

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT:	PAGE <u>1</u> OF <u>7</u> .
Collection Process for a Court Order to Pay a Stated Obligation	NUMBER: 24-CAS-07
RULE/CODE REFERENCE: ORC 5120.133; AR 5120-5-03	SUPERSEDES: 24-CAS-07 Effective 12/11/12
RELATED ACA STANDARDS: 4-4461-1	EFFECTIVE DATE: September 13, 2013
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish a standard procedure for withdrawing monies from an inmate's account to satisfy court ordered debts pursuant to Administrative Rule 5120-5-03, Court Order for Payment of Funds from Inmate's Account, and Ohio Revised Code section 5120.133.

III. APPLICABILITY

This policy applies to Ohio Department of Rehabilitation and Correction (DRC) employees implementing it and any inmate (except those in the short-term offender program) for which the DRC has received a certified copy of a judgment of a court of record in an action in which that inmate was a party that orders him/her to pay a stated obligation. That obligation includes, but is not limited to, criminal court costs (trial or appeal), fines, reparations, victim restitution, and reimbursement of the crime victim's fund.

This policy does not apply to the collection of filing fees, court costs, and attorney fees by federal courts under the Prison Litigation Reform Act (28 U.S.C. Sec. 1915) in federal civil actions initiated by an inmate. Likewise, this policy does not apply to the collection of filing fees, court costs, and attorney fees by state courts under the Inmate Civil Actions and Appeal Law (ORC Sections 2969.22 and 2969.23) in civil actions or appeals by an inmate against a government entity or employee.

Also, except for child support orders for a lump sum payment, this policy does not apply to deductions from inmates' accounts to pay a court or administrative order for child and/or spousal support (current and past-due), which is governed by Department Policy 24-CAS-06, Collection Process for Child Support Orders Against Inmates.

IV. DEFINITIONS

Collection Designee – Staff assigned by the Managing Officer to administer the collection process pursuant to this policy.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction that upon receipt of a certified copy of a judgment of a court of record in an action in which an inmate was a party that orders an inmate to pay a stated obligation, the DRC shall pay pursuant to Administrative Rule 5120-5-03, Court Order for Payment of Funds from Inmate's Account, any balance in an inmate's account in excess of twenty-five dollars to the clerk or other appropriate authority to satisfy such order unless other obligations are being paid by DRC. That rule requires an inmate to be notified of the obligation and be given an opportunity to object to the deduction request through the assertion of legal exemptions and/or defenses.

VI. PROCEDURES

A. Initial Screening Process

1. Upon receipt of a judgment/order/entry (hereinafter referred to as "entry") or any entry presently possessed and not paid in full, which creates a debt for an inmate, the collection designee (designee) shall review within three working days of receipt, if practicable, the entry and other relevant documents to determine facial validity. The designee shall use the Collection Designee Screening Guidelines Manual, incorporated herein by reference, as a standardized method of determining whether the documents facially comply with legal authority. The manual includes a screening form entitled Screening Form for Facial Validity of Entries Submitted for Collection (DRC1838) which must be used for each such review.

The designees at the male and female reception facilities shall not follow this policy for inmates in the short-term offender program. Any entry requesting collection upon these inmates' accounts shall be returned to sender when the inmate is released so noting that release. For all other non-cadre, reception inmates, the designees shall forward within ten (10) days of the inmate's transfer any such entry to the parent institution to conduct the procedures set forth in this policy.

- a. All of the following criteria must be met for civil entries (case involves two private parties, one of which is the inmate, the State of Ohio is not a party) to be facially valid (includes costs of divorce actions but not child support orders unless reduced to judgment for payment of a lump sum):
 - i. Documents are submitted pursuant to R.C. 5120.133.
 - ii. Entry orders the defendant to pay judgment and/or costs of a civil action.
 - iii. Amount of judgment is stated in entry or if only costs are assessed then the amount is stated on the cost bill.
 - iv. Entry is certified by the Clerk of Courts in which judgment was rendered.

- v. Cost bill is certified by the Clerk of Courts if submitted as evidence of amount owed.
 - vi. Entry is not over five (5) years old if in favor of a private party or over ten (10) years old if in favor of the State (The dormancy statute was amended Sept. 26, 2003. Dormancy is not applicable if ten-year period expires after Sept. 26, 2003. Child support arrearages are not subject to dormancy.)
 - b. All of the following criteria must be met for criminal entries (case involves the State of Ohio and the inmate as a defendant or appellant) to be facially valid:
 - i. The documents are submitted pursuant to R.C. 5120.133.
 - ii. Entry orders the defendant to pay costs of prosecution, restitution, attorney fees, fines, or any combination thereof.
 - iii. Entry is certified by the Clerk of Courts.
 - iv. Entry ordering costs is not over ten (10) years old and has not been revived pursuant to R.C. 2325.15. (That dormancy statute was amended September 26, 2003. Dormancy is not applicable if ten-year period expires after September 26, 2003.)
 - v. Entry does not defer payment of costs until after release from prison.
 - vi. Entry ordering costs is not a “nunc pro tunc” order entered at a date after the actual sentencing but having a retroactive effect (correction of clerical mistakes in the sentencing entry is permissible, but a sentence may not be amended).
 - vii. Attorney fees, restitution and/or fines listed in the bill of costs are assessed to the defendant in the submitted sentencing entry. (Attorney fees and expenses are prohibited from being a part of the costs in a criminal case.)
 - viii. Entry or bill of costs submitted with entry is for a stated amount.
 - ix. Bill of costs submitted with entry is itemized-only applicable if from a Common Pleas criminal case.
 - x. Bill of costs is certified by the Clerk - only applicable if from a Common Pleas criminal case. Note: Bill of Costs must always be certified by the Clerk if submitted as evidence of amount of costs owed.
2. If the institution receives from the Office of the Attorney General (OAG) a certified criminal or civil entry that orders the inmate to reimburse/repay the Ohio Victims of Crime Fund, then:
 - a. These documents are presumed to be facially valid and do not require a validity review.
 - b. The designee shall prepare notice, Court Order to Pay a Stated Obligation (DRC1598) of the court order for the inmate.
3. In the event the designee determines that the documents are facially valid and enforceable, the designee shall prepare the notice for the inmate, Court Order to Pay a Stated Obligation (DRC1598). At the same time, the designee shall provide written notice by utilizing the Cashier’s Actions on Inmate’s Account form (DRC1603) to the cashier to place a hold on the inmate’s account for the amount of the debt.

4. In the event that the designee finds a facial defect then a letter of explanation shall be enclosed with the documents and the following procedure shall apply:
 - a. The designee shall return the documents to the clerk or other appropriate authority with a cover letter - Clerk of Courts/Cease of Collection/Non Facial (DRC1606) explaining instructions for corrections. In that event, the collection process stops until the corrected documents are returned.
 - b. When the clerk or other authority returns the corrected documents and the designee determines them to be facially valid, the designee prepares notice Court Order to Pay a Stated Obligation (DRC1598) of the court order for the inmate.

B. Notice to the Inmate

When the designee finds no defect (or the clerk or other appropriate authority returns corrected documents), the designee shall deliver to the inmate a pre-deprivation notice, Court Order To Pay A Stated Obligation (DRC1598). The notice informs the inmate of the following:

1. The institution has received a judgment ordering him/her to pay a stated obligation. A copy of the judgment and any related documents must be attached to the notice.
2. Intent to deduct or withdraw the debt from the inmate's personal account.
3. Offers the inmate an opportunity to timely serve written objections on a Notice of Objection to Judgment for Payment (DRC1599) to that deduction or withdrawal by claiming an exemption or a defense. The form Notice of Objection to Judgment for Payment (DRC1599) to file objections shall be attached to the notice Court Order to Pay a Stated Obligation (DRC1598) given to the inmate.
4. List of available exemptions Court Order to Pay a Stated Obligation (side two of DRC1598).
5. He/she may discuss the matter with and explain any objections to the designee.
6. Responsibility for instituting court action to stay, vacate, or modify the order is on the inmate.

C. Enter the Debt in the Cashier System

At the same time the notice is delivered to the inmate, the designee shall deliver to the cashier a notice by utilizing the Cashier's Actions on Inmate's Account form (DRC1603) to hold the inmate's account. Upon receipt, the cashier shall enter the debt in the cashier system in accordance with Administrative Rule 5120-5-03, Court Order for Payment of Funds from Inmate's Account. The court ordered amount or available portion thereof shall be held by the cashier in the inmate's account until further notice by the designee.

D. Post-Notice Processing

1. Inmate Objections

If an inmate wishes to object to the payment of a court ordered debt, the following procedure shall apply:

- a. The objection must be made within fourteen days of the date on the pre-deprivation notice.
- b. The objection shall be on a Notice of Objection to Judgment for Payment (DRC1599) and assert an exemption under R.C. section 2329.66 and or a defense set forth in the laws of Ohio or the United States.
- c. If the inmate wants to discuss his exemption(s) and or defense(s) with the designee and he has submitted a written request to do so, he must be given this opportunity. The inmate has no right to counsel in such discussions.

2. Designee Decisions

Within fourteen days after the date the designee timely receives the inmate's written objection, he/she shall review and decide whether any asserted exemption(s) or defense(s) applies unless a designee is unable to determine the validity of a defense(s) attacking the judgment itself. Decisions shall be made on information within the knowledge and control of DRC and, if applicable, upon hearing the inmate's position. In rendering a decision, the designee shall observe the following guidelines:

- a. If the inmate delivers no objections to the designee within fourteen days of the date on the pre-deprivation notice, or objections are untimely delivered, or if the designee does not agree with the objections, then the designee shall, within fourteen days after the date the objections are due, provide the inmate with the Stated Obligation Letter to Inmate (DRC1601) of the decision authorizing withdrawal and payment. At this time, the designee shall notify by utilizing the Cashier's Actions on Inmate's Account form (DRC1603) the cashier to proceed to withdraw funds from the inmate's account in accordance with Administrative Rule 5120-5-03, Court Order for Payment of Funds from Inmate's Account.
- b. If the designee agrees with the inmate's asserted exemption and/or defense, then she/he must notify the inmate utilizing the Stated Obligation Letter to Inmate (DRC1601), within fourteen days after timely receiving the inmate's objection and at the same time, notify by utilizing the Cashier's Actions on Inmate's Account form (DRC1603) the cashier that either no or partial withdrawals from the inmate's account will be authorized. If there are no withdrawals due to a valid defense, then the designee shall also notify the clerk utilizing, letter Clerk of Courts/Notification of Cease of Collection (DRC1604) or other authority of this decision.
- c. If the designee cannot determine the validity of an alleged defense, then the designee shall attach a Notice of Objection to Judgment for Payment (DRC1599) to a letter

Clerk of Courts/Referring Form (DRC1600) and mail to the clerk of the issuing court (or other appropriate authority). The clerk or other authority shall be requested to respond to the defense(s) within fourteen days of receiving that letter. Concurrently, the designee shall furnish the inmate a copy of the letter sent to the clerk of the issuing court (or other appropriate authority). The hold on the inmate's account shall continue twenty-eight days from the date on that letter to await one of the following responses from the clerk or other authority:

- i. If the clerk or other authority notifies the designee that he or she accepts the inmate's defense, then the designee shall immediately notify, by utilizing the Cashier's Actions on Inmate's Account form (DRC1603), the cashier to remove the hold on the inmate's account. At the same time, the designee shall notify, by utilizing the stated obligation letter to inmate form Stated Obligation Letter to Inmate Form (DRC1602), the inmate of the lack of authority to withdrawal monies from the account based on the clerk's response, which shall be attached to that notice. If the matter is stayed or vacated by the court, the designee shall coordinate compliance.
- ii. If the clerk/other authority notifies the designee that he or she rejects the inmate's defense, the designee shall immediately notify the inmate by sending a copy of the rejection correspondence to the inmate. No further action to collect the money shall take place until expiration of the twenty-eight day period set forth in VI.D.2.c. of this policy.
- iii. If the twenty-eight-day period expires without any further action or response by the clerk/other authority, or if the clerk/other authority reject the inmate defense, then the designee shall immediately notify the cashier by utilizing the Cashier's Actions on Inmate's Account form (DRC1603) to proceed with the withdrawal and payment pursuant to Administrative Rule 5120-5-03, Court Order for Payment of Funds from Inmate's Account. At the same time, the designee shall send to the inmate the Stated Obligation Letter to Inmate Form (DRC1602), which authorizes the withdrawal of monies from his/her account because the court-ordered debt is presumed valid.

E. Payments from Inmate Account

1. If money is withdrawn from an inmate's account and sent to the clerk or other appropriate authority, the designee shall include a cover letter utilizing letter Clerk of Courts/Check Enclosed (DRC1605) for mailing payment and notifying the inmate of this deduction.
2. When collection processing is in place for an inmate, the first \$25.00, unless exempted by Section 2329.66 of the Revised Code (see Court Order to Pay a Stated Obligation (DRC1598) for a list of exemptions), in the account during a calendar month is exempt from collection for the debt. As monthly income is received by an inmate the full amount received shall be credited to the inmate's account and any balance in excess of \$25.00 shall be paid on a monthly basis to the clerk or other appropriate authority. For example:

- a. An inmate has \$25.00 in his account which is exempt. The inmate receives \$20.00 from an approved outside source bringing his account balance to \$45.00. Immediately hold that \$20.00 to pay the clerk/other authority leaving a \$25.00 balance/exemption available to the inmate in the account.
- b. An inmate has \$3.00 in his account and receives \$22.00 bringing his account balance to \$25.00. No money is withheld for the court obligation because the balance in the account is \$25.00 or less. The inmate may spend all \$25.00.

F. Designee and Cashier Duties

The designee shall be responsible for monitoring and enforcing the timelines set forth in Part VI of this policy. A collection process checklist, Collection Process Checklist Court Order Obligation (DRC1641), shall be utilized to aid in this responsibility. The designee shall oversee the debt collection process and ensure the institution's compliance. When the designee receives a court order staying, vacating, or modifying a judgment, he/she shall stop any deductions or withdrawals and contact Legal Services if legal assistance is needed. The cashier's office shall maintain up-to-date and accurate personal account records of all inmate deductions, payments, and required notices.

The file containing the entry which creates a debt for the inmate should be maintained in the Cashier's Office. The file must be forwarded to the new institution when the inmate transfers. Also, upon the inmate's release the file must be maintained by the cashier in accordance with the DRC Records Retention Schedule.

Related Department Forms:

Court Order to Pay a Stated Obligation	DRC1598
Notice of Objection to Judgment for Payment	DRC1599
Letter Clerk of Courts/Referring Form	DRC1600
Decision on Objections to Collection by Warden's Designee	DRC 1601
Decision on Objections to Collection by Warden's Designee Following Submission to Clerk/Other Authority	DRC1602
Cashier's Actions on Inmate's Account Form	DRC1603
Letter Clerk of Courts/Notification of Cease of Collection	DRC1604
Letter Clerk of Courts/Check Enclosed	DRC1605
Letter - Clerk of Courts/Cease of Collection/Non Facial	DRC1606
Collection Process Checklist Court Ordered Obligation	DRC1641
Screening for Facial Validity of Entries Submitted for Collection	DRC1838