

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
AMENDING ARIZONA CODE OF) Administrative Order
JUDICIAL ADMINISTRATION § 5-205:) No. 2022 - 135
COLLECTIONS)
)
)
_____)

Proposed amendments to the above-captioned section of the Arizona Code of Judicial Administration (ACJA) came before the Arizona Judicial Council on October 27, 2022 and were approved and recommended for adoption.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the amendments to ACJA § 5-205 as indicated on the attached document are adopted. All other provisions of § 5-205 remain unchanged and in effect.

Dated this 2nd day of November, 2022.

ROBERT BRUTINEL
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
Section: 5-205 Collections

A. Definitions. In this section, the following definitions apply:

“Attempt” means a good faith effort to contact the defendant using notification methods such as mail, phone, text message, or other electronic means.

“Court” or “courts” means the limited jurisdiction courts or superior court in each county.

“Delinquent cases” means all cases for which court-ordered financial obligations have not been paid and not been otherwise assigned to private collection services, actively worked by a warrant officer or other governmental collection activity.

“DSO/TIP program” means the debt setoff/tax intercept program established by A.R.S. §§ 5-575, 5-1208, 5-1320, and 42-1122.

“DSO/TIP participants” means the limited jurisdiction courts, the superior court, city and county attorney’s offices, and probation departments in each county participating in the DSO/TIP program administered by the Administrative Office of the Courts (AOC).

~~“Excess FARE revenue” means the remaining balance of any revenues in the FARE fund after payment of the FARE vendor, other governmental agencies, and the Administrative Office of the Courts for or costs incurred.~~

“Expansion” means any activity that requires capital fund expenditures, binding contractual obligations, or technology development or enhancement, including web-related services.- It does not include maintenance of existing collection services or renewal of an existing contract.

“Extraordinary circumstances” means incarceration, deployment for military service, hospitalization, a serious medical illness, or a death in the immediate family that would prevent payment of ~~any fines, fees or restitution~~ a court-ordered financial obligation.

“FARE” means the fines/fees and restitution enforcement program established to collect delinquent court-ordered ~~restitution, fines, fees, and surcharges~~ financial obligations by means of collection services.

“FARE Compliance Assistance Program (FARE CAP)” means a program that assists defendants in resolving delinquent court-ordered financial obligations ~~when by ceasing collection activities and allowing the defendant to establish a new payment plan when the defendant makes a partial payment~~ pays a certain amount of the outstanding case balance; in exchange, the court may reinstate the defendant’s driver’s license, waive a portion of the outstanding collections fees, cease collection activities, and allow the defendant to establish a new and reasonable time payment plan.

“FARE fund” means an account established by the supreme court with the state treasurer and the General Accounting Office.

“FARE participant” means a court participating in the FARE program.

“FARE vendor” means the vendor contracted with the AOC to provide FARE program services.

“Fine reduction program” means a program ~~to reduce~~ aimed at reducing the amount balance of outstanding criminal and civil traffic fines, penalties, and surcharges pursuant to A.R.S. § 28-1601.

“Gaming intercept” means the interception of eligible event wagering and fantasy sports betting winnings through the Arizona Department of Gaming (ADG) for the payment of delinquent court-ordered financial obligations, pursuant to A.R.S. §§ 5-1208(E) and 5-1320(F).

“Lottery intercept” means the interception of eligible lottery winnings through the Arizona Lottery (AZL) for the payment of delinquent court-ordered financial obligations, pursuant to A.R.S. § 5-575.

“Recall” or “Remove” means removing a case from the FARE program so that all collection efforts will cease and all FARE fees will be removed from the case.

“State tax intercept” means the interception of a state tax refund through the Arizona Department of Revenue (DOR) ~~for the payment of delinquent restitution, fines, fees, and surcharges~~ court-ordered financial obligations.

“TTEAP” means the Traffic Ticket Enforcement Assistance Program established by A.R.S. §§ 28-1630 et seq., where a hold is placed on the registration of all vehicles registered to the defendant until all delinquent ~~restitution fines, fees, and surcharges~~ court-ordered financial obligations have been paid or are no longer due and owing; a waiver has been issued under A.R.S. § 28-1635 so that a registered owner of a vehicle subject to a registration hold may be permitted to register a vehicle(s) within a certain timeframe for the registration period; or a payment contract with the court has been established and the defendant remains compliant.

“Vendor” means a contracted vendor, other than the FARE vendor, that provides collection services to a court.

B. Purpose. ~~–This section is intended to result in the effective administration of statewide collection programs with the goals of~~ by increasing compliance with and enforcement of court orders and the law, ~~and enhanced~~ enhancing customer service, ~~increased revenues,~~ consistency and uniformity in case processing, and efficiencies in the collection process.

C. Applicability. -This section applies to FARE and DSO/TIP participants ~~as defined in Section A,~~ and FARE CAP and fine reduction programs.

D. Administration. The AOC shall oversee the FARE, DSO/TIP, and TTEAP programs including:

1. Provisions of ~~local~~ collection services in participating FARE courts, to which includes: reminder notices, web and telephone-based credit and debit card payment options, delinquency notices, installment payment plan services, referral to the DSO/TIP program, referral to the TTEAP program, ~~electronic~~ skip tracing, case record data enhancement, and advanced collection services ~~including which may include~~ credit bureau reporting, ~~skip tracing,~~ outbound calling, and wage garnishment when authorized by the court.
2. and 3. [No Change]
4. Managing and directing ~~of the~~ FARE vendor in the provisions of contracted services, including all current and future program maintenance and enhancements.
5. Administering the DSO/TIP program, including entering into DSO/TIP participant agreements as necessary to carry out program duties and collecting the ~~court-ordered monetary~~ court-ordered financial obligations that include the DSO/TIP fee established in subsection (H).
6. through 7. [No Change]
8. Administering the FARE fund and expending revenues in the fund to pay ~~the operational~~ expenses incurred in the FARE and DSO/TIP programs, to replace lost state revenue due to reduced court filings limiting the necessity to increase local device cost, and to support electronic court services.
9. ~~Recommending allocation of excess~~ Distributing a portion of FARE revenues in the FARE fund to ~~the Arizona Judicial Council (AJC)~~ FARE participants, based on the percentage of revenues received by each court.
10. Maintaining operational oversight ~~over~~ of all FARE and DSO/TIP software.
11. Maintaining oversight of the data interface with the FARE vendor, the Motor Vehicle Division (MVD), ~~the Department of Revenue (DOR), the ADG, and the Arizona Lottery (AZL).~~
12. Overseeing the receipt of monies from the DOR, ADG, and AZL in response to finalized court claims and ~~shall distribute proportionately~~ distributing those monies to the courts proportionately to based on the number of court claims submitted by and processed for each court.
13. Providing user training ~~for~~ on the FARE and DSO/TIP programs to the courts.

14. Assisting ~~the~~ courts in resolving identity and data related discrepancies between the courts, the FARE vendor, MVD, DOR, ADG, and AZL.
15. Ensuring connectivity between the FARE vendor, the ~~administrative office~~ AOC, MVD, and the local courts. -The AOC shall also ensure connectivity between the ~~administrative office~~ AOC, ADG, AZL, and DOR for the transfer of DSO/TIP data.
16. [No Change]

E. General Provisions for FARE Participants. FARE participants shall:

1. Comply with the business and technical specifications established by the ~~FARE court pioneers, available on the FARE web site~~ AOC.
2. [No Change]
3. Be responsible for entering all ~~applicable~~ required data into the case management system.
4. [No Change]
5. Establish an account with a financial institution for the acceptance of funds received from ~~Internet web~~ and telephone payments.
6. Refer all delinquent cases to the FARE vendor for ~~special~~ collection services, unless the court has an approved local collection plan and these cases are assigned to a vendor pursuant to the plan. -The AOC shall determine which delinquent debt qualifies for ~~special~~ collection services according to criteria established by the AOC.
7. Transmit all FARE fees through the city or county treasurer, as appropriate, to the state treasurer. All fees collected/~~accumulated~~ during the previous month shall be transmitted to the state treasurer by the fifteenth of the succeeding month.
8. Not recall or remove a case from FARE unless the judge has issued a written order to recall or remove the case or the AOC has instructed the court to recall or remove the case.
9. Create a policy for reviewing delinquent cases every 30 days and refer to FARE or other AOC approved Vendor cases that have been delinquent more than 90 days unless good cause exists to not refer a case, except that the court may exercise discretion in referring active supervised probation cases.

F. General Provisions for DSO/TIP Participants. DSO/TIP participants shall:

1. Submit annually a DSO/TIP participant's agreement ~~in~~ on the form provided by the AOC.

2. Ensure that ~~all the~~ social security number, and case, person, and balance information for each case submitted to the DSO/TIP program has been reviewed for accuracy and ~~shall~~ make all necessary corrections to ensure accurate and complete data is timely submitted ~~timely~~.
3. Review interceptions by the DOR for validity within ten days of receipt. -Erroneous interceptions shall be released immediately. -DSO/TIP participants are responsible for all applicable DOR fees, penalties, and interest ~~per~~ pursuant to A.R.S. § 42-1122(O).
4. Finalize all interceptions within 30 days of receipt from DOR. -DSO/TIP participants that do not comply with the 30-day finalization ~~limit~~ requirement shall refund to the debtor any applicable DOR fees, penalties, and interest incurred.
5. Receipt all valid interceptions into the case management system within the time required by Arizona Code of Judicial Administration § 1-401: Minimum Accounting Standards.
6. and 7. [No Change]

G. Local Collection Services.

1. Courts planning expansion of existing collection services, independent of or separate from the FARE program, shall submit such plan to the Arizona Judicial Council (AJC) for approval prior to proceeding with development and implementation.
2. Courts that did not have collection services prior to August 12, 2003; shall not develop a program or contract with a private vendor for collection services without approval of the plan by the AJC and the Supreme Court.
3. Courts planning development or expansion of a collection program shall provide the AJC with a report that describes, at a minimum, the following information, ~~at a minimum~~:
 - a. through e. [No Change]
 - f. ~~Time line~~ Timeline for ~~implementation of~~ implementing the local court plan.
 - g. and h. [No Change]
 - i. Efficiency of resources of the local court plan.
 - j. [No Change]
 - k. ~~Compare~~ A comparison of the local court plan cost of collection with FARE.
4. Approval of court development or expansion plans is delegated to the ~~administrative~~ Director of the AOC in periods between AJC meetings.

H. FARE and DSO/TIP Collection Fees.

1. The following FARE fees cover the provision of additional services and costs to operate the FARE program and shall be set-assessed as follows:
 - a. A \$49 delinquency fee shall be assessed when a case is identified as being delinquent and submitted to the FARE vendor. This fee may be suspended or waived in the following circumstances:
 - (1) if all other financial obligations on the case are eligible for suspension or waiver under the applicable statutory authorities and the judge issues a written order suspending or waiving all other financial obligations on the case, or
 - (2) if extraordinary circumstances exist that would have prevented the defendant from timely responding to notices and making payment arrangements to satisfy the financial obligation, and the judge makes a finding on the record that extraordinary circumstances exist and issues a written order waiving the fee.
 - b. A 19.5% FARE special collections fee shall be assessed to all cases submitted by FARE participants to the FARE vendor for special-collections efforts by courts that are participating in the FARE program only after at least two delinquency notices have been sent to attempts have been made by the FARE vendor to notify the defendant of the delinquency. When this fee is assessed, it becomes part of the total balance due and any payment received must be applied proportionately between this fee and the delinquent court obligation pursuant to sections 3-401(C)(2) and 4-301(G). This fee may be suspended or waived only if all other financial obligations on the case are eligible for suspension or waiver under the applicable statutory authorities, and the judge issues a written order suspending or waiving all other financial obligations on the case.
 - c. ~~A \$10 installment payment plan fee, shall be assessed if the court chooses to have the FARE vendor manage installment payment plans when all services of FARE are implemented in the court. This fee is in addition to the time payment fee imposed pursuant to A.R.S. § 12-116(A).~~
2. ~~The delinquency fee, the special collections fee, and the installment payment plan fee shall cover the provision of additional services and costs to operate the FARE program.~~
32. The FARE fees shall be assessed on-in cases referred to the FARE program as follows: in cases where court fees and costs are reduced to a judgment under-pursuant to A.R.S. § 12-302, and for each violation of a local ordinance violation except parking violations unless a default judgment has been entered, civil violation, civil traffic violation, boating violation, petty offense, misdemeanor offense, and felony charge-offense where a financial sanction court-ordered financial obligation is imposed by the court. -The FARE fees shall be added to existing cases on the date agreed upon for implementation of the FARE program in the court. Imposition of the FARE fees on new cases shall occur as the cases are added to the FARE program.

43. The FARE fees shall be assessed in addition to any ~~fin~~~~es, fees or surcharges~~ other financial obligation authorized by statute or local, ~~or~~ city, or county ordinance.
- ~~54. The FARE Pursuant to sections §§ 3-401(D) and (E) and 4-301(E), the \$49 delinquency fees shall be in the next category of priority for payment following the time payment fee established pursuant to A.R.S. § 12-116(A); ACJA §§ 3-401(E) and 4-301(E).~~
- ~~6. The FARE fees shall not apply to parking violations except for default parking violations.~~
- ~~7. The FARE fees shall not be waived or suspended by a judge unless the judge waives or suspends all monetary obligations.~~
- ~~8. The delinquency fee may be waived if the judge states on the record that extraordinary circumstances exist which would prevent the defendant from responding timely to the notices and satisfying the court obligation.~~
95. A \$9 DSO/TIP fee shall be assessed on all DSO/TIP claims submitted by DSO/TIP participants who do not utilize the FARE program. The AOC will withhold the fee at the time of interception.

I. FARE Compliance Assistance Program (FARE CAP)

1. ~~The local~~ A court participating in the FARE CAP shall will determine the types of cases eligible for FARE CAP.
2. Defendants who choose to participate in the FARE CAP shall make a partial payment and enter into a reasonable payment plan. -The presumptive minimum partial payment amount is \$150. Courts have discretion to set lower or higher partial payments amounts.
3. and 4. [No Change]
4. Once the defendant enrolls in FARE CAP, the court shall remove the case from TIP ~~and TTEAP~~, notify the FARE vendor to cease all collection activity, and may notify MVD to reinstate the defendant's driver's license, if applicable. The FARE vendor will remove the case from TTEAP eligibility.
5. The court may permit a defendant who defaults on his or her FARE CAP payment obligation and is subsequently removed from FARE CAP to re-enter the program at any time.

J. Fine Reduction Programs

1. The presiding judge of any court may periodically conduct a program for the purpose of reducing the amount of outstanding criminal traffic and civil traffic fines, penalties, and surcharges with the prior approval of the supreme court, in accordance with A.R.S. § 28-1601; and Administrative Order No. 97-57.

2. Prior to conducting a fine reduction program, the court ~~shall~~must have exhausted all available collection opportunities, including utilization of the FARE program.
3. Proposed fine reduction programs must meet all the following criteria:
 - a. The purpose of the program shall be to reduce outstanding criminal traffic and civil traffic fines, penalties, and surcharges which are at least twelve months delinquent.
 - b. The proposed program shall provide for reduction of the outstanding amounts due up to 50%. All categories of receivables due (fines, penalties, sanctions, and surcharges), including the FARE special collections fee, shall be reduced proportionately. The time payment fee imposed pursuant to A.R.S. § 12-116, ~~and the FARE general services fee and the FARE delinquency fee~~ shall not be reduced or waived.
 - c. The proposed program shall apply exclusively to fines, penalties, and surcharges resulting from criminal traffic and civil traffic violations, except a fine ordered as a result of a violation of A.R.S. §§ 28-1381 or -1382.
4. A fine reduction program shall include the following elements:
 - a. [No Change]
 - b. A description of existing in-house collection efforts or efforts with a vendor or the FARE program, including results of those efforts. -If no collection activity has taken place, then an explanation of why these cases should not be forwarded first to the FARE program.
 - c. The beginning and ending date of the proposed fine reduction program. -The program duration shall not exceed 60 days.
 - d. A defined schedule of which violations/violators shall be eligible for the program. Delinquent amounts shall be at least twelve months delinquent. -The program shall note that fines and surcharges as a result of A.R.S. §§ 28-1381 and -1382 and other non-traffic related criminal offense statutes shall not be eligible for the program.
 - e. A defined schedule of how fines, penalties, and surcharges shall be reduced. -The schedule shall state the amount of the reduction, the criteria which determine the amount of reduction, how the deduction will be applied consistently across all eligible violations, and procedures the violators will follow to receive the reduction.
 - f. [No Change]
 - g. A plan for court staff, judges, and facilities that shall be used to handle increased workload as a result of the program.

- h. A plan that shall measure the program goals and objectives. Suggested measurements include:
 - (1) Outstanding receivables at the beginning of the program, planned percentage reduction in receivables, and actual percentage of reduction at the end of the program.
 - (2) through (4) [No Change]
 - i. and j. [No Change]
5. Fine reduction program proposals shall be reviewed according to the following:
- a. and b. [No Change]
 - c. The AOC court services director shall send recommendations for program approval ~~shall to the administrative d~~Director of the AOC for final approval.
 - d. [No Change]
6. Within 30 days of program completion the court shall forward an “end-of-project” report to the AOC court services director ~~which and~~ shall include a description of the program implementation and the statistical measures of the program’s achievements to the stated goals and objectives.