



COLLECTING CRIMINAL JUSTICE DEBT THROUGH THE STATE CIVIL JUSTICE SYSTEM

Table 2: At a Glance: Will Moving Collection of Criminal Justice Debt to the Civil Justice Collection System Achieve the Improvements Advocates Seek?

Using the civil justice system to collect criminal justice offers the hope of a fairer, less punitive, and less self-defeating system. But advocates and policymakers should not assume that the civil justice collection system in their state offers the improvements they seek. This table summarizes key goals and collection system features that advocates may be looking for in the civil collection system: (“goals”), common problems with state laws that may stand in the way of or undermine the desired goals (“concerns”), and possible steps to address those problems (“actions”).

GOALS	CONCERNS	ACTIONS
Bar arrest and imprisonment for debts	<ul style="list-style-type: none"> ■ The state’s existing ban on imprisonment for debt may have loopholes or exceptions that would still permit arrest warrants and imprisonment for nonpayment or nonappearance at hearings relating to debts that arose in the criminal justice system, or even for civil debts. ■ Many states allow use of both the civil justice system and the criminal justice system to enforce criminal justice debt, creating a “worst of both worlds” situation. 	<ul style="list-style-type: none"> ✍ Research the state’s law carefully; close any loopholes and eliminate exceptions. ✍ Make use of the civil justice system the exclusive method of enforcement, rather than an additional method of enforcement.
Preserve subsistence income and essential property from collection	<ul style="list-style-type: none"> ■ Many states do not protect a living wage from garnishment to pay a civil debt. Additionally, some states permit employers to fire employees based on multiple garnishments. ■ Many states fail to protect the debtor’s home, a running car, household goods, and a basic amount in a bank account from seizure to pay a civil debt. ■ Some states make their exemption laws—which protect income and assets from collection—inapplicable or only partially applicable to criminal justice debt. 	<ul style="list-style-type: none"> ✍ Reform state wage garnishment laws to protect a living wage and to prohibit employers from taking any adverse action because of garnishment. ✍ Reform the state’s exemption laws to protect essential property from seizure. ✍ Amend the state’s exemption laws to eliminate any exceptions for criminal justice debt.

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Take the debtor's ability to pay into account during collection	<ul style="list-style-type: none"> ■ Most states do not take the debtor's financial circumstances into account when determining the amount of wages that can be garnished or when applying other civil collection methods, applying only minimal standardized protections. ■ State laws regarding collection of civil debts do not provide a procedure like remission to waive the debt based on financial hardship. 	<ul style="list-style-type: none"> ✍ Amend the civil justice system's enforcement provisions to improve protection of living wages and essential property, and require the debtor's financial circumstances to be taken into account. ✍ Retain (and improve upon) the criminal justice system's remission procedures when moving to the civil justice system's enforcement methods.
Prevent the amount of the debt from ballooning	<ul style="list-style-type: none"> ■ Many states allow civil debts to accrue interest, sometimes at high rates. ■ Court costs and fees for obtaining a judgment and for enforcing it are commonly added to civil debts and charged to the debtor. 	<ul style="list-style-type: none"> ✍ Eliminate or reduce the judgment interest rate, and ensure that interest does not accrue during periods of incarceration. ✍ Evaluate whether the added fees would be greater or less than those the criminal justice system imposes; reduce unnecessary or overly high fees or prohibit their addition to the debt. ✍ Make sure that the state's law does not allow collection agency fees or collection attorney costs to be added to the debt.
Apply reasonable time limits to efforts to enforce the debt	<ul style="list-style-type: none"> ■ How long a judgment debt remains enforceable varies by state and often by type of debt, and can be very long. 	<ul style="list-style-type: none"> ✍ Research the state's law carefully: ✍ if the state's time limits for enforcement of civil debts are shorter than the time limits for criminal justice debts, ensure that the time limits for civil debts apply to criminal justice debts; if the time limits on enforcement may sometimes be shorter for criminal justice debts, then consider ways to ensure that the shorter of the applicable time limits applies.
Reduce or eliminate collateral consequences of criminal justice debt	<ul style="list-style-type: none"> ■ Under many states' laws, criminal justice debt prevents the debtor from voting, obtaining or renewing a driver's license, obtaining an occupational license, or accessing criminal record clearing; collection as a civil judgment will not necessarily end these consequences. 	<ul style="list-style-type: none"> ✍ These laws may require separate amendment to ensure that criminal justice debt is treated as a civil judgment for all purposes and to eliminate collateral consequences of the debt.
Eliminate financial incentives for local jurisdictions to pile on fees and use draconian enforcement methods	<ul style="list-style-type: none"> ■ State and local governments often use the criminal justice debt they collect to fund their legal systems and other government services; moving collection to the civil system would not necessarily address this problem. ■ States may not track all (or any) of the costs of their enforcement methods, making it impossible to identify harsh yet unproductive methods. 	<ul style="list-style-type: none"> ✍ Examine legislative proposals carefully to ensure that they do not create financial incentives that would distort jurisdictions' priorities. Recognize that reforms beyond changes to collection practices are likely needed to address this concern. ✍ Require jurisdictions to track and publish all the costs of enforcement of criminal justice debt, and the recoveries obtained.