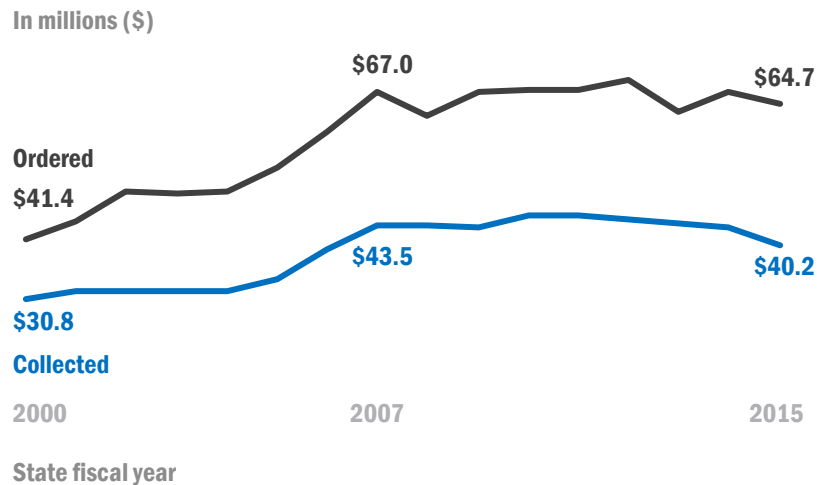
Overall, the dollar amount of fines and fees ordered has increased faster than the dollar amount collected.

In general, financial obligations are due immediately after judges have issued a sentence. However, judges can set any due date such as a specific time later that day, the end of probation, or even monthly installment amounts. In our sample of misdemeanor cases, we found that about 23 percent of defendants paid in full on the same day judgment was issued. When defendants do not pay in full within the timeframe set by judges, additional actions are needed to ensure that the obligation is paid.

Annual reports from the Administrative Office of the Courts indicated the percentages of orders collected. In fiscal year 2015 counties collected on average about 62 percent of the total financial obligations ordered as compared with 74 percent in fiscal year 2000.

Exhibit 6 shows the statewide trends for the total amount ordered and collected in fiscal years 2000–2015.

Exhibit 6
Total dollar amount of fines, fees, and costs ordered increased faster than the dollar amount collected in state fiscal years 2000–2015.



Source: Idaho Judiciary Annual Reports, Collections Appendices 2005–2015.

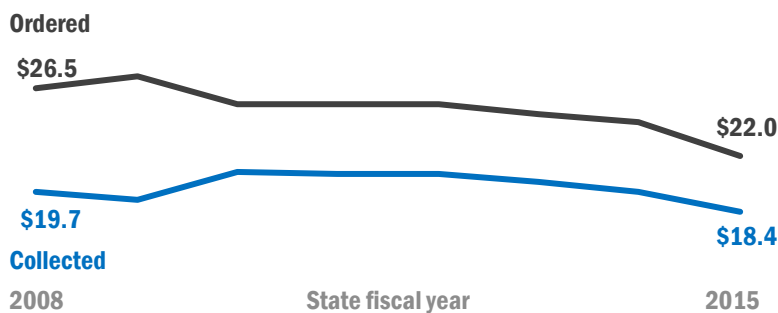
Collection success rates vary among crime types.

Collection rates for misdemeanors, infractions, and felonies are remarkably different. Exhibit 7 shows those differences have been reasonably consistent over time. Our review of literature showed similar patterns in other states.

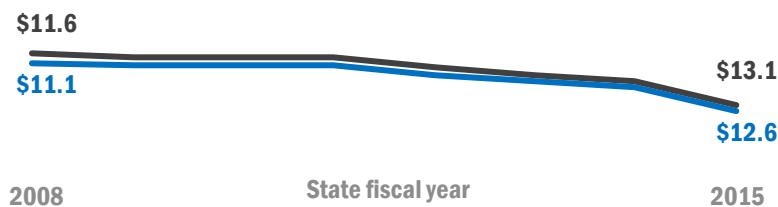
Exhibit 7
The difference between the amount ordered and the amount collected varies across crime types.

In millions (\$)

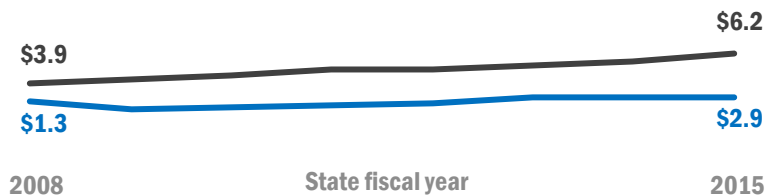
Misdemeanors



Infractions



Felonies



Source: Idaho Judiciary Annual Reports, Collections Appendices 2008–2015.

We focused on criminal misdemeanor cases for three reasons:

1. Misdemeanor cases have the most potential to close the gap between the amount ordered and collected for a substantial number of defendants.

2. Infraction cases have historically outperformed misdemeanor and felony cases in collection rates.

3. Felony cases have very low compliance and a low total-dollar-value potential.

**Bear Lake ►
County
Courthouse**

A few judges and elected clerks were concerned that collection rates on infractions cases may decline as a result of recent changes made by the Legislature. In 2018, House Bill 599 revised Idaho Code § 49-328(3) to no longer allow a person's driver's license to be suspended for failure to pay an infraction penalty. As of yet, there has been no clear evidence that the change has affected collection rates on infraction cases. However, given the concern expressed by judges and elected clerks, the impact of the change may need additional analysis.



Collection success rates vary among judicial districts.

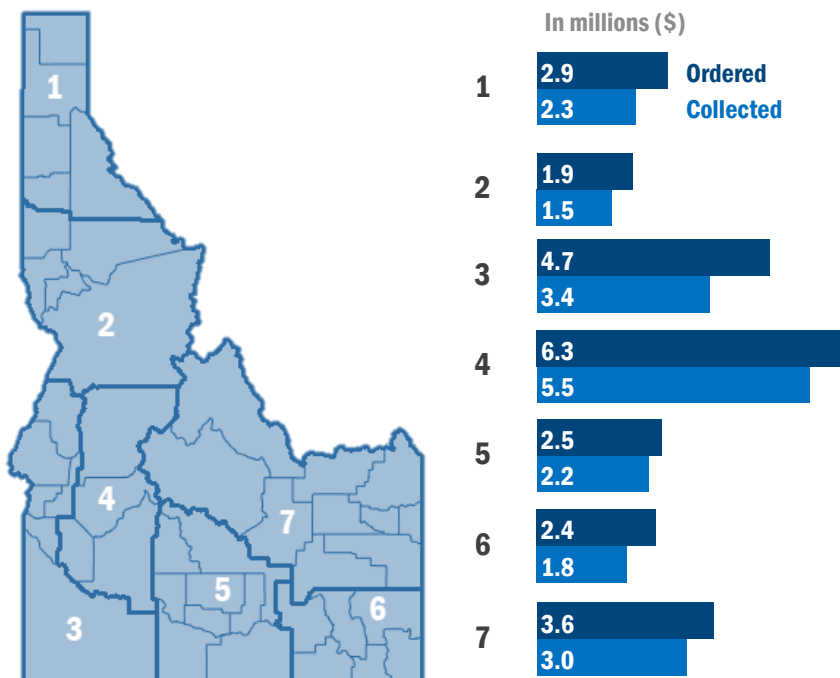
We used two data sources to analyze collections rates among judicial districts. The data sources covered two different time periods and were collected using different methods. Findings from both sources show similar patterns.

Annual report data

Our analysis of annual report data submitted by the counties and consolidated by the Administrative Office of the Courts shows that counties differ in their collection success rates. The data from annual reports also show differences in collection rates at the district level. Exhibit 8 shows the amount ordered and the amount collected in each district for fiscal year 2014.

Exhibit 8

The difference between the amount ordered and the amount collected varies across judicial districts.



Note: Fiscal year 2014 is the most recent year the Supreme Court reported complete data for all counties. Beginning in fiscal year 2015, Twin Falls County in the 5th Judicial District had transitioned to Odyssey and complete data were not available.

Source: Idaho Judiciary Annual Reports, Collections Appendix, 2014.

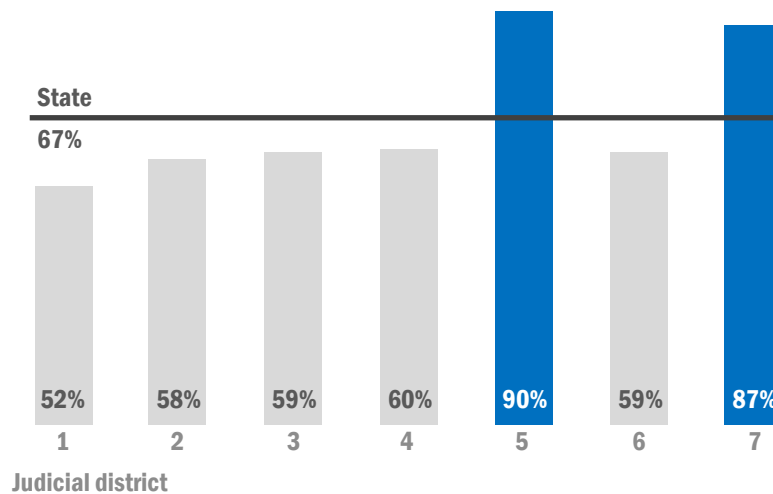
In fiscal years 2006–2015, the amount of fines and fees collected by the 5th and 7th judicial districts was almost 90 percent of the amount ordered, the highest rate of all districts.¹ The 1st, 2nd, 4th, and 6th judicial districts collected 74–78 percent. The 3rd Judicial District collected the lowest at 68 percent.

Sample of misdemeanor cases

We observed similar patterns in our sample of misdemeanor cases. Exhibit 9 shows that the 5th and 7th judicial districts had significantly higher collection rates.

Exhibit 9

Misdemeanor collection rates in a sample of 2016 and 2017 cases were highest in the 5th and 7th judicial districts.



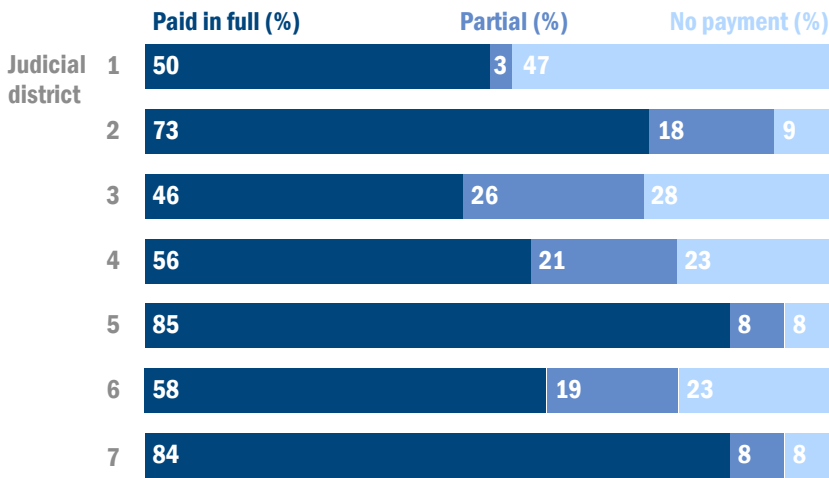
Source: iCourt data from a sample of 291 misdemeanor cases initiated in calendar years 2016 or 2017.

1. Twin Falls County in the 5th Judicial District began to transition to Odyssey in the second half of fiscal year 2015 and that data is not reflected in the chart. However, the ratio for fiscal year 2015 is the same as 2014 and falls within one percentage point of the 10-year trend.

Also in our sample, we found districts varied considerably in the percentage of cases paid in full. Exhibit 10 shows the portion of the 291 misdemeanor cases we analyzed that were paid in full, partially paid, or were not paid at all.

Exhibit 10

The percentage of cases paid in full varied across judicial districts.



Note: Percentages may not sum to 100 because of rounding.

Source: iCourt data from a sample of 291 misdemeanor cases initiated in calendar years 2016 or 2017.

The 7th Judicial District had the highest percentage of cases paid in full.



◀ Nez Perce County Courthouse

About **26%** of our sample of misdemeanor cases had some collection action.

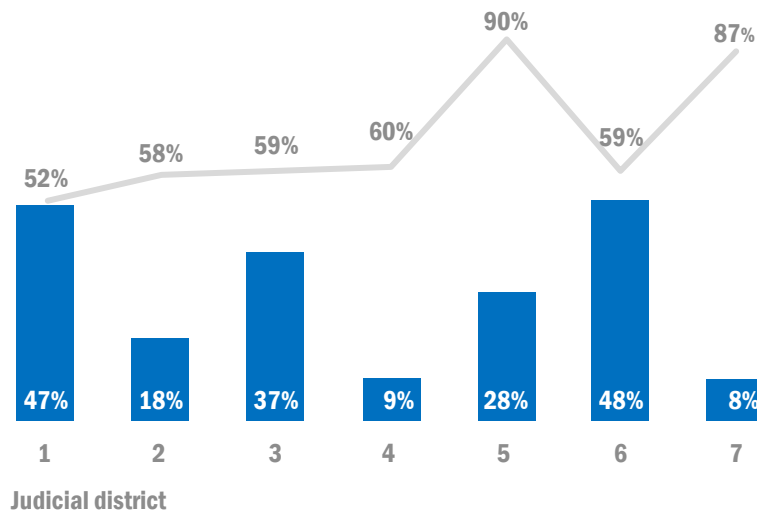
District practices partly explain the difference in collection rates.

All counties share a basic set of tools to collect on judgments. Tools available to counties include notices, payment plans, scheduled follow-up hearings, additional fines, warrants, collection agencies, the state income tax intercept, or the threat of jail time.

Although counties share a basic set of tools to collect past due judgments, each county has developed its own procedures. Over the past several decades, each county has determined along with their elected clerks, judges, administrative judge, and trial clerk administrator, procedures to follow when a defendant does not pay.

For example, in our sample of misdemeanor cases, we found about 26 percent of cases statewide had some collection action noted. Exhibit 11 shows wide differences in the percentage of cases with collection actions noted in each district.

Exhibit 11
Districts with a higher percentage of cases with collection actions did not have higher collection rates.



Source: iCourt data from a sample of 291 misdemeanor cases initiated in calendar years 2016 or 2017.

Surprisingly, districts with a higher percentage of collection actions did not necessarily have higher collection rates. The specific collection practices and procedures used in each district were likely a more important indicator than the percentage of cases using collection actions.

We found that certain collection procedures appear to be important indicators for explaining differences in district collection rates. Knowledge about these procedures can help improve the assessment and collection of fines and fees. The procedures we discuss include communication with defendants, use of collection agencies, establishing payment agreements, use of scheduled review hearings, and a number of probation practices.

Communication with defendants

Elected clerks, trial court administrators, administrative judges, and trial court judges told us that communication with defendants was an area that needed improvement.

Communication can come from judges, elected clerks, probation officers, prosecutors, or public defenders.

According to the American Collectors Association, “The number one reason for payment default is confusion; the problem can be magnified in the justice system.”²

The judges we heard from underscored the need to provide defendants with timely and constant information to achieve an optimal level of collections. Several of the judges we surveyed noted that defendants were often unaware of or surprised at the amount owed to the court:

“ If people had better information, it would improve compliance. This is the #1 tool in my view. And it's free! Clerks, prosecutors, public defenders, probation officers and judges are not always well informed about how a person may pay toward their fines and fees, and they can give conflicting information which does not help the citizen!...The point is to get the public consistent, easy-to-understand information about HOW to pay and to make sure that the system participants are given that same information.

2. National Center for State Courts, *Current Practices in Collecting Fines and Fees in State Courts: A Handbook of Collection Issues and Solutions*, 2009.

Districts with a higher percentage of collection actions did not necessarily have higher collection rates.

“There is no way to get blood from a turnip.”

“ I used to get a printout that showed how much a defendant owed and I could give it to a defendant in court and I could explain how to set up a payment plan. Most defendants were surprised to find out that they owed a bunch of money.

“ It would be nice if it was made clear that fees could be worked off, at least local fees. The amounts are a huge burden for most defendants in criminal cases.

Defendants’ ability to pay relative to the amount of fines and fees ordered

Judges and elected clerks identified ability to pay as one of the greatest challenges to ensuring compliance with court-ordered financial obligations. One judge summarized the overall sentiment we heard from counties, administrators, and judges:

“ The fines, fees, costs, or other financial obligations are staggeringly high. On a weekly basis, in criminal cases, I order people who make \$9/hour to pay over \$250 in court costs alone. That is without restitution, without a fine, without a civil penalty, without restitution [for] the victim, without public defender reimbursement, without the costs of probation supervision, with the pre-sentence investigation fee, etc. There is no way to get blood from a turnip. The greatest single challenge is the blood from a turnip problem. Often, the cost for collections [is more] than the order to pay. If the fees were lower, compliance would go up, because people do that which appears manageable or doable. Right now, the costs just defeat the person from the very beginning. (Note: There are exceptions. Some people do have financial resources. In those cases, I increase the fines without hesitation.)

The National Center for State Courts underscored what we heard from judges and counties. It points out that “a critical first step for any collection strategy is determining if and when a defendant

has the capacity to pay and whether to pursue delinquent accounts.”³

To determine how ability to pay might affect compliance, we used the assignment of a public defender as a proxy for indigency in analyzing our sample of misdemeanor cases. Exhibit 12 shows that for comparable statute violations, defendants assigned a

Exhibit 12

Offenders who were appointed a public defender paid less of their financial obligations and were less likely to pay the obligation in full than those without a public defender.



Source: iCourt data from a sample of 291 misdemeanor cases initiated in calendar year 2016 or 2017.

public defender paid a much lower percentage of their financial obligations and were significantly less likely to have paid their financial obligations in full.

Although assignment of a public defender is not a perfect measure of a defendant’s ability to pay, the differences we found are compelling indications that ability to pay is one of the barriers to compliance. This finding aligns with judges’ and counties’ observations. A more precise analysis would require data collection and reporting of defendants’ ability to pay.

Ability to pay is an important consideration statewide and is at the center of a number of constitutional limitations on imposing and collecting fines and fees. For example, courts must determine a defendant’s ability to pay before revoking probation or incarcerating the defendant for nonpayment. The way judges and counties evaluate and respond to defendants’ ability to pay during sentencing and collections may help explain differences in counties’ collection success.

3. Ibid.

Collection agencies are allowed to charge defendants a fee not to exceed 33% of the balance sent to collections.

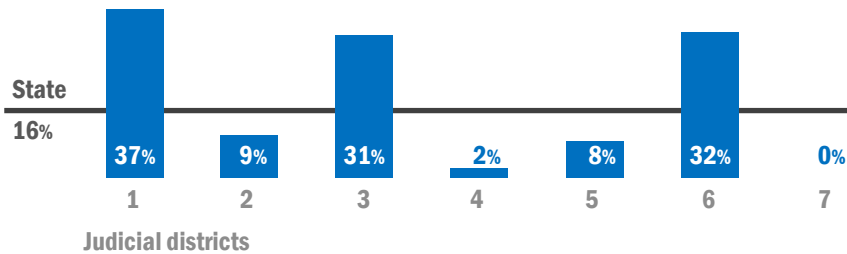
Collection agencies

Idaho Code § 19-4708 allows an elected clerk, with approval of an administrative judge, to enter into contracts with private collection agencies to collect court debts for misdemeanors and felonies. The collection agency is allowed to charge the defendant a fee that is not to exceed 33 percent of the balance sent to collections. This 33 percent is on top of what is collected on behalf of the court, not of the total amount collected.

In our sample of 291 misdemeanor cases, we found that districts sent about 16 percent of cases statewide to collections. However, as shown in exhibit 13, districts varied considerably in their use of collection agencies.

Exhibit 13

The percentage of cases sent to collection agencies varied across districts.



Source: iCourt data from a sample of 291 misdemeanor cases initiated in calendar year 2016 or 2017.

We used notes in the registry of actions for each case to identify those sent to collection agencies. Consistency of county reporting practices and the relatively small size of our sample could affect analysis results. More robust data collection and reporting would allow for a more precise analysis.



Counties we spoke with offered differing views on the use and success of third-party collection agencies. Some elected clerks said they have a close relationship with a local agency and saw it as an integral partner to ensure court debts are collected. Other elected clerks told us they have had bad experiences with collection agencies and preferred to rely more on their own staff to follow up with defendants. As one trial court administrator summarized:

“ People end up disappearing into collections. The state [is] losing some teeth. Collections should be last resort, not first resort.

This sentiment aligns with what we found in our sample of misdemeanor cases. For cases in our sample that had been sent to collection agencies, about 20 percent of the dollars ordered had been collected as of November 2018. Only about 6 percent of cases that were sent to collection agencies had been paid in full.

One option that has been explored in other states and occasionally discussed in Idaho is a statewide collections contract. Currently, there is no statewide contract for collections. One judge described the situation and some of the possible considerations that should be made:

“ Collection efforts vary greatly from county to county [and] from district to district. Having an option for statewide collections for the small counties statewide that do not have the resources could be beneficial.

Some of the larger counties and communities like to utilize local collection agencies and would like their business to stay local. So, there would need to be a balance and choices for the districts and counties, I believe.

There is no statewide contract for collections.

In our sample of misdemeanor cases, about **25%** of defendants had entered into payment agreements.

Payment agreements

Another tool that courts use to collect debts is deferred payment agreements. This formal agreement is made between the defendant and the court. Idaho Misdemeanor Criminal Rule 8 outlines the structure of deferred payment agreements and includes an agreement form. The agreement form is signed by the defendant and the court. It stipulates the terms of the agreement and cautions that if defendants fail to meet the agreement, they may be issued a warrant for arrest or a probation violation.

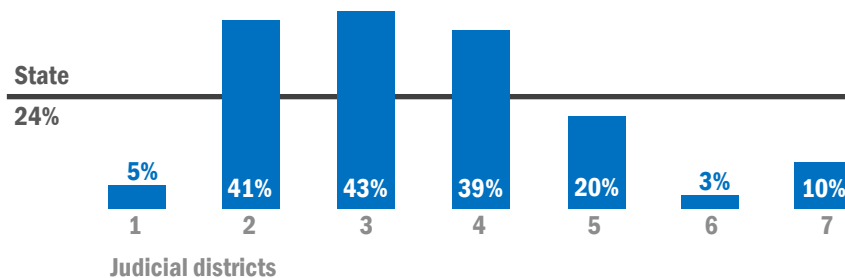
Several judges told us that the courts' ability to allow reasonable time for repayment is an example of practices that work well. A reasonable time for payment allows defendants the opportunity to work out a repayment schedule and establishes ongoing accountability for repayment.

In our sample of misdemeanor cases, we found that, on average, about one-quarter of defendants had entered into payment agreements. However, as shown in exhibit 14, the percentage of defendants on payment agreements varied widely among districts.

As of November 2018, about 57 percent of cases in our sample with a payment agreement in place had been paid in full. In total, about 65 percent of the financial obligations ordered in our sample of cases had been collected.

Exhibit 14

The percentage of cases with payment agreements varied across districts.



Source: iCourt data from a sample of 291 misdemeanor cases initiated in calendar year 2016 or 2017.

Scheduled review hearings

Regularly scheduled review hearings were cited frequently by judges as an effective tool in keeping defendants accountable and increasing the likelihood that fines and fees are paid. These hearings are typically held monthly but can be held more frequently. The hearings allow defendants an opportunity to speak directly to a judge and discuss their progress on several issues, including compliance with fines and fees. The judge can also modify defendants' payment agreements, if necessary. One judge noted:

“ One reason defendants fail to appear is the belief that if they do not or have not paid, the only option is jail. Some courts in Idaho have found regularly scheduled hearings to be a successful way to keep defendants engaged with the courts even when they have not made payments.

Many judges and elected clerks we talked with in the 7th Judicial District spoke about their ongoing use of review hearings as a positive indicator for why counties in their district have a high collection rate. Without detailed data, we cannot say to what degree review hearings are directly linked to higher collection rates. However, considering that the 7th Judicial District has historically had higher collection rates, further research and data analysis may provide insight into the effectiveness of scheduled review hearings and compliance with court-ordered fines and fees.

Not all stakeholders we spoke with agreed that scheduled review hearings were a good use of a judge's time. One judge's comments reflect many of the concerns we heard about the time pressures put on judges and how they prioritize:

“ Everyone's time is just maxed out trying to keep up with our growing caseloads in our district. The judges, the probation officers, the clerks...our workloads just keep getting larger. When we have to balance the concerns of community protection, rehabilitating offenders, and paying fines and fees, paying fines and fees are not the highest priority of everything we are trying to ensure compliance with. Having defendants stop committing crimes is a higher priority.

Not all stakeholders we spoke with agreed that scheduled review hearings were a good use of a judge's time.

Communication with probation officers is key to an effective collection system.

**Twin Falls ►
County
Courthouse**

Probation

Judges and elected clerks told us that the use of supervised probation is one of the most valuable tools they have available to improve compliance with court-ordered fines and fees. When a defendant is on probation, the judge, probation officer, and other officers of the court have regular contact with the defendant. Ideally, ensuring that the defendant keeps up-to-date on any court costs is an integral part of the probation process. Further, several judges identified probation officers as those officers of the court who interact with the defendant the most and can provide the court with reliable information on the defendant's ability to pay fines and fees.

One judge's comments appropriately summarize the general sentiment we heard about how important probation is for the collection process:

“ County misdemeanor probation programs...provide critical services to the people of Idaho. These programs ensure accountability and support for offenders including adherence to counseling, drug and alcohol testing, and financial obligation requirements.

Many judges we surveyed said that communication with probation officers is key to an effective collection system. However, judges also noted that probation officers are tasked with many other responsibilities beyond serving as a de facto collection agent, and many counties have a shortage of probation and parole officers. When data are available, further analysis will help determine the effectiveness of probation as a collection tool.



Views differ about the role of judges and administrators in fostering compliance with court-ordered fines and fees.

Each judicial district in Idaho has a trial court administrator who is familiar with the operations of the local courts. Similarly, each judicial district has an administrative district judge who is responsible, along with the trial court administrator, for the management of the courts in that district.

The input we received from administrators, judges, and elected clerks showed that the level of commitment and leadership in fostering compliance with court-ordered fines and fees varies considerably among administrators and judges across the state.

When we asked district administrators to describe their role in fostering or improving compliance with court-ordered fines and fees, they described a wide range of views. The following four quotes are representative of the range of responses we received from trial court administrators and administrative judges:

- “ Handled by the elected clerks, trial court administrators will assist or review if asked.
- “ I don't actively foster compliance with court-ordered fines and fees.
- “ As administrative judge, I work with the judges, court staff and elected clerks to develop and implement policies and practices that will more effectively allow for successful collection of imposed fines and fees.
- “ I meet with the clerk's office on a weekly basis to tackle issues involving—among other things—collecting court-ordered fines and fees. We troubleshoot issues with Odyssey that interfere with collections.

The level of commitment and leadership in fostering offender compliance with court-ordered fines and fees varies considerably among administrators and judges.

Judges described widely differing views of their role, even within the same judicial district.

A court needs to agree internally on its collection philosophy.

**Bonneville ►
 County
 Courthouse**

We also asked judges to describe their role in fostering or improving compliance with court-ordered fines and fees. Much like administrators, judges described widely differing views of their role. For example, compare the approaches expressed in the following responses of three judges within the same judicial district:

- “ A judge has no proper role in that whatsoever beyond imposing fines or fees as appropriate and adjudicating probation violation charges that stem from nonpayment.
- “ Ensuring [all justice partners] understand their role and the importance of compliance with fines and fees ordered by the court. Hold hearings when necessary to secure compliance.
- “ I set timelines or payment plans for fines, costs, and restitution. When people are out of compliance, rather than just impose punishments (jail, community service, etc.). I try to work with the defendants to get some payments going and encourage compliance while holding potential sanctions over their head.

The National Center for State Courts emphasizes that “a court needs to agree internally on its collection philosophy. Courts can respect individuals’ ability to pay by using payment plans and other tools, so that fines are collected and individuals still feel they have experienced procedural fairness.”⁴



4. National Center for State Courts, *Current Practices in Collecting Fines and Fees in State Courts: A Handbook of Collection Issues and Solutions*, 2009.

Decades of unpaid fines and fees have added up to a substantial backlog.

Despite collection efforts, some portion of financial obligations have gone unpaid. Statute and court rule require that infractions be written off after three years. However, Idaho has no process for writing off or inactivating unpaid fines and fees in misdemeanor or felony cases. Over time, unpaid fines and fees have accumulated and created a large inventory of uncollected obligations.

The best data available on the total amount of uncollected financial obligations were from the Idaho Tax Commission. Idaho code allows the Idaho Supreme Court to collect unpaid fines and fees that exceed \$50 from offenders' state income tax returns. To initiate the tax intercept process, Odyssey generates a file with information necessary for the Tax Commission to divert some or all of an offender's state income tax return to pay delinquent fines and fees. In fiscal year 2018, the tax intercept collected about \$3.2 million.

The total past due claims sent to the Tax Commission by the Administrative Office of the Courts show that as of July 1, 2018, the Tax Commission had 206,289 claims of unpaid court-ordered obligations statewide. These claims totaled about \$195 million.

In fact, the total balance of uncollected obligations is greater than the amount sent to the Tax Commission. Because statute excludes accounts with balances of \$50 or less from the state income tax intercept, the courts do not include those accounts in the file they send to the Tax Commission. Without this data, we were not able to determine the total amount of outstanding financial obligations.

The total dollar amount of outstanding fines, fees, and costs is substantial, but it is not an accurate representation of collectible past due obligations. As the National Center for State Courts has pointed out, there will always be a group that cannot or will not pay, regardless of additional sanctions. In our sample of misdemeanor cases, we found that in about 21 percent of cases, no payment had ever been made.

Idaho has no process for writing off or inactivating unpaid fines and fees in misdemeanor or felony cases.

As of July 1, 2018, 206,289 claims of unpaid court-ordered obligations totaled about \$195 million.

No payment had ever been made in about 21% of our sample of misdemeanor cases.

The likelihood of collecting financial obligations decreases rapidly as time passes.

It is not reasonable to assume that all \$195 million can be recovered or should be actively pursued.

**Benewah ►
County
Courthouse**

Accounts included in the tax intercept file date back at least three decades. The likelihood of collecting financial obligations decreases rapidly as time passes. The National Center for State Courts has pointed out that “one important rule of fines and fees collection is that the longer the delay between sentencing and payment, the less likely it is that the defendant will pay.”⁵ The center’s research demonstrates that the first 60 days after sentencing is when the most fines are collected. After that period, a significant percentage fall behind or go dormant.

The National Center for State Courts suggests that courts should determine a “reasonable level of uncollectible accounts suitable for write-off after appropriate time and effort has been expended.”⁶ Uncollectible accounts that remain on the books for active collection serve no useful purpose and create a public-relations problem for courts. It is not reasonable to assume that all \$195 million in past due court-ordered obligations can be recovered or should be actively pursued for collection. Accounting for uncollectible accounts separately than those debts being pursued by active collection efforts more accurately reflects the actual balance of uncollected fines and fees and enhances accountability and public confidence.



5. National Center for State Courts, *Current Practices in Collecting Fines and Fees in State Courts: A Handbook of Collection Issues and Solutions*, 2009.

6. Ibid.

Collection efforts can easily reach diminishing returns.

Even when a collection method produces excellent outcomes, the benefits of the efforts will not always equal or exceed the cost of the efforts. For example, in fiscal year 2015 judges ordered about \$22 million in misdemeanor financial obligations. In the same year, counties collected about \$18.4 million. If all counties maintained a 90 percent collection rate (the highest collection rate we observed in our sample of misdemeanor cases), they would have collected an additional \$1.4 million statewide.

If counties achieved a 90 percent collection rate by adding a substantial number of staff dedicated to collections, increasing the number of review hearings that judges conduct, and substantially increasing efforts by law enforcement to execute warrants, the cost of increasing collections would have been nearly as much as the additional amount collected. Diminishing returns for collection efforts do not mean that improvements are not worthwhile, only that the cost of collection efforts should be taken into account when determining the most efficient approach to collections.

The National Center for State Courts recommends that courts consider the cost of practices necessary to collect each dollar. By monitoring the cost per dollar collected, counties or the courts can identify and invest resources in the most efficient methods. For example, by monitoring the cost of collections, the courts can determine when in-house efforts are most efficient and when accounts would be more efficiently collected through a collection agency.

Cost of collection efforts should be taken into account when determining the most efficient approach to collections.

4

Improving Idaho's statewide system

For years, the courts have seen the need for improving the assessment and collection of financial obligations. In 2012 the Administrative Office of the Courts proposed conducting a study of what was then fragmented collection practices and developing a statewide business plan to improve the collection of obligations.

In its 2013 legislative priorities report, the Administrative Office of the Courts identified the need to examine the existing statutory structure for the collection of fines and fees in criminal cases to clarify:

- Whether each fee is to be assessed for each case or for each count or charge within a case

- The priority of how payments should be applied to the various fees, fines, and restitution when payments are insufficient to pay the entire court-ordered obligation

- Best practices for the collection of fees, including a clearer definition of the role of probation officers

In its 2016 legislative priorities report, the Administrative Office of the Courts added to its priorities:

- Whether provisions for the waiver of various fees should be made uniform

- How the burden placed on offenders by fines, fees, and costs should be taken into account, both in its effect on the ability of offenders to rehabilitate themselves and in its effect on the level of funding for the judicial system and other agencies

In addition, the Administrative Office of the Courts has stated its expectation that the transition to a new case management system, Odyssey, would support the proper accounting of millions of dollars in court-ordered obligations. The Odyssey project is, in part, the product of the courts' recognition of the need to improve deficiencies in data collection and reporting of the ISTARS system.

Idaho would benefit from a statewide system of accountability and a formal process for measuring performance and improving practice and policy.

Overall, we found that counties and the state have implemented various aspects of the strategies and practices recommended in national literature. However, we also found indications that some aspects of Idaho’s approach to assessing and collecting fines and fees would be strengthened.

Although Odyssey was not capable of reporting on the data we requested during fieldwork, the courts have indicated that they are working to provide the data. At this point, we cannot say with any degree of certainty if or how Odyssey will be capable of reporting on the data identified in the request (appendix C) or if the data will be sufficient to address questions policymakers and justice system partners have posed to the courts.

The courts have acknowledged the need to provide better information to the Legislature and justice system partners. In his 2019 State of the Judiciary speech, the Chief Justice said:

“ The courts are a main hub of information and data for a myriad of city, county, state and commercial interests. One of [the courts’] main customers for data is the Legislature—your need for strong, fair policy must be supported by data from the courts. We take this challenge seriously. We are piloting new technology called Socrata to help take the millions of data points in the courts and streamline and collate them. Then we can give you the most up-to-date comprehensive reports available.

Additional data can certainly improve accountability and help the Legislature better evaluate Idaho’s system of fines and fees in both civil and criminal cases. However, lessons from other states and recommendations from best practice literature show that data reporting alone is not enough to significantly improve the assessment and collection of fines and fees.

Creating the most effective system for assessing and collecting fines and fees requires a statewide system of accountability. The National Center for State Courts points out that “the most visible means of demonstrating accountability is developing collection

Data reporting alone is not enough to significantly improve the assessment and collection of fines and fees.

Judicial leadership is key to establishing a strong compliance system.



procedures with mechanisms for measuring success.”⁷ Research has found that compliance with court-ordered financial obligations improves when the courts focus on processes by developing, executing, and monitoring goals and a strategy for the collections process.

Literature has also identified judicial leadership as key to establishing a strong compliance system. For example, in its Trial Court Collections Project, Michigan found that “while the approach of court collections personnel is an important factor in the success of a collections program, judicial leadership is critical.”⁸

Recommendation

The Idaho Supreme Court is the ultimate authority for supervising and administering the Idaho court system. The Supreme Court establishes statewide rules and policies for the operation of its internal functions and that of trial courts.

We recommend that the Joint Legislative Oversight Committee ask the courts to provide to the committee a plan that defines next steps and timelines for establishing a system of statewide accountability for the assessment and collection of court-ordered financial obligations. This information should be provided in a timeframe that facilitates completion of a comprehensive OPE follow-up by the start of the 2020 legislative session.

The court’s plan should identify next steps in at least seven key areas:

Ensure data collection and reporting capabilities are comprehensive and readily accessible for internal and external use, and meet the needs of collection partners such as judges, judicial district administrators, elected clerks, and probation officers.

Establish a method for identifying and resolving gaps in data collection or reporting.

7. National Center for State Courts, *Current Practices in Collecting Fines and Fees in State Courts: A Handbook of Collection Issues and Solutions*, 2009.

8. Michigan Supreme Court, Michigan’s Trial Court Collections Project: Collection of Court-ordered Fines, Fees, Costs, and Victim Restitution, 2010.

Establish accountability for the backlog of past due obligations by regularly reporting on total past due obligations, establishing criteria and procedures for identifying debts that should be considered uncollectible, and reporting on debts considered uncollectible separately from debts that should be actively pursued.

Establish and communicate minimum collection program requirements that promote effective practices while adhering to constitutional limitations.

Clarify roles and expectations for all justice partners such as judges, state and district administrators, elected clerks, and probation officers.

Establish a formal process for measuring performance and improving policy and practice statewide. The process should include a way to ensure all data are collected that are necessary for monitoring performance of collection practices and to the degree possible, collection costs.

Facilitate problem-solving among justice system partners to strengthen coordination.



◀ Franklin County Courthouse



Request for evaluation



Sen. Abby Lee

DISTRICT 9
Counties: Adams, Canyon,
Payette & Washington



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Idaho State Senate
SENATOR ABBY LEE

March 12, 2018

Joint Legislative Oversight Committee
Attn: Co-Chair Senator Cliff Bayer
Attn: Co-Chair Representative Mat Erpelding

Dear Senator Bayer and Representative Erpelding,

As the Idaho Legislature continues to look at the demands and costs regarding providing court services, there is increasing interest in changing criminal codes to reduce a variety of misdemeanors to infractions. These proposals offer the ability to reduce the demand and costs for courts, counties, the public defense system and the Department of Corrections by removing potential jail time as a sanction. While this effort offers promise, it also comes with challenges.

The current process for collecting fines, fees and costs is already stretched, inefficient and at times difficult to enforce in court and through the counties. Our counties and courts rely on these fines and fees to help fund court services. Failure to collect necessary fines and fees may also result in simply having no sanction, which is not consistent with Idaho statutes on crimes and penalties.

In addition, there is inconsistent collection of civil filing fees throughout Idaho since there is little direction as to when and how indigent determinations are made in civil cases. Broad discretion to waive filing fees may also result in a reduction of revenue currently required to fund the court system in Idaho.

As we look at these impacts, I would request a study to address the following questions as appropriate:

- Are fine-based sanctions, as currently envisioned, a deterrent that effectively replaces jail time, particularly for people who are limited in their ability to pay?
- How many and which type of civil filing fees were waived in the past three years? Is there any standard as to when these fees may be waived?
- What practices best ensure compliance with financial sanctions, and how well are these practices implemented across the state?
- Across the state, what percentage of dollars from financial sanctions are being collected? What percentage could be expected if collection processes were improved?
- What are the costs (financial or other costs) for counties or court systems to start and maintain collection system?

- What role does the Administrative Office of the Courts play in any of the rules or procedures of collection processes of the individual courts? What information is collected in the Odyssey system relating to the status of fines and fees for an offender?
- Would user fees be a more effective source of funding if collection practices were improved or standardized?
- What policies are in place for courts to develop process for insuring collection of fees?
- Is there an opportunity for counties to pool resources and create district or other joint efforts to collect fines and fees?

This is an especially critical and timely discussion to have when considering the Courts and the counties are currently transitioning Odyssey, the new Court Information System. Addressing these questions and providing the information for policy makers, the Court and the counties, would provide the ability to insure better coordination, collaboration, and effective collection of these much-needed resources.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Abby Lee". The signature is written in a cursive, flowing style.

Senator Abby Lee

Evaluation scope



Our evaluation will focus on practices and policies that affect the amount that counties collect in fines and fees. The following questions will guide our evaluation approach and methods.

To what extent have counties' practices for collecting fines and fees been effective?

How efficiently have counties collected fines and fees?

To what extent, if at all, do collection practices affect failure to pay fines? In turn, does failure to pay fines result in offenders going unpunished?

To what extent do factors other than collection practices affect funding from fines and fees? Such factors could include waived fines and fees, limitations of Odyssey, or policies that create disincentives to pay.

What, if anything, can be done to help counties optimize the funding available from fines and fees?

Across the country, the role of fines and fees in court funding has been the subject of ongoing debate. Idaho has made a policy decision to rely on fines and fees as a considerable source of court funding.

Alternative funding approaches will not be part of this evaluation. The evaluation will only explore the policies and practices under Idaho's current approach. Alternative approaches could be the focus of a future evaluation.



Data request to the courts

Fines and fees assessed

- 1.1 Dollar amount of fines and fees assessed in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute by month.

Fines and fees collected

- 2.1 Total dollar amount of fines and fees collected in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute by month. (We would like to identify the total amount of fines and fees collected by each payment or collection method.)
 - a. Total dollar amount collected through in-house collections in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month. (If possible, specify the amount collected through payment plans each month. See also item 5.5. If 5.5 can be taken care of here, that is fine.)
 - b. Total dollar amount collected through a collection agency in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.
 - c. Total dollar amount collected through the tax intercept in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.
 - d. Total dollar amount collected through any other collection method not identified above. The subsets above (2.1a–2.1c are the payment or collection methods we have identified. If amounts in 2.1a–2.1c do not sum to the totals for 2.1, please identify and provide data for any additional payment or collection methods we did not identify. Also broken out by each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.

Fines and fees waived, reduced, adjusted, or uncollectible

- 3.1 Dollar amount of fines and fees waived by judges in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.
- 3.2 Dollar amount of fines and fees adjusted by judges in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.
- 3.3 Total dollar amount fines and fees reduced in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.
- 3.4 Total dollar amount that judges ruled as uncollectible in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.
- 3.5 Total dollar amount of infraction penalties cancelled in accordance with I.I.R. 10c in each county by relevant statute and fine and fee type by month.
- 3.6 Count of cases, individuals, or infractions with cancelled penalties in accordance with I.I.R. 10c in each county by relevant statute and fine and fee type by month.
- 3.7 Number of civil cases where filing fees were waived in each county by filing type by month.

Overdue fines and fees

- 4.1 Total number of cases in each county that were 30 days, 60 days, 90 days, 180 days or more past due each month for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type.
- 4.2 Dollar amount of fines and fees in each county that were 30 days, 60 days, 90 days, 180 days or more past due for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.
- 4.3 Number of cases (or individuals if easier to query) sent to collections in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.
- 4.4 Dollar amount of fines and fees sent to collections in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.
- 4.5 Total dollar amount of fines and fees for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type in each county that became past due ≥ 45 days each month and were sent to the Tax Commission for state income tax intercept.
- 4.6 Total number of each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type in each county that became past due ≥ 45 days each month and were sent to the Tax Commission for state income tax intercept.
- 4.7 Total dollar amount of fines and fees for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type in each county that became past due ≥ 45 days each month and were NOT sent to the Tax Commission for state income tax intercept because the amount past due was $\leq \$50$.
- 4.8 Total number of each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type in each county that became past due ≥ 45 days each month and were NOT sent to the Tax Commission for state income tax intercept because the amount past due was $\leq \$50$.

Payment plan agreements

- 5.1 Number of payment plan agreements initiated in each county each month for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type.
- 5.2 Total dollar amount of fines and fees put into payment plans each month in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type.
- 5.3 Average dollar amount for payment plan agreements initiated each month by county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type.
- 5.4 Average or most frequent specified payment agreement terms (30 days, 60 days or any other relevant terms of the agreements) and the count of agreements that specified those terms each month.
- 5.5 Total dollar amount collected through payment plans in each county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.

Failure to pay

- 6.1 Count of failure to pay affidavit or order to show cause by county for each case type (civil, infraction, misdemeanor, felony) by relevant statute and fine and fee type by month.

Counts of cases

- 7.1 Count of civil filings by county by month by filing type (or by distinct fee type).
- 7.2 Count of criminal cases in which fines and fees were ordered or waived in each county for each case type (infraction, misdemeanor, felony) by relevant statute by month.

Other

- 8.1 Total dollar amount collected in bond forfeitures in each county by year.
- 8.2 A separate listing of applicable fines and fees for each case type:
 - Criminal
 - Juvenile
 - Filing fees (civil)
 - Filing fee exceptions
 - Miscellaneous fees
- 8.3 Fine and fee distribution reports. This would identify the amount each entity or organization (e.g., counties, POST) receives from each fine or fee.

**Blaine ►
County
Courthouse**



Methodology



This evaluation was designed to address questions of policymakers about the collection of court-ordered fines and fees.

We developed an evaluation approach that focused on stakeholder interviews, analysis of statutes, rules, court documents, a review of national literature and relevant studies in other states, and a random sample of misdemeanor cases we assembled from the courts' online repository of court records.

Background interviews

We interviewed the following key stakeholders about their role in the collection of court-ordered fines and fees:

Legislators, including the study requester

Staff at the Administrative Office of the Courts, Idaho Supreme Court

Administrative, district, and magistrate judges

Elected clerks and their staff

Staff at the Idaho Association of Counties

Staff at the Idaho State Tax Commission

Document analysis

To establish necessary foundational information on laws, rules, and processes governing the collection of court-ordered fines and fees, we reviewed the following publications and documents:

Idaho statutes and court rules

Administrative Office of the Courts' documents, including annual reports, committee minutes, and data and reporting documents from its data management systems

Reports and data from the National Center for State Courts

Literature review

Several state and national organizations have produced studies, reports, and recommendations about court fines and fees. We reviewed national literature to see what conclusions and recommendations have been made by stakeholders in other states. Listed are a selection of those works:

Conference of State Court Administrators, *The End of Debtor's Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations*, 2016.

Conference of State Court Administrators, *Courts Are Not Revenue Centers*, 2012.

Criminal Justice Policy Program, Harvard Law School, *Confronting Criminal Justice Debt: A Guide to Policy Reform*, 2016.

Florida Courts, *Stabilizing Revenues for the State Courts System and Clerks of Court*, 2011.

Institute for Court Management, *Best Practices for Collecting Fines and Fees*, 2016.

Legislative Analyst's Office, California Legislature, *Overview of Criminal Fine and Fee System*, 2017.

Michigan Supreme Court, *Adoption of Administrative Order to Establish and Require Compliance with Court Collections Program and Reporting Requirements*, 2010.

Michigan Supreme Court, *Michigan's Trial Court Collections Project: Collection of Court-ordered Fines, Fees, Costs, and Victim Restitution*, 2010.

National Center for State Courts, *Study of the Effectiveness of Collections in the Florida Courts: A Report to the Florida Clerks of Court Operations Corporation*, 2012.

National Center for State Courts, *Current Practices in Collecting Fines and Fees in State Courts: A Handbook of Collection Issues and Solutions*, 2009.

National Center for State Courts, *Nebraska Court Compliance Pilot Project Final Report*, 2013.

National Council of Juvenile and Family Court Judges, *Resolutions Addressing Fines, Fees, and Costs in Juvenile Courts*, 2018.

National Task Force on Fines, Fees, and Bail Practices, *Principles on Fines, Fees, and Bail Practices*, 2018.

National Task Force on Fines, Fees, and Bail Practices, *Lawful Collection of Legal Financial Obligations: A Bench Card for Judges*, 2017.

Ruback, R. Barry, "The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society," *Minnesota Law Review* 99 (2014): 1779.

Ruback, R. Barry, and Mark H. Bergstrom, "Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications," *Criminal Justice and Behavior* 33, no. 2 (2006): 242–273.

Sances, M. W., and H. Young You, "Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources," *The Journal of Politics* 79, no. 3 (2017): 1090–1094.

We received responses from 37 district and magistrate judges, and 8 administrative judges and trial court administrators.

Although lacking detail needed for a rigorous analysis, this data illustrated a trend over time.

Stakeholder outreach

We conducted a series of online questionnaires to different stakeholder groups that have a role in the assessment and collection of court fines and fees. These groups included district judges, magistrate judges, administrative judges, and trial court administrators. The questions were primarily open-ended so respondents could answer in detail. We received responses from 37 district and magistrate judges, and 8 administrative judges and trial court administrators.

We spoke to elected clerks over the phone, via an online questionnaire, and at two conferences hosted by the Idaho Association of Counties in 2018.

Data analysis

As a part of our initial scope and evaluation plan, we submitted a detailed data request to the Administrative Office of the Courts (see appendix C). Data for the request would have been pulled from the court's legacy data management system, ISTARs, and the court's new system, Odyssey.

After we made the data request, the Chief Justice told us that the administrative office did not have the time or ability to extract the requested data from the new Odyssey system. However, he indicated that sometime during the 2019 legislative session, the administrative office would be able to begin reporting to the Legislature on many of the data elements we requested.

Because we did not have primary data from the court's data management system, we were unable to evaluate the court's capacity to analyze, report, monitor, or account for key aspects of the collection of fines and fees.

To make up for this lack of data, we looked at the Administrative Office of the Courts' annual reports published on its website. From those reports, we obtained aggregate data on financial obligations for fiscal years 2000–2015. The financial obligations included dollar amounts ordered and collected by county, judicial district, and crime type. Although lacking detail needed for a rigorous analysis, this data illustrated a trend over time.

We used the Idaho iCourt portal to collect samples of court record information. The iCourt portal is a repository of court

records maintained by Tyler Technologies under the direction of the Idaho Judicial Branch. Records were selected by doing statewide random searches of the repository, restricting the search results to years 2016 and 2017. All counties are represented by at least two entries per year. We profiled 303 court records, with 150 coming from 2016 and 153 from 2017. Twelve of the cases collected did not meet the criteria we set for cases, resulting in 291 misdemeanor cases for analysis.

We primarily collected financial information from the court records. Financial information included total fines levied and waived, fines paid, the average payment amount, whether there was a payment agreement between the court and defendant, and additional collection actions taken by the court. Other information we collected from the court records included the case file number, the county of origin for the case, the statute used to charge the defendant, the disposition of the case, and bail and jail time assessed. No names or personal information were collected.



We used the Idaho iCourt portal to collect samples of court record information.

◀ **Bannock County Courthouse**



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Responses to the evaluation



This data will be a tool for lawmakers and me to make the most informed decisions possible about the court system.
—Brad Little, Governor



Through on-going work, additional court data, information, and analysis will be reported as it becomes available, providing on-going accountability and transparency into the Idaho court system.

**Sara Thomas—
Idaho Supreme Court**



BRAD LITTLE
GOVERNOR

March 6, 2019

Rakesh Mohan, Director
Office of Performance Evaluations
954 W. Jefferson St., Ste. 202
Boise, ID 83720

Dear Director Mohan,

I want to thank you and the Office of Performance Evaluations on your thorough report, "Collecting Court Fines and Fees."

Idaho relies on fines and fees in both civil and criminal matters to fund the court system, so it is important that policy-makers have a firm understanding where the funds from court fines and fees are directed, how much money the courts are collecting, and best practices from around the state for collecting outstanding fees and fines.

Idaho is a fast-growing state. As our state grows, the courts will have to provide services to more people with increasingly complex legal needs. Your report, coupled with the information that Idaho's new electronic recording system will provide when fully online, will help policy-makers decide how our State will adapt to the changing legal landscape.

Thank you again for providing a thorough report. This data will be a tool for lawmakers and me to make the most informed decisions possible about the court system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad Little", is written over a yellow rectangular highlight.

Brad Little
Governor

THE STATE OF IDAHO
SUPREME COURT



SARA B. THOMAS
ADMINISTRATIVE DIRECTOR
OF THE COURTS
March 18, 2019

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Mr. Rakesh Mohan
Office of Performance Evaluation
PO Box 83720
Boise, ID 83720-0055

Dear Mr. Mohan,

Thank you for providing the Idaho Supreme Court with a copy of the final draft of the Office of Performance Evaluation's Court-Ordered Fines and Fees report. I appreciate the opportunity to provide additional information.

As the report notes, Idaho's courts have long recognized the need to examine many aspects of the court-related fines and fees structure, including those created by both the state and counties, imposition and waiver practices, the priority of distribution of partial payments, and best practices in collections of court-related financial obligations. Recently this work has included presenting House Bill 530 (2018), in which the Court obtained policy guidance from the legislature on the preferred distribution of partial payments of state-imposed fines and fees in criminal cases.

In addition, the Court has worked to identify needed steps in understanding the current landscape of fines and fees and any needed improvements to the system. However, this effort was hampered by limitations in the collection of accurate data in the legacy ISTAR system which prevented an evidence-based approach and valid examination. Thus, the Court determined that collection of accurate data and validated financial reporting was a critical first step in the process. This became an important part of the recent iCourt project and was included in the implementation of the Odyssey case manager system.

The implementation of the Odyssey case manager and financial manager systems provides a platform for the collection of data regarding how and when fines and fees are imposed, collected, and distributed throughout the state. As of October of 2018, all forty-four of Idaho's counties are live on the system. This now allows for the adoption and application of statewide business processes, more consistent data collection across jurisdictions, and more transparency into the processes being utilized in each county.

Now that the platform exists for the collection of accurate data, the Administrative Office is diligently working on developing a system to allow analysis of that data by both the Court and other interested parties. Throughout the iCourt project, work has been done on developing accurate internal reporting capabilities. Beginning in 2018, the Court also began work on a larger data project designed to inventory available data, create relevant data sets, and display data in a meaningful and useful format for both internal and external use. The Court has utilized the data request received from the Office of Performance Evaluation as a focused pilot project for this program. Once completed, the availability of this particular data can inform any additional work the Office of Performance Evaluation wishes to complete in regard to fines and fees. In addition, through on-going work, additional court data, information, and analysis will be reported as it becomes available, providing on-going accountability and transparency into the Idaho court system.

The collection and reporting of current data is but one aspect of the Court's work on fines and fees. Also informing the Court's efforts are constitutional issues being addressed through court cases and legislation throughout the country. In recent years a number of groups have identified the rise of what some have called modern day "debtor's prisons" resulting from court-related financial obligations and it has become the focus of reporting and litigation. As a result, the Idaho Supreme Court is also reviewing policies and practices to ensure that both constitutional and statutory requirements have been properly considered. This includes:

- Ensuring that all Idahoans, including those struggling with poverty, have access to Idaho's courts as constitutionally required.
- Confirming that the Idaho Supreme Court, as the administrator of Idaho's unified judiciary, remains in control of the processes utilized by lower courts to impose, waive, and collect fines and fees.
- Ensuring that a sanction of jail time is not imposed for failure to pay a court financial obligation unless a court has inquired into the reasons for the failure to pay, made a finding as to whether bona fide efforts to legally acquire the resources to pay have been made, and considered whether alternate measures of punishment are adequate to meet the state's interests in punishment and deterrence.
- Reviewing how recent United States Supreme Court precedent will impact the substance of and processes for imposition and collection of court fines and fees in Idaho. *See Timbs v. Indiana*, 139 S.Ct. 682 (February 20, 2019) (holding that the prohibition against excessive fines found in the 8th Amendment to the United States constitution is

incorporated by the Due Process Clause of the Fourteenth Amendment and is thereby applicable to the states).

Further informing the Court's work is additional awareness of local practices that the implementation of Odyssey has brought. Already work has been done to understand any variances among counties in the fee structure and methods used to collect those fees. Future work will include reviewing processes currently utilized to collect statutory fines and fees throughout the state, including determining the return on investment differing processes provide, and ways to improve the system.

The Court will continue to inform the legislature, our judicial partners, as well as the public as it fulfills its role in the imposition, collection, and waiver of fines and fees. With our newly enhanced ability to collect accurate data, coupled with our ongoing commitment to transparency, the Court looks forward to continued improvement in the area of court fines and fees.

Sincerely,



Sara B. Thomas
Administrative Director of the Courts

