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the order of the director of insurance, Department of Commerce and Economic Development, under which the deposit is made. (§ 2 ch 62 SLA 1982)

Sec. 09.38.030. Exemption of earnings and liquid assets. (a) Except as provided [illegible] and (c) of this section and AS 09.38.050, an individual debtor is entitled to an exemption of the individual debtor's weekly net earnings not to exceed $175. The weekly net earnings of an individual are determined by subtracting from the weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an individual paid on a monthly basis are determined by subtracting from the monthly gross earnings of the individual all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an individual paid on a semi-monthly basis are determined by subtracting from the semi-monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 2.17.

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of $700, except as provided in AS 09.38.050. The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

(c) A creditor may levy upon earnings exempt under (a) and (b) of this section if the creditor's claim is

(1) enforceable against exempt property under AS 09.38.065(a)(1); or

(2) enforceable under an order of a court of bankruptcy under chapter XIII of the Bankruptcy Act (11 U.S.C., sec. 1301 et seq.).

(d) If the individual debtor is a nonresident, the limitations on garnishment imposed under 15 U.S.C. 1673 apply.

(e) The following property, unless exempt without limitation under AS 09.38.015, upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;

(4) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service. (§ 2 ch 62 SLA 1982)

Cross references. — For federal provisions placing limitations on garnishment of wages, see 15 U.S.C. § 1673; for provisions exempting permanent fund dividends from execution, see AS 43.23.065.

Editor's notes. — This section must be read with 15 U.S.C. § 1673, which limits garnishments of wages and preempts this section wherever it would permit garnishment in excess of federal limitations. See notes from November 15, 1982, Op. Att'y Gen. under heading "Opinions of attorney general," below.

Opinions of attorney general. — This section is incompatible in many respects with 15 U.S.C. § 1673, which places limits on garnishment of wages, and as a result, where state law would permit g[illegible] nishment of wages in excess of [illegible] permitted by federal law, the state [illegible] must give way and federal limitations applied. November 15, 1982, Op. A[illegible] Gen.

The preemption by 15 U.S.C. § 167[illegible] limited. Under the provisions of 15 U.S.C. §§ 1673(c) and 1677 as interpreted by [illegible] ious state courts, when a state law c[illegible] flicts with the federal garnishm[illegible] provisions, each garnishment must analyzed on a case-by-case basis, and a[illegible] consideration of both the federal and st[illegible] formulas, whichever results in the le[illegible] amount garnished should be appl[illegible] November 15, 1982, Op. Att'y Gen.

NOTES TO DECISIONS

Prior law. — For case construing prior income exemption statute, see Miller v. Monrean, Sup. Ct. Op. No. 871 (File 1490), 507 P.2d 771 (1973).

Sec. 09.38.035. Continuing lien on wages. (a) In the case of garnishment of earnings, when the garnishee's answer reflects that t[illegible] defendant is employed by the garnishee, the judgment or balance d[illegible] as reflected on the writ of garnishment shall become a lien on earnin[illegible] due at the time of service of the writ to the extent that they are n[illegible] exempt from garnishment, and that lien shall continue as to subsequent nonexempt earnings until the total subject to the lien equals t[illegible] amount stated on the writ of garnishment, except that the lien [illegible] subsequent earnings shall terminate sooner if the employme[illegible] relationship is terminated, if the underlying judgment is vacate[illegible] modified, or satisfied in full, or if the writ is dismissed.

(b) A garnishee shall pay into court all nonexempt earnings of t[illegible] defendant subject to the continuing lien under (a) of this secti[illegible] Accrued interest on the judgment or balance due as reflected on t[illegible] writ of attachment may be garnished under a supplemental writ [illegible] garnishment after the principal amount stated on the original writ [illegible] garnishment has been paid. (§ 2 ch 62 SLA 1982)

Sec. 09.38.040. Priorities between continuing liens. A li[illegible] obtained under AS 09.38.035 has priority over any subsequent g[illegible] nishment lien or wage assignment. A writ creating a continuing li[illegible] served upon an employer while a continuing lien imposed by a previo[illegible] writ is still in effect shall be answered by the employer with [illegible] statement that the employer is holding no funds and with a furth[illegible] statement stating when all previous liens are expected to termina[illegible] The subsequent writ has full effect from the termination of all pri[illegible] liens or until it is otherwise terminated under AS 09.38.035. Howev[illegible] a subsequent writ is not effective if a writ in the same cause of acti[illegible] is pending at the time of service of garnishment. (§ 2 ch 62 SLA 19[illegible]

Sec. 09.38.045. Effective date of continuing lien. The effective date of a writ creating a continuing lien is the date of service upon the garnishee. However, if there are, on that date, liens by virtue of previous writs, the effective date is the date all previous writs terminate. (§ 2 ch 62 SLA 1982)

Sec. 09.38.050. Increased exemption amount. (a) An individual debtor who is in possession of money that was obtained as payment for an injury or disability may request the court to order an increase in the exemption amounts under AS 09.38.030. The individual debtor shall submit affidavits or offer testimony in support of the request as required by the court. The court shall determine the exemption amount after consideration of the individual's responsibilities and all the present and anticipated property and income of the individual, including that which is exempt.

(b) The exemption amounts under AS 09.38.030 may be increased when the individual submits an affidavit, under penalty of perjury, stating that the individual's earnings alone support the individual's household, by so doing, the maximum part of the individual's aggregate disposable earnings for any week subject to execution may not exceed the amount by which the individual's disposable earnings for that week exceed $275, or, if the individual is claiming an exemption for cash or other liquid assets under AS 09.38.030(b), a maximum amount of $1,100 available in any month is exempt. (§ 2 ch 62 SLA 1982)

Sec. 09.38.055. Bankruptcy proceedings. In a proceeding under the Bankruptcy Act (11 U.S.C.) only the exemptions under AS 09.38.010, 09.38.015(a), 09.38.0[illegible], 09.38.025 and 09.38.030 [illegible]y (§ 2 ch 62 SLA 1982)

Sec. 09.38.060. Tracing exempt property. (a) If propert[illegible] a part of it, that could have been claimed as an exempt homestead under AS 09.38.010, a burial plot under AS 09.38.015(a)(1), a health aid under AS 09.38.015(a)(2), or personal property subject to a value limitation under AS 09.38.020(a)(1), or (2) or 09.38.020(c), has been taken or sold by condemnation, or has been lost, damaged, or destroyed and the owner has been indemnified for it, the individual is entitled to an exemption of proceeds that are traceable for 12 months after the proceeds are received. An individual is entitled to an exemption of proceeds from the voluntary sale of an exempt homestead under AS 09.38.010 that are traceable for six months after the proceeds are received. The exemption of proceeds under this subsection does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under AS 09.38.010 or 09.38.020.

(b) Money or other property and proceeds exempt under this chapter are traceable under this section by application of the principle of first-in first-out, last-in first-out, or any other reasonable basis for

tracing selected by the individual claiming the exemption. (§ 2 ch SLA 1982)

Sec. 09.38.065. Claims enforceable against exempt proper (a) Notwithstanding other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any k to enforce a claim for

(A) child support;

(B) unpaid earnings of up to one month's compensation or full-time equivalent of one month's compensation for personal serv of an employee; or

(C) state or local taxes; and

(2) a creditor may make a levy against exempt property to enfo a claim for

(A) the purchase price of the property or a loan made for the expr purpose of enabling an individual to purchase the property and used that purpose;

(B) labor or materials furnished to make, repair, improve, preser store, or transport the property; and

(C) a special assessment imposed to defray costs of a public impro ment benefiting the property.

(b) Except as provided in AS 09.38.070 limiting the enforcemen certain security interests, this chapter does not affect any statut lien or security interest in exempt property.

(c) A creditor having a claim enforceable under (a) of this sect against exempt property, before, at the time of, or a reasonable t after making a levy on property of an individual, shall serve on individual a notice of the levy and of the basis for the creditor's ri to make a levy on exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.070. Limitation on enforcement of certain secu interests in exempt goods. (a) This section applies to a security in est, except a purchase-money security interest, or a security intere a motor vehicle, in an item of goods (1) possessed by an individual being used by that individual or a dependent, and (3) exempt under 09.38.020(a) — (d).

(b) Unless the individual, after receiving written notice of the vidual's rights under this section, voluntarily surrenders to the sec creditor possession of an item of goods to which this section applies, creditor may not take possession of the item or otherwise enforce security interest according to its terms without an order or proce court.

(c) The court may order or authorize process respecting any ite goods to which this section applies only after a hearing, upon notic the individual of the hearing and of the individual's rights at it. notice shall be as directed by the court. The order or authorization prescribe appropriate conditions as to payments upon the debt sec

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or otherwise. The court may not order or authorize process respecting the item if it finds upon the hearing both that the individual lacks the means to pay all or part of the debt secured and that continued possession or use of the item is necessary to avoid undue hardship for the individual or a dependent.

(d) The court, upon application of the creditor or the individual and notice to the other and after a hearing and finding of changed circumstances, may vacate or modify an order or authorization under this section. (§ 2 ch 62 SLA 1982)

Sec. 09.38.075. Special procedures relating to limited value exemptions. (a) Unless a creditor is seeking collection of a claim enforceable against exempt property under AS 09.38.065, the creditor may obtain a levy on an individual's property of a kind listed in AS 09.38.020 only by complying with this section. Before levy, the creditor shall file with the court out of which the process issues

(1) an affidavit stating that the creditor has reason to believe the individual has property of a kind listed in AS 09.38.020 that is not exempt, identifying the property, setting out facts constituting the basis for believing the property is not exempt; and

(2) a request for an order by the court notifying the individual

(A) of the creditor's claim of a right to levy on the property identified as nonexempt,

(B) of the individual's right to contest the creditor's claim of a right to levy by filing with the clerk of the court, on or before a date fixed by the court, but not exceeding 15 days after the issuance of the order, a written objection to the proposed levy and a statement of the grounds for the objection and of the right to describe the property in lieu of setting its value,

(C) of the possible consequences of failure to respond to the notice as provided in (c) of this section, and

(D) of the information required by AS 09.38.085(a).

(b) Notice of an order issued in accordance with a request under (a) of this section, together with the creditor's affidavit, shall be served on the individual. The order shall restrain the individual from removing, encumbering, damaging, or disposing of any property of the kind listed in AS 09.38.020 for 30 days after receipt of the order, unless the court reduces, extends, or otherwise modifies the restraining order during the 30-day period.

(c) If exemption of property identified in a notice served on an individual under (b) of this section depends on its value, the individual may describe the property in the responsive statement and indicate the amount of any indebtedness chargeable against it. If the individual, within the time allowed by the order of the court, fails to respond to a notice served under (b) of this section that the creditor believes the debtor has nonexempt property of a kind listed under AS 09.38.020, the court may order the individual to appear and disclose the description,

location, and value of the individual's property. If the individual fa to appear and disclose the information specified in the order, the in vidual waives objection to the creditor's levy on property of that ki

(d) Except to the extent the procedure is prescribed by this secti AS 09.38.080(e) governs a proceeding for the determination of a cont in respect to a claim to exemption of property under AS 09.38.020

(e) Costs incurred in making, or proposing to make, a levy on pr erty of a kind listed in AS 09.38.020 shall be paid out of the proce of a sale of property of that kind. If the proceeds of a sale of the prope are insufficient to cover the costs incurred in proceedings commen under this section, the creditor shall pay the costs and may not reco them from the individual, notwithstanding any agreement of parties to the contrary.

(f) The burden of proving the validity of an exemption by preponderance of the evidence, is upon the individual claiming exemption. (§ 2 ch 62 SLA 1982)

Sec. 09.38.080. Procedures applicable to a levy on property an individual. (a) Except in a proceeding under AS 09.38.065, a cr itor shall comply with this section in obtaining a levy on property of individual. In a proceeding to levy on personal property of a kind list in AS 09.38.020, a creditor shall comply with this section and 09.38.075.

(b) Before, at the time of, or within three days after levy again property of an individual, the creditor shall file with the court fr which the process issued an affidavit stating that the creditor h reason to believe the individual has property that is not exempt, id tifying the property, and stating facts constituting the basis for th belief.

(c) Before, at the time of, or within three days after levy, the credi shall serve on the individual a notice under AS 09.38.085, includin copy of the affidavit filed under (b) of this section.

(d) A bid for property that is less than the amount of the exem value is not acceptable at a sale of property under a levy. If indebt ness secured by a valid lien is chargeable against the proceeds of t sale, the bid must exceed the amount of the indebtedness secured pl the amount of the exempt value. If a sufficient bid is not received, t officer shall file a notation of the fact with the clerk of the court a return the property to the individual. The costs incurred during le offering the property for sale, and returning the property shall assessed against the creditor and are not recoverable from the indivi ual, notwithstanding any agreement of the parties to the contrary.

(e) If any question arises as to the rights of an individual entitled an exemption under this chapter, an interested person may file wi the clerk of the court from which the process issued a statement of t claim of exemptions and the question raised. The statement shall referred to the court as soon as practicable thereafter. The court sha

order that notice of a hearing be given. After hearing the matter, the court shall make findings and issue an appropriate order. The court may award to the prevailing party costs of a proceeding under this subsection.

(f) An objection to levy on the ground that the property seized is exempt must be filed with the clerk of the court within 15 days after the levy. The burden of proving the validity of an exemption by a preponderance of the evidence is upon the individual claiming the exemption. Failure to file a timely objection may be held to be a waiver of a claim to exemption in the property, unless for cause shown the court excuses the failure. (§ 2 ch 62 SLA 1982)

Sec. 09.38.085. Contents of notice. (a) The notice required by AS 09.38.075(b) and 09.38.080(c) shall include the following information:

(1) the amount and date of the judgment to be enforced by levy and sale or other mode of appropriating the individual's property;

(2) the name and address of the clerk of the court with whom objections must be filed;

(3) the name and address of the creditor and of the creditor's attorney, if any;

(4) a copy of the affidavit filed under AS 09.38.080(b);

(5) a summary statement in lay terminology of the exemptions provided by the laws of this state;

(6) a summary statement in lay terminology of the procedures for claiming exemptions, objecting to a levy on exempt property, changing venue, and exercising the right to repurchase homestead property from a sale before its confirmation; and

(7) a statement in lay terminology of the rights of persons other than the individual as provided in AS 09.38.090.

(b) The supreme court may prescribe forms to be used by creditors, debtors and court officers under this chapter.

(c) A notice substantially complying with this section is effective even though the notice contains errors if those errors do not result in substantial prejudice to the rights of the individual debtor or of the dependents of the individual debtor. (§ 2 ch 62 SLA 1982)

Revisor's notes. — Subsection (c) was enacted as the second sentence of (b), but was redesignated in 1982.

Sec. 09.38.090. Assertion of rights by another. If an individual fails to select property entitled to be claimed as exempt or to object to a levy on the property or to assert any other right under this chapter, the spouse or a dependent of the individual or any other person authorized by law may make the claim or objection or assert the rights provided by this chapter. (§ 2 ch 62 SLA 1982)

Sec. 09.38.095. Judicial relief. (a) An individual or the spouse, dependent of the individual, or any other person authorized by law is entitled to injunctive relief, damages, or both, against a creditor or other person to prevent or redress a violation of this chapter as provided in the Alaska Rules of Civil Procedure. A court may award costs and reasonable attorney fees to a party entitled to injunctive relief or damages.

(b) For cause shown the court may relieve a person from the consequences of failing to take timely action to assert rights under this chapter. (§ 2 ch 62 SLA 1982)

Sec. 09.38.100. Debtor's property owned with another. (a) If an individual and another own property in this state as tenants in common or tenants by the entirety, a creditor of the individual, subject to the individual's right to claim an exemption under this chapter, may obtain a levy on and sale of the interest of the individual in the property. A creditor who has obtained a levy, or a purchaser who has purchased the individual's interest at the sale, may have the property partitioned or the individual's interest severed.

(b) A partner's right in specific partnership property is exempt except on a claim against the partnership. If partnership property is attached for a partnership debt, the partners or any of them or the representatives of a deceased partner may not claim an exemption in that property under this chapter. (§ 2 ch 62 SLA 1982)

Cross references. — For provisions making homestead held by tenants for the entirety liable for the debts of either tenant after petition of tenancy, see 34.15.140(b).

Sec. 09.38.105. Waiver of exemption. A waiver of exemption executed in favor of an unsecured creditor before levy on an individual's property is unenforceable, but a valid security interest may be given in exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.110. Federal requirements. If a federal department or agency issues a formal ruling that a section of this chapter relating to public assistance will cause a state plan for the delivery of services or benefits to be out of conformity with federal requirements, the section will not apply to the extent that it causes the program to be out of conformity with federal requirements. (§ 2 ch 62 SLA 1982)

Sec. 09.38.115. Adjustment of dollar amounts. (a) The dollar amounts in this chapter change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for All Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of the year in which this section becomes effective is the reference base index.

(b) The dollar amounts change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for December of the preceding year and the reference base index, is 10 percent or more, but

(1) the portion of the percentage change in the index in excess of a multiple of 10 percent is disregarded and the dollar amounts change only in multiples of 10 percent of the amounts appearing in this chapter on the effective date of this chapter; and

(2) the dollar amounts do not change if the amounts required by this section are those currently in effect as a result of earlier application of this section.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The Department of Labor shall adopt a regulation announcing

(1) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by (b) of this section; and

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(e) The Department of Labor shall also provide notification of a change in exemption amounts required under (c) of this section to the clerks of court in each judicial district of the state. (§ 2 ch 62 SLA 1982)

Sec. 09.38.120. Protection of property of residents and nonresidents. (a) Residents of this state are entitled to the exemptions provided under this chapter. Nonresidents are entitled to the exemptions provided by the law of the jurisdiction of their residence.

(b) The term "resident" means an individual who is physically present in the state and who intends to maintain a permanent home in Alaska. (§ 2 ch 62 SLA 1982)

Sec. 09.38.500. Definitions. In this chapter, unless the context otherwise requires,

(1) "burial plot" means a parcel of real estate used for burial of human remains and which is located within an area designated for cemetery purposes by the state or a general law or home rule municipality;

(2) "debt" means a legally enforceable monetary obligation or li ity of an individual, whether arising out of contract, tort, or other

(3) "dependent" means an individual who derives support prim from another individual;

(4) "earnings" means money received by an individual for per- services and denominated as wages, salary, commissions, or other

(5) "exempt" means protected, and "exemption" means protec from subjection to process or a proceeding to collect an unsecured

(6) "household goods" includes those items that make a resi habitable according to mode[illegible] standards;

(7) "judicial lien" means a [illegible]n on property obtained by judgi levy, sequestration, or other legal or equitable process or proce instituted for the purpose of collecting an unsecured debt;

(8) "levy" means the seizure of property under a writ of attach garnishment, execution, or any similar legal or equitable pr issued for the purpose of collecting an unsecured debt;

(9) "lien" means a security interest, or a judicial, statutor common-law lien, or any other interest in property securing pay of a debt or performance of an obligation;

(10) "principal residence" means the actual dwelling place individual or dependents of the individual and includes real personal property;

(11) "security interest" means an interest in property creat contract to secure payment or performance of an obligation;

(12) "serve notice" means to give the person to be served a wr personal notice in the same manner a summons in a civil acti served, or to mail the notice to the person's last known addre first-class mail and by using a form of mail requiring a signed re

(13) "statutory lien" means a lien arising by force of a statute specified circumstances or conditions, but does not include a sec interest;

(14) "value" means fair market value of an individual's inter property, exclusive of liens of record;

(15) "wearing apparel" means clothing and garments intende adapted to be worn on the person to protect the person again- elements or to provide personal comfort or decency, or serv ornament the person but does not include jewelry. (§ 2 ch 62 SLA

Revisor's notes. — Enacted as AS 09.38.125. Renumbered in 1982.

Sec. 09.38.510. Short title. This chapter may be cited as the A Exemptions Act. (§ 2 ch 62 SLA 1982)

Revisor's notes. — Enacted as AS 09.38.130. Renumbered in 1982.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3.00
(907) 465-3991

March 19, 1987

MEMORANDUM

TO: Representative C. E. Swackhammer

ATTN: Tom Wright

FROM: Penelope Weyhrauch
Legislative Analyst

RE: **Outstanding Court Fines: Attaching Permanent Fund Dividends**
Research Request 87.187 (Supplemental Information)

I have received additional informa on on the collection of outstanding court fines by the courts in Juneau and Anchorage, which might be of interest to you. Dave Haas, Clerk of the Court in Juneau, said that about $5,000 was collected in 1986 by the assignment of PFDs for the payment of outstanding fines. Goldeen Goodfellow, Clerk of the Court in Anchorage, said that the Anchorage court does not have the manpower to pursue the collection of outstanding fines. The court can issue warrants for the arrest of individuals with outstanding fines, although this practice has not been followed in the last year or two.

ALASKA STATE LEGISLATURE
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RESEARCH AGENCY

P.O. Box Y, State Capitol
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March 23, 1987

MEMORANDUM

TO: Representative C. E. Swackhammer

ATTN: Tom Wright

FROM: Penelope Weyhrauch
Legislative Analyst

RE: **Outstanding Court Fines: The Collection Process in Other States**
Research Request 87.204

You asked for information on the collection of outstanding fines owed to court systems in other states. In researching your request, I contacted the National Center for State Courts and the states of Arizona, California, Colorado, Idaho, Oregon, Utah, Washington and Wyoming.[1]

The collection of outstanding court fines is considered a judicial function in Arizona, Oregon, Washington and Wyoming. In Colorado, the attorney general's office has a collection unit which handles the collection of some outstanding court fines. In California, Idaho and Utah, each county or jurisdiction is responsible for the collection of outstanding fines; collection practices vary from jurisdiction to jurisdiction.

In **Arizona**, failing to pay a fine levied by the court can result in imprisonment. Allen Hellman, Director of the Court Services Division, said that a recently enacted statute authorizes courts to use the contempt power to imprison those who refuse to pay outstanding fines. Mr. Hellman said that the constitutionality of this statute has not yet been tested. Courts in Arizona have also recently been provided with garnishment authority as a collection measure, although Mr. Hellman said that the garnishment process is very complex, with many due process safeguards built in to protect debtors. Several counties in Arizona tried using private agencies to collect fines but found that the amount of fines collected did not warrant their use.

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[1]The National Center for State Courts may be sending me some information on the collection of outstanding court fines. I will share this information with you if, and when, it is received.

In **Colorado**, $7 million is owed to the court system in attorney fees and outstanding fines. Collection efforts are made both through the courts and through the executive branch. The collection of attorney fees levied against a defendant on probation is the responsibility of the probation department. If a defendant receives a fine, he/she is immediately required to visit a "collection clerk." The clerk demands that the defendant fill out a lengthy questionnaire regarding his/her assets and agree to a payment plan. James Thomas, Court Administrator in Colorado, said that many defendants pay fines on the spot to avoid filling out questionnaires. Defendants are allowed to use Mastercard and Visa to pay fines.

The attorney general's office has a collection unit which charges the court system 25 percent of each fine collected. Mr. Thomas said that this agency is no more successful than a collection agency. He said that the use of collection clerks is more expensive but also more successful than the attorney general's office.

In **Oregon**, $8 to $10 million is currently owed to the court system in outstanding fines. John Radford, with the court system, said that the court system is not doing very well in its collection efforts because there is no comprehensive collection policy for the courts to follow. He said that nothing happens to the vast majority of people who do not pay their court fines. Because of overcrowding in Oregon's jails and prisons, people know that they will not go to jail and this encourages them to avoid paying their fines.

Mr. Radford said that the court system turns some outstanding fines over to the Department of Revenue to garnish tax returns. He also said that the courts are trying to pursue collection more aggressively and are considering hiring collection agencies. He said that collection agencies use methods to collect that the court system would not conceive of using; primarily because of the strict due process requirements which also make collection a lengthy and complex process.

In **Washington**, $10 million is currently owed to the court system in outstanding fines. Susan Curtright, Court Specialist, said that the collection of fines is currently a hot issue in the Washington legislature. She said that courts want to share the responsibility for collection with the police and other agencies, but that the legislature believes it is a judicial responsibility. Ms. Curtright said that some courts are more aggressive than others in pursuing collection. Some courts have initiated the

use of collection agencies, while others have installed telephone systems which automatically, and repeatedly, contact debtors to remind them of their obligations. Some courts also allow debtors to pay their fines by using credit cards. These methods have all added to the success of the court system's collection efforts.

In W ming, the accrual and collection of outstanding fines does not appear to be a problem. Robert Duncan, Court Administrator, estimated that less than one million dollars is owed to the state in outstanding fines. He said that the greatest problem in Wyoming in regard to the collection of outstanding fines is collecting them from nonresidents. Mr. Duncan estimated that 60 percent of Wyoming's outstanding court fines are owed by nonresidents. Courts in Wyoming have the authority to issue a warrant for the arrest of someone who does not respond to a letter sent by the court in regard to the outstanding fine. This brings the debtor before the court to make arrangements for paying the fine.

I hope this information is useful to you. If you have any questions or would like additional information, please contact our agency.

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HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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April 6, 1987

MEMORANDUM

TO: Representative C.E. Swackhammer

ATTN: Tom Wright

FROM: Penelope Weyhrauch
Legislative Analyst

RE: **Outstanding Court Fines: The Collection Process in Other States**
Research Request 87.204 (Supplemental Information)

I have attached information which I just received from the National Center for State Courts on the collection of outstanding court fines. I hope this information is useful to you.

National Center for State Courts

300 Newport Avenue
Williamsburg, Virginia 23187-8798
(804) 253-2000

Edward B. McConnell
President

April 1, 1987

Ms. Penelope Rock
House Research Agency
P. O. Box Y
Juneau, Alaska 99811-3100

Ref. No. RIX 87.344

Dear Ms. Rock:

This is in response to your inquiry as to whether the responsibility for the collection of court fines and fees rests with the judiciary or the executive branch. A previously prepared staff memorandum (RIS 82.059), enclosed with selected attachments generally addresses the topic of court fine and fee collection.

Robert Tobin notes in his study Financial Management (National Institute of Law Enforcement and Criminal Justice, July 1979, pp. 2-4 enclosed) that trial courts are generally responsible for the collection of court-generated revenue. The judiciary's responsibility for this function is discussed further in Major Issues of Trial Court Financing in New Jersey: Final Report (NCSC, May 13, 1981, pp. 63-69 enclosed). The report identifies various divisions of the judiciary in New Jersey (including probation, office of the court clerk or sheriff, and the administrative office of the courts) that are responsible for revenue collection (see p. 65). The excerpt notes that the Morris County Probation Department uses a "lock box" system for the collection of court revenues, whereby payments are mailed to a post office box and processed by a bank (see p. 67). (This method is also used by Hudson County, New Jersey, and numerous municipal courts in California.)

The following enclosed articles note recent initiatives in court revenue collection at the federal level, and in various states (including Virginia, Alabama, Ohio, and Utah):

1. "Collection of Criminal Fines Lagging, But New Law May Help" (Criminal Justice Newsletter, 12/2/85, pp. 6-7).

2. Collecting Fines and Costs--A System that Works for Loudoun County" (Court Commentaries (Virginia), April 1986, pp. 3-4).

3. Two articles from Alabama Court News: "Criminals Pay Up in Dale County" (April 1986, pp. 1-2); and "Automated Payment System Being Tested in the Field" (November 1985, pp. 1-2).

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Western Region
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Alexander B. Aikman, Director

4. "Cincinnati May Hire Agency to Collect Old Fines" (Judicial Notice, August/September 1984, p. 3).
Notes that the New York-based Datacom Systems Corporation collects parking fines for Detroit and New York City. The Research and Information Service recently learned that Cincinnati abandoned the idea of hiring a private collection agency, and instead improved its automated information management system to monitor delinquent traffic fines. This move was reported to have resulted in a considerable decrease in the number of outstanding fines.

5. From the State Capitals (June 25, 1984, p. 5).
Reports the use of computers in Utah to identify individuals with outstanding court warrants who file for tax refunds.

For your information, the National Center recently developed a court technology database index. Records describing various functions performed (including fine and fee accounting) were created for systems in general jurisdiction courts serving a population of over 100,000, several hundred other trial courts, all appellate courts, and all automated administrative offices of the courts. The index is available for purchase at a cost of $50.00, and may be ordered by contacting Ms. Regina Page.

I hope this will be helpful to you. In exchange for our services we ask that you complete and return the enclosed evaluation form.

Please contact us if we can be of further assistance.

Sincerely,

Marcia J. Lim

Marcia J. Lim
Staff Associate

MJL/bl
encls.
cc: Mr. Alex Aikman, Western Regional Office
Mr. Arthur Snowden II, State Court Administrator (Alaska)

National Center for State Courts

300 Newport Avenue
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Edward B McConnell
Executive Director

April 27, 1982

MEMORANDUM

REF. NO. RIS 82.059

BY: W. Lawrence Fitch WLF

RE: Court-operated collection systems to enforce restitution and collect fines and fees (including defender fees).

The Research and Information Service was asked to provide information about court-operated collection systems to enforce restitution and collect fines and fees (including defender fees). A review of materials in the National Center for State Courts' library revealed nothing concerning overall collection procedures of this type. Information is provided below, however, about program-specific procedures in several states for enforcing restitution and collecting fines and fees.

Enclosed is a copy of a previously-prepared memorandum (RIS 81.058), with attachments, that discusses collection procedures for fines and monetary restitution. Also enclosed are excerpts from articles contained in Victims, Offenders, and Alternative Sanctions, by Joe Hudson and Burt Galaway (Lexington Books, 1980). The first excerpt, from "Legal Issues in Restitution Programs" by Howard Feinman, (pages 147 and 149), suggests that there should be no constitutional (i.e., Tate v. Short) problems with incarcerating an offender for failure to pay restitution if there is a showing that the offender has the ability to pay and that the failure to pay is willful. The second excerpt, from "Restitution Statutes and Cases," by Alan T. Harland (pages 159-161 and 168-169), outlines various restitution enforcement approaches taken in different states and discusses the legal problems associated with these approaches.

Guidelines for the collection of fines and costs in Kentucky are presented in the enclosed excerpt from Accent on Courts, published by the Kentucky Administrative Office of the Courts (Jan./Feb. 1981). Various fining systems and remedies for default are discussed in "Criminal Procedures--the Use of the Fine as a Criminal Sanction in New Jersey: Some Suggested Improvements," 28 Rutgers Law Review 1185 (1975), also enclosed.

Regarding the recoupment from certain defendants of fees for legal services provided by the state, enclosed is an excerpt from Defense Services in New Hampshire (pp. 120-130), published by the National Center for State Courts in 1976. This excerpt contains an analysis of recoupment procedures in New Hampshire and presents recommendations for improvement.

Finally, it is reported that effective procedures for the recoupment of defender costs have been established in the Alameda County, California courts. For more information about these procedures, contact:

Ms. Winifred L. Hepperle
Office of Court Services
600 Washington
Oakland, CA 94607.

WLF/bl

encls.

JUDICIAL COUNCIL RECOMMENDS GUIDELINES FOR COLLECTION OF FINES AND COSTS

The Judicial Council, at its December 5 meeting, reviewed the status of accounts receivable of the Court of Justice. It was observed that in excess of $1.7 million in accounts receivable were payable to the state in fines and costs issued for criminal misdemeanor and/or traffic cases. The Council recommended the following guidelines as of October 30, 1980, to district judges for the collection of such fines and costs:

(1) Prior to the calling of the docket for criminal misdemeanor and traffic cases, the presiding judge should advise all the defendants that if they plead guilty to or are found guilty of the offense and wish to have the payment of fine and costs deferred or paid in installments due to inability to pay, they will be required to remain in the courtroom until all the cases on the docket are called.

(2) At the conclusion of all the cases, the judge should then recall those defendants who indicated that they wished to have payment deferred. If the judge determines that there are valid reasons for deferring payment, he should continue that particular case until a date certain, allowing the defendant to pay the fine and costs in the interim, either in lump sum or in installments. (The period of time to continue the case may vary from 30 days to several months depending upon whether the defendant can pay in lump sum or in installments.)

(3) At the same time, the judge should issue an order to the defendant to either have completed payment of the fine and costs or appear back in court on that date certain. The judge should then advise the defendants that their failure to pay the fine and costs or their failure to appear in court on that day will result in a warrant being issued for them, and might further result in the loss of their driving privilege.

(4) If the defendant does not pay the fine and costs and if he does not show up on the date on which he was ordered to appear, the judge should issue a bench warrant for the arrest of the defendant to show cause why the defendant should not be jailed for failure to make payment (as provided in KRS 534.060).

(5) At the same time, if the defendant is convicted of a traffic violation, the clerk will automatically issue a "failure to appear" notice to the Department of Transportation for the purpose of suspension of the person's driver's license.

Where these steps have been implemented, the courts have found a substantial decrease in the amounts of accounts receivable, especially if there has been a cooperative effort between all three elements in the collection process: the judge who follows specific procedures or local rules to collect such fines and costs; the clerk who maintains an accurate record of the status of the case and notifies the defendant as to payments to be rendered; and the sheriff who serves the bench warrant and brings the defendant into court for failure to appear. Additionally, the county or commonwealth's attorney are vital to the collection process as they must thoroughly pursue possible civil litigation in non-payment situations.

It is suggested by AOC legal counsel that a forfeited appearance on bail bond for a defendant should not be applied to the fines and costs accounts, but should be forfeited and placed in the bond accounting system. For out-of-state offenders, a performance bond, if applicable, can be issued, a date for a hearing set, along with an explanation of what will occur if the offender fails to appear. The performance bond is designed to allow a defendant to plead guilty to a charge, post an amount to cover the fine and costs, and then allows him to leave with the choice of appearing or not on the trial date. It is not designed to guarantee appearance at trial, that being the purpose of the bail bond. If the defendant fails to appear, the judge may dismiss the charges, or try the defendant in absentia after notice of hearing, convict the defendant, apply the posted performance bond to fines and costs, notify the Department of Transportation which will then notify the home state of the violation.

Questions concerning these suggestions may be referred to Bill Thurman, AOC legal counsel, 403 Wapping Street, Frankfort, Kentucky 40601 - (502) 564-7486.

4-1975

NUMBER 5

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NOTES

Criminal Procedure—The Use of the Fine as a Criminal Sanction in New Jersey: Some Suggested Improvements

I. INTRODUCTION

The fine is by far the most common of all criminal sanctions, comprising at least 75 percent of all sentences.[1] The popularity of fines stems from the notion that they accomplish the dual purposes of punishing the offender and financing the criminal system.[2] Courts, however, have encountered a variety of difficulties in the use of fines as the primary sanction. Fines, for example, often are uncollected,[3] and, moreover, no sanctions are likely to follow for uncollected fines.[4] This results from the general inefficiency which pervades the entire area of fine imposition and fine collection.[5] This article will consider present methods of setting fines and offer suggestions for their improvement.

II. BACKGROUND

A. *Alternatives to Payment of Fines*

Appellate courts generally do not consider fines until after the defendant, through unwillingness or inability, has failed to pay. The appropriateness of the original fine, therefore, is rarely reviewed.[6] In-

1. Rosenzweig, *Fines*, in THE LAW OF CRIMINAL CORRECTION 240 (S. Rubin ed. 1963) [hereinafter cited as Rosenzweig].

2. *See* Note, *Imprisonment for Nonpayment of Fines and Costs: A New Look at the Law and the Constitution*, 22 VAND. L. REV. 611, 614 (1969) [hereinafter cited as *Imprisonment for Nonpayment*]; *cf.* Hendrix v. Lark, 482 S.W.2d 427, 431 n.6 (Mo. Sup. Ct. 1972).

3. *Cf.* note 30 and surrounding text *infra*.

4. *See* text accompanying note 74 *infra*.

5. *Cf.* notes 29-32 and accompanying text *infra*.

Fine collection is not merely a modern problem. *Cf. In re* Collins, 108 Ariz. 310, 497 P.2d 523 (1972). The *Collins* court traced the history of sanctions for nonpayment of fines, noting that "[u]nder the Law of Moses, an individual unable to pay a fine could be stoned to death, Exodus 21:29-31. In ancient Rome, such an individual could be sold into slavery. In England in the Middle Ages, he could remain in prison for life." *Id.* at 311, 497 P.2d at 524. In 1910, the United States Bureau of the Census reported that 58% of all prison inmates in the United States had been committed because of failure to pay fines. *Id.*

6. *See, e.g., In re* Antazo, 3 Cal. 3d 100, 473 P.2d 999, 89 Cal. Rptr. 255 (1970) (imprisonment of indigent solely because of inability to pay fine was invidious discrimination based upon poverty); Phillips v. Allen, 255 So. 2d 528 (Fla. 1971) (where municipal court that had imposed alternative sentence modified it on remand by vacat-

stead, judicial attention has focused on the sanctions which may be imposed upon defaulting defendants. Imprisonment, the most common sanction,[7] has been justified on the theory that a fine is intended to punish. Imprisonment upon nonpayment, therefore, is substituted punishment,[8] even though it results in the very jail term that was to be avoided by the imposition of the fine.[9]

In *Williams v. Illinois*,[10] the Supreme Court held that imprisonment of an indigent for inability to pay a fine may violate the equal protection clause of the fourteenth amendment, since there can be no equal justice when the poor are given a more severe sanction solely on the basis of their financial status.[11] The Court refused to allow imprisonment of an

ing fine and imposing reduced prison term, issue of invidious discrimination against indigent defendant was mooted); State v. DeBonis, 58 N.J. 182, 276 A.2d 137 (1971) (imprisonment for inability to pay a fine in full at once, without providing for installment payments, was improper).

7. *See, e.g.*, CAL. PENAL CODE § 1205 (West 1970), *as amended*, (Supp. 1975); ILL. ANN. STAT. ch. 38, § 1005-9-3 (Smith-Hurd 1973); N.J. STAT. ANN. § 2A:166-15 (1971); 11A N.Y. CODE CRIM. PRO. § 430.20(5) (McKinney 1971).

8. *See* State v. DeBonis, 58 N.J. 182, 276 A.2d 137 (1971). *DeBonis*, the leading New Jersey case on fines, is the authority for current state practices in this area. Defendant pleaded guilty to six municipal motor vehicle charges. Fines totaling $705, plus $25 in costs, were imposed. *Id.* at 186, 276 A.2d at 139. Under the terms of the sentence, if defendant did not pay, he would be imprisoned for 146 days, thus satisfying his fine at the rate of five dollars a day. *Id.* at 186, 276 A.2d at 140. The trial court refused defendant's application to pay in installments and ordered him committed to serve out the sentence. On de novo determination of the sentence on appeal, the county court imposed three concurrent jail sentences of 90 days and fines totaling $250, plus $15 costs. On appeal to the appellate division, defendant raised two issues: whether the county court could impose a heavier sentence than that from which he had appealed, and whether the Constitution required that he be permitted to pay fines and costs in installments because of his alleged inability to pay them in one lump sum. *Id.* at 185, 276 A.2d at 139. The New Jersey Supreme Court, certifying the matter before argument in the appellate division, held that the defendant must be afforded an opportunity to pay the fine in "reasonable installments consistent with the objective of achieving the punishment the fine is intended to inflict." *Id.* at 199, 276 A.2d at 147. The court stated, however, that imprisonment was not an impermissible sanction for a defendant who defaulted in his payments. *Id.* at 197-98, 276 A.2d at 145-46.

New Jersey statutes authorize substituted punishments such as that imposed on DeBonis. N.J. STAT. ANN. § 2A:169-5 (1971) (provides that "[a]ny person adjudged a disorderly person who defaults in the payment of a fine duly imposed on him may be committed by the court to the county workhouse, penitentiary or jail until the fine has been paid."); N.J. STAT. ANN. § 2A:166-15 (1970) ("If default shall be made in paying the fine, or fine and costs, or costs without fine, within the time so definitely fixed by the court, or within a time to which the court may from time to time extend it, the court may then order the defendant into custody to serve the sentence imposed, as if he had been originally committed at the time of the imposition thereof.").

9. *See* ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SENTENCING ALTERNATIVES AND PROCEDURES § 2.7(b), Comment (1968) [hereinafter cited as ABA SENTENCING ALTERNATIVES].

10. 399 U.S. 235 (1970).

11. "[O]nce the State has defined the outer limits of incarceration necessary to satisfy its penological interests and policies, it may not then subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency." *Id.* at 241-42.

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13. 401 U.S. 395 (1971).

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15. 58 N.J. 182, 276 A.2d 137
16. 58 N.J. at 191-92, 276 A.2d
17. *Id.* at 195, 276 A.2d at 144
18. *Id.* at 197-98, 276 A.2d at

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However, *State v. DeBonis* held

offender for failing to pay a fine, since the total time served would be greater than the maximum sentence which could have been imposed for the original offense.[12] In *Tate v. Short*,[13] the Court expanded *Williams* to hold that a noncontumacious defaulting defendant could not be imprisoned at all if the statute provided that the offense was punishable only by a fine.[14]

State v. DeBonis,[15] the leading decision on nonpayment of fines in New Jersey, attempted to avoid the *Williams* analysis by reading the New Jersey motor vehicle statutes together with the statute authorizing a jail term for nonpayment of fines. The court concluded that "the maximum jail term is not the one stated in a statute relating to a specific offense but rather consists of that authorized jail term *plus* the period of time after which, by the companion statute, an offender may be held in jail if the fine is not paid."[16] Reading *Williams* as turning upon the denial of a "fair opportunity to pay the fine,"[17] the court stated that a jail term would be constitutionally permissible as substituted punishment for a defendant who defaulted after being given an opportunity to pay his fine in installments.[18] The *DeBonis* decision, however, failed to take

12. *Id.* at 243. The defendant had been sentenced to a one-year imprisonment and a $500 fine. As authorized by statute, the judgment also provided that if the defendant had defaulted in payment of the fine at the expiration of the one-year sentence, he should remain in jail to satisfy the fine at the rate of five dollars a day. The maximum time of imprisonment for the original offense was exceeded because of the extension for nonpayment of the fine. *Id.* at 236-37.

13. 401 U.S. 395 (1971).

14. *Id.* The Court found that the defendant must be given time to satisfy his fine, but did not bar imprisonment of a contumacious defendant.

Williams and *Tate* have been discussed and interpreted in many state and lower federal court cases. *See, e.g.*, Phillips v. Allen, 255 So. 2d 528 (Fla. 1971). The trial court resentenced an indigent petitioner, who had been given an alternative sentence of a fine or a prison term, by vacating all fines and reducing his p on term, after he charged that his original sentence forced him to choose jail solely by reason of his indigency. The Florida Supreme Court found that the resentencing satisfied the demands of equal protection. The Acting Chief Justice dissented, however, declaring that to imprison an indigent defendant after it was established that he was unable to pay the fine was "too neat a precedent which simply by indirection authorizes trial judges to impose alternative imprisonments after it develops indigents can't pay their fines." *Id.* at 529. In *Frazier v. Jordan*, 457 F.2d 726 (5th Cir. 1972), defendants received alternative sentences of $17 fine or 13 days in jail for each of two municipal violations. Defendants were unable to pay their fines because of indigency and thus were forced to serve the prison terms. The court found that the alternative sentences created two disparately treated classes defined by wealth and that there was no compelling state interest to justify the classification, since the state's interest in collecting its fine revenues could have been achieved by less onerous methods.

15. 58 N.J. 182, 276 A.2d 137 (1971). *See* note 8 *supra*.

16. 58 N.J. at 191-92, 276 A.2d at 142.

17. *Id.* at 195, 276 A.2d at 144.

18. *Id.* at 197-98, 276 A.2d at 146-47.

In New Jersey, when a defendant is imprisoned for failure to pay a fine, a credit of $5.00 for each day of imprisonment is allowed against the fine. N.J. STAT. ANN. §§ 2A:166-16, 169-5 (1971).

However, *State v. DeBonis* held that if a jail sentence is substituted for payment of

into consideration that the indigent offender still, under that theory, will receive a harsher sanction solely because of his poverty.

Imprisonment for failure to pay a fine has also been criticized on other than constitutional grounds: that such a short term commitment has little rehabilitative effect; that it brings the offender into association with convicted felons, possibly promoting future crime; and that it prevents an offender from earning money, the lack of which caused him or her to be detained in the first place.[19] A further criticism of imprisonment is that dependents of the defendant also suffer. Moreover, as was noted earlier, imprisonment occurs despite an initial determination that such imprisonment was not the proper sanction.[20]

Under the New Jersey statutes, there are four other sanctions which may be imposed if an offender fails to pay a fine: (1) A writ of *fieri facias*[21]—which commands a sheriff to levy and take the amount of judgment from the goods, land, or chattels of a judgment debtor—may be issued. Imprisonment remains a possibility if the judgment is not satisfied,[22] as is likely to be the case when a defendant is indigent.[23] (2) If it is found that the failure to pay a fine is contumacious, the defendant may be subjected to further punishment for contempt.[24] (3) The non-

a fine after default, the sentencing judge is not obligated to equate a day in jail with the statutory dollar amount, but must invoke a lesser jail term if it is adequate in the totality of the circumstances of the case. 58 N.J. at 199-200, 276 A.2d at 147. One authority suggests setting the value of a day served in prison so as to reflect the current economic value of forfeiture of a day's work for a particular offender. *See Imprisonment for Nonpayment, supra* note 2, at 626. However, this approach also discriminates against the indigent, whose rate would be lower than someone who could afford to pay a fine.

19. ABA SENTENCING ALTERNATIVES, *supra* note 9, at § 2.7(b).

20. [A]ll of this is brought about, it should be kept in mind, after there has been an initial determination that jail—or at least the time which is due to nonpayment—is unnecessary in terms of the protection of the public, the gravity of the offense, and other factors which normally determine the need for incarceration. *Id.*

21. N.J. STAT. ANN. § 2A:166-11 (1971).

22. *Id.* The defendant may be imprisoned "pursuant to the judgment of the court, until the judgment shall be satisfied."

23. As the *DeBonis* court noted about this sanction, "it is idle to say the State can achieve its punitive end by a levy when the hypothesis is that the defendant has nothing." 58 N.J. at 197, 276 A.2d at 145.

24. N.J. STAT. ANN. § 2A:10-1(c) (1971). *See* State v. Corey, 117 N.J. Super. 296, 284 A.2d 395 (Passaic County Ct., Law Div. 1971), *aff'd sub nom. In re* Contempt of Frankel, 119 N.J. Super. 579, 293 A.2d 196 (App. Div. 1972), *cert. denied sub nom.* Frankel v. New Jersey, 409 U.S. 1125 (1972). If a defendant is adjudged guilty of contempt, he may be confined without time limit or credit until he ends his recalcitrance by paying the fine. 58 N.J. at 198 n.4, 276 A.2d at 145 n.4. *See also* O'Connor v. O'Connor, 48 Wis. 2d 535, 542, 180 N.W.2d 735, 736 (1970).

The *DeBonis* court addressed itself to the issue of whether a default must be contumacious before imprisonment could be imposed and found: "We think it need not. Again, we are not talking about the collection of a debt; the subject is punishment, and the aim is to inflict a therapeutic sting." 58 N.J. at 198, 276 A.2d at 146. But such a finding, according to the *DeBonis* court, would subject the defendant to still further punishment. *Id.* at 198 n.4, 276 A.2d

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B. *The Fine System: A C*

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payment of a fine may be only a part of the defendant's noncompliance. If accompanied by a violation of other conditions, the failure to pay a fine may be treated as a probation violation.[25] (4) An additional penalty for nonpayment of fines may be provided by placing the defendant in a penitentiary to labor until the fine is paid.[26] While the provision itself is obsolete,[27] this principle can become the basis of a viable alternative to imprisonment.[28]

It should be noted that all four of the alternatives currently available in New Jersey involve the possibility of imprisonment. These options do not, therefore, provide adequate remedies. New forms of criminal sanctions must be developed as viable alternatives for defendants who are unable or unwilling to pay fines.

B. *The Fine System: A Case Study*

The need for reform of the fine system in New Jersey becomes evident upon examination of the experience of one county in the northern part of the state.[29]

In 1973, municipal[30] and county courts levied 212 fines,[31] averaging

ishment. *Id.* at 198 n.4, 276 A.2d at 146 n.4. Contempt may be an appropriate sanction for contumacious refusal to pay a fine, but not when it is combined with a sentence of substituted punishment. *See* text accompanying notes 85-87 *infra*.

25. *See* Adamo v. McCorkle, 13 N.J. 561, 100 A.2d 674 (1953) (payment of fine included in conditions of probation did not alter or terminate defendant's obligation to comply with the other conditions). But it has been suggested that a fine should not be imposed as a condition of probation. *See* Rosenzweig, *supra* note 1, at 294-95. The *Model Penal Code* does not include payment of a fine among the conditions of probation. MODEL PENAL CODE § 301.1(2) (Proposed Official Draft 1962).

26. N.J. STAT. ANN. § 2A:166-14 (1971).

27. As *DeBonis* notes, "The statute apparently reflects a practice beyond the memory of any of us. We know of no such jail-work program in our State today, and we would doubt the wisdom of compulsory labor as the medium for inflicting punishment in lieu of a fine." 58 N.J. at 197, 276 A.2d at 145-46. *Contra*, Larsen, *Ensuring the Payment of Judicial Fines*, 2 U.C.L.A.-ALAS. L. REV. 157, 169 (1973) [hereinafter cited as Larsen].

28. *See* text accompanying notes 58-61 *infra*.

29. The offenses for which fines were assessed were those handled at the county court level or were municipal offenses assigned for county collection. Minor municipal offenses, for which fines are generally small (e.g., parking violations) are not included in the following statistics. This article is primarily concerned with the problems of fining at the county level, since, arguably, fines for municipal offenses are so small that indigents should have no difficulty in paying them. Many, for example, involve motor vehicle violations, and anyone operating a car could afford to pay them. For more serious municipal court offenses, however, the analysis and recommendations of this article would apply.

30. Ten fines were assigned by municipal court judges from four communities to be collected through the county. From the first municipality, two fines totaling $250 were assigned, of which $150 was collected. From the second, one $250 fine was assigned, and this fine was paid in full. From the third municipality, one fine of $1,000 was assigned; nothing was collected toward this fine and it was later remitted. From the final municipality, six fines totaling $2,275 were assigned, of which $1,775 was collected.

31. Statistics in this article were compiled from probation and cashier records of the

$430.31, for collection by the county. The fines were levied either alone or in combination with a term of imprisonment and probation. No county costs were assigned.[32] The total amount of fines set in this county in 1973 was $91,225, of which $50,272 (55.1%) had been collected by August 15, 1974. Only 75 of the 212 fines (35.4%) had been paid in full; of those which had been paid, 35 were paid in installments. An average of slightly over five months passed before these fines were satisfied. Six fines totaling $2,625 were remitted. No payments have been credited toward the accounts of 20 defendants who owe fines totaling $11,500. Still paying installments toward the satisfaction of their fines are 109 defendants.[33]

Nine defendants had paid between $1 and $25 toward their fines; 41 defendants had paid between $26 and $100; 54 defendants had paid between $101 and $500; and five defendants had paid $501 or more.[34]

It is apparent that the present use of fines as a criminal sanction is ineffective. The function of fines as a deterrent is meaningless when defendants do not pay. Furthermore, the imposition of fines does not accomplish the purpose of financial self-sufficiency for the criminal system when the county is forced to operate as a collection agency, which at best is an ineffective one.

III. Innovations in the Imposition of Fines

A. *The Day-Fine System*

Finland, Sweden, and Cuba employ a system whereby fines are assessed with regard to a defendant's wealth.[35] Under the Swedish Penal

county. Research methods required searching the presentencing investigation book of the probation office to ascertain each defendant's name, number, and offense. These were then cross-referred to the county cashier's record which used different numbers for each defendant. The cashier's records are filed by paid and unpaid municipal and county fines. There were some defendants whose numbers were not available in the county cashier's record. Each defendant's payment account was examined for nonpayment or satisfaction of the fine. Statistics on sanctions for nonpayment were provided by the probation department. The obtaining of data presented great difficulty since the probation and cashier records were not cross-referenced.

32. In New Jersey, failure to pay costs does not subject a defendant to incarceration. "In the absence of a statute making 'costs' a part of the punishment, costs cannot be deemed to seek a punitive end." State v. DeBonis, 58 N.J. 182, 200, 276 A.2d 137, 147 (1971). Statutes do not include costs among the authorized punitive impositions. *E.g.*, N.J. Stat. Ann. §§ 2A:85-6, -7, :169-4 (1971). Since other statutes, *e.g.*, N.J. Stat. Ann. § 2A:166-15 (1971); N.J. Stat. Ann. § 39:5-36 (1973), provide for incarceration until "fines and costs" are paid, it could be argued that costs are deemed to be a part of the punishment. But such statutes are consistent with the thesis that their purpose was only to authorize commitment as a civil remedy for collection of costs.

Inability to pay costs has been regarded as a valid defense to a charge of contempt for failure to pay. Burack v. Mayers, 122 N.J. Eq. 359, 194 A. 178 (Ch. 1937). The court rules also provide for waiver of fees for an indigent defendant. N.J.R. 1:13-2(a).

33. See note 31 *supra*. Records of two defendants were unavailable.

34. See note 31 *supra*.

35. This concept was practiced in the 18th and 19th centuries. A laborer would

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37. *Id.*

38. *Id.* These set fines ran
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39. *Id.*

40. *Id.*

41. Larsen, *supra* note 27, a

42. Responses to Crime, 3

43. *Id.*

44. *Id.* In Sweden, fines n
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Code, the unit of punishment is the day-fine, representing the worth of the defendant's labor for a day.[36] Drunkenness and disorderly conduct are exceptions, the maximum fine for these offenses being 500 crowns (about $100).[37] Under the special penal laws which correspond to municipal ordinances in the United States, more serious offenses are punished with day-fines, with set monetary fines only for petty offenses.[38]

The fine for a particular defendant is imposed according to an elaborate procedure. First, the number of day-fine units is determined This may range from one to 120, depending upon the severity of the offense.[39] The maximum increases to 180 where the offender is sentenced concurrently for several crimes,[40] and maximum and minimum units for particular offenses may be set by statute. For example, the penalty for jaywalking might be one to two day-fine units, and that for running a red light three to six day-fine units.[41] The judge then sets the amount of one day-fine, taking into consideration the wealth, number of dependents, and productive capacity of the defendant. The amount in Sweden ranges from a minimum of 2 crowns (about 40 cents) to a maximum of 500 crowns (about $100) per one day-fine.[42]

Swedish courts usually set the amount of one day-fine at one-thousandth of the annual income for a person supporting a family but this may be decreased when a minor offense is involved.[43] The amount of one day-fine is then multiplied by the applicable number of units to determine the fine the defendant must pay.[44]

Under the day-fine system, an individual's financial ability is taken into consideration so as to impose an equitable fine. Such an approach is well suited for adoption in New Jersey. Day-fines improve the rate of collection because they are based on the offender's actual ability to

be fined the equivalent of three days' wages and a wealthy man would be fined three days' income for the same offense. *Imprisonment for Nonpayment*, *supra* note 2, at 623-24. *See also* Bradbury, *Fines—Are They a Deterrent?*, 119 NEW L.J. 466 (1969) [hereinafter cited as Bradbury]; Larsen, *supra* note 27, at 161; Sharples, *The Fine: An Outline of Certain Novel Dutch Proposals*, 114 SOL. J. 835 (1970).

36. A. NILSON, RESPONSES TO CRIME: AN INTRODUCTION TO SWEDISH CRIMINAL LAW AND ADMINISTRATION 65 (1972) [hereinafter cited as RESPONSES TO CRIME].

37. *Id.*

38. *Id.* These set fines range from a minimum of ten crowns (about $2) to a maximum of 500 crowns (about $100).

39. *Id.*

40. *Id.*

41. Larsen, *supra* note 27, at 160.

42. RESPONSES TO CRIME, *supra* note 36, at 65.

43. *Id.*

44. *Id.* In Sweden, fines may range from $0.97 to $6,984.00 for identical offenses. *Imprisonment for Nonpayment*, *supra* note 2, at 624. The day-fine system is credited with having reduced from 12,000 or 13,000 a year to a few hundred a year, the number of offenders imprisoned for default. *Id.* The payment record on Swedish fines, except for parking tickets, is reportedly excellent: RESPONSES TO CRIME, *supra* note 36, at 89.

pay.[45] Generally, however, unlike earlier hard labor sentences, the work performed is that which the defendant is currently doing. Differences in skills and interests of defendants are considered, and the work does not come under penal supervision. The system is also in accord with the American Bar Association philosophy that fines should not be imposed unless it is reasonably clear that the defendant, either immediately or over a period of time, will be able to pay.[46] A poor person would not be permitted to violate the laws with impunity, however, since safeguards could be combined with a day-fine program. Defendants, for example, could be provided with employment references or be sentenced to perform gratuitous labor related to the offense.[47] It has been suggested that such an individualized approach, pursuing various available alternatives for offenders, would convince them that laws cannot be violated with impunity.[48]

Although it might be argued that too much time would be expended gathering and analyzing data about each offender, the increase in actual revenues collected and the administrative time saved by eliminating wasteful collection attempts would outweigh the possible burden of day-fines.[49] Such data as Presentence Reports, which are essentially the same as required for a day-fine system, are routinely prepared in New Jersey.[50] Moreover, defense counsel should also be able to provide information that would enable a judge to sentence a defendant fairly.[51] The goal

45. *See* text surrounding note 43 *supra*.

46. ABA SENTENCING ALTERNATIVES, *supra* note 9, at § 6.5(b), Comment. *See* Rutledge v. Turner, 495 P.2d 119 (Okla. Crim. App. 1972); Commonwealth *ex rel.* Parrish v. Cliff, 451 Pa. 427, 304 A.2d 158 (1973). Since there had been no determination of the immediate ability of the defendant to pay the fine nor a showing that a reasonable opportunity had been given to allow the defendant to comply without immediate incarceration, the defendant had to be given the opportunity to establish an inability to pay the fine. Upon a showing of indigency, defendant had to be allowed to make payment in installments. *Contra*, State v. DeBonis, 58 N.J. 182, 276 A.2d 137 (1971).

See also THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS, ch. 2 (1967) [hereinafter cited as PRESIDENT'S COMMISSION]. That study recommends that a "thorough" report should cover a defendant's life history, including prior criminal record and employment activities. The Commission also recommends gathering information about the attitudes of family, neighbors, co-workers, employers and teachers toward the offender; about the beliefs and prejudices of the defendant; about the personal cleanliness of the home; and about the offender's leisure and cultural activities.

47. *See* text accompanying notes 59-61 *infra*.

48. Hendrix v. Lark, 482 S.W.2d 427, 431-32 n.6 (Mo. Sup. Ct. 1972).

In New Jersey, as in Sweden, it might be found more practical to impose set fines for those offenses which municipal courts handle routinely, such as parking tickets. See note 29 and accompanying text *supra*. Jaywalking and running a red light, which are handled by day-fines in Sweden, might also be appropriately treated by imposing set fines. *See* Larsen, *supra* note 27, at 160.

49. *Cf.* note 45 *supra*.

50. Presentence reports in New Jersey now contain data about the employment history and financial status of a defendant. Interview with Passaic County Probation Department, August 15, 1974.

51. *See* PRESIDENT'S COMMISSION, *supra* note 46, at 18-22.

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of day-fines is not to achieve uniformity in sentences, but to achieve uniformity in policy and approach.[52]

Uniformity might further be achieved by: informing judges of the deterrent effects of the sentence they choose; providing information about what other judges have done in similar cases; and having judges get to know probation personnel. For more serious offenses handled at the county level, uniformity could also be promoted by: three-judge sentencing panels; presentence conferences at which lawyers present suggestions to sentencing judges; and a requirement that judges give reasons for the sentences they choose.[53]

B. *Other Sentencing Alternatives*

Although fines present many difficulties as a criminal sanction, their total elimination does not appear to be feasible. If the only form of punishment were a prison term for all offenders, then all would be afforded the same treatment and any equal protection controversy would be eliminated.[54] Nevertheless, such a policy would not take into consid-

The Manhattan Bail Project provides a model. Under the Project, prior to the bail hearing, probation department employees or defender agency representatives interview defendants on their personal and social history. This information is then verified by telephone calls and a summary is given to the defense counsel. *See* Botein, *The Manhattan Bail Project: Its Impact on Criminology and the Criminal Law Processes*, 43 TEXAS L. REV. 319 (1965). For a table of fines set in one county in New Jersey in 1973, see Appendix.

52. United States Attorney's Office For The Southern District of New York, *Sentencing Study*, in JUSTICE IN SENTENCING: PAPERS & PROCEEDINGS OF THE SENTENCING INSTITUTE FOR THE FIRST AND SECOND UNITED STATES JUDICIAL CIRCUITS 157, 164 (L. Orland & H. Tyler 1974) [hereinafter cited as JUSTICE IN SENTENCING]. This study points up the disparity in sentencing by giving the dispositions of various cases. One defendant was charged with personally realizing unlawful commissions of thousands of dollars in securities frauds and was directed to pay a fine of $6,000. Another broke into a post office, stealing $20,000 worth of stamps, and was sentenced to four years in prison. *Id.* at 165-66.

In New Jersey, a study of sentencing practices of judges showed that the ratio of a fine to the total sentence imposed varied from judge to judge. For property crimes, the ratio ranged from 0.2 percent to 1.5 percent; for crimes of violence, from 0.0 percent to 1.3 percent; for sex crimes, from 0.0 percent to 9.8 percent. The highest disparity was in liquor law violations, where the range was from 3.3 percent to 46.7 percent. Rosenzweig, *supra* note 1, at 269.

Part of the discrepancy is due to the philosophy of the sentencing judge. His use of the fining power will indicate whether he feels that deterrence, incapacitation, prevention, or treatment is the prime goal of the criminal law. *Id.* at 266. *See also* Rubin, *Disparity and Equality of Sentences—A Constitutional Challenge*, 40 F.R.D. 55 (1965).

53. *See* The Association of the Bar of the City of New York, *Report on Sentencing Practices in the Federal Courts in New York City, by Committee on the Federal Courts*, in JUSTICE IN SENTENCING, *supra* note 52, at 177, 189-96; THE PRESIDENT'S COMMISSION, *supra* note 46, at 19; *Sentencing Study*, in JUSTICE IN SENTENCING, *supra* note 52, at 167-68; Tyler, *Some Guideposts for the Compleat Sentencer*, in JUSTICE IN SENTENCING, *supra* note 52, at 198, 200-01.

54. ABA SENTENCING ALTERNATIVES, *supra* note 9, § 2.7(b), Comment. One possible disadvantage of an emphasis on ability to pay is that jail sentences may result in

eration the situation of the individual defendant and his family. Furthermore, prisons would be overcrowded, and association of minor offenders with convicted felons might lead to a future increase in crime. Some form of sanction other than incarceration is clearly a necessity.

The day-fine system seems to be the most viable alternative to the current fining system. However, other approaches have also been suggested.[55]

1. Fine as Percentage of Income

One innovation in fine setting is to calculate the amount of the fine according to the income of the defendant. An indication of a feasible fine could be obtained by examining the defendant's federal income tax return, with perhaps five percent of adjusted gross income being the maximum permissible fine.[56] This is a variation on the day-fine system, but is not as effective, since day-fines allow more individual factors to be considered in the computation of the fine.[57]

2. Employment as Equivalent to a Fine

This alternative stems from earlier statutes permitting a defendant to be placed at labor until the fine was discharged.[58] A related sanction

cases where fines would normally be imposed, on the ground that otherwise an indigent defendant will escape punishment. *Id.* Nevertheless, the authors suggest that partial confinement may be more appropriate even for defendants who could pay a fine, since for both the jail term would then be set as the desired punishment rather than as an alternative to nonpayment. *But see* Burton v. Goodlett, 480 F.2d 983, 987 (5th Cir. 1973) (it is hardly arguable that a jail sentence is less severe than the imposition of a fine); State v. Snyder, 203 N.W.2d 280, 292 (Iowa 1972).

55. The question of alternative approaches has been raised in cases where state courts have held that the defendant who is unable to pay a fine must not be imprisoned as a sanction, since imprisonment does not result in payment and furthermore is discriminatory when those who can pay go free. *See, e.g., In re* Antazo, 3 Cal. 3d 100, 473 P.2d 999, 89 Cal. Rptr. 255 (1970). Although this court did not suggest any specific remedies, it noted that a number of authorities, as well as the *Williams* Court, had suggested solutions. 3 Cal. 3d at 114 n.13, 473 P.2d at 1008 n.13, 89 Cal. Rptr. at 264 n.13. *See also* State v. Tackett, 52 Hawaii 601, 483 P.2d 191 (1971). That court suggested a work parole system as a possible alternative. 52 Hawaii at 603 n.3, 483 P.2d at 193 n.3.

56. It could be argued that a fine of this amount, especially for a corporation, would be excessive. This issue was raised in *State v. Trailer Service, Inc.*, 61 Wis. 2d 400, 212 N.W.2d 683 (1973). The court there said: "For a fine to be unusual or excessive, it must be so disproportionate to the offense as to shock public sentiment and contrary to the judgment of reasonable people concerning what is proper under the circumstances." 61 Wis. 2d at 409, 212 N.W.2d at 689. Such a standard could readily be established.

57. *See* text accompanying notes 43-48 *supra*.

58. *See* note 27 and accompanying text *supra*. Sentences to hard labor have been rejected by courts. *See, e.g.*, Dorch v. City of Opelika, 50 Ala. App. 612, 281 So. 2d 666 (1973). The defendant in *Dorch* was convicted of a violation of a municipal ordinance and was fined $100 plus costs; in lieu of payment, he was sentenced to hard labor for [illegible] days. The court held that it was error to order a defaulting defendant to hard

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3. Job Bank

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60. N.Y. Times, Aug. 28,
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could be the basis of an acceptable alternative to fines. Unlike work sentences where the defendants are assigned to hard labor, the defendant in such a situation would not be required to work under prison authorities, but would do something related to the offense, thereby correcting the wrong against society.

The Delaware legislature has enacted a statute permitting a defendant to be sentenced to work on a public works project.[59] A New York City municipal judge recently dismissed charges of trespass and disorderly conduct against a defendant tightrope walker on condition that he perform at a free exhibition.[60] The theory behind this form of sanction is that many crimes can be punished by having the defendant work off a penalty in a way that would benefit society. Forced work would also impress upon the offenders the intrusion created on others' lives by their illegal actions and would constitute a sanction having equal impact upon rich and poor.[61] Gratuitous employment, however, might also create additional administrative burdens. Furthermore, such a plan would require more collection supervision than does a conventional fine system.

3. Job Bank

In three counties in New Jersey—Bergen, Hudson, and Middlesex—there are currently job bank programs which refer defendants to potential employers, thus providing the defendants with an opportunity to pay their fines.[62] The Bergen County Job Bank attempts to accommodate any defendant who has been sentenced to pay a fine or support through probation or has been released on a pretrial diversion program subject to securing employment. This program has been in operation for two-and-one-half years. The Hudson County program, in which the job bank operates only as part of the pretrial diversion program, has been in

labor, citing *Tate* and declaring that an indigent's right of equal protection was infringed by incarceration in lieu of a fine. *Id.* at 612-13, 281 So. 2d at 666.

59. DEL. CODE ANN. tit. 11, § 4105 (1975). *See also* State v. Bender, 283 A.2d 847 (Del. Super. 1971) (where the defendant was required either to pay a fine or to report to work for the number of days necessary to discharge the fine).

60. N.Y. Times, Aug. 28, 1974, § 2, at 35, col. 5. *See also* N.Y. Times, Nov. 19, 1974, § 1, at 31, col. 1. As part of his sentence for submitting false Medicare bills, a physician was required to offer his services without charge to a mental hospital, prison, or other governmental institution.

61. A study of the effectiveness of required attendance at driver's school as a deterrent to traffic violators indicated that school appeared to have more lasting effects than probation and that its deterrent effect was reduced when combined with probation. Holt, *Guides for Judges in Choosing the Disposition*, in NATIONAL COLLEGE OF THE STATE JUDICIARY, SENTENCING AND PROBATION 330 (1973).

62. Funds for these programs are provided in part by a grant from the State Law Enforcement Planning Agency. Statistics and information on job banks were provided by the Bergen County Job Bank. Interviews with Director Richard McMahon, August 15, 1974, November, 1974.

operation for one year. The Middlesex County Job Bank has been in operation for six months.[63]

Between November 1972 and October 1973, the Bergen County Job Bank had 409 applicants, of whom 353 were placed in jobs. Three hundred eighteen stayed employed. Between November 1973 and September 1974, 294 out of 571 applicants were placed, of whom 281 stayed employed.[64] The decline in placement during the latter period was due to the general national employment decline.[65] Jobs are obtained through solicitation of businesses by the job bank staff and through telephoning prospective employers who advertise in newspaper classified ads. Typical positions obtained include semi-skilled work such as factory labor and stock or shipping positions in retail stores.

A properly functioning job bank would insure that all defendants could meet their monetary obligations. Clearly, however, some defendants will always be unable to secure a job through bank referrals. In addition, problems are created by the discrepancy in the value of labor of different defendants. A defendant who obtained a semi-skilled position through the job bank would still be discriminated against in relation to a wealthier defendant with an identical fine. For maximum fairness, therefore, the job bank concept should be combined with a fine-setting system which would recognize individual differences among defendants.

4. *New Jersey Penal Code* Approach

The proposed *New Jersey Penal Code* (*Penal Code*) as it exists at this date, would not make any substantive changes in the state's current fining system.[66] The *Penal Code* declares that its main purpose is "to retard the merely routine imposition of a fine,"[67] but sets no specific

63. *Id.*

64. *Id.*

65. Changing economic conditions in Bergen County are also partly responsible for the drop in the number of referrals.

66. A study proposing revisions of sentencing and parole provisions of the proposed *New Jersey Penal Code* recommends revision of Section 2C:43-3(a)(1) to provide:

> The amount of the fine shall be calculated in terms of percentage of average annual net income as reported by the offender in his Internal Revenue Service files over the previous three years. The fine shall not exceed 5% of the average annual net income above the amount stolen from the victim. If there are no Internal Revenue records, the Court may impose a fine by calculating the net daily income of the offender over the year preceding the arrest or conviction of the offender.

R. Singer, Proposed Revisions of Sentencing and Parole Provisions of the Proposed New Jersey Penal Code, November 1974 in SENTENCING, FOR NAT'L ADVISORY COMM'N ON CRIMINAL JUSTICE, STANDARDS AND GOALS, STANDARD F.11(3)-(7) (Draft Chap.) (on file at L.E.A.A. Library, Washington, D.C. 1972) (hereinafter cited as Proposed Revisions). This method is a variation of the day-fine system. There is a fact finding as to the defendant's income, and the fine is related to a percentage of this income regardless of the offense. *See* Rutgers Prison Law Clinic, Commentary to the Sentencing and Parole law § 2C:43-3(a)(1), February 1975 (unpublished manuscript in *Rutgers Law Review* files).

67. N.J. PENAL CODE § 2C:44-2, Comment (Proposed Draft, Oct. 1971).

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76. *Id.*
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h recognition. The *Penal Code*, how- r for statutorily set fines. N.J. PENAL A plan such as the day-fine system xibility. *See* text accompanying notes

posed in conjunction with a prison sen- ceration is necessary, this sanction is fine. Moreover, an indigent defendant ney to pay a fine. An exception to mmitted for monetary gain; the com-

APPENDIX

Categories of Offenses	Number in 1973	Total Fines	Average Fine
Admitting Person Under 18 to Obscene Film	1	$3,000	$3,000
Assault and Battery on Law Enforcement Officer	2	$1,000	$500
Assault w/Deadly Weapon	2	$1,250	$625
Assault w/Intent to Rob	1	$250	$250
Assault w/Intent to Rob While Armed	1	$1,000	$1,000
Atrocious Assault and Battery	9	$3,550	$443.75
Attaining Money by False Pretenses	2	$1,000	$500
Attempted Larceny	1	$900	$900
Conspiracy to Commit Larceny	2	$2,000	$1,000
Contributing to the Delinquency of a Child	3	$850	$283.33
Counterfeiting Driver's License	1	$100	$100
Disorderly Person	12	$3,750	$312.50
Disorderly Person Assault & Battery	2	$650	$325
Distribution of Controlled Dangerous Substance	10	$3,600	$360
Driving Under the Influence of Liquor	1	$250	$250
Driving While Impaired	1	$100	$100
Embezzlement	2	$450	$225
Entering w/Intent to Steal	22	$5,900	$269.18
Exhibiting Forged Driver's License	1	$200	$200
False Information Given to Law Enforcement Officer	1	$200	$200
Illegal Possession of a Weapon	40	$10,450	$261.25
Larceny	13	$3,150	$242.23
Larceny by Trick	1	$1,000	$1,000
Larceny from the Person	1	$300	$300
Maintaining a Gambling Resort	2	$750	$375
Malicious Damage to Property	2	$2,000	$1,000
Misrepresenting a Serial No. on a Motor Vehicle	1	$300	$300
Municipal Ordinance Violation	1	$25	$25
Possession of Burglary Tools	1	$250	$250
Possession of Lottery Slips and Bookmaking	40	$25,500	$637.50

Possession of a Switch Blade Knife	1	$250	$250
Receiving Stolen Property	8	$5,700	$712.50
Receiving Stolen Motor Vehicle	5	$1,300	$325
Robbery	1	$150	$150
Sale Illegally of Intoxicating Beverages	2	$500	$250
Unlawful Possession of Alcoholic Beverages w/Intent to Sell	4	$1,000	$250
Unlawful Possession of Controlled Dangerous Substance	15	$7,550	$503.33
Unlawful Use of Controlled Dangerous Substance	1	$300	$300
Uttering Forged Instrument	7	$2,150	$307.14

Criminal Practice—Pretri
Reform of the Crimi

I. INTRODUCTION

Pretrial intervention (P
Jersey pursuant to New J
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in lieu of criminal prosecut

1. N.J.R. CRIM. PRAC. 3:28
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Trial Court Administrator fc
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ceed 3 months.
(c) At the conclusion of s
one of the following disposition
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complaint (or indictment or a
(2) On recommendation o
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(3) On the written recomr
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shall make a disposition in
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grant such further postponer

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February 27, 1976

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DEFENSE SERVICES

IN

NEW HAMPSHIRE

The preparation of this study was funded by a grant from the Law Enforcement Assistance Administration, U.S. Department of Justice, through the New Hampshire Governor's Commission on Crime and Delinquency, by block grant number 74A209GO-1, dated June 28, 1974.

VI. Repayment

The statutes implementing an impoverished criminal defendant's right to counsel in New Hampshire courts also include a provision whereby the court may order that certain defendants repay the state or local government responsible for meeting expenses of representation. RSA 604-A:9 (1973 Supp.). The purpose of this provision seems clear: within the scope of constitutional requirements, it presents an opportunity for preventing abuse of the indigent defense system by authorizing recoupment of at least part of the expenses of providing defense services.

But the provisions of RSA 604-A:9 are seldom applied. Interviews with judges of the Superior, District and Municipal Courts indicated that very few have ordered repayment. In a state where legislative appropriations have fallen critically short of actual expenditures, and in which counsel must sometimes wait up to eight months to be paid because of this shortage, the statutory repayment provisions may be of help.[204]

An obvious and important reason that there may be few criminal defendants who, upon having been found financially unable to retain counsel in the first instance, are unable

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[204] See Recommendation 34 .

after trial to repay the state for counsel is that they are just as poor after trial as before. The courts seem to have concluded from evidence of defendants' poverty that the benefit to the state obtained from repayment does not justify the administrative costs of (1) identifying those who should repay [205] and (2) providing a system for repayment.[206]

As has been indicated in the above sections of this report treating the initial determination of eligibility (see above, Chapter IV) and of partial eligibility (see above, Chapter V), the judges do not now have the means to measure financial circumstances with any precision, so that decisions to appoint counsel must be based on general assessments that may vary sharply from judge to judge. Having been able to decid. with confidence how much flexibility (in terms of liquid assets) there is in the financial pictures of defendants seeking appointed counsel, judges are understandably reluctant to make conditional orders of appointment including part payment or repayment provisions.

Even with sufficient information, judges are hampered in their determination of which persons should be ordered to repay. Personnel among court and probation staff do not

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[205] See Recommendation 35 .

[206] See Recommendation 36 .

regularly check the representations as to financial status made in support of petitions for court-appointed counsel. The addition of responsibilities (1) to test the accuracy of such representations, (2) to conduct subsequent reviews of the financial status of those with court-appointed counsel, looking for changes that would make part payment or repayment possible, or (3) to receive, record, and transmit repayments would add administrative burdens.[207]

The Justices of the New Hampshire Supreme Court were asked by the Governor and Council to consider issues arising from a footnote attached to the appropriation for payment of counsel for indigent defendants.[208] That footnote provided that defendants represented by appointed counsel be responsible for payment of 10 percent of the legal fees, with no such defendant required to pay more than $20. The Supreme Court, in Opinion of the Justices, 109 N.H. 508, 256 A.2d 500 (1969), advised that such a provision violates Part 1, Article 15 of the New Hampshire Constitution because it makes no distinction between those defendants with funds to make repayment and those with "no funds and no probability of acquiring any."[209]

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[207] See Recommendation 37.

[208] The text of the footnote is set forth in the appropriation, Laws 1969, C.367:4 and Laws 1969, C.368:4.

[209] 107 N.H. at 512.

This opinion did not address the validity or application of RSA 604-A:9, which allows courts to order repayment in certain circumstances.

RSA 604-A:9 reads as follows:

> Any defendant whose sentence is unconditional discharge, conditional discharge, or probation and who has had counsel assigned to him at the expense of the state, county, city, or town may be ordered by the court to repay the state, county, city, or town all of the fees and expenses paid on his behalf on such terms as the court may order.[210]

Four features of RSA 604-A:9 merit discussion here. First, it should be noted that the class of defendants subject to the application of the statute is specifically defined. Also, the fees and expenses to be repaid are circumscribed. Furthermore, the statute as it now reads

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[210] As originally inserted by Laws 1969, C.475:1, this section was substantially different:

> Any defendant whose case is continued for sentence, or who receives a suspended sentence, or who is placed on probation, and who has had counsel assigned to him at the expense of the state or county or city or town, may be ordered by the court to repay the state, county, city, or town all of the fees and expenses paid on his behalf on such terms as the court may order. Failure to comply with the court's order shall be considered a violation of probation and shall, after a summary hearing, be punished.

As part of an act transferring and repealing certain criminal statutes and making technical amendments to others so that they would conform to the new criminal code, Laws 1973, C. 370:24, struck out the above-noted section and inserted in its place the version appearing in the text.

does not contain the sentence appearing in the originally enacted version of the statute which gave some direction regarding court treatment of failure to comply with a repayment order. Still further, no mention is made of notice: must the court give a defendant notice before he requests appointed counsel that he may be ordered to make repayment? Finally, the statute makes no distinction between people able to make repayment and those with "no funds and no probability of obtaining any." This aspect was addressed by the justices in the advisory opinion regarding the legislative footnote imposing a duty on criminal defendants to repay 10 percent of expenses for appointed counsel. See Opinion of the Justices, supra, 107 N.H. at 512.

The statute specifies that those defendants given sentences of unconditional discharge, conditional discharge, or probation are subject to its provisions. Thus, defendants who are acquitted or whose cases are dismissed are under no circumstances liable to a repayment obligation.[211] RSA 604-A:9

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[211] It seems only fair that a person for whom the presumption of innocence has not been overcome beyond a reasonable doubt should not have to bear the cost of refuting the charges against him if he is poor. Indeed, a logical corollary of our justice system's presumption of innocence might well be that the state should pay the reasonable defense costs of any acquitted criminal defendant, whether poor or not, to avoid the possibility of compelling an innocent person to choose between unjust conviction and personal bankruptcy. Of course, the United States and most other democratic countries recognize no duty of reimbursing a defendant after acquittal. Cahn, The Predicament of Democratic Man, at 51-52 (1961).

also excludes from its ambit those defendants sentenced to imprisonment or payment of a fine. Nor is it applicable to defendants granted a work release from, or suspension of, imprisonment.[212]

The statute also limits the fees that persons in the above classes may be ordered to repay. Only fees and expenses paid on behalf of the defendant are subject to repayment; prosecution expenses or court costs are excluded.[213] As it now reads, RSA 604-A:9 provides no guidance for treatment of failure to make repayment that has been ordered by the court. Courts have at least two options: (1) hold the person in contempt of court; or (2) revoke probation or discharge. If failure to make repayment is due to indigence, the person may not be imprisoned;[214] imposition of a further

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[212] See N.H. R.S.A. Ch. 651. An additional consideration is that no mention is made in the statute of acquitted persons.

[213] Under N.H. R.S.A. 618:44 (1955), all convicted criminal defendants are exempt from payment of prosecution and court costs. For further discussion, see Note, "Charging Costs of Prosecution to the Defendant," 59 Geo.L.J. 991 (1971).

[214] Tate v. Short, 401 U.S. 395 (1971).

fine is fruitless. If a person "unconditionally" discharged were ordered to repay and were to fail, it can hardly be said that the discharge was "unconditional" if sanctions were to be imposed for failure to repay. The discharge would be based on a condition that repayment be made; failure could result in the imposition of sanctions.

A further problem is the matter of notice. It seems proper that a court should notify a defendant prior to appointment of counsel that repayment may be ordered. Absent notice of repayment responsibilities, a defendant seeking and accepting appointed counsel could be surprised to find himself subsequently burdened with the obligation to make repayment. The defendant's decision as to appointed counsel may be colored by his expectations as to repayment. If notice were given before appointment of counsel that repayment would or might be ordered, a defendant might decide to proceed without the aid of counsel rather than be burdened with a reimbursement obligation. It might be argued that a system placing a defendant in such a dilemma places an undue burden on the constitutional right to counsel.[215]

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[215] See Comment, "Reimbursement of Defense Costs as a Condition of Probation for Indigents," 67 Mich.L.Rev. 1404, at 1413-16 (1969), and In re Allen, 71 Cal.2d 388, 78 Cal. Rptr. 207, 455 R2d 143 (1969).

In Fuller v. Oregon, 417 U.S. 40 (1974), the United States Supreme Court held, inter alia, that a state scheme for recoupment of indigent defense costs, if properly structured, need not in and of itself be an undue imposition on a defendant's right to counsel. The Court expressly rejected the contention that prior notice of a possible reimbursement obligation would pose an unfair dilemma for a defendant.

A final difficulty with RSA 604-A:9 is that it makes no distinction between those with and those without means to make repayment.[216] Such a distinction is clearly necessary under Part I, Article 15 of the New Hampshire Constitutution, as applied in Opinion of the Justices, 109 N.H. 508, 256 A.2d 500 (1969). Similarly, the United States Supreme Court held in Fuller v. Oregon, supra, that a state recoupment statute giving criminal defendants the same property exemptions allowed other judgment debtors and allowing an opportunity to obtain relief from repayment by demonstrating that repayment would impose manifest hardship does not deny equal protection in violation of the federal constitution. Though it seems clear that RSA 604-A:9 would not be unconstitutional if applied in a manner consistent with relevant portions of these opinions, New Hampshire courts have nonetheless seemed reluctant to act in this area because of the statute's lack of clarity.

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[216]See Recommendation 34 .

RECOMMENDATION 34: RSA 604-A:9 SHOULD BE AMENDED TO IMPROVE CLARITY AND FAIRNESS. THE SUPREME COURT SHOULD PROMULGATE GUIDELINES FOR IMPLEMENTATION OF THE STATUTE. (p.120)

Commentary. Amendments to the statute might include the following:

A. Defendants whose sentence is unconditional discharge should be removed from the scope of the statute.

B. Repayment should be to the state alone, since counties, cities, or towns no longer bear expenses of public representation.

Unless the following proposed provisions are included as amendments to the statute, they should be addressed in guidelines promulgated by the Supreme Court.

A. An opportunity should be provided for a defendant to obtain relief from the repayment obligation by demonstrating that repayment would impose manifest hardship.[217]

B. Willful failure by one able to make repayment should be treated as a contempt.

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[217] See Fuller V. Oregon, 417 U.S. 40 (1974), and National Advisory Commission of Criminal Justice Standards and Goals, Courts, Standard 13.2 (1973).

C. Defendants ordered to make repayment should be provided the same exemptions as are available to other judgment debtors.

D. Notice of a possible repayment order should be made before appointment of counsel. Review of the order of appointment should be made available prior to trial to avoid the possibility that a defendant would proceed to trial without the aid of counsel solely or primarily because an order appointing counsel would be conditioned on repayment.

RECOMMENDATION 35: THE DETERMINATION WHETHER A DEFENDANT WILL BE ORDERED TO MAKE REPAYMENT SHOULD BE BASED ON A MORE THOROUGH INVESTIGATION OF FINANCIAL CIRCUMSTANCES THAN IS NOW MADE. (p. 121)

Commentary. Court rules implementing RSA 604-A:9 should accomplish this end and should provide an orderly system for collection of repayments.

RECOMMENDATION 36: INFORMATION SHOULD BE GATHERED TO DETERMINE (i) WHETHER FULL IMPLEMENTATION OF THE REPAYMENT STATUTE IS COST EFFECTIVE AND (ii) WHETHER THE FULLER IMPLEMENTATION OF THE REPAYMENT STATUTE HAS CAUSED A SIGNIFICANT NUMBER OF DEFENDANTS TO PLEAD OR GO TO TRIAL WITHOUT THE AID OF COUNSEL. (p. 121)

Commentary. If the state determines within five years after the implementation of the above recommendations, (i) that its repayment scheme is not cost effective or (ii) that the scheme has unduly impinged on defendants' right to counsel, thereafter the statute RSA 604-A:9 relating to repayment for the fees and expenses of services provided a criminal defendant might be repealed, except when there has been fraud in obtaining representation.

This latter position is consistent with ABA, Defense, Standard 6.4. It is based on a single overriding consideration. Many New Hampshire judges believe that very few defendants seeking appointed counsel have means to make repayments. If this perception is correct, full implementation of RSA 604-A:9 as it now reads would call for the state to apply further manpower resources, both among probation officers and court personnel, for the identification of those who should be required to repay and for provision of a collection system.

RECOMMENDATION 37: PARTIAL PAYMENTS AND REPAYMENTS SHOULD BE MADE THROUGH THE PROBATION DEPARTMENT TO THE STATE COMPTROLLER WITH APPROPRIATE NOTICE BY THE PROBATION DEPARTMENT TO THE ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE OF THE SUPERIOR COURT AND TO THE EXECUTIVE SECRETARY OF THE ADMINISTRATIVE COMMITTEE OF DISTRICT AND MUNICIPAL COURTS. (p. 122)

Trial Court Management Series

Financial Management

by
Robert Tobin

July 1979

U.S. Department of Justice
Law Enforcement Assistance Administration
National Institute of Law Enforcement and Criminal Justice

- a disposition to exercise the management authority; and
- a capability for exercising the management authority.

There is a clear, current need for trial courts to reexamine their financial management role.

2. **The legal and governmental environment.**

a. *Legal responsibility for funding trial courts.* Traditionally, general jurisdiction trial courts have been part of the fabric of local government and have received their basic funding from county and, occasionally, city governments. The great majority of trial courts are still dependent on local funding.

There is, however, an increasing trend to make states legally responsible for some or all of the costs of trial court operation. In those states which have undergone administrative unification, state funding of trial court operations is virtually total.[3] There are several states which are moving toward total state assumption and are in an interim mode where major parts of the trial court system are state-funded.[4] Most trial courts receive only limited state funding, usually for such items as judicial salaries, judicial expenses, court reporters and judicial secretaries.[5]

The level of state funding has important implications for court financial management, since the government which supplies the money is the government which determines management procedures, particularly budgetary procedures. In a totally unified system, the budget process is that imposed by the state executive branch, possibly including procedures established by the state supreme court. Submission of a trial court budget is made to the state court administrator for inclusion in the overall court budget presented to the other branches of state government.

In a partially unified system, a trial court may find itself dealing with two budget processes—one governed by the state, the other by a local government. In such states, a state court administrator will often submit a budget to cover the state portion of trial court costs, relieving individual trial courts from direct dealing with the state.

In those systems where the state pays only a few legally mandated trial court costs, no formal budget submission to the state may be required. The mandated items, such as judicial salaries, are often automatically included in the state budget or do not require an appropriation. For most trial courts, the local government budget process is still the key process, and the state budget process is fairly peripheral.

Although state and local budgetary processes provide the principal source of trial court financial support, trial courts often have access to other funding sources. To the extent that other funding sources exist, they supplement or displace appropriations from state and local general funds and affect the way in which state and local governments carry out their financial obligations toward courts. Table 1 contains the principal funding sources from which trial courts are financed.

As indicated in Table 1, trial court financing cannot be viewed entirely in terms of general fund appropriations. Nor can the level of general fund appropriations for courts be viewed in the same light as the funding given to an executive branch agency. Trial courts, particularly those operating entirely within the local government framework, have a different legal status than executive branch agencies.

In some states (e.g., Alabama), there are strong constitutional requirements for adequate legislative funding of the whole court system. In West Virginia the constitution prohibits the state legislature from cutting the judicial budget, a prohibition challenged by the legislative branch.[6] While such constitutional mandates tend to be general, they underscore the unique role of the judiciary in the budgetary arena.

Other states (e.g., Iowa and Illinois), have statutes which permit courts to mandate county general fund appropriations for major aspects of court operations. In states where there is no explicit legislative recognition of the special status of courts, trial courts have occasionally resorted to mandamus or court-ordered appropriations to obtain adequate funding (e.g., Indiana). The salient fact is that many trial courts view themselves as having a unique budgetary status because of their position as the third branch of government.

b. *Legal responsibilities for collection and distribution of court costs, fines and other monies.* Trial courts generally have a legal obligation to collect and distribute fines, costs and a great variety of other funds paid into the court. The nature and scope of this legal obligation determines the type of financial systems which must be employed. Typical of the monies collected and distributed are the following:

(1) *Fines and forfeitures.* One of the largest single items of court-collected revenue is the money collected in fines and bail forfeitures. This revenue is very large in limited jurisdiction trial courts, but usually does not amount to much in a general jurisdiction court. Fines and forfeitures usually go into state or local general

[3] For example, Hawaii, Alaska, Colorado, Alabama, North Carolina, New Mexico, Rhode Island, Maine and Kentucky.

[4] For example, Kansas and New York.

[5] For example, in Arizona the state only pays one-half of the salaries of general jurisdiction judges.

[6] See *State Ex. Rel. Bagley and Swigert v C.A. Blankenship;* decided June 19, 1978, upholding the state constitutional provision prohibiting reduction of the judicial budget.

TABLE 1. *Funding Sources for Trial Courts*

Source	Description
State General Fund	Principal source for basically unified systems, but probably accounts for 15%-30% of court expenditures in most states.
State Special Funds	Occasionally, there are special state funds earmarked for court purposes and fed by some fee or cost collected in courts (e.g., judicial retirement fund fed primarily by a special court cost).
County General Funds	County general funds remain the primary source of trial court funding in most states.
County Special Funds	General legislation or special legislation sometimes establishes county funds earmarked for court use by certain fees (e.g., law library funds). These funds supplement the normal county appropriation for courts.
Municipal General Funds	Municipal general funds support some trial courts and are analogous to county general funds.
Capital Funds	Trial courts may have access to bond money or other funds for capital expenditures.
Federal Grant Funds	A small, but not insignificant, amount of federal grant money is used for court purposes. It is primarily LEAA money, but courts also receive money under the Highway Safety Program of the Department of Transportation, CETA and some Health, Education and Welfare money for various social programs related to courts.
Federal Revenue-sharing	There are some locally-funded trial courts which receive local revenue-sharing funds to support some aspect of court operations.
Fees	In a few states, clerks and justices fund their offices in whole or in part from fees. In some states, these fees are collected from parties and retained, or the fees may be paid to a clerk or justice by a state or local government after submission of a request for payment.

funds, but some states still retain fine and forfeiture funds with earmarked purposes. The laws on division of fines and forfeitures between state and local governments vary from state to state and are generally influenced by one or more of the following factors: the relative state and local responsibility for financing trial courts; the relative percentage of arrests made by state law enforcement agencies and local law enforcement agencies; and the degree of local government dependence on revenues from fines and forfeitures.

(2) *Fees and costs related to cases.* Most states impose a number of fees or costs on parties to cases. The amounts and the timing of the collections vary with the seriousness of the case, the court level and whether the case is civil or criminal.[7] Usually, there is some flat cost-per-case, supplemented by a variety of other special costs, such as: fees for officer services (e.g., sheriff fees or court reporter fees); special assessment for a special fund (e.g., police or judicial retirement, indigent defense or driver education); or for judgment enforcement (e.g., execution and garnishment fees). Some of these case-related fees and costs go to earmarked funds, some of which do not have court-related purposes (e.g., a school fund); some go to funds earmarked for court purposes (e.g., a law library fund); but most go into state or local general funds.

(3) *Fees and costs unrelated to cases.* Many courts collect fees that have nothing to do with a specific case, but are collected as a *quid pro quo* for some service, such as certifying a record.

(4) *Paid-in funds.* Court clerks in some jurisdictions are legally compelled to serve as a conduit for funds passing between individuals or organizations. The legal responsibility takes several forms, as indicated below:

- serving as a trustee for funds paid into court for investment and ultimate distribution to a named beneficiary;
- serving as a pass-through agent for funds paid in for the benefit of a particular individual or organization (e.g., support payments, restitution or condemnation award); or
- serving as a temporary holding agent for cash bail payments.

In some jurisdictions, state law describes, in considerable detail, the type of records and procedures to be followed by trial courts in connection with various funds received by the court. Usually these obligations are imposed on clerks. Typical of the requirements imposed by statute or by rule of court are that:

- cash books or other books of account be maintained to record receipt and disbursement; [8]
- there be periodic audit by an executive or legislative branch auditor;
- that courts use prescribed procedures and forms for distribution of receipts to government agencies;
- that courts report receipts and distributions to state-level agencies;

[7] Criminal costs cannot be collected until a judgment has been entered. Civil costs can be collected at filing.

[8] Cash books, common in many rural states, are very simple single-entry journals that cross-index case numbers, receipts and docket entries. The system serves an auditing purpose, but little else.

- that courts adhere to regulations on banking practices, or that
- court employees handling money be bonded.

The legal requirements affecting cash handling are often anachronistic and may impede, rather than promote, court financial management.

c. *Inter-branch relationships.* The power relationships between the three branches necessarily affect the way a trial court approaches financing of court operations. There are jurisdictions where the budget for trial courts is not subject to executive branch reduction[9] or is not even submitted to the executive branch at all.[10] Short of these rather unusual circumstances, there are various gradations in judicial budgetary independence, ranging from a more or less *pro forma* executive and legislative branch acceptance of a lump sum court budget all the way to a total domination of trial court budgeting by the other branches.[11] This domination may take the form of executive branch preparation of the court budget. It may also take the form of various restrictions on the use of budgeted funds, such as very detailed line items with limited transferability between line items or a system of quarterly allotments.

The posture of a trial court in relation to the other branches is not entirely a matter of legal authority. Almost as important is: the personal stature of the presiding judge; the credibility of the judiciary and the top administrators in the court; and the personal relationship between court officials and the executive or legislative branch officials with financial management authority. Some trial courts enjoy a strong budgetary position even though the political and legal strength of the court is not great. The ultimate test of a trial court's status as a separate branch of government is its ability to obtain the funding it needs and its ability to freely allocate the funds it receives. A number of trial courts have a weak status in both areas.

Where a trial court is denied the level of funding necessary to operate the court effectively, it can resort to the ultimate judicial weapon—invocation of inherent powers. This amounts to an assertion that the judicial branch, as a function of its independence, has the inherent authority to mandatorily require the other branches to supply the resources required by the court. Resort to inherent powers is only a last effort, since it involves a test of power between the judicial branch and the other two branches of government. It is a struggle where the court may win the battle in court, but lose the war in the broader realm of local politics. Unfortunately, trial courts are sometimes pushed to this extreme.

3. **The financial environment.**

a. *The basic money flows in trial courts.* Court financial management deals primarily with the basic functions of obtaining funds for court operations, controlling the expenditure of these funds and keeping records relating to these expenditures. In this sense, court financial management is not greatly different from financial management in other governmental organizations.

There are some unique aspects of court financial management arising from the fact that courts collect and distribute fines, costs and fees, and serve as conduits for various funds paid into the court for the benefit of individuals.

Since trial courts generally have a major responsibility for collecting and distributing funds, court financial management must deal not only with the normal flow of budgetary appropriations to support court operations, but also with the flow of cash for redistribution. These two basic money flows are composed of various lesser flows, which are depicted in Figure 1.

The flow of money to support court operations encompasses three different types of funds: general fund appropriations; grant and revenue-sharing funds; and special funds fed by earmarked costs and fees. The flow of money into courts for redistribution also encompasses three different types of funds: funds paid into a trust to be held for ultimate distribution; costs, fees and fines to be

Illustration 1: Managing the Moneyflow in a Trial Court

[9]By law, the executive branch of the District of Columbia has only a power of review and comment over the Superior Court budget, but exercises budgetary control under other statutes.

[10]In Hawaii, a unified court system, the trial court budget is submitted directly to the legislature.

[11]Mississippi presents an extreme example. Trial courts have a very limited role in the budget process.

Northeastern Regional Office

MAJOR ISSUES OF TRIAL COURT FINANCING IN NEW JERSEY:

Final Report

May 13, 1981

Submitted by the Finance Subcommittee of the Committee on Efficiency in the Operation of the Courts. Prepared for the Subcommittee by the National Center for State Courts.

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CHAPTER VII

THE MONEY FLOWS IN TRIAL COURTS: ISSUES OF MANAGEMENT CONTROL AND USER FEES

A. Description of Problem

1. General Problem Statement

The various organizational units within the trial court judiciary (excluding municipal courts) handle in excess of $200,000,000 annually. This money, which is collected and distributed according to state law or court judgments, flows into trial courts from a variety of sources.[44] Hundreds of trial court employees are involved in handling these various, discrete money flows. Bookkeeping units in Probation Offices bear the major burden, since the principal distributees of court-collected funds are individual recipients of support and alimony payments.[45] A relatively small percentage of court-collected funds is distributed to the general funds of state and local governments.

The current system for handling these money flows[46] (hereafter termed the money flow process) has two basic weaknesses: (1) it lacks organizational and managerial coherence, being characterized by a profusion of small bookkeeping units largely unsupervised by Assignment Judges or Trial Court Administrators, much less the Administrative Office

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[44]See NCSC, Clerks of Court in New Jersey, p. 82.

[45]See NCSC, New Jersey Probation Services, recommendation 28.

[46]See supra., n. 44 pp. 82-83.

of the Courts; (2) there is no management rationale for user costs and fees, which are not set in relation to the operating expenses of courts and are quite low.

2. Detailed Problem Statement

a. Nature of the Money Flow Process

The trial court judiciary is involved in five basic types of money flows:

Type of Money Flow	Characteristics
Short term pass-through payments to individuals	Courts serve as a conduit for the collection and transmission of court-ordered payments to individuals (e.g., civil judgments for alimony, support; criminal judgments for restitution).
Cash payments to insure defendant appearance	Courts may permit a posting of cash as a condition of pre-trial release (i.e., cash bail) with the money repayable to the defendant upon appearance or payable to public treasuries if bail is forfeited.
Long-term handling of money on behalf of individuals	Courts may order money to be paid into special accounts to be held for the benefit of an individual, the trustee having a fiduciary responsibility to the beneficiary of the trust.
Fines	Courts may impose a fine as a criminal sanction; the distribution to government treasuries being determined by state law.
Court costs or user fees	These are charges assessed against litigants (or other users of court services) to defray court operating expenses (e.g., filing fees, Surrogate fees, Sheriff service fees, etc.) and are distributed to government treasuries pursuant to state law.

The basic money flows can be distinguished by four variables:

- ultimate recipient - Most money collected by courts is passed on to private individuals or corporations; some money collected by courts goes into the general funds of state or local government, or occasionally, into some special government fund (e.g., support payments to individuals on welfare go into special funds). Government funds can be disbursed in the aggregate.

- Turn-around line - Most money collected by courts is quickly disbursed, but money paid into trust funds may remain there for years, requiring a special type of management.

- Frequency of payment or disbursement - Some money is paid into courts in installments or in regular periodic amounts, requiring frequent disbursements and recording of the various transactions in an individual account. Other matters, typically payment of fees and costs, do not involve multiple transactions.

- Cash receipts - Where disbursements are by check, as is the case in many probation payments and trust accounts, less elaborate control mechanisms are needed.

b. Fragmentation of the Money Flow Process

The above variables influence the types of accounting systems and management controls necessary with respect to a particular type of money flow, but these differences do not justify the fragmentation that now involves numerous agencies or offices in responsibility for collection and distribution of money:

Office	Responsibility
Probation	Support, alimony, restitution and criminal fines.
Surrogate	Probate fees; trust funds.
Clerk, Law Division Superior Court, function	Fees, costs in civil cases filed in Superior Court
Administrative Office of the Courts	Trust funds established by Superior Court; condemnation funds (rougnly 7,000 accounts under Supervision of Committee appointed by Chief Justice).
Sheriff	Collection and disbursement of service fees.
County Clerk (or separate clerks of County District Court or Clerk of the Juvenile and Domestic Relations Court)	Fees, costs in County District Court, J & DR Court.

For the most part, the listed organizational units are not operating under close supervision of Assignment Judges in money collection and disbursement procedures.[47] This fragmentation of responsibility would not be so significant if there were not so much money involved. Viewed in toto the money flow process involves well over $200,000,000 annually. At any point in time there is roughly $150,000,000 in trust funds, about $61,000,000 in trust funds administered by the Administrative Office of Courts[48] and roughly $88,000,000 in Surrogate trust funds.[49] The pass-through funds to individuals in the period September 1, 1978, to August 31, 1979, totalled $107,773,567.[50] Revenues paid to counties by the judiciary in the same period totalled $19,649,795.[51] Fees and commissions received by the Clerk of Superior Court in the same period amounted to $9,144,693.[52]

The above figures provide, at best, a broad picture of the money flow handled by trial courts. They indicate that the short-term money flow is roughly $138,000,000 and that the long-term money flow is about $150,000,000. One reason why more specificity is not possible is the fact that there is no central management control of money flow, only a

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[47]See NCSC, Clerks of Court in New Jersey, recommendation 9.

[48]This amount was on hand as of December 31, 1980.

[49]This is an estimate by the Administrative Office of the Courts. Eventually, the Superior Court trust fund accounting system may be available for local use by the surrogates.

[50]Statistical Supplement to the Annual Report of the Administrative Director of Courts, 1978-79, P-42.

[51]Ibid. 0-9. This amount included most of the $2,635,778 in fines collected by Probation Offices (some went to municipalities). Under recent legislation most of these fines now go to the state.

[52]Ibid. 0-5.

diverse set of small bookkeeping operations. The large dollar amounts involved in the money flow suggests that it is time for a reorganization of bookkeeping functions and imposition of a tighter management discipline over the process.[53]

It is also time to consider a more basic question. Why should court personnel be involved in collection of money at all? The Morris County Probation Department, for example, uses a "lock box" system. Payments are mailed into a post office box and processed by a bank. Money is deposited in an account controlled by the Probation Office, which receives a daily set of batched punch cards and a tape which are used to issue checks and update records.[54] It is conceivable that the bank could also disburse the checks. The service of the bank is free, since the "money float" yields interest. With interest rates high, banks might even pay to do this service. Banks could even maintain "Filing Fee" accounts with attorneys so that these accounts could be charged whenever a case was filed without involving checks or money collection.[55] There is no inherent reason why courts should be in the money collection business when private institutions perform the role better and more cheaply.

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[53]See supra., n. 47.

[54]See NCSC, New Jersey Probation Services, recommendation 25.

[55]In its report on clerks' offices the National Center for State Courts has suggested that attorneys have a credit card which could be used in lieu of cash, with clerks than submitting attorney charges to the processing bank for debit of the attorney's account. See NCSC, Clerks of Court in New Jersey, recommendation 11 and recommendation 12 regarding cash payments by pro se litigants.

c. Insufficient User Fees

Several facts stand out clearly in the finances of New Jersey trial courts: (1) Municipal Courts, due to their high volume of traffic cases, generate revenues for municipalities far in excess of municipal expenditures for their courts;[56] (2) County- funded trial courts, lacking the case volume of traffic cases, rely primarily on fees collected in civil cases to produce revenues; (3) the civil fees collected by the Clerk of the Superior Court go primarily to the state; (4) the net result is that counties receive little court-generated revenue to defray their expenditures on courts.[57]

It is clear that court revenues in New Jersey bear little relation to operating expenses. They have not been established with this frame of reference. The question arises as to whether county-funded trial courts ought to review their user costs, primarily in civil cases, to compensate for the high cost of court operations.

The answer to this question requires that a value judgment be made on the role and purpose of courts. Do they provide an essential public service, such as fire departments, police departments, or public schools? Shouldn't courts be a free public forum for the resolution of disputes, so that even the most humble citizen has easy access to the civil courts? Rarely are such philosophical issues settled clearly in the real-world political arena. Compromises are made. The concept of

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[56] Ibid. O-10, O-11, indicating that in 1978-79 Municipal Courts had revenues of $59,522,000 and operating expenses of $16,810,000.

[57] Audit reports, when adjusted for personnel fringe benefits, indicate that counties expended almost $100,000,000 on courts in 1978-79, as compared with court revenues of about $20,000,000.

easy access to the courts as a public forum is usually found to be consistent with imposition of some small user charges. This is essentially what New Jersey has done.

Arguably, more could be done to require that users contribute more toward the support of county-funded trial courts. The political implications of this step are substantial since few persons would contend that trial courts should become a quasi-private forum for affluent litigants. Yet is is not unreasonable to expect that court users should share somewhat more of the expense of courts and that this share be based on some realistic assessment of what it costs to service users.

B. Recommendations

It is recommended that:

- trial court bookkeeping functions be under the supervision and direction of the Trial Court Administrator and that consideration be given to reducing the money collection duties of court employees;
- that all trust funds be administered using the system being developed for the Superior Court trust fund;
- that the Administrative Office of the Courts monitor and all aspects of the money flow process;
- that in each county there be designated a person to serve as a liaison with the Administrative Office of the Courts for purposes of reporting money flow; and
- all cost and fee schedules be reviewed in the light of actual trial court operating costs for the purpose of assessing more realistic user costs.

Judiciary Committee to add language allowing use of evidence obtained through police errors of less-than-Constitutional magnitude—those involving violations of laws, regulations, or police departments' internal guidelines.

Civil liberties groups have opposed any loosening of the exclusionary rule, arguing that the best way to deter police from making improper searches and seizures is to make the resulting evidence useless in court. Trott denied that the proposed legislation would encourage police misconduct. "We do not intend to use illegal methods to combat crime," he said. "But at the same time we cannot tolerate the freeing of guilty criminals without a valid reason."

Trott said that the Administration's goal is to restrict application of the exclusionary rule to "cases where there has been real police misconduct"—not just technical mistakes.

But organizations representing criminal defense attorneys and civil libertarians said that preventing "bad faith" searches and seizures is not enough. The courts must prevent police from finding "rubber-stamp" magistrates who have little regard for the Fourth Amendment and are willing to approve any search warrant, they said. More than 15,000 officials are empowered to issue search warrants, the American Civil Liberties Union said at the time of the Supreme Court's "good faith" rulings. Many of them have no legal training, according to Burt Neuborne, an ACLU official.

In any case, Attorney General Edwin Meese 3d called for the widest possible amendment to the exclusionary rule in May, when he told a meeting of the National Association of District Attorneys that he hopes that eventually "we can do away with" it entirely.

In the last Congress, the Senate approved the Justice Department's exclusionary-rule amendments by a 63-24 vote. The House took no action.

Habeas corpus: Finally, the Justice Department is calling for changes in U.S. district courts' habeas corpus jurisdiction, which allows the lower federal courts to review and overturn rulings of state courts in criminal cases. Supporters of the current system argue that federal habeas corpus review is necessary to prevent state courts from violating defendants' federal rights.

Trott said that habeas corpus petitions have become "a means of harassing the authorities, or . . . a form of recreational activity which passes the time in prison." More than 8,000 habeas corpus petitions are filed annually in district courts, he said. In most cases, the federal courts agree with the conclusions of the state courts, he said—but only after "considerable time and effort" are expended.

The Justice Department bill, S. 238, would impose a one-year time limit on habeas corpus applications by state prisoners, and a two-year limit for federal prisoners. It also would prohibit defendants from making claims in federal courts that they did not make in state courts, as long as the state provided an opportunity to raise the claim.

An identical bill passed the Senate 67-9 last year.

The Senate Judiciary Committee has scheduled meetings to "mark up" the three pieces of legislation, and odds for passage by the committee, and eventually by the full Senate, were considered good.

House action on the Administration's package, however, remained unlikely. Exclusionary rule and habeas corpus reform bills have been introduced but have not been the subject of hearings. At least a dozen bills proposing a federal death penalty have been introduced and were the subject of a hearing in November by the House Judiciary Committee's Subcommittee on Crime, but a vote even at the subcommittee level is not likely any time soon, according to a subcommittee aide.

COLLECTION OF CRIMINAL FINES LAGGING, BUT NEW LAW MAY HELP

Collection of federal criminal fines needs improvement, according to a recent report by the General Accounting Office. U.S. district courts imposed fines totaling $57 million last year, according to the report, but many fines have been allowed to go unpaid, without so much as a letter demanding payment. "Most offenders delay payment or do not pay because they are not forced to pay," GAO concluded.

The GAO's study of five court districts found that in 1982, the most recent year for which figures were available, only 34 percent of the money owed by convicted felons and misdemeanants was paid. And those who paid their fines did so slowly, GAO said. Fines which should have been paid immediately actually were not paid for more than three months on average, the study found.

However, tougher enforcement mechanisms enacted by Congress last year may increase the proportion of money actually collected, GAO said.

One problem with fines as a criminal sanction is that judges too often have no information about offenders' ability to pay, the GAO said. Presentence reports, which are prepared by probation offices, are supposed to include data on offenders' monthly income, spending habits, financial obligations such as mortgage payments, rent, loans, and child support, and sources of income. But in 43 percent of the non-petty cases GAO examined, no information at all had been developed about offenders' ability to pay fines. Chief probation officers told GAO that they have neither the time nor expertise to conduct financial investigations.

The Criminal Fine Collection Act of 1984 may improve the situation, GAO said. The new law requires courts to obtain and consider an offender's financial capability before imposing a fine. GAO recommended that federal courts share this information with U.S. Attorneys' offices, which are responsible for collecting fines and taking legal action against those who do not pay.

The new law makes a number of additional changes that could increase payment rates. It makes willful nonpayment

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of a criminal fine a crime in itself, strengthens the government's judgment lien on property owned by criminals owing fines, requires fine payment as a condition of probation and parole, sets a general five year limit on installment schedules, and allows U.S. Attorneys to assess interest of 18 percent per year for past-due fines.

In addition, the 1984 law greatly increases the ante. The maximum fine for felonies, for example, was raised from $10,000 in most cases to $250,000 for individuals and $500,000 for corporations.

Finally, the new law calls for better management. Collecting fines traditionally has been a responsibility shared by U.S. Attorneys' offices, court clerks' offices, and probation offices, GAO said. The fragmentation of responsibility produced confusion and duplication of effort, GAO said. The new law gives the Justice Department primary authority to collect fines. The Justice Department is creating a system in each federal court district for reporting and tracking of all court-imposed fines, GAO said. While the new system is not as centralized as GAO recommended, the Justice Department believes it will improve accountability, GAO said.

Report: "After the Criminal Fine Enforcement Act of 1984—Some Issues Still Need To Be Resolved" (GAO/GGD-86-02) is available from the U.S. General Accounting Office, Document Handling and Information Services Facility, Box 6015, Gaithersburg MD 20877, (202)275-6241. The first five copies are free of charge.

NEWS IN BRIEF

LAW ENFORCEMENT

• The U.S. Supreme Court, in an unusual case recognizing the widespread but informal practice of plea bargaining, ruled unanimously that an Arkansas man who pleaded guilty to murder was not entitled to a re-examination of his plea simply because his sentence turned out to be longer than he expected.

The November 18 decision in *Hill V. Lockhart* involved a misunderstanding which defendant William Lloyd Hill said amounted to "erroneous advice" from his attorney. Under the terms of the agreement, Hill pleaded guilty to first-degree murder and property theft on the understanding that he would receive a sentence of 35 years and would be eligible for parole after serving one-third of that term. He did not tell his attorney, however, that he had a prior criminal conviction in Florida. Under an Arkansas law, the previous conviction meant that Hill must serve one-half of his sentence before becoming eligible for parole. Hill sought unsuccessfully to withdraw his guilty plea.

Justice William Rehnquist wrote the opinion denying Hill's petition. Justice Byron White, in a concurring opinion, noted that Hill's claim of ineffective assistance of counsel was undercut by the fact that he had not told his lawyer about the previous conviction.

• The U.S. Justice Department has obtained a consent decree with the Anne Arundel County, Maryland Police Department requiring the department to try to hire more women as police officers and to pay $100,000 to at least 136 women who were rejected over the past decade. The agreement resolved an employment discrimination suit filed under the Civil Rights Act of 1964.

The suit said that the police department used minimum height and weight requirements to exclude women until 1974, and since then has used a physical strength and agility test to the same end. Since 1974, the department hired 302 men and 20 women as police officers, the Justice Department said.

The consent decree requires the county to hire 15 of the best-qualified women who failed the physical tests and give them seniority retroactively. And it requires payment of $25,000 to the woman who filed charges challenging the physical requirements, with the other $75,000 to be distributed among other women who failed the test and were denied employment as a result.

• The city of Chicago agreed to a $306,000 settlement with 10 organizations and 10 individuals who were subjected to police surveillance during the 1960s and early 1970s. The settlement also will allow five additional plaintiffs to continue to seek a formal court decision on the Constitutionality of the police action. The surveillance unit, which spied on anti-war activists and others, was called the "Red Squad" and was disbanded in 1975.

COURTS

• Associate Justice William J. Brennan, whom many see as a "liberal" fighting a rising tide of conservatism on the U.S. Supreme Court, and whose writings in fact are increasingly taking the form of dissenting, not majority, opinions, recently defended the practice of writing dissents against those who think they diminish the impact of the court's rulings.

Speaking at the University of California Hastings College of Law, Justice Brennan said that "unanimity is not in itself a judicial virtue." Dissents safeguard the integrity of the courts "by keeping the majority accountable for the rationale and consequences of its decision."

Brennan noted that many Supreme Court justices have criticized the practice of issuing dissents on the ground that they reduce the court's authority and prestige. Former Justice Potter Stewart once called dissents "subversive literature."

Reaction from the judges ranged from enthusiastic to hostile, with the majority agreeing that the conference was needed and worthwhile, even if some ideas were not appropriate for Virginia. Whether they liked a particular subject or presentor, or not, the judges agreed that the conference addressed an area where they need as much information and help as they can get.

The next specialty course will be on "Improving the Court Management Team" and will be held in Williamsburg during July.

JUROR MANAGEMENT STANDARDS

The Standards Relating to Juror Use and Management in Virginia adopted by the Judicial Council of Virginia point out that improving the representativeness of the jury system and making better use of the time of individuals performing jury service do not necessarily imply that the cost of operating the jury system must increase. One area in which significant cost savings can be realized is the process for summoning and determining the qualifications of prospective jurors. Accordingly, Standard Eleven urges adoption of a combined qualification and summoning procedure and a simplified questionnaire as a means of increasing efficiency and reducing the cost of summoning individuals for jury service. In addition, it urges jurisdictions to establish clear policies and procedures so as to insure to the greatest extent possible that a summons for jury service will be obeyed.

Combining the summons and questionnaire has a number of advantages. Filling out and screening a well-designed questionnaire not only takes less time than a personal interview by a sheriff or jury commissioner but is less subject to bias and distortion. Sending out one form rather than two eliminates duplication of work, thus reducing material and postage expenses. It also relieves some of the uncertainty and confusion felt by prospective jurors as a result of this interval between qualification and summoning. Finally, the combined qualification and summoning method has been shown to increase the percentage of eligible persons who respond to the initial notice.

The design and packaging of the notification and qualification forms are important not only for reasons of efficiency but also because the forms serve as an introduction to the courts. Long, legalistic documents may be confusing, tedious, and aggravating to prospective jurors. Both the operation of the jury system and esteem for the judicial process is significianly enhanced when citizens called for jury duty understand what is expected of them and why it is required. Since the qualification questionnaire and summons will be the first contact for many individuals with the court system, it is essential that the forms be as clear and concise as possible. (An example of a combined summons and qualifications questionnaire has been prepared by the Council and is included in the Standards.)

This standard also recommends use of first-class mail. Courts that have adopted delivery of juror summons by first-class mail report the following advantages: (1) The net response rate is as high, if not higher, than with other methods of service. (2) Non-deliverables are returned more quickly and reduced in number (certified mail is held for three weeks; undeliverable first-class mail is returned at once). (3) The anxiety or embarrassment felt by citizens when a sheriff delivers the summons is eliminated.

Continued efforts to enhance the operation of the jury system will significantly improve the attitudes of all citizens about the judicial system.

COLLECTING FINES AND COSTS—A SYSTEM THAT WORKS FOR LOUDOUN COUNTY

Collecting fines and costs is a continuing problem throughout the Commonwealth. One county, Loudoun, has developed a system that is working. We offer it for your information and possible use.

In the spring of 1981 under the authority of Chapter 21 of the Code of Virginia - Recoveries of Fines and Penalties, and specifically of Article 3 - Collection and Disposition of Fines, the then Commonwealth's Attorney of Loudoun County, Thomas D. Horne, now Judge of the Circuit Court, established a system for the collection of fines and costs as required of his office under Sections 19.2-348 and 19.2-349.

Unpaid criminal judgments ten years old or less were identified from the Judgment and Delinquent Lien Book and a card file set up with information from the unpaid warrants and summonses sufficient for locating defendants and serving them with process where necessary. When a file had been established for delinquencies 6 to 10 years old, about 500 in number, a statistically sound random sampling of 10% of these was made and requests for payment sent by regular mail to all the defendants.

All but one of the mailings were returned by the Post Office Department as undeliverable, probably

because of the transient nature of the population of this area. On the basis of this sampling it was obvious that to attempt recovery of fines and costs summonses or warrants more than 5 years old was economically not justifiable.

With no precedents to follow, legal forms, letters and procedures were devised as they became necessary and gradually improved upon as experience dictated.

Beginning with April 1981 convictions in both the Circuit Court and General District Court, and from the oldest toward the more recent cases, notices were sent by regular mail to defendants demanding payment within 30 days of receipt of the notice. Many turned out to be undeliverable but those that were not so returned were assumed to have been delivered.

In the latter case if payments were not received within a reasonable time after the 30 days had expired, Show Causes were issued to defendants with Virginia addresses. This required a Motion signed by the Commonwealth's Attorney, and Order signed by a Circuit Court Judge and a Rule to Show Cause signed by the Clerk of the Circuit Court. Wording of these forms was worked out between the Circuit Court Judge and the Commonwealth's Attorney and occasionally modified as experience indicated. Rules were made returnable at least 3 weeks from date of issuance. to allow ample time for service and return of service. On the return date the case was heard by a Circuit Court Judge and prosecuted by the Commonwealth's Attorney's Office.

Up to this point no formal file was established but if a defendant who had been served in person did not appear, a Bench Warrant, signed by the Judge who had heard the case would issue and a Circuit Court file would be set up in the regular Circuit Court numbering system. The Bench Warrant was accompanied by a Memorandum to the Magistrate, suggesting a return date and recommending a bond amount sufficient to cover the total of fines, costs and interest, if any, plus an additional $50 for a possible fine for Contempt of Court for Failure to Appear.

All the foregoing proedures were accomplished in the Commonwealth's Attorney's Office by one part-time Collections Assistant who developed and set up the card file, sent out the 30-day Notices, with occasional clerical help when necessary, prepared Motions, Orders, Rules and Bench Warrants, maintained records to determine whether time payments were being made as ordered and, when requested, prepared follow-up Rules or Capiases for defendants failing to make payments as Ordered.

Prior to January 1, 1985, these procedures applied both to Circuit Court cases and to General District Court summonses and warrants which had been returned to the Circuit Court under the authority of Section 19.2-345 and 19.2-346. Because of the time lag built into the system as much as 6 or 8 weeks might elapse from the date of conviction in the General District Court to the mailing of the 30-day Notice, which in itself added to the delay. As a result defendants moved in the interim and could not be located.

In spite of this the total of collections of delinquent fines and costs in the Circuit Court and the General District Court from the inception of the program in April, 1981, to November 30, 1984, was $148,690.

Effective January 1, 1985, the procedures for collection of fines and costs in the Circuit Court remain as described heretofore.

Where the General District Court is concerned, however, the 1983 Amendment of Section 19.2-348, effective January 1, 1985, inserted "or appropriate district court". As a result the Collections Assistant, whose base of operations previously had been in the Circuit Court Clerk's Office, established another base in the Clerk's Office of the General District Court, where most of the work is now done.

There are two major types of cases in which fines and costs are unpaid. The first and probably most common results when the defendant does not appear for trial at the date and time set forth in the summons or warrant and is tried in absentia. In such instances, a Notice, mailed within a day or two after the trial, goes out to the defendant by regular mail, requesting payment within 10 days. If this does not bring either a full or partial payment, the warrants or summonses are turned over weekly to the Collections Assistant who prepares a simple, one-page Show Cause Summons form carrying the facsimile signature of the Clerk of the General District Court, and sends it out for service. This faster, tighter procedure-cases tried on December 2 or December 3, 1985, for instance prompted Show Cause Summonses dated and sent out from December 15 to December 18-undoubtedly spurs earlier payments and catches defendants who might otherwise have disappeared.

The other major problem case in the General District Court is that in which the defendant has been ordered to make payment by a certain date but failed to do so. Such warrants and summonses are referred to the Collections Assistant within a week after the due date. Here, again, the time lag has been greatly reduced. When defendants have been served in person with the Show Cause Summons and have not appeared on the return date, one of the General District Court clerks issues a capias.

In the first year of operation under the new district court handling, the collection of unpaid fines and costs as a result of Show Causes issued by the Collections Assistant from January 1, 1985 to December 15, 1985, amounted to a total of $38,861.

Anyone wanting more details on these procedures and the forms used, should contact Mr. Phillip Brownrigg, Collection Assistant to the Commonwealth's Attorney, Loudoun County.

STATE OF ALABAMA
ADMINISTRATIVE OFFICE OF COURTS
817 South Court Street
Montgomery, Alabama 36130

COURT NEWS

Newsletter of the Alabama Judicial System LIBRARY *April, 1986*

Criminals Pay Up in Dale County

The Dale County Clerk's office keeps a copy of an editorial which appeared in the Montgomery Advertiser in 1985 in their office. The editorial reads, in part:

"It soon became clear that no single office was taking the responsibility for seeing that criminals paid fines . . ."

Circuit Clerk Bettye Garrett says, "They could have been writing about us, and we didn't even know it."

But that is no longer the case, according to Presiding Circuit Judge Ben McLauchlin. "At one time, everyone thought someone else was following up on collections. Now, however, our clerk's office has devised a collection procedure that works well for us, and with the cooperation of the district attorney and the probation officer, we have been most successful in collecting monies due the court," said McLauchlin.

McLauchlin

Figures indicate that Judge McLauchlin is correct--their system does work.

(See Dale Co., page 2)

Interagency Conference On Youth Scheduled For June

On June 25-27, approximately 400 juvenile court judges, probation officers, pensions and security and mental health staff, and educators are scheduled to meet in Montgomery for the first Interagency Conference on Youth.

Plans for the conference were first announced last Spring by Chief Justice C. C. Torbert, Jr., following a meeting with juvenile court judges and officials of the Department of Pensions and Security, the Department of Mental Health and Mental Retardation, the State Department of Education, the Department of Youth Services, and the Alabama Law Enforcement Planning Agency.

"The Interagency Conference is a means to forge a new, cooperative partnership and improve coordination between departments and agencies involved in providing services to the youth of Alabama," said Chief Justice Torbert.

(See Youth, page 3)

Child Support Committee Appointed

Chief Justice C. C. Torbert, Jr., recently appointed a 21-member Child Support Enforcement Committee to review and analyze the changes mandated by the 1984 Congressional Amendments to the Social Security Act's Child Support Enforcement Title.

"The Amendments to the Child Support Enforcement Title directly affect judges, district attorneys and special prosecutors, clerks and registers, and Department of Pensions and Security personnel," said Torbert.

"It is, therefore, essential that representatives from each of these groups participate on a committee which is charged with the responsibility of developing a coordinated and effective approach to these changes," Torbert said.

Presiding Circuit Judge Clatus K. Junkin, 24th Judicial Circuit, Fayette, Alabama, was appointed by the Chief Justice to chair the committee. Judge Junkin was recently named the "1985-86 Judge

Junkin

(See Child Support, page 6)

Dale Co.

(Continued from Page 1)

In 1983, total costs and fines collected in Dale County circuit criminal cases were $39,593.33. 1984 showed an increase in collections of $12,754.34, for a total of $52,347.67. And with the advent of the new collections procedure in 1985, collections of $75,669.93 were reported by the clerk's office.

When adjudicated case files are returned to the circuit clerk's office, a card is completed on each defendant, showing his case number, name, address, and the total amount owed. The charges assessed by the judge are itemized on the card and the date payment is ordered to be made is shown.

"This card is compatible with our pegboard system and is easily updated when funds are receipted," said Mary Bludsworth, head bookkeeper in the clerk's office, who was instrumental in developing the card system.

Mary maintains a tickler file by date payments are due. The tickler file is checked each day to determine if monies to be paid on that particular day are received in the clerk's office.

Each action taken to effect collection of costs and fine is noted on the defendant's individual card and the tickler file is updated to show any change in due date.

If a defendant fails to pay on the date due, the clerk's office prepares an Order for the judge's signature, notifying the defendant of his failure to pay and ordering him to pay by a given date. The Order advises the defendant that if he fails to comply, a warrant will be issued for his arrest.

Should the defendant again fail to pay by the date shown on the Order, the clerk's office prepares an Order to Serve for the judge's signature and a warrant is then served on the defendant by the Sheriff's office. The defendant may, at the time the warrant is served, be brought to the clerk's office and pay the fine or, if he refuses to do so, he is brought before the judge. The judge may extend the due date or work out a payment plan. This action is then noted on the card file and the tickler file is updated. The collection process repeats itself until the amount assessed is collected.

If a defendant has been sentenced to probation, the probation officer monitors the clerk's records to see if he is paying. If all efforts by the clerk's office to collect fail, the probation officer prepares an Order from the judge for revocation of probation. A copy is sent to the clerk's office so that this action may be noted on the defendant's card.

Pictured (l-r) are: Bettye B. Garrett, Circuit Clerk; Mary Bludsworth, Deputy Clerk; Merilyn Campbell, Carol Goodson, Brunise Bryan, Valerie Scott and Debra Nicholson.

"We intend for fines and costs assessed by the court to be paid," said McLauchlin. "We want defendants to know that they will be held accountable for payment of fines and court costs.

One Step Juror Summoning Requests

Courts using the one-step juror summoning system are requested to follow the procedure listed below in order to prevent unnecessary delays in the receipt of their venires.

Six to six and one-half weeks prior to a term of court, mail both copies of your request to the Administrative Office of Courts, 817 South Court Street, Montgomery, AL 36130-0101, ATTN: Carolyn Overman. The pink copy will be dated and returned to you to acknowledge receipt.

If you have any questions regarding one-step summoning or need assistance, call Ms. Overman at 1-800-392-8077.

JUDICIAL NEWS

Newsletter of the Alabama Judicial System — November, 1985

Judge Neilson Rides The Circuit In Black Belt

From Hoboken on the southern edge of Marengo County to Mantua southwest of Tuscaloosa, it's 63 miles as the crow flies. By road, it's more like 80.

These are the north and south borders of Alabama's 17th Judicial Circuit, composed of Greene, Marengo, and Sumter counties with courthouses in Eutaw, Linden, and Livingston. It's the largest geographical area in the state covered by a single circuit judge.

That judge is Claud Neilson who often sits in courtrooms without air conditioning or even a ceiling fan; with open windows but no screens. Twice he's been stung by wasps while on the bench.

Neilson

"Being a rural judge is different," he says. "You're closer to the people and sometimes that makes it tougher."

The 17th Judicial Circuit was originally composed of four counties -- Marengo, Sumter, Greene, and Pickens. In 1947, the legislature

(See Neilson, Page 2)

District Judges Appointed In Clay, Cleburne Counties

Clay and Cleburne counties were the only counties at the beginning of the Unified Judicial System in 1977 which were not provided resident district judges. With the passage of Act 85-924 which created the two judgeships, each county in Alabama is now a separate district court.

Pilgrim

Rochester

Gov. George C. Wallace has named John Edward Rochester to fill the new position in Clay County, and Larry E. Pilgrim has been appointed to serve as district judge of Cleburne County.

Judge Rochester received his undergraduate degree from Auburn University and graduated from the Cumberland School of Law in 1980. He engaged in the private practice of law in Ashland and served as municipal court judge for Ashland and Wedowee.

A lifelong resident of Cleburne County, Judge Pilgrim graduated from Auburn University in 1975 and received his law degree from Cumberland School of Law in 1979. He was engaged in the general practice of law in Cleburne County prior to being appointed to the bench.

Automated Payment System Being Tested In The Field

A new automated system was added to the State Judicial Information System (SJIS) in October of this year. The new release is the Court Payment System designed to speed the process of collecting and disbursing funds collected on any periodic payments made to the clerk.

Such periodic payments will include restitution, fines, partial payment on court costs or indigent attorney fees, all child support collections including ADC, Title IV, and URESA, alimony and any other judgments being paid in installments.

(See Automated, Page 2)

Neilson

(Continued from Page 1)

deleted Pickens County from the circuit. Since 1947, there have been only three different circuit judges -- Judge Emmett Hildreath, Judge Tom Boggs, and Judge Neilson.

When you've got three counties, being close to the people requires a three-fold effort. Neilson is a member of organizations in each county and must deal regularly with local officials in each courthouse.

"When I go to Eutaw or Livingston or Linden to hold court, I'm obligated to visit offices in the courthouse and also be open d available to local city officials. You might call it politics, but so be it; it's necessary."

In addition to the politics, Neilson also is the head of three law libraries and three jury commissions. He has no law clerks; no full-time bailiffs.

"When I pack up to go to Eutaw or Livingston, the only tool of the oldtime circuit-riding judge that's missing is the horse."

If the judge needs to hold a private conference, he uses a jury room or witness room. His phone messages are usually handled by the circuit clerk's or district judge's staff.

"We've got excellent clerks and district judges in each county and their cooperation is my salvation."

Neilson is proud that the circuit court docket in all three counties is current. During the past year, 778 cases were filed and 829 were disposed, giving him a throughput figure of 107%.

The case filings are less than the state-wide average but Neilson feels his other workload multiplied times three equals that of any circuit judge in the state. Insofar as workload goes, he'd trade for a caseload of 1,100 in a single county jurisdiction any time.

However, he feels the rewards of being close to the people. "They never let you get in a vacuum or sit in an ivory tower."

Automated

(Continued from Page 1)

In addition to aiding the clerk in the actual handling of the monies, the systems will produce a variety of management reports and products.

These include delinquent payment reports, warning letters, warrants, executions, statistical data, and caseload information.

The system is also designed to retain the "payment history" of the client through the life of the case. It is anticipated that this system will increase, with little extra burden, the ability of the court to monitor compliance with its order, thereby increasing the collection of court-ordered monies.

This is the first automated system with direct financial applications that has been designed for the trial court.

Due to this fact, the system will be tested in Montgomery and Etowah counties before being released generally.

AOC Program Analyst Mike Moore (r) assists (l-r) Circuit Clerk Debra Hackett and Court Clerk Ruby Martin with new system.

Debra Hackett, Circuit Clerk of Montgomery County, will test the restitution/court cost/fines attorney fee portion of the system. Billy Yates, Circuit Clerk of Etowah County will test the capabilities of the system in the child support area.

Judge Melvin E. Grass

Retired Marshall County District Judge Melvin E. Grass, 71, died on September 23, after a lengthy illness. Judge Grass served on the district court from 1971 until his retirement in 1983. He was a native of Marshall County and he and Mrs. Grass resided in Guntersville.

Cole, Nurre victorious in second annual judicial tennis tournament

The second annual Ohio Common Pleas Judges Judicial Tennis Tournament took place at Quail Hollow during the judges' association meeting in June.

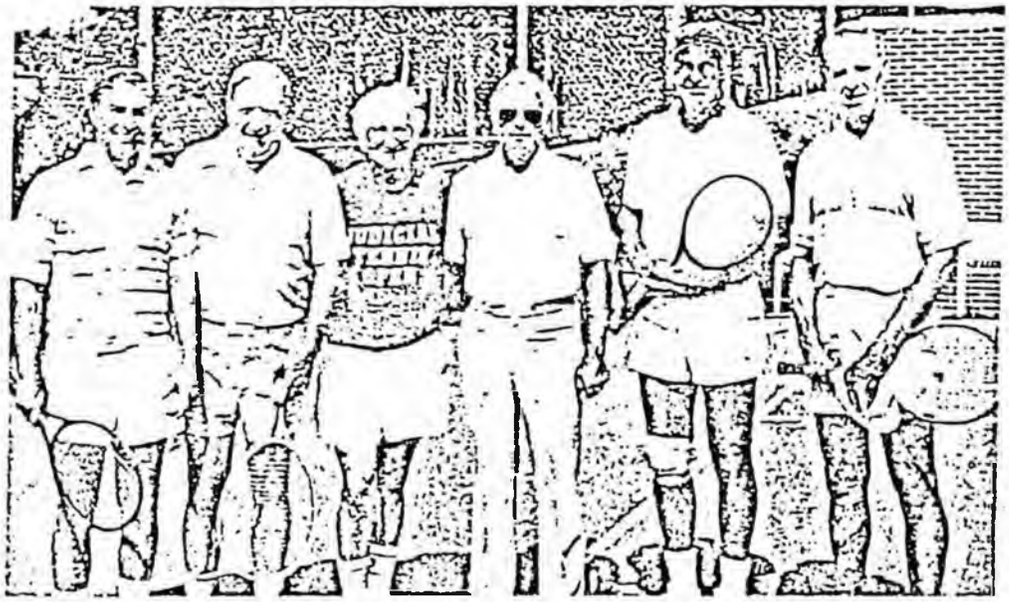
Judge Thomas C. Nurre, Hamilton County Court of Common Pleas, and Judge Richard T. Cole, Clark County Court of Common Pleas, were crowned champions. Cole teamed up with Judge Arthur O. Fisher, Montgomery County Court of Common Pleas, to win last year's tournament.

Judge Dale A. Crawford, Franklin County Court of Common Pleas, and Judge Warren J. Bettis, Columbiana County Court of Common Pleas, were the runners-up.

Judge Harry Jaffe, chairman of the event, said it was a great tournament this year and is looking forward to next year with an eye toward greater participation by the judges.

"Hopefully, we will be able to keep a few more judges off the golf course and onto the tennis courts next year," quipped Jaffe.

For the first time, the winners and runners-up received silver trophies for their efforts. The trophies were designed by Virginia McMonagle, wife of Judge George J. McMonagle.



Participants of the Common Pleas Judges Tennis Tournament pose before the championship match. From left to right: Judge Dale Crawford, Judge Warren Bettis, Judge Harry Jaffe, Herb Nold, Judge Thomas Nurre and Judge Richard Cole.

ABA and insurance company develop liability policy for judges

Herbert L. Jamison and Company and the American Bar Association's Judicial Administration Division have developed a professional liability insurance policy for state judges.

The annual premium for the policy is $425. The coverage applies to claims arising out of any act, error or omission in an official judicial capacity and reported to the insurance company. The coverage includes claims arising out of judicial, administrative, ministerial or management acts.

The limit of liability are $1 million for each [illegible] and $2 million annual aggrega[illegible]ding defense.

For m[illegible] information on the policy contact the insurance company at 800-526-4766.

County garden saves money, provides work

Exercise and good time credits are some of the benefits inmates at the Madison County Jail are receiving for working on a half-acre county garden.

Sheriff Stephen Saltsman said that inmates serving time for non-violent misdemeanors can qualify for garden work after they have served a minimum of 30 days.

The inmates receive a 24-hour credit toward their sentence for each eight hours worked in the garden. The county has also reaped some benefits from the garden by saving over $1200 this year.

Saltsman said the garden was planted last spring. Vegetables grown in the garden are also being used at a local school.

The garden judge donated tomato plants and an area resident helped prepare the grounds for planting.

Saltsman said the garden helps his department meet the state requirements that prisoners receive five hours of exercise per week.

Cincinnati may hire agency to collect old fines

The city of Cincinnati is considering hiring a collection agency to collect over $3.5 million in overdue parking tickets.

A New York-based computer firm, Datacom Systems Corporation, reported to the city that four out of every 10 people who get a ticket in Cincinanti don't pay them.

The corporation, which collects parking fines for Detroit and New York City, based its revenue collection figures on data provided by police.

The firm said 282,564 tickets have not been paid dating back through 1980. The city collected only $54,000 from tickets in 1982 although 172,887 were issued.

The bill under consideration increases penalties for manufacture or distribution of PCP from five years in jail or a $50,000 fine to 15 years or a $100,000 fine. For distribution of PCP to a minor, the maximum penalty would increase from 10 years in prison or a $50,000 fine to 30 years and a $100,000 fine.

A local counsel rule recently enacted by the Mississippi Supreme Court limits the number of times an out-of-state attorney can practice in the state's courts to five times a year. It also requires out-of-state attorneys to associate with a Mississippi lawyer before they appear in court.

Arkansas also requires local counsel affiliation and Tennessee has a similar rule but no limitations on court apearances. Mississipi has a one-year residency requirement for licensure. Cases pending before the U.S. Supreme Court may eventually dictate how the question is resolved.

Governor Kean has accepted aproposal by the New Jersey Bar Association to create a committee of lawyers to assist in the selection of candidates for appointment as judges and prosecutors. Working apart from the Judicial Appointments Committee, the panel will involve the bar in the selection process.

New York lawmakers sent to Governor Cuomo legislation that will require defendants seeking acquittal using the insanity defense to prove that they were insane when they committed the crime. Under present law, the burden of proof is on the prosecution. The U.S. Supreme Court has on two occasions upheld similar state laws -- Oregon in 1952 and Delaware 1976.

Computers in Utah are reclaiming bail from people who have neglected outstanding court warrants, under a program authorized by the 1984 legislature. People who have not satisfied the warrants and file for refunds on their 1983 state taxes, will be matched on a computer file that so far has tagged 1,100 Utahns.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 26, 1987

MEMORANDUM

TO: Representative C.E. Swackhammer

ATTN: Tom Wright

FROM: Penelope Weyhrauch
Legislative Analyst

RE: **Permanent Fund Dividends: Refusing to Apply**
Research Request 87.214

You asked us to contact State agencies and ask them if individuals who owed the State money were refusing to apply for their Permanent Fund Dividend (PFD) because the State would garnish it. In researching your request, I contacted the State agencies which garnish PFDs.

Sandra Beebe, Manager of the Collection Section of the Child Support Enforcement Division of the Department of Revenue, estimated that two to three thousand individuals (of the ten thousand child support cases handled by the division) refuse to apply for their PFDs because they know the checks will be garnished by the State or by the Internal Revenue Service. Ms. Beebe said that one man went to jail rather than apply for his PFD, and another, after finding out that his child support had ended, immediately filed for PFDs for the last four years.

Tammy Ross, with the Division of Employment Security of the Department of Labor, garnishes PFDs for the repayment of unemployment insurance taxes by employers. She says that employers who owe back taxes are usually not aware that garnishment is going to occur until after they have already applied for their PFD. Andrea Wetzstein, with the Benefit Payment Control Division of the department, garnishes PFDs for the repayment of overpaid benefits to unemployed individuals. She believes that some people do not apply for their PFD because it will be garnished. She said that three or four people have told her that they would not apply because it would be garnished.

Cindy Valleho, who acts as a collection agent for the Postsecondary Education Commission, estimated that one percent of the people who are contacted for collection refuse to apply for their PFD because it would be garnished. Jackie Rhine, with the Criminal Division of the Anchorage Court System, said that no efforts have been made by the Court System during the last two years to collect money owed for fines and attorney fees.

* * *

I hope this information is useful to you. If you have any questions or would like additional information, please contact our agency.

SELECT = QUERY
00001 ALL SECTION EQ 43.23.005

AS43.23.005 DOCUMENT= 1 OF 1

CHAPTER = 43.23
SECTION = 43.23.005
TITLE = 43
HEADINGS TITLE 43.
REVENUE AND TAXATION.
CHAPTER 23.
PERMANENT FUND DIVIDENDS.
CITATION SEC. 43.23.005.
CATCH LINE
ELIGIBILITY.
TEXT (A) AN INDIVIDUAL IS ELIGIBLE TO RECEIVE ONE PERMANENT FUND DIVIDEND EACH YEAR IN AN AMOUNT TO BE DETERMINED UNDER AS 43.23.025 IF THE INDIVIDUAL APPLIES TO THE DEPARTMENT, AND IF ON THE DATE OF APPLICATION THE INDIVIDUAL

(1) IS A STATE RESIDENT; AND

(2) HAS BEEN A STATE RESIDENT FOR A PERIOD OF AT LEAST SIX CONSECUTIVE MONTHS IMMEDIATELY PRECEDING THE DATE OF APPLICATION.

(B) IN DETERMINING THE MINIMUM PERIOD OF AN INDIVIDUAL'S RESIDENCY REQUIRED UNDER (A)(2) OF THIS SECTION, THE DEPARTMENT MAY INCLUDE MONTHS OF RESIDENCY BOTH IN THE CURRENT YEAR AND IN THE IMMEDIATELY PRECEDING YEAR.

(C) A PARENT, GUARDIAN, OR OTHER AUTHORIZED REPRESENTATIVE MAY CLAIM A PERMANENT FUND DIVIDEND ON BEHALF OF AN UNEMANCIPATED MINOR OR ON BEHALF OF AN INCOMPETENT INDIVIDUAL WHO IS ELIGIBLE TO RECEIVE A PAYMENT UNDER THIS SECTION.

HISTORY (SEC. 1 CH 102 SLA 1982)
ANNOTATIONS
REVISOR'S NOTES SECTIONS 2 AND 3, CH. 99, SLA 1985, AMEND (C) AND (D) OF THIS SECTION RESPECTIVELY. THE AMENDMENTS ARE EFFECTIVE IF &SEC 1, CH. 99, SLA 1985 IS REPEALED (SEE &SEC 25, CH. 99, SLA 1985). IF THE AMENDMENTS BECOME LAW, THE SUBSECTIONS WILL READ: "(C) A PARENT, GUARDIAN, OR OTHER AUTHORIZED REPRESENTATIVE MAY CLAIM A PERMANENT FUND DIVIDEND ON BEHALF OF AN UNEMANCIPATED MINOR OR ON BEHALF OF AN INCOMPETENT INDIVIDUAL WHO IS ELIGIBLE TO RECEIVE A DIVIDEND UNDER THIS SECTION.
"(D) A PERSON WHO IS ELIGIBLE TO RECEIVE A PERMANENT FUND DIVIDEND UNDER THIS SECTION, OR WHO IS AUTHORIZED TO CLAIM A DIVIDEND ON BEHALF OF ANOTHER UNDER (C) OF THIS SECTION, MAY ELECT TO RECEIVE THE DIVIDEND EITHER IN CASH OR AS AN ANNUITY CREDIT. ALTERNATIVELY, A PERSON MAY ELECT TO RECEIVE 25 PERCENT, 50 PERCENT, OR 75 PERCENT OF THE DIVIDEND IN CASH AND THE REMAINDER AS AN ANNUITY CREDIT. A PERSON WHO IS 65 YEARS OF AGE ON OR BEFORE JANUARY 1, 1988 MAY ONLY RECEIVE THE PERMANENT FUND DIVIDEND IN CASH AND MAY NOT ELECT TO RECEIVE AN ANNUITY CREDIT."
SECTION 22, CH. 99, SLA 1985 PROVIDES FOR AN ADVISORY VOTE TO BE HELD AT THE GENERAL ELECTION IN 1986. FOR THE TEXT OF THAT PROVISION, SEE &SEC 22, CH. 99, SLA 1985 IN THE TEMPORARY AND SPECIAL ACTS.
DECISIONS NOTES TO DECISIONS STATED IN ALASKA OIL CO. V. ALASKA, 45 BANKR. 358 (D. ALASKA 1985).

SELECT - QUERY
0.0001 ALL SECTION EQ 43.23.015

AS43.23.015 DOCUMENT= 1 OF 1

CHAPTER = 43.23
SECTION = 43.23.015
TITLE = 43
HEADINGS TITLE 43.
REVENUE AND TAXATION.
CHAPTER 23.
PERMANENT FUND DIVIDENDS.
CITATION SEC. 43.23.015.
MATCH LINE
APPLICATION AND PROOF OF ELIGIBILITY.
TEXT (A) THE COMMISSIONER SHALL ADOPT REGULATIONS UNDER THE ADMINISTRATIVE PROCEDURE ACT (AS 44.62) FOR DETERMINING THE ELIGIBILITY OF INDIVIDUALS FOR PERMANENT FUND DIVIDENDS. THE COMMISSIONER MAY REQUIRE AN INDIVIDUAL TO PROVIDE PROOF OF ELIGIBILITY, AND THE COMMISSIONER MAY USE OTHER INFORMATION AVAILABLE FROM OTHER STATE DEPARTMENTS OR AGENCIES TO DETERMINE THE ELIGIBILITY OF AN INDIVIDUAL.

(B) THE DEPARTMENT SHALL PRESCRIBE AND FURNISH AN APPLICATION FORM FOR CLAIMING A PERMANENT FUND DIVIDEND. THE APPLICATION MUST CONTAIN A STATEMENT OF ELIGIBILITY AND A CERTIFICATION OF RESIDENCY IN SUBSTANTIALLY THE FOLLOWING FORM:
I CERTIFY THAT
( ) I AM A STATE RESIDENT ON THE DATE OF THIS APPLICATION AND I HAVE BEEN A STATE RESIDENT FOR AT LEAST SIX MONTHS IMMEDIATELY PRECEDING THE DATE OF THIS APPLICATION; OR
( ) (NAME), THE INDIVIDUAL ON WHOSE BEHALF I AM APPLYING, IS A STATE RESIDENT AND HAS BEEN A STATE RESIDENT FOR AT LEAST SIX MONTHS IMMEDIATELY PRECEDING THE DATE OF THIS APPLICATION.

I UNDERSTAND THAT A FALSE CLAIM OF RESIDENCY TO OBTAIN A PERMANENT FUND DIVIDEND FOR MYSELF OR FOR ANOTHER IS A CRIMINAL OFFENSE AND THAT IF CONVICTED I WILL FORFEIT FUTURE PERMANENT FUND DIVIDENDS AND THAT I MUST REPAY ALL PERMANENT FUND DIVIDENDS THAT HAVE BEEN PAID TO ME. I UNDERSTAND THAT THIS PENALTY IS IN ADDITION TO ANY CRIMINAL PENALTIES IMPOSED.

_____ _____
(SIGNATURE OF INDIVIDUAL, PARENT, GUARDIAN, OR OTHER AUTHORIZED REPRESENTATIVE)

(C) EXCEPT AS PROVIDED IN (D) OF THIS SECTION OR AS MAY BE PROVIDED BY REGULATIONS ADOPTED BY THE DEPARTMENT, AN INDIVIDUAL MUST PERSONALLY SIGN THE APPLICATION FOR PERMANENT FUND DIVIDENDS, INCLUDING THE CERTIFICATION OF RESIDENCY REQUIRED UNDER (B) OF THIS SECTION.

(D) THE APPLICATION AND CERTIFICATION OF RESIDENCY OF AN UNEMANCIPATED INDIVIDUAL UNDER 18 YEARS OF AGE OR OF AN INCOMPETENT INDIVIDUAL MUST BE SIGNED BY THE INDIVIDUAL'S PARENT, LEGAL GUARDIAN, OR OTHER AUTHORIZED REPRESENTATIVE.

(E) IF A PUBLIC AGENCY CLAIMS A PERMANENT FUND DIVIDEND ON BEHALF OF AN INDIVIDUAL, THE PUBLIC AGENCY SHALL HOLD THE DIVIDEND IN TRUST FOR THE INDIVIDUAL. MONEY HELD IN TRUST UNDER THIS SUBSECTION SHALL BE INVESTED BY THE COMMISSIONER IN ACCORDANCE WITH AS 37.10.070.

(F) A MINOR AN INCOMPETENT INDIVIDUAL MAY NOT MAINTAIN A CLAIM AGAINST THE STATE OR AN OFFICER OR EMPLOYEE OF THE STATE BASED ON THE MANNER IN WHICH THE PARENT, GUARDIAN, OR AUTHORIZED REPRESENTATIVE OTHER THAN A PUBLIC AGENCY OF THE STATE MANAGED OR DISPOSED OF PERMANENT FUND DIVIDENDS RECEIVED ON BEHALF OF THE MINOR OR INCOMPETENT INDIVIDUAL.

(G) IF AN INDIVIDUAL IS AGGRIEVED BY A DECISION OF THE DEPARTMENT DETERMINING THE INDIVIDUAL'S ELIGIBILITY FOR A PERMANENT FUND DIVIDEND OR THE INDIVIDUAL'S AUTHORITY TO CLAIM A PERMANENT FUND DIVIDEND ON BEHALF OF ANOTHER, THE INDIVIDUAL MAY APPEAL THAT DECISION TO THE SUPERIOR COURT IN ACCORDANCE WITH AS 44.62.560. AN APPEAL UNDER THIS SECTION DOES NOT ENTITLE THE AGGRIEVED INDIVIDUAL TO A TRIAL DE NOVO. THE APPEAL SHALL BE BASED ON THE RECORD OF THE ADMINISTRATIVE PROCEEDING FROM WHICH APPEAL IS TAKEN AND THE SCOPE OF APPEAL IS LIMITED TO MATTERS CONTAINED IN THE RECORD OF THE ADMINISTRATIVE PROCEEDING.

(H) THE PENALTY AND ENFORCEMENT PROVISIONS OF AS 43.23.035 APPLY TO AN INDIVIDUAL WHO CLAIMS A PERMANENT FUND DIVIDEND ON BEHALF OF ANOTHER.

HISTORY (SEC. 1 CH 102 SLA 1982)

ANNOTATIONS

REVISOR'S NOTES SECTIONS 4 - 8, CH. 99, SLA 1985, AMEND (A), (B), (E) AND (F) OF THIS SECTION, AND ADD A NEW (I). THE AMENDMENTS ARE EFFECTIVE IF &SEC 1, CH. 99, SLA 1985 IS REPEALED (SEE &SEC 23, CH. 99, SLA 1985). IF THE AMENDMENTS BECOME LAW, THE SECTION WILL READ: "(A) THE COMMISSIONER SHALL ADOPT REGULATIONS UNDER THE ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING THE PROCESS FOR DETERMINING THE ELIGIBILITY OF INDIVIDUALS FOR PERMANENT FUND DIVIDENDS. THE COMMISSIONER MAY REQUIRE AN INDIVIDUAL TO PROVIDE PROOF OF ELIGIBILITY, AND THE COMMISSIONER MAY USE OTHER INFORMATION AVAILABLE FROM OTHER STATE DEPARTMENTS OR AGENCIES TO DETERMINE THE ELIGIBILITY OF AN INDIVIDUAL.

"(B) THE DEPARTMENT SHALL PRESCRIBE AND FURNISH AN APPLICATION FORM FOR CLAIMING A PERMANENT FUND DIVIDEND. THE APPLICATION MUST CONTAIN A STATEMENT OF ELIGIBILITY AND A CERTIFICATION OF RESIDENCY IN SUBSTANTIALLY THE FOLLOWING FORM:

I CERTIFY THAT

( ) I AM A STATE RESIDENT ON THE DATE OF THIS APPLICATION AND I HAVE BEEN A STATE RESIDENT FOR AT LEAST SIX MONTHS IMMEDIATELY PRECEDING THE DATE OF THIS APPLICATION; OR

( ) (NAME), THE INDIVIDUAL ON WHOSE BEHALF I AM APPLYING, IS A STATE RESIDENT AND HAS BEEN A STATE RESIDENT FOR AT LEAST SIX MONTHS IMMEDIATELY PRECEDING THE DATE OF THIS APPLICATION.

I UNDERSTAND THAT A FALSE CLAIM OF RESIDENCY TO OBTAIN A PERMANENT FUND DIVIDEND FOR MYSELF OR FOR ANOTHER IS A CRIMINAL OFFENSE AND THAT IF CONVICTED I WILL FORFEIT FUTURE PERMANENT FUND DIVIDENDS AND THAT I WILL LOSE OR MUST REPAY ALL PERMANENT FUND DIVIDENDS THAT HAVE BEEN CREDITED OR PAID TO ME, AND ANY ACCURED INTEREST IN MY ANNUITY ACCOUNT. I UNDERSTAND THAT THIS PENALTY IS IN ADDITION TO ANY CRIMINAL PENALTIES IMPOSED.

(SIGNATURE OF INDIVIDUAL, PARENT, GUARDIAN, OR OTHER AUTHORIZED REPRESENTATIVE)

"(E) IF A PUBLIC AGENCY CLAIMS A DIVIDEND ON BEHALF OF AN INDIVIDUAL UNDER THIS SECTION, THE PUBLIC AGENCY SHALL ELECT 100 PERCENT CASH UNDER AS 43.23.005 (D) AND HOLD THE DIVIDEND IN TRUST FOR THE INDIVIDUAL. MONEY HELD IN TRUST UNDER THIS

SUBSECTION SHALL INVESTED BY THE COMMISSIO R IN ACCORDANCE WITH AS 37.10.070.

"(F) A MINOR OR AN INCOMPETENT INDIVIDUAL MAY NOT MAINTAIN A CLAIM AGAINST THE STATE OR AN OFFICER OR EMPLOYEE OF THE STATE BASED EITHER ON THE MANNER IN WHICH THE PARENT, GUARDIAN, OR AUTHORIZED REPRESENTATIVE OTHER THAN A PUBLIC AGENCY OF THE STATE MANAGED OR DISPOSED OF PERMANENT FUND DIVIDENDS RECEIVED ON BEHALF OF THE MINOR OR INCOMPETENT, OR AN ELECTION MADE OR NOT MADE ON THAT INDIVIDUAL'S BEHALF UNDER AS 43.23.005 (D).

"(I) THE PERMANENT FUND DIVIDEND APPLICATION FORM SHALL BE PREPARED TO ALLOW AN APPLICANT, OTHER THAN A PERSON WHO IS EXEMPT UNDER AS 47.45.015(B), TO ELECT TO RECEIVE THE DIVIDEND EITHER IN CASH OR AS AN ANNUITY CREDIT."

SECTION 22, CH. 99, SLA 1985 PROVIDES FOR AN ADVISORY VOTE TO BE HELD AT THE GENERAL ELECTION IN 1986. FOR THE TEXT OF THAT PROVISION, SEE &SEC 22, CH. 99, SLA 1985 IN THE TEMPORARY AND SPECIAL ACTS.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

SELECT - QUERY
00002 ALL SECTION EQ 43.23.065

AS43.23.065 DOCUMENT= 1 OF 1

CHAPTER = 43.23
SECTION = 43.23.065
TITLE = 43
HEADINGS TITLE 43.
REVENUE AND TAXATION.
CHAPTER 23.
PERMANENT FUND DIVIDENDS.
CITATION SEC. 43.23.065.
CATCH LINE
EXEMPTION OF PERMANENT FUND DIVIDENDS.
TEXT (A) EXCEPT AS PROVIDED IN (B) OF THIS SECTION, 50 PERCENT OF THE ANNUAL PERMANENT FUND DIVIDEND PAYABLE TO AN INDIVIDUAL IS EXEMPT FROM LEVY, EXECUTION, GARNISHMENT, ATTACHMENT, OR ANY OTHER REMEDY FOR THE COLLECTION OF DEBT. THIS EXEMPTION APPLIES TO AN ELIGIBLE INDIVIDUAL'S PERMANENT FUND DIVIDEND BOTH BEFORE AND AFTER PAYMENT IS MADE TO THE INDIVIDUAL.

(B) AN EXEMPTION IS NOT AVAILABLE UNDER THIS SECTION FOR PERMANENT FUND DIVIDENDS TAKEN TO SATISFY

(1) CHILD SUPPORT OBLIGATIONS REQUIRED BY COURT ORDER OR DECISION OF THE CHILD SUPPORT ENFORCEMENT AGENCY UNDER AS 47.23.140 - 47.23.220;

(2) COURT ORDERED RESTITUTION UNDER AS 12.55.045 - 12.55.051 OR 12.55.100;

(3) A COURT ORDERED PROBATION FEE UNDER AS 12.55.105; OR

(4) A DEBT OWED BY AN ELIGIBLE INDIVIDUAL TO AN AGENCY OF THE STATE, UNLESS THE DEBT IS CONTESTED AND AN APPEAL IS PENDING, OR THE TIME LIMIT FOR FILING AN APPEAL HAS NOT EXPIRED.

(C) CLAIMS LISTED IN (B) OF THIS SECTION HAVE PRIORITY IN THE ORDER LISTED OVER OTHER CLAIMS ON A PERMANENT FUND DIVIDEND.

HISTORY (SEC. 1 CH 102 SLA 1982; AM SEC. 1 CH 157 SLA 1984; AM SEC. 1 CH. 57 SLA 1985; AM SEC. 67 CH 138 SLA 1986)

ANNOTATIONS

CROSS REFERENCES FOR PROPERTY EXEMPT FROM EXECUTION GENERALLY, SEE AS 09.38.

REVISOR'S NOTES SECTIONS 12 AND 13, CH. 99, SLA 1985, AMEND THIS SECTION AND ADD NEW (B) AND (C). THE AMENDMENTS ARE EFFECTIVE IF &SEC 1, CH. 99, SLA 1985 IS REPEALED (SEE &SEC 25, CH. 99, SLA 1985). IF THE AMENDMENTS BECOME LAW, THE SECTION WILL READ: "(A) FIFTY PERCENT OF A CASH PERMANENT FUND DIVIDEND PAYMENT IS EXEMPT FROM LEVY, EXECUTION, GARNISHMENT, ATTACHMENT, OR ANY OTHER REMEDY FOR THE COLLECTION OF DEBT. THIS EXEMPTION APPLIES TO AN ELIGIBLE INDIVIDUAL'S PERMANENT FUND DIVIDEND BOTH BEFORE AND AFTER PAYMENT IS MADE TO THE INDIVIDUAL. AN EXEMPTION IS NOT AVAILABLE UNDER THIS SECTION FOR CASH PERMANENT FUND DIVIDEND PAYMENTS TAKEN TO SATISFY (1) CHILD SUPPORT OBLIGATIONS REQUIRED BY COURT ORDER OR DECISION OF THE CHILD SUPPORT ENFORCEMENT AGENCY UNDER AS 47.23.140 -47.23.220; (2) A DEBT OWED BY AN ELIGIBLE INDIVIDUAL TO AN AGENCY OF THE STATE, UNLESS THE DEBT IS CONTESTED AND AN APPEAL IS PENDING, OR THE TIME LIMIT FOR FILING

AN APPEAL HAS NOT EXPIRED; OR (3) COURT ORDERED RESTITUTION UNDER AS 12.55.045 - 12.55.051 OR 12.55.100. A CHILD SUPPORT OBLIGATION UNDER (1) OF THIS SECTION HAS PRIORITY OVER A DEBT OWED TO AN AGENCY OF THE STATE, AND A PERMANENT FUND DIVIDEND MAY NOT BE TAKEN TO SATISFY A DEBT UNDER (2) OF THIS SECTION UNTIL ANY PORTION OF THE DIVIDEND NECESSARY TO SATISFY A CHILD SUPPORT OBLIGATION HAS BEEN TAKEN.

"(B) THE DEPARTMENT SHALL REQUIRE AN INDIVIDUAL TO TAKE 100 PERCENT OF THE PERMANENT FUND DIVIDEND IN CASH IF THE DEPARTMENT RECEIVES A LEVY, EXECUTION, GARNISHMENT, ATTACHMENT OR OTHER LEGAL REMEDY FOR THE COLLECTION OF A PAST DUE DEBT DESCRIBED IN (A)(1) OR (2) OF THIS SECTION.

"(C) THE COURTS OF THIS STATE MAY, AS A CONDITION OF ANY CIVIL JUDGMENT OR RESTITUTION ORDER UNDER AS 12.55.045 - 12.55.051 OR 12.55.100, REQUIRE THE DEFENDANT TO TAKE THE DEFENDANT'S PERMANENT FUND DIVIDEND IN CASH."

SECTION 22, CH. 99, SLA 1985 PROVIDES FOR AN ADVISORY VOTE TO BE HELD AT THE GENERAL ELECTION IN 1986. FOR THE TEXT OF THAT PROVISION, SEE &SEC 22, CH. 99, SLA 1985 IN THE TEMPORARY AND SPECIAL ACTS.

AMENDMENT NOTES

EFFECT OF AMENDMENTS THE 1984 AMENDMENT ADDED THE LAST SENTENCE AND, IN THE NEXT-TO-LAST SENTENCE, SUBSTITUTED "AN EXEMPTION IS NOT" FOR "NO EXEMPTION IS," INSERTED "(1)," AND ADDED THE LANGUAGE BEGINNING WITH "(2) A DEBT" AT THE END OF THE SENTENCE.

SECTION 2, CH. 157, SLA 1984 LIMITS THE APPLICATION OF THE 1984 AMENDMENT TO DIVIDENDS ISSUED FOR 1984 AND SUBSEQUENT YEARS.

THE FIRST 1985 AMENDMENT ADDED "OR (3) COURT ORDERED RESTITUTION UNDER AS 12.55.045 - 12.55.051 OR 12.55.100" AT THE END OF THE NEXT-TO-LAST SENTENCE AND IN THE LAST SENTENCE INSERTED "OR COURT ORDERED RESTITUTION" AND "AND COURT ORDERED RESTITUTION."

THE SECOND 1985 AMENDMENT, EFFECTIVE IF &SEC 1, CH. 99, SLA 1985 IS REPEALED, REWROTE SUBSECTION (A) AND ADDED SUBSECTIONS (B) AND (C).

THE 1986 AMENDMENT, EFFECTIVE JULY 1, 1986, REWROTE THIS SECTION.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

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SELECT - QUERY
0/0001 ALL SECTION EQ 43.23.095

AS43.23.095  DOCUMENT=        1 OF          1

 CHAPTER   = 43.23
 SECTION   = 43.23.095
 TITLE     = 43
HEADINGS   TITLE 43.
           REVENUE AND TAXATION.
           CHAPTER 23.
           PERMANENT FUND DIVIDENDS.
CITATION   SEC. 43.23.095.
CATCH LINE
            DEFINITIONS.
TEXT       IN THIS CHAPTER,
                    (1)  "ALASKA PERMANENT FUND" MEANS THE FUND ESTABLISHED
               BY ART. IX, SEC. 15 OF THE STATE CONSTITUTION;
                    (2)  "COMMISSIONER" MEANS THE COMMISSIONER OF REVENUE;
                    (3)  "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE;
                    (4)  "DIVIDEND FUND" MEANS THE FUND ESTABLISHED BY AS
               43.23.045;
                    (5)  "INDIVIDUAL" MEANS A NATURAL PERSON;
                    (6)  "PERMANENT FUND DIVIDEND" MEANS A RIGHT TO RECEIVE
               A PAYMENT FROM THE DIVIDEND FUND;
                    (7)  "STATE RESIDENT" MEANS AN INDIVIDUAL WHO IS
               PHYSICALLY PRESENT IN THE STATE WITH THE INTENT TO REMAIN
               PERMANENTLY IN THE STATE OR, IF THE INDIVIDUAL IS NOT
               PHYSICALLY PRESENT IN THE STATE, INTENDS TO RETURN TO THE
               STATE AND IS ABSENT ONLY FOR ANY OF THE FOLLOWING REASONS:
                         (A)  VOCATIONAL, PROFESSIONAL, OR OTHER SPECIFIC
                    EDUCATION FOR WHICH A COMPARABLE PROGRAM WAS NOT
                    REASONABLY AVAILABLE IN THE STATE;
                         (B)  SECONDARY OR POSTSECONDARY EDUCATION;
                         (C)  MILITARY SERVICE;
                         (D)  MEDICAL TREATMENT;
                         (E)  SERVICE IN CONGRESS;
                         (F)  OTHER REASONS WHICH THE COMMISSIONER MAY
                    ESTABLISH BY REGULATION; OR
                         (G)  SERVICE IN THE PEACE CORPS;
                    (8)  "YEAR" MEANS A CALENDAR YEAR.
HISTORY    (SEC. 1 CH 102 SLA 1982; AM SEC. 3 CH 55 SLA 1983)
ANNOTATIONS
           REVISOR'S NOTES SECTION 15, CH. 99, SLA 1985, AMENDS (6) OF THIS
           SECTION.  THE AMENDMENT IS EFFECTIVE IF &SEC  1, CH.  99, SLA
           1985 IS REPEALED (SEE &SEC  25, CH. 99, SLA 1985).  IF THE
           AMENDMENT BECOMES LAW, THE PARAGRAPH WILL READ: "(6) 'PERMANENT
           FUND DIVIDEND' MEANS A CREDIT TO AN ANNUITY ACCOUNT OR A CASH
           PAYMENT UNDER THIS CHAPTER;"
           IN ADDITION, &SEC  16, CH. 99, SLA 1985, ALSO EFFECTIVE UPON THE
           REPEAL OF &SEC  1, CH. 99, SLA 1985, ENACTS AS 43.23.110 -
           43.23.130.  IF &SEC  16, CH. 99, SLA 1985 BECOMES LAW, THE NEW
           SECTIONS WILL READ:
           "ARTICLE 2. ANNUITY PROGRAM.
           "SEC. 43.23.110.  ANNUITY INVESTMENT FUND.   (A) THE ANNUITY
           INVESTMENT FUND IS ESTABLISHED AS A SEPARATE FUND IN THE STATE
```

TREASURY. THE A JITY INVESTMENT FUND CONSI S OF MONEY TRANSFERRED FROM THE DIVIDEND FUND AND INCOME EARNED BY THE ANNUITY INVESTMENT FUND. NOTWITHSTANDING AS 37.13.145, AN AMOUNT EQUAL TO THE PERMANENT FUND DIVIDENDS TAKEN AS ANNUITY CREDITS UNDER THIS CHAPTER SHALL BE ANNUALLY TRANSFERRED FROM THE DIVIDEND FUND TO THE ANNUITY INVESTMENT FUND.

"(B) MONEY IN THE ANNUITY INVESTMENT FUND SHALL BE INVESTED BY THE COMMISSIONER OF REVENUE IN INVESTMENTS AUTHORIZED UNDER AS 39.35.110. THE COMMISSIONER OF ADMINISTRATION SHALL CREDIT THE NET INCOME OF THE ANNUITY INVESTMENT FUND TO THE INDIVIDUAL ANNUITY ACCOUNTS.

"(C) THE LEGISLATURE MAY ANNUALLY APPROPRIATE TO THE DEPARTMENT OF ADMINISTRATION AN AMOUNT SUFFICIENT TO PAY MONTHLY ANNUITY PAYMENTS FOR THE SUBSEQUENT FISCAL YEAR UNDER AS 43.23.130 FROM THE ANNUITY INVESTMENT FUND. FUNDS APPROPRIATED UNDER THIS SUBSECTION SHALL BE TRANSFERRED FROM THE ANNUITY INVESTMENT FUND TO THE DEPARTMENT OF ADMINISTRATION IN ORDER TO MEET THE CURRENT DEMANDS OF THE ANNUITY PROGRAM.

"(D) THE LEGISLATURE MAY ANNUALLY APPROPRIATE FROM THE ANNUITY INVESTMENT FUND AN AMOUNT SUFFICIENT TO ADMINISTER THE ANNUITY PROGRAM. ANY COSTS OF ADMINISTRATION FUNDED UNDER THIS SUBSECTION SHALL BE ALLOCATED EQUITABLY AMONG ALL INDIVIDUAL ANNUITY ACCOUNTS.

"(E) NOTWITHSTANDING AS 39.35.110 OR (B) OF THIS SECTION, THE COMMISSIONER OF REVENUE MAY INVEST ALL OR PART OF THE ANNUITY INVESTMENT FUND IN COMMERCIAL INSURANCE CONTRACTS PURCHASED FROM INSURANCE COMPANIES THAT HAVE A BEST'S POLICYHOLDERS' RATING OF A OR BETTER AND BELONG TO BEST'S FINANCIAL SIZE GROUP XV AT THE TIME OF PURCHASE.

"SEC. 43.23.120. ANNUITY PROGRAM. (A) THE ANNUITY PROGRAM IS ADMINISTERED BY THE COMMISSIONER OF ADMINISTRATION. THE COMMISSIONER OF ADMINISTRATION SHALL ADOPT REGULATIONS NECESSARY TO IMPLEMENT THE ANNUITY PROGRAM.

"(B) THE COMMISSIONER OF ADMINISTRATION SHALL MAINTAIN RECORDS OF INDIVIDUAL ANNUITY ACCOUNTS AND MAKE ANNUITY PAYMENTS UNDER AS 43.23.130.

"SEC. 43.23.130. PAYMENT OF ANNUITIES. (A) AN INDIVIDUAL WITH ONE OR MORE ANNUITY CREDITS MAY RECEIVE AN ANNUITY UPON REACHING THE AGE OF 65.

"(B) AN ANNUITY UNDER THIS SECTION IS A MONTHLY PAYMENT BASED UPON THE PRINCIPAL AND ACCRUED INTEREST IN THE PERSON'S ANNUITY ACCOUNT. AN ANNUITY SHALL BE PAID AS A STRAIGHT LIFE ANNUITY OR OTHER PAYMENT PLAN AUTHORIZED BY THE COMMISSIONER OF THE DEPARTMENT OF ADMINISTRATION. THE SIZE OF THE ANNUITY MAY NOT VARY ON ACCOUNT OF THE INDIVIDUAL'S SEX.

"(C) AN INDIVIDUAL NEED NOT BE A RESIDENT OF THE STATE TO BE ELIGIBLE TO RECEIVE AN ANNUITY PAYMENT FROM THE INDIVIDUAL'S ACCOUNT.

"(D) EXCEPT AS PROVIDED IN (B) AND (E) OF THIS SECTION, AN ANNUITY ACCOUNT MAY NOT BE ASSIGNED, SOLD, OR OTHERWISE TRANSFERRED FROM ONE INDIVIDUAL TO ANOTHER.

"(E) IF A PERSON ELECTS TO CREDIT A PERMANENT FUND DIVIDEND TO AN ANNUITY ACCOUNT IN A PARTICULAR YEAR, THAT PERSON MAY MAKE AN IRREVOCABLE CHOICE REGARDING DEATH BENEFITS WITH RESPECT TO THAT CREDIT. IF A PERSON DIES BEFORE AGE 65 AND THAT PERSON HAS SELECTED DEATH BENEFITS IN AT LEAST ONE YEAR, A LUMP SUM PAYMENT

SHALL, SUBJECT T APPROPRIATION, BE PAID TO .E SURVIVING SPOUSE BY RIGHT OF SURVIVORSHIP UNLESS A DIFFERENT BENEFICIARY WAS DESIGNATED. WHEN NO SPOUSE SURVIVES AND NO BENEFICIARY IS DESIGNATED, THE LUMP SUM SHALL BE PAID TO THE DECEDENT'S ESTATE. THE LUMP SUM PAYMENT INCLUDES ALL DIVIDENDS CREDITED TO THE PERSON'S ANNUITY ACCOUNT IN YEARS IN WHICH DEATH BENEFITS WERE SELECTED AND INTEREST ON THOSE DIVIDENDS. DIVIDENDS CREDITED TO A PERSON'S ANNUITY ACCOUNT IN YEARS FOR WHICH DEATH BENEFITS WERE NOT SELECTED AND INTERESTON THOSE DIVIDENDS SHALL, IF THE PERSON DIES BEFORE AGE 65, BE DISTRIBUTED EQUITABLY AMONG THE ANNUITY ACCOUNTS OF ALL INDIVIDUALS FOR WHICH DEATH BENEFITS WERE NOT SELECTED.

"(F) AN INDIVIDUAL DOES NOT RECEIVE A VESTED PROPERTY RIGHT IN AN ANNUITY PAYMENT UNTIL THAT PAYMENT IS MADE. NOTWITHSTANDING THIS SECTION, THE STATE IS NOT OBLIGATED TO PROVIDE ANNUITY PAYMENTS FOR ANNUITY CREDITS GRANTED UNDER AS 43.23.005."

SECTION 22, CH. 99, SLA 1985 PROVIDES FOR AN ADVISORY VOTE TO BE HELD AT THE GENERAL ELECTION IN 1986. FOR THE TEXT OF THAT PROVISION, SEE &SEC 22, CH. 99, SLA 1985 IN THE TEMPORARY AND SPECIAL ACTS.

AMENDMENT NOTES

EFFECT OF AMENDMENTS THE 1983 AMENDMENT ADDED PARAGRAPH (7)(G).

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

SUMMARY OF DELINQUENCY AND DEFAULT
STATE LOAN PROGRAMS
1ST QUARTER, FY 87

LOAN PROGRAM	--DELINQUENT LOANS-- $ Amount	Percent	--LOANS IN DEFAULT-- $ Amount	Percent
Indirect Lenders (Bond Sales)				
Alaska Housing Finance Corporation (All Programs)	$613,885,113	14.327%	$89,987,635	2.100%
Alaska Industrial Development Authority				
AIDA Purchased	32,115,561	12.022%	3,588,922	1.343%
Appropriated to AIDA	6,778,787	7.880%	2,888,464	3.358%
Alaska Medical Facility Authority	0	0.000%	0	0.000%
Alaska Municipal Bond Bank	0	0.000%	0	0.000%
Direct Lenders (Appropriations)				
Agriculture Revolving Loan Fund	10,126,940	25.189%	3,118,363	7.757%
Alaska Power Authority				
Power Project Fund	0	0.000%	0	0.000%
Rural Elect. Revolving Loan Fund	0	0.000%	0	0.000%
Alaska Resources Corporation	318,992	2.085%	15,295,892	100.000%
Alternate Tech. Revolving Loan Fund	730,000	6.386%	354,000	3.097%
Bulk Fuel Revolving Loan Fund	264,000	27.889%	19,000	2.007%
Child Care Facility Revolving Loan Fund	98,000	7.824%	189,000	15.090%
Commercial Fishing Revolving Loan Fund	6,845,000	8.914%	2,481,000	3.231%
Fisheries Enhancement Revolving Loan Fund	0	0.000%	1,553,900	3.059%
Grain Reserve Loan Fund	0	0.000%	33,876	8.584%
Historical District Revolving Loan Fund	0	0.000%	0	0.000%
Housing Assistance Loan Fund	8,679,198	4.636%	3,177,635	1.697%
Med. Malpractice Liability Loan Fund	0	0.000%	0	0.000%
Mining Loan Fund	3,037,000	22.844%	3,903,000	29.358%
Power Development Revolving Loan Fund	0	0.000%	0	0.000%
Residential Energy Conservation Fund	368,000	10.619%	66,000	1.904%
Scholorship Revolving Loan Fund	22,792,396	5.968%	40,888,197	10.707%
Small Business Revolving Loan Fund	2,675,000	12.611%	4,292,000	20.234%
Teacher Scholorship Loan Fund	0	0.000%	0	0.000%
Tourism Revolving Loan Fund	118,000	5.839%	119,000	5.889%
Veterans Revolving Loan Fund	7,138,400	9.307%	849,000	1.107%
Water Resources Revolving Loan Fund	0	0.000%	0	0.000%

1. Delinquency includes all loans that are more than one day past due at the end of the quarter; the exceptions are the Agriculture Revolving Loan Fund, AIDA and the Scholorship Loan Fund.
2. Loans in default are defined as delinquent loans that have been turned over to counsel for legal action. Scholorship loans are considered to be default if more than 120 days past due.
3. Housing Assistance Loan Fund data includes all Nonconforming Housing Loans and loans from the Rural Owner-Occupied and Rural Non-Owner Occupied programs purchased since the start of FY 1983. Mortgages made by the two rural loan programs before July 1, 1982 are included in AHFC delinquency and default data.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

5-0686L
Cook
4/23/87

6

Original sponsors: Swackhammer and Larson

IN THE HOUSE

CS FOR HOUSE BILL NO. 223 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to remedies for the collection of debt involving permanent fund dividends and to the exemption for dividends; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 43.23.065 is amended to read:

Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. (a) Except as provided in (b) of this section, $100 [50 PERCENT] of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. Notwithstanding other laws, no other exemption applies to a dividend. A creditor is not required to serve the individual with notice of levy under AS 09.38.085. A writ of execution may be served on the commissioner by a court by certified mail. The commissioner shall include the case name and number with a dividend delivered to the court in accordance with a writ of execution.

(b) An exemption is not available under this section for permanent fund dividends taken to satisfy

(1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 - 47.23.220;

(2) court ordered restitution under AS 12.55.045 -

5-086
Cook
3/13/87

IN THE HOUSE BY DONLEY

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the exemption for permanent fund dividends from remedies for the collection of debt."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 43.23.065(a) is amended to read:

(a) One hundred dollars [EXCEPT AS PROVIDED IN (b) OF THIS SECTION, 50 PERCENT] of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual.

* Sec. 2. Section 13, ch. 99, SLA 1985 is amended to read:

Sec. 13. AS 43.23.065 is amended by adding new subsections to read:

(d) [(b)] The department shall require an individual to take 100 percent of the permanent fund dividend in cash if the department receives a levy, execution, garnishment, attachment or other legal remedy for the collection of a past due debt [DESCRIBED IN (a)(1) OR (2) OF THIS SECTION].

(e) [(c)] The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 - 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash.

* Sec. 3. AS 43.23.065(b) and (c) are repealed.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

5-0686L
Cook
4/23/87

6

Original sponsors: Swackhammer and Larson

IN THE HOUSE

CS FOR HOUSE BILL NO. 223 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

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(b) An exemption is not available under this section for permanent fund dividends taken to satisfy

(1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 - 47.23.220;

(2) court ordered restitution under AS 12.55.045 -

12.55.051 or 12.55.100;

(3) a court ordered fine;

(4) a court ordered probation fee under AS 12.55.105; or

(5) [(4)] a debt owed by an eligible individual to an agency of the state, state court, or municipality unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired.

(c) A claim [CLAIMS] listed in (b) of this section or a voluntary assignment of a dividend in payment or partial payment of a debt listed in (b) of this section has [HAVE] priority in the order listed over other claims on a permanent fund dividend.

* Sec. 2. AS 43.23.065 is amended by adding new subsections to read:

(d) AS 09.38 does not apply to permanent fund dividends taken to satisfy debts under (b) of this section. Notwithstanding AS 09.35, execution on a claim listed under (b) of this section is accomplished by delivering a certified copy of the court order or judgment to the commissioner.

(e) Before payment of all or part of an individual's permanent fund dividend is made to a creditor under this section the commissioner shall provide the individual with

(1) notification of the claim and amount claimed;

(2) a statement of the basis for the claim; and

(3) if applicable, identification of the case under which the claim has been made.

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

5-086
Cook
3/13/87

IN THE HOUSE BY DONLEY

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

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Sec. 13. AS 43.23.065 is amended by adding new subsections to read:

(d) [(b)] The department shall require an individual to take 100 percent of the permanent fund dividend in cash if the department receives a levy, execution, garnishment, attachment or other legal remedy for the collection of a past due debt [DESCRIBED IN (a)(1) OR (2) OF THIS SECTION].

(e) [(c)] The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 - 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash.

* Sec. 3. AS 43.23.065(b) and (c) are repealed.

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
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303 K Street
Anchorage, Alaska 99501

(907) 264-8228

RECEIVED APR 1 . 3

April 13, 1987

Representative Fran Ulmer
Chair, House State Affairs Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

I am writing with regard to House Bill 223, which relates to permanent fund dividends. The Alaska Court System takes no position on the various substantive policy decisions involved in this measure. However, to the extent that this measure is intended to establish a procedure for taking permanent fund dividends to satisfy court-ordered fines, the court system has an interest in making certain that the adopted procedures are workable. The following comments address procedural and fiscal concerns.

Section 1. This section permits an agency, including the court system, to claim a permanent fund dividend on behalf of an individual believed to be eligible to receive a dividend. It is the understanding of the court system that many persons who are eligible to apply for dividends do not do so, particularly if they believe that the dividend will be attached to satisfy a child support obligation, a restitution order, or a private creditor. This provision would make the permanent fund dividend available to the court system to satisfy a fine even if a defendant has not applied for a dividend.

The court system takes no position on the desirability of this provision. Questions have been raised about the constitutionality of requiring a person to receive taxable income. It would be helpful if the Legislature could resolve the constitutional issue so that agencies can use this procedure without fear of litigation.

Section 2. This section sets forth the procedure for agencies to use in applying for a permanent fund dividend. It requires the Department of Revenue to provide an application form which an agency must fill out to support its belief that the individual is eligible to receive the dividend.

Again, the court system takes no position about the desirability of this provision. Questions have been raised by the Department of Law about the ability of an agency to determine the eligibility of another person. Additionally, there are timing concerns which are particularly relevant to action by the court. Since a defendant may be sentenced several months before the current dividend application period (April through June), the court will not have current residency information at the time when the Department of Revenue is accepting dividend applications.

As a procedural matter, this section will require the courts to gather information about an individual's residency. This will probably occur at the time a defendant is sentenced (at arraignment, at a change of plea, or after trial). Additionally, court personnel will complete the application form, arrange for an appropriate signature, and forward the form to the Department of Revenue. It is estimated that this procedure will take approximately one hour.

Section 3 and Section 4. The court system takes no position on these two sections.

Section 5. This section clarifies confusion under existing law by providing that no exemption other than the one described in the first sentence of this statute is available to a person receiving a permanent fund dividend. Arguably, under the existing law, some debtors could also claim the liquid asset exemption described in AS 09.38.030(b).

Assuming the Department of Revenue automatically grants the 50% exemption provided by the first sentence, since no additional exemption is provided, this section further provides that the creditor (including the courts and other agencies as well as private creditors) need not serve the debtor with notice of exemption rights, thus significantly simplifying the execution procedures otherwise required by AS 09.38. The debtor will still receive notice, but it will come from the Department of Revenue, as provided in Section 6 of the bill, rather than from the creditor.

Additionally, this section provides that a writ may be mailed by certified mail to the Department of Revenue rather than delivered by a process server. This provision benefits not only state agencies but also private parties who are seeking to levy on a permanent fund dividend, since mailing is a less expensive method of service. This may, however, mean more work for the courts, since Civil Rule 4(h) requires service by certified mail to be done by courts.

Finally, this section specifically includes court-ordered fines within the non-exempt category and gives the fines a priority behind child support payments and restitution.

Section 5 of the bill is critical to developing a workable procedure. If existing execution procedures must be used, the state agencies will be required to process a substantial amount of paperwork and give the debtor an opportunity for a court hearing.. In the case of a court-ordered fine the defendant is already before the court so due process considerations are met.

Some minor changes in Section 5 would be helpful. The court system proposes that the second and third sentences underlined in paragraph (a) [on lines 16-18 of page 3] be revised to provide: "When levying upon the non-exempt portion of a dividend, a creditor is not required to serve the individual with notice of levy under AS 09.38.080(c) and AS 09.38.085. A writ of execution may be served on the commissioner by certified mail under the rules of court for civil procedure." These additions would clarify the procedure and answer technical concerns raised by the Department of Law.

Section 6. This section permits the court system to send a certified copy of a court order or judgment to the Department of Revenue, rather than a writ of execution. Originally, the court system proposed this procedure because it appeared to be the easiest for the court. After discussion with the Department of Revenue, it appears that a writ of execution would be much more helpful to the department because it would provide more information about the defendant. The court system therefore proposes deleting the second sentence of paragraph D, starting at line 10 on page 4.

Although the court would be using a writ of execution, procedures under existing law would be much less burdensome because the court would be able to either mail the writ or have it delivered by troopers, whichever appeared most expedient.

The court system's fiscal note is based primarily on work requirements attributable to this section. Based on information provided by the Anchorage trial court, it is assumed that fines are due in approximately 1/6 of criminal cases charged under state law (not including traffic infractions). The clerical work require to process a writ of execution will include physical review of the file, cross-checking against various monitoring lists maintained by the clerk's office including those for outstanding warrants, and bookkeeping. All of this work must be completed with a high level of accuracy, since execution on a dividend for a defendant who has already paid the fine could result in costly litigation. The supervisor of the criminal division of the Anchorage clerk's office estimates that approximately three hours will be required to issue a writ of execution and arrange for delivery to the Department of Revenue, as well as to account for the dividend when it is received. Substantial time will also be expended reviewing old files to determine if a writ of execution should be issued to obtain a current dividend.

Although additional clerical positions would be required to perform this function, at an ongoing cost of $112,400, the state will break even on this expenditure if an average of $52 is collected from the dividend for each outstanding fine. A review of court records indicates an average fine of $400 so it appears the work required to issue a writ of execution will be offset by revenue.

In summary, although the court system takes no position on substantive issues raised by this legislation, and although efforts to create new procedures will result in additional clerical work, the court system supports development of workable procedures, and will be glad to work with the committee to this end.

Sincerely,

Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Representative C. E. Swackhammer
Representative Dave Donley
Representative Terry Martin
Arthur H. Snowden, II, Administrative Director
Robert G. Fisher, Fiscal Officer
Susan Miller, Manager, Special Projects

4/10/87-2

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 2, 1987

STEVE COWPER, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE
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☐ 1st NATIONAL CENTER
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FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☐ P.O. BOX K-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Hon. C. E. Swackhammer
Alaska State House
P.O. Box V
Juneau, AK 99811

Re: House Bill 223, relating to permanent fund dividends
Our File No.: 663-87-0446

Dear Representative Swackhammer:

By memorandum dated March 19, 1987, you asked us to review a proposed bill to permit agencies to apply for and receive the permanent fund dividends of individuals who owe debts to the agencies. Specifically, you asked us to comment on the tax consequences of the proposal and to make any other general comments regarding the draft. A later version of this proposed bill was recently introduced as House Bill 223, and we will direct our comments to the version currently under consideration.

Federal Tax Implications

House Bill 223 would permit an "agency," defined as any state agency, state court, or municipality, to apply for and receive the permanent fund dividend of an individual who owes a debt to the agency. Assuming the procedure proposed to implement this process is workable (see discussion below), you have asked whether the agency's action will have federal income tax consequences to the individual. Although an absolute answer is impossible without either an Internal Revenue Service official ruling or a court decision, we believe a court would characterize this transaction as a discharge of a taxpayer's debt, thereby constituting income to the taxpayer under 26 U.S.C. § 61.

We understand that you asked the same question of the Legislative Affairs Agency. By memorandum dated March 20, 1987, Theresa L. Bannister stated that she could not, with any certainty, provide an answer to your question. On the one hand, the discharge of a taxpayer's debts is generally included in a taxpayer's gross income under 26 U.S.C. § 61. On the other hand, because the agency would claim the dividend on behalf of the taxpayer, who would never claim the dividend himself, the transaction could be viewed as simply a diversion of income by the

taxpayer's debt by the agency. Thus the transaction might be excluded from income as a gift under 26 U.S.C. § 102.

We believe the better argument is that the discharge of a debt under these circumstances would constitute gross income. The bill permits agencies other than the state to apply for and receive an individual's dividend. In those cases where a municipality received an individual's dividend, an actual transfer of funds would take place from the dividend fund (within the state general fund) to the municipality. This would clearly be a discharge of debt, rather than a write-off of debt. Although the question is arguably closer where the state is the debtor, the language of the bill implies an actual discharge of a debt by the state, rather than a gift. Finally, as noted by Tamara Brandt Cook, Director of the Legal Services Division, Legislative Affairs Agency, in a memorandum dated March 23, 1987, were this to be interpreted as a gift, the transaction could violate article IX, section 6, of the Alaska Constitution. Given the generally aggressive posture of the Internal Revenue Service, which views any exemption claim with skepticism, we believe the IRS would treat any agency claim for a permanent fund dividend as taxable income to the individual.

Other Legal Issues

In addition to the tax issues, this bill raises other legal issues which deserve discussion. First, as outlined by Ms. Cook, this legislation would be subject to challenge under the due process requirements of the state and federal constitutions, because by exempting these transactions from the normal execution procedures in AS 09.25, the bill does not provide for notice and prior hearing before the seizure of the individual's property. Balancing the interest of the individual in a prior hearing against the interest of the agency in efficient government operations, and taking into account the relatively slight chance of a permanent deprivation in the event of an agency mistake, we believe the legislation might withstand a due process challenge. However, the only thing we can say with any certainty is that a challenge would likely occur.

Second, although providing an exemption from AS 09.35, the bill fails to mention applicable court rules. The Alaska Supreme Court has provided specific procedures for execution on judgments in Civil Rule 69. Because this rule specifically provides that enforcement of a judgment be by a writ of execution unless otherwise directed by the court, this rule would supercede the new legislation unless the bill is amended to specifically amend Civil Rule 69. Of course, the bill will then need to be