REVIEW OF VIRGINIA COURTS MANAGEMENT OF UNPAID FINES AND COSTS

SPECIAL REPORT

NOVEMBER 20, 2000

APA
Auditor of Public Accounts
COMMONWEALTH OF VIRGINIA

AUDIT SUMMARY

The Auditor of Public Accounts has reviewed the management of unpaid fines, fees, and costs assessed in Virginia's courts to:

- Determine the results of court collection efforts, including those methods used by Commonwealth's Attorneys for delinquent accounts;
- Consider alternative methods for improving the collection of fines, fees, and costs; and
- Compare the costs related to the collection efforts used.

We found that law changes and improvements in the recording and reporting of delinquent accounts have strengthened the collection process. Over the last six years, more than $124.3 million in delinquent fines, fees, and costs have been returned to the Commonwealth.

We recommend that:

- The General Assembly consider legislative changes, which provide opportunities for achieving economies of scale in collecting delinquent accounts;
- Commonwealth's Attorneys award delinquent account collection services contracts on a competitive basis;
- The Supreme Court continue to improve automated systems accounts receivable management processes and user training; and
- The General Assembly may wish to consider addressing the role judges and court personnel have in collecting fines and costs.

We also recommend that the General Assembly consider removing the requirement that the Auditor of Public Accounts perform continuing special reviews of the court system's collection efforts and methods for unpaid fines, fees, and costs. Recently established oversight of collection procedures by the Supreme Court and the Compensation Board as well as our on-going audits of courts and clerks of the circuit court should provide adequate review of this process in the future.

TABLE OF CONTENTS

	Pages
AUDIT SUMMARY	
INDEPENDENT AUDITOR'S REPORT	1-2
SPECIAL REVIEW OF UNPAID FINES, FEES, AND COSTS	3-10
APPENDIX A – Fines, Fees, and Costs Management Recommendations	11-17
APPENDIX B – Commonwealth's Attorneys Association Response to Report	18

Commonwealth of Virginia

Auditor of Public Accounts
P.O. Box 1295
Richmond, Virginia 23218

Walter J. Kucharski, Auditor

November 20, 2000

The Honorable Vincent F. Callahan, Jr.
Co-Chairman, House Appropriations Committee

The Honorable V. Earl Dickinson
Co-Chairman, House Appropriations Committee

The Honorable John H. Chichester
Chairman, Senate Finance Committee

Gentlemen:

The Auditor of Public Accounts has reviewed the management of unpaid fines, fees, and costs assessed in Virginia's courts for fiscal years 1999 and 2000.

Our objectives were to determine the results of court collection efforts including those methods used by Commonwealth's Attorneys for delinquent accounts; consider alternative methods for improving the collection of fines, fees, and costs; and compare the costs related to the collection efforts used.

Conclusion

Since our first report in 1993, there has been significant progress in increasing the collection rate of delinquent fines, fees, and costs. In fiscal year 1995, the total of delinquent fines, fees, and costs collected represented 7.04 percent of all collections. By the end of fiscal year 2000, that percentage had more than doubled to 15.5 percent. This steady increase in the collection of delinquent fines, fees, and costs represents more than $124.3 million returned to the Commonwealth over the last six years.

Virginia's courts collected $204,382,890 in fiscal year 1999 and $203,509,872 in fiscal year 2000. The courts' collection rate for the two years was 68.5 percent, which is consistent with prior years. Net collections of delinquent accounts by the various methods available to Commonwealth's Attorneys totaled $28,290,184 and $30,986,141 in fiscal years 1999 and 2000 respectively. However, for the period fiscal years 1999 – 2000, more than 18 percent of fines, fees, and costs still remain uncollected one year after assessment.

We recommend that the General Assembly consider legislative changes, which would provide opportunities for achieving economies of scale in collecting delinquent accounts; that Commonwealth's Attorneys award delinquent account collection services contracts on a competitive basis; and that the Supreme Court continue to improve automated systems for accounts receivable management processes and user training.

In light of the overall improvements in the management and collection of fines, fees, and costs assessed in Virginia's courts, the General Assembly may wish to consider removing the requirement that the Auditor of Public Accounts perform continuing special reviews of the court system's collection efforts and methods. Recently established oversight of collection procedures by the Supreme Court and the Compensation Board as well as our ongoing audits of courts and clerks of the circuit court should provide adequate review of this process in the future.

In order to improve collections beyond a marginal amount that further procedural changes would accomplish, the General Assembly would need to consider addressing significant public policy issues regarding the role of judges and courts in the collection process. We recommended several of these changes in our 1998 and 1997 reports.

AUDITOR OF PUBLIC ACCOUNTS

JMS:jld
jld: 32

SPECIAL REVIEW OF UNPAID FINES, FEES, AND COSTS

Purpose

Chapter 1073 of the 2000 Virginia Acts of Assembly requires that the Auditor of Public Accounts "continue to examine the results of Circuit and District Court collection efforts and methods for unpaid fines, fees, and costs, including those methods used by Commonwealth's Attorneys for delinquent accounts." Further, the review should "consider alternative methods, including contracting and other sources for improving the collection of fines, fees, and costs, and should compare the costs related to the collection efforts."

Methodology

We researched the Code of Virginia for recent changes that have affected the collection process for the fines, fees, and costs assessed in the Commonwealth's circuit and district courts. We examined relevant financial data from the Supreme Court's Financial Management System (FMS.) We also queried selected Commonwealth's Attorneys and private collection agencies that are under contract with Commonwealth's Attorneys to determine their procedures for collecting delinquent fines, fees, and costs. Finally, we reviewed our previous reports on the collection process to assess the overall effectiveness of collection activities within the Commonwealth.

In conducting this review, we solicited comments from the Office of the Secretary of the Supreme Court, the Department of Taxation, the Compensation Board, the Virginia Court Clerks' Association, and the Virginia Commonwealth's Attorneys Association. Information provided by these entities was considered in drafting this report. The Virginia Commonwealth's Attorney's Association provided a written response that is included as an appendix to this report.

Background

In December 1993, the Auditor of Public Accounts issued a special report *Courts System – Financial Management of Accounts Receivable*, which identified issues that hampered the effectiveness of the court fines and costs collection and enforcement process. We offered several recommendations to alleviate problems with the process.

In December 1997, the Auditor of Public Accounts issued another special report *Review of Virginia Courts Management of Unpaid Fines and Costs,* which followed up on the previous study and reported whether courts were following established collection procedures. The report stressed the courts' responsibility to collect fines, fees, and costs before they become delinquent and enhancements to improve the collection of delinquent accounts.

Finally, in November 1998, the Auditor of Public Accounts issued another special report entitled *Review of Virginia Courts Management of Unpaid Fines and Costs*. This report again addressed several issues regarding the collection of fines, fees, and costs and followed up on the previous reports.

In these three previous reports, the Auditor of Public Accounts made several recommendations to improve the overall collection of unpaid fines, fees, and costs within the Commonwealth.

The actions of the General Assembly, Office of the Executive Secretary of the Supreme Court, Clerks of Circuit and District Courts, and Commonwealth's Attorneys have implemented most of our recommendations. For example, the General Assembly has adopted changes to applicable statutes thereby strengthening the collection process. Technological and procedural improvements at the Office of the Executive Secretary of the Supreme Court have enhanced the recording and reporting of fines and costs receivables.

In fiscal year 1995, delinquent fines and costs collected represented 7.04 percent of all fines and costs collections. At the end of fiscal year 2000, that percentage more than doubled to 15.5 percent. This steady increase in the collection of delinquent fines and costs represents more than $124.3 million returned to the Commonwealth over the last six years.

Recommendation: **In light of the overall improvements in the management of fines, fees, and costs assessed in Virginia's courts, the General Assembly may wish to consider removing the requirement that the Auditor of Public Accounts perform continuing special reviews of the court system's collection efforts and methods. Recently established oversight of collection procedures by the Supreme Court and the Compensation Board as well as our ongoing audits of courts and clerks of the circuit court should provide adequate review of this process in the future.**

Legislative Changes

Pursuant to our recommendations, the General Assembly has made several changes to the Code of Virginia, which have helped strengthen collection efforts. The more significant changes include assigning Commonwealth's Attorneys delinquent collection responsibilities, establishing approved methods of collection, and requiring courts to report delinquent accounts monthly.

Commonwealth's Attorneys have responsibility for collecting delinquent accounts. Section 19.2-349 of the Code of Virginia requires Commonwealth's Attorneys "to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution." Further, this statute stipulates four collection methods, which Commonwealth's Attorneys may use: an in-house collection program; contract with a private attorney or collection agency; through agreement with a local governing body; or through the Department of Taxation's Court Debt Collection (CDC) unit.

Systems and Procedural Changes

Over the last several years, the Office of the Executive Secretary of the Supreme Court has implemented systems and procedural changes, which have helped increase the collection rates of fines, fees, and costs. The Supreme Court's Financial Management System (FMS) can record and report fines, fees, and costs receivables. FMS has an accounts receivable capability that allows courts to establish individual accounts, maintain balances due, record transactions, and produce reports of delinquent accounts, which Commonwealth's Attorneys use for collection purposes.

Based on our recommendation, in 1995 the Supreme Court made system changes so that FMS could produce an annual report designed to show the results of collection efforts by the courts and the various delinquent account collections entities. FMS also began providing quarterly receivable aging reports. We have worked with the Supreme Court since the reports were first introduced to enhance the reports to show more complete information, including gross and net collection figures for each collection method, and the total of delinquent accounts referred for collection.

FMS generates automated payment notices that are mailed to defendants. The system also interfaces with the Department of Motor Vehicles for automated submission of license suspension. Automated interfaces also exist between FMS and the Department of Taxation's Court Debt Collection and the Tax Set-Off programs. The courts' cash registers, PCRs, are part of FMS and record all necessary information regarding an account. PCRs can accommodate all types of receipts, including credit cards, delinquent collections, and community service as well as tracking bad checks and collection agent commissions. All traffic and criminal receipts establish individual accounts so court staff only need to enter unpaid accounts into the system.

Although the individual account information will automatically produce a Final Notice to Pay and suspend licenses based on the due date, the system performs no other actions until the account becomes delinquent at 41 days past due. At that time the system will list the account on the collection report for referral to the collection agent. If a court wishes to pursue any collection methods (beyond those mentioned) before the account goes to collections, the clerk has to establish additional procedures.

At June 30, 2000, accounts receivables totaled $492,990,097 in FMS. As we have noted in a previous report, FMS reports all accounts receivable regardless of the probability of collection. Delinquent accounts include indigent and transient defendants, very high dollar fines, and bankruptcy cases. All of these factors inflate the balances and distort collection ratios.

Further, although FMS can identify those accounts receivable balances attributed to incarcerated defendants, inconsistent input by users adversely affects the completeness of the information. This hinders any effort to identify those portions of the accounts receivable balance that have a reasonable chance of collection. Without segregating these amounts, it is difficult to fully evaluate the effectiveness of fines, fees, and costs management and collection efforts.

Recommendation: **The Supreme Court should continue to initiate FMS improvements, which would provide analytical and monitoring tools to better manage fines, fees, and costs management and evaluate the effectiveness of collections.**

Recommendation: **The Supreme Court should provide FMS user training designed to improve the completeness of accounts receivable-related information.**

Improvements in the Collection Process

In our December 1993 Special Report *Courts System – Financial Management of Accounts Receivable*, we used three fictional case studies to point out deficiencies in the fines and costs collection process. We have noted significant changes, which have improved the collection process since that time. As a way to summarize the legislative, process, and procedural changes in unpaid fines, fees, and costs management, we will revisit the three scenarios.

Traffic Infraction

In 1993, a Virginia State Trooper stopped Fred for speeding and gave him a ticket that stated the offense and the day he should appear in court. The trooper also told Fred that if he wanted to admit his guilt and prepay, he would not have to go to court. Fred had to call the court during business hours to find out the amount of the fine and where to send his payment. Fred made the call, mailed his personal check to the court, and thought he was done.

A week later, the court returned the check to Fred with a notice that said the court did not accept personal checks or credit cards. Since it was too close to the court day to mail a money order, Fred went to court. The judge found him guilty, assessed a fine plus costs, and then called the next case. The deputy took Fred to a payment window, and the clerk told him how much he owed. Fred told the clerk he was unable to pay that day and the clerk told him to pay within ten days or the Department of Motor Vehicles (DMV) would suspend his driver's license. Fred went home and forgot about the ticket.

Fred did not receive a bill or past-due notice from the court. License suspension had no real impact on Fred unless he got stopped by police or tried to renew his license. Since the court was too busy to issue a court order, Fred never had to come to court and tell why he had not paid.

Following the law, the clerk gave Fred's name to the local Commonwealth's Attorney who had a contract with a collection agency to pursue collections. After 90 days, Fred got a past-due notice from a collection agency demanding payment.

Fred put off the collection agency. Finally, the collection agency realized its share of the fine and costs would not pay for any further collection efforts and they stopped their efforts. The clerk put Fred's name on the Virginia Tax Set-Off Debt Program, but Fred did not get a tax refund. The court had exhausted all of its current methods to collect from Fred, but the receivable remains on the court's records, forever.

Criminal Misdemeanor

In 1993, police arrested Pat for shoplifting and released her after she posted a $100 cash bond. She appeared in court and thus avoided forfeiture of the bond. The judge found Pat guilty as charged and assessed a fine plus costs. The judge did not tell Pat when to pay or what will happen if she did not pay immediately. After trial, Pat stopped by the clerk's office to recover the $100 cash bond and the clerk asked her to pay the fine and costs. However, Pat said that the bond money belonged to a friend and she could not use it for payment. State law did not allow the clerk to force Pat to use the bond to pay the fines and cost. The clerk worked with Pat to establish a payment plan and returned the $100 cash bond. Pat left the courthouse thinking the clerk will never see any of her money.

Pat never paid the fine and costs and the court did not send a delinquent notice. The clerk could not suspend Pat's driver's license for nonpayment since the offense was not a traffic violation. The clerk issued a show cause order for Pat to come to court and explain why she had not paid. But, Pat had moved and the Sheriff could not find her to personally deliver the order.

After 90 days, the clerk and the Commonwealth's Attorney sent the account to the collection agency. Pat received one letter from the collection agency and, terrified of having her credit rating damaged, she immediately went to court to pay. The clerk, because of the collection agency's contract, could not accept the payment and told Pat to mail the payment to the collection agency. The collection agency kept one-third of Pat's payment, even though all it did was send one notice. The court received only two-thirds of Pat's payment for all her fines and costs.

Criminal Felony

In 1993, the Sheriff arrested Kris for armed robbery and the judge sentenced him to ten years in prison and a fine plus costs. Immediately after trial, Kris asked the clerk how much he owed. The clerk did not know until he got bills from the court-appointed attorney and the court reporter to calculate costs. Two weeks later, the clerk finally got the court appointed attorney's time sheet and prepared the final order with the total fine and costs. The clerk did not send a bill to Kris because Kris was in prison.

While Kris was in prison no one tried to collect the fine and costs. If the clerk tried to garnish his inmate trust account, it would probably cost more than the collection. Also, the clerk would have to file a new garnishment if Corrections transferred him to another prison.

Kris went on parole and was released from prison. The clerk got a release notice from Corrections, but it did not tell where Kris planned to live. The court sent a bill to Kris's last known address, but it was returned undelivered since Kris no longer lived there. The parole officer released Kris from parole, although he owed the fine and costs, because he satisfied all the other terms of parole. The law did not require parole officers to collect fines and costs before releasing an individual from parole. After all this, Kris still did not know the total amount of fines and costs he owed.

Improvements

Since we first presented these scenarios in 1993, there have been several procedural as well as statutory changes that have improved the process for collecting fines, fees, and costs. Today there are no longer differences in the handling of delinquent accounts based on the type of infraction. All traffic offenses, misdemeanors, and felonies carry the same penalty for failure to pay fines, fees, and costs. Both the defendant's driver's license and any vehicle registrations are subject to suspension. When Fred decides to trade in his old automobile for a newer model, DMV will not issue his new tags until he pays his delinquent fines, fees, and costs. Both Pat and Kris would have their licenses and registration suspended even though their crimes did not include a traffic violation.

Today, courts must inform defendants of their total amount due for fines and costs within two days of the trial. Courts can use several methods to meet this notification requirement. Defendants can prepay many traffic offenses, saving the defendant from ever coming to court. Most police officers and State Troopers will inform violators of their court date and time as well as prepayment information. The Virginia Uniform Summons form gives the defendant the information necessary to contact the court for prepayment directions. Since courts now accept checks, Fred will not need to get a money order and in some courts he can call the court and pay his fines and costs with his credit card.

Should Fred become forgetful and miss his court date, the court could find him guilty in his absence and the court will take appropriate steps to notify him of his debt. The court's automated financial system will produce a Notice to Pay with full details regarding the amount owed, the due date, and the consequences for failure to pay. The Court will mail him this notice within two days of trial as required by law, giving him ten days to pay the account before license suspension. Since Fred likes driving his sports car, he promptly mails his check.

Unfortunately, Fred's check bounced. Although the court had marked his account closed upon receipt of his check, the court can easily re-establish the account (adding a bad check fee), and issue a new Notice to Pay giving Fred ten days to satisfy the debt. The court's automated system will automatically notify DMV on the 12th day if Fred has not paid his account. DMV will subsequently notify Fred of the suspension of his license and registration. Should Fred choose to ignore all these notices, his account will go to a collection agent on the 41st day after the due date. In addition, the court will submit his name to the Virginia Tax Set-Off Debt Program. Should Fred have a tax refund or get lucky playing the lottery, he will receive no money until he pays his debts to the Commonwealth.

After her arrest for shoplifting, Pat posted a $100 cash bond; the magistrate asked her whether she wished to allow the court to take fines and costs out of the bond if convicted. Although not a requirement for release, Pat agreed and the magistrate had her sign the appropriate place on the back of the bond form. After the court found her guilty, Pat asked the court clerk for a refund of her bond. Since the original bond form was available in Pat's case file, the clerk knew to pay Pat's fines and costs with the bond proceeds and return only the balance to her by check.

If Pat's friend supplied the cash for the bond and did not want it used to pay the fines and costs, Pat would still have options for satisfying her debt. When the Judge found her guilty he directed her to the clerk to pay her fines and costs. The clerk explains the consequences of failing to pay and asks Pat for full payment. She replies that she cannot pay the full balance and would like to make installment payments. The clerk has her sign a Promise to Pay agreement, which clearly states the total amount owed, the expected payments and the consequences of failing to comply. Pat makes her first two scheduled payments but misses the third payment. The court's automated system notifies the clerk of the missed payment, holds the account for two days, and then issues a Final Notice to Pay. The court mails this notice but Pat does not respond. The Court automatically suspends her license and registration and sends her account to collections. When Pat receives a letter from the collection agent, she decides to pay up and calls the collection agent for direction. She is concerned because her new job requires a valid driver's license and explains that she will pay in full by check. The agent tells her that he will hold her check until it clears the bank and then issue her a receipt for full payment. Pat calls the court and they tell her they will issue the license reinstatement form as soon as she pays. She goes to the court, presents her check, and receives her reinstatement form. Even though she pays at the court, the collection agent will receive his commission.

Convicted of armed robbery and sentenced to ten years, Kris wanted to pay his court costs. The clerk could tell him the amount owed based on his felony conviction and the maximum amount allowed by statute for a court appointed attorney. Legislative changes incorporating a Fixed Felony Fee afford clerks the ability to inform defendants of their debt immediately after trial, and encourage them to enter into a payment agreement. Kris was a model prisoner and entered a work release program. Because he made his payments to the court on time, he had a valid driver's license when he was released and found employment. Although he had not finished paying his costs and restitution by the time of release, he kept the parole officer and court informed of his location, met his payment obligations, and kept his account from going to collections.

As shown in the scenario updates, legislative and system changes have enabled courts to respond forcefully and quickly to resolve defendants' accounts. Collection methods are initiated promptly, affording increased opportunities for collection. Communications and technical enhancements between courts and other agencies have positively impacted collection rates. Today, statistical information provides more specific details regarding gross and net collections of delinquent accounts as well as amounts sent to the various collection methods. Each of these improvements has contributed to increased collection rates and enhanced reporting of collection statistics.

Future Improvements

Our previous reports have offered many recommendations to improve the collection process. Appendix A lists all previous recommendations as well as actions taken to implement them. For the most part, those recommendations that focused on changing statutory requirements and automated system or procedural changes have been implemented.

Our 1997 and 1998 reports offered several recommendations regarding the role of judges and courts in the collection process. However, many of these recommendations remain open and subject to a discussion as to the role of the judge and court personnel in the collection process.

Continued procedural enhancements in the future will only provide marginal improvements to the collection process. To provide significant collection progress, the General Assembly and the Judicial System leadership will need to review and determine the role judges and court personnel should have in this process. The extent to which a court collects accounts and prevents them from becoming delinquent, comes from the leadership of the judge and clerk, who control the operations of the court.

Recommendation: **The General Assembly may wish to consider addressing the role judges and court personnel have in collecting fines and costs.**

Delinquent Collections

Delinquent accounts are referred to collection programs when they become 41 days past due or are otherwise in a delinquent status. The collection program is responsible for making reasonable and diligent efforts by lawful means to collect all unpaid fines, costs, forfeitures, or penalties and interest in cases referred by the Commonwealth's Attorney. Private collection agents remit collections to the court, after deducting their fee from the proceeds of the amounts collected. The compensation percentage rate for private collection agents and Commonwealth's Attorney in-house programs range from 21 percent to 35 percent. Under the Department of Taxation's Court Debt Collection Program, defendants pay the court directly and then the court remits 14 percent of the delinquent amount collected to the CDC Program.

The following table shows the breakdown of the different methods in use at June 30, 2000. We will address the historical effective collection rate for each collection method later in this report.

Collection Methods Used

Method	Number in Use	Number of Courts
In-house	6	12
Private attorney or collection agency	9	57
CDC - Taxation	-	255
Local agreement	1	3
Total		327

Sources: Commonwealth's Attorneys Collection Reports
Supreme Court's Financial Management System (FMS.)

Delinquent accounts referred to CDC for collection totaled more than $41.3 million and $42.8 million in fiscal years 1999 and 2000 respectively. During the same period, private attorneys and collection agencies received more than $38.7 million each year in delinquent accounts. Finally, delinquent accounts totaling more than $2.8 million in fiscal year 1999 and more than $3.4 million in fiscal year 2000 went to Commonwealth's Attorneys' in-house collection programs.

Effective Collection Rates

Commonwealth's Attorneys in most localities have chosen to refer delinquent accounts to the Department of Taxation's Court Debt Collection (CDC) unit. This process has proven to be an effective and cost-beneficial collection method. CDC receives weekly downloads of data from the Supreme Court into its system. At June 30, 2000, CDC held approximately $181 million in unpaid accounts. We have found that the CDC unit continues to have the highest effective collection rate based upon the net amount the court receives after the cost of collection. CDC charges 14 percent whereas the other programs charge rates ranging from 21 to 35 percent for collecting delinquent accounts. For fiscal year 2000, CDC's overall effective collection rate was 41.4 percent, which compares to effective rates of 27.7 percent for private attorneys and collection agencies, and 30.3 percent for Commonwealth's Attorneys' in-house collection programs.

The following table shows the effective collection rates of the various methods used by Commonwealth's Attorneys to collect delinquent fines, fees, and costs. We have combined the amounts for private attorneys and private collection agencies in the "Collection Agencies" category.

Collection Method	Fiscal Year 1999	Fiscal Year 2000
Court Debt Collection:		
Total of Accounts Referred	$ 41,398,166	$ 42,885,528
Gross Amount Collected	19,082,842	20,653,722
Net Amount Collected	16,220,416	17,762,200
Effective Collection Rate	39.1 Percent	41.4 Percent
Collection Agencies:		
Total of Accounts Referred	$ 38,710,168	$ 38,726,207
Gross Amount Collected	13,558,772	15,311,755
Net Amount Collected	9,479,990	10,737,855
Effective Collection Rate	24.4 Percent	27.7 Percent
In-House Programs:		
Total of Accounts Referred	$ 2,875,459	$ 3,412,982
Gross Amount Collected	1,475,461	1,516,334
Net Amount Collected	1,006,103	1,035,363
Effective Collection Rate	34.9 Percent	30.3 percent

Source: Supreme Court's FMS.

Part of CDC's success is its ability to achieve "economics of scale" and its use of non-legal staff to lead the collection effort. Our 1993 report recognized that while the Commonwealth's Attorneys are an integral part of the collection process since fines and cost are a form of punishment, the Commonwealth also needed to coordinate these efforts and work with the different parties to achieve the most effective collection methods.

To allow others to achieve the economics of scale that CDC has can only happen if Commonwealth's Attorneys have the ability to create regional collection efforts and pool their accounts. The Supreme Court or the Compensation Board could work with groups of Commonwealth's Attorneys to contract collectively for services. This approach would provide a sufficiently large enough pool of accounts for the economics of scale available to CDC. In addition, the potential commissions would allow for the selection of a collector using the Virginia Public Procurement Act and create a competitive environment.

Some of the lower rates charged for collections occur when the Commonwealth's Attorneys use public procurement methods and do not limit the potential bidders to legal firms specializing in collection, rather than just collection agencies. As we have recommended in previous reports, the selection of contractors should be on a competitive basis in accordance with the Virginia Public Procurement Act. Competitive procurement would take into account the expertise of any potential contractor together with the fee for which he is willing to perform collection services. As we have previously reported, however, not all Commonwealth's Attorneys have contracted for their collection programs on a competitive basis.

Recommendation: **The General Assembly may wish to consider providing legislative changes that would allow for contracting collection services on a regional basis.**

Recommendation: **Commonwealth's Attorneys should follow the Virginia Public Procurement Act and select collections contractors on a competitive basis. Commonwealth's Attorneys should take into account the expertise of any potential contractor together with the fee for which he is willing to perform collection services.**

Fines, Fees, and Costs Management Recommendations

The following tables are listings of all of the recommendations presented in the Auditor of Public Accounts' previous reviews of court fines, fees, and costs management. Where appropriate, any actions taken are also shown.

Special Report dated December 15, 1993
Courts System – Financial Management of Accounts Receivable

RECOMMENDATION	RESPONSE
Recommendation 1: The General Assembly may wish to consider designating a group or organization with the responsibility and authority for the collection process for fines and costs.	There was a revision of §19.349 of the Code of Virginia to designate that Commonwealth's Attorneys cause proceedings to be instituted for the collection of unpaid fines and costs in July 1994. Commonwealth's Attorney shall contract with an outside party to collect unpaid fines and costs if he chooses not to pursue collection.
Recommendation 2: The General Assembly may wish to consider formally assigning responsibilities for collections. Consideration should include the courts, the Commonwealth's Attorneys, an administrative agency in either the Judicial or Executive Branch, or a private collection agency.	See Recommendation number 1 and the revision effective July 1994. Commonwealth's Attorneys sign contracts with either the Department of Taxation's Court Debt Collection Program, a collection agent, or will establish an in-house collection program.
Recommendation 3: The Supreme Court should set measurable performance standards for clerks, judges, Commonwealth's Attorneys, and collection agencies. The Supreme Court should also issue an annual report on these measurers.	The Supreme Court issues a BR22 reports that shows collection totals per the court, the collection agent, and receivables owed. The Supreme Court began producing the BR22 Receivable Balances and the BR191 Accounts Receivable Analysis Reports in September 1994.
Recommendation 4: The Supreme Court must review communications throughout the collection process and identify how improvements can occur among all of the parties involved.	The Supreme Court has developed interface communication with the Department of Motor Vehicles, the Department of Taxation, and the State Police. This has been in effect since 1995.
Recommendation 5: The Supreme Court must issue guidance to judges and clerks on procedures they must follow to collect fines and costs immediately after sentencing.	The Supreme Court's Technical Assistance Department has provided on-going guidance to clerks of district and juvenile courts.
Recommendation 6: The judge must tell the defendant that fines and costs are part of the punishment and he must pay the clerk's office immediately. The judge should determine how and when the defendant expects to pay and if unable, the judge should initiate a payment plan or alternate sentence, immediately. Further, the judge must discuss the results of nonpayment and follow up on defendants who do not pay.	Effective July 1995, §19.2-354 of the Code of Virginia requires courts to establish a deferred payment plan or an installment payment plan for defendants not paying in full immediately.

Recommendation 7: If the judge imposed a suspended jail sentence with fines, he should set a date by which the defendant must pay fines or the defendant must explain why he did not pay the fine. If the defendant's payment failure is willful, the judge should order the defendant to serve the suspended sentence.	There was a revision of §19.349 of the Code of Virginia to designate that Commonwealth's Attorneys cause proceedings to be instituted for the collection of unpaid fines and costs in July 1994.
Recommendation 8: The General Assembly may wish to consider amending Section 19.2-353.3 of the Code of Virginia to require all district and circuit court clerks to accept personal checks and credit cards instead of only cash.	The circuit and district courts accept personal checks and credit cards along with cash and money orders. Pursuant to §19.2-353.3 of the Code of Virginia circuit courts have the option to accept credit cards.
Recommendation 9: Courts should continue to absorb the credit card fee because doing so may increase collectibility and result in less cost than paying collection agency fees.	Ongoing.
Recommendation 10: Courts should review their prepayment process and determine whether defendants are receiving information about the prepayment options. Courts should also work with law enforcement agencies to ensure that defendants receive accurate information about fines and costs for pre-payable violations and how to make payment. One option would require that law enforcement officers give each defendant a prepayment information sheet for the applicable locality. Another option includes furnishing a pre-addressed envelope with the traffic summons for the pre-payable violations.	Since 1995, law enforcement officers have given prepayment sheets to defendants. These sheets have fines and costs listed, and the telephone and address of the district court.
Recommendation 11: Circuit courts should enforce immediate payment when there is no jail sentence by requiring the defendant to pay all known fines and costs and an estimate of other costs. The clerk should mail a refund or balance due notice once he compiles all the costs.	Since 1995, Circuit Courts have provided a form to defendants to detail the costs owed and to set up a payment plan for the payment of costs.
Recommendation 12: Courts should send standard notices for all past due accounts at regular intervals. If individual courts do not have the resources to send notices, the Supreme Court should consider contracting with a third-party billing service to send notices. Implementation of centralized billing would not only reduce the burden on the individual court staff, but also provide a more cost beneficial way to inform defendants of their delinquent accounts.	Since 1993, all district courts send defendants a notice the day after court. Circuit courts began sending a dunning notice in 1995 to inform the defendant that their driving privileges would be suspended if payment is not made within 10 days of the issue date of the dunning notice.
Recommendation 13: The Supreme Court should change the standard payment agreement form to contain all information that would improve future collection efforts.	Implementation of forms DC210, CC1350, CC1378 and CC1379 used by the circuit and district courts.
Recommendation 14: The judge should require all defendants to sign an installment or deferred payment agreement whenever the defendant cannot make immediate payment.	All courts have some form of installment or deferred payment plans.
Recommendation 15: The General Assembly may wish to consider amending Section 19.2-354 of the Code of Virginia so installment or deferred payment agreements include a return to court date, if a defendant does not complete payment according to the agreement.	§19.2-354 of the Code of Virginia requires courts to give notice that failure to pay in accordance with agreement will cause license to be suspended and may cause the defendant to be arrested. Effective July 1994.

Recommendation 16: The State Police, Attorney General's Office, Department of Motor Vehicles and the Supreme Court should change the Uniform Traffic Summons to inform the defendant that if found guilty they must make immediate payment of all fines and costs. This may result in defendants arriving at court with the knowledge that the court expects immediate payment of fines and costs, if convicted.	Changes implemented.
Recommendation 17: The General Assembly may wish to consider amending the Code of Virginia to require that Corrections withhold a portion of defendant's earnings while incarcerated to satisfy unpaid fines and costs.	Section 19.2-354 of the Code of Virginia requires that a defendant who participates in work release, home/electronic incarceration or nonconsecutive days program is required to make payments in agreement with installment plan in order to participate in the program.
Recommendation 18: The General Assembly may wish to consider amending the Code of Virginia to require the defendant to either make full payment of fines and costs or require a payment agreement as a condition of work release or a home incarceration participation program. The agreement should state that failure to make payments would result in removal from the programs.	Section 19.2-354 of the Code of Virginia requires that a defendant who participates in work release, home/electronic incarceration or nonconsecutive days program is required to make payments in agreement with installment plan in order to participate in the program.
Recommendation 19: Corrections and clerks must work together to determine why clerks do not always receive the release notice.	All clerks provide their fax numbers, and all releases are faxed to the courts of original jurisdiction.
Recommendation 20: Local jails should have procedures to tell the clerk of the release of a jailed defendant.	Not fully implemented statewide.
Recommendation 21: The Supreme Court should consider developing a program to match defendant release data from Corrections with the receivable accounts to identify delinquent accounts of released defendants. The Supreme Court should then notify the applicable clerks of the defendants' location.	Not implemented.
Recommendation 22: The General Assembly may wish to consider amending the Code of Virginia to prevent a defendant from registering or titling a motor vehicle when they have unpaid fines and costs.	Not implemented.
Recommendation 23: The General Assembly may wish to consider legislation allowing judges to suspend drivers' licenses immediately if the defendant does not make full payment or enter into a payment agreement. The judge should take physical possession of the defendant's suspended license before the defendant leaves court.	Effective January 1995, §46.2-395 of the Code of Virginia requires that defendant's driver's license be suspended for failure to pay fines and costs on criminal cases.
Recommendation 24: The General Assembly may wish to consider legislation to suspend a defendant's driver's license for unpaid criminal offenses. This would encourage the defendant to pay his debt immediately after trial.	Effective January 1995, §46.2-395 of the Code of Virginia requires that defendant's driver's license is suspended for failure to pay fines and costs on criminal cases.

Recommendation 25: DMV should work with the American Association of Motor Vehicles Administrators to encourage the remaining seven states to enter the Nonresident Violator Compact of 1977	No action noted.
Recommendation 26: The Supreme Court should continue to submit claims to set-off debt for three years.	Continuing.
Recommendation 27: The General Assembly may wish to consider amending Section 19.2-349 of the Code of Virginia to specifically define Commonwealth's Attorneys' responsibility for collecting fines and costs. Further, the Code should require Commonwealth's Attorneys to either contract with an outside collection agency or have an in-house collection unit.	There was a revision of §19.349 of the Code of Virginia to designate that Commonwealth's Attorneys cause proceedings to be instituted for the collection of unpaid fines and costs in July 1994. Commonwealth's Attorneys shall contract with an outside party to collect unpaid fines and costs if he chooses not to pursue collection in-house.
Recommendation 28: The Supreme Court of Virginia through its MIS section should semi-annually analyze and report on the collectibility of receivables. The Supreme Court should accumulate receivable accounts for all courts not on its central accounting system, those using other accounts receivable systems and for accounts it classifies as not yet delinquent. Receivable totals should not include those old accounts where the possibility of collection is remote. Complete information would allow state decision-makers to make more informed decisions about the receivable balance and delinquency.	Implemented by the Supreme Court of Virginia September 1994. Produces quarterly and annual reports of receivable balances and analysis.
Recommendation 29: The Supreme Court should assign someone the responsibility to analyze the character of receivable accounts. This individual should work with judges, court officials, and local Commonwealth's Attorneys to improve collections and develop collection plans.	Personnel in the Management Information Systems Department working with the Financial Management System analyze collection data and distribute it to the respective courts.

Special Report dated December 15, 1997
Review of Virginia Courts Management of Unpaid Fines and Costs

RECOMMENDATION	**RESPONSE**
Recommendation 1: The Supreme Court should consider developing guidelines to increase the Judges' participation in stressing the importance and expectation of immediately paying fines and costs. Judges need to explain possible enforcement actions that occur when defendants do not fulfill this responsibility.	No Action Noted.
Recommendation 2: Courts should place notices in the courthouses outlining the courts' philosophy, payment procedures, and collection policies. Prominently displaying these notices will increase the community's understanding of the courts' policies and procedures.	No Action Noted.

Recommendation 3: The Supreme Court should revise court documents (DC210 and CC1379) to provide additional space for employment information, address of nearest relative, and personal references. The courts should verify the accuracy of the information before accepting a payment plan. Determination of indigent status at this time may aid in categorizing the collectibility of the receivable. Additionally, defendants who claim the need for installment payments may decide to make full payment when confronted with the need for verifying income, employment, and reference information.	No Action Noted.
Recommendation 4 Except for indigent cases, the Judge should inform defendants that down payments are a sign of "good faith" that warrant payment extensions. Failure to make a down payment at the time of sentencing should negate the ability to receive deferred or installment payment plans.	No Action Noted.
Recommendation 5 The courts should contact the defendant after the due date but before the account goes to the Commonwealth's Attorney for delinquent collection. Court personnel could make this contact by issuing show causes, sending a letter signed by the judge, or by telephone. The courts should inform the defendants what sanctions have occurred and what will occur and should the account remain updated.	Courts report cases to the Commonwealth's Attorney 41 days after the trial date of once the defendant is delinquent on the account. Due to the timing constraints, there may not be enough time for the court to contract the defendant before reporting to the Commonwealth's Attorney. The Supreme Court should work with the courts to determine if additional actions taken by the court would provide better benefits than reporting the case to the collection agent.
Recommendation 6: The Supreme Court should investigate the feasibility of reporting all delinquent accounts to credit bureaus as an additional method of increasing collections. In addition, courts must do a better job of docketing all judgments. Some clerks suggested the possibility of automating and interfacing the Judgment Lien Docket Book with the Financial Management System.	No Action Noted.
Recommendation 7: Judges, court clerks, and probation officials in each locality should formulate action plans suitable for their court. They should document and consistently use these plans. In addition, the courts and probation officers should monitor the defendant's compliance with the payment plan. The Department of Corrections' Division of Community Corrections could provide guidelines for probation officers for monitoring collections, establishing payment plans, and accepting payments.	No Action Noted.
Recommendation 8: The General Assembly may wish to consider requiring full payment of fines, costs, and restitution as a condition for release from probationary status.	The ten general conditions of probation do not include payment of fines, costs, and restitution instead payment is a special condition. Probation officers do not normally bring probationers to court solely for non-payment of fines and costs. If the probationer comes to court for violation of other conditions, the court will sometimes address the unpaid fines and costs. Pursuant to §19.2-356 of the Code of Virginia the court may make payment a special condition of probation.

Recommendation 9: The General Assembly may wish to consider requiring all courts to use the Department of Taxation's Court Debt Collection Program for collecting delinquent fines and costs. Taxation could contract with collection agencies for the more difficult accounts, similar to their procedure for delinquent state income taxes. Commonwealth's Attorneys would not have to monitor the activity of delinquent accounts nor contract for collection services.

Commonwealth's Attorneys have agreements with the Department of Taxation's Court Debt Collection Program for approximately 72% of the courts using the Financial Management System. However, the accounts receivable for these courts represent only 47% of total receivables. Implementation of this recommendation would double the current caseload handled by Taxation's CDC Program.

The CDC Program continues to have the highest effective collection rate, which is the net amount the court receives after the cost of collection. Taxation charges 14% whereas the other programs charge an average of 30% for collecting delinquent accounts.

As discussed earlier, another alternative is to allow Commonwealth's Attorneys or the Supreme Court to contract for collection of delinquent accounts on a regional basis. This could enable the private attorneys or collection agencies to realize "economies of scale" and lower the collection rate charged to the accounts; thereby, improving their effective collection rate.

Recommendation 10: The Supreme Court should revise the Financial Management System to include features for monitoring the effectiveness of collection procedures. The Supreme Court also should implement an effective write-off policy that evaluates the collectibility of accounts. These changes would require the Courts to determine the collectibility of accounts receivable.

No Action Noted.

Recommendation 11: The Supreme Court should create or update training materials to assist Courts in understanding, implementing, and monitoring accounts receivable. In addition, the courts must fully use the features provided in the Financial Management System.

The Supreme Court of Virginia's Management Information Systems Department has trained over 800 clerks and deputy clerks since September 1997. The MIS Department has had refresher courses for the Financial Management System and the Case Management System. The MIS Department has provided training for the Auditor of Public Accounts, the Department of Corrections, and the Department of Taxation's Court Debt Collection Program.

Recommendation 12: First, courts should set individual attainable and measurable goals to improve fines and costs collection. The goals should include a time standard for case disposition, average time for successful completion of fine payments, and average amounts collected. Second, the courts should regularly measure program outcomes against goals. The courts should be able to use the FMS reports to monitor their performance.

To implement this recommendation, the Supreme Court and the State Compensation Board should work with the courts in developing meaningful goals, procedures to monitor these goals, and any additional accounts receivable management reports. Goals should take into consideration the workload for an individual court, the type of cases heard, its location, and other factors influencing accounts receivables.

No Action Noted.

Recommendation 13: The General Assembly may want to consider having the Supreme Court and State Compensation Board, in conjunction with the Department of Corrections and local sheriffs, study the best alternatives for collecting unpaid fines and costs from incarcerated defendants.	Currently, §19.2-354(B) does require that individuals sentenced to a state or local correctional facility, as a condition of participating in any work release, home incarceration, or nonconsecutive days program, make payments in accordance with their deferred or installment payment agreement while participating in such program.

Special Report dated November 1, 1998

Review of Virginia Courts Management of Unpaid Fines and Costs

RECOMMENDATIONS	**RESPONSE**
Recommendation 1: There needs to be clear and continuous communication between the judge, clerk, and probation officer as to the terms, conditions, and payment status for each payment plan. Further, the parties must know their responsibilities for monitoring payments and agree on reporting the delinquent cases to the Commonwealth's Attorney for collection.	No action noted.
Recommendation 2: The individual courts noted in the audit findings should enforce the "Fines and Fees Policies and Procedures" to improve the collection of unpaid fines and costs. It is important that the courts properly monitor the status of each case and use the available mechanisms to enforce collections.	Many courts have improved their collection procedures. This is an ongoing process.
Recommendation 3: All Commonwealth's Attorneys contracting with private attorneys or collection agencies should select the contractor on a competitive basis in accordance with the provisions of the Virginia Public Procurement Act. The Commonwealth's Attorney should take into account the expertise of each potential contractor together with the fee for which he is willing to perform the services.	Under study at this time.
Recommendation 4: The courts should get complete information from the defendant, including social security number, employment information, address of nearest relative, and personal references. The courts should verify the accuracy of the information before accepting a payment plan. Courts must understand the importance of obtaining complete information. Defendants who claim the need for installment payments may decide to make full payment when confronted with the need for verifying income, employment, and reference information.	No action noted.
Recommendation 5: The Department of Corrections needs to include the social security number, race, and new address of the defendant on all release notifications. The Department of Corrections' Community Release unit personnel indicated that this information is available, but is not included in the database used to produce the release notices. The Community Release Unit should add the necessary fields to extract the social security number, race information, and any other specific identifiers about the defendant when issuing the release notices.	Under study at this time.

VIRGINIA ASSOCIATION OF COMMONWEALTH'S ATTORNEYS
E. M. WRIGHT, JR., PRESIDENT
BUCKINGHAM COUNTY

Richard E. Trodden, IMMEDIATE PAST PRESIDENT
Arlington County

Linda D. Curtis, PRESIDENT-ELECT
City of Hampton

Charles S. Sharp, VICE-PRESIDENT
City of Fredericksburg

C. Phillips Ferguson, SECRETARY/TREASURER
City of Suffolk

November 9, 2000

Mr. Walter J. Kucharski
Auditor of Public Accounts
P.O. Box 1295
Richmond, Virginia 23218

Dear Mr. Kucharski:

Thank you for the opportunity to review and comment on the information and recommendations contained in your report on the management of unpaid fines, fees and costs assessed in Virginia's courts. The Virginia Association of Commonwealth's Attorneys' Board of Directors considered the recommendations impacting Commonwealth's Attorneys at our November 8, 2000 meeting.

It was the consensus of the Commonwealth's Attorneys present at the meeting not to oppose legislation that would allow for contracting collection services on a regional basis provided that the discretion to do so be vested in and remain with the individual Commonwealth's Attorneys in the region. In addition, acknowledging the information contained in your report that the Department of Taxation's Court Debt Collection (CDC) Unit charges the lowest rate (14 percent) for collecting delinquent accounts, the Commonwealth's Attorneys present felt strongly that those who choose to contract with the CDC should not be subject to the Virginia Public Procurement Act or any similar process, procedure or certification.

If you have any questions or comments, please feel free to contact me at (804) 969-4910.

Sincerely,

E.M. Wright, Jr.
President

cc: Susan B. Williams, Director, Commonwealth's Attorneys' Services Council

BUCKINGHAM COUNTY OFFICE
Post Office Box 200
Buckingham, Virginia 23921
(804) 969-4910
Fax: (804) 969-1567

WILLIAMSBURG OFFICE
Correspondence Address:
Post Office Box 3549
Williamsburg, Virginia 23187-3549
(757) 253-4146
Fax: (757) 253-7159
E-Mail: lddann@mail.wm.edu

WILLIAMSBURG OFFICE
Delivery Address:
208 South Boundary Street
Williamsburg, Virginia 23185