

REPORT NO. 11823



STATE OF FLORIDA
OFFICE OF THE AUDITOR GENERAL



151586

PERFORMANCE AUDIT

OF THE

DISTRIBUTION OF MONIES COLLECTED
FROM CRIMINAL FINES AND FEES

ASSESSED BY THE

STATE COURTS SYSTEM OF FLORIDA

MARCH 25, 1992

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STATE OF FLORIDA
OFFICE OF THE AUDITOR GENERAL



CHARLES L. LESTER, C.P.A.
AUDITOR GENERAL

March 25, 1992

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NCJRS

DEC 19 1994

The President of the Senate, the Speaker of the
House of Representatives, and the
Legislative Auditing Committee

ACQUISITIONS

I have directed that a performance audit be made of the distribution of monies collected from criminal fines and fees assessed by the State Courts System of Florida. The results of the audit are presented to you in this report. This audit was made as a part of an ongoing program of performance auditing by the Office of the Auditor General as mandated by Section 11.45(3)(a), Florida Statutes.

Respectfully yours,

Charles L. Lester
Auditor General

151586

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U.S. Department of Justice
National Institute of Justice

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PERFORMANCE AUDIT
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Table of Contents

<u>Chapter</u>	<u>Page</u>
Executive Summary	i
I. Introduction: Purpose and Scope, Methodology	1
Purpose and Scope	1
Methodology	2
II. Background: Program Design and Organization	3
Program Design	3
Program Organization	6
Program Resources	7
III. Findings and Recommendations	9
Finding 1.1	
Current statewide guidelines for the distribution of collected criminal court fines and fees to designated trust funds are incomplete. Consequently, Clerks of the Circuit Court use different procedures for distributing collected fines and fees.	10
Finding 1.2	
Of the 34 Clerks of the Circuit Courts we contacted, 9 did not invest monies collected from fines and fees in interest bearing accounts. Additionally, only 4 of the 25 Clerks who invest these monies in interest bearing accounts remit the earned interest to the state.	19

Table of Contents

<u>Chapter</u>	<u>Page</u>
Appendices	25
A. Methodology Used to Select Sample of Local Court Systems for Site Visits	26
B. Methodology for Case Selection	29
C. Fine and Fee Investments by County	32
D. Method for Calculating Interest Income	33
E. Remittance Rates for Partial Payments	35
F. Responses From the Supreme Court of Florida, the Florida Association of Court Clerks and Comptrollers, and the Office of the Comptroller	37

DISTRIBUTION OF MONIES COLLECTED FROM CRIMINAL FINES AND FEES

Purpose and Scope

This audit reviewed the process for distributing monies collected from fines and fees assessed by the State Courts System of Florida. These monies are collected from persons convicted of criminal offenses. The primary focus of our audit was to examine whether such fines and fees are distributed to the trust funds specified in statutes. Specific audit questions were:

- Are criminal court fines and fees being distributed to state and county trust funds as provided by statute?
- What remittance policies and procedures have been established to guide the distribution of collected fines and fees?
- What are the fiscal impacts of current remittance practices on state trust funds?

The scope of our audit was limited to a review of distribution practices of 34 Clerks of the Circuit Court (Clerks). Our audit scope did not include the remittance practices used by Clerks for costs that may be assessed such as bonds, forfeitures, restitution, and service charges (e.g., recording fees). We also did not conduct a financial audit of the accounts maintained and used by these Clerks; such audits are performed annually by private certified public accounting firms.

To assess remittance practices we obtained data of criminal court records from nine Clerks for fiscal periods 1988-89 through 1989-90, and made site visits to these

EXECUTIVE SUMMARY

counties. During these visits, we reviewed the court files of a sample of 1,647 criminal cases assessed fines and fees in fiscal year 1988-89 to determine whether collected fines and fees had been remitted to designated trust funds. The counties we sampled were Baker, Charlotte, Citrus, Dade, Duval, Gadsden, Lee, Orange, and Pinellas. To assess the fiscal impact of current remittance practices on county and state trust funds, we examined those cases in our sample from which full payment was collected by June 30, 1990. For these cases we calculated to the extent practicable given the incomplete nature of some of the court records, the amount of fines and fees assessed, collected, and the amount remitted, through June 30, 1990. We also interviewed staff in Clerk of the Circuit Court offices in 34 counties regarding their remittance procedures.

This audit is the last in a series of audits concerning the assessment, collection, and distribution of fines and fees assessed by the State Courts System. The assessment of required fees is the subject of Office of the Auditor General report No. 11757, issued November 13, 1991. The collection of fines and fees assessed is the subject of Office of the Auditor General report No. 11780, issued January 6, 1992.

Background

The statutes authorize courts to assess a variety of penalties, including monetary fines, to offenders convicted of felonies, misdemeanors, or traffic crimes.¹ Additionally, courts are authorized to assess certain fees, including court costs and surcharges, to defray some of the cost of prosecution, or to finance certain state and local programs. The number of fees required to be assessed depends on the type of crime, as judges may be required to assess several fees for a single conviction. For example, a person convicted for driving under the influence of alcohol, may be assessed as many as six fees and a fine.

The statutes provide for the Clerk in each county to account for collected fines and fees, and to distribute these monies to various state and county trust funds. These trust funds are used to support various state and local programs, which are typically created to alleviate the consequences of crimes. For example, fees assessed pursuant to ss. 960.20, and 960.25, F.S., are remitted to the Crimes Compensation Trust Fund to provide medical, emotional, and financial support to victims of crimes. Fees assessed pursuant to s. 27.3455, F.S., are remitted to the Special County Trust Fund to help underwrite the expenses of the counties' State Attorney and Public Defender offices. A total of 11 state trust funds receive fine and fee remittances. Ten of these trust funds

¹ Felonies, misdemeanors, and criminal traffic crimes are punishable by a fine and/or a period of incarceration. A felony is any criminal offense that is punishable under state laws by death or imprisonment in a state penitentiary or correctional facility. A misdemeanor is any criminal offense that is punishable under state laws by a term of imprisonment in a county correctional facility not to exceed one year, unless otherwise ordered. Traffic violations include all offenses outlined in Florida Statutes: Ch. 316, State Uniform Traffic Control; Ch. 320, Motor Vehicle Licenses; and Ch. 322, Drivers' Licenses, and can be either felonies or misdemeanors.

EXECUTIVE SUMMARY

finance, or partially finance, state agency programs; the remaining trust fund serves as a clearing account from which funds are transferred into three of the aforementioned trust funds. Additionally, fine and fee revenues are deposited into four county trust funds to finance programs administered by the Boards of County Commissioners. Although the total amount of fines and fees collected statewide is not reported, Clerks remitted over \$14 million to state trust funds during fiscal year 1989-90, and approximately \$15 million during fiscal year 1990-91. We could not readily determine the amount of money that the Clerks remitted to county trust funds.

Unless otherwise prescribed by law or ordinance, s. 219.075, F.S., requires that fines and fees be invested as specified by statute and the interest accrued from these investments be remitted, along with the principal, to the appropriate trust funds.

This audit is the last in a series of three audits that deal with the assessment, collection, and distribution of fines assessed by the State Courts System. In Office of the Auditor General report No. 11757 issued November 13, 1991, we found that judges had assessed all required fees in approximately 34% (909 of 2,637) of the cases reviewed. We also found that due to the low assessment of statutorily required fees, potential revenues to state and county trust funds are reduced. The courts assessed 61% of the required fees for state trust funds and 43% of the required fees for county funds. In addition, in Office of the Auditor General report No. 11780 issued January 6, 1992, we found that of the total dollar amount assessed to cases in our sample in fiscal year 1988-89 and due on or before June 30, 1990, only 43% had been collected. Of the dollar amount assessed to cases in our sample that was due to county

funds, 40% had been collected by June 30, 1990, while 65% of the amount due to state trust funds had been collected.

Results in Brief

Although statutes provide that certain fines and fees are to be assessed to offenders convicted of criminal offenses, there is currently incomplete state guidance on how Clerks are to remit collected monies to state and local trust funds. The statutes identify specific trust funds into which collections are to be deposited when offenders fully pay their fines and fees. However, the statutes do not specify how such monies are to be apportioned when offenders pay only a portion of their assessments, which occurred in 23% of the cases we reviewed. In the absence of such state guidance, Clerks have implemented their own remittance policies and procedures that vary by county and by court. This can reduce the collection rate of fines and fees, result in the distribution of monies to the wrong trust funds, and can cause some trust funds to receive less than the amount that is statutorily required. Additionally, there are incomplete audit trails for assessed fines and fees, as court records do not always specify how judges intended collected funds to be apportioned among the various trust funds. As a result, we could not determine the extent to which fines and fees are being distributed to state and county trust funds as provided by law.

Additionally, s. 219.075, F.S., provides that, unless otherwise prescribed by law or ordinance, monies collected pending distribution are to be invested and the interest earned remitted along with the collected funds. Of the 34 Clerks we contacted, 9 did not invest collected

finances and fees, 4 Clerks remit interest earned to the state, and the remaining 21 Clerks invested collected funds but retained the interest earnings for county use. ²

Findings

Clerks of the Circuit Court Receive Little Guidance in How to Distribute Fines and Fees When Offenders Make Partial Payments

The process of remitting collected fines and fees to state and county trust funds is complex, as up to 11 state trust funds and 4 county trust funds may receive monies collected from fines and fees. The process becomes more complex when persons do not pay their assessments in a single sum but make multiple payments, as Clerks must apportion the partial payments among the recipient trust funds (23% of the cases we reviewed [270 of 1,167 cases] made multiple payments). There is currently limited state guidance on how Clerks should process such payments. The statutes do not provide clear guidance to Clerks on how partial payments are to be distributed among the various trust funds once collected.

² In response to our question of why monies collected had not been remitted to the state, none of the Clerks' staff interviewees indicated that their county had adopted a local ordinance that allowed interest to be retained locally. It was not practical for us to determine whether any local ordinances had been adopted.

**Procedures Used
by Clerks of the
Circuit Court
Vary and Affect
the Collection and
Distribution of
Fines and Fees**

In the absence of specific state guidance, Clerks have developed their own remittance policies and procedures, which vary throughout the state. As a result, the collection and distribution of fines and fees is affected. The collection rate of assessed fines and fees may be reduced because of Clerks' uncertainty in determining how to distribute monies collected. For example, of the 34 Clerks we contacted, 8 Clerks do not accept partial payments in county court and 2 Clerks do not accept partial payments in circuit court because they are unsure how to distribute the monies in an equitable manner. Refusing partial payments may reduce the amount of fines and fees collected as some individuals may be unable to make full payment at one time.

We identified instances in which monies were either remitted to the wrong trust fund, or were not remitted at all. For example, in three of nine counties included in our sample, monies assessed and collected for the Game and Fresh Water Fish Commission's Endangered and Threatened Species Reward Trust Fund were not properly remitted but were retained by the counties. One of these Clerks was waiting for the Game and Fresh Water Fish Commission to "bill" the Clerk's office for these monies. The other two Clerks remitted fines assessed in these cases to their county's Fine and Forfeiture Trust Fund rather than the Endangered and Threatened Species Reward Trust Fund. The amount of funds affected by these problems in the cases we reviewed was \$605. However, of the 737,795 criminal cases in which courts rendered guilty verdicts in fiscal year 1988-89, our sample of 1,647 cases examined only 1,167 cases in which funds were collected as of June 30, 1990. Thus, the amount of funds affected by these problems may be large; however, the actual amount could not be determined on a statewide basis. In addition, court records did not always indicate how

EXECUTIVE SUMMARY

judges intended assessed fines and fees to be apportioned among the various trust funds, thus, we could not determine the extent to which fines and fees are being distributed to state and county trust funds as provided by law.

The lack of remittance guidelines also affects remittance priorities employed by the Clerks when they receive partial payments. Clerks' staff reported using different priorities for apportioning partial payments among the recipient trust funds. Most Clerks give priority to trust funds with lower assessments, rather than apportioning the amount collected over all appropriate trust funds.

Not All Clerks of the Circuit Court Invest Monies Collected in Interest Bearing Accounts

Once fines and fees are collected, s. 219.075, F.S., provides that, unless otherwise prescribed by law or ordinance, these monies are to be invested and the interest remitted with the principal, to the respective trust funds. However, neither the statutes, nor the state has provided guidance on how to prorate the interest earnings among the various trust funds. Of the 34 Clerks we contacted, 9 Clerks do not deposit all collected monies in interest bearing accounts. Of the 25 Clerks who invest some or all collected fines and fees, 4 Clerks remit interest earnings to the state. The remaining 21 Clerks stated several reasons for retaining interest earnings, including lack of state guidance to remit the interest and retention of interest to offset the expenses of collection.³ The Clerks also asserted that it would be difficult to prorate the interest among the various recipient trust funds.

³ In response to our question of why monies collected had not been remitted to the state, none of the Clerks' staff interviewed indicated that their county had adopted a local ordinance that allowed interest to be retained locally. It was not practical for us to determine whether any local ordinances had been adopted.

There is insufficient data available on the aggregate amount of fines and fees collected statewide to allow precise determination of the amount of interest revenue that the state could have earned if Clerks had invested all collected fines and fees. However, using fine and fee revenues reported by state agencies, we estimate that if these monies had been invested in the Local Government Surplus Funds Trust Fund maintained by the State Board of Administration, approximately \$46,000⁴ in interest could have been earned for the state during fiscal year 1990-91.

Recommendations

Recommendations to the Legislature

To provide guidance to Clerks in the distribution and remittance of collected fines and fees, we recommend that the Legislature provide guidance on how Clerks are to distribute monies collected for assessed fines and fees whenever the entire fine or fee is not paid at one time. This guidance may include the order of remittance or proration of these payments among the affected trust funds. The Legislature should then direct the Department of Banking and Finance, in consultation with the Clerks of the Circuit Court, to develop guidelines for distributing monies collected from assessed fines and fees. Such guidelines should address how partial payments should be processed and how interest earnings should be distributed.

⁴ This amount is projected annual interest earnings assuming all funds collected are invested. As noted earlier 25 of 34 Clerks we contacted do invest some or all monies collected.

Agency Response

The Chief Justice of the Supreme Court of Florida, in his written response to our preliminary and tentative findings and recommendations, pointed out that "the findings deal with the clerks of court or perhaps legislative action." He also stated that "the procedures individual clerks adopt for distributing collected fines and fees and the use of interest bearing accounts are not matters that the Supreme Court can determine."

The Executive Director of the Florida Association of Court Clerks and Comptrollers, in his written response to our preliminary and tentative findings and recommendations, accepted our findings as written, but expressed concerns about the potential costs associated with implementing corrective actions. He presented information that will need to be considered before taking action to address our concerns.

The Comptroller of Florida, in his written response to our preliminary and tentative findings and recommendations, stated "given the necessary legislative direction, we look forward to working with the Office of the State Courts Administrator, the Clerks of the Circuit Courts and other agencies in the implementation of an effective and efficient system regarding the distribution of criminal fines and fees."

CHAPTER I

Introduction: Purpose and Scope, Methodology

Purpose and Scope

This audit is the last in a series of audits dealing with assessment, collection, and distribution of fines and fees assessed by the State Courts System of Florida. This audit reviewed the process of distributing monies collected from fines and fees assessed. These monies are collected from persons convicted of criminal offenses. The primary focus of our audit was to examine whether such fines and fees are distributed to certain trust funds as specified in statutes. Specific audit questions were:

- Are criminal court fines and fees being distributed to state and county trust funds as provided by statute?
- What remittance policies and procedures have been established to guide the distribution of collected fines and fees?
- What are the fiscal impacts of current remittance practices on state trust funds?

The scope of our audit was limited to a review of distribution practices of 34 Clerks of the Circuit Courts (Clerks). Our audit scope did not include the remittance practices used by Clerks for costs that may be assessed such as bonds, forfeitures, restitution, and service charges (e.g., recording fees). We also did not conduct a financial audit of the accounts maintained by these Clerks; such audits are performed annually by independent certified public accounting firms.

This audit was conducted as part of the Auditor General's 10-year schedule of performance audits, pursuant to Ch. 90-110, Laws of Florida.

Methodology

This audit was conducted in accordance with generally accepted government auditing standards and accordingly included appropriate performance auditing and evaluation methods. Our fieldwork was conducted from May 1990 through July 1991. Follow-up fieldwork was conducted in September 1991.

To assess remittance practices we obtained data of criminal court records from nine Clerks for fiscal periods 1988-89 through 1989-90, and made site visits to these counties. ¹ See Appendix A, page 26, for the methodology used to select these counties. During these visits, we reviewed the court files of a sample of 1,647 criminal cases assessed fines and fees in fiscal year 1988-89 to determine whether collected fines and fees had been remitted to designated trust funds. See Appendix B, page 29, for the methodology used to select these cases. The counties we sampled were Baker, Charlotte, Citrus, Dade, Duval, Gadsden, Lee, Orange, and Pinellas. To assess the fiscal impact of current remittance practices on county and state trust funds, we examined those cases in our sample from which full payment was collected by June 30, 1990. For these cases, we calculated to the extent practicable given the incomplete nature of some of the court records, the amount of fines and fees assessed, collected, and the amount remitted, through June 30, 1990. We also interviewed staff in Clerk of the Circuit Court offices in 34 counties regarding their remittance procedures.

¹ Our scope was limited to nine counties because most counties were unable to provide computerized data on fiscal year 1988-89 court assessments and collections. Nineteen counties provided us with this data. From this group, we selected nine counties for in-depth analysis: Baker, Charlotte, Citrus, Dade, Duval, Gadsden, Lee, Orange, and Pinellas.

CHAPTER II

Background: Program Design and Organization

Program Design

Florida Statutes authorize courts to assess a variety of penalties, including monetary fines, to offenders convicted of felonies, misdemeanors, or traffic crimes.² Additionally, courts are authorized to assess certain fees, including court costs and surcharges, to defray some of the cost of prosecution, or to finance certain state and local programs. The number of fees required to be assessed depends on the type of crime, as judges may be required to assess several fees for a single conviction. For example, a person convicted for driving under the influence of alcohol may be assessed as many as six fees in addition to a fine.

The statutes provide for the Clerk of the Circuit Court in each county to account for collected fines and fees, and distribute these monies to certain state and county trust funds. These trust funds are used to support various state and local programs. For example, fees assessed pursuant to ss. 960.20, and 960.25, F.S., are remitted to the Crimes Compensation Trust Fund to provide medical, emotional and financial support to victims of crimes. Fees assessed pursuant to s. 27.3455, F.S., are remitted to a special trust fund of the county to help underwrite the expenses of the State Attorney and Public Defender offices. It is important that these monies be properly distributed because these funds are used to finance judicial activities and programs created to alleviate the consequences of crimes.

² Felonies, misdemeanors, and criminal traffic crimes are punishable by a fine and/or a period of incarceration. A felony is any criminal offense that is punishable under state laws by death or imprisonment in a state penitentiary or correctional facility. A misdemeanor is any criminal offense that is punishable under state laws by a term of imprisonment in a county correctional facility not to exceed one year, unless otherwise ordered. Traffic violations include all offenses outlined in Florida Statutes: Ch. 316, State Uniform Traffic Control; Ch. 320, Motor Vehicle Licenses; and Ch. 322, Drivers' Licenses, and can be either felonies or misdemeanors.

There are 11 state trust funds that receive the remittances of fines and fees assessed to offenders of felony, misdemeanor, and criminal traffic crimes. Ten of these trust funds are established to finance, or partially finance, state agency programs; the remaining trust fund serves as a clearing account from which funds are transferred into three of the aforementioned trust funds. See Exhibit 1, page 5, for a listing of these state trust funds and a description of the purposes for which the trust funds are to be used.

Additionally, fine and fee revenues are placed in four county trust funds to finance programs administered by the Boards of County Commissioners. See Exhibit 2, page 6, for these county trust funds and a description of the purposes for which the trust funds are to be used.

Exhibit 1

State Trust Funds That Receive Monies Collected for Fine and Fee Assessments

Trust Fund	Administering Agency	Purpose
Trust Fund for Grant Matching (s. 943.25(1), F.S.)	Department of Community Affairs	To help state and local governments meet criminal justice needs.
Crimes Compensation Trust Fund (s. 960.21, F.S.)	Department of Legal Affairs	To provide financial assistance to victims of criminal acts.
Endangered and Threatened Species Reward Trust Fund (s. 372.073(1), F.S.)	Game and Fresh Water Fish Commission	To post rewards for providing information leading to the conviction of person(s) illegally killing, wounding, or possessing endangered and threatened species.
Criminal Justice Training Trust Fund (s. 943.25(2), F.S.)	Department of Law Enforcement	To provide advanced and specialized criminal justice training to state and local law enforcement agents.
Emergency Medical Services Trust Fund (s. 401.34(4), F.S.)	Department of Health and Rehabilitative Services	To encourage and assist cooperative efforts between private and governmental agencies in financing the provision of emergency medical care and transportation to the sick, injured, or incapacitated persons of Florida.
Handicapped and Elderly Security Assistance Trust Fund (s. 426.009(1), F.S.)	Department of Community Affairs	To implement crime prevention programs in housing projects for the elderly and handicapped.
Administrative Trust Fund (s. 943.25(2), F.S.)	Department of Law Enforcement	To provide supervision for criminal justice training programs.
Additional Court Cost Clearing Trust Fund (s. 943.25(3)(a), F.S.)	Department of Revenue	To distribute monies to the Criminal Justice Training Trust Fund, the Administrative Trust Fund, and the Trust Fund for Grant Matching.
Operational Trust Fund ¹ (s. 316.193(6)(d), F.S.)	Department of Law Enforcement	To provide for a statewide crime laboratory system.
Community Drug Abuse Services Grants and Donations Trust Fund (s. 893.16, F.S.)	Department of Health and Rehabilitative Services	To provide assistance to local drug rehabilitation programs.
Impaired Drivers and Speeders Trust Fund (s. 413.613, F.S.)	Department of Labor and Employment Security	To financially assist head and spinal injury victims.

¹ Section 316.193(6)(d), F.S., authorizes distribution to the Department of Law Enforcement's Administrative Trust Fund. However, because of the specific use of the funds for crime labs, agency officials said they account for received funds in the Department of Law Enforcement Operational Trust Fund.

Source: Office of the Auditor General analysis.

Exhibit 2

County Trust Funds That Receive Monies Collected for Fine and Fee Assessments

Trust Fund	Administering Agency	Purpose
Fine and Forfeiture Trust Fund (s. 142.01, F.S.)	Board of County Commissioners	To be used for criminal expenses, fees, and costs in the county where the crime was committed.
County Drug Abuse Trust Fund (s. 893.165(1), F.S.)	Board of County Commissioners	To provide assistance grants to county drug abuse and education programs.
Special County Trust Fund (s. 27.3455(3), F.S.)	Board of County Commissioners	To be used to reimburse counties for actual expenditures incurred in providing State Attorney and Public Defender services.
Local Law Enforcement Trust Fund (s. 943.25(13), F.S.)	Board of County Commissioners	To be used for local criminal justice education and training courses.

Source: Office of the Auditor General analysis.

Program Organization

The State Courts System of Florida is divided into 20 judicial circuits, with each circuit consisting of counties in which circuit and county courts convene.³ The Supreme Court is responsible for the administrative supervision of the State Courts System. In 1972, the Office of the State Courts Administrator was created to assist the Chief Justice of the Supreme Court in his role as Chief Administrative Officer of the court system.

³ Traffic cases are usually heard in a division of county courts.

In each county, a Clerk of the Circuit Court is elected to a four-year term by the county's electorate. As a county officer, the Clerk is responsible for duties and functions enumerated in Article V and Article VIII of the Constitution of the State of Florida, and the Florida Statutes. Such duties include acting as ex officio clerk of the Board of County Commissioners, auditor, recorder, and custodian of all county funds. The Clerk is also responsible for managing court related functions such as monitoring court minutes and dockets, scheduling court appearances, and managing court records and staff.

As custodian of county funds, the Clerk of the Circuit Court maintains all legal and accounting records related to court activities including collecting, accounting for, and remitting fines and fees assessed by the court. Clerks must account for these monies in accordance with guidelines established by the Department of Banking and Finance. The Clerks record collections of payments received for fines and fees assessed by the court. Section 219.075, F.S., requires that, except when otherwise prescribed by law or ordinance, the monies collected be invested as specified by statute and the interest accrued from these investments be remitted, along with the principal, to the appropriate trust funds. ⁴

Program Resources

Clerk of the Circuit Court activities are financed through appropriations by the Board of County Commissioners in each county, and by authorized court surcharges. Counties are also required by s. 43.28, F.S., to provide appropriate facilities and equipment necessary for courtroom operations. Statewide summary data of Clerk of the Circuit Court costs for administering fine assessment, collection, and distribution activities in fiscal year 1989-90 are not readily available. However, according to a study conducted by Florida's

⁴ Section 219.075, F.S., directs county officers to invest monies in:

- The Local Government Surplus Funds Trust Fund, as created by s. 218.405, F.S.;
- Bonds, notes, or other obligations of the United States;
- Interest-bearing accounts in state and national banks and savings and loan associations; and
- United States Securities.

Advisory Council on Intergovernmental relations, local government expenditures for court systems were approximately \$290 million in fiscal year 1986. ⁵

⁵ Article V Costs: County Revenues and Expenditures Associated with the Operation of the State Trial Court System, Florida Advisory Council on Intergovernmental Relations; April 1987.

CHAPTER III

Findings and Recommendations

Courts are authorized by various sections of the statutes to assess fines and fees to offenders convicted of crimes. The number of fees required to be assessed and the dollar value of these fines and fees depends on the crime(s) for which the offenders are convicted. Revenues derived from criminal court fines and fees are used to finance various state and local programs. The statutes identify recipient trust funds for each fine or fee assessed, and further stipulate that the Clerk of the Circuit Court is to distribute monies from collected fines and fees to the trust funds. For example, fees assessed pursuant to ss. 960.20, and 960.25, F.S., are remitted to the Crimes Compensation Trust Fund, managed by the Department of Legal Affairs.⁶ This Trust Fund provides funds for medical, emotional, and financial support of victims of crimes. Fees assessed pursuant to s. 27.3455, F.S., are remitted to the county to underwrite the expenses of State Attorney and Public Defender offices. It is important that fines and fees be properly remitted to the trust funds, as these monies are a primary source of revenues for programs supported by these funds.

To determine whether Clerks of the Circuit Court are distributing fines and fees as specified by statute, we examined the remittance policies and procedures implemented by the state agencies responsible for the trust funds. We also reviewed court records in nine counties of 1,167 offenders who were convicted of crimes during fiscal year 1988-89 and who paid all or some of their fines and fees as of June 30, 1990. We also interviewed staff in Clerk of the Circuit Court offices in 34 of the state's 67 counties regarding their

⁶ The Crimes Compensation Trust Fund is administered by the Bureau of Crimes Compensation. On July 1, 1991, the Bureau of Crimes Compensation was transferred from the Department of Labor and Employment Security to the Department of Legal Affairs.

remittance procedures, and staff of the Department of Banking and Finance and the State Courts Administrator's Office. We found that:

- Statewide guidelines for the distribution of collected fines and fees to designated trust funds are incomplete. In the absence of clear guidelines, Clerks of the Circuit Court use different distribution procedures; and
- Of the 34 offices of Clerks of the Circuit Court we contacted, 9 do not invest monies collected from fines and fees in interest bearing accounts. Additionally, only 4 of the 25 Clerks that do invest these funds remit the earned interest to the state, while the remaining 21 Clerks invest these funds but retain the interest earnings for county use.

Finding 1.1

Current statewide guidelines for the distribution of collected criminal court fines and fees to designated trust funds are incomplete. Consequently, Clerks of the Circuit Court use different procedures for distributing collected fines and fees.

Clerks of the Circuit Court (Clerks) are responsible for accounting for and distributing collected criminal court fines and fees. For each fine or fee authorized, the statutes designate the trust fund(s) to receive the monies collected. Florida Statutes designate 11 state trust funds and 4 county trust funds to receive monies collected from fines and fees.⁷

The process of distributing collected fines and fees is complex because several fines and fees can be assessed to individuals convicted of a crime. For example, a minimum of \$73 is required to be assessed to offenders convicted of misdemeanor violations. This amount is to be apportioned to four trust funds -- \$47 to the Special County Trust Fund, \$19 to the Crimes Compensation Trust Fund, \$3 to the Additional Court Cost Clearing Trust Fund, and a \$4 fee which is retained by the Clerk. Similarly, offenders convicted of driving

⁷ See pages 5 and 6 for a description of state and county trust funds and the programs they support.

under the influence (DUI) are required to be assessed a minimum of \$450.50, which is to be distributed among nine different trust funds or accounts. See Exhibit 3, for further examples.

Exhibit 3

Examples of Minimum Assessments in County and Circuit Court

	Statute	Minimum Assessment	Trust Fund (TF) or Account	Distribution of Assessment	
				Trust Fund	Clerk's Fee
COUNTY COURT					
Misdemeanor Violations	s. 27.3455	\$50.00	Special County TF	\$47.00	\$3.00
	s. 960.20	20.00	Crimes Compensation TF	19.00	1.00
	s. 943.25	<u>3.00</u>	Additional Court Cost Clearing TF	<u>3.00</u>	<u>0.00</u>
Minimum Assessment		<u>\$73.00</u>		<u>\$69.00</u>	<u>\$4.00</u>
<hr/>					
Criminal Traffic Violation - Adjudication Withheld	s. 960.20	\$20.00	Crimes Compensation TF	\$19.00	\$1.00
	s. 943.25	<u>3.00</u>	Additional Court Cost Clearing TF	<u>3.00</u>	<u>0.00</u>
Minimum Assessment		<u>\$23.00</u>		<u>\$22.00</u>	<u>\$1.00</u>
<hr/>					
Driving Under the Influence	s. 316.193(2)	\$250.00	County Fine and Forfeiture TF	\$250.00	\$0.00
	s. 316.193(6)	100.00	Emergency Medical Services TF	25.00	0.00
			Florida Department of Law Enforcement Operational TF	50.00	0.00
			Impaired Drivers and Speeders TF	25.00	0.00
	s. 27.3455	50.00	Special County TF	47.00	3.00
	s. 960.20	20.00	Crimes Compensation TF	19.00	1.00
	s. 939.017	15.00	Treasurer (for DHRS)	14.00	1.00
	s. 960.25	12.50	Crimes Compensation TF	12.50	0.00
	s. 943.25	<u>3.00</u>	Additional Court Cost Clearing TF	<u>3.00</u>	<u>0.00</u>
Minimum Assessment		<u>\$450.50</u>	<u>\$445.50</u>	<u>\$5.00</u>	
<hr/>					
CIRCUIT COURT					
Felony Violation	s. 27.3455	\$200.00	Special County TF	\$195.00	\$5.00
	s. 960.20	20.00	Crimes Compensation TF	19.00	1.00
	s. 943.25	<u>3.00</u>	Additional Court Cost Clearing TF	<u>3.00</u>	<u>0.00</u>
Minimum Assessment		<u>\$223.00</u>	<u>\$217.00</u>	<u>\$6.00</u>	

Source: Office of the Auditor General analysis of Florida Statutes.

When the Clerks collect fines and fees, their staff must decide how to distribute the monies collected to the designated trust funds. Clerks' staff we interviewed stated that distributing monies collected is straightforward when offenders pay all of their assessed fines and fees at one time. Distribution becomes complex when offenders do not pay their entire assessment at one time, but instead make partial payments. In these instances, Clerks must determine how to distribute the partial payment to the various designated trust funds. For example, an offender convicted of driving under the influence, should be assessed \$450.50 in fees (see Exhibit 3, page 11). If the offender paid the entire assessment, the Clerk would distribute the money to each trust fund as specified by statute. However, if the offender makes a partial payment of \$50, the Clerk would have to decide how to distribute the payment among the nine trust funds or accounts that are to receive funds from such cases. Our review of 1,167 case records in which fines and fees were paid showed that 270 offenders (23%) made multiple payments before the total amount due was paid.

To determine whether Clerks were distributing fines and fees to the trust funds as specified by statute, we reviewed the remittance practices and processes used by 9 Clerks, and contacted an additional 25 Clerks' staff to obtain information about their procedures. We focused our analysis on four questions:

- Are remittance procedures established by statute?
- Have remittance policies and procedures been established by the various state agencies that administer trust funds which receive fine and fee payments?
- Have remittance procedures been established by individual Clerks of the Circuit Court?
- What are the fiscal impacts of the current distribution system?

Statutory Remittance Procedures Are Incomplete

The requirement or authorization to assess fines and/or fees is found in various sections of the statutes. However, the statutes do not specify the procedures for distributing collected fines and fees when partial payments are made by offenders of fines and fees assessed by the court system.

State Agency Remittance Policies and Procedures

Since the statutes do not provide complete guidance to Clerks in fine and fee distribution procedures, we interviewed staff in the Office of the State Courts Administrator, the Department of Banking and Finance (DBF), and the seven state agencies that receive fine and fee revenues to determine if remittance policies and procedures had been provided to Clerks. However, none of these entities had promulgated guidelines. Staff of the Office of the State Courts Administrator stated that his Office did not have the responsibility of ensuring the accurate distribution of collected fines and fees, and asserted that the statutes vest this responsibility with the Clerks. Staff of DBF similarly reported that the Department does not have the statutory authority to establish policies and procedures for the distribution of fines and fees.

Staff of the seven state agencies that receive fines and fees also said that their agencies had not promulgated remittance policies or procedures beyond developing fine and fee remittance forms. These state agencies are not required by statute to develop policies or procedures to direct Clerks in the remittance of monies collected. These staff indicated that when offenders make partial payments on assessed fines and fees, the Clerks make remittances. The state agency staff also reported that they did not know if Clerks were properly remitting monies because they had no information on the amount of funds due.

Clerks of the Circuit Court Remittance Practices

In the absence of complete statutory guidance or state agency provided guidelines on remittance policies and procedures, Clerks must develop their own distribution procedures and practices. To identify remittance procedures and practices being used, we interviewed staff of 34 Clerks. None of these Clerks' staff indicated that written remittance policies and procedures had been developed in their offices. We found that Clerks' unwritten remittance procedures varied by Clerk and by court.

As shown in Exhibit 4 (page 15), 26 of the 34 Clerks' staff reported that monies collected from fines and fees (including partial payments) from circuit court cases would be remitted at least monthly. Six of the 34 Clerks' staff reported that they held partial payments until the total was collected and then remitted the fines and fees. Of these six Clerks, five indicated that if the offenders did not make full payments the funds collected would be retained in the bank account in which it was originally deposited, and one Clerk indicated partial payments would be remitted when it was determined that the offenders would not fully pay. The remaining 2 of 34 Clerks' staff reported that they remitted all collected funds, but did not accept partial payments. Of these two Clerks, one Clerk would accept only the amount assessed, and one Clerk would accept partial payments only if the payment was equal to or greater than the minimum mandatory assessment of \$223.

For county court cases, 20 of the 34 Clerks' staff reported that all funds received would be remitted monthly. Six of the 34 Clerks' staff reported that monies from those offenders who paid in full would be remitted monthly. However, staff in one Clerks' office indicated partial payments collected from probationers would be remitted monthly. The remaining eight Clerks' offices reported that they did not accept partial payments. However, one Clerk's office indicated that partial payments received through a probation agency would be accepted and remitted.

Clerks' staff in those offices that did not accept partial payments cited the lack of guidance in remittance procedures as the rationale for this policy, as the Clerks did not know how partial payments should be distributed. This policy may reduce collections of assessed fines and fees, and revenues to state trust funds, as some offenders may be unable to make full payment at one time.

Exhibit 4

Remittance Practices by Type of Court		
<u>Remittance Practices</u>	<u>Circuit Court</u>	<u>County Court</u>
Distributes full and partial payments at least monthly	26	20
Holds partial payments until full payment is received	6 ¹	6 ²
Does not accept partial payments	2	8 ³
Total Clerks	<u>34</u>	<u>34</u>

¹ One of the six Clerks indicated partial payments would be remitted when it was determined that full payment would not be received.
² One of the six Clerks indicated partial payments received from probationers would be remitted.
³ One of the eight Clerks indicated partial payments received through probation agencies would be accepted and remitted.

Source: Information provided by Clerks' staff.

Fiscal Impact of Current Remittance System

To determine if the lack of state remittance directions affected distribution and remittance of fines and fees, we reviewed the remittance practices of Clerks in a sample of 1,167 criminal cases assessed in fiscal year 1988-89 where offenders had made payments by June 30, 1990. Our analysis showed that the remittance of fines and fees is a complex process that lacks complete audit trails. For example, in five counties we could not determine if monies were being appropriately remitted to designated trust funds because court records did not identify the specific fines and fees assessed. In these counties, assessments levied in county courts were recorded as lump sum amounts rather than by individual fines and fees. As a result, Clerks' staff in these counties had to decide how the amount was to be

broken down to specific trust funds. For example, in one county, an individual was convicted of a single count of battery. The sentencing document showed that the individual was found guilty and assessed \$174.75. Court records did not indicate how the judge intended the assessed amount to be apportioned among the various trust funds. For example, the judge could have assessed this entire amount as a fine, which would be due to the County Fine and Forfeiture Trust Fund, or the judge could have intended the amount to be court fees to be distributed among various state and county trust funds. Due to the incomplete nature of the court records, we were unable to determine the precise fiscal impact of the current remittance system on the various state and county trust funds.

We identified three areas in which the current remittance process may affect fine and fee collection revenues. First, the collection rate of assessed fines and fees may be reduced because of Clerks' uncertainty in determining how payments should be distributed. As shown in Exhibit 4 on page 15, Clerks did not accept partial payments of fines and fees for two circuit courts and eight county courts because the Clerks were unsure how to distribute such payments. This policy could reduce the amount of fines and fees collected, as some individuals may be unable to make full payment at one time but could make partial payments over time.

Second, incomplete statewide guidelines on distribution may result in some monies being directed to the wrong trust fund or not being remitted. It was not within the scope of our audit to track collections in all cases from offender payment to distribution, thus, we could not determine the extent that monies were directed to the wrong fund or not remitted. However, in reviewing remittance practices we did identify instances where this occurred. For example, one Clerk remitted \$50 to the Department of Health and Rehabilitative Services' Emergency Medical Services Trust Fund from monies received from a DUI assessment rather than \$25 to the Emergency Medical Services Trust Fund and \$25 to the Impaired Drivers and Spellers Trust Fund as required by s. 316.193(6)(d), F.S.

We also found that three Clerks had not remitted any monies to the Endangered and Threatened Species Reward Trust Fund in fiscal year 1988-89, although these offices had collected monies that should have been remitted to this trust fund. We determined that one of these Clerks had collected \$575 from one case in our sample which should have been remitted to the Endangered and Threatened Species Reward Trust Fund, but was waiting for the Game and Fresh Water Fish Commission to "bill" them for the monies. Commission staff told us that they do not "bill" Clerks, as monies are to be remitted as soon as collected. The other two Clerks remitted all fines assessed in sample cases (\$30) involving endangered species to their County's Fine and Forfeiture Trust Fund rather than the Endangered and Threatened Species Reward Trust Fund. These two Clerks indicated that the monies collected were retained in the county to cover court costs because these collections were fines. Of the 737,975 criminal cases in which courts rendered guilty verdicts in fiscal year 1988-89, our sample of 1,647 cases examined only 1,167 cases in which funds were collected as of June 30, 1990. Thus, the amount of funds affected by these problems may be larger; however, the actual amount could not be determined on a statewide basis.

The third area where the lack of remittance guidelines can affect the various trust funds is the use of different remittance practices when Clerks receive partial payments. (See Appendix E, page 35, for the remittance rates for partial payments.) Staff in 12 Clerks' offices reported that their remittance practices for partial payments give priority to assessments that include an amount to be retained by the Clerk. For example, offenders convicted of felony or misdemeanor offenses are subject to an assessment of \$20 under s. 960.20, F.S., of which \$1 is retained by the Clerk as a fee and \$19 is remitted to the Treasurer for the Crimes Compensation Trust Fund. The remittance practices for these 12 Clerks' offices are to retain \$1 of the partial payment first, then distribute the remainder of the payment. Similarly, staff in 11 Clerks' offices reported their remittance practices are to give priority to trust funds requiring the smallest payment amount. For example, the \$73 minimum county court assessment includes \$3 assessed per s. 943.25, F.S., \$20 assessed per s. 960.20, F.S., and \$50 assessed per s. 27.3455, F.S. The remittance practices for these 11

Clerks' offices are to distribute payments to the \$3 assessment first, then the \$20 assessment, and the \$50 assessment last (see Exhibit 5).

Exhibit 5

Example of How \$50 Received as Partial Payment on a \$73 Assessment May Be Distributed by Clerk's Staff

Authorizing Statute and Fee Amount	Statutory Distribution of Assessment	Trust Fund (TF)	Amount Distributed as Determined by Clerk
s. 943.25, F.S. - \$ 3	\$ 3	Additional Court Clearing TF	\$ 3
s. 960.20, F.S. - \$20	1 19	Clerk's fee Crimes Compensation TF	1 19
s. 27.3455, F.S. - \$50	3 47	Clerk's fee Special County TF	3 24
Total Assessed	<u>\$73</u>	Total Distributed	<u>\$50</u>

Source: Office of the Auditor General analysis.

Summary and Recommendations

In our performance audit of the "Assessment of Required Criminal Fees," report No. 11757, issued November 13, 1991, we recommended that the Legislature consolidate into one chapter of the statutes all requirements for assessing criminal fines and fees. Additionally, we recommended in our performance audit of the "Collection of Fines and Fees," report No. 11780, issued January 6, 1992, that the Legislature direct the Department of Banking and Finance to develop guidelines for Clerks to use in carrying out their fine and fee collection responsibilities. We stated that these guidelines should address payment options such as the acceptance of credit cards, partial payment of fines and fees, and the establishment of payment schedules for offenders.

In this audit, we found that the statutes direct Clerks to remit fines and fees collected from convicted offenders to various state and county trust funds. However, the statutes do not identify a remittance procedure for these funds when offenders make only partial payments of their assessments, and state agencies have not developed or provided to Clerks policies or procedures for the remittance of such monies when collected. As a result, Clerks have developed different practices for remitting partial payments.

To provide guidance to Clerks in the distribution and remittance of collected fines and fees, we recommend that the Legislature provide guidance on how Clerks are to distribute monies collected for assessed fines and fees whenever the entire fine or fee is not paid at one time. This guidance may include the order of remittance or proration of these payments among the affected trust funds. The Legislature should then direct the Department of Banking and Finance, in consultation with the Clerks of the Circuit Court, to develop guidelines for distributing monies collected from assessed fines and fees. Such guidelines should also address how partial payments should be processed.

Finding 1.2

Of the 34 Clerks of the Circuit Courts we contacted, 9 did not invest monies collected from fines and fees in interest bearing accounts. Additionally, only 4 of the 25 Clerks who invest these monies in interest bearing accounts remit the earned interest to the state.

Clerks of the Circuit Court generally deposit monies collected from fine and fee assessments in local bank accounts prior to remitting the monies to the various state and local trust funds. Although the total amount of fines and fees collected statewide is not reported, Clerks remitted over \$14 million to state trust funds during fiscal year 1989-90, and approximately \$15 million during fiscal year 1990-91. (See Exhibit 6, page 20.) We could not readily determine the amount of money that the Clerks remitted to county trust funds. Section 219.075, F.S., directs that unless otherwise prescribed by law or ordinance, monies collected are to be invested in some manner, such as depositing them in an interest

bearing account. ⁸ Section 219.075(1)(b), F.S., further stipulates that the interest received from these deposits shall be remitted to the appropriate trust funds together with the principal on which the earnings accrued.

Exhibit 6

**Revenues Remitted to State Trust Funds by Clerks
Fiscal Years 1989-90 and 1990-91**

Trust Fund	Fiscal Year	
	1989-90	1990-91
Endangered and Threatened Species Reward Trust Fund	\$ 7,235	\$ 10,425
Handicapped and Elderly Security Assistance Trust Fund ¹	110	202
Emergency Medical Services Trust Fund	1,033,828	932,237
Operational Trust Fund	1,260,867	1,529,014
Impaired Drivers and Speeders Trust Fund	888,746	1,215,415
Community Drug Abuse Services Grants and Donations Trust Fund	105,257	222,763
Crimes Compensation Trust Fund	7,952,336	7,739,135
Additional Court Cost Trust Fund	2,785,134	3,106,805
Total Revenue All Trust Funds	\$14,033,513	\$14,755,996

¹ In Office of the Auditor General report No. 11757, issued November 13, 1991, Chief Judges and trial judges interviewed stated that the two fees which support this trust fund were generally not being assessed. Judges said that they were generally unaware at the time of assessment of whether the victims were handicapped and/or elderly.

Source: Office of the Auditor General Analysis of information provided by staff of the state agencies that maintain the trust funds.

⁸ Section 219.075, F.S., directs county officers to invest monies in:

- The Local Government Surplus Funds Trust Fund, as created by s. 218.405, F.S.;
- Bonds, notes, or other obligations of the United States;
- Interest-bearing accounts in state and national banks and savings and loan associations; and
- United States Securities.

We interviewed Clerks' financial staff in 34 counties to determine if the Clerks are remitting interest earned from fine and fee deposits. We also contacted representatives from banks used by Clerks to verify the interest-bearing nature of the accounts where fines and fees were deposited. We found that 4 of the 25 Clerks' offices we contacted who invest monies remitted earned interest to the state; the remaining 21 Clerks invest the funds but retain the interest earnings for county use.

Clerks Are Not Investing Collected Fines and Fees

Section 219.075, F.S., provides that public monies collected by any county officer are to be invested while pending distribution. One method of investment identified in this section is interest-bearing time deposits, or savings accounts in banks organized under the laws of Florida or the United States. According to staff of the Department of Banking and Finance, Clerks of the Circuit Court are county officials, and fine and fee monies are public monies. Thus, Clerks are required to deposit collected fines and fees into interest bearing accounts pending their distribution unless otherwise prescribed by law or ordinance.

We interviewed Clerks' staff in 34 counties to determine if monies collected from fine and fee assessments are deposited in interest bearing accounts, or are otherwise invested. As shown in Exhibit 7 (page 22), 21 Clerks deposit all monies collected in interest bearing accounts. However, nine Clerks did not invest collected fines and fees in interest bearing accounts, and four Clerks deposit some, but not all, collected monies.⁹ (See Appendix C, page 32).

⁹ In response to our question of why interest collected had not been remitted to the state, none of the Clerks' staff interviewed indicated that their county had adopted a local ordinance that allowed interest to be retained locally. It was not practical for us to determine whether such local ordinances had been adopted.

Exhibit 7

**Investments of Fine and Fee Collections
by Clerks of the Circuit Court**

	<u>Total</u>
Invest all monies collected from circuit and county cases	21
Do not invest any monies collected	9
Invest some monies collected	<u>4</u>
Total Clerks	<u>34</u>

Source: Office of the Auditor General interviews with Clerks' staff and corresponding banks.

The primary reasons cited by staff of five Clerks' offices for not investing monies collected was the lack of state guidance on how to apportion and remit interest earnings. Also, staff of three Clerks' offices asserted that interest earned would have to be prorated and credited to those offenders on whose monies the interest was earned. However, staff of the Department of Banking and Finance told us that assessed fines and fees are monies owed to the court, and thus become state or county funds once collected. As such, any interest that may be earned should be prorated to the various assessed state and county trust funds.

**Counties Are Not Remitting Interest Earned
From Fine and Fee Investments**

Section 219.075(4)(b), F.S., provides that interest earnings shall be paid, along with the principal, to the office or agency for whom the monies were collected. To determine if the Clerks are remitting interest earned to the various state and local trust funds, we interviewed financial staff of 25 Clerks we contacted that had invested some or all collected fines and fees in interest bearing accounts. One Clerk's staff reported he was prorating interest earnings and remitting these monies to the individual trust funds. Staff

from three other Clerks' offices reported they were remitting interest earnings, but were doing so as a lump sum to the Department of Revenue's Additional Court Cost Clearing Trust Fund rather than apportioning the money to the individual trust funds; one of these Clerks was retaining 10% of the interest earned as a handling fee. The remaining 21 Clerks were not remitting earned interest to designated trust funds. Staff of these Clerks provided three reasons why interest was not remitted to the state: (1) they had received no guidance from the state to remit the interest; (2) the state had never requested the interest earned; and (3) the interest was retained to offset the expenses of collecting the monies. These Clerks' staff also reported that it would be difficult to prorate interest earned to the various state trust funds because collected fines and fees are deposited daily and would earn interest on a daily basis.

To determine if the state had provided guidance on the remittance of interest earned, we reviewed the statutes, the remittance forms supplied by state agencies that administer the various trust funds that receive collected fines and fees, and instructions provided by the Department of Banking and Finance to Clerks on financial accounting of public funds. We found that the statutes address interest earned, however, the statutes do not identify how interest earned is to be segregated or allocated back to the various trust funds. The Department of Banking and Finance instructions also do not provide guidelines on how interest should be prorated and distributed. Only one state agency's remittance form included instructions that money held pending distribution to the trust fund (Additional Court Cost Clearing Trust Fund) was to be invested in an interest bearing account and the interest was to be remitted to the trust fund. Clerks' staff in the three counties that remit interest to the Additional Court Cost Clearing Trust Fund, stated that they did so because of the instructions on the remittance form. ¹⁰

¹⁰ Department of Revenue staff who administer the Additional Court Cost Clearing Trust Fund indicated that when Clerks' staff questioned the need to remit the interest they would inform the Clerks' staff that the county could adopt a local ordinance to retain the interest.

Potential Revenues Lost

Information is not available on the aggregate amount of fines and fees collected statewide by the county for county and state purposes as Clerks are not required to report such data to the state. Accordingly, we were unable to determine the amount of interest that could be earned if fine and fee collections were invested in interest bearing accounts. Based on revenues reported by state trust funds for the fiscal years 1989-90 and 1990-91, we estimated that if collections due to state trust funds had been deposited in the Local Government Surplus Funds Trust Fund, approximately \$50,000 in interest could have been earned for the state in fiscal year 1989-90 and approximately \$46,000 in interest could have been earned for the state in fiscal year 1990-91.¹¹ The interest calculation is based on the revenues reported by the trust funds for fiscal years 1989-90 and 1990-91. No adjustment was made for amounts submitted by Clerks who were remitting interest. See Appendix D, page 33, for the methodology used to calculate forgone interest earnings.

Summary and Recommendations

In summary, s. 219.075, F.S., provides that unless otherwise prescribed by law or ordinance, county officers are to invest monies collected for state or local government in an interest bearing account, and the interest is to be remitted to the various trust funds for which the monies were collected. However, we found that most Clerks' offices we contacted are depositing the monies in interest bearing accounts, but are not remitting the interest earned to the state trust funds. Therefore, we recommend that the Legislature provide guidance on how Clerks are to distribute interest earned from interest bearing accounts. The Legislature should then direct the Department of Banking and Finance, in consultation with Clerks of the Circuit Court, to develop guidelines for distributing interest earnings.

¹¹ The Local Government Surplus Funds Trust Fund is an investment option identified by s. 219.075, F.S., for monies collected by county officials. The Fund is administered by Florida's State Board of Administration, and was established to provide investment opportunities for local government's excess revenues.

Appendices

<u>Appendix</u>	<u>Page</u>
A. Methodology Used to Select Sample of Local Court Systems for Site Visits	26
B. Methodology for Case Selection	29
C. Fine and Fee Investments by County	32
D. Method for Calculating Interest Income	33
E. Remittance Rates for Partial Payments	35
F. Responses From the Supreme Court of Florida, the Florida Association of Court Clerks and Comptrollers, and the Office of the Comptroller	37

Appendix A

Methodology Used to Select Sample of Local Court Systems for Site Visits

Scope and Methodology

Our primary objective in our site visits was to collect information on the distribution of criminal fines and fees from a sample of local court systems. We based our selection of local courts on two factors: geographic distribution of counties representing the northern, central, and southern sections of the state; and whether the local courts could provide us with computer data on the number of persons assessed fines and fees, the amount assessed in fiscal year 1988-89, the amount collected, and the amount distributed. In making our site selection we gave consideration to discussions with staff of Legislative committees and the State Courts Administrator, and the numbers of criminal disposed cases as reported by the local courts to the Supreme Court's Summary Reporting System and the Department of Highway Safety and Motor Vehicles' Annual Uniform Citation Statistic Report. At each site, we interviewed Clerks of the Circuit Court and Clerks' staff, circuit and county trial judges (as practicable) and reviewed local court policies and procedures. While our audit findings may represent generally the distribution process throughout the state, the results do not express statewide conclusions.

We assigned each county to one of three categories, according to the number of disposed guilty criminal cases during fiscal year 1988-89. Counties that disposed of between 1 through 1,000 criminal cases were grouped in one category (small), counties that disposed of 1,001 through 10,000 criminal cases were grouped together (medium), and counties that disposed of over 10,000 criminal cases were grouped together (large). (See Table A-1, page 27.)

Table A-1

**Criminal Cases
(Number of Guilty Disposed)
Fiscal Year 1988-89**

<u>Number of Guilty Cases Disposed</u>	<u>Number of Counties</u>
1 - 1,000	16
1,001 - 10,000	36
Over 10,000	15

Source: Office of the Auditor General Summary Analysis of Supreme Court Summary Reporting System information, and Department of Highway Safety and Motor Vehicles Annual Uniform Citation Statistics Report.

The Supreme Court's data showed that the 15 large counties disposed of approximately 78% of the criminal cases, while the medium size counties disposed of approximately 21%, and the small size counties disposed of 1% of the cases.

Based on these factors, we selected nine counties for site visits: Baker, Gadsden, Citrus, Charlotte, Dade, Duval, Lee, Orange, and Pinellas counties. The nine counties are located in 8 of the state's 20 judicial circuits. (See Table A-2, page 28.)

Table A-2

Guilty Cases by Court in Sample Counties

Category	County	Circuit	County	Traffic	Total
1-1,000 Cases	Baker	82	361	357	800
1,001-10,000 Cases	Gadsden	1,251	969	523	2,743
	Citrus	354	1,342	1,574	3,270
	Charlotte	305	910	2,428	3,643
Over 10,000 Cases	Duval	9,744	16,123	19,705	45,572
	Orange	6,867	10,023	22,008	38,898
	Pinellas	6,699	20,043	25,663	52,405
	Dade	24,804	32,440	47,052	104,296
	Lee	1,974	12,850	6,689	21,513

Source: Supreme Court Summary Reporting Systems and Department of Highway Safety and Motor Vehicles Annual Uniform Citation Statistical Report.

Appendix B

Methodology for Case Selection

To obtain information about the assessment and criminal fines and fees, we reviewed the case file histories of a random sample of 1,647 guilty cases sentenced between July 1, 1988, and June 30, 1989. Given this sample size, the results are subject to a 5% sampling error at the .95 confidence level, meaning that there is a 95% probability that the characteristics of the total population of criminal cases in our selected counties sentenced during this time period would vary no more than $\pm 5\%$ from the characteristics of the criminal cases sentenced in our sample. The methodology used to select our sample, and the characteristics of these criminals are discussed below.

Sample Selection and Data Collection

Sample Frame. To select our sample of criminal cases, we obtained from the Clerks of the Circuit Court a listing of all cases sentenced guilty during the period July 1, 1988, through June 30, 1989. We selected this time period in order to cover a complete fiscal year and to allow sufficient time for assessments to be collected by the courts during the subsequent fiscal year.

The listings of cases were generally derived from computerized record systems maintained by the Clerks of Circuit Court. The records provided unique case numbers assigned to each case sentenced by the courts during the fiscal year. Two counties, Baker and Citrus, did not have all cases included in their computerized record system. Accordingly, we used manual records to obtain listings of cases sentenced in these counties.

Sample Selection. Clerks could not provide us with a complete listing of cases found guilty during fiscal year 1988-89 as reported to the Florida Supreme Court and the Department of Highway Safety and Motor Vehicles. Clerks provided us with listings of case files available for the audited period. We then selected a random sample of 2,637 cases

from the combined listings of cases sentenced upon conviction of a crime. To draw our sample, we used the random number generator in a commercial software package. We numbered the cases on the combined listings, and using the random numbers, identified cases until we had selected the requisite number. If a Clerk was unable to provide the case file for a specified case, we selected a replacement case using the above method. We selected a representative number of cases for each type court within a county (circuit, county, and traffic), based on the number of guilty cases disposed during fiscal year 1988-89. We used a sample of 2,637 cases to determine the number of cases assessed. Fines and fees were assessed in 1,647 cases. In 1,167 cases, some or all of the amount assessed was collected as of June 30, 1990. Our distribution analysis is based on these 1,167 cases. See Table B-1 for the number of cases selected from each county.

Table B-1

Sample of Cases Assessed and Collected Selected From Guilty Cases Sentenced July 1, 1988, Through June 30, 1989				
Counties	Number of ¹ Guilty Cases	Number of Guilty Case Files Reviewed	Number of Cases Assessed	Number of Cases Collected
Baker	391	112	60	45
Charlotte	3,860	221	175	134
Citrus	3,114	225	181	150
Dade	53,651	260	118	14
Duval	49,618	450	159	133
Gadsden	2,623	225	187	113
Lee	18,805	450	330	281
Orange	14,306	244	156	72
Pinellas	61,813	450	281	225
Totals	<u>208,181</u>	<u>2,637</u>	<u>1,647</u>	<u>1,167</u>

¹ Did not include traffic data for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of guilty cases.

Sample Validation. To validate our sample of guilty cases, we compared information from computerized case file histories to original source documentation. We made this comparison for the dollar amount of fines and fees assessed by the courts at the time of sentencing. In general, this validation found that the amounts reflected in the computerized case file histories were reasonably accurate within the precision and confidence level specified. Accordingly, it can be concluded that the data in our sample is generally representative of the data in the combined listings.

We also did not receive criminal traffic case data from Baker, Dade, and Orange counties. We analyzed the impact of not including these cases by weighing the estimated total disposed guilty cases for traffic courts compared to circuit and county court guilty cases. We concluded that not including these cases in our sample did not materially affect our conclusions.

File Review. To evaluate the information about the distribution of criminal fines and fees, we reviewed the case file histories of the 1,167 cases in our sample in which some or all funds were collected by June 30, 1990. We obtained these case file histories by requesting the Clerks of the Circuit Court to provide computerized printouts for our sample. The computerized systems of three counties (Baker, Orange, and Pinellas) did not always retrieve sentencing dates or indicate that a sentencing action had occurred. Also, in Citrus County, a small portion of the cases did not have this information. Accordingly, we obtained information for these cases from the court file records. During our review of computerized case histories we reviewed predominantly docket line entries. For case files of felony and misdemeanor cases we reviewed sentence and judgment forms and probation orders. For traffic cases we also reviewed traffic citations. To gain additional information and clarify case information, we interviewed knowledgeable staff of the Clerks of Circuit Court.

Appendix C

Fine and Fee Investments by County

Counties That Invest All Monies Collected	Counties That Do Not Invest Monies Collected	Counties That Invest Some Monies Collected
Alachua	Baker	Dade
Broward	Brevard	Monroe
Collier	Charlotte	Palm Beach
Columbia	Flagler	Polk
Citrus	Hendry	
Duval	Holmes	
Escambia	Manatee	
Franklin	Orange	
Gadsden	Volusia	
Gulf		
Hillsborough		
Jefferson		
Lee		
Levy		
Okaloosa		
Pasco		
Pinellas		
Putnam		
Santa Rosa		
Suwanee		

Source: Office of the Auditor General analysis of county provided data.

Appendix D

Method for Calculating Interest Income

Section 219.075, F.S., provides that unless otherwise prescribed by law or ordinance monies collected by a county officer, e.g., a Clerk of the Circuit Court, shall be invested. One of the investment options identified by s. 219.075, F.S., is the Local Government Surplus Funds (LGSF) Trust Fund, a fund managed by the State Board of Administration and established to provide investment opportunities for local government excess revenues.

We estimated the interest that could have been earned for the state on fine and fee revenue for fiscal years 1989-90 and 1990-91 using the LGSF Trust Fund. The interest calculation is based on the revenues reported by the trust funds for fiscal years 1989-90 and 1990-91. No adjustment was made for amounts submitted by Clerks who were remitting interest. We based our calculations on fine and fee revenue reported to us by staff of the agencies responsible for administering the trust funds. Interest was compounded on a daily basis, assuming an equal flow of funds over 22 working days per month. Interest was earned on funds existing in the account throughout the day, with daily deposits made at each day's end. The account was emptied of all funds at month's end. Assumptions included a 360-day year, and a 30-day month. Projected state trust funds interest that would have been earned on fine and fee revenue for fiscal years 1989-90 and 1990-91 is shown in Table D-1, page 34.

Table D-1

**Projected State Trust Funds Interest Income
For Fiscal Years 1989-90 and 1990-91**

Trust Fund (TF)	Fiscal Year	
	1989-90	1990-91
Endangered and Threatened Species Reward TF	\$ 25.73	\$ 32.74
Handicapped and Elderly Security Assistance TF	0.39	0.63
Emergency Medical Services TF	3,676.72	2,928.01
Operational TF	4,484.02	4,802.28
Impaired Drivers and Speeders TF	3,160.65	3,817.34
Community Drug Abuse Services Grants and Donations TF	374.33	699.65
Crimes Compensation TF	28,280.87	24,306.86
Additional Court Cost Clearing TF	9,904.76	9,757.77
Total	<u>\$49,907.47</u>	<u>\$46,345.28</u>

Assumptions:

Interest rate for fiscal year 1989-90 - 8.49%

Interest rate for fiscal year 1990-91 - 7.5%

360-day year

30-day month

22 working days per month

Equal allocation of monthly receipts over 22 days

Same time line is used for each month

Source: Office of The Auditor General calculation.

Appendix E

Remittance Rates for Partial Payments

To determine the potential impact of the current distribution practices, we examined 1,167 criminal cases assessed fines and fees during fiscal year 1988-89 that had made payments as of June 30, 1990. Of these cases, 76 offenders had made partial payments that totaled \$11,703 or 44% of the \$26,499 assessed. Table E-1, page 36, shows the remittance rates for partial payments.

Table E-1

Remittance Rates for Partial Payments of
Fine and Fee Assessments

Trust Fund Name	Required Assessment Per Case	Total Amount Assessed	Amount Remitted	Amount Remitted as a Percentage of Assessment
CLERK FUNDS				
Clerk fees	\$1, \$3 or \$5	\$306	\$223	73%
STATE FUNDS				
Additional Court Cost ¹	\$3	\$ 177	\$ 141	80%
Community Drug Abuse	\$25	56	14	25%
Crimes Compensation	\$20 (includes \$1 to Clerk)	1,325	1,039	78%
Emergency Medical Services	\$25	150	100	67%
Impaired Drivers	\$25	150	75	50%
Operational	\$50	300	200	67%
Crimes Compensation 5%	varies	580	391	67%
Endangered Species ²	varies	0	0	0%
Handicapped and Elderly ³	varies	0	0	0%
Total State Funds		\$2,738	\$1,960	72%
COUNTY FUNDS				
Local Law Enforcement	\$2	\$ 118	\$ 95	81%
Special County: Misdemeanor	\$50 (includes \$3 to Clerk)	1,628	1,373	84%
Felony	\$200 (includes \$5 to Clerk)	5,070	2,041	40%
County Drug Abuse ⁴	varies	0	0	0%
County Fine and Forfeiture	varies	16,639	6,011	36%
Total County Funds		\$23,455	\$ 9,520	40%
TOTAL		<u>\$26,499</u>	<u>\$11,703</u>	<u>44%</u>

¹ Fees remitted to the Additional Court Cost Clearing Trust Fund are distributed by the Department of Revenue to three trust funds: (1) \$.25 to the Trust Fund for Grant Matching; (2) \$2.00 to the Criminal Justice Training Trust Fund; and, (3) \$.75 to the FDLE Administrative Trust Fund.

² No one in our sample population was assessed a fine for the Threatened and Endangered Species Reward Trust Fund.

³ We did not examine the fiscal impact of the two fees which support the Handicapped and Elderly Assistance Trust Fund as court records did not identify whether the case involved handicapped or elderly victims.

⁴ No one in our sample population was assessed a fine for the County Drug Abuse Trust Fund.

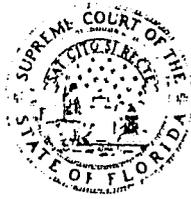
Source: Office of the Auditor General's analysis.

Appendix F

Responses From the Supreme Court of Florida, the Florida Association of Court Clerks and Comptrollers, and the Office of the Comptroller

In accordance with the provisions of s. 11.45(7)(d), F.S., a list of preliminary and tentative audit findings were submitted to the Chief Justice of the Supreme Court of Florida, the Executive Director of the Florida Association of Court Clerks and Comptrollers, and the Comptroller of Florida for their review and response.

Written responses from the Chief Justice of the Supreme Court of Florida, the Executive Director of the Florida Association of Court Clerks and Comptrollers, and the Comptroller of Florida are reprinted herein beginning on page 38.



SUPREME COURT OF FLORIDA
TALLAHASSEE
32399-1925

LEANDER J. SHAW, JR.
CHIEF JUSTICE
BEN F. OVERTON
PARKER LEE McDONALD
ROSEMARY BARKETT
STEPHEN H. GRIMES
GERALD KOGAN
MAJOR B. HARDING
JUSTICES

SID J. WHITE
CLERK
WILSON E. BARNES
MARSHAL

March 19, 1992

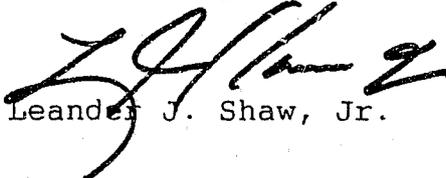
Mr. Charles L. Lester, C.P.A.
Auditor General
Room G-74, Claude Pepper Building
Tallahassee, Florida 32301

Dear Mr. Lester:

I have reviewed the preliminary and tentative audit report on the distribution of monies collected from criminal fines and fees assessed by the State Courts System of Florida that was provided to my office by letter dated February 17, 1992. Although that letter seems to require that I respond to you with a written explanation concerning all of the findings contained in Chapter III, including actual or proposed corrective action, it is apparent that neither of the recommendations made would require action on the part of the State Courts System. Both of the findings deal with the clerks of court or perhaps legislative action. The procedures individual clerks adopt for distributing collected fines and fees and the use of interest bearing accounts are not matters that the Supreme Court can determine.

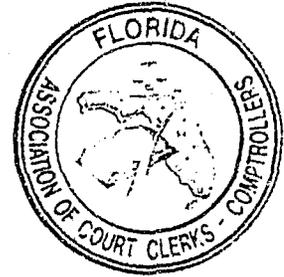
Since the findings and recommendations do not apply to the State Courts System, it is unclear to me what corrective action you would have me take.

Very truly yours,


Leander J. Shaw, Jr.

LJSjr:MUB:ger

FLORIDA ASSOCIATION OF
COURT CLERKS & COMPTROLLERS



150 S. Monroe Street, Suite 305
Tallahassee, Florida 32301
P.O. Box 1457 • Tallahassee, Florida 32302
(904) 224-1619 • FAX (904) 222-2306

March 18, 1992

Mr. Charles L. Lester, C.P.A.
Auditor General
State of Florida
111 West Madison Street
Tallahassee, Florida 32302

Dear Mr. Lester:

On behalf of the FACC, I wish to express our appreciation for this opportunity to comment on your office's preliminary audit findings on the distribution of monies collected from criminal fines and fees. We have reviewed the findings with the thirty four (34) Clerks that participated in the study, and our comments are, as requested, limited to Chapter III of the preliminary audit findings.

We concur with Finding 1.1 that current state wide guidelines for the distribution of collected criminal court fees and fines to designated trust funds are incomplete. The FACC would welcome reasonable guidelines for the distribution of these funds and we are ready to assist with the drafting of policies and procedures for that purpose.

Having said this, several factors must be recognized. The Clerks do not assess fines, we are only responsible for the tracking and receiving of the amounts set by judges. Sometimes, the amounts assessed are insufficient to cover all of the assessments for the trust funds.

In order to be effective, detailed distribution guidelines must be developed which include but are not limited to partial payments, bad checks, refunds and multiple fund distributions. The guidelines need to be uniform for each trust fund for which funds are to be distributed.

Daun Crews
Jackson County
President

Frances E. Thigpin
Marion County
First Vice President

Richard L. Ake
Hillsborough County
Second Vice President

Karleen F. De Blaker
Pinellas County
Secretary/Treasurer

Roger H. Alderman
Executive Director

Fred W. Baggett
General Counsel

Barbara R. Nettles
Executive Assistant

Mr. Charles L. Lester
March 18, 1992
Page 2

The cost for implementing such guidelines must also be carefully considered. For those Clerks Offices with automated accounting systems, guidelines that require significant changes to automation programs can be very costly. On the other hand, those who are not automated or whose automation is limited may have difficulty implementing guidelines which require sophisticated financial transactions. Changes may also require modification to existing contractual arrangements with banking institutions.

The collection and distribution of partial payments is both time consuming and costly. There are many instances in which the Clerk will spend more in the collection process of a small partial payment than the total amount of the payment received. If acceptance of partial payments is to be required, funding sources should be considered for the processing of partial payments.

We accept Finding 1.2, but feel that it should be recognized that there is a cost associated with the investment and distribution of earned interest. Table D-1, Projected State Trust Funds Interest Income For Fiscal Years 1989-90 and 1990-91 indicates that potential interest income to the state was approximately \$50,000 and \$46,000 respectively.

Since the calculation used for Table D-1 involved placing funds in the Local Government Surplus Funds Trust Fund (LGSFTF), it must be recognized that the LGSFTF standard procedure for deposits is for each county to wire funds directly to the LGSFTF depository. Assuming that each county were to wire funds once a month to the depository, and that all wire charges were at a cost of \$8.00 each, \$6,432 in annual wire charges would result. In addition to this figure there would also be the cost of distributing interest earnings to the various state trust funds, and the cost of staff time for both the investment and distribution functions.

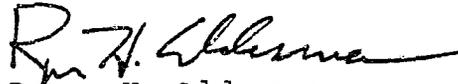
The purpose of the above analysis is not to challenge the preliminary audit findings. The example is offered only to illustrate that the cost to the Clerk's of investing funds and then distributing earned interest to the various

Mr. Charles L. Lester
March 18, 1992
Page 3

state trust funds is not cost effective and would most likely result in the Clerk's expending far more in resources than would be gained in interest earnings.

In conclusion, we recognize the problems observed in this preliminary audit finding and stand ready to work with the Legislature and the Courts to produce changes that would make the fee distribution process more manageable and effective.

Sincerely,



Roger H. Alderman
Executive Director

RHA/bn
cc: FACC Membership
General Counsel



OFFICE OF COMPTROLLER
DEPARTMENT OF BANKING AND FINANCE
STATE OF FLORIDA

TALLAHASSEE
32301

GERALD LEWIS
COMPTROLLER OF FLORIDA

March 16, 1992

Mr. Charles L. Lester, C.P.A.
Auditor General
State of Florida
Post Office Box 1735
Tallahassee, Florida 32302-1735

Dear Mr. Lester:

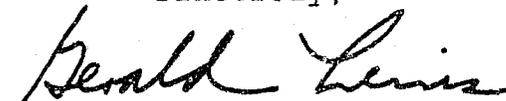
We have reviewed the preliminary and tentative audit report containing findings and recommendations which may be included in your performance audit of the "Distribution of Monies Collected from Criminal Fines and Fees Assessed by the State Courts System of Florida."

To provide guidance to Clerks in the Distribution and remittance of collected fines and fees, you recommend that the Legislature provide guidance on how Clerks are to distribute monies collected for assessed fines and fees whenever the entire fine or fee is not paid at one time. You further recommend that the Legislature should then direct the Department of Banking and Finance, in consultation with the Clerks of the Circuit Court, to develop guidelines for distributing monies collected from assessed fines and fees.

With regard to interest earned pursuant to Section 219.075, Florida Statutes, you recommend that the Legislature provide guidance on how Clerks are to distribute interest earned from interest bearing accounts. You further recommend that the Legislature should then direct the Department of Banking and Finance, in consultation with Clerks of the Circuit Court, to develop guidelines for distributing interest earnings.

Given the necessary legislative direction, we look forward to working with the Office of the State Courts Administrator, the Clerks of the Circuit Courts and other agencies in the implementation of an effective and efficient system regarding the distribution of criminal fines and fees.

Sincerely,


GERALD LEWIS

GL:JIW:ks