



Office of Court Administration

Memo

To: Chief Justice Nathan Hecht
Presiding Judge Sharon Keller
Members, Texas Judicial Council

From: David Slayton

Date: June 29, 2018

Re: Proposed Amendments to Collection Improvement Program Rules - Secs. 175.1, 175.3 and 175.4 of Title I, Texas Administrative Code

At its September 29, 2017 and February 23, 2018 meetings, the Council approved amendments to Secs. 175.1, 175.3, and 175.4 of the Collection Improvement Program (CIP) rules (Title 1, Chapter 175, Texas Administrative Code).

The proposed amendments would:

- 1) increase the population threshold for counties that are subject to the CIP rules from 50,000 to 100,000 (implementation of House Bill 3167 (85th Legislature);
- 2) repeal reporting requirements that are no longer essential for compliance with Art. 103.0033 of the Code of Criminal Procedure; and
- 3) require that required reports be submitted monthly as is the current practice of most of the local collection programs subject to the CIP (under the current rule monthly reporting is recommended but not required).

The proposed amendments were published in the *Texas Register* on May 18, 2018 (43 TexReg 3171). A copy of the proposed amendments is attached. No comments were received on the proposed rules.

Action Required: Adoption of attached proposed amendments.

Texas Administrative Code, Title I, Chapter 175

§175.1. Purpose and Scope.

(a) The purpose of this chapter is to provide notice to counties and municipalities that are subject to Article 103.0033 of the Code of Criminal Procedure of the scope and components of the Collection Improvement Program (CIP) model developed by the Office of Court Administration pursuant to Article 103.0033 and the standards that will be used to determine whether a county or municipality is complying with the CIP requirements.

(b) Article 103.0033 and this chapter apply to counties [~~with a population of 50,000 or greater~~] and cities with a population of 100,000 or greater based on the last decennial census. Counties that have been granted a waiver under §175.6(b) of this chapter are not required to comply with the requirements in this chapter.

(c) The CIP is designed to improve the enforcement of a defendant's compliance with the payment of costs, fees, and fines that have been ordered by a court, without imposing an undue hardship on the defendant or the defendant's dependents. The CIP components should not be interpreted to conflict with or undermine the provision to defendants of full procedural and substantive rights under the constitution and laws of this state and of the United States.

(d) The CIP does not alter a judge's legal authority or discretion to design payment plans of any amount or length of time; to convert costs, fees, and fines into community service or other non-monetary compliance options as prescribed by law; to waive costs, fees, and fines; [ø] to reduce the total amount a defendant owes at any time; or to adjudicate a case for non-compliance at any time.

(e) The CIP applies to criminal cases in which the defendant is ordered to pay costs, fees, and fines under a payment plan.

(f) The CIP does not apply to cases in which:

(1) the court has waived all court costs, fees, and fines;

(2) the court authorizes discharge of the costs, fees, and fines through non-monetary compliance options;

(3) the defendant has been placed on deferred disposition or has elected to take a driving safety course;
or

(4) the defendant is incarcerated, unless the defendant is released and payment is requested. The CIP does not apply to the collection of community supervision fees assessed under Sec. 42A.652 of the Code of Criminal Procedure.

(g) Although cases in which the court has ordered a defendant to satisfy his or her obligation regarding costs, fees, and fines through community service or other non-monetary compliance options are not subject to the CIP requirements, a judge may use local program staff to assist the court with monitoring a defendant's compliance with these court orders.

§175.3. Collection Improvement Program Components.

(a) Components for Local Program Operations.

(1) Dedicated Local Program Staff. Each program must designate at least one employee whose job description contains an essential job function of CIP program activities. The local program activities may be assigned to one individual employee or distributed among two or more employees. The local program activities need not require 40 hours per week of an employee's time, but must be a priority.

(2) Payment Plan Compliance Monitoring. Local program staff must monitor the defendants' compliance with the terms of their payment plans and document the ongoing monitoring by either an updated payment due list or a manual or electronic tickler system.

(3) Application or Contact Information.

(A) Payment Plans Set by Judge Prior to Referral to the Local Program and Standard Payment Plans Accepted by the Defendant. If the judge has established a payment plan for the defendant prior to

referring the case to the local program or the defendant has agreed to a standard payment plan under paragraph (7)(A) of this subsection, local program staff must obtain contact information from the defendant. Contact information documentation must be signed and dated and obtained within one month of the assessment date.

(B) Other Cases. For all other cases, the local program must collect from the defendant a signed and dated application for a payment plan that includes both contact information and payment ability information. The required information must be obtained within one month of the assessment date.

(4) Verification of Contact Information. Within five days of receiving the contact information, local program staff must verify both the home and primary contact telephone number. Verification may be conducted by reviewing written proof of the contact information, by telephoning the personal contacts, or by using a verification service. Verification must be documented by identifying the person conducting it and the date of the verification.

(5) Defendant Interviews.

(A) Within 14 days of receiving an application, local program staff must conduct an in-person or telephone interview with the defendant to review payment ability information. Interviews must be documented by indicating the interviewer and date of the interview.

(B) Within 14 days of receiving a case in which the judge has set a payment plan before referring the case to the program or the defendant has agreed to a standard payment plan under paragraph (7)(A) of this subsection, local program staff must conduct an in-person or telephone interview with the defendant to review the terms of the defendant's payment plan. Interviews must be documented by indicating the interviewer and date of the interview.

(6) Court Review of the Defendant's Ability to Pay Information.

(A) Court Review. Local program staff must provide the court the defendant's payment ability information collected under paragraph (3)(B) of this subsection for the court to review and consider if non-monetary compliance options or waiver or partial waiver of costs, fees or fines are appropriate when the defendant meets one or more of the following criteria:

(i) the defendant is required to attend school pursuant to the compulsory school attendance law in Sec. 25.085 of the Texas Education Code;

(ii) the defendant's household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines; or

(iii) the defendant receives assistance under the following:

(I) a food stamp program or the financial assistance program established under Chapter 31, Human Resources Code;

(II) the federal special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. Section 1786;

(III) the medical assistance program under Chapter 32, Human Resources Code; or

(IV) the child health plan program under Chapter 62, Health and Safety Code.

(B) Other Cases. Local program staff must also provide for the court's review the payment ability information of a defendant that does not meet the criteria listed in subparagraph (A) of this paragraph if local program staff receive information that has not already been considered by the court indicating that the payment of the assessed court costs, fees, and fines would cause undue hardship to the defendant or the defendant's dependents. Local program staff may also provide for the court's review the payment ability information of a defendant that local program staff determine should be reviewed by the court.

(C) Information Regarding Non-Monetary Compliance Options. When local program staff provide a defendant's payment ability information for the court's review under subparagraph (A) of this paragraph, local program staff should collect and provide to the court information regarding non-monetary

compliance options that may be available, if any, that may enable the defendant to discharge all or part of the defendant's costs, fees, and fines.

(D) Judicial Discretion. Judges retain discretion regarding the determination of whether to waive or reduce costs, fees, and fines for any defendant; to impose non-monetary compliance options to satisfy costs, fees or fines; or the assessment of costs, fees or fines, sentencing, or other disposition decisions. Once a judge reviews a defendant's payment ability information in a case provided for review under subparagraph (A) or (B) of this paragraph, the local program is not required to provide the judge the defendant's payment ability information again unless the defendant provides additional payment ability information that was not previously provided to the judge.

(7) Payment Plans.

(A) Standard Payment Plan. A judge may adopt standard payment plans that include a payment range and time range based on amounts owed that can be made available to defendants when they are referred to the local program. Prior to agreeing to a standard payment plan the defendant must agree in writing that the defendant: 1) understands the payment plan terms, 2) believes that the defendant has the ability to successfully meet the payment plan terms, and 3) declines the opportunity for local program staff to review the defendant's payment ability information to consider lower monthly payments or a longer term than those provided in the standard payment plan.

(B) Other Payment Plans. If a defendant declines a jurisdiction's standard payment plan or the jurisdiction has not adopted a standard payment plan, local program staff must review the payment ability information provided by the defendant and establish appropriate payment terms based on the defendant's ability to pay that will not cause undue hardship to the defendant or the defendant's dependents.

(C) Payment Plan Elements. Payment plans should include the payment amount, the designated interval, and the number of payments that the defendant will make to pay the defendant's court-ordered costs, fees, and fines.

(D) Documentation. Payment plans must be documented by notation in the judgment or court order, on a docket sheet, by written or electronic record, or by other means enabling later review.

(8) Telephone Contact for Past-Due Payments. Within one month of a missed payment, a telephone call must be made to the defendant who has not been in contact with local program staff. In every telephone contact for past due payment, local program staff must provide the defendant with instructions about what to do if the defendant is unable to make payments. This telephone contact must also include information about how the defendant may request a hearing for the judge to consider the defendant's ability to pay and any non-monetary compliance options available for the defendant to satisfy the judgment. Telephone calls may be made by an automated system, but an electronic report or manual documentation of the telephone contact must be available on request.

(9) Written Notice for Past-Due Payments. Within one month of a missed payment, a written notice must be sent to the defendant who has not been in contact with local program staff. Written notice may be made by regular or certified mail, e-mail, text message or other electronic means. Every written notice for past due payment must provide the defendant with instructions about what to do if the defendant is unable to make payments. The written notice must also include information about how the defendant may request a hearing for the judge to consider the defendant's ability to pay and any non-monetary compliance options available for the defendant to satisfy the judgment. Written notice may be sent by an automated system, but an electronic report or manual documentation of the written notice must be available on request. Notice under this paragraph is not required if local program staff make contact with the defendant under paragraph (8) of this subsection and the defendant makes payment or other payment arrangements.

(10) Final Contact Attempt. Local program staff must send a final written notice by regular or certified mail to the defendant within one month of the written notice described in paragraph (9) of this subsection prior

to reporting the case to the court as non-compliant. The written notice must include the same information required in paragraph (9) of this subsection and include reasonable steps the defendant can take to avoid the defendant's case being reported to the court as non-compliant. The written notice must also notify the defendant of the defendant's right to avoid jail time for nonpayment if the defendant is unable to pay the amount owed without undue hardship to the defendant and the defendant's dependents. An electronic report or manual documentation of the written notice must be available on request. The local program should not report the case back to the court as non-compliant until at least one month after the final contact attempt to provide the defendant time to discuss with local program staff new payment plan terms or alternative non-monetary compliance options, if any are available, for the court to consider. This paragraph does not interfere or alter the judge's authority to adjudicate a case for non-compliance at any time.

(11) Delinquent Cases. Each local program must have a component designed to improve collection of balances more than 60 days past due.

(12) Proper Reporting. The local program must report its collection activity data to OCA monthly [~~at least annually~~] in a format approved by OCA, as described in §175.4.

(b) Exceptions to Defendant Communications Rules. Exceptions to the defendant communications rules described in this subsection are limited to those cases in which timely access to the defendant in order to obtain the required application or contact information is not possible, and efforts to obtain an application or contact information are documented, as provided in paragraphs (1) and (2) of this subsection.

(1) Attempt to Obtain Application or Contact Information. An attempt to obtain an application or contact information described in subsection (a)(3) of this section is made by taking one of the following actions within one week of the assessment date: 1) mailing a notice requesting the defendant contact local program staff to make arrangements to complete an application and provide contact information; 2) mailing an application or contact information form; or 3) obtaining the information via the telephone. An electronic report or manual documentation of the attempt must be available on request. Should the defendant fail to contact local program staff or return a completed application or contact information form and the post office not return the notice or application or contact information form as undeliverable, the local program must make a second attempt to contact the defendant with any existing available information within one month of the first attempt. An electronic report or manual documentation of the second attempt must be made available on request.

(2) Application or Contact Information Is Obtained. Should a completed application or contact information form be returned to the local program by the defendant as the result of an attempt described in paragraph (1) of this subsection, it will be considered timely and all other communication timing requirements described in subsection (a)(4) and (5) of this section are based on the date the local program receives the application or contact information form.

(c) Computation of Time. In computing any period of time under these rules, when the last day of the period falls on a Saturday, Sunday, legal holiday, or other day on which the office is not open for business, then the period runs until the end of the next day on which the office is open for business.

§175.4. Content and Form of Local Government Reports.

(a) General Scope. Article 103.0033(i) of the Code of Criminal Procedure requires that each local program submit a written report to OCA at least annually that includes updated information regarding the local program, with the content and form to be determined by OCA. Reporting under Art. 103.0033 of the Code of Criminal Procedure and this subchapter is not the same as reporting of judicial statistics under Sec. 71.035 of the Government Code and different rules for reporting and waiver apply.

(b) Reporting Format and Account Setup. OCA has implemented a web-based online Court Collection Reporting System for local programs or jurisdictions to enter information into the system. For good cause shown by a jurisdiction, OCA may grant a temporary waiver from timely online reporting. Local program

participants or jurisdictions must provide OCA with information for the online reporting system to enable OCA to establish the local program reporting system account. ~~[The information must include the local program name, program start date, start-up costs, the type of collection and case management software programs used by the local program, the entity to which the local program reports (e.g., judge, district clerk's office, sheriff, etc.), the name and title of the person who manages the daily operations of the local program, the mail and e-mail addresses and telephone and fax numbers of the local program, the courts serviced by the local program, and contact information for the local program staff with access to the system so user identifications and passwords can be assigned.]~~

(c) Content and Timing of Reports.

~~[(1) Annual Report. By the 60th day following the fiscal year end, each local program or jurisdiction must report the following information:~~

~~(A) Number of full-time and part-time local program employees;~~

~~(B) Total local program expenditures;~~

~~(C) Salary expenditures for the local program;~~

~~(D) Fringe benefit expenditures for the local program;~~

~~(E) Areas other than court collections for which the local program provides services;~~

~~(F) Local and contract jail statistics and average cost per day to house a defendant; and~~

~~(G) A compilation of 12 months of the monthly reporting information described in paragraph (2) of this subsection, if not reported each month as requested.~~

~~[(2) Monthly Reports.]~~ By the 20th day of the following month, each local program or jurisdiction must ~~[is requested to]~~ provide the following information regarding the previous month's local program activities:

~~[(A)]~~ (1) Number of cases in which costs, fees, and fines were assessed;

~~[(B)]~~ (2) Number of cases in which local program staff provided the court a defendant's ability to pay information in a case under §175.3(a)(6) for review of the defendant's ability to pay;

~~[(C)]~~ (3) For assessed court costs and fees: the dollar amount assessed and collected; the dollar amount of credit given for jail time served; the dollar amount of credit given for community service performed or other non-monetary compliance options; the dollar amount waived because of the defendant's inability to pay, and the dollar amount waived for reasons other than the defendant's inability to pay;

~~[(D)]~~ (4) For fines: the dollar amount assessed, collected, or waived; the dollar amount of credit given for jail time served; and the dollar amount of credit given for community service performed or other non-monetary compliance options; and

~~[(E)]~~ (5) Aging information consisting of the time span from date of assessment through the date of payment, in 30-day increments up to 120 days, and for more than 120 days.