

## ARIZONA JUDICIAL COUNCIL

### Request for Council Action

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**Date Action Requested:**

March 22, 2018

**Type of Action Requested:**

Formal Action/Request  
 Information Only  
 Other

**Subject:**

**Proposed  
Amendments to ACJA  
§ 5-205 Collections**

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**FROM:**

Marcus Reinkensmeyer, Division Director, Court Services, AOC and Candace Atkinson, Manager, Consolidated Collections Unit, AOC

**DISCUSSION:**

The presenter will discuss proposed amendments to ACJA § 5-205. The statewide Fines, Fees and Restitution Enforcement Program (FARE) has been in operation since 2003, and is now implemented in almost every court in the state. FARE has been working with different committees to balance the needs of monetary court order enforcement with the principles and initiatives of the Fair Justice for All Task Force. This proposal is intended primarily to update the FARE code section, ACJA § 5-205, with program enhancements and to give courts more tools for collecting delinquent court obligations based on recent local programs that have proven to be very effective.

Significant new or changed provisions: Introduce and defines FARE Compliance Assistance Program (FARE CAP). Establishes guidelines for courts to develop and implement FARE CAP. Increases the amount of: \$35 FARE Delinquency Fee to \$49 and percentage of 19% Special Collections Fee to 19.5%. Proposes a new allocation model for year-end FARE Funds.

**RECOMMENDED COUNCIL ACTION:**

The Consolidated Collections Unit is requesting the Arizona Judicial Council support the proposed FARE Program enhancements and support the code changes by taking a formal vote.

**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:

“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, or 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. § 42-1122.

“DSO/TIP participants” means the limited jurisdiction courts, the superior court, county attorney’s office, and probation departments in each county participating in the DSO/TIP program.

“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 (AOC) for 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.

“FARE” means the fines/fees and restitution enforcement program established to collect delinquent court ordered restitution, fines, fees, and surcharges.

“FARE Compliance Assistance Program (FARE CAP)” means a program that assists defendants in resolving delinquent court financial obligations when the defendant makes a partial payment 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 the amount of outstanding criminal and civil traffic fines, penalties, and surcharges pursuant to A.R.S. § 28-1601.

“State tax intercept” means the interception of a state tax refund through the Arizona Department of Revenue for the payment of delinquent restitution, fines, fees, and surcharges.

“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 have been paid or a waiver has been issued.

“Vendor” means a contracted vendor to provide collection services to a court.

## **B. through G. [no changes]**

## **H. FARE Collection Fees.**

1. The FARE fees shall be set as follows:

~~a. A \$7 general services fee shall be assessed by a court participating in the FARE program on all charges where a sentence or judgment with a financial sanction is imposed on or after the effective date of implementation. This fee applies even if the defendant pays in full at the time of the citation. The fee does not apply if the judge orders the defendant to satisfy the full financial sanction through community service, time served, or some other non-monetary satisfaction of the sanction. The fee is not subject to any surcharge authorized by statute or city or county ordinance.~~

~~ba.~~ A \$3549 delinquency fee shall be assessed when a case is identified as being delinquent and submitted to the FARE vendor.

~~eb.~~ A 19.5% special collections fee shall be assessed to all cases submitted to the FARE vendor for special collections by courts that are participating in the FARE program only after at least two delinquency notices have been sent to the defendant.

~~dc.~~ 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 ~~general services fee, 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.
3. The FARE fees shall be assessed on court fees and costs reduced to judgment under A.R.S. § 12-302, and for each violation of a local ordinance, civil traffic violation, boating violation, petty offense, misdemeanor, and felony charge where a financial sanction is imposed. The FARE fees shall be added to existing cases on the date agreed 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 program.
4. The FARE fees shall be in addition to any fines, fees or surcharges authorized by statute or local, or city, or county ordinance.
5. The FARE 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.

**I. FARE Compliance Assistance Program (FARE CAP)**

1. The local court shall 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.
3. The FARE CAP partial payment shall include the special collections fee calculated on the partial payment amount.
4. The court shall waive the special collections fee on the remaining case balance.
5. 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.
6. The court may permit a defendant who defaults on his or her FARE CAP payment obligation to re-enter the program at any time.

**IJ. Fine Reduction Programs [no changes]**