

**Stopping the Revolving Door:
How Leaning Out the Collections Process Could Ensure Payer
Compliance and Reduce Costs at the 55th District Court**

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BACKGROUND: “PAY OR STAY,” ALTERNATIVE COLLECTIONS, AND THE REVOLVING DOOR *

In Michigan and across the United States, many people are incarcerated solely because they cannot afford to pay court-ordered fines and fees. This is the inevitable aftermath of courts’ imposition of “pay or stay” practices in which individuals who are able to “pay” their fines and fees in full are spared jail time, while those who are unable to pay must “stay” in jail. For this reason, “pay or stay” practices have been widely and highly criticized as having created a two-tier justice system that serves to benefit the wealthy and oppress the poor. In line with this criticism, the Supreme Court of the United States ruled in 1983 that “pay or stay” practices are unconstitutional.¹

Despite the Court’s 1983 ruling, however, many courts across the United States continue to implement “pay or stay” practices. While these practices may entice non-indigent individuals to pay in full the fines and fees assessed by courts in an effort to avoid incarceration, they cannot possibly have the same effect on indigent individuals who do not have the means to pay court-ordered fines and fees. As a result, neither affected party involved in the collections process benefits from these practices. For courts and states, “pay or stay” practices generate additional costs associated with collecting and incarcerating indigent individuals. For indigent individuals, “pay or stay” practices exacerbate indigency by preventing these individuals from being able to work or remain employed throughout the duration of their incarceration. As a result, incarcerating indigent individuals for their inability to pay court-ordered fines and fees makes it even less likely that they will ever be able to afford to make payments and, consequently, that courts will ever receive such payments.

* Nothing in this paper should be read to suggest that the 55th District Court imposes or has imposed “pay or stay” practices.

¹ *Bearden v. Georgia*, 461 U.S. 660 (1983).

In recognition of the fact that “pay or stay” practices are not only unconstitutional, but also financially counterproductive for courts and states, some courts across the United States have opted to replace “pay or stay” practices with alternative collections practices. Of these courts, many give individuals the option to enroll in payment plans as an alternative to paying their fines and fees in full or staying in jail. Payment plans enable individuals to make smaller incremental payments over the span of a specified length of time until they have paid off the entirety of the court-ordered fines and fees that they owe. Ideally, individuals’ enrollment in payment plans benefits all affected parties involved in the collections process; courts and states eventually receive the entirety of the amounts owed by indigent individuals, and indigent individuals are able to make affordable payments while avoiding incarceration.

However, the realization of these ideals by all parties involved in the collections process is contingent on individuals’ compliance with any established payment plans. Affected individuals must actually make payments as scheduled in order for this alternative collections system to work and thereby benefit all parties, but that is often not the case. When affected individuals fail to comply with the terms of their payment plans by neglecting to make payments, courts must spend considerable time and resources tracking the individuals and issuing warrants for their arrest in an attempt to bring them back to court and entice them to pay. But when incarceration for failure to make payments is out of the question and the individuals have already refused to comply with an initial payment plan, what will entice them to pay off their fines and fees when they are brought back to court?

Oftentimes, the answer is nothing, and the establishment of any subsequent remedial payment plans as a solution to the problem of noncompliance by way of nonpayment creates a

“revolving door” to the court. Affected individuals enter the revolving door by failing to make payments toward an existing payment plan, being collected by police, being brought back to court, being enrolled in a remedial payment plan, and failing to make payments according to the remedial payment plan. Once affected individuals fail to make payments according to a remedial payment plan, the cycle begins again, and the revolving door continues to spin with no sign of stopping.

PROBLEM: THE CHASE AROUND THE REVOLVING DOOR IMPOSES INDEFINITE COSTS ON COURTS

While affected individuals clearly benefit from the implementation of remedial payment plans by having the ability to avoid both payments and incarceration without serious consequence, the same cannot be said for courts and states. In fact, courts and states potentially waste even more resources with the remedial payment plan solution in place than they would by practicing “pay or stay.” For courts that practice “pay or stay,” the chase for payment eventually ends when individuals either pay and are freed or are incarcerated for a finite length of time and then freed. This ensures that the resources and costs associated with tracking, collecting, and potentially incarcerating individuals remain predictable and finite for courts and states.

For courts that offer remedial payment plans as solutions to nonpayment and noncompliance, however, the chase for payment may never end; these courts could theoretically find themselves tracking and collecting the same individual for the entirety of his or her lifetime and still never receive a cent in payment from that individual. Thus, the costs associated with such tracking and collection remain indefinite and uncontrollable for as long as this alternative collections “solution” remains in place, and respective courts literally pay the price—oftentimes a price greater than the total amount of fines and fees owed by the individual—for this potentially never-ending and unproductive chase around the revolving door.

1) Case Study: Calculating the Cost of the Revolving Door at the 55th District Court

The 55th District Court in Mason, Michigan offers initial payment plans and remedial payment plans to defendants in collections cases. The court's judges encourage payment plans as an alternative to "pay or stay" practices, as they believe that the "friendlier" practice of offering payment plans will encourage greater compliance on the part of defendants in terms of paying fines and fees they owe and appearing in court as scheduled. However, it is questionable if the use of this alternative collections practice has resulted in greater compliance among defendants

For several years, the 55th District Court's administrator expressed concern with the amount of money and resources that the court and criminal justice agencies in Ingham County were expending as a result of defendants who refused to comply with payment plans. Concerned about the financial consequences of the perpetual implementation of remedial payment plans by the 55th District Court and subsequent noncompliance by individuals, he wanted to calculate approximately how much money the court and law enforcement agencies were spending on tracking cases, issuing warrants, apprehending defendants, processing and housing defendants in jail, processing the defendant at the court and assessing fees for noncomplying individuals involved in the court's collections cases. Ultimately, the court administrator wanted to calculate how much each trip around the revolving door was costing the "system" in Ingham County (i.e., court, law enforcement agencies and jail).

a. Method and Application

In order to determine how much one cycle around the revolving door was costing the system in a typical defendant's case, Michigan State University College of Law's LegalRnD

team (1) mapped out the court's collections process, (2) identified the scope of the revolving door (where the revolving door begins and ends) within the court's collections process, (3) determined how much time was spent on each part of the process (by court staff, police officers, and corrections deputies), and (4) multiplied [real or standard] state salaries/wages by the time taken to complete each task in the revolving door process, and (4) multiplied [real or standard] state salaries/wages by the time taken to complete each task in the revolving door process.

(1) Court's Collections Process

At the 55th District Court, individuals who accumulate over \$300 in delinquent fines and costs are subject to the collections process. When an individual accumulates over \$300 in delinquent fines and costs, the court's collections clerk first creates a warrant request. The warrant request must then be reviewed and approved by a judge at the court. After a judge approves the warrant request, the collections officer enters the warrant into the court's lien database and a clerk validates the warrant. The collections officer then files the warrant.

Once the warrant is filed, police officers are able to access the warrant and collect the individual. After the individual has been collected, the arresting officer then brings the individual to the Ingham County Jail, where the individual goes through the jail's intake process. During this process, the arresting officer pats the individual down and bags up all of the individual's property, and a deputy at the jail pats the individual down as well. The individual then walks through an x-ray scanner and is put into a waiting cell until he or she can be booked in by another deputy. A deputy then pulls the individual out of the cell to ask booking questions and to take the individual's picture. If the individual does not post bail, the individual is held in jail until the next court session, at which time the magistrate will conduct an arraignment. At this point, the magistrate

arraigns the individual and, once the individual has been arraigned, a court clerk creates a commitment document, sets a court date for the individual to report back to the court, and mails this information to the individual and to the jail. The individual then meets with the collections clerk to create a payment plan. Following this, a deputy at the jail discharges the individual.

(2) The Scope of the Revolving Door

If the individual makes payments according to the payment plan that the collections clerk has created, then he or she does not enter the revolving door. However, if the individual fails to make payments according to the payment plan and/or does not appear in court on the set court date, the individual enters the revolving door. Similarly, if the individual fails to make payments according to the initial payment plan and does appear in court, the judge generally instructs the collections officer to create a remedial payment plan for the individual, and if he or she does not comply with this remedial payment plan, the individual then enters the revolving door. Following the individual's noncompliance in either of these situations, the collections clerk must create a warrant request following the individual's noncompliance, and the revolving door cycle begins.

(3) Time Spent on Each Part of the Revolving Door Process

The time spent on each revolving door task per individual case is best broken down according to the parties involved in the collections process, which include: (i) the collections clerk, (ii) police officers and corrections deputies, (iii) court clerks, (iv) magistrate, and (v) judges.

(i) Collections Clerk

The collections clerk's tasks in the revolving door process include creating the warrant request, entering the warrant into the lien database, filing the warrant, and creating a payment plan for each individual. In addition to these tasks, the collections clerk tracks the status of each

individual's compliance with his or her initial or remedial payment plan in order to determine whether and when to file a warrant following nonpayment and failure to appear in court as scheduled. The collections clerk spends approximately 1 minute creating the warrant request, 1 minute entering the warrant into the lien database, 1 minute filing the warrant, 5 minutes creating a payment plan, and 1 minute tracking the status of each individual's compliance with the payment plan per case. Thus, the collections clerk spends approximately 9 minutes per collections case performing her respective tasks in the revolving door process.

(ii) Police Officers and Corrections Deputies

Both police officers and corrections deputies are involved in the revolving door. The police officers' tasks in the revolving door process include collecting the individual and dropping the individual off at jail. Because police officers can collect the individual by either intentionally driving to his or her residence to do so or by coincidentally stopping the individual for a traffic violation (or similar coincidental occurrences), the officers' time spent collecting the individual can vary depending on the circumstances of each case. Generally, however, the police officers spend approximately 1 hour collecting and dropping of the individual at the jail.

Corrections deputies' tasks in the revolving door process include taking the individual through the jail intake process till discharge. Generally, a corrections deputy 25 minutes to take the individual through the jail's intake process, and 5 minutes discharging the individual per case. Thus, the corrections deputy approximately 30 minutes per collections case collectively performing their respective tasks in the revolving door process.

Thus, the total involvement of officers is approximately 1 hour and 30 minutes per collections case collectively performing their respective tasks in the revolving door process.

(iii) Court Clerks

The court clerk's tasks in the revolving door process include validating the warrant, updating the arraignment list, creating the commitment document and setting the court date, and mailing the court date to the individual and the jail. The court clerk spends approximately 1 minute updating the arraignment list, 3 minutes creating the commitment document and setting the court date, and 2 minutes mailing the court date to the individual and the jail per case. Thus, the court clerk spends approximately 6 minutes per collections case performing her respective tasks in the revolving door process.

(iv) Magistrate

The magistrate's task in the revolving door process is arraigning the individual. The magistrate spends approximately 5 minutes arraigning the individual per case. Thus, the magistrate spends approximately 5 minutes per collections case performing his respective task in the revolving door process.

(v) Judges

The judges' tasks in the revolving door process include reviewing and approving the warrant and hearing the individual's case regarding the status of his or her payment plan (assuming that the individual appears in court as scheduled). The judges spend approximately 1 minute reviewing and approving the warrant and 5 minutes hearing the individual's case. Thus, the judges spend approximately 6 minutes per collections case collectively performing their respective tasks in the revolving door process.

(4) Salaries of Parties Involved in the Revolving Door Process

Salaries for each individual involved in the revolving door is based on the mid-range of the salary schedule or what is considered step 3 of the step 5 schedule. Salaries are listed below:

Collections Clerk- \$37,292
Police Officer (median)- \$50,024
Court Clerks- \$34,993
Magistrate- \$78,274
Judges (district level)- \$138,272

Additionally, employees are paid benefits that on average equate to \$25,000 fringe cost. To figure out the true cost of work performed both wages and benefits must be included. Thus, the true cost would be:

Collections Clerk- \$62,292
Police Officer (median)- \$75,024
Court Clerks- \$59,993
Magistrate- \$103,274
Judges (district level)- \$163,272

b. Total Cost of the Revolving Door Cycle

The total cost of the revolving door includes the cost of each employees' performance in the cycle, as well as, housing the individual in jail. To figure out the cost per individual involved on the revolving door we had to determine the cost of performance per minute for each employee. To reach this amount we first needed to establish employees' hourly wage. The hourly wage is created by multiplying the number of weeks in a year, 52, by the number of hours per week the

employee works, 40.² This equates to 2,080 which is then divided by the person's salary. Thus, establishing the employee's hourly wage, which is listed below:

Collections Clerk- \$29.95
Police Officer (median)- \$36.06
Court Clerks- \$28.84
Magistrate- \$49.65
Judges (district level)- \$78.49

To reach each employees cost of performance per minute the hourly wage was divided by sixty minutes. Listed below is the amount.

Collections Clerk- \$0.49
Police Officer (median)- \$0.60
Court Clerks- \$0.48
Magistrate- \$0.82
Judges (district level)- \$1.30

Once the cost of performance per minute was established we took the performance per minute and timed it by the number of minutes each employee worked on the revolving door. The math and total is shown below:

Collections Clerk- $\$0.49 \times 9 = \4.49
Police Officer (median)- $\$0.60 \times 90 = \54.10
Court Clerks- $\$0.48 \times 6 = \2.88
Magistrate- $\$0.82 \times 5 = \4.14
Judges (district level)- $\$1.30 \times 6 = \7.85^3

² It was assumed that the average employee at the 55th District Court works 40 hours per week. If the number of hours are different then the equation may be off.

³ The math for this can also be listed in the footnote.

As mentioned above, an additional cost in the revolving door cycle is housing the defendant in jail. The cost of housing someone in the jail ranges from \$35 to \$50 per day at the 55 District Court.⁴ Thus, the average cost is \$42.50 per defendant housed in the jail.⁵

Therefore, \$115.96 is how much each individual's one cycle around the revolving door costs the 55th District Court.

2) Applying Lean to Stop the Revolving Door

The goal of lean is to remove waste from a process so as to make the process as efficient as possible. In this case, the entire revolving door constitutes waste because it does not need to occur in order for the court to receive payment from the individuals who owe over \$300 in fines and fees. The revolving door portion of the collections process only occurs as a result of noncompliance after the initial payment plan is established. Therefore, stopping the revolving door before it begins is the ideal way for the court to remove waste. In order to stop the revolving door, the court must make costs and resources associated with noncompliance by way of nonpayment finite and thereby controllable. In other words, the court's chase for payment needs to come to an end at some definable point. This leads to the ultimate question: How can we stop the revolving door before it even begins?

SOLUTION: POSSIBLE WAYS TO STOP THE REVOLVING DOOR

There are two specific changes that a court can make in order to stop the revolving door associated with noncompliance in payment plan collections cases before it begins. First, the court can restrict the allowance of payment plans (both initial and remedial) to truly indigent individuals

⁴ This amount was unverified and may affect the total cost of the revolving door.

⁵ This amount was averaged out. However, the revolving door cost could also be a range from \$108.46 to \$123.46.

and impose “pay or stay” consequences on nonindigent individuals who can afford to pay but simply choose not to do so. In order to implement this change, the court would have to find a method by which it could accurately determine an individual’s indigency before assessing fees following initial noncompliance so that the court can avoid imposing fees that it knows the individual will never be able to pay off. The issue with this solution is that it is difficult to determine and track an individual’s indigency with accuracy. For example, an individual might not be indigent at the time of assessment but may become indigent later on before they have paid their fines and fees off in full. Thus, the key to this approach is to find a method and measure by which the court can determine an individual’s actual indigency.

Second, the court can offer alternatives like “pay or volunteer” to affected individuals. In order to implement this change, the court must determine a per hour “wage” to be received for volunteer work and order individuals to work until they have earned the equivalent of the amount they owe in fines and fees. The issue with this solution is the potential exclusion of people with physical or other disabilities from this solution, as such individuals may not have the ability to participate in particular volunteer work in order to pay off their fines and fees. The court would, therefore, have to ensure that all available volunteer work would not involve exclusively manual labor or be too mentally challenging so that people with disabilities would not encounter more difficulties than others performing the same community service.

Although these potential solutions to the issue of the revolving door would require considerable work on the part of the court, these solutions would ultimately remove waste from the payment plan collections process and stop the revolving door before it could begin, to the benefit of both the court and the individuals involved in the court’s collections process.

CONCLUSION

While affected individuals benefit from the implementation of remedial measures by having the ability to avoid payment and incarceration without serious consequences courts like the 55th District Court are put at a disadvantage. Approximately one cycle of the revolving door is currently costing the system in Ingham County \$115.96.⁶ Thus, this Court could save money and resources by implementing alternative collections practices with definable ending points. By implementing the changes suggested, the court can avoid the injustices associated with pay or stay practices involving indigent individuals and the costly consequences of perpetually offering initial and remedial payment plans to noncomplying individuals.

⁶ Again , the revolving door cost could also be a range from \$108.46 to \$123.46 depending on the cost of jail cost per individual.