

COLLECTIONS COURT IN LEON COUNTY

***SELECTED FINDINGS
FROM FORTHCOMING BRENNAN CENTER
REPORT ON COURT FEES IN FLORIDA***

The operation of Collections Courts is a clear example of Florida's counterproductive court debt scheme in practice. These courts are set up largely to deal with the inevitable downstream consequences of a system in which financial obligations are imposed at sentencing regardless of a defendant's ability to pay.

Ostensibly, Collections Court gives the defendant an opportunity to explain why he or she is unable to pay and gives judges the discretion to work out a reasonable payment schedule. However, judges are not permitted to waive any fines or fees, even when it is clear that an individual is indigent. While state law does permit judges to convert financial obligations into community service for those unable to pay,¹ it appears that defendants are not generally offered this option in Leon County. Even more troubling, numerous persons who have completed their underlying sentences end up arrested and processed through the criminal justice system again, not for any violation related to their underlying crime, but rather solely because they have failed to appear in Collections Court and to explain why they are late on a payment. These findings analyze Collections Court-related arrests in Leon County over a one-year period.

A. The Process

1. Imposition of Court Costs and Commencement of Payment Plan

At the sentencing and judgment phase of any Leon County criminal case, the judge imposes a series of statutorily mandated court costs and fines depending on the nature of the offense, rather than on a defendant's ability to pay.² In Leon County, each person convicted of a crime is notified to pay costs and fines immediately. When individual cannot pay, they are placed on a payment program, which by statute costs \$25 to initiate³ and requires payment of a designated amount each month, usually \$75 a month for felony convictions and \$50 a month for misdemeanor and

traffic cases.⁴ Defendants are notified that they may request an adjustment of their payment amounts from the clerk.

Defendants are notified that failure to pay will result in the driver's license suspension and the issuance of an order requiring the individual to appear in Collections Court to explain why he or she "should not be held in contempt of court for failure to pay his or her court ordered costs and fines."⁵ Defendants are notified that failure to appear for such a court hearing will result in the issuance of a warrant for arrest.⁶ Collections Court takes place at an inopportune time in the middle of work week: Tuesday afternoons at the Leon County courthouse.

2. Collections Enforcement

The clerk of court runs a daily computer report that identifies certain cases that are delinquent on that day.⁷ According to the Leon County Clerk, the report is based on programming that selects individuals who are more than 60 days late in paying, in alphabetical order.⁸ In practice, it appears that these results may be somewhat random. The Clerk's Office employee who runs the program stated that it sometimes generates cases in which payment is only a day late while overlooking cases that have been delinquent for some time.⁹

Once the clerk has the daily list, the clerk reviews the Collections Court dockets for the weeks following—which each max out at 250 individuals—and schedules individuals for Collections Court hearings as early as two weeks (to give time for mailing) and as far as six weeks away.¹⁰

In addition to mailing out orders that require these defendants to appear in Collections Court, the clerk's office also issues a late notice, assesses a \$10 fine, and requests suspension of the individual's driver's license, all before the defendant appears in Collections Court or explains their failure to pay.¹¹

3. Consequences for Delinquency and Missed Collection Court Appearance

If and when an individual misses a Collections Court date after being ordered to attend for delinquency without first paying, a writ of bodily attachment or a "blue writ" – a type of warrant – issues for the person's arrest and an additional \$20 fee is assessed for its issuance.¹² When individuals are arrested, cash bonds (or "cash purges") are set for their release at the total amount they owe or at the set ceiling of \$320—whichever is less.¹³ The county clerks are not permitted to return any of that money once paid and the defendant will still owe the balance of any outstanding costs and fines if they owed over \$320.¹⁴

If the defendant cannot pay the purge amount, he or she must spend the night in jail and wait to go before a judge the following day at first appearances with other individuals arrested on "blue writs" and other offenses, either to work out another

payment plan, ask for release on their own recognizance, or work out some other option.¹⁵ As the data below suggests, however, many individuals remain jailed for longer than a day and in some cases for several weeks.

B. Arrests for Failure to Appear at Collections Courts Are Frequent and Costly

The Brennan Center received and reviewed court data for all individuals who were arrested and jailed solely for failure to appear at Collections Court in Leon County between October 1, 2007 and September 30, 2008.¹⁶ These were individuals for whom “blue writs” were issued and executed.¹⁷ The data received included names and case numbers, the date and exact times of admission and release from Leon County jail, total bond and/or cash purge owed, and the amount ultimately paid, if paid at all.

The data reveals both the sky-high costs and the negligible benefits of Leon County’s practice of arresting persons for failing to appear in Collections Court. Note: our analysis did not address the separate implications of the amount of revenue raised by Collections Court as a whole – which is significant – but rather focused instead on the amount raised and the costs incurred exclusively through Collections Court-related arrests.

1. Frequency of Arrests and Length of Incarceration

In the year between October 1, 2007 and September 30, 2008, eight-hundred and thirty-eight (838) total arrests were made in Leon County solely for failure to appear at Collections Court after failing to pay court fees and fines or falling behind in a payment plan. Some of the individuals who were arrested had outstanding, unpaid fines or fees related to more than one specific charge or incident.¹⁸

Most individuals (650) spent less than a full day in jail. Of those, nearly half (322) were incarcerated for ten (10) or more hours. One hundred and eighty-eight (188) individuals spent a day or longer in jail, with fifty-two (52) individuals spending between two and six days in jail, nine (9) individuals spending 9 days or longer in jail and one (1) individual spending more than a month behind bars.¹⁹ The *median* length of stay was 13 hours, 34 minutes, and 52 seconds. The *average* length of stay was 24 hours, 14 minutes, and 12 seconds.

Additionally, some individuals were arrested more than once between October 2007 and September 2008 for failing to appear at Collections Court. There were one hundred-and-three (103) such individuals. Of those, eighty-three (83) were arrested twice, seventeen (17) arrested three times, and three (3) arrested more than three times.

2. Cost Incurred for Arrests, Incarceration, and Subsequent Hearings

The 838 total arrests led to 20,310 total hours²⁰ or 846.25 total days²¹ spent behind bars. Leon County spent approximately \$53.56/day to incarcerate each individual between October of 2007 and September of 2008.²² Using this per diem rate, the estimated cost to the county jail solely for jailing the individuals who missed Collections Court totaled \$45,325.²³ But the costs do not end there.

It is unclear exactly how much it costs the Leon County Sheriff's Office to execute an arrest warrant for failure to appear in Collections Court or how much it costs to bring each of the arrested individuals before a judge at first appearances.²⁴ Leon County charges individuals a \$20 surcharge for processing such a warrant.²⁵ If this \$20 fee can be considered a proxy for the cost of issuing and executing the warrant, the county court would have spent \$16,760 to process these individuals.²⁶

Not including any possible additional costs incurred in arresting individuals and bringing them before a judge, the cost to the system for this 12-month period of arresting individuals for failure to appear at Collections Courts was \$62,085.²⁷

It is important to note also that these costs do not include the human and societal costs involved in arresting people. Invariably, an arrested individual misses work, making it harder to pay. Additionally, arresting individuals for failure to pay has the effect of not only draining the defendant monetarily and psychologically, but draining their communities, as well. While in many cases individuals are bonded out at the total amount due, this does not necessarily mean that the individual actually *has the ability to pay* those costs. In many instances, an individual's friend, family member, or employer is forced to step forward to get the person out of jail. Alternatively, when the arrested individual posts their own bond, that money likely is taken directly from other necessities, such as child support, food, or housing.

3. Total Amount Collected by the County from Arrested Individuals

Between October 1, 2007 and September 30, 2008 the state collected \$80,450 in cash purges from individuals arrested on "blue writs" out of a total of \$347,084 owed in cash purges and bonds.

Five hundred and forty-two (542) or sixty-five percent (65%) of all those arrested in the one year period were ultimately freed and paid no bond or purge amount at all. The remaining two hundred and ninety-six (296) individuals paid bonds or purge amounts for three hundred and sixty-eight (368) different incidents. The *median* bond or purge amount *owed* was \$320. The *average* bond or purge amount *owed* was \$282. The *median* bond or purge amount *paid* was \$250. The *average* bond or purge amount *paid* was \$218.62.

When balanced against the cost of arrests, the county's enforcement system only netted the county at most an additional \$18,365; indeed, for reasons noted above,

the net gain, if any, is likely to be much lower since these figures do not include the costs to the court system of holding constitutionally mandated first appearance hearings for those who have been arrested.²⁸

C. *Collections Court Hearing Process is Ineffective and Unfair*

When individuals do in fact show up for Collections Court, judges often suggest unreasonable solutions or even threaten jail time though the Constitution does not permit jailing someone for failing to pay court debt unless a court finds that they had the ability to pay and willfully failed to do so.²⁹

Defendant Michael Simmons's interaction with a Leon County Collections Court judge in February of 2008 is illustrative. As background, the suspension of an individual's driver's license is one of the most common mechanisms used in Florida as a penalty for failure to pay court ordered legal financial obligations.³⁰ Mr. Simmons, who owed approximately \$900 in fines and fees, explained to Judge Ron Flury: "I'm self employed. I deliver furniture. And there's no way I can work delivering furniture with my license being revoked. And that's the gist of why I can't pay [my fines]... I've been looking for a job, but everyone wants you to have a drivers' license."³¹ Explaining that under Florida law, he is not allowed to waive fees, Judge Flury gave Mr. Simmons three options: (1) 12 days in jail—"that way you don't have to worry about missing payments . . . it's not like you're going to be missing work now"; (2) day labor; or (3) a postponement of a minimum payment of \$50 until April, two months later.³²

Mr. Simmons, not surprisingly, chose the last option, but his predicament remained unchanged. With his lingering debt to the State of Florida, Mr. Simmons still was unable drive and thus continued to face an uphill battle to find a job. What is more, the use of incarceration to induce payment is constitutionally problematic under the Supreme Court line of cases holding it unlawful under the Equal Protection Clause to incarcerate someone simply because they are unable to fulfill a financial obligation. *See Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395, 398 (1971); *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970).

--March 30, 2009

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¹ See FLA. STAT. § 938.02(2) (2004) (amended 2009) ("The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay.").

² See Administrative Order 97-08, available at http://image.clerk.leon.fl.us/official_records/download_document.asp?book=2589&page=00857

(establishing a distribution schedule of the fines and statutory court costs imposed in county and circuit criminal cases. The order also provides an installment schedule for partial payments of fines and costs). *See also* FLA. STAT. §§ 938.01 *et seq.* (imposing certain mandatory costs in every criminal case in Florida).

³ FLA. STAT. § 28.24(26)(c) (2009).

⁴ *See* Notice of Court Costs and Fines (on file with the Brennan Center).

⁵ Leon County Second Judicial Circuit Form, Order to Show Cause or Pay Fees (on file with the Brennan Center).

⁶ *Id.*; *see also* Leon County Payment Program FAQ, *available at* http://www.clerk.leon.fl.us/index.php?section=1&server=&page=clerk_services/faqs/index.php&division=collections (hereinafter “Payment FAQ”) (last accessed on February 11, 2009); FLA. STAT. §§ 322.245 & 938.30 (2009).

⁷ Email correspondence with Gypsy Bailey, Office of the Clerk of Court, Leon County (March 9, 2009).

⁸ *Id.*

⁹ Telephone Interview with Shannon Russell, Supervising Clerk, Leon County Court Costs and Fines (February 11, 2009).

¹⁰ *Id.*

¹¹ Payment FAQ, *supra*, note 6. *See infra*, Part ___, for a more detailed discussion of the unintended costs and consequences of driver’s license suspensions. *See also* FLA. STAT. §§ 322.245 & 938.30 (2009).

¹² Email correspondence with Gypsy Bailey, Office of the Clerk of Court, Leon County (March 9, 2009). *See also* Payment FAQ, *supra* note 6; FLA. STAT. § 938.30(2) (2004) (amended 2009) (“Any person failing to attend a hearing may be arrested on warrant or capias which may be issued by the clerk upon order of the court.”).

¹³ Email correspondence with Gypsy Bailey, Office of the Clerk of Court, Leon County (March 9, 2009). Although \$320 is supposed to be the cut-off for cash purge amounts, the data collected reveals that thirty-two (32) of the individuals arrested on “blue writs” had cash purges or bonds set above \$320, the highest at \$384. Two (2) of these thirty-two (32) individuals paid these higher sums (\$350 and \$351, respectively).

¹⁴ *See* FLA. STAT. § 903.286(1) (2008) (“The clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent.”); Payment FAQ, *supra*, note 6.

¹⁵ Email correspondence with Gypsy Bailey, Office of the Clerk of Court, Leon County (March 9, 2009).

¹⁶ Source of data, John Tomasino, Administrative Director of the Leon County Office of the Public Defender. Mr. Tomasino asked the Leon County Clerks of Court to pull case information from every “blue writ” arrest in the yearlong period between October 2007 and 2008. In order to maximize the accuracy of the data, Mr. Tomasino requested that none of the individuals in the data set were arrested or held pending any other concurrent charges unrelated to their “blue writ” arrests. While the system was set up to filter out such individuals, it is still possible that the program logic did not catch all such instances.

¹⁷ There were numerous other “blue writs” that issued in this period that were never ultimately executed either because the person paid, attended Collections Court, or because they could not be found for arrest. Additionally, as discussed in note 16, *supra*, numerous other individuals who were arrested on “blue writs” yet had other outstanding charges on which they were subsequently held, were excluded from the data.

¹⁸ Of the 838 arrests, there were 1238 individual cases of unpaid fines.

¹⁹ *See State v. Thomas*, No. 2006ZT2412A1 (Fla. Leon County Ct. 2007) (Christopher Thomas was arrested on October 15, 2007 and released on November 27, 2007, totaling one month and twelve days. Mr. Thomas did not ultimately pay any bond or cash purge).

²⁰ The total number of hours of incarceration was calculated by subtracting the release date and time by the time and date of entry for each individual arrest and adding up the total time spent in jail by all of the individuals.

²¹ The total number of days of incarceration was calculated by dividing the total number of hours of incarceration by 24, the total number of hours in a day.

²² Telephone interview with Major Scott Bakotic, Administration, Leon County Sheriffs Department. (January 26, 2009). The cost per day per inmate in the Leon County Jail was calculated by first taking the FY2007 budget (\$26,027,595) and multiplying by 1/4 to determine the total budget (\$6,506,989) for three months (October – December 2007) and taking the FY2008 budget (\$28,493,362) and multiplying by 3/4 to determine the total budget (\$21,370,021.50) for nine months (January-September 2008). From those calculations, the total budget from October 1, 2007 to September 30, 2008 was calculated as \$27,876,919.50. Next, that number was divided by 365, the number of days in a year, to determine the daily budget (\$76,375). Finally, that number was divided by the number of prison beds (1426), to come up with the final cost per day per inmate of \$53.56.

²³ The total cost to jail individuals for failure to appear at Collections Court was calculated by multiplying the cost per day per inmate (\$53.56) by the total days individuals spent behind bars for failure to appear at Collections Court (846.25).

²⁴ Telephone interview with Lieutenant Tim Coughlin of Leon County Warrants and Civil Division (January 26, 2009) (stating that he had no way of estimating the cost to arrest any given individual and that the cost depends on the circumstances of the given arrest like the time, place, and number of officers on the scene).

²⁵ Telephone interview with Jamey Maine, Deputy Clerk, Leon County (January 26, 2009).

²⁶ For a similar use of the warrant fee methodology *see* RHODE ISLAND FAMILY LIFE CENTER, COURT DEBT AND RELATED INCARCERATION IN RHODE ISLAND FROM 2005 THROUGH 2007 (APR. 2008), *available at* <http://www.ri-familylifecenter.org/pagetool/reports/CourtDebt.pdf>.

²⁷ The total cost to the county was calculated by adding the total jail cost to the total warrant cost.

²⁸ The net was calculated by subtracting the estimated cost to the county and county jail from the total cash purges paid between October 1, 2007 and September 30, 2008.

²⁹ *See Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395, 398 (1971); *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970).

³⁰ OFFICE OF PROGRAM POLICY ANALYSIS & GOV'T ACCOUNTABILITY (OPPAGA), REP. NO. 07-21, CLERKS OF COURT GENERALLY ARE MEETING THE SYSTEM'S COLLECTION PERFORMANCE STANDARDS (MAR. 2007), *available at* <http://www.oppaga.state.fl.us/monitor/reports/jud/r07-21s.html> (according to OPPAGA, 85% of county clerks use "Driver's License Sanctions" as a collection tool). *See* FLA. STAT. 322.245(5)(a) (2008) (authorizing the clerk of courts to notify the Florida Department of Motor Vehicles if "a person licensed to operate a motor vehicle in [Florida] . . . has failed to pay financial obligations for any criminal offense other than [certain traffic misdemeanors and traffic felonies]" and requiring the DMV to suspend the person's driver's license upon receipt of such notification.).

³¹ Brennan Center Transcription of Leon County Collections Court hearings from February 20, 2008.

³² *Id.* at 3.