



ASSOCIATION OF ARKANSAS COUNTIES  
FINE COLLECTION SEMINAR & GUIDEBOOK

4<sup>th</sup> Edition

April 20, 2022

**AGENDA**

April 20, 2022

- I. OVERVIEW OF FINE COLLECTIONS GENERALLY..... 10:00-10:15  
Lindsey Bailey French, AAC  
Cagney Kilgroe, AAC
  
- II. SOFTWARE AND CREDIT CARD PROCESSING..... 10:15-11:00  
Mary Bonner, INA
  
- III. STATE INCOME TAX SETOFF ..... 11:00-11:45  
Gaylord Waltermire, DFA  
Danielle Steinhart, NACo  
Lindsey Bailey French, AAC
  
- IV. SUSPENSION OF DRIVER’S LICENSE .....11:45-12:15  
Richelle Jones and  
Chuck Moody, DFA
  
- V. LUNCH..... 12:15-1:00
  
- VI. ARDOT LITTER PICKUP PROGRAM.....1:00-1:45  
Steve Frisbee, Dave Parker, and Holly Butler; ARDOT  
Chief Deputy Joseph Gorman, Jefferson County
  
- VII. WORK RELEASE.....1:45-2:15  
Elizabeth Taylor, ACC
  
- VIII. DEBTORS’ PRISON.....2:15-2:30  
Cagney Kilgroe, AAC
  
- IX. ORDER OF PAYMENT .....2:30-2:45  
Lindsey Bailey French, AAC
  
- X. Q & A SESSION/CONCLUSION..... 2:45

## **Collection of Fines, Costs, and Restitution: Generally**

The enforcement of fines is found in §16-13-709 of the Arkansas Code. Under this section, “Delinquent” means fines assessed by the circuit or district courts of Arkansas that have not been paid as ordered for a period over 90 days or 3 payments, either consecutive or concurrent, since payment was ordered or last partial payment was received. This section of the code states that the quorum court of each county shall designate by ordinance a county official, agency, or department to be responsible for the collection of delinquent fines assessed in circuit court unless the quorum court designates a private contractor.

§16-17-707 of the Arkansas Code addresses the proper disbursements of fines received by the district court clerks, including proper payments to be made to local law enforcement agencies, the County Administration of Justice Fund, and the remainder to go to the County Treasurer. Regarding fines collected by circuit courts, §16-13-709 provides that these fines shall be disbursed to the State Administration of Justice Fund, the county administration of justice fund, and the appropriate county fund, state agency, or state entity *as provided by law*. The county administration of justice fund defrays expenses for the following: the county jail fund, prosecuting attorney fund, the law library fund, the intoxication detection and equipment fund, prosecuting attorney witness-victim program, and the public defender indigent defense fund. §16-10-307 sets forth the amounts to be retained by the county administration of justice fund. Beginning in 2014, an additional amount is to be retained for the county administration of justice fund – *the lesser of* the average percentage increase in the Consumer Price Index for All Urban Consumers or its successor, as published by the United States Department of Labor, for the two (2) years immediately preceding *or* the percentage rate of increase in collections of the State Administration of Justice Fund for the two (2) years immediately preceding. Pursuant to §16-13-710, the Administrative Office of the Courts (“AOC”) is responsible for assisting circuit courts and district courts in the assessment and collection of fines and the management and reporting of revenue.

According to AOC, the total fines assessed in District Courts in 2019 totaled approximately \$189.7 million and the total amount collected totaled approximately \$79.7 million. Fines assessed in District Courts in 2020 totaled approximately \$150.5 million and the total amount collected totaled approximately \$70.4 million. Fines assessed in District Courts in 2021

totalled approximately \$177.6 million and the total amount collected totalled approximately \$83.7 million. Fines assessed in Circuit Courts and reported to the AOC in 2019 totalled approximately \$4.2 million and the total amount collected totalled approximately \$500 thousand. Fines assessed in Circuit Courts in 2020 totalled approximately \$3.1 million and the total amount collected totalled approximately \$800 thousand. Fines assessed in Circuit Courts in 2021 totalled approximately \$2.3 million and the total amount collected totalled approximately \$1 million.

§16-13-704 of the Arkansas Code provides that the court may authorize installment payments on a fine owed by a defendant if it concludes that the defendant is able to pay the fine, but that doing so in one immediate payment would cause a “severe and undue hardship for the defendant and the defendant’s dependents.” The court’s order will specify the date by which the fine must be paid in full. An installment fee of five dollars (\$5.00) per month will be assessed on each person who is authorized to pay a fine in installments and is to be collected each month that an installment payment is made. The fee shall also accrue each month that no installment payment is made until the fine is paid in full.

According to Act 583 of 2017, codified as § 9-6-101, when an installment plan is authorized, any court costs under §§ 9-15-202(d) or 16-10-305(h) (additional court costs for domestic abuse violations) will be the first court costs collected from the initial installment payment.

One-half of the installment fee collected in the **circuit** court must be remitted by the tenth (10) day of each month to the Administration of Justice Funds Section of the Office of Administrative Service of the Department of Finance and Administration for deposit in the Judicial Fine Collection Enhancement Fund. The other half must be remitted by the tenth (10) day of each month to the county treasurer to be deposited in the circuit court automation fund to be used solely for circuit court-related technology. Expenditures from this fund must be approved by the circuit judge in accordance with state law regarding county expenditures. Authorized expenses include those indirectly related to technology, including overtime pay, personnel or travel expenses, and technology-related supplies.

One-half of the installment fee collected in the **district** court must be remitted by the tenth (10) day of each month to the Administration of Justice Funds Section of the Office of Administrative Service of the Department of

Finance and Administration for deposit in the Judicial Fine Collection Enhancement Fund. The other half must be remitted by the tenth (10) day of each month to the general fund of the city treasurer of the city in which the district court is located to be deposited into the district court automation fund to be used solely for district court-related technology. Expenditures from this fund must be approved by a district judge in accordance with state law regarding county and municipal expenditures. Authorized expenses include those indirectly related to technology, including overtime pay, personnel or travel expenses, and technology-related supplies.

On top of the original \$5.00 monthly installment fee to be collected by the clerk of the court, an additional installment fee of \$5.00 shall be assessed on the first of each month on each person who is ordered to pay fine in installments. In the **circuit** court, the additional \$5.00 must be remitted to the collecting official to be used to defray the cost of fine collection. In the **district** court, the additional \$5.00 must be remitted by the tenth day of each month to the Administrative Service of the Department of Finance and Administration for deposit in the State Administration of Justice Fund.

§16-13-705 provides that a district court *shall* and a circuit court *may* accept personal checks made out to the official designated to collect the court's fines in payment of any fine or associated charge assessed by the court if the person furnishing the check provides satisfactory proof of residence in this state and if the check is drawn on a banking institution located in this state. If a personal check is returned without payment for any reason, a reasonable charge for the returned check, not to exceed the actual costs incurred by the court, may be imposed to recover processing and collection costs. This charge may be added to and become part of any underlying obligation.

§16-13-706 permits but does not require courts or a designated collecting agency for the court to accept payment of fines and associated costs by an approved credit card or debit card. The court or agency may enter into contracts with credit card companies and pay those companies fees normally charged by those companies for allowing the court to accept their credit cards as payment, and the court may assess the offender a transaction fee when the offender pays fines or court costs by an approved credit card or debit card. All courts may enroll for service with and accept payments from a third-party entity for the acceptance and collection of fines and associated costs with an approved credit card for which the third-

party entity may charge the offender a transaction fee; however, neither the State of Arkansas nor any of its political subdivisions (counties) may charge a transaction fee for electronic payments of a court-ordered fine paid through a third-party.

§16-13-707 clarifies that when any defendant sentenced to pay a fine defaults on payment, or defaults on any installment, the fine may be collected by any means authorized for the enforcement of money judgments in civil cases. A judgment that the defendant pay a fine constitutes a lien on the real and personal property of the defendant in the same manner and to the same extent as a money judgment in a civil case. A judgment entered by a district court does not become a lien against real property of the defendant unless a certified copy of the judgment showing the name of the judgment debtor and the date and amount of the judgment is filed in the circuit clerk's office of the county where the real property is located.

§16-13-708 allows the court to request that the Department of Finance and Administration revoke, suspend, or refuse to renew the driver's license or vehicle registration of a debtor who has failed to make satisfactory arrangements for the payment of fines. For driver's license revocation, the court must provide the department with the reason for the revocation, suspension, or nonrenewal, the amount the person owes the court, and the person's full name, date of birth, and last known address. Alternatively, the court may issue an order for a restricted driving permit in accordance with §27-16-916.

For vehicle registration revocation, suspension, or nonrenewal, the court must provide the department with the reason for the revocation, suspension, or nonrenewal, the amount the person owes the court, and the person's full name, and the license plate number or VIN of the person's vehicle. However, none of these actions may be taken with regard to license or vehicle registration revocation, suspension, or nonrenewal unless the court has scheduled a hearing to address the person's nonpayment of the court-ordered fine and the person has failed to appear at the hearing.

§ 16-13-709 of the Arkansas Code also provides that the governing body of the county and city, the quorum court and city council, respectively, shall designate by ordinance the official, agency, or department to be responsible for the collection of delinquent fines assessed in district court. In many counties, the county shares the costs of the district court with the sheriff's

office designated to collect the county docket delinquent fines, court costs, and restitution assessed in district court. The fines collected in district court shall be disbursed the following month on the tenth working day. Both the sheriff and the city police will still be responsible for collecting bail and money deposited in lieu of bail.

§16-92-118 provides for the payment of fines, costs, and restitution assessed by a criminal court to be made electronically or by credit card and the imposition of installment payments and a “transaction fee” (amended in 2011 from an “access fee not to exceed \$10”). This process has enhanced collection revenues.

§ 5-4-205 provides: If a court authorizes payment of restitution by a criminal defendant in specified installments, a monthly installment fee of five dollars (\$5.00) shall be assessed on the defendant for making restitution payments on an installment basis in addition to the restitution and other assessments authorized. The monthly installment fee of this section shall be remitted to the collecting official to be used to defray the cost of restitution collection.

Sheriffs also collect fines for county ordinance violations. §14-14- 906 provides that all fines and penalties imposed for violation of any county ordinance shall be paid into the county general fund.

District Court fines imposed by the county docket and some state agencies, such as those relating to citations of the Arkansas State Police and Game & Fish, which are not dedicated for an express purpose, go to the county treasurer as general revenues. Court costs on the county docket and state agencies are distributed by the district court clerk for the costs of the court system, the local or county administration of justice fund, and the state administration of justice fund. The same is true of the city docket; their district court fines are generally considered general revenue, and their district court costs are distributed to the local administration of justice fund and the state administration of justice fund. Some fines are dedicated and will be discussed below: the jail fine under §16-17-129; and the booking and administration fee and pay for stay under § 12-41-505.

The passage of Act 209 of 2009, codified as §16-17-129, raised the fine amount from \$5 to \$20 that counties and cities may assess by ordinance for convictions for offenses and violations in district court. The impact of Act 209 in 2009 contributed millions of dollars towards revenue. This revenue

is supposed to be used to help defray prisoner costs. When trying to interpret this statute, you should use the *plain meaning rule*. This rule means that you simply take the statute at its word without resorting to rules of construction or external aids when trying to interpret it. Therefore, §16-17-129(b) explicitly says this fine can only be implemented by a county by passing an ordinance. This ordinance will apply to all district courts in the county. In addition, the fine amount can be set in an amount less than \$20.00. The statute only forbids amounts that *exceed* the \$20.00 amount. The fine is imposed on pleas of guilty and nolo contendere. It should also be collected according to law along with any other fines imposed on the defendant.

This fine can also be imposed on defendants who have cases on the city dockets (cases charged and prosecuted by a city or municipality as opposed to the county). In this instance, the defendant will have two fines (one for the city and one for the county). These are technically two separate fines. However, for a county to take such action there must be an ordinance pursuant to §16-17-129 that authorizes the fine. This statute also permits a collection of a fine for seat belt violations. According to Opinion 2003-117 by the Arkansas Attorney General, the additional fine under §16-17-129 can be collected for this sort of violation as well. According to the Sheriff Survey, a small percentage of counties use this fine.

Funds collected from the additional fine shall be paid into the county treasury and deposited into a fund to be used exclusively to help defray the cost of: (1) the construction, maintenance, and operation of the city, county, or regional jail; (2) deferring the costs of incarcerating county prisoners held by a county, a city, or any entity; (3) the transportation and incarceration of city or county prisoners; (4) the purchase and maintenance of equipment for the city, county or regional jail; and (5) the training, salaries, and certificate pay for jail personnel.

The passage of Act 117 during the 2007 Regular Session implemented the Booking/Administrative Fee. The projected revenue increase of Act 117 was estimated to be around 1.5 million statewide. The Booking/Administration fee “was to be used exclusively for the maintenance, operation, and capital expenditures of a county jail or regional detention facility.” Act 372 of 2019 doubled the booking and administration fee from \$20.00 to \$40.00. Therefore, according to §12-41-505, a person convicted of a felony or Class A misdemeanor must now pay a fee of **\$40.00** for booking and administration. This fee is included in the judgment of conviction of the



prisoner entered by the court. If the court happens to suspend imposition of a sentence on a prisoner or places him or her on probation and does not enter a judgment of conviction, the booking and administration fee is administered as a cost. This fee will go through the Circuit Clerk's office.

§12-41-505 says 10% of this fee is to be deposited into or credited to the county sheriff's office fund and then transferred by check on a monthly basis using a uniform remittance form provided by the Treasurer of State for the Law Enforcement Training Fund. The remaining funds shall be used for the maintenance, operational, and capital expenditures of a county jail or regional detention facility and for certificate pay for law enforcement and jail personnel. This includes using the funds to pay for an inmate's medical expenses (even pre-existing conditions) and daily support. A County's requirement to provide medical care and other services is enforced under state and Federal law. However, this fee allows the county to seek reimbursement from the prisoner.

Some counties do not maintain a county jail or regional detention facility, but instead pay other detention facilities to house that county's prisoners on a per diem or contract basis. In this circumstance, a county must reserve the booking and administration fee until the time it has a county jail or regional detention facility. The county also cannot use the fee to satisfy any of the financial obligations for its prisoners housed at another facility since it would be contrary to the plain language of §12-41-505(b)(3). Unlike the county ordinance discussed in §16-17-129, this particular fee is not supposed to be used to help "defray the cost of incarcerating county prisoners."

A county can even use the §12-41-505 fee to set goals. To accomplish this, a county must pass an ordinance. The only limitation to this would be that the statute must authorize it. Any question regarding whether or not this fine covers something turns on whether the expense at issue was incurred as an act, instance, or process of operating the jail or regional facility. See: AG Opinion Nos. 2010-066, 2008-088, 2007-304.

Notably, in 2016, the Supreme Court of Arkansas held that a civil contempt order for failure to pay fines, which resulted in a jail sentence, violated the Arkansas Constitution. *Stehle v. Zimmerebner*, 2016 Ark. 290, 6, 497 S.W.3d 188, 192 (2016). The court likened this situation to debtor's prison. The court stressed that this order was improper because the circuit court did not determine whether the woman in question had the ability to pay.

Essentially, if she had the ability to pay and did not, she could be held in contempt for disobeying the court order to pay. If she did not have the ability to pay, however, the contempt order and following detention violated the state Constitution's ban on debtor's prison. The City of Sherwood faced similar allegations in 2017, but that case was dismissed for procedural issues. *Dade v. City of Sherwood, Arkansas*, No. 4:16CV00602-JM-JJV, 2017 WL 2486087, at \*1 (E.D. Ark. Jan. 24, 2017). Eighth Circuit courts are given broad deference to determine whether someone will, at some point, be able to pay. *United States v. Kelley*, 861 F.3d 790, 802 (8th Cir. 2017).

Act 1071 of 2021, codified as §5-4-207, allows defendants paying fines or costs in installments as a result of a felony conviction to request the entity responsible for collecting fines and costs to **temporarily** lower the installment payment upon a demonstration of hardship. A defendant's request for lowered payments will not be accepted if the defendant's failure to pay is as a result of (1) purposeful refusal to obey the sentence of the court or (2) refusal to make a good-faith effort to obtain the necessary funds for payment of his or her fine or cost. The lowered installment payment may be accepted for up to three consecutive months; a request for and acceptance of lower installment payments in excess of more than three months must be ordered by the circuit court.

Furthermore, a defendant is not considered "delinquent" during a period in which he or she (1) has had his or her installment payment amount lowered and is making such payments and (2) is incarcerated in the Department of Corrections and has, upon request, been permitted to file notice with the circuit court of his or her incarceration and seek a temporary abatement of all outstanding fines, fees, court costs, or restitution obligations for the period of incarceration **and** up to six months immediate following the scheduled release from incarceration.

Additionally, Act 1071 set a limit on the bond amount set by the court if the defendant becomes delinquent on his or her installment payments and a warrant is issued for the defendant's arrest: the bond shall not exceed 10% of the amount of the defendant's arrearage. While these provisions allow a defendant to ask for a lower payment amount, they still have the potential to actually bolster fine collections by allowing a defendant to pay a smaller payment instead of going delinquent.

The remainder of this manual will address some of the mechanisms available statewide (some of which are under-utilized) for collecting fines, restitution, and court costs:

- State Income Tax Set-Off
- Suspension of Driver's License
- ArDOT Litter Program
- Work Release
- Pay for Stay
- Lien on Property

## **STATE INCOME TAX SET-OFF**

The state income tax set-off is another tool counties may utilize to collect fines. §26-36-301 allows qualifying agencies to apply with the Department of Finance and Administration (DFA) to intercept the income tax refund of any *individual* owing money to or having a delinquent account which obligation has not been adjudicated, satisfied by court order, set aside by a court, or discharged by a claimant agency. §26-36-303 which states that “setoff means the withholding of part or all of income tax refunds due individuals who owe debts to the State of Arkansas, to a county, a city, or a town, or to a housing authority created under § 14-169-101.” In short, upon claim by the county, the state can withhold an individual’s income tax refund if he or she still owes fines that have been delinquent for longer than six months.

Obviously, it must first be determined that the debtor owes a fine that is delinquent. The agency must then send a notice to the debtor and must wait 30 days before it can actually file a claim with DFA to intercept the debtor’s income tax refund. During this 30-day window, people may come in and pay their fine or give a legitimate excuse and the county may choose to implement an alternative payment arrangement.

As stated above, the county must provide written notice to the debtor of its intention to capture the debtor’s tax refund. The written notification should contain the following:

1. the basis for the claim to the refund;
2. the intention to apply the refund against the debt to the claimant agency;
3. the debtor’s opportunity to give written notice of intent to contest the validity of the claim before the claimant agency within thirty (30) days of the date of the mailing notice;
4. the mailing address to which the application for a hearing must be sent; and
5. the fact that failure to apply for a hearing in writing within the thirty (30) day period will be deemed a waiver of the opportunity to contest the claim, causing final set-off by default.

If the debtor is married, the county does not necessarily get to capture the couple’s income tax refund. According to the Arkansas Individual Income

Tax Instructions for married taxpayers, if only one of the married taxpayers owes a delinquent fine, the taxpayer who is not liable will not have his/her refund applied to the debt if both taxpayers file status 5, Married Filing Separately on Different Returns. However, the taxpayer who is liable will have his/her portion applied to the debt.

The County must complete the Intent to Participate Form before it can begin using the Income Tax Refund Setoff. Once the county has filed its Letter of Intent and 30 days has expired since it sent proper notice, it can submit its debtor information to DFA. There are numerous rules, requirements, and formatting standards that a claimant agency must follow, and this can be a cumbersome process, especially for smaller administrative offices with limited staff.

The Association of Arkansas Counties (AAC) has partnered with the National Association of Counties (NACo) to form ArkTRECS, a one-stop-shop clearinghouse to serve as the liaison between your office and DFA. ArkTRECS will do the work your office doesn't have time to—preparing and sending notices, getting your documents approved by DFA, vetting debtor addresses and social security numbers, and formatting your debtor information correctly—for no cost to your agency up front. Additionally, ArkTRECS provides an automated phone hotline to which DFA will direct a taxpayer who questions the validity of their debt.

While the offsets captured from individual income tax returns are beneficial, the real benefit of this program comes from the voluntary walk-in payments that begin after the debtors receive their notices because no one wants to lose their tax refund. The better news is ArkTRECS charges NOTHING when those walk-ins pay you voluntarily. That is free money for your agency to apply to delinquent fines, fees, and of course, restitution to the citizens of your county.

The county will be able to use the ArkTRECS portal to track reports that will be available daily. These reports list all of the refunds that have been intercepted. It is the county's responsibility to research the accounts and determine if the debt is still owed. The debt files can be updated and uploaded daily on the portal. Procedures exist to refund the debtor in case the debtor overpays or if only a portion of the debt is owed.

The formula that is used to determine what is disbursed to the county is: (refunds captured – (minus) overpayment for the thirty (30) day period –

(minus) a 5% collection fee. The monthly reports and current address listing will be available the following Monday after the deadline for that month. Deposits are sent to the counties immediately after month-end processing. If there are multiple claims to refunds to be set off, then such refunds will be decided upon by the time in which an agency has filed written notice with the division of its intention to take collection. ArkTRECS makes sure to submit its debt file as soon as possible to be first in line.

This method is a great tool to encourage individuals to voluntarily pay their delinquent fines. For example, in 2006, Baxter County collected \$10,000 in delinquent fines from income taxes and \$80,000 from individuals who came forth to pay. Although the procedure is somewhat lengthy, it is a great way to increase revenue for your county and pay restitution to the citizens of your county, and the ArkTRECS program is a great tool to help you navigate the process.

## **SUSPENSION OF DRIVER'S LICENSE**

Suspending an individual's driver's license is a fairly simple procedure administered through the Department of Finance and Administration. Arkansas Code Annotated §16-13-708 gives the Arkansas courts the authority to tell the Department of Finance and Administration (DFA) to revoke, suspend, or refuse to renew the driving privileges of an individual for failure to pay a fine. Notably, according to Act 460 of 2017, a Class D license can be renewed every four or eight years.

§16-13-708 allows a district court to request in writing that DFA revoke, suspend, or refuse to renew the motor vehicle registration of driver's license of a person who has failed to make satisfactory arrangements for the payment of a court-ordered fine. However, the court shall not make this request before the court has scheduled a hearing to address the person's nonpayment of the court-ordered fine and the person has failed to appear at the hearing. Alternatively, the court may issue an order for a restricted driving permit in accordance with § 27-16-916. For driver's license revocation, suspension, or nonrenewal, the court must provide the department with the reason for the revocation, suspension, or nonrenewal, the amount the person owes the court, and the person's full name, date of birth, and last known addresses.

DFA has a standard form available for the District Court to request revocation of a driver's license. The court will fill out the information identifying the driver at the top and check "Failure to Pay." Since federal regulations require that DFA enter the underlying violation, there is a place on the form asking for the violation that the subject failed to pay. It is important to note that you only indicate what the original offense was; not the failure to pay. The actual date that the offense occurred should also be documented. For example, if it were a speeding ticket that was not paid, this would be documented on the Order. However, if the underlying offense was not traffic related, the court can just write "non-moving" (not traffic related), and it will be sufficient. If it was a moving or traffic related offense, it must be documented whether it occurred in a commercial vehicle and if it was carrying hazardous materials.

§27-16-508 provides that if someone's license is suspended or revoked only for unpaid reinstatement fees, the person can pay one reinstatement fee of \$100. The revenue derived from this fee shall be deposited into the State Treasury as special revenues to the credit of the Division of Arkansas State Police Fund. This person must have paid all other court costs, fines, and

fees, however. DFA must also provide a reinstatement letter.

A representative from DFA commented on how effective this suspension may be. She said the DFA receives a high volume of phone calls from drivers trying to clear the suspension imposed against them. This is perhaps a sign of the potential success of this tool in generating revenue for the state of Arkansas. It is worth a try to implement since it is a relatively easy process to administer.



## **ArDOT LITTER PROGRAM**

Currently, nine counties participate in the litter pick-up program that is funded by the Arkansas Department of Transportation. The program is designed to reimburse those governments for inmates that are assigned to pick-up litter along the State Highways. The County Sheriff shall record the litter pick-up activities and submit these documents to the Department. After this verification, the Department will make payment to the County Treasurer as the Reimbursement Request Forms and supporting documentation is received.

An inmate is eligible for this program if the court assigns him/her to community service and is determined suitable by the County Sheriff to perform public service work. Prison parolees that have had such a condition of early release imposed on them by the Parole Board are also eligible for this program. The eligible service is the number of hours that an inmate is actually involved in the litter pick-up activity. This service must be documented on the official Arkansas Department of Transportation form, Jail-Inmate Litter Pick-up Reimbursement Request, and must be certified by the County Sheriff. If everything is properly documented and certified, reimbursement will be at \$2.00 per hour per Jail-Inmate.

The county must establish and at all times maintain on-site oversight and supervision of an inmate cleanup crew. The exception for this is if a work-release inmate or community service inmate is allowed to work independently of enforcement oversight. In that case, the inmate may record their schedules and locations with the proper authorities and perform that work in accordance with the rules and guidelines of the court. The County Sheriff must coordinate the daily litter pick-up activities with a designated official of the Department. The County Sheriff has total responsibility over the needs of the prisoners and the security and protection of the public.

Officials from Garland County stated this program cleans up the roadways and they receive positive feedback from the public. Cleburne County says one negative of the program is the amount of labor that must be used to administer the program. However, overall, this program seems to generate a substantial amount of revenue for the counties.

\*See the Appendix for a sample resolution, agreement, reimbursement form, labor time record form, and informational packet.

## **WORK RELEASE**

The work release program is used to help a prisoner pay off a fine, sentence, or both. It is codified under Arkansas Code §§12- 30-401 and 12-42-116. A Sheriff Survey indicated that a prisoner could earn anywhere from \$10.00 to \$60.00 a day to be used toward paying fines. An inmate can work a job that directly benefits approved jail facilities, political subdivisions, or nonprofit organizations. Most of the time, the work release is done under a judgment of conviction. It is important to note that if an individual is convicted of a felony, they are not eligible for this program.

Cleburne County uses the work release program. In Cleburne County, if a person comes through court and has been issued a warrant because he/she did not make a fine payment, the judge will sentence them to 30 days in jail and the opportunity to work off the time. The prisoner gets \$10.00 an hour while working in jail. If the person is out of jail and wants to continue working off the fine, they usually can work for the Cleburne County Community Work Program. Cleburne County implements this program under a judgment of conviction.

Counties around the state administer the work release program in different ways. Baxter County uses it to pay off 1/3 of fines, 1/3 towards housing costs, and 1/3 to the inmate. Unlike some other counties, it is not administered under a judgment of conviction. It is done through the powers of the Sheriff under the Rules of Criminal Procedure.

## **PAY FOR STAY**

Some counties use “Pay for Stay” which is codified in Arkansas Code §12-41-505 which require prisoners to pay for their cost of incarceration. This section requires the defendant to pay "the expenses . . . for his or her support from the day of his or her initial incarceration for the whole time he or she remains there." According to the surveys sent to the Sheriffs through-out the state in 2011, this process is rarely used in the counties.

\*A sample ordinance may be found in the Appendix.

## LIEN ON PROPERTY

§16-13-707 allows **circuit** court officials to collect defaulted fine payments or installment payments to be collected by any means authorized for the enforcement of money judgments in civil actions. A court judgment against a defendant to pay a fine serves as a lien on the real and personal property of the defendant the same way that a money judgment serves as a lien against a defendant's property in a civil judgment.

Conversely, a judgment entered by a **district** court does not serve as a lien against real property unless and until a certified copy of the judgment, showing the name of the judgment debtor and the date and amount of the judgment, is filed in the office of the circuit clerk of the county where the land is located.

§16-66-102 et. seq. allows a circuit court the power to issue a writ of execution upon any registered civil judgment of that court at any time before the collection of the judgment is barred by the statute of limitations. A 16-66-104 form is provided to the sheriff, identifying the judgment debtor and the debtor's property to be collected under the writ, and ordering the sheriff to seize and return the described property to the court within the time allowed by law, as well as to serve notice upon the judgment debtor of the writ of execution. After being served, the judgment debtor has 20 days to file a petition to claim any exemptions on his property as provided by law. A writ of execution issued by the circuit court of one county can be directed to and executed by the sheriff of any other county within the state. When the sheriff receives a writ of execution, he must endorse the writ with the date and time he actually received the writ.

This section creates a lien on any "goods or chattels, or the rights or shares in any stock, or on any real estate, to which the lien of the judgment, order, or decree extends or has been determined, from the time the writ shall be delivered to the officer in the proper county to be executed." Arkansas Code §16-66-112. It is the duty of the clerk to keep a book of all executions issued as well as recording the returns, according to §16-66-115. Also, a sheriff or deputy who willfully neglects to follow the law upon delivery of an execution will be liable for up to the whole amount of the execution. However, any sheriff or law enforcement officer acting "in good faith, and not in violation of clearly established law, and exercising due care while serving and executing writs of execution shall have immunity." A.C.A. §§ 16-66-118 – 119.

§16-66-201 et. seq. sets forth what types of property may be seized and sold upon execution of a judgment. The law also states that the property may be seized, even if the property is subject to a mortgage or some other lien, so long as the lienholder is provided notice, and the sale of seized property shall be subject to the lienholder's interest.

§16-66-208 et. seq. allows for the garnishment of the wages of a judgment debtor by his creditor, so this is also a permitted method for an Arkansas court to use in the collection of unpaid fines, subject to the limits on wage garnishment set forth in this section. However, payment to an Arkansas resident for life, sick, accident, or disability benefits are not subject to execution by any court. Additionally, an Arkansas resident's homestead shall not be subject to any lien or execution by any court. Other property exempt from execution includes a person's wedding rings and any pension payments, profit-sharing plan, or other retirement plan payments. If a debtor thinks their execution should be stayed, they can petition the court for a stay pursuant to §16-66-301 et. seq.

This section of the code also goes on to set forth the proper procedure for the levy, sale, and possible property owner redemption of property executed pursuant to a judgment against the property owner.

## **INMATE MISDEMEANOR OFFENSE RECONCILIATION**

Act 1048 of 2021, codified as §16-90-1501, was passed in order to encourage the collection of all outstanding restitution, fines, fees, and court costs and to enable prisoners to resolve pending misdemeanor offenses while incarcerated to avoid further excessive fines or warrants for failure to appear. Under §16-90-1502, prisoners may request of the Arkansas Department of Corrections (ADOC) a compilation of all of their outstanding arrest warrants, criminal summons, and pending misdemeanor cases. Additionally, the Department of Corrections is tasked with making available means of communication between a prisoner, their attorney, the prosecuting attorney, the court, and local law enforcement agencies, to enter into pleas remotely and address outstanding misdemeanor warrants; additionally, the department is tasked with facilitating transportation to the court when necessary for the purposes of entry of pleas, hearings, or trials.

If the prisoner has any outstanding misdemeanor warrants, he or she may, with the assistance of the department, petition the court for a speedy resolution of such warrant, including a request for service of the misdemeanor warrant while in jail so the prisoner may begin the process of resolving it. The main purpose of this act is to prevent prisoners from accruing additional fines while incarcerated due to their inability to appear at court proceedings or pay existing fines. Without these practices, many inmates may get released from ADOC only to be taken immediately to the county jail for failing to pay the additional fines they accrued while incarcerated. This act also created a task force to study and assess the process of fine, fee, court cost, and restitution collection in Arkansas with an eye toward making the process more efficient and just.

**APPENDIX**

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## **AGREEMENT TO ENTER THE LITTER PICK-UP REIMBURSEMENT PROGRAM**

A program exists that is managed by the Arkansas Department of Transportation (ARDOT), available to the counties of the State of Arkansas, to reimburse those governments for jail-inmates that are assigned to pick-up litter along the State Highways.

### **Work Plan**

The litter pick-up activities shall consist of only roadside litter found within the identified or perceived rights-of-way of designated State Highways. The responsible party shall further assure that the collected litter shall be bagged and placed on the shoulder of the roadway but outside of any designated driving lane.

The County Sheriff shall accurately record the litter pick-up activities and submit these documents to ARDOT. After verification, ARDOT will make payment to the County Treasurer as the Reimbursement Request Forms and supporting documentation are received, but, no more frequently than bi-weekly.

The eligibility for reimbursement is for those inmates that are housed in a jail or are assigned to community service by the courts and found suitable by the County Sheriff to perform public service work. Eligible service is based on the number of hours that a Jail-Inmate is actually involved in the litter pick-up activity. The service must be documented on the official ARDOT form, Jail-Inmate Litter Pick-up Reimbursement Request, and must be certified by the County Sheriff.

Reimbursement for this service, properly documented and certified, will be at \$2.00 per hour per Jail-Inmate and made payable to the County that has entered this agreement. All reimbursements requested and made are subject to audit.

The term of this agreement shall be for one year beginning July 1. The maximum available funds shall be \$50,000 during any fiscal year and may be canceled for any reason with 30 days notice by either party.

### **ARDOT Responsibilities**

ARDOT will provide signs and supports to the County for placement in the vicinity of roadside litter pick-up activities to alert motorists of these activities. In addition, ARDOT will furnish safety vests and trash bags and will collect and dispose of all litter that has been properly placed on the shoulder of the highway.

ARDOT personnel shall have the right to perform reasonable audits of the activities and reimbursements of the Jail-Inmate Litter Pick-up Program and to examine all records of the County relating to the Program.

### **County Responsibilities**



A County that is party to a Jail-Inmate Litter Pick-up Agreement shall establish and at all times maintain on-site oversight and supervision of a jail-inmate clean-up crew.

*Exception: Work-release inmates or community service inmates that are allowed to work independently of enforcement oversight may record their schedules and locations with the proper authorities and perform that work in accordance with the rules and guidelines of the court. These hours may be submitted by the County Sheriff for appropriate reimbursement under the terms of the Agreement.*

The County Sheriff will coordinate the daily litter pick-up activities with a designated official of ARDOT so that these activities can be directed to routes that would be most beneficial to ARDOT and that the collected litter can be promptly loaded and disposed.

The County, represented by the County Sheriff’s office, shall maintain (and submit upon request) documentation showing State Highway routes serviced, work orders, court orders or other documentation relative to reimbursement requests. If ARDOT finds discrepancies that result in overpayment, ARDOT shall pursue collection and recovery of the funds.

The County Sheriff will be totally responsible for the needs of the prisoner and for the security and protection of the public. ARDOT shall be held harmless in any aspects of this program regarding the care and treatment of prisoners and for the security and protection of the public.

— — —

\_\_\_\_\_ County now hereby enters this agreement with the Arkansas Highway and Transportation Department to become a participant, eligible for reimbursement in the Jail-Inmate Litter Pick-up Program without any further obligations not identified herein. (A Resolution by the Quorum Court must accompany the application by a County government - sample attached).

Applicant: \_\_\_\_\_ Date  
(County Judge)

\_\_\_\_\_  
(County Sheriff) Date

Approved: \_\_\_\_\_ Date  
Department of Transportation

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION EXPRESSING THE WILLINGNESS  
OF \_\_\_\_\_ COUNTY  
TO PARTICIPATE IN THE JAIL-INMATE LITTER  
PICK-UP PROGRAM**

WHEREAS, the County of \_\_\_\_\_ understands that funds are available through the Arkansas Department of Transportation (ARDOT) for reimbursement at a set rate for jail/prison labor that is used to pick up litter on State Highways within this County.

NOW THEREFORE, BE IT RESOLVED BY THE COUNTY'S GOVERNING BOARD OF THE COUNTY OF \_\_\_\_\_, ARKANSAS, THAT:

SECTION I: The County pledges its full support to the elimination of litter and littering within \_\_\_\_\_ County and the State of Arkansas.

SECTION II: The County desires to participate in the Jail-Inmate Litter Pick-up Program to the extent possible and allowed by the resources available.

SECTION III: The County Judge is hereby authorized and directed to enter into an agreement with ARDOT for participation in the Jail Inmate Litter Pick-up Program and the County Sheriff is authorized and directed to take full advantage of the participation and to properly document, certify and request all reimbursements that are available in this program.

THIS RESOLUTION adopted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
JUDGE

ATTEST: \_\_\_\_\_

**ARKANSAS JAIL-INMATE LITTER PICK-UP PROGRAM**

**LITTER PICK-UP REIMBURSEMENT REQUEST FORM**

Fund Recipient: \_\_\_\_\_ COUNTY \_\_\_\_\_

Address \_\_\_\_\_  
 \_\_\_\_\_

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_ e-mail: \_\_\_\_\_

FOR THE PERIOD BEGINNING \_\_\_\_\_ ENDING \_\_\_\_\_

Date	Number of Inmates	Number of Bags Filled	Total Hours Worked	Hourly Rate per Inmate	Total Reimbursement Requested
				\$2.00	
				\$2.00	
				\$2.00	
				\$2.00	
				\$2.00	
				\$2.00	
<b>TOTALS</b>					

I hereby declare that to the best of my knowledge this request is supported by documentation maintained on file at this office. I further understand that this request is subject to verification and audit by representatives of the Arkansas Highway and Transportation Department.

County Sheriff Signature \_\_\_\_\_ Date \_\_\_\_\_

USE THIS FORM FOR REQUESTING REIMBURSEMENT FOR THE JAIL-INMATE LITTER PICK-UP PROGRAM.

**LABOR TIME RECORD FORM MUST BE ATTACHED**

SUBMIT COMPLETED FORMS TO:

Arkansas Highway and Transportation Department  
 \_\_\_\_\_, Area Maintenance Supervisor

P.O. Box \_\_\_\_\_  
 \_\_\_\_\_, AR  
 Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

\_\_\_\_\_  
 AMS Initials

# ARKANSAS JAIL-INMATE LITTER PICK-UP PROGRAM

## LABOR TIME RECORD FORM

Fund  
 Recipient: \_\_\_\_\_

Date \_\_\_\_\_ to \_\_\_\_\_

**Summarize this information on "Jail-Inmate Litter Pick-up Reimbursement Request Form"**

Name	Inmate Identification Number	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	Total Hours	Hourly Rate	Total
										\$2.00	
										\$2.00	
										\$2.00	
										\$2.00	
										\$2.00	
										\$2.00	
										\$2.00	
										\$2.00	
										\$2.00	
										\$2.00	
										\$2.00	
										\$2.00	
<b>TOTALS</b>										\$2.00	

**This form must be used to record daily litter pick-up activities.**

## **JAIL INMATE LITTER PICK-UP PROGRAM**

With the growing litter problems in Arkansas, a task force was formed in 2003 to seek new strategies to combat the litter. A Jail-Inmate Litter Pick-up Program was proposed as a means to obtain services to remove litter from the roadsides. The Arkansas Department of Transportation (ARDOT) passed Minute Order 2007-075 on May 23, 2007 to promote a pilot program.

The intent of the pilot program was to develop agreements with selected counties by which ARDOT will provide payments to each county for assigning jail inmates to pick up litter on state highway rights-of-way. The payments (hourly rate of \$2.00) were established as a means to reimburse a county for providing a deputy for security and for transporting the inmates.

The following thirteen (13) counties signed agreements to participate in the pilot program: St. Francis, Jefferson, Pike, Washington, Sebastian, White, Cleburne, Pulaski, Union, Faulkner, Benton, Craighead and Mississippi.

In 2008, the program had proved to be such a success that ARDOT expanded to all interested counties. Currently, only nine counties have existing agreements. We encourage you to reach out to your ARDOT district engineer about participation.

### Responsibilities of ARDOT

ARDOT will provide signs and supports to the county for placement in the vicinity of roadside litter pick-up activities to alert motorists of these activities. In addition, ARDOT will furnish safety vests and trash bags and will collect and dispose of all litter that has been properly placed on the shoulder of the highway.

ARDOT personnel shall have the right to perform reasonable audits of the activities and reimbursements of the Jail-Inmate Litter Pick-up Program and to examine all records of the county relating to the program.

### County Responsibilities

Each participating county shall at all times maintain on-site oversight and supervision of the jail inmate crew. Exception: Work-release inmates or community service inmates that are allowed to work independently of enforcement oversight may record their schedules and locations with the proper authorities and perform that work in accordance with the rules and guidelines of the court. These hours may be submitted by the county sheriff for appropriate reimbursement under the terms of the agreement.

The county sheriff will coordinate the daily litter pick-up activities with a designated official of ARDOT so that these activities can be directed to routes that would be most beneficial to ARDOT and that the collected litter can be promptly loaded and disposed.

The county, represented by the county sheriff's office, shall maintain (and submit upon request) documentation showing state highway route(s), work order(s), court order(s) or other documentation relative to reimbursement request(s). If ArDOT finds discrepancies that result in overpayment, ARDOT shall pursue collection and recovery of the funds.

The county sheriff will be totally responsible for the needs of the inmates and for the security and protection of the public. ARDOT shall be held harmless in any aspects of this program regarding the care and treatment of inmates and for the security and protection of the public.

### How to Participate

1. County Sheriff or County Judge contacts ARDOT
2. County Sheriff/County Judge meet with District Engineer for designated county
3. District Engineer provides the paperwork which includes:
  - a. Copy of Agreement which County Sheriff and County Judge sign
  - b. Copy of a sample Resolution to be executed by the County
  - c. Labor Time Record Form
  - d. Litter Pick-Up Reimbursement Request Form
4. After the Resolution and Agreement are signed by the County Sheriff and County Judge, it is sent to Director of ARDOT for signature.
5. After Director signs off on Agreement, distribution is as follows:
  - a. The original executed Agreement and Resolution is sent to the County Judge.
  - b. County Sheriff and District Engineer are mailed copies of the Agreement and Resolution.
  - c. ARDOT Central Office file copies are retained by Assistant Chief Engineer-Operations
6. To request reimbursement, the County shall submit the Litter Pick-Up Reimbursement Request Form and the Labor Time Record Form to the appropriate Area Maintenance Supervisor
7. Area Maintenance Supervisor submits the paperwork to the District Office for further processing.

State of Arkansas  
County of [unclear]  
Quorum Court

ORDINANCE NO. 20

AN ORDINANCE AUTHORIZING THE BILLING OF PRISONERS FOR EXPENSES INCURRED BY THE COUNTY FOR THEIR INCARCERATION IN THE COUNTY JAIL - PAY FOR STAY.

WHEREAS, every person who may be committed to the county jail by lawful authority for any criminal offense or misdemeanor, if convicted, shall pay the expense to carry him to jail and also for his support from the day of his initial incarceration and for the whole time he remains there; and

BE IT ENACTED BY THE QUORUM COURT OF THE COUNTY OF  
STATE OF ARKANSAS:

ARTICLE I. Cost of Carrying to Jail: The average expense of carrying a prisoner to jail shall be determined annually by the Sheriff as required by ACA 12-41-505(a).

ARTICLE II. Daily Housing Cost: A Daily Average Jail Housing Cost shall be determined annually by the Sheriff as required by ACA 12-41-505(a). In computing this average, the Sheriff shall not include Medical Expenses directly related to the treatment of a particular jailed prisoner. Nor shall the Sheriff include the Capital Cost of the jail facility itself. All other Jail Operating Costs shall be included.

ARTICLE III. Prisoner Medical Expense: The Sheriff shall keep an account of each prisoner showing each item of Medical Expense Incurred by the county for the direct benefit of that prisoner.

An Ordinance Authorizing the Billing of Prisoners for Expenses Incurred by the County for their Incarceration in the County Jail- Pay for Stay.

ARTICLE IV. Billing Procedure: When each prisoner is delivered to court the Sheriff shall provide the Prosecuting Attorney an Invoice of Expenses for carrying him to jail and also for his support from the day of his initial incarceration and for the whole time he remains there, so the Judge can hear any challenges the inmate has concerning the imposition of the expenses incurred against him. These expenses are an additional element of cost that is to be assessed as part of the judgment upon conviction. These amounts assessed may be reduced to a judgment against the inmate as per ACA 12-41-506(b).

ARTICLE V. Collection: Once the Collectible Expenses have been reduced to judgment they shall be collected in the same manner as fines and court costs are collected and no real property of the detainee shall be reduced to judgment where minor children will be displaced or a family hardship is recognized.

ARTICLE VI. That this Ordinance shall be in full force and effect from and after its passage and approval.

INTRODUCED BY:

APPROVED BY:



## Order of Payment of Fines, Fees, Court Costs, and Restitution

By Lindsey Bailey French

- A.C.A. § 16-13-226 sets the order in which circuit court payments are to be applied:
  1. Court costs (until collected in full);
  2. Restitution;
  3. Fines; and then
  4. Any remaining amounts due (booking/DNA fees, etc.)
  
- A.C.A. § 16-13-704 allows the court to provide defendants relief from severe and undue financial hardship by ordering installment payments of *fines*.
  1. (b)(1)(A) establishes a \$5.00 installment fee to be assessed on each person who is authorized to pay a *fine* on an installment basis.
    - To be collected every month fines are owed
    - One-half remitted by the tenth day of the month to the Administration of Justice Funds Section of the Office of Administrative Service of DFA
    - In Circuit Court, one-half remitted by the tenth day of the month to the county treasurer to be deposited into the “circuit court automation fund” to be solely for circuit court-related technology.
    - In District Court, one-half remitted by the tenth day of the month to the city treasurer to be deposited into the “district court automation fund” to be used solely for district court-related technology.
  2. (b)(3)(E) establishes a second \$5.00 monthly installment fee *in circuit court only* to be assessed on the first day of each month on each person who is ordered to pay a *fine* on an installment basis with the additional \$5.00 to be remitted to the collecting official to be used to defray the cost of fine collection.
    - It also establishes *in district court only* a second installment fee of \$5.00 monthly installment fee to be assessed on the first day of each month on each person who is ordered to pay a *fine* on an installment basis with the additional \$5.00

to be remitted by the tenth day of the month to the State AOJ Fund.

- A.C.A. § 5-4-205 allows the court to provide defendants relief by authorizing installment payments of *restitution*.
  1. A monthly \$5.00 installment fee shall be assessed on the defendant for making restitution payments on an installment basis in addition to the restitution and other assessments authorized.
  2. This \$5.00 fee shall be remitted to the collecting official to be used to defray the cost of restitution collection.

In conclusion:

- Payments should be applied first to court costs, second to restitution, third to fines, and the remainder to any remaining amounts due.
- The two \$5.00 fees authorized by § 16-13-704 (\$10.00 total) should be assessed for each month *fin*es are owed.
- The \$5.00 fee authorized by § 5-4-205 should be assessed for each month *restitution* is owed (but not once payments are applied to fines).
- Therefore, the monthly installment payments should be assessed as follows:
  - If payment applied to court costs: \$15.00
  - If payment applied to restitution: \$15.00
  - If payment applied to fines: \$10.00
  - If payment applied to some other fee assessed: \$0