



**CITY OF HENDERSON
CHARTER COMMITTEE
REGULAR MEETING AGENDA**

**Tuesday, May 24, 2016
8:30 AM
Meeting Inquiries: (702) 267-1200**

**Mayor & Council Boardroom
240 Water Street
Henderson, Nevada 89015**

NOTICE

Notice to persons with special needs: For those requiring special assistance or accommodation to attend or participate in this meeting, arrangements for a sign language interpreter or services necessary for effective communication for qualified persons with disabilities should be made as soon as possible, but no later than 72 hours before the scheduled event. Listening devices are available for persons with hearing impairments.

Please contact Crystal Bomar at (702) 267-2057 or TTY: 7-1-1 at least 72 hours in advance to request a sign language interpreter. You may also submit your request by using [Contact Henderson](#).

The Chairman reserves the right to hear agenda items out of order, combine two or more agenda items for consideration, remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

Individuals speaking on an item will be limited to three (3) minutes and spokespersons for a group will be limited to ten (10) minutes.

Backup materials for agenda items can be found at the Intergovernmental Relations Office or on the City's website at: <http://henderson.siretechnologies.com/sirepub/meetresults.aspx>. To request backup materials, please contact Crystal Bomar at (702) 267-2057.

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- I. CALL TO ORDER**
 - II. CONFIRMATION OF POSTING AND ROLL CALL**
 - III. PUBLIC COMMENT**

Items discussed under Public Comment cannot be acted upon at this meeting, but may be referred to a future agenda for consideration. Individuals speaking on an item will be limited to three (3) minutes and spokespersons for a group will be limited to ten (10) minutes, at the discretion of the Chairman.

IV. ACCEPTANCE OF AGENDA (For Possible Action)

V. NEW BUSINESS

NB-1 MINUTES
CHARTER COMMITTEE MEETING
APRIL 26, 2016

For Possible Action.
RECOMMENDATION: adopt the Charter Committee Meeting Minutes of April 26, 2016.

City of Henderson Charter Committee Meeting Minutes of April 26, 2016

NB-2 DISCUSSION ON THE OUTCOMES FROM THE 2014 CHARTER
COMMITTEE MEETINGS REGARDING AT-LARGE MUNICIPAL ELECTIONS

For Discussion Only.

Discussion on the outcomes of the 2014 Charter Committee meetings regarding at-large municipal elections.

NB-3 DISCUSSION ON THE OUTCOMES FROM THE 2014 CHARTER
COMMITTEE MEETINGS REGARDING COMBINED ELECTIONS

For Discussion Only.

Discussion on the outcomes of the 2014 Charter Committee meetings regarding combined elections.

NB-4 PRESENTATION OF THE PROCESS AND COST FOR PLACING A
QUESTION ON THE MUNICIPAL ELECTION BALLOT

For Discussion Only.

The City Clerk's Office will provide an overview of the process and cost estimate for placing a question on the municipal election ballot.

NB-5 PRESENTATION OF THE FINANCIAL OPERATIONS OF THE HENDERSON
MUNICIPAL COURT

For Discussion Only.

The Henderson Municipal Court Administrator will provide an overview of the budget, including the allocation of collected court fees.

VI. CHAIRMAN\MEMBER COMMENTS

The Chairman and Members may speak on any subject under this section of the agenda. Chairman and Members may comment on matters including, without limitation, future agenda items, upcoming meeting dates, and meeting procedures. Comments made cannot be acted upon or discussed at this meeting, but may be placed on a future agenda for consideration.

VII. SET NEXT MEETING

VIII. PUBLIC COMMENT

Items discussed under Public Comment cannot be acted upon at this meeting, but may be referred to a future agenda for consideration. Individuals speaking on an item will be limited to three (3) minutes and spokespersons for a group will be limited to ten (10) minutes, at the discretion of the Chairman.

IX. ADJOURNMENT

Posted by 9:00 a.m., May 18, 2016, at the following locations:
City Hall, 240 Water Street, 1st Floor Lobbies
Multigenerational Center, 250 S. Green Valley Parkway
Whitney Ranch Recreation Center, 1575 Galleria Drive
Fire Station No. 86, 96 Via Antincendio
www.cityofhenderson.com
<https://notice.nv.gov>

**CITY OF HENDERSON
CHARTER COMMITTEE
MINUTES
April 26, 2016**

I. CALL TO ORDER

Jennifer Carleton called the Charter Committee meeting to order at 8:39 a.m., in the Mayor and Council Board Room, Henderson City Hall, 240 S. Water Street, Henderson, Nevada.

II. CONFIRMATION OF POSTING AND ROLL CALL

Crystal Bomar, Board Secretary, confirmed the Charter Committee had been noticed in compliance with the Open Meeting Law by posting the Agenda three working days prior to the meeting at the Facilities Management Building, City Hall, the Multigenerational Center, the Whitney Ranch Recreation Center, Fire Station No. 86, the Nevada Public Notice Website, the City of Henderson Website, and by emailing a copy of the Agenda to everyone appearing thereon on the Agenda Master Mailing List.

Present: Chair Jennifer Carleton
Lou Cila
Virginia Finnegan
Charlene Frost
Edward Gonzalez (arrived at 8:42 a.m.)
Terry Mannion
Erin McMullen
Tina Past (arrived at 8:44 a.m.)
Walt Rulfes (arrived at 9:22 a.m.)
Nick Vaskov

Absent: Lou Cila
Robert McNinch
John Simmons
Joseph Zerga

Staff: Crystal Bomar, Board Secretary
Chris Boyd, Intergovernmental Relations Specialist
Stacey Brownfield, Assistant City Clerk
David Cherry, Intergovernmental Relations Specialist
Brent Gunson, Assistant City Attorney
April Parra, Council and Commission Services Reporter
Robert Murnane, City Manager
Bud Cranor, Director of Council Support
Rory Robinson, Senior Assistant City Attorney
Javier Trujillo, Director of Public Affairs

III. PUBLIC COMMENT

There were no public comments presented.

IV. ACCEPTANCE OF AGENDA

A correction was made under NB-4. It was noted that the presentation is on Article 4 and not Article 5.

(Motion) Mr. Gonzalez introduced a motion to accept the agenda as submitted, seconded by Ms. McMullen. The vote favoring approval was unanimous. Chair Carleton declared the motion carried.

V. NEW BUSINESS

NB-1 MINUTES
CHARTER COMMITTEE MEETING
MARCH 29, 2016

City of Henderson Charter Committee Meeting Minutes of March 29, 2016.

(Motion) Ms. Mannion introduced a motion to adopt the City of Henderson Charter Committee meeting minutes of March 29, 2016 as submitted, seconded by Ms. McMullen. The vote favoring approval was unanimous. Chair Carleton declared the motion carried.

NB-2 HENDERSON CHARTER COMMITTEE BYLAWS
AMENDMENTS TO VARIOUS ARTICLES

CITY ATTORNEY'S OFFICE

Review amendments to Article V, Section E; Article V, Section F; and Article VII, Section A of the Henderson Charter Committee Bylaws to require a majority vote of members present at the meeting for 1) routine motions and resolutions, 2) recommendations that are to be presented to the City Council, and 3) the adoption of amendments to the Bylaws.

Brent Gunson, Assistant City Attorney III, reviewed the amendments that were suggested at the last meeting.

(Motion) Ms. Frost introduced a motion to adopt the amendments to the Bylaws as submitted, seconded by Ms. McMullen. The vote

favoring approval was unanimous. Chair Carleton declared the motion carried.

NB-3 PRESENTATION OF HENDERSON CITY CHARTER
SECTION 5.040 AND “AT-LARGE” MUNICIPAL ELECTIONS

CITY CLERK'S OFFICE

The City Clerk's Office will provide an overview of the Henderson City Charter provisions providing for the current “at-large” election process. The overview will include legislative history of Section 5.040 and prior proposals for “ward only” voting.

Stacey Brownfield, Assistant City Clerk, gave the following background information regarding voting at large:

- Prior to 1963, councilmen were elected by ward.
- From 1963 – present, voting was done at large.
- In 1973, a question was posed to voters to change the system. Did not pass.
- In 2011, Senate Bill 304 was introduced, passed and vetoed.
- In 2013, Senate Bill 457 was introduced, passed and vetoed.
- In 2015, Senate Bill 368 was introduced, failed the first house

Responding to Ms. Finnegan's inquiry regarding the City's position regarding “at-large” elections, Javier Trujillo, Director of Public Affairs, stated that it is the City's position that any change to the voting process should go to the voters for a decision. He noted that in 1973, there was a vote to go back to ward voting; however, it failed.

Ms. Past inquired as to why this item is being discussed again as it was just brought before the Committee last year.

Ms. Finnegan said she requested it be on the agenda for further discussion as she frequently gets asked this question. She said members of her community do not like that others are electing “their city councilman”.

Ms. Past says she lives in the same neighborhood and she disagrees. She said one of the strengths of the community is that all the councilmen represent everyone. It helps keep the city cohesive and deters power centers. She said ward voting was defeated last year for these very reasons.

Chair Carleton clarified that this item was put on the agenda due to one member of the Committee requesting some historical information on the election history. She noted that there will be no action taken on this item.

Responding to a question by Mr. Gonzalez's question regarding the idea of

moving the date of the municipal elections to the general election, Mr. Trujillo, said the combine elections discussion was held last meeting. He reviewed what occurred at the last session of the charter commission, and noted that a motion to recommend voting-by-ward to Council was defeated, and a motion for an advisory question had been defeated as well under the previous bylaws. He said this item would have been approved had the recently adopted bylaws been in place.

Ms. Vaskov stated he is not in favor of the ward voting as it is not constructive and creates areas of power. He noted that at-large voting keeps consistency in the Council and provides stability in Henderson.

Ms. Frost commented that the downside to the current system is a block of people have all the control. She said it is a lose-lose situation for the voters.

Additional discussion ensued regarding at-large voting versus ward voting.

Chairman Carlton requested that minutes from the last sessions be provided for the members to review. She also requested that this item be placed on the next agenda.

Ms. Finnegan requested for information regarding the City Council's ability to put a referendum on the ballot as well as how the process would work.

Mr. Gonzalez requested historical information regarding the combining of municipal elections.

NB-4 PRESENTATION ON ARTICLE V (JUDICIAL DEPARTMENT) OF THE HENDERSON CITY CHARTER AND THE MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF HENDERSON AND THE HENDERSON MUNICIPAL COURT DATED APRIL 24, 2014

CITY ATTORNEY'S OFFICE

The City Attorney's Office will provide a presentation on Article V of the Henderson City Charter and the Memorandum of Agreement between the City of Henderson and the Henderson Municipal Court that was entered into as of April 24, 2014, following the Supreme Court of Nevada decision captioned as City of Sparks, Sparks Civil Service Commission v. Sparks Municipal Court, 302 P.3d 118.

Rory Robinson, Senior Asst. City Attorney, gave a PowerPoint presentation on the proposed item. Areas of discussion included: City of Sparks V. Sparks Municipal Court; Facts, Legal Issues, disposition/outcome, Article 15, Section 11 of the Nevada State Constitution, Separation of Powers,

Inherent Powers, Similarities to Henderson Municipal Court Operations, Differences in Henderson Municipal Court Operations, and City of Henderson Response to the City of Sparks.

Responding to a question by a Committee member regarding the impact to the City, Ms. Robinson said there is no real impact, but it does leave open a lot of questions such as budgeting and overlapping jurisdiction. She added that it could upset a long-standing practice and leave open a lot of questions.

Mr. Vaskov commented that he requested this agenda item and said the MOU is completely appropriate. He said his concern is the wave of reform movements nationally for municipal court operations and whether bench warrants and other fees that are attached to municipal cases end up with disadvantaged communities going to prison for being unable to pay. Mr. Vaskov noted that if the City wanted to address the situation, the only way possible would be through the charter or the legislature.

Mr. Vaskov said he would like to see is a financial snapshot of the court to see how the funding is being utilized.

Bob Murnane, City Manager, responded that he is confident that everyone is comfortable with the current system. He has no problem providing the financial information regarding the courts to the members of the Committee. Mr. Murnane also noted that the courts have mitigated impacts to the disadvantaged with programs and other methods. He said he will provide the Committee with a presentation.

CHAIRMAN\MEMBER COMMENTS

VI.

Ms. Mannion asked if staff can determine if the earlier time is problematic for some of the members.

Chair Carleton noted that she received an email from member Lou Cila, who was not present, opposing the proposed changes to the definition of quorum in the bylaws. Rory Robinson, Senior Assistant City Attorney, advised that Mr. Cila has to hear the discussion and everyone has to hear his remarks in order for his comments to be a part of the record.

Mr. Gonzalez noted that according to Article 3H in the bylaws we might have a situation where people would be removed from the committee due to three unexcused absences.

VII. SET NEXT MEETING

The next meeting was set for May 24, 2016, at 8:30 a.m.

VIII. PUBLIC COMMENT

There were no public comments presented.

IX. ADJOURNMENT

There being no further business to be discussed, the meeting was adjourned at 9:25 a.m.

Respectfully submitted,

April Parra,
Council & Commission Services Reporter

**CITY OF HENDERSON
CHARTER COMMITTEE
June 11, 2014**

I. CALL TO ORDER

Chairperson Jennifer Carleton called the Charter Committee meeting to order at 9:07 a.m., in the Mayor and Council Board Room, Henderson City Hall, 240 S. Water Street, Henderson, Nevada.

II. CONFIRMATION OF POSTING AND ROLL CALL

Cheryl Navitskis, Committee Secretary, confirmed the meeting had been noticed in accordance with the Open Meeting Law by posting the Agenda three (3) working days prior to the meeting at City Hall, Henderson Convention Center, Green Valley Police Substation, and Fire Station No. 86.

Present: Present: Chairperson Jennifer Carleton
Virginia Finnegan
Charlene Frost
Joe Hardy
Lou Cila
Erin McMullen
Keith Pickard
Tina Past (arrived at 9:23 a.m.)
Nick Vaskov
Robert McCord
Terry Mannion

Absent: Richard Miller (excused)
Joseph Zerga

Staff: Josh Reid, City Attorney (arrived at 9:26 a.m.)
Tracy Bower, Sr. Director of Public Affairs, Economic
and Cultural Development
Travis Buchanan, Assistant City Attorney III
Nechole Garcia, Assistant City Attorney I
Sabrina Mercadante, City Clerk
Javier Trujillo, Intergovernmental Relations Manager
Cheryl Navitskis, Executive Legal Assistant
Tedie Jackson, Council and Commission Services
Reporter

III. PUBLIC COMMENT

Javier Trujillo, Intergovernmental Relations Manager, reminded the committee members that the goal is to finalize the discussion items on the agenda so staff can prepare the final report in July to be submitted to the City Council. He noted that any items discussed after today’s meeting will be taken into consideration for the 2017 legislative session.

IV. ACCEPTANCE OF AGENDA

(Motion) Ms. Mannion introduced a motion to accept the agenda as submitted, seconded by Ms. Frost. The vote favoring approval was unanimous. Chairperson Carleton declared the motion carried.

V. NEW BUSINESS

1	MINUTES CHARTER COMMITTEE MEETING May 8, 2014
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Javier Trujillo, Intergovernmental Relations Manager, referred to the last paragraph in Item 3 and clarified that employees covered under collective bargaining agreements do not enjoy Civil Service Rules because they already have their own protection disciplinary processes in place under the collective bargaining agreement.

(Motion) Ms. Finnegan introduced a motion to approve the May 8, 2014, minutes as presented, seconded by Mr. Pickard. The vote favoring approval was unanimous. Chairperson Carleton declared the motion carried.

2	DISCUSSION AND POSSIBLE RECOMMENDATIONS REGARDING REVISIONS TO THE HENDERSON CITY CHARTER, ARTICLE V, ELECTIONS, TO REQUIRE ELECTIONS TO BE CONDUCTED IN EVEN-NUMBERED YEARS. (For Discussion and Possible Action)
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Sabrina Mercadante, City Clerk, distributed and reviewed a handout outlining information regarding voting at large and combined elections. She noted that Clark County cannot provide the City with a number of what it would cost to host our election with theirs. She stated that it is already possible to change the election cycle to even years through the City Council, so the City Charter does not need to be amended.

Note: No further action or discussion was taken on this item.

3	DISCUSSION AND POSSIBLE RECOMMENDATIONS REGARDING REVISIONS TO THE HENDERSON CITY CHARTER, SECTION 2.010, TO PROVIDE THAT ALL COUNCIL MEMBERS AND THE MAYOR MUST BE VOTED UPON BY WARD. (For Discussion and Possible Action)
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Nechole Garcia, Assistant City Attorney I, presented a summary of this item and reported that SB 457 was voted on by the legislature during the last session and vetoed by the Governor.

Mr. Pickard commented that he brought up this issue due to concerns about a project in his neighborhood. He explained that decisions and comments from the City Council appeared to be influenced by people outside the neighborhood. He believes many residents would prefer to vote for ward representatives rather than at large. He asked for the rationale behind voting at large and questioned why the Governor vetoed the bill.

Sabrina Mercadante, City Clerk, replied that the Governor may have vetoed the bill because a ballot question in Reno, Nevada passed with 70 percent of voters supporting voting at large. She noted that this issue was last put to voters in Henderson in 1973 and is an option to put as a ballot question.

Ms. Past expressed concern that representation based by ward only will bring about turf battles and unintended consequences. She said districts that have an electorate may be more affluent and influential. She noted that limited resources tend to leave other districts behind. She believes that a person running at large views the needs and desires of the city as a whole rather than just their ward.

Ms. Finnegan noted that voting in odd-numbered years results in very few people electing the candidate, which is not a fair representation of the entire city. She said politics is already present in all election, but she would like to see more voter turnout.

Mr. Pickard suggested a non-binding ballot question asking whether Henderson residents would like to vote on councilmembers by ward rather than at large.

Josh Reid, City Attorney, commented that the committee could include this recommendation to go forward to the City Council. He noted that the City Charter would have to be amended through the legislative process to have this as a ballot question for the 2017 legislative session.

Mr. Vaskov stated that Clark County is all politics and no policy because of the district voting. He believes all Council members can represent entire city and not only their ward. He said ward voting would provide more direct representation, but it has a destructive effect on the collegiality among the Council. In his experience it will create sense of territory that will discourage rational legitimate compromise.

Jacob Snow, City Manager, commented that this discussion getting into substantive policy issues and there are excellent arguments on both sides. He said staff would be reluctant to spend taxpayer dollars on a polling issue. Mr. Snow stated that the Council has right to put a question on the ballot if they chose so, but he is not sure if it's in the Committee's purview to make that recommendation as it is not directly related to making recommendation to the Council on legislative changes.

Mr. Trujillo commented that this issue has come up many times over the years. Staff conducted research in 2011 and declined to move forward on this initiative because voting at large in Henderson works well. He noted that he is not sure how successful this effort will be in 2015 considering the recent veto by the governor.

The following motions were made following lengthy discussion regarding this issue:

(Motion)

Mr. Pickard introduced a motion recommending the City Council amend the City Charter to reflect voting by ward, seconded by Ms. Frost. The Roll Call Vote was: Those voting Aye: Virginia Finnegan, Charlene

<A>
Frost, Erin McMullen, Terry Mannion, and Keith Pickard. Those voting Nay: Robert McCord, Lou Cila, Tina Past, Joe Hardy, Nick Vaskov, and Jenifer Carleton. Those Absent: Richard Miller and Joseph Zerga. Those abstaining: None. Chairperson Carleton declared the motion failed due to lack of a two-thirds majority vote.

(Motion)
Ms. Finnegan introduced a motion recommending the City Council put a non-binding ballot question to the residents reflecting voting by ward, seconded by Mr. Pickard. The Roll Call Vote was: Those voting Aye: Lou Cila, Virginia Finnegan, Charlene Frost, Erin McMullen, Terry Mannion, and Keith Pickard. Those voting Nay: Robert McCord, Tina Past, Joe Hardy, and Nick Vaskov. Those Absent: Richard Miller and Joseph Zerga. Those abstaining: Jennifer Carleton. Chairperson Carleton declared the motion failed due to lack of a two-thirds majority vote.

Note: A recess was taken from 10:28 a.m. to 10:34 a.m.

4	<u>DISCUSSION AND POSSIBLE RECOMMENDATIONS REGARDING REVISIONS TO THE HENDERSON CITY CHARTER, SECTION 2.100, TO MODIFY THE ORDINANCE ENACTMENT PROCESS.</u> <u>(For Discussion and Possible Action)</u>
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Nechole Garcia, Assistant City Attorney I, reported that the backup material outlines proposed language resulting from discussion at the last meeting.

Mr. Vaskov stated that he brought up this issue due to a concern about the process and confusion of the committee meeting and council meeting. He noted that he does not feel passionate enough to make a formal recommendation regarding this issue, but asked staff discuss the concern with City Council.

Sabrina Mercadante, City Clerk, said the Clerk's office is looking at outreach efforts to educate the public on the process. She noted that staff will add language to the agenda and public notices for bills that further explains the bill enactment process. She mentioned that the City Clerk and Community Development will add language to their website to clarify the process.

There was a consensus that these administrative remedies are adequate to address the concerns.

Chairwoman Carleton commended the City Clerk for participating in the discussion and addressing the concerns.

Note: No action was taken on this item.

5	<u>DISCUSSION AND POSSIBLE RECOMMENDATIONS REGARDING REVISIONS TO THE HENDERSON CITY CHARTER, ARTICLE III, SECTION 3.010, MAYOR: DUTIES.</u> <u>(For Discussion and Possible Action)</u>
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Nechole Garcia, Assistant City Attorney I, stated that the backup material outlines proposed language resulting from discussion at the last meeting.

Mr. Pickard said he raised this issue and thinks the City Charter could be tightened up, but he does not want to make a formal recommendation at this time. He suggested adding language to the Charter to reflect the Lorton decision.

Ms. Finnegan commented that she believes there should be term limits on elected officials.

Note: No action was taken on this item.

6	<u>DISCUSSION OF FINAL REPORT TO CITY COUNCIL AND POSSIBLE RECOMMENDATIONS.</u> <u>(For Discussion and Possible Action)</u>
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Suggestions were made that the final report includes the following:

- A short summary of all the issues discussed, especially the healthy debate on wards.
- An acknowledgement and recognition to the City Clerk’s Office for providing administrative remedies.
- A preface of the work completed by staff.
- Although there are no recommendations, provide a justification of efforts regarding meaningful discussions.

Mr. Reid suggested a motion be made that the Chairperson prepares a report, with the assistance of staff, that outlines the committee members, research, discussion points, et cetera. He noted that a formal presentation of the report will be provided to the City Council at a future Council meeting in July or August.

(Motion)

Mr. McCord introduced a motion that the Chairperson prepares a report, with the help of staff, outlining the committee members and summarizing the discussion topics and motions.

Following further discussion, a suggestion was made to amend that motion so that the report be provided to the committee members at least ten days before the City Council meeting.

(Amended Motion)

Mr. McCord introduced a motion that the Chairperson prepares a report, with the help of staff, outlining the committee members and summarizing the discussion topics and motions; that the Chairperson and Vice-Chairman collaborate and finalize the report; and the report be provided to the committee members before the City Council meeting. The motion was seconded by Mr. Pickard.

Following further discussion, there was a consensus that another meeting be scheduled for July 23, 2014, for committee members to review and approve the final report.

(Motion Withdrawn)

Mr. McCord introduced a motion to withdraw the amended motion.

VI. CHAIRMAN\MEMBER COMMENTS

Mr. McCord thanked Mr. Trujillo for keeping the committee members on task with the bill draft review dates.

Ms. Finnegan commented that she thoroughly enjoyed the discussion and believes the committee members are thoughtful and conscientious about their role. She is honored to be part of this committee.

VII. SET NEXT MEETING

The next meeting was set for Wednesday, July 23, 2014, at 9:00 a.m., in the Mayor and Council Boardroom, City Hall, 4th Floor, 240 Water Street, Henderson, NV 89015.

VIII. PUBLIC COMMENT

No comments were presented by the public.

IX. ADJOURNMENT

There being no further business to be discussed, the meeting was adjourned at 10:56 a.m.

Respectfully submitted,

Tedie Jackson, Council and
Commission Services Reporter

**CITY OF HENDERSON
CHARTER COMMITTEE
MINUTES
May 8, 2014**

I. CALL TO ORDER

Chairperson, Jennifer Carleton, called the Charter Committee meeting to order at 9:07 a.m., in the Mayor and Council Board Room, Henderson City Hall, 240 S. Water Street, Henderson, Nevada.

II. CONFIRMATION OF POSTING AND ROLL CALL

Cheryl Navitskis, Committee Secretary, confirmed the meeting had been noticed in accordance with the Open Meeting Law by posting the Agenda three (3) working days prior to the meeting at City Hall, Henderson Convention Center, Green Valley Police Substation, and Fire Station No. 86.

Present: Chairperson Jennifer Carleton
Virginia Finnegan
Charlene Frost (left at 10:09 a.m.)
Joe Hardy (left at 10:39 a.m.)
Lou Cila
Erin McMullen (arrived at 9:15 a.m.)
Richard Miller (arrived at 9:11 a.m.)
Keith Pickard
Tina Past (left at 10:48 a.m.)
Nick Vaskov
Robert McCord (via teleconference)
Terry Mannion

Absent: Joseph Zerga

Staff: Josh Reid, City Attorney
Tracy Bower, Sr. Director of Public Affairs, Economic and Cultural Development
Travis Buchanan, Assistant City Attorney III
Nehole Garcia, Assistant City Attorney I
Sabrina Mercadante, City Clerk
Javier Trujillo, Intergovernmental Relations Manager
Santana Garcia, Intergovernmental Relations Specialist
Cheryl Navitskis, Executive Legal Assistant
Tedio Jackson, Council and Commission Services Reporter

III. ACCEPTANCE OF AGENDA

(Motion) Mr. Vaskov introduced a motion to accept the agenda as submitted, seconded by Ms. Mannion. The vote favoring approval was unanimous. Chairperson Carleton declared the motion carried.

IV. PUBLIC COMMENT

No comments were presented by the public.

V. NEW BUSINESS

1.	MINUTES CHARTER COMMITTEE MEETING MARCH 27, 2014
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City of Henderson Charter Committee Meeting Minutes of March 27, 2014.

(Motion) Mr. Vaskov introduced a motion to approve the minutes of March 27, 2014, as presented, seconded by Ms. Frost. The vote favoring approval was unanimous. Chairperson Carleton declared the motion carried.

2.	CHARTER COMMITTEE BYLAWS
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Approval of the City of Henderson Charter Committee Bylaws.

Josh Reid, City Attorney, reported that bylaws are modeled after similar formats of City of Henderson committees. He briefly reviewed the articles outlined in the bylaws and noted that under Article IV, the chairperson has the authority to schedule future meetings as needed.

Responding to questions regarding the difference between the ex-officio secretary and the Committee secretary in Article IV, C and D, Mr. Reid explained that staff usually takes the secretary role instead of a committee member. The ex-officio secretary is from the City Clerk's Office and is responsible for preparing and maintaining the minutes. The Committee secretary is from the City Attorney's Office and is responsible for preparing and posting meeting agendas and backup material.

Following a discussion to address concerns regarding clarifying these roles better, a suggestion was made add the following sentence to Article III, E: "The City Clerk of the City of Henderson shall designate a Committee secretary."

(Motion) Mr. Vaskov introduced a motion to approve the bylaws as amended to add the following sentence to Article III, E: "The City Clerk of the City of Henderson shall designate a Committee secretary." The motion was seconded by Ms. Past and the vote favoring approval was unanimous. Chairperson Carleton declared the motion carried.

3.	PRESENTATION HENDERSON CITY CHARTER UPDATES PROVIDED BY SB 440 IN 2013 (For Information Only)
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City Attorney Josh Reid will provide an overview of the Henderson City Charter Updates provided by SB 440 in 2013.

City Attorney Josh Reid, provided an overview of Senate Bill 440, which amended the Charter in the 2013 Legislative Session. He noted that the Henderson Municipal Code and City Charter had different language that needed to be addressed. He explained that staff compared the City's Charter with other jurisdictions and reviewed the changes made throughout the document.

In response to a question regarding Union employees being excluded from Civil Service Rules, Mr. Reid said Nevada Revised Statute 288 addresses unions and collective bargaining agreements.

Javier Trujillo, Intergovernmental Relations Manager, pointed out that the City's bargaining agreements state that those employees do not enjoy Civil Service Rules.

Note: A break was taken from 10:00 a.m. to 10:09 a.m.

4.	<u>PRESENTATION HENDERSON CITY CHARTER PROVISIONS COVERING THE ORDINANCE ENACTMENT PROCESS (For Information Only)</u>
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Josh Reid, City Attorney, and Assistant City Attorney's, Travis Buchanan and Nechole Garcia, will provide an overview of Henderson's Ordinance enactment process as set forth in the Charter and how the process compares with the charters of other comparable municipalities in Nevada.

Assistant City Attorney III Travis Buchanan; and Nechole Garcia, Assistant City Attorney I, reviewed the COH Ordinance Enactment Process Comparison Chart with Las Vegas, North Las Vegas, and Reno, Nevada. There is a substantive difference that the City of Henderson has 30 days to adopt, amend, or reject an ordinance and the other entities have 45 or 60 days.

Mr. Reid explained that a bill is first introduced at the Regular City Council agenda to be read into title and referred to the next Committee meeting for discussion. The bill is then discussed at the next City Council Committee meeting and then heard for final adoption at the same Regular City Council meeting.

The following comments and suggestions were made regarding the ordinance enactment process:

- Eliminate the Committee meeting; does the Committee process function well?
- Confusion for applicants regarding when the appropriate time is for public comment.
- Confusion that Committee body and Council body are the same.
- Increase the number of days to act on a bill from 30 to 45 or 60 to allow staff and applicants more flexibility.
- Clarify on public notices when an item will be deliberated and public comment will be taken.
- Educate residents on this process.
- Constituents that want to be involved should educate themselves to some extent.
- Change the language to read "may be referred to committee."

- All issues of potential recommendations should be tracked, and those issues can be prioritized to be immediately recommended for the upcoming legislative session or tabled to a future time.
- Differentiate making a recommendation to staff and the Council.
- Develop a list of recommendations that do not affect the Charter.

Mr. Reid noted that there are three opportunities for public comment on a proposed bill.

Sabrina Mercadante, City Clerk, MMC, commented that our public notices might mention when the public hearing portion is, but if not, staff can easily add this information. She also noted that information can be incorporated in the agenda to help address the concern.

Mr. Reid commented that a problem with opening the City Charter for revisions is the Legislature can make it more difficult and make other changes the City does not want.

Responding to a question as to how the City publishes bills, Mr. Reid explained that notice requirements are outlined in Title 19 and NRS 278 for zoning items. The City publishes on the website, newspapers, and posts notices in certain locations for a certain period of time.

Chairperson Carleton asked staff to report back at next meeting to address issues that were discussed.

5.	<u>PRESENTATION HENDERSON CITY CHARTER PROVISIONS REGARDING MUNICIPAL ELECTIONS (For Information Only)</u>
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City Clerk, MMC, Sabrina Mercadante will provide an overview of Henderson City Charter Provisions regarding Municipal Elections, costs and turnout.

City Clerk, MMC, Sabrina Mercadante reviewed minor changes outlined in Article V regarding primary municipal elections. Regarding concerns as to why the City of Henderson still holds municipal elections in odd-numbered years, Ms. Mercadante explained that staff found that the City would have to have an election for every year until the year 2022 to even things up. This effort to pay for an election every year for the next eight years would cause major budget concerns for the City.

Committee comments and suggestions regarding municipal elections included:

- Might be worth the effort and cost to change elections to even-numbered years to increase voter turnouts; lower voter turnout in odd-numbered years.
- Municipal elections do not get attention of constituents.
- From a political standpoint, it would be difficult to hold elections once a year.
- This effort would cost the City money.
- What is the rationale of voting for councilmembers at-large instead of their individual wards?
- Concern that a ward representative is being influenced by sources outside of his ward.

- Concern of voter fatigue due to large ballots and multiple elections.
- Concern of increased costs for candidates in even-numbered years due to competing for air time and other campaign tools; political campaign overload.

Responding to a question as to whether current years of service could be extended to get to an even-numbered year, Ms. Mercadante stated that that cannot be done with anyone in their current term per State law and City Charter. There would need to be legislative changes to allow current terms to be extended.

Ms. Mercadante said the City of Henderson spends approximately \$150,000.00 each for a primary and general election. She noted that staff does not know what it would cost the City of Henderson to piggy-back on the County and hold elections on even years. She noted that the City informally asked for a cost from the County; however, they would not provide an estimated cost unless the City would commit to this change. She noted that this effort would also have to be approved by the Clark County Commission.

In regards of the Lorton decision, Mr. Pickard asked if it would make sense to tighten up language of elections for City Council and Mayor in the City Charter. He suggested modifying existing language to be more explicit that the Mayor is a member of the City Council with additional non-administrative tasks.

Mr. Reid summarized that the Lorton decision was the term-limit decision by the Nevada Supreme Court in Reno that the Mayor is a member of the City Council and is subject to term limits.

Mr. Cila has does not understand if a candidate gets a majority of vote in the primary election, they become the elected official. He questioned how fair this is when not many people vote.

Mr. Reid replied that the system has always been that way, and there is low voter turnout in elections in general. He noted that there is a costs savings of not having to do a general election if the candidate wins the primary election.

Chairperson Carleton asked staff report back to the Committee with recommendations of 1) what it would take to get on even-numbered year elections including costs, time, and the process; 2) a comparison on voter turnout of an odd-number year election versus an even-number year election done in Clark County; and 3) address the point about the Supreme Court ruling on Lorton regarding term limits. She also asked staff

to provide a list of pros and cons regarding changing municipal elections to even-numbered years.

Ms. Mercadante stated that the City of Las Vegas, the City of North Las Vegas, City of Boulder City, and the City of Henderson do not hold elections in even-numbered years. She noted that vote centers save the City of Henderson money; however, going to even-numbered years would not allow for vote centers. She explained that the City Charter does allow for municipal elections to be held with the state and federal elections in even-numbered years. The City Council chooses not to exercise this due to cost concerns.

In response to a question as to whether other cities in the valley are interested in holding elections in even-numbered years, Ms. Mercadante stated that she is not aware of any interest to change from other municipalities in the valley.

VI. PUBLIC COMMENT

No comments were presented by the public.

VII. CHAIRMAN/MEMBER COMMENTS

Mr. Pickard asked staff to provide information regarding the rationale as to why Henderson votes at large versus by wards.

At the request of Ms. McMullen, staff will provide her with a PowerPoint presentation from the last meeting.

VIII. SET NEXT MEETING

The next meeting was set for Wednesday, June 11, 2014, at 9:00 a.m., in the Mayor and Council Boardroom, City Hall, 4th Floor, 240 Water Street, Henderson, NV 89015.

IX. ADJOURNMENT

There being no further business to be discussed, the meeting was adjourned at 11:18 a.m.

Respectfully submitted,

Tedie Jackson, Council and
Commission Services Reporter

HENDERSON MUNICIPAL COURT BAIL SCHEDULE – page 1

(Effective for Arrests/Citations occurring/written 01/05/2015 and after)

COMMON TRAFFIC VIOLATIONS (Literal)	NRS/HMC	NOC(s)	BAIL	AA FEES	NOTES
Aggressive Driving, 1 st Offense / 1 st Off. Work Zone	484B.650	53888 / 53889	1000	140	Mandatory Appear
Aggressive Driving, 2 nd Offense / 2 nd Off. Work Zone		53890 / 53891	1000	140	Mandatory Appear
Aggressive Driving, 3 rd Offense		55006	1500	140	Mandatory Appear
Driver's License – No Valid License	483.550	53720	300	115	
Driver's License – License Not in Possession	483.350	53706	100	95	
Driver's License – Fail to Change Name/Address	483.390	53708	100	95	
Driver's License – Suspended / Cancelled	483.560	53722 / 53724	1000	140	
Driver's License – Revoked (Subsection 1)	483.560-1	53723	1000	140	
Driver's License – Revoked (Subsection 2)	483.560-2	53721	1000	140	Mandatory Appear
Driver's License – All Other	483.	various	300	115	
Driver Disobey Peace Officer (Fail to Stop on Signal)	484B.5501	53832	1000	140	Mandatory Appear
Fail to Obey Police Officer Re: Traffic Laws	484B.100	53756	1000	140	Mandatory Appear
Failure to Pay Full Time & Attention While Driving	10.28.010	55615	200	105	
Duty to Stop At Accident w/Attended Vehicle/Property Damage (Hit and Run)	484E.020	53744	1000	140	Mandatory Appear
			1000	140	Mandatory Appear
Fail to Give Info to Officer at Vehicle Accident	484E.0301	53745	1000	140	Mandatory Appear
Fail to Give Info to Party(s) at Vehicle Accident	484E.0301	53746	1000	140	Mandatory Appear
Fail Render Aid at Vehicle Accident	484E.0301	53747	1000	140	Mandatory Appear
Duty Upon Damaging Unattended Vehicle/Property	484E.040	53748	1000	140	Mandatory Appear
Fail to Report Accident to Police	484E.050	53749	1000	140	Mandatory Appear
Insurance, Owner – Proof of Insurance Required	485.1871	54094	600	140	
Insurance, Operator – Proof of Ins. Required	485.1872	54095	600	140	
Fail Wear Safety Belt/Shoulder Harness	484D.4952	54057	25	50	
Child Restraints Violation, 1 st Offense	484B.1572	53975	200	105	Mandatory Appear
Child Restraints Violation, 2 nd Offense		53976	500	140	Mandatory Appear
Child Restraints Violation, 3 rd + Offense		53977	500	140	Mandatory Appear
Open Container in Motor Vehicle	484B.1502	53952	150	95	
Open Container in Motor Vehicle, Work Zone		53953	300	115	
Overtake/Pass Stopped School Bus w/Signal, 1 st	484B.3533	53840	250	105	
Overtake/Pass Stopped School Bus w/Signal, 2 nd		53841	250	105	Mandatory Appear
Overtake/Pass Stopped School Bus w/Signal, 3 rd		53842	1000	140	Mandatory Appear
Pedestrian Crossing Other Than At Crosswalk	484B.287	53812	50	65	
Reckless Driving, Disregard Safety Pers/Prop 1 st	484B.6531	55040	1000	140	Mandatory Appear
Reckless Driving, Disregard Sfty Pers/Prop 2 nd	484B.6532	55041	1000	140	Mandatory Appear
Participate/Organize Speed Contest 1 st / 2 nd	484B.6533	55043 / 55044	1000	140	Mandatory Appear
REG: Registration Certificate Not In Vehicle	482.255	53615	100	95	
REG: License Plates Improperly Displayed	482.275	53617			
REG: Fail Change Addr on Registration w/in 30-days	482.283	53618			
REG: Operate Unregistered Vehicle/Trailer/Semi	482.545-1	53656	300	115	
REG: Operate Vehicle w/Expired Reg/Plates	482.545-1	53661			
REG: Display Bogus Veh Reg/Plate/Title (Fictitious)	482.545-2	53657	1000	140	
REG: Lend/Permit Improper Use of Reg/Lic Plate	482.545-3	53658	1000	140	
REG: Fail Surrender Susp/Rev/Canc Reg Card/Lic Plate	482.545-4	53659			
REG: Resident Operate Vehicle w/o NV Registr.	482.385	53637	1000	140	
REG: Registration/Plates – All Other	482.	various	300	115	
Speeding \leq 1-10 Over	484B.600	53849	100	95	
Speeding \leq 11-15 Over	484B.600	53850	150	95	
Speeding \leq 16-20 Over	484B.600	53851	200	105	
Speeding \leq 21-30 Over	484B.600	53854	300	115	
Speeding \leq 31-40 Over	484B.600	53856	400	125	
Speeding \leq 41+ Over	484B.600	53857	500	140	
School Zone Speeding \leq 1-10 Over	484B.363	53875	200	105	
School Zone Speeding \leq 11-15 Over	484B.363	53876	300	115	
School Zone Speeding \leq 16-20 Over	484B.363	55973	400	125	
School Zone Speeding \leq 21-30 Over	484B.363	53879	600	140	
School Zone Speeding \leq 31-40 Over	484B.363	55974	800	140	
School Zone Speeding \leq 41+ Over	484B.363	55975	1000	140	

HENDERSON MUNICIPAL COURT BAIL SCHEDULE – page 2

(Effective for Arrests/Citations occurring/written 01/05/2015 and after)

Work Zone Speeding \pm 1-10 Over	484B.600	53862	200	105	
Work Zone Speeding \pm 11-15 Over	484B.600	53863	300	115	
Work Zone Speeding \pm 16-20 Over	484B.600	53864	400	125	
Work Zone Speeding \pm 21-30 Over	484B.600	53867	600	140	
Work Zone Speeding \pm 31-40 Over	484B.600	53869	800	140	
Work Zone Speeding \pm 41+ Over	484B.600	53870	1000	140	
Unlaw Read/Text/Send/Talk Cellphone 1 st Off.	484B.1654A	55927	50	65	
Unlaw Read/Text/Send/Talk Cellphone 2 nd Off.	484B.1654B	55928	100	95	
Unlaw Read/Text/Send/Talk Cellphone 3 rd Off.	484B.1654C	55929	250	105	
Work Zone Unlaw Read/Text/Send/Talk Cellphone 1 st Off.	484B.1654A	56694	100	95	
Work Zone Unlaw Read/Text/Send/Talk Cellphone 2 nd Off.	484B.1654B	56695	200	105	
ALL OTHER TRAFFIC VIOLATIONS	Various	Multiple	100	95	

****Construction Zone Violations:** Any violation of NRS 484.254, 484.278, 484.289, 484.291 to 484.301, inclusive, 484.305, 484.309, 484.311, 484.335, 484.337, 484.361, 484.363, 484.3765, 484.377, 484.379, 484.448, 484.453 or 484.479 shall result in a double penalty (on the citations: Double the Bail, maximum of \$1000, and add the appropriate AA Fee) imposed by the Court pursuant to NRS 484.3667.

****School Zone Violations:** Except otherwise noted above for School Zone Speeding Violations; any **MOVING** violation committed in an **active** designated school zone shall have the bail amount doubled (maximum of \$1000) with the appropriate AA Fee added.

FIRE CODE VIOLATIONS	Various	Multiple	1000	140	Mandatory Appear
Parking in a Fire Lane	15.32.100	55619	100	95	
PARKING VIOLATIONS (Literal)	NRS/HMC	NOC(s)	BAIL	AA FEES	NOTES
Park in Handicap Space, 1 st Offense	484B.467	53926	250	105	
Park in Handicap Space, 2 nd Offense		53927	250	105	
Park in Handicap Space, 3 rd Offense		53928	500	140	
ALL OTHER PARKING VIOLATIONS	Various	Multiple	40	50	
NON-TRAFFIC/OTHER (Literal)					
Animal Control					
Fail To Provide Animal Feed/Water	7.06.010	55946	500	140	Mandatory Appear
Fail to Provide Humane Care/Treatment	7.06.010	55947	500	140	Mandatory Appear
Dangerous/Vicious Animals @ Large	7.06.020	54778	500	140	Mandatory Appear
Vehicle Confinement	7.06.070	55945	500	140	Mandatory Appear
Mandatory Spay/Neuter Dogs/Cats	7.10.010	55153	300	115	
Licensing of Pets - Required	7.04.010	55937	100	95	
ALL OTHER ANIMAL VIOLATIONS	Various	Multiple	40	50	
CODE VIOLATIONS	Various	Multiple	500	140	Mandatory Appear

COURT SCHEDULE: TRAFFIC / PARKING / NON-TRAFFIC

▽ **TUESDAYS \pm ADULTS: 8:00 AM; JUVENILES: 3:00 PM (16/17 years only, all others to CCJH)**

▽ **WEDNESDAYS \pm ADULTS: 8:00 AM, 2:00 PM, & 3:00 PM THURSDAYS \pm ADULTS: 200 PM & 300 PM**

ADMINISTRATIVE/BUILDING/SPECIAL COURT ASSESSMENT FEE APPLICATION

BAIL	AA FEES	BAIL	AA FEES
\$ 5 - \$49	\$50	\$100 - \$ 199	\$ 95
\$50 - \$59	\$65	\$200 - \$ 299	\$105
\$60 - \$69	\$70	\$300 - \$ 399	\$115
\$70 - \$79	\$75	\$400 - \$ 499	\$125
\$80 - \$89	\$80	\$500 - \$1000	\$140
\$90 - \$99	\$85		

HENDERSON MUNICIPAL COURT BAIL SCHEDULE – page 3
(Effective for Arrests/Citations occurring/written 11/03/2014 and after)

CRIMINAL (Literal)	NRS/HMC	NOC(s)	BAIL	AA FEES	NOTES
DUI – Alcohol and/or CS 1 st Offense	484C.4001	53900	2000	140	Cash or Bond
DUI – Alcohol and/or CS 2 nd Offense	484C.4001	53902	5000	140	Cash or Bond
Vehicular Manslaughter	484B.657	53898	5000	140	Cash or Bond
Domestic Battery – 1st Offense	200.485-1	50235	3000	140	Cash or Bond
Dom Batt 1 st – Victim is Older Person	200.485-1	50236			
Domestic Battery – 2nd Offense	200.485-1	50237	5000	140	Cash or Bond
Dom Batt 2 nd – Victim is Older Person	200.485-1	50238			
Stalking, 1 st Offense	200.575-1	50331	5000	140	Cash or Bond
Harassment, 1 st Offense	200.571-2	50328	5000	140	Cash or Bond
Extended Protective Order Violation	033.100	52917	3000	140	Cash or Bond
Temporary Protective Order Violation	033.100	52916	5000	140	Cash or Bond
Marijuana, 1 st Posses <= 1 oz	453.336-4	51137	600	140	Cash or Bond
Marijuana, 2 nd Posses <= 1 oz	453.336-4	51138	1000	140	Cash or Bond
All Other Criminal Charges	Various	Multiple	500	140	Cash or Bond

CRIMINAL (Literal)	NRS/HMC	NOC(s)	BAIL	AA FEES	NOTES
Contempt / Fail to Pay Fine	266.570	52459	200	105	Cash Only
Contempt / Fine (Parking violation)			45	50	Cash Only

****Outstanding Fine Balance(s) due on underlying cases must also be paid****

Contempt / Fail to Comply	266.570	52459	1000	140	Cash Only
Fail to Appear / Traffic Citation	484A.670	54091	200	105	Cash Only
Fail to Appear / Parking Citation	484A.700	54092	45	50	Cash Only
Fail to Appear / Criminal Charge	171.17785	52939	200	105	Cash Only

****Underlying case(s) Bail & AA Fees must be posted in addition to the warrant Bail/AA****

- Traffic/Parking Citation Underlying Charge £ Cash Only Bail
- Criminal Charge £ Surety of Cash Bond Unless otherwise noted on the Warrant
- **NO** Checks Accepted on Fail to Pay / Fail to Comply / Fail to Appear Warrants

ADMINISTRATIVE/BUILDING/SPECIAL COURT ASSESSMENT FEE APPLICATION

BAIL	AA FEES	BAIL	AA FEES
\$ 5 - \$49	\$50	\$100 - \$ 199	\$ 95
\$50 - \$59	\$65	\$200 - \$ 299	\$105
\$60 - \$69	\$70	\$300 - \$ 399	\$115
\$70 - \$79	\$75me	\$400 - \$ 499	\$125
\$80 - \$89	\$80	\$500 - \$1000	\$140
\$90 - \$99	\$85		

HENDERSON MUNICIPAL COURT ARRAIGNMENT SCHEDULE

CRIMINAL CITATIONS & PAGE 2 MANDATORY VIOLATIONS

∇ **Monday – Thursday £ 9:00 AM CRIMINAL CITATIONS, ANIMAL CONTROL & CODE VIOLATIONS**

COURT SCHEDULE: TRAFFIC / PARKING / NON-TRAFFIC

∇ **TUESDAYS £ ADULTS: 8:00 AM; JUVENILES: 3:00 PM (16/17 years only, all others to CCJH)**

∇ **WEDNESDAYS £ ADULTS: 8:00 AM, 2:00 PM, & 3:00 PM THURSDAYS £ ADULTS: 200 PM & 300 PM**

ADMINISTRATIVE ASSESSMENT (AA) FEE DISTRIBUTION BREAKDOWN

Reference NRS 176.059

Clark County Treasurer - Juvenile Court funding	\$ 2.00	State Controller - State General Fund	\$ 5.00
Municipal Court Special Revenue Fund	\$ 7.00	Genetic Marker Testing - Clark County	\$ 3.00
Municipal Court Facilities Fund	\$ 10.00	(Remaing balance of AA fee collected	
Specialty Court Fee - Nevada Supreme Court	\$ 7.00	is sent to Nevada Supreme Court)	

NRS 484B.650 Acts constituting aggressive driving; penalties; additional penalty for violation committed in work zone.

3. A driver who commits an offense of aggressive driving in violation of subsection 1 is guilty of a misdemeanor and:
 - (a) For the first offense, shall be punished:
 - (1) By a fine of not less than \$250 but not more than \$1,000; or
 - (2) By both fine and imprisonment in the county jail for not more than 6 months.
 - (b) For the second offense, shall be punished:
 - (1) By a fine of not less than \$1,000 but not more than \$1,500; or
 - (2) By both fine and imprisonment in the county jail for not more than 6 months.
 - (c) For the third and each subsequent offense, shall be punished:
 - (1) By a fine of not less than \$1,500 but not more than \$2,000; or
 - (2) By both fine and imprisonment in the county jail for not more than 6 months.
4. In addition to any other penalty pursuant to subsection 3:
 - (a) For the first offense within 2 years, the court shall order the driver to attend, at the driver's own expense, a course of traffic safety approved by the Department and may issue an order suspending the driver's license of the driver for a period of not more than 30 days.
 - (b) For a second or subsequent offense within 2 years, the court shall issue an order revoking the driver's license of the driver for a period of 1 year.

NRS 484B.157 Child less than 6 years of age and weighing 60 pounds or less to be secured in child restraint system while being transported in motor vehicle; requirements for system; penalties; programs of training; waiver or reduction of penalty under certain circumstances; application of section.

2. If a defendant pleads or is found guilty of violating the provisions of subsection 1, the court shall:
 - (a) For a first offense, order the defendant to pay a fine of not less than \$100 or more than \$500 or order the defendant to perform not less than 10 hours or more than 50 hours of community service;
 - (b) For a second offense, order the defendant to pay a fine of not less than \$500 or more than \$1000 or order the defendant to perform not less than 50 hours or more than 100 hours of community service; and
 - (c) For a third or subsequent offense, suspend the driver's license of the defendant for not less than 30 days or more than 180 days.

NRS 484B.353 Overtaking and passing school bus: Duties of driver; exceptions; penalties.

3. Any person who violates any of the provisions of this section is guilty of a misdemeanor and:
 - (a) For a third or any subsequent offense within 2 years after the most recent offense, shall be punished by a fine of not more than \$1,000 and the driver's license of the person must be suspended for not more than 1 year.
 - (b) For a second offense within 1 year after the first offense, shall be punished by a fine of not less than \$250 nor more than \$500 and the driver's license of the person must be suspended for 6 months.
 - (c) For a first offense or any subsequent offense for which a punishment is not provided in paragraph (a) or (b), shall be punished by a fine of not less than \$250 nor more than \$500.

NRS 484B.653 Reckless driving and organization of unauthorized speed contests prohibited; penalties; court to suspend driver's license of certain offenders; additional penalty for violation committed in work zone.

1. It is unlawful for a person to:
 - (a) Drive a vehicle in willful or wanton disregard of the safety of persons or property.
 - (b) Drive a vehicle in an unauthorized speed contest on a public highway.
 - (c) Organize an unauthorized speed contest on a public highway.
- ¶ A violation of paragraph (a) or (b) of this subsection or subsection 1 of [NRS 484B.550](#) constitutes reckless driving.
2. A person who violates paragraph (a) of subsection 1 is guilty of a misdemeanor and:
 - (a) For the first offense, shall be punished:
 - (1) By a fine of not less than \$250 but not more than \$1,000; or
 - (2) By both fine and imprisonment in the county jail for not more than 6 months.
 - (b) For the second offense, shall be punished:
 - (1) By a fine of not less than \$1,000 but not more than \$1,500; or
 - (2) By both fine and imprisonment in the county jail for not more than 6 months.
 - (c) For the third and each subsequent offense, shall be punished:
 - (1) By a fine of not less than \$1,500 but not more than \$2,000; or
 - (2) By both fine and imprisonment in the county jail for not more than 6 months.
3. A person who violates paragraph (b) or (c) of subsection 1 is guilty of a misdemeanor and:
 - (a) For the first offense:
 - (1) Shall be punished by a fine of not less than \$250 but not more than \$1,000;
 - (2) Shall perform not less than 50 hours, but not more than 99 hours, of community service; and
 - (3) May be punished by imprisonment in the county jail for not more than 6 months.
 - (b) For the second offense:
 - (1) Shall be punished by a fine of not less than \$1,000 but not more than \$1,500;
 - (2) Shall perform not less than 100 hours, but not more than 199 hours, of community service; and
 - (3) May be punished by imprisonment in the county jail for not more than 6 months.
 - (c) For the third and each subsequent offense:
 - (1) Shall be punished by a fine of not less than \$1,500 but not more than \$2,000;
 - (2) Shall perform 200 hours of community service; and
 - (3) May be punished by imprisonment in the county jail for not more than 6 months.
4. In addition to any fine, community service and imprisonment imposed upon a person pursuant to subsection 3, the court:
 - (a) Shall issue an order suspending the driver's license of the person for a period of not less than 6 months but not more than 2 years and requiring the person to surrender all driver's licenses then held by the person;
 - (b) Within 5 days after issuing an order pursuant to paragraph (a), shall forward to the Department any licenses, together with a copy of the order;
 - (c) For the first offense, may issue an order impounding, for a period of 15 days, any vehicle that is registered to the person who violates paragraph (b) or (c) of subsection 1 if the vehicle is used in the commission of the offense; and
 - (d) For the second and each subsequent offense, shall issue an order impounding, for a period of 30 days, any vehicle that is registered to the person who violates paragraph (b) or (c) of subsection 1 if the vehicle is used in the commission of the offense.

Collection of Monetary Penalties

Measure



Definition: Payments collected and distributed within established timelines, expressed as a percentage of total monetary penalties ordered in specific cases.

Purpose: Integrity and public trust in the dispute resolution process depend in part on how well court orders are observed and enforced in cases of noncompliance. In particular, restitution for crime victims and accountability for enforcement of monetary penalties imposed on offenders are issues of intense public interest and concern. The focus of this measure is on the extent to which a court takes responsibility for the enforcement of orders requiring payment of monetary penalties.

While court orders establish a wide variety of sanctions, financial obligations are clearly understood and measurable. Financial obligations include child support, civil damage awards, traffic fines, and criminal penalties. However, state courts vary in their responsibility for and control over the full range of monies ordered and received. Therefore, to keep this measure broadly applicable and feasible, the focus is on criminal penalties in misdemeanor cases, including restitution. Once understood and in place for misdemeanor cases, similar measurement methods can be applied to other relevant types of monetary penalties and obligations.

Timely payment of restitution is a significant part of how success is defined for this measure. Collection and disbursement of restitution to victims of crime is particularly emblematic of the court's commitment to public accountability.

Method: The results of this measure should be reviewed on a regular basis (e.g., monthly, quarterly, annually). If reviewed regularly, the court can establish baselines, set performance goals, observe trends as they develop, and aggregate the data for annual reporting.

The first task is to compile a list of all misdemeanor cases in which 1) a financial penalty was ordered and 2) the due date for final payment falls within the reporting period. The term total monetary penalty includes all financial obligations associated with misdemeanor cases, regardless of local terminology and practice (e.g., fines, fees, assessments, restitution, etc). If the case includes an order for restitution, additional information will include the amount of restitution ordered, the amount of money collected and applied to the restitution obligation, and the amount disbursed to the victims. For the purposes of the measure, separate restitution "accounts" (multiple victims/payees) can be aggregated into a single balance.

Why only measure criminal financial obligations?

- All courts with criminal jurisdiction process and account for financial penalties.
- Every jurisdiction has at least one criminal court.
- Responsibility for financial accounting in child support and other civil matters is not universally accepted as a core court function across the states.

Why only measure misdemeanors?

- Accounting for fines, fees, and restitution is a core operational activity of all courts with misdemeanor jurisdiction.
- Most of the money handled by criminal courts originates in criminal traffic and other misdemeanors.
- Due dates are likely to be clearly established and fall within one year from order date.



Other than for restitution payments to victims, compiling a record of all subsequent disbursement activities is not included in this measure (i.e., success in directing/paying out funds received to the appropriate account). This decision reflects the practical reality that there can be numerous funds entitled to a fraction of the total penalty as well as wide variation in local accounting practices governing the timing and allocation of dollars received.

Eight data elements are essential:

1. Case number.
2. Date of the order of sentence.
3. Due date for final payment of the total monetary penalty.
4. Total monetary penalty in the case.
5. Amount of total monetary penalty received (collected) to date.
6. Total amount of restitution ordered in the case.
7. Amount received that is applied by the court to restitution.
8. Amount of restitution received that is disbursed to victims.

Availability of Information

Ease of data collection for this measure will depend on the quality of the court's systems for tracking and monitoring compliance with the terms of sentences and other judgments. For many courts, accessible court records, whether manual or automated, may contain all the required data. In the event data cannot be collected for this measure without inspection of case files, a reliable sampling technique may need to be used. The task will be relatively simple if the clerk's office keeps judgment journals or similar payment bookkeeping records. A sample should not be drawn from bookkeeping records alone unless an entry is created in those records for all cases where an order includes restitution and other monetary penalties. It is possible, for example, that the bookkeeper only creates a record when a payment is made rather than when a penalty is initially ordered. In that instance, sampling from that source would not be representative of all cases in which a monetary penalty is ordered.

Converting Time to Dollars

Accurate measurement of compliance requires a means to convert a monetary penalty into days of community service or jail time when accepted in lieu of fines or as alternatives to payment of restitution. These equity-related practices are used in many cases where the offender is unable to pay the full amount of monetary penalties. This process obliges courts to establish a dollar value when converting monetary obligations to "time served." For example, an order that states "\$200 fine to be paid within 3 days, or one day in jail" establishes an implied conversion formula of "\$200 = 1 day jail time."

More commonly, when circumstances include an inability to pay, community service is imposed. For example, local policy may be that a \$200 penalty is equivalent to the number of hours necessary to pay off the penalty at \$10 per hour.

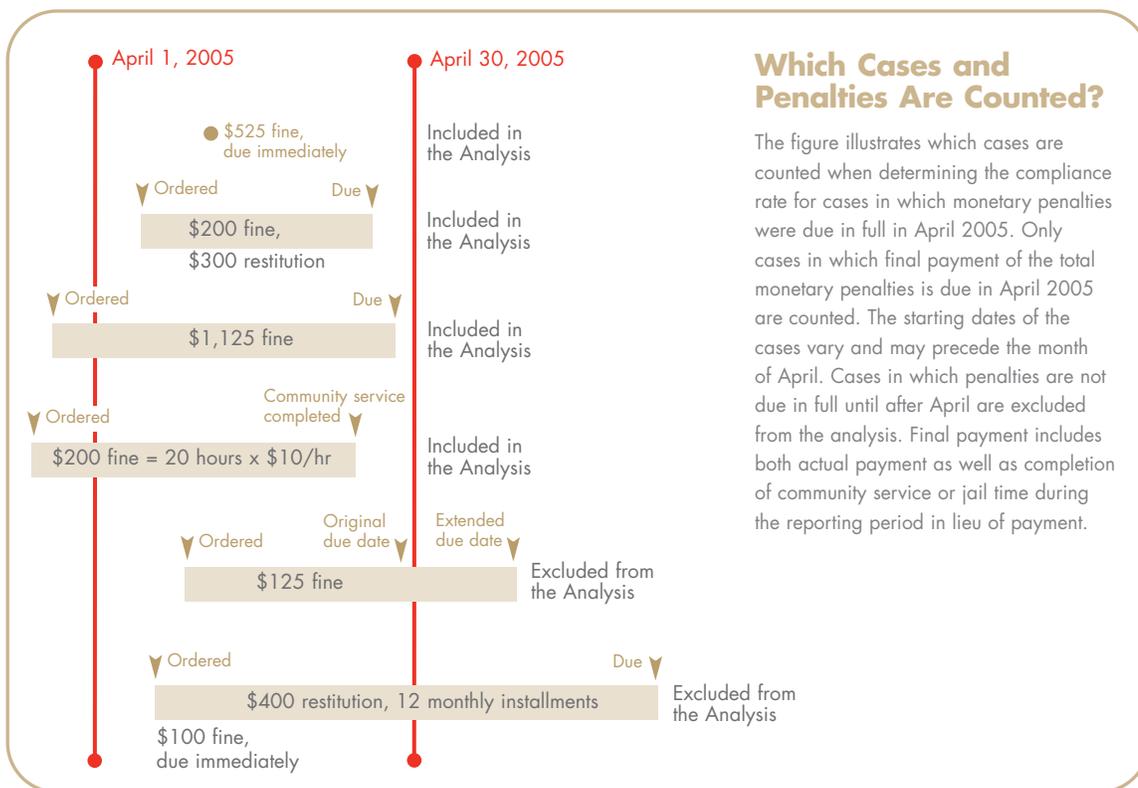
$$\text{Total Penalty} = \text{Hours Necessary to Pay Fine} \times \text{Hourly Rate}$$

Extended Due Dates and Time Payments

Consistent with strategies to improve enforcement of orders without resorting to community service or incarceration, courts may extend the original due dates for monetary obligations, set up payment plans, etc. For this measure, if the original date is extended, the extended due date is used in measuring compliance.

Collection of Monetary Penalties

Measure



Data Reporting and Analysis

Total Penalties

This table summarizes compliance on collection of total misdemeanor monetary penalties in one court. The Preliminary Compliance Rate is the percentage of total monetary penalties ordered that were collected as actual dollars. Combining the dollar value of community service or jail served in lieu of payment (Conversion Credit Dollar Value) with Actual Dollars Collected produces Overall Monetary Penalties Collected. Finally, Overall Compliance Rate is calculated by dividing Overall Monetary Penalties Collected by the Total Amount Ordered.

Two examples illustrate the use of conversion credits: Case Three shows the total penalty (penalty and restitution) of \$250 converted, and Case Five shows \$100 of \$1,150 converted. In addition, Cases Two and Four show partial compliance with no conversion credits, which means that preliminary and overall compliance rates are the same. Case One shows full compliance.

Total Penalties

Case	Date Ordered	Date Due	Total Amount Ordered	Actual Dollars Collected	Preliminary Compliance Rate	Conversion Credit Dollar Value	Overall Monetary Penalties Collected	Overall Compliance Rate
One	1/1/2003	4/1/2004	\$400	\$400	100%	—	\$400	100%
Two	2/15/2003	4/15/2004	\$450	\$325	72%	—	\$325	72%
Three	3/5/2003	4/5/2004	\$250	\$0	0%	\$250	\$250	100%
Four	4/15/2003	4/15/2004	\$500	\$125	25%	—	\$125	25%
Five	4/25/2003	4/25/2004	\$1,150	\$375	33%	\$100	\$475	41%
Total			\$2,750	\$1,225	45%	\$350	\$1,575	57%

$1,575 / 2,750 = 57\%$



Restitution Collection and Disbursement

In some criminal cases, the monetary penalty will require restitution in the form of payment to the victim for harm that was caused. This measure calls for specific analysis of the amount of restitution ordered, collected, and distributed to victims. In this court, the overall compliance rate is 57%, the restitution collection rate is also 82%, and all restitution has been disbursed (100%). This result occurs because all dollars collected are applied to restitution obligations first, prior to paying any other government revenue penalty accounts, and the court is efficient in making payment to victims. In Case One the total penalty, including restitution, is fully paid. In Case Four, the total monetary penalty of \$500 is not paid, but sufficient funds have been collected to cover full restitution. Once restitution is collected, the court can monitor the actual disbursement of restitution to victims.

Compliance with Monetary Penalties Over Time

Improving compliance rates for collection of monetary penalties as well as for collection and disbursement of restitution is enhanced by monitoring the trend in performance. For example, the figure below compares Preliminary Compliance Rate to Overall Compliance Rate over time. This court had not implemented “conversion credit” practices in 2000, so the two rates are identical. As a result of implementing conversion practices in 2001, the two rates diverge and a more accurate measure of compliance is achieved. Adopting a broader definition of payment, to include both dollars and community service or jail time, allows the court to incorporate the full spectrum of penalty enforcement. Without such adjustments, performance in this area will be misrepresented and misunderstood.



Terms You Need To Know

Misdemeanor: A lesser crime punishable by a fine and/or county jail time generally up to one year.

Restitution: An amount to be paid for the purpose of compensation for an injury, loss, or damage.

Restitution Collection and Disbursement

Restitution Amount Ordered	Restitution Amount Collected	Restitution Collection Rate	Restitution Disbursed	Overall Compliance Rate
\$300	\$300	100%	\$300	100%
—	—	—	—	—
—	—	—	—	—
\$100	\$100	100%	\$100	100%
\$550	\$375	68%	\$375	100%
\$950	\$775	82%	\$775	100%

$775 / 775 = 100\%$



COURTS AND COLLECTIONS

Laura Klaversma

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State courts are being called upon to improve their collection of fines and fees. Four states provide good examples of courts working in partnership with each other and the private sector to improve collections.

A tension has existed between courts and other branches of government over the level of responsibility and involvement courts should have in collecting the fines and fees they assess. This tension has increased as governments have faced more and more financial constraints and public scrutiny over the past several years. With the financial squeeze, governments have more closely reviewed courts' expenditures as well as potential sources of revenue, fines, and fees, which come through court assessments.

The financial environment these past several years has led to changing attitudes regarding the appropriate role for courts in collections, but public trust and confidence in all government entities has also influenced a change in attitudes. We live in an age when trust in government institutions, including courts, is not automatic. The integrity, efficiency, and use of public funds by government institutions are widely and openly questioned. There is an increased expectation from the public that all government operations, including those of the courts, should be efficient, accountable, and cost-effective. It is difficult to promote public trust and confidence in the judiciary without the courts supporting and encouraging programs and processes that improve the collection of fines and fees.

The attitudes of not only the general public and other branches of governments are changing in regard to court operations and the court's role in collections, but the attitudes within the judicial branch are changing as well. Whether or not the change within courts toward an increased role in improving collections is from government pressure, increasing lack of public trust and confidence, or financial desperation, many courts have made changes in their processes and procedures to improve the collection of fines and fees. These attitude changes and the resulting

new programs are not just scattered local phenomena. On a state and national level, the perspective that courts should be aware and involved in the process of collection, and not just in assessing monetary penalties, is changing as well. There is increasing pressure and support for courts to be knowledgeable about their own collection practices and collection best practices and to modify and improve their own practices, processes, and procedures.

Under the policy direction of the Conference of Chief Justices (CCJ) and Conference State Court Administrators (COSCA), the National Center for State Courts (NCSC) provides information, resources, and tools to assist courts in improving fine and fee collection. NCSC's Web site states, "Consistent with the basic premises of fine administration, individual offenders must be made to pay their fines in order for society to have achieved its policy goals of punishment and deterrence and for the courts to maintain their own credibility."

Indicative of CCJ's and COSCA's support for collection improvement, both conferences approved the *CourTools* trial court performance measures. Included in the court performance measures tool kit is CourTool 7: "Collection of Monetary Penalties." The definition and purpose of CourTool 7 is: "Integrity and public trust in the dispute resolution process depend in part on how well court orders are observed and enforced in cases of noncompliance. . . . The focus of this measure is on the extent to which a court takes responsibility for the enforcement of orders requiring payment of monetary penalties" (National Center for State Courts, 2006).

Changes in court involvement in the collection process are reflected by various state and local court initiatives and actions to improve collections. Though there are generally accepted guiding principles on what can be done to improve collections, there is no one right solution to best implement those principles in individual courts, regional jurisdictions, or state processes and programs. States and courts are directed and limited in their collection-policy decisions and program changes for many reasons. These include court organizational structure, statutes related to collections, available resources to improve collections, and current policies and procedures, as well as the laws, resources, policies, and procedures of other agencies involved in the collections process.

Several state judiciaries have made strides to improve collections within their states by creating and implementing statewide initiatives. Externally imposed legislation has at times been the impetus for initiating a particular program. At other times, state judiciaries have created and sponsored legislation that could provide a better framework by which courts could change processes or develop programs to improve collections. Here are examples of the efforts taken by four state judiciaries to improve collections.

Texas

With a decentralized court structure in Texas, much of the funding for the courts comes from counties. To improve funding in the counties and therefore the courts, the Texas Office of Court Administration (OCA) initiated a voluntary model Collection Improvement Program a little over a decade ago. This program provides information and technical assistance to counties and courts on how to improve their collections.

Even though the OCA has little direct budget or funding responsibilities for the courts, the program was designed to assist cities and counties in improving the collection of fines and fees assessed by the courts. Since most of the funds collected are retained locally and used to fund local programs, it was a way to help improve funding for the courts.

Two major benefits of the Collection Improvement Program are that it encourages personal responsibility by those assessed and it increases revenue. By May 2005, the OCA had assisted with the development of 69 collections programs serving 237

Texas Collection Improvement Program—Key Elements

- **Expectation that obligations are due at the time of sentencing or pleading**
- **Defendants unable to pay complete an application for extension**
- **Payment plans are established for those who qualify with strict terms**
- **Alternative enforcement options available for those who do not qualify**
- **Close monitoring for compliance**
- **Prompt action for noncompliance**

courts. These voluntary programs had an overall increase in collection revenues in 2005 of 86 percent, or \$42 million. The increase in collections was the catalyst for legislation in 2006 that created a mandatory collections-improvement program targeting the largest cities and counties in Texas.

Arizona Fines/Fees and Restitution Enhancement—Program Services

- **Reminder notices**
- **Delinquency notices**
- **Web-based and IVR credit-card payment (English and Spanish)**
- **Electronic skip tracing**
- **State-tax-intercept program**
- **Vehicle-registration holds**
- **Credit-bureau reporting**
- **Outbound phone calls**

Arizona

The interest by the Arizona Administrative Office of the Courts (AOC) in improving court collections began with a fiscal crisis during 2000-03. The AOC initiated the statewide Arizona Fines/Fees and Restitution Enhancement (Arizona FARE) program as an alternative to anticipated large budget reductions and forced court layoffs. The program is a voluntary statewide collection unit for courts that uses various initiatives and processes to maximize collection potential. The program has two parts: one component deals with backlog processing and the other component takes responsibility for all collection tasks from the time of charge filing.

The Arizona FARE program, a public/private partnership of the state courts, which includes the state motor vehicle division, the state department of revenue, and a private vendor, began in July 2003. The program is designed to enforce compliance with court orders and law and increase revenues. The Arizona FARE program is in 115 courts in 13 counties. Approximately 1.8 million cases have been submitted.

Michigan

The Michigan Supreme Court started with the assumption that one of the guiding principles of a successful collections program is having judicial support. They appointed a collections advisory committee, consisting of judges and a court

Michigan's Tools for Collecting Fines and Fees

TOOLS	EXAMPLES OF VARIOUS COURTS' RESULTS
Orders to remit prisoner funds: Court orders to collect fines and fees from prisoner accounts	51% of court orders on prisoner funds collected statewide, resulting in \$3,525,375 during a three-year period.
Delinquency notification software: Software developed internally by a Michigan court that was purchased by the SCAO so it could be provided to other courts at no cost	10th District Court sent 32,453 notices and collected \$1,352,546 at a cost of \$24,893 during a 20-month period.
Show-Cause process	47th District Court collected \$1,492,279 during the three years the show-cause docket was in place.
Court-ordered wage assignments	47th District Court has issued 102 wage assignments in a 14-month period and collected \$47,121.

administrator, and approved the committee's recommended collections strategy. This strategy included appointing regional subcommittees to promote the supreme court's approved collections strategy. The subcommittees, which include judges and court staff experienced in various collection techniques, also provide training on practical and tested collection techniques throughout the state.

Another aspect of the Michigan program has been accomplished in conjunction with legislation that focused on the court's authority to assess and collect fines, costs, and assessments and codified the process to collect funds from prisoner accounts to pay court-ordered fines, costs, and assessments. Effective January 1, 2006, the Michigan Collection Legislation authorized that fines and fees could be collected at any time regardless of whether a defendant is on probation, has had probation revoked, or has been discharged from probation. The legislation also allows that courts may require a wage assignment to pay the assessed costs. This legislation was then amended effective January 9, 2007 to allow courts to order defendants to pay any additional costs incurred in compelling the defendant's appearance. This allowed courts to put the financial burden for nonpayment back on the defendant and not on the court. The table above shows some of the tools that courts have used since this legislation was enacted and the reported results.

California

Chief Justice Ron George called the collection of court debt a top priority in his 2003 State of the Judiciary Address. Following that address, the California Judicial Council established the Collaborative Court-County Working Group on Enhanced Collections. By August 2004, the Judicial Council had adopted several policies to improve statewide collections based on the recommendations that came from the working group. These included policies for:

- Definitions of delinquent accounts or payments
- Standards for discharging court-ordered debt
- Establishment of trial court and county committees to increase collections and compliance
- Courts and counties to submit midyear and year-end collection reports on Judicial Council-approved templates
- Developing and supporting legislation that would allow courts and counties to charge installment fees
- Process to develop standards and guidelines for courts in approving or denying fee waivers

California is also using a legislated cost-recovery program. This program allows a court or county that maintains a collection program for delinquent fines, penalties, assessments, and fees to deduct certain expenses for that program before making any distribution to the state. To qualify for the cost-recovery program, the collection program must meet at least 10 of 17 collection criteria.

These four examples demonstrate that despite differences in organization and legislative approach, states are making successful efforts to improve collections. Even when programs are voluntary, leadership, encouragement, and practical assistance from the state-level judiciary can significantly improve the collection process by providing tools to guide courts and help them improve their collection processes. Michigan's judiciary found that by promoting best practices, training, and successful pilot programs, there has been competition among individual courts to improve collections. When court leaders show interest and do their part to improve collections by using whatever principles, programs, or processes work within their own justice system, they can gain increased trust from the public, other branches of government, and funding bodies.

California Comprehensive Collection Program Criteria

1. Issue monthly billing statements
2. Make telephone contact with debtor
3. Issue warning letters
4. Request credit reports to assist in locating debtors
5. Access employment development dept. (EDD)
6. Generate monthly delinquent reports
7. Participate in FTB tax-intercept program
8. Use department of motor vehicles information to locate debtors
9. Use wage and bank-account garnishments
10. File liens on real property and proceeds of sale
11. File claims of objection in bankruptcy
12. Coordinate with probation department to locate debtors
13. Suspend driver's licenses
14. Accept credit-card payments
15. Participate in FTB court-ordered debt program
16. Contract with private debt collectors
17. Use local and national skip-tracing locator resources

RESOURCES

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2011-2012 Policy Paper Courts Are Not Revenue Centers



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If the right to obtain justice freely is to be a meaningful guarantee, it must preclude the legislature from raising general welfare through charges assessed to those who would utilize our courts.

– Supreme Court of Texas

I. INTRODUCTION

A quarter of a century ago the Conference of State Court Administrators adopted a set of standards¹ (hereinafter referenced as the “1986 Standards”) related to court filing fees, surcharges and miscellaneous fees in response to a burgeoning reliance upon courts to generate revenue to fund both the courts and other functions of government. The issue of court revenue - and the relationship of that revenue to funding the courts - remains fresh and relevant and warrants a renewed examination and restatement of the previously adopted standards, couched here as “principles.”

The intersection of court revenues and court funding is complex and includes constitutional, statutory and case law mandates and restraints governing access to justice, governmental revenues, and appropriate uses of court-generated revenue:

- A variety of vehicles to deliver court revenue that are difficult to define consistently and that present different problems or issues depending upon the type of case (civil, criminal or traffic);
- The tension between the public benefit courts provide to society as a whole and the private benefit which inures to individual litigants; and
- The economic and fiscal pressures and practical realities that face legislative bodies and court leadership.

Court leaders must navigate among the particular historical, political and budgetary realities that face the courts and legislative bodies and serve as the backdrop to every new and increased fee or cost in their individual states. For revenue sources attached to civil cases, court leaders must advocate for the principles of access to justice, the balance of public good and private benefit in establishing court fees,

and restricting revenue generation to court purposes only. In criminal cases, court leaders have a responsibility not only to ensure that judicial orders are enforced - *i.e.*, fees and fines are collected² - but also to ensure that the system does not impose unreasonable financial obligations assessed to fund other governmental services. In traffic infractions, whether characterized as criminal or civil, court leaders face the greatest challenge in ensuring that fines, fees, and surcharges are not simply an alternate form of taxation.

Court leaders must work toward uniformity across their state and be the experts on the typically complex scheme of fees and costs that currently exists, while seeking a more principled and transparent approach.

II. TERMINOLOGY AND DEFINITIONS

There is wide variation among the states (and sometimes within a state) as to the terms used to describe court revenue vehicles and the particular meaning associated with the term in differing circumstances. This paper re-adopts the definitions from the 1986 Standards as listed below, with an additional definition for “Fines and Penalties.” These terms, as they appear in this paper, are therefore consistent with the following definitions, with the exception of the civil and criminal case law discussions where the terms are used within the context of their meaning in the particular state in which the case arose.

Fees: Amounts charged for the performance of a particular court service and that are disbursed to a governmental entity. These fees are specified by an authority at a fixed amount.

¹ Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges and A National Survey of Practice, Conference of State Court Administrators, June, 1986. NCSC KF 8995 C6 1986 C.4

² “As State Courts Face Cuts, a New Push to Squeeze Defendants,” New York Times, April 6, 2009; available at <http://www.nytimes.com/2009/04/07/us/07collection.html> ; last visited Dec. 30, 2010.

Miscellaneous Charges: Amounts assessed that ultimately compensate individuals or non-court entities for services relating to the process of litigation. These amounts often vary from case to case based on the services provided.

Surcharges: Amounts added to fines, fees, or court costs that are used for designated purposes or are deposited into the general fund.

Court Costs: Amounts assessed against a party or parties in litigation. Such amounts are determined on a case-by-case basis and vary in relation to the activities involved in the course of litigation. Court costs include fees, miscellaneous charges and surcharges.

Fines and Penalties: Amounts assessed to penalize an individual or organization for violating a provision of law or rule following conviction or other adjudicatory decision by a judicial officer.

III. RELEVANT CASE LAW – FILING FEES

Access to the courts is a fundamental right. In *Boddie v. Connecticut*, the Supreme Court of the United States held unconstitutional a state statute requiring payment of fees before commencing a divorce action. The Court found that barring access of indigent persons through the imposition of a filing fee was inconsistent with the obligations imposed under the due process clause of the Fourteenth Amendment.³

Beyond this basic precept, the thrust of the case law concerning civil filing fees is that such fees may be imposed only to fund programs directly involving judicial services. When the connection between fees imposed and judicial services administered is slight, courts generally find that an unreasonable burden is placed upon the litigant, particularly in those states that have a constitutional “open courts” provision.⁴

³ *Boddie v. Connecticut*, 401 U.S. 371 (1971)

⁴ E.g., Oklahoma Constitution, Article II § 6, states: “The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered with sale, denial, or prejudice.”

Thirty-eight states currently have open courts provisions within their constitutions.⁵ The general purpose of such provisions is to ensure that citizens are not “arbitrarily deprived of effective remedies designed to protect basic individual rights.”⁶ In most of these states, the open courts provision is interpreted to prohibit “filing fees that go to fund general welfare programs, and not court-related services.”⁷

For example, in a Texas Supreme Court case, *LeCroy v. Hanlon*, the court held that “filing fees that go to state general revenues . . . are unreasonable impositions on the state constitutional right of access to the courts. Regardless of its size, such a filing fee is unconstitutional for filing fees cannot go for non-court-related purposes.”⁸ The court in *LeCroy* based its analysis on an Illinois Supreme Court case that examined whether a \$5 fee charged for divorce proceedings could go to finance a statewide domestic violence shelter program. The Illinois high court had held that such a fee was unconstitutional because it “had no relation to the judicial services rendered and was assessed to provide general revenue.”⁹ The court explained that

[c]ourt filing fees and taxes may be imposed only for purposes relating to the operation and maintenance of the court
Dissolution-of-marriage petitioners should not be required as a condition to filing, to support a general welfare program that relates neither to their litigation nor to the court system. If the right to obtain justice freely is to be a meaningful guarantee, it must preclude the legislature from raising general welfare through charges assessed to those who would utilize our courts . . . [I]f domestic violence services are deemed sufficiently court related to validate the funding scheme, countless other social

⁵ Erin K. Burke, *Note: Utah's Open Courts: Will Hikes in Civil Filing Fees Restrict Access to Justice?*, 2010 UTAH L. REV. 201, 201 n.1; *Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 674 (Utah 1985).

⁶ *Berry*, 717 P.2d at 675; *State v. Saunders*, 25 A. 588, 589 (N.H. 1889) (“The incidental right to an adequate remedy for the infringement of a right derived from the unwritten law, is coeval with the right of which it is an incident.”)

⁷ *LeCroy v. Hanlon*, 713 S.W.2d 335, 341 (Tex. 1986) (“Nearly all states with similar open courts provisions have held that filing fees that go to fund general welfare programs, and not court-related services, are unconstitutional.”)

⁸ *Id.* at 342.

⁹ *Id.* at 341.

welfare programs would qualify for monies obtained by taxing litigants.¹⁰

The Louisiana Supreme Court reached a similar conclusion in *Safety Net for Abused Persons v. Segura*, invalidating a statute that imposed filing fees in all civil suits to fund a family violence program.¹¹ The court held that fees assessed must be for services that bear a “logical connection to the judicial system.”¹² If a program is not “part of the judicial branch, serves no judicial or even quasi-judicial function, and is not a program administered by the judiciary, [then] it is not a link in the chain of the justice system.”¹³ The court elaborated that “clerks of courts should not be made tax collectors for our state, nor should the threshold to our justice system be used as a toll booth to collect money for random programs created by the legislature.”¹⁴

The Supreme Court of Oklahoma has also held that its open courts provision¹⁵ is violated if portions of court costs are deposited into accounts to fund non-judicial programs with “no relation to the services being provided or to the maintenance of the courts.”¹⁶ In that case, the challenged fee assessments included costs in adoption cases deposited for the Voluntary Registry and Confidential Intermediary program and the Mutual Consent Voluntary Registry, costs in civil cases deposited for the Child Abuse Multidisciplinary Account, and a cost credited to the Office of the Attorney General Victim Services Unit.¹⁷ Because the programs were “not for the maintenance or support of the court system, nor [meant to] defray [the] expenses of the [judiciary],” the court concluded: “they do not serve a judicial or even a quasi-judicial function.”¹⁸ The programs were “social welfare programs under the operation of the executive branch of government;” and “the funding of these programs through the use of fees imposed on litigants [is] impermissible.”¹⁹

The Oklahoma court clarified that the imposition of court costs on a litigant does not violate the open courts provision if they are “uniform, reasonable and related to the services provided,”²⁰ explaining that

[T]he purpose of the court fees is to reimburse the state for money that otherwise would have to be appropriated for the maintenance of the courts. The legislature may impose court costs and not violate the open access or sale of justice clause when such costs are in the nature of reimbursement to the state for services rendered by the courts. The connection between filing fees and the services rendered by the courts or maintenance of the courts is thus established.²¹

A number of state courts agree that directing civil filing fees into general welfare funds violates the open courts provisions. There are, however, exceptions to this trend. The Alabama Supreme Court²² declined to invalidate a statute that imposed a \$50 civil jury trial fee, a portion of which was directed into a general state fund. The court held that “neither the jury trial fee, nor that portion of it that is paid directly into the general fund, is an unconstitutional tax on the right to litigate or on the right to a jury trial in a civil case.”²³ The court reasoned that “[t]he guarantee of a right to trial by jury is not a guarantee of the ‘right to litigate without expense’; therefore, requiring the payment of a reasonable jury fee is not an infringement on the right to a trial by jury.”²⁴

The Florida Supreme Court has also upheld statutes directing portions of civil filing fees to a general revenue fund. There, the court held that “[d]irecting a portion of the filing fees to the general revenue fund for further appropriation is an accounting mechanism reasonably related to the governmental purpose of funding the administration of justice.”²⁵ Specifically, the court found that “the Legislature would be using the filing fees to fund the administration of justice if it funds the justice system

¹⁰ Id. at 1351.

¹¹ Id. at 1042. The invalidated statute also provided for the imposition of a \$3.00 cost on all criminal cases. (See LA R.S. 13:1906 B.)

¹² *Safety Net for Abused Persons v. Segura*, 692 So.2d 1038, 1044 (La. 1997).

¹³ Id.

¹⁴ Id. at 1042.

¹⁵ See fn. 9.

¹⁶ *Fent v. State ex. Rel. Dept. of Human Services*, 236 P.3d 61, 70 (Okla. 2010).

¹⁷ Id. at 64.

¹⁸ *Fent* at 69.

¹⁹ Id.

²⁰ Id. at 66.

²¹ Id.

²² “That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay.” Alabama Const. Art. I, Sec. 13.

²³ *Fox v. Hunt*, 619 So. 2d 1364, 1367 (Ala. 1993).

²⁴ *Fox*, 619 So. 2d at 1366.

²⁵ *Crist v. Ervin*, No. SC10-1317, 2010 Fla. LEXIS 1858, at *4 (Fla. Nov. 4, 2010).

at a level at least equal to the amount of filing fees that is commingled with other state money in the general revenue fund.”²⁶

Variations are also found in those courts whose state constitutions do not include open courts provisions, such as Arizona. There, a state court of appeals upheld a statute requiring parties in a marriage dissolution action to pay fees that went towards funding a domestic violence shelter and a child abuse prevention and treatment group.²⁷ When the appellant argued that the statute was unconstitutional, the court responded, “Arizona has no comparable [open courts] provision” that relates to an individual’s “right to obtain justice freely,”²⁸ nor a requirement that such court “fees be used only for court-related programs.”²⁹

As a policy matter, some commentators have raised concerns related to the impact of mounting filing fees. Such fees, for example, may be seen as thwarting the judicial function as a viable alternative to less civilized dispute resolution:

the costs to the justice system may be higher if the alternative to resolution of disputes through the courts ... [is] illegal forms of dispute resolution ... [such as] self-help or street justice. Indeed, the Open Courts Provision itself seeks to secure a basic principle of justice that will, in the end, deter persons wronged by others from resorting to self-help and the inevitable violence that ensues when people take the law into their own hands rather than seeking judicial remedies. We ought to remember that access to the courts for the protection of rights and the settlement of disputes is one of the most important factors in the maintenance of a peaceable and well-ordered society.³⁰

Critiques of civil filing fees in federal court may also be analogous, as one writer describes a potential consequence of using access fees as a means of caseload diversion:

It is reasonable to assume that the more money one has, the lower the value, or utility, she will ascribe to each particular dollar; thus, the marginal utility of dollars declines as the amount involved increases. Access fees, therefore, constitute a decidedly inefficient gauge to determine the utility of a suit to the litigant. The use of access fees as entry barriers could very well press litigants with “high utility value” stakes out, while leaving those with lower utility values in.³¹

Policy implications aside, it is clear that a number of state courts carefully scrutinize the use and allocation of filing fees to determine their constitutionality. Many courts, as shown, require that such fees be directed in large part, if not entirely, to court-related purposes. And yet, it is not always clear what exactly “court-related purposes” entail.

The Louisiana Supreme Court offered a broad definition in *Safety Net*, requiring that fees assessed be for services that have a “logical connection to the judicial system,” or that bear a “relationship to the nature of the filing against which it is assessed.”³² Similarly, the Texas Supreme Court held that “[c]harging litigants that are able to pay a reasonable fee for judicial support services does not violate the open courts provision. [T]hey are permitted because they go for court-related purposes.”³³

In a more recent decision, the Louisiana high court relied on the state Judicial Council’s General Guidelines Regarding the Evaluation of Requests for Court Costs and Fees (promulgated in 2004) to determine what might fall under “court costs” and “court-related operational costs.”³⁴ Under those guidelines (further discussed in Part VI), a fee is

a charge or cost . . . that is used to defray the operational costs of the courts or the court-related operational costs of the clerks of court or other court-related functions, and that has been authorized by state law to be collected from a person either filing a document in any civil or criminal proceeding with the clerk of court, appearing in a civil matter before a court, failing to fulfill a condition of

²⁶ *Crist*, 2010 Fla. LEXIS 1858, at *10.

²⁷ *Browning v. Corbett*, 734 P.2d 1030, 1031-1032 (Ariz. App. 1986).

²⁸ *Id.* at 1033.

²⁹ *Id.*

³⁰ *Burke*, 2010 UTAH L. REV. at 220 (quotations omitted).

³¹ Martin D. Beier, *Economics Awry: Using Access Fees for Caseload Diversion*, 138 U. PA. L. REV. 1175, 1193-94 (1990).

³² *Safety Net*, 692 So. 2d at 1044.

³³ *LeCroy*, 713 S.W.2d 335, 342-43 (citations omitted).

³⁴ *State v. Lanclus*, 980 So. 2d 643, 653 (La. 2008).

release, or meeting a condition of probation or other court order.³⁵

This definition is consistent with a number of other courts' interpretations of "court-related purposes":

- the Illinois Supreme Court held that "court filing fees and taxes may be imposed only for purposes relating to the operation and maintenance of the courts";³⁶
- the Supreme Court of Oklahoma explained that the purpose of court costs is "to reimburse the state for the expenses incurred in providing and maintaining all of the officers and other facilities of the court, and is intended as compensation to the state for services rendered, not by the clerk only, but by the entire court";³⁷ and
- the Florida Supreme Court held that directing portions of filing fees to the law library qualified as a judicial purpose, because "the law library fulfills an important and growing need of practitioners, judges, and litigants. It is essential to the administration of justice today, and it is appropriate that its costs be assessed against those who make use of the court systems of our state."³⁸

Fees dedicated for services such as family violence prevention,³⁹ counseling, marriage preservation, or victim services⁴⁰ are suspect, as they are unrelated to the maintenance and operation of the courts. While states like Florida allow for a *portion* of the fees to go to a general revenue fund,⁴¹ other states, like Texas, do not permit even bifurcated allocation of court fees.⁴²

IV. RELEVANT CASE LAW – CRIMINAL COURT COSTS

Most courts agree that court costs imposed in criminal proceedings must bear a reasonable relationship to the expenses of prosecution. However, courts vary widely in their determination of whether such costs must defray the expenses of defendants' particular prosecutions, or whether those costs might go into a larger fund, the purpose of which is to remedy the cause of the offenses.

In Michigan, Wyoming, and Louisiana, costs may be assessed only against a defendant if used to defray the expenses of the defendant's particular prosecution. An early case from the Michigan Supreme Court found that a \$250 court cost imposed on a defendant for violating the "prohibitory liquor law" was excessive because it bore "no reasonable relation to the expenses actually incurred in the prosecution."⁴³ The Michigan Court of Appeals upheld this reasoning in reference to a more recent statute in *People v. Brown*.⁴⁴ In that case, the court held that "expert witness costs were 'expenses specifically incurred in prosecuting the defendant'" and were thus properly assessed. As summarized in a law review article on Michigan court costs,

Michigan cases indicate that state courts have consistently adhered to the position that where assessed costs are to be paid to the state for public expenditures, the amount assessed must arise out of the particular case before the court and be directly or indirectly related to that particular case.⁴⁵

[C]lerks of court should not be made tax collectors for our state, nor should the threshold to our justice system be used as a toll booth to collect money for random programs created by the legislature.

– Supreme Court of Louisiana

³⁵ "General Guidelines Regarding the Evaluation of Requests for Court Costs and Fees," available at http://www.lasc.org/la_judicial_entities/Judicial_Council/CourtCostGuidelines.pdf.

³⁶ *Crocker*, 459 N.E.2d 1346, 1351.

³⁷ *In re Lee*, 168 P.53, 56 (Okla. 1917).

³⁸ *Farabee v. Board of Trustees*, 254 So.2d 1, 5 (Fla. 1971).

³⁹ *Safety Net*, 692 So.2d at 1044; *Crocker*, 459 N.E.2d at 1351.

⁴⁰ *Fent*, 236 P.3d at 70.

⁴¹ *Crist*, 2010 Fla. LEXIS 1858, at *4 (Fla. Nov. 4, 2010).

⁴² *LeCroy*, 713 S.W.2d at 342.

⁴³ *People v. Wallace*, 222 N.W.698, 699 (Mich. 1929).

⁴⁴ *People v. Brown*, 755 N.W.2d 664, 681 (Mich. Ct. App. 2008).

⁴⁵ Elizabeth Campbell, Tanya Marcum, and Patricia Morris, *Study: The Rationale for Taxing Costs*, 80 U. DET. MERCY L. REV. 205, 209 (2003).

The Wyoming Supreme Court has held that “[c]osts of prosecution do not include the general expense of maintaining a system of courts and administration of justice.”⁴⁶ The Louisiana Supreme Court, guided by its decision in *Safety Net*, invalidated a statute assessing costs against traffic offenders that went into the Greater New Orleans Expressway Commission.⁴⁷ The court held that the statute “bears no relation to an individual’s particular offense and does not help defray the costs of prosecuting that particular individual.”⁴⁸ Similarly, the Texas Court of Criminal Appeals has held that assessments of costs for the establishment and maintenance of a law library were invalid, because “costs in criminal cases are assessed as a part of the punishment for the commission of the offense charged.”⁴⁹

In a somewhat less restrictive approach, the Supreme Court of Virginia sustained an assessment of \$5 against all traffic offenders used to defray the costs of administration of the Division of Motor Vehicles.⁵⁰ The court noted that the Division was statutorily required to maintain records to supply evidence in such cases, and to forward abstracts of these records to the Division Commissioner. As such, the assessment was “directly related to convictions for traffic offenses” and “needed to defray, or to defray partially the expense incurred by the State as a result of a conviction for a traffic offense.”⁵¹

Other states permit directing court costs into more general funds to an even greater extent than that permitted for civil filing fees. As the Arkansas Supreme Court noted, “[t]he decisions elsewhere are not unanimous in deciding to what extent the costs in a criminal case must be directly related to that particular prosecution.”⁵² For example, the Florida Supreme Court has specifically rejected the argument “that costs must be expenses incident to case prosecution.”⁵³

This line of cases generally holds that as long as a criminal assessment is *reasonably related to the costs of administering the criminal justice system*, its imposition will not render the courts “tax gatherers” in violation of the separation of powers doctrine,⁵⁴

and that costs may be imposed without a precise relationship to the actual cost of the particular prosecution.⁵⁵ For example,

- the Arizona Supreme Court upheld a statute requiring defendants convicted of driving while impaired to pay a cost that would go into the Highway Safety Program and the Alcohol and Drug Safety Fund;⁵⁶
- the Oklahoma Court of Criminal Appeals upheld a statute requiring that costs assessed against criminal defendants be paid into a victims’ compensation fund,⁵⁷ as well as a statute requiring that costs assessed against defendants convicted of drug trafficking be forwarded to the Drug Abuse Education and Treatment Fund;⁵⁸ and
- the Florida Supreme Court upheld a \$1 cost assessed against all convicted criminal defendants to be deposited in the state general revenue fund, stating “It is not unreasonable that one who stands convicted of such an offense should be made to share in the improvement of the agencies that society has had to employ in defense against the very acts for which he has been convicted.”⁵⁹

Other courts have held that costs assessed against criminal defendants may be directed into funds that generally address the problem or offense of which the defendant was convicted “[I]t is only fair that those who help create the problem should bear some of the costs of trying to alleviate it in themselves or others.”⁶⁰

In other words, no general principle defines the validity of court costs in criminal cases, and such determinations are instead dependent on state-specific holdings. Despite the existence of decisions requiring more restrictive assessment of costs, those courts that permit the direction of funds into victim compensation and drug treatment seem to allow greater latitude than their civil counterparts, which appear less likely to permit the direction of filing fees into such “non-judicial” uses.

There is a further issue in the criminal context: the differential assessment of costs by locality. Courts

⁴⁶ *Arnold v. State*, 306 P.2d 368, 463 (Wyo. 1957).

⁴⁷ *State v. Lanclos*, 980 So. 2d 643, 645 (La. 2008).

⁴⁸ *Lanclos*, 980 So. 2d at 653.

⁴⁹ *Ex parte Carson*, 159 S.W.2d 126, 129 (Tex. Crim. App. 1942).

⁵⁰ *Carter v. Norfolk*, 147 S.E.2d 139, 140-44 (Va. 1966).

⁵¹ *Carter*, 147 S.E.2d at 144.

⁵² *Broyles v. State*, 688 S.W.2d 290, 291 (Ark. 1985).

⁵³ *State v. Champe*, 373 So. 2d 874, 880 (Fla. 1978).

⁵⁴ *State v. Claborn*, 870 P.2d 169, 173 (Okla. Crim. App. 1994) (emphasis added).

⁵⁵ *Broyles v. State*, 688 S.W.2d at 292.

⁵⁶ *Broyles*, 688 S.W.2d 290, 291 (Ark. 1985).

⁵⁷ *Claborn*, 870 P.2d at 174.

⁵⁸ *State v. Ballard*, 868 P.2d 738, 741 n.1 (Okla. Crim. App. 1994).

⁵⁹ *State v. Young*, 238 So. 2d 589, 590 (Fla. 1970).

⁶⁰ *Ballard*, 868 P.2d at 741 n.1.

have found that “any law which makes the punishment for an offense in one or more counties greater than the punishment of other counties for the same offense is void”⁶¹ because it violates the equal protection and due process clauses of federal and state constitutions. “A law which should prescribe death as the punishment of murder in one county, and imprisonment as the penalty for the same crime in other parts of the State, would be void, because not operating equally upon all inhabitants of the State.”⁶² Equal protection requires that “no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.”

In 1877, a Missouri Court of Appeals found unconstitutional the fact that one county prescribed longer jail time for the crime of abortion than other counties. “The law highly regards the liberty of the citizen, and the organic law of the State forbids the Legislature to enact that the term of imprisonment for the same offense shall vary in different localities.”⁶³

In *Ex parte Ferguson*, the Texas Court of Criminal Appeals invalidated a statute that assessed a varying fee upon criminal defendants based upon certain county population brackets. The court reasoned that because the statute failed to “give equal protection to all . . . citizens alike,” it deprived them of equal protection and due process.⁶⁴ In *Ex parte Sizemore*, the same court invalidated a portion of a local road law that provided convicts a work allowance (to be credited against their fines and costs) at a rate of \$0.50 per day because it differed from a statewide law providing that such an allowance be \$3.00 per day,⁶⁵ and in *Ex parte Carson*, the court invalidated a statute that provided for a \$1.00 assessment in criminal cases only in counties having eight or more district courts.⁶⁶

More recently, in *State v. Gregori*, the Supreme Court of Missouri rejected a statute that devised varying punishments for the same criminal offense throughout the counties.⁶⁷ The statute provided that 17 year-old children in counties with a population of 50,000 or more were subject to the Juvenile Court

Act, while 17 year-old children in counties with a population less than 50,000 were subject to criminal penalties.⁶⁸ The court explained that the provision denied constitutional protection because it failed to operate “equally upon all inhabitants of the state.”⁶⁹

The Supreme Court of North Carolina invalidated a similar statute that subjected criminal defendants from five particular state counties to a fine, while criminals elsewhere, who committed the same offense, were subject to a fine or imprisonment.⁷⁰ The court reasoned that criminal punishment schemes should “operate uniformly upon persons and property, giving to all under like circumstances equal protection and security.”⁷¹

V. PRINCIPLES WITH COMMENTARY

In adopting the following principles, the Conference clearly acknowledges the tension, and at times, direct conflict, that exists between the themes embodied in the principles and the realities of government, governance, politics, the economy and fiscal practices and policies in each individual state. The principles are intended to serve as guideposts that will direct reasoned and constructive thinking and conversations leading toward balance among the many competing interests and forces that result in the establishment of various revenue vehicles within the court system.

Principle 1: Courts should be substantially funded from general governmental revenue sources, enabling them to fulfill their constitutional mandates. Court users derive a private benefit from the courts and may be charged reasonable fees partially to offset the cost of the courts borne by the public-at-large. Neither courts nor specific court functions should be expected to operate exclusively from proceeds produced by fees and miscellaneous charges.

It is axiomatic that the core functions of our government are supported from basic and general tax revenues. Government exists and operates for the common good based upon a common will to be

⁶¹ *Ex parte Carson*, 159 S.W.2d 126, 130 (Tex. Crim. App. 1942).

⁶² *In re Jilz*, 3 Mo. App. 243, 246 (Mo. Ct. App. 1877).

⁶³ *Jilz*, 3 Mo. App. at 246.

⁶⁴ *Ex parte Ferguson*, 132 S.W.2d 408, 410 (Tex. Crim. App. 1939).

⁶⁵ *Ex parte Sizemore*, 8 S.W.2d 134, 135 (Tex. Crim. App. 1928).

⁶⁶ *Ex parte Carson*, 159 S.W.2d 126, 127 (Tex. Crim. App. 1942).

⁶⁷ *State v. Gregori*, 2 S.W.2d 748 (Mo. 1928).

⁶⁸ *State v. Gregori*, 2 S.W.2d 748 (Mo. 1928).

⁶⁹ *State v. Gregori*, 2 S.W.2d 749 (Mo. 1928).

⁷⁰ *State v. Fowler*, 136 S.E. 709, 711 (N.C. 1927).

⁷¹ *Id.* at 710.

governed, and the expense thereof is borne by general taxation of the governed. Courts, as a core function of government, should be substantially funded by general government revenues. It is as illogical to expect the judiciary to be self-supporting through user fees as it would be to expect the executive or legislative branches of government to be funded through user fees.

However, it is clear that courts also provide a direct private benefit to users of the court system and it is reasonable to expect that they shoulder a portion of the general cost of the litigation, particularly so because certain users are high frequency. Historically, court-related fees have consisted primarily of the fee to initiate a case before the court. These “filing fees” traditionally have been viewed as offsetting the basic cost of case initiation: creating and maintaining the paper file of the court action. Court fees are generally nominal in comparison to the actual cost of providing court services. In an economically efficient system of court fees, the fees would reflect the long-run marginal cost of having a system in place that is capable of processing all cases, and actually litigating at least some small portion.⁷²

In more recent times, courts and legislatures have provided or mandated additional “services” that extend beyond the traditional adversarial adjudicatory model. Courts now frequently offer or mandate mediation services, parenting classes in marriage dissolutions, and procedural assistance to *pro se* litigants, for which the litigant is assessed a miscellaneous charge. These ancillary programs and services are often primarily or wholly supported by the miscellaneous charges assessed against the litigants. This is not inappropriate where the services provided are not precedent to the resolution of a case or where simple fee waiver processes are in place for litigants. However, in determining whether to set a fee and the amount of the fee, the cumulative cost of court fees and the total cost of the service must be thoughtfully balanced.

Principle 2: Fees and miscellaneous charges cannot preclude access to the courts and should be waived for indigent litigants.

⁷² Cabrillo, Francisco, and Sean Fitzpatrick, 2008. *The Economics of Courts and Litigation*. Northhampton, Massachusetts: Edward Elgar.

The need for governmental revenues must be carefully counterbalanced with the public’s access to the courts. By increasing the financial burden of using the courts, excessive fees or miscellaneous charges tend to exclude citizens who have neither the monetary resources available to the wealthy nor the governmental subsidies for the poor. Excessive fees and miscellaneous charges can effectively deny this middle economic income group such fundamental rights as the right to a trial by a jury of one’s peers and the right of equal access to the court system. The Supreme Court of Washington enacted General Rule 34 in response to the growing number of charges litigants face, clearly providing for “a waiver of filing fees or surcharges the payment of which is a condition precedent to a litigant’s ability to secure access to judicial relief from a judicial officer . . .”⁷³ This clear standard implicitly acknowledges that, while fees may be appropriate, they cannot serve as a bar to judicial relief.

*Principle 3: Surcharges should only be used to fund justice system purposes and care must be exercised to ensure the cumulative cost of litigation does not impede access to justice and that the fee and cost structure does not become too complex.*⁷⁴

Surcharges are sometimes used for purposes clearly related to the courts, and sometimes are used for purposes that have no relationship to the operation of the courts or justice system. The latter is inappropriate and the former must be instituted sparingly. If taxation is a prerogative of the legislative branch of government, the practice of earmarking funds escapes the priority-setting process existing in most progressive governmental entities. Neither use should escape the appropriations’ review process nor should the amount of a public good to be provided by such funds be necessarily limited to the amount of revenue generated by a surcharge for the purpose. If the purpose funded by a surcharge is for the greater public good, it should be worthy of consideration of funding from a broader general revenue source through the normal appropriation process.

⁷³ Washington Court Rules, General Rule 34 (http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr34)

⁷⁴ See also <http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf> and Justice Center at Council of State Governments, Repaying Debts: http://www.reentrypolicy.org/jc_publications/repaying_debts_full_report

The benefit derived from the efficient administration of justice is not limited to those who utilize the system for litigation, but is enjoyed by all those who would suffer if there were no such system -- the entire body politic. Society as a whole benefits from the very existence of a trusted dispute resolution system with the capability to process all cases timely and bring some fraction of them to trial and continue to develop the common law, or the price of a given crime.

As one commonly adopted surcharge suggests, it can be appropriate to include a surcharge on filing fees to generate revenue that allows the court to provide for the safety and security of litigants in court facilities. In this instance the litigant is a clear direct beneficiary of the service and the tangential public good, while present, is distant.

There is no bright line rule for policymakers to rely upon in determining whether a particular surcharge is appropriate. A balance must be struck, giving consideration to

- The extent to which a surcharge supports a court-related function;
- The cumulative cost of litigation;
- The overall complexity of the cost and fee structure; and
- Where the service being funded falls on the private good/public good spectrum.

In addition to the general discussion above, increasing attention must be given to the impact of criminal fees and charges on the population re-entering society from incarceration. As part of the reentry movement, the Council of State Governments Justice Center points out that “people released from prisons and jails typically have insufficient resources to pay their debts to their children, victims, and the criminal justice system.”⁷⁵ Other groups have also highlighted this issue:

States have increasingly turned to user fees to fund their criminal justice systems, as well as to provide general budgetary support. States now charge defendants for a wide range of activities including booking

⁷⁵ “Repaying Debts,” Council of State Governments Justice Center, 2007. report summary at p. 2, available at: http://www.reentrypolicy.org/jc_publications/repaying_debts_summary/RepayingDebts_Summary_v18.pdf

fees, probation supervision, jail stays, and the post-conviction collection of DNA samples. Every stage of the criminal justice process, it seems, is now chargeable to the criminal defendant as a cost. These “user fees” differ from other kinds of court-imposed financial obligations. Unlike fines, whose [*sic*] purpose is to punish, and restitution, whose [*sic*] purpose is to compensate victims, user fees are explicitly intended to raise revenue. Sometimes deployed as an eleventh hour maneuver to close a state budget gap, the decision to raise or create new user fees is rarely made with much deliberation or thought about the consequences.⁷⁶

The proliferation of these fees and costs as chargeable fees and costs included in the judgment and sentence issued as part of the legal financial obligation of the defendant has recast the role of the court as a collection agency for executive branch services.

Principle 4: Fees and costs, however set, should be determined in consultation with the appropriate judicial body, and reviewed periodically to determine if they should be adjusted.

Policy considerations such as types of fee structures and public access are matters of concern to the judiciary, and legislative review of fees and miscellaneous charges must involve the judicial branch as an integral part of the process. Because legislative bodies may be primarily concerned with public funding policies, the judiciary must assume the responsibility for protecting the public’s access to the courts.

Periodic, coordinated review by the legislative and judicial branches should ensure a reasonable level of fees and miscellaneous charges that does not unduly restrict access to the courts but is reflective of the current economy. The review should permit sufficient time to evaluate the impact of previous revisions (if any); to allow the collection and analysis of cost of living and other economic data to

⁷⁶ “Criminal Justice Debt: A Barrier to Reentry,” Brennan Center for Justice, 2010; available at http://brennan.3cdn.net/c610802495d901dac3_76m6vqhpy.pdf. See also the ACLU report http://www.aclu.org/files/assets/InForAPenny_web.pdf and the Brennan Center report http://brennan.3cdn.net/c610802495d901dac3_76m6vqhpy.pdf

determine actual and projected changes in these factors; to prepare a documented report and recommendation regarding the existing fee schedule; and to provide advance notice of rate proposed increases to judicial offices, the practicing bar, and the public. Proposed changes in fees should be subject to public review and commentary.

Attention should be given to the reduction of fees and miscellaneous charges when improved procedures have resulted in certain economies. Annual reviews do not allow sufficient time to complete a thoughtful, deliberate process. However, reviews occurring in a time span of every three to five years would allow collection of data and necessary consideration for the decision-making process.

The importance of regular reviews cannot be overstated as it is this process that prevents the erosion of the basis for the fee and miscellaneous charges structure and insures the durability of the system.⁷⁷

Principle 5: Fees and miscellaneous charges should be simple and easy to understand with fee schedules based on fixed or flat rates, and should be codified in one place to facilitate transparency and ease of comprehension.

In many states the only people who fully understand the array of court costs and fees are in the Administrative Office of the Courts, and in some (but possibly not all) clerks' offices. The complexity of statutory drafting tends to exacerbate the complexity of the fees themselves, so that legislators are hard-pressed to grasp either the need for, or cumulative impact of, new proposals for costs and fees. When the system includes surcharges that are event specific, different fees for different case types, local fee options, etc., even the clerk may lack the information or expertise needed to determine accurately and to assess the costs or fees called for by statute in a given case.

A flat or fixed rate is one that consolidates all of the fees itemized for each of the different transactions involving court services into one fee. The flat or fixed fee may vary for different types of cases but should not vary between cases of the same type. There are substantial differences between case processing services provided for a small claims case, a municipal case, a criminal case or a civil case filed

in the general trial jurisdiction. In contrast, an appellate fee providing access to the appellate process may not vary in amount by type of case if the court support service is basically the same for each case filed.

In the first half of the 20th century, most courts used a "step" fee system, which provided various fees for each activity undertaken in a case. In 1943, the Director of the Administrative Office of the U.S. Courts noted the importance of "simplicity" and "uniformity" to any schedule of fees.⁷⁸ A major problem with a "step" fee system is that as the number of fees for different activities increases, calculation of the correct fees becomes more complex, requiring substantial expenditures of effort from all concerned. For that reason, a fixed or flat rate system is recommended.

All schedules of court fees and miscellaneous charges should be set forth in a single location in the laws or court rules of the body having appropriate authority. While each level of court may have its own applicable costs and fees statutes, these should be consistently and uniformly codified within a chapter or a section of the statutes or rules setting out the entire structure of fees and charges in the courts. Establishing court fees or miscellaneous charges without codifying them into one section is confusing and inefficient. Often, statutory enactments or rule revisions go unnoted by clerks who may be isolated and ill equipped to search for new or revised fees and charges. Administrative costs rise with a proliferation of court fee statutes spread over many volumes of law. Revenue for governmental entities is lost as a result of oversight or failure to keep abreast of new enactments.

Principle 6: Optional local fees or miscellaneous charges should not be established.

If a court is established by state constitution and governed by laws passed by the state legislature, it is appropriate that some state funding be provided to fund the court. Local financing contributes to a fragmented court system where "services vary dramatically according to the locality's ability to pay."⁷⁹ Fees and miscellaneous charges should be consistent within a state. Allowing court fees to be

⁷⁷ Op cit., Stott and Ross, p. 39

⁷⁸ U.S. Congress house Committee on the Judiciary. "Fees and Costs in the United States Courts." Hearings before Subcommittee No. 4 of the Committee on the Judiciary. Public Document No. 20, 78th Congress, First Session, November 1943.

⁷⁹ A.B.A., Standards Relating to Court Organization 99 (1974).

established by local governing bodies or by local judges risks the formulation of inconsistent practices among courts of similar jurisdictions. There may be a tendency for locally-funded courts to prioritize local fees over legislative fees, and there is an appearance of conflict when fees fund local programs and the judges order defendants to use those programs. Finally, a judge could use the threat of waiving fees to force local entities to conform to practices or fees schedules that the judge thinks are appropriate.

Courts should have uniform processes and litigants should receive consistent treatment regardless of the court's locality. The amount of fees and miscellaneous charges should be established on a rational basis throughout a state and should not be more or less costly for a litigant simply as a result of venue and jurisdiction.⁸⁰

In criminal cases, differential treatment in different localities by statute is clearly subject to equal protection challenges.

Discretionary charges or local levy charges should be eliminated. If the court is governed by state law, local fees should be prohibited from creating inconsistent costs in different locales. Superfluous charges, which are not easily understood and accepted by the public, erode confidence and should be eliminated.

Principle 7: The proceeds from fees, costs and fines should not be earmarked for the direct benefit of any judge, court official, or other criminal justice official who may have direct or indirect control over cases filed or disposed in the judicial system. All funds collected from fees, costs and fines should be deposited to the account of the governmental source providing the court's funding.

The due process clause of the Fourteenth Amendment guarantees the right to a trial before a disinterested and impartial judicial officer.⁸¹ Consequently, any judicial officer who has control over the processing of cases may be disqualified for holding a pecuniary interest in fees payable by litigants.

For example, in *Ward v. Monroeville*, 409 U.S. 57, 93 S.Ct. 60 (1972), an ordinance authorized the

mayor, who also had wide executive powers, to preside as a judge over certain traffic offenses. A large portion of the Monroeville income was derived from fees, costs, fines, and forfeitures imposed by the mayor in his traffic court. The mayor convicted the petitioner of two offenses and fined him \$100. The petitioner appealed his conviction, arguing that because the mayor was interested in securing revenue, the petitioner was denied his right to a fair and impartial trial. The Supreme Court of the United States agreed, setting out a standard for determining whether due process of law has been denied.

[Every procedure] which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law.⁸²

The Court, applying this standard, concluded that a possible temptation "exist[s] when [a judicial officer's] responsibilities for village finances may make him partisan to maintain the high level of contribution from the ... court."⁸³ Similarly, an unconstitutional temptation may be created by the practice of earmarking revenue from costs and fees for the direct or indirect benefit of judicial officers that control the disposition of criminal cases.

There is also tension between this principle and the acceptance that surcharges that support court activities are permissible. Arguably, a judge who denies the waiver of a surcharge that funds court security benefits from that security. Again, policymakers must weigh competing values along a continuum when assessing the propriety of surcharges that support court operations. In particular, consideration must be given to the degree to which it appears that an individual judge or court official would benefit from the assessment of the surcharge.

⁸⁰ *Ibid.*, p.10

⁸¹ *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437 (1927)

⁸² *Ward v. Monroeville*, 409 U.S. 57, 93 S. Ct. 60 (1972)

⁸³ *Id.*

VI. THE WAY FORWARD

According to a 2010 study by the National Center for State Courts, it is “unlikely that there is any single state that could be held out as a model for a budgeting and revenue structure that provides access, adequacy, stability, equity, transparency, and simplicity.”⁸⁴ Addressing these issues is a state-by-state matter – this is one problem that does not lend itself to a national summit – and a national paper can only go so far in prescribing a particular approach.

COSCA advocates that its members:

1. *Make the current system visible.*
Promote accountability and transparency regarding fees and costs within each state by developing and maintaining accurate and understandable information about the current laws, structures and amounts for fees and costs. Once developed, this information should be routinely shared with legislators, the executive branch, and the public. For example, the Texas OCA provides extensive guidance on the state court website, specifically for clerks but available to the public,⁸⁵ and the court administrator used a blog post to provide information on the various bills in 2011 that would increase costs on conviction, advising, for example, that if all seven bills passed, the total for most tickets would increase from \$98 to \$137.⁸⁶
2. *Advocate for a principled approach.*
The factual information regarding fees and costs must be presented within the context of a principled framework that accounts for fiscal realities. The seven principles provide a solid base from which individual states may craft a set of policy principles to frame their unique fee and cost discussions and dialogues. Development of a set of principles that work within the context of each state can best be undertaken by involvement of a workgroup or task force. That also takes into account all the constituencies that are dependent on the current array of dedicated funding streams, and strive to ensure that those

services maintain necessary funding, even if future funding is not through court fees.

Consider the legislative perspective. The dedication of court fees and costs to particular programs raises the same issues that state legislatures confront, on a larger scale, with the practice of earmarking taxes. The National Conference of State Legislatures’ report, “Evaluation of Earmarking,”⁸⁷ suggests that the arguments in favor of earmarking tend to be of limited application to the real world of state taxes and budgets, and that the arguments against earmarking are more powerful. Earmarking hampers legislators’ budgetary control, distorts the distribution of funds among programs, and reduces the flexibility of the revenue structure (which increases the difficulty of adapting budgets to changing conditions). These arguments apply with equal force to the practice of dedicating costs and fees to specific programs. Although many legislators may seek new fees and costs for projects, they should be made cognizant of the inherent problems of dedicating court costs and fees.

Louisiana provides one case study of the effort to take a principled approach.⁸⁸ In 2003, that state’s Judicial Council formed a Court Cost/Fee Committee of its Judicial Council, pursuant to a state statute passed that year requiring consideration by the Council of any proposals for court costs and fees.⁸⁹ The evaluation guidelines developed by that committee include determination of the financial need for the new assessment, analysis of the probable yield, and, most important, a determination of the propriety of the cost or fee.

Among the appropriate purposes for which court costs or fees may be requested are

to support a court or the court system or help defray the court-related operational costs of other agencies;
to support an activity in which there is a reasonable relationship between the fee or court cost imposed and the costs of the administration of justice.⁹⁰

⁸⁴ State of Oregon, Report to the Joint Interim Committee on State Justice System Revenues (National Center for State Courts 2010), on file with author.

⁸⁵ See <http://www.courts.state.tx.us/pubs/pubs-home.asp>.

⁸⁶ See <http://courtex.blogspot.com/2011/03/costs-on-conviction.html>.

⁸⁷ Id.

⁸⁸ There is legislative activity pending that may affect Louisiana’s system.

⁸⁹ See press release at: http://www.lasc.org/press_room/press_releases/2003/2003-14.asp; last viewed May 12, 2011.

⁹⁰ “General Guidelines Relating to the Evaluation of Requests for Court Costs and Fees.” At: http://www.lasc.org/la_judicial_entities/Judicial_Council/CourtCostGuidelines.pdf; last viewed May 12, 2011.

Each state should strive for a revenue structure that provides access, adequacy, stability, equity, transparency and simplicity. Each state's court leadership must moderate or staunch the legislative impulse (and sometimes its own) to add additional and higher fees. On the civil side, court leaders must advocate for the principles of reasonable access to justice, comprehensible and defensible fees, and restricting revenue generation to court purposes only. On the criminal side, court leaders have a responsibility to ensure that judicial orders are followed, but also to ensure that the system is not overloaded with unreasonable financial obligations to fund other governmental services. For both criminal and civil cases, court leaders must work toward uniformity across the state and be the experts on whatever structure currently exists, while seeking a more principled and transparent approach.

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Administrative Assessment Overview

NRS 176.059 Administrative assessment for misdemeanor: Collection; distribution; limitations on use.

1. Except as otherwise provided in subsection 2, when a defendant pleads guilty or guilty but mentally ill or is found guilty or guilty but mentally ill of a misdemeanor, including the violation of any municipal ordinance, the justice or judge shall include in the sentence the sum prescribed by the following schedule as an administrative assessment and render a judgment against the defendant for the assessment:

Fine	Assessment
\$5 to \$49.....	\$30
50 to 59.....	45
60 to 69.....	50
70 to 79.....	55
80 to 89.....	60
90 to 99.....	65
100 to 199.....	75
200 to 299.....	85
300 to 399.....	95
400 to 499.....	105
500 to 1,000.....	120

If the justice or judge sentences the defendant to perform community service in lieu of a fine, the justice or judge shall include in the sentence the amount of the administrative assessment that corresponds with the fine for which the defendant would have been responsible as prescribed by the schedule in this subsection.

2. The provisions of subsection 1 do not apply to:

(a) An ordinance regulating metered parking; or

(b) An ordinance which is specifically designated as imposing a civil penalty or liability pursuant to [NRS 244.3575](#) or [268.019](#).

3. The money collected for an administrative assessment must not be deducted from the fine imposed by the justice or judge but must be taxed against the defendant in addition to the fine. The money collected for an administrative assessment must be stated separately on the court's docket and must be included in the amount posted for bail. If bail is forfeited, the administrative assessment included in the amount posted for bail pursuant to this subsection must be disbursed in the manner set forth in subsection 5 or 6. If the defendant is found not guilty or the charges are dismissed, the money deposited with the court must be returned to the defendant. If the justice or judge cancels a fine because the fine has been determined to be uncollectible, any balance of the fine and the administrative assessment remaining unpaid shall be deemed to be uncollectible and the defendant is not required to pay it. If a fine is determined to be uncollectible, the defendant is not entitled to a refund of the fine or administrative assessment the defendant has paid and the justice or judge shall not recalculate the administrative assessment.

4. If the justice or judge permits the fine and administrative assessment to be paid in installments, the payments must be first applied to the unpaid balance of the administrative assessment. The city treasurer shall distribute partially collected administrative assessments in accordance with the requirements of subsection 5. The county treasurer shall distribute partially collected administrative assessments in accordance with the requirements of subsection 6.

5. The money collected for administrative assessments in municipal court must be paid by the clerk of the court to the city treasurer on or before the fifth day of each month for the preceding month. The city treasurer shall distribute, on or before the 15th day of that month, the money received in the following amounts for each assessment received:

(a) Two dollars to the county treasurer for credit to a special account in the county general fund for the use of the county's juvenile court or for services to juvenile offenders. Any money remaining in the special account after 2 fiscal years must be deposited in the county general fund if it has not been committed for expenditure. The county treasurer shall provide, upon request by a juvenile court, monthly reports of the revenue credited to and expenditures made from the special account.

(b) **Seven dollars** for credit to a special revenue fund for the use of the municipal courts. Any money remaining in the special revenue fund after 2 fiscal years must be deposited in the municipal general fund if it has not been committed for expenditure. The city treasurer shall provide, upon request by a municipal court, monthly reports of the revenue credited to and expenditures made from the special revenue fund.

(c) **Five dollars** to the State Controller for credit to the State General Fund.

(d) **The remainder of each assessment to the State Controller** for credit to a special account in the State General Fund for distribution as provided in subsection 8.

7. The money apportioned to a juvenile court, a justice court or a municipal court pursuant to this section must be used, in addition to providing services to juvenile offenders in the juvenile court, to improve the operations of the court, or to acquire appropriate advanced technology or the use of such technology, or both. Money used to improve the operations of the court may include expenditures for:

(a) **Training and education of personnel;**

(b) **Acquisition of capital goods;**

(c) **Management and operational studies; or**

(d) **Audits.**

8. Of the total amount deposited in the State General Fund pursuant to paragraph (d) of subsection 5 and paragraph (d) of subsection 6, the State Controller shall distribute the money received to the following public agencies in the following manner:

(a) Not less than 51 percent to the Office of Court Administrator for allocation as follows:

(1) Thirty-six and one-half percent of the amount distributed to the Office of Court Administrator for:

(I) The administration of the courts;

(II) The development of a uniform system for judicial records; and

(III) Continuing judicial education.

(2) Forty-eight percent of the amount distributed to the Office of Court Administrator for the Supreme Court.

(3) Three and one-half percent of the amount distributed to the Office of Court Administrator for the payment for the services of retired justices, retired judges of the Court of Appeals and retired district judges.

(4) Twelve percent of the amount distributed to the Office of Court Administrator for the provision of specialty court programs.

(b) Not more than 49 percent must be used to the extent of legislative authorization for the support of:

(1) The Central Repository for Nevada Records of Criminal History;

(2) The Peace Officers' Standards and Training Commission;

(3) The operation by the Department of Public Safety of a computerized interoperative system for information related to law enforcement;

(4) The Fund for the Compensation of Victims of Crime;

(5) The Advisory Council for Prosecuting Attorneys; and

(6) Programs within the Office of the Attorney General related to victims of domestic violence.

9. Any money deposited in the State General Fund pursuant to paragraph (d) of subsection 5 and paragraph (d) of subsection 6 that is not distributed or used pursuant to paragraph (b) of subsection 8 must be transferred to the uncommitted balance of the State General Fund.

10. As used in this section:

(a) "Juvenile court" has the meaning ascribed to it in [NRS 62A.180](#).

(b) "Office of Court Administrator" means the Office of Court Administrator created pursuant to [NRS 1.320](#).

(Added to NRS by [1983, 907](#); A [1985, 907](#); [1987, 1417](#); [1989, 1058](#), [1980](#); [1991, 1554](#), [2181](#); [1993, 604](#), [867](#); [1995, 2453](#); [1997, 1508](#); [1999, 2426](#); [2001, 375](#), [2353](#), [2919](#); [2003, 1118](#), [1461](#), [2098](#); [2007, 40](#), [1413](#), [1741](#); [2009, 979](#); [2010, 26th Special Session, 81](#); [2013, 1753](#))

NRS 176.0611 Additional administrative assessment for misdemeanor: Authorization; collection; distribution; limitations on use. [Effective July 1, 2015.]

1. A county or a city, upon recommendation of the appropriate court, may, by ordinance, authorize the justices or judges of the justice or municipal courts within its jurisdiction to impose for not longer than 50 years, in addition to the administrative assessments imposed pursuant to [NRS 176.059](#), [176.0613](#) and [176.0623](#), an administrative assessment for the provision of court facilities.

2. Except as otherwise provided in subsection 3, in any jurisdiction in which an administrative assessment for the provision of court facilities has been authorized, when a defendant pleads guilty or guilty but mentally ill or is found guilty or guilty but mentally ill of a misdemeanor, including the violation of any municipal ordinance, the justice or judge shall include in the sentence the sum of \$10 as an administrative assessment for the provision of court facilities and render a judgment against the defendant for the assessment. If the justice or judge sentences the defendant to perform community service in lieu of a fine, the justice or judge shall include in the sentence the administrative assessment required pursuant to this subsection.

5. If the justice or judge permits the fine and administrative assessment for the provision of court facilities to be paid in installments, the payments must be applied in the following order:

- (a) To pay the unpaid balance of an administrative assessment imposed pursuant to [NRS 176.059](#);
- (b) To pay the unpaid balance of an administrative assessment for the provision of court facilities pursuant to this section;
- (c) To pay the unpaid balance of an administrative assessment for the provision of specialty court programs pursuant to [NRS 176.0613](#);
- (d) To pay the unpaid balance of an administrative assessment for obtaining a biological specimen and conducting a genetic marker analysis pursuant to [NRS 176.0623](#); and
- (e) To pay the fine.

6. The money collected for administrative assessments for the provision of court facilities in municipal courts must be paid by the clerk of the court to the city treasurer on or before the fifth day of each month for the preceding month. The city treasurer shall deposit the money received in a special revenue fund. The city may use the money in the special revenue fund only to:

- (a) **Acquire land on which to construct additional facilities for the municipal courts or a regional justice center that includes the municipal courts.**
- (b) **Construct or acquire additional facilities for the municipal courts or a regional justice center that includes the municipal courts.**
- (c) **Renovate or remodel existing facilities for the municipal courts.**
- (d) **Acquire furniture, fixtures and equipment necessitated by the construction or acquisition of additional facilities or the renovation of an existing facility for the municipal courts or a regional justice center that includes the municipal courts. *This paragraph does not authorize the expenditure of money from the fund for furniture, fixtures or equipment for judicial chambers.***
- (e) **Acquire advanced technology for use in the additional or renovated facilities.**
- (f) **Pay debt service on any bonds issued pursuant to subsection 3 of [NRS 350.020](#) for the acquisition of land or facilities or the construction or renovation of facilities for the municipal courts or a regional justice center that includes the municipal courts.** Any money remaining in the special revenue fund after 5 fiscal years must be deposited in the municipal general fund for the continued maintenance of court facilities if it has not been committed for expenditure pursuant to a plan for the construction or acquisition of court facilities or improvements to court facilities. The city treasurer shall provide, upon request by a municipal court, monthly reports of the revenue credited to and expenditures made from the special revenue fund.

NRS 176.0613 Additional administrative assessment for misdemeanor: Authorization; collection; distribution; limitations on use. [Effective July 1, 2015.]

1. The justices or judges of the justice or municipal courts shall impose, in addition to an administrative assessment imposed pursuant to [NRS 176.059](#), [176.0611](#) and [176.0623](#), an administrative assessment for the provision of specialty court programs.

2. Except as otherwise provided in subsection 3, when a defendant pleads guilty or guilty but mentally ill or is found guilty or guilty but mentally ill of a misdemeanor, including the violation of any municipal ordinance, the justice or judge shall include in the sentence the sum of \$7 as an administrative assessment for the provision of specialty court programs and render a judgment against the defendant for the assessment. If a defendant is sentenced to perform community service in lieu of a fine, the sentence must include the administrative assessment required pursuant to this subsection.

8. The Office of Court Administrator shall allocate the money credited to the State General Fund pursuant to subsections 6 and 7 to courts to assist with the funding or establishment of specialty court programs.

NRS 176.0623 Additional administrative assessment for felony, gross misdemeanor or misdemeanor: Authorization; collection; distribution; limitations on use. [Effective July 1, 2015.]

1. In addition to any other administrative assessment imposed, when a defendant pleads guilty, is found guilty or enters a plea of nolo contendere to a misdemeanor, gross misdemeanor or felony, including the violation of any municipal ordinance, on or after July 1, 2013, the justice or judge of the justice, municipal or district court, as applicable, shall include in the sentence the sum of \$3 as an administrative assessment for obtaining a biological specimen and conducting a genetic marker analysis and shall render a judgment against the defendant for the assessment. If a defendant is sentenced to perform community service in lieu of a fine, the sentence must include the administrative assessment required pursuant to this subsection.

4. The money collected for an administrative assessment for the provision of genetic marker analysis must be paid by the clerk of the court to the county treasurer on or before the fifth day of each month for the preceding month for credit to the fund for genetic marker analysis pursuant to [NRS 176.0915](#).

(Added to NRS by [2013, 1062](#), effective July 1, 2015)

NRS 176.064 Collection fee for unpaid administrative assessment, fine, fee or restitution; use of collection agency; report to credit agencies; civil judgment; attachment or garnishment; suspension of driver's license; imprisonment.

1. If a fine, administrative assessment, fee or restitution is imposed upon a defendant pursuant to this chapter, whether or not the fine, administrative assessment, fee or restitution is in addition to any other punishment, and the fine, administrative assessment, fee or restitution or any part of it remains unpaid after the time established by the court for its payment, the defendant is liable for a collection fee, to be imposed by the court at the time it finds that the fine, administrative assessment, fee or restitution is delinquent, of:

(a) **Not more than \$100, if the amount of the delinquency is less than \$2,000.**

(b) **Not more than \$500, if the amount of the delinquency is \$2,000 or greater, but is less than \$5,000.**

(c) **Ten percent of the amount of the delinquency, if the amount of the delinquency is \$5,000 or greater.**

2. A state or local entity that is responsible for collecting a delinquent fine, administrative assessment, fee or restitution may, in addition to attempting to collect the fine, administrative assessment, fee or restitution through any other lawful means, take any or all of the following actions:

(a) Report the delinquency to reporting agencies that assemble or evaluate information concerning credit.

(b) Request that the court take appropriate action pursuant to subsection 3.

(c) Contract with a collection agency licensed pursuant to [NRS 649.075](#) to collect the delinquent amount and the collection fee. The collection agency must be paid as compensation for its services an amount not greater than the amount of the collection fee imposed pursuant to subsection 1, in accordance with the provisions of the contract.

4. Money collected from a collection fee imposed pursuant to subsection 1 must be distributed in the following manner:

(a) Except as otherwise provided in paragraph (d), if the money is collected by or on behalf of a municipal court, the money must be deposited in a special fund in the appropriate city treasury. The city may use the money in the fund only to develop and implement a program for the collection of fines, administrative assessments, fees and restitution and to hire additional personnel necessary for the success of such a program.

(d) If the money is collected by a collection agency, after the collection agency has been paid its fee pursuant to the terms of the contract, any remaining money must be deposited in the state, city or county treasury, whichever is appropriate, to be used only for the purposes set forth in paragraph (a), (b) or (c) of this subsection.

NRS 176.085 Reduction of excessive fine or administrative assessment; payment in installments. Whenever, after a fine and administrative assessment have been imposed but before they have been discharged by payment or confinement, it is made to appear to the judge or justice imposing the fine or administrative assessment or his or her successor:

1. That the fine or administrative assessment is excessive in relation to the financial resources of the defendant, the judge or justice or his or her successor may reduce the fine accordingly.

2. That the discharge of the fine or administrative assessment is not within the defendant's present financial ability to pay, the judge or justice or his or her successor may direct that the fine be paid in installments.

(Added to NRS by 1967, 1433; A 1973, 388; [1983, 908](#))

NRS 176.087 Imposition of community service as punishment or condition of probation.

1. Except where the imposition of a specific criminal penalty is mandatory, a court may order a convicted person to perform supervised community service:

(a) In lieu of all or a part of any fine or imprisonment that may be imposed for the commission of a misdemeanor; or

(b) As a condition of probation granted for another offense.

2. The community service must be performed for and under the supervising authority of a county, city, town or other political subdivision or agency of the State of Nevada or a charitable organization that renders service to the community or its residents.

3. The court may require the convicted person to deposit with the court a reasonable sum of money to pay for the cost of policies of insurance against liability for personal injury and damage to property or for industrial insurance, or both, during those periods in which the person performs the community service, unless, in the case of industrial insurance, it is provided by the authority for which the person performs the community service.

4. The following conditions apply to any such community service imposed by the court:

(a) The court must fix the period of community service that is imposed as punishment or a condition of probation and distribute the period over weekends or over other appropriate times that will allow the convicted person to continue employment and to care for the person's family. The period of community service fixed by the court must not exceed, for a:

(1) Misdemeanor, 200 hours;

(2) Gross misdemeanor, 600 hours; or

(3) Felony, 1,000 hours.

(b) A supervising authority listed in subsection 2 must agree to accept the convicted person for community service before the court may require the convicted person to perform community service for that supervising authority. The supervising authority must be located in or be the town or city of the convicted person's residence or, if that placement is not possible, one located within the jurisdiction of the court or, if that placement is not possible, the authority may be located outside the jurisdiction of the court.

(c) Community service that a court requires pursuant to this section must be supervised by an official of the supervising authority or by a person designated by the authority.

(d) The court may require the supervising authority to report periodically to the court or to a probation officer the convicted person's performance in carrying out the punishment or condition of probation.

(Added to NRS by [1981, 486](#); A [1991, 1930](#); [1997, 33](#); [2001 Special Session, 133](#))