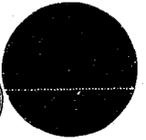


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*Issues and
Practices*

Recovering Correctional Costs Through Offender Fees

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U.S. Department of Justice
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Recovering Correctional Costs Through Offender Fees

by

Dale Parent

June 1990

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Chapter 1: Overview of Correctional Fee Policies and Practices

With correctional costs skyrocketing in recent years, the notion that offenders should contribute to their own supervision costs has gained widespread political support. By 1988, some form of correctional fees was authorized in 48 states. Specifically, statutes authorized fees charged to probationers in 28 states, to jail inmates in 26 states, to parolees in 15 states, and to prison inmates in 39 states.¹

These enabling statutes typically permit financial obligations to be levied on convicted offenders, in order to generate new revenues or to recoup part of the cost of basic or supplemental correctional services. Unlike financial obligations imposed to inflict punishment (e.g., fines), to restore victim losses (e.g., restitution, or payments to a victim's compensation fund), or to enforce performance of civil obligations (e.g., child support payments), correctional fees are imposed with the express purpose of generating revenue for correctional programs.

Indeed, the revenue raised can be substantial. In some states today, correctional fees generate as much as one-half of the cost of basic probation supervision, and as much as one-third of the cost of some work release programs. Among probation and parole agencies responding to this study in 1988, over \$85 million in correctional fees had been collected during their most recent fiscal years. Yet states varied widely in their abilities to generate fee revenues, ranging from a low of less than 3 percent of the probation budget to a high of over 50 percent. While correctional fees can generate substantial revenue, efficient collection policies are essential to program success.

While the number of programs imposing corrections fees has increased dramatically in recent years, the practice is hardly a new one. Michigan enacted the first correctional fee law in 1846, authorizing counties to charge sentenced jail inmates for the costs of medical care. For most of the next 125 years, correctional fees nationwide were authorized most often for confined offenders (for whom costs were greatest), but were actually collected only rarely, because few confined offenders had the ability to pay. The exception was room and board fees for offenders in work release programs, as these employed inmates did have income from which to pay.

In recent years, state fiscal crises have prompted policy makers to rely more heavily on fees to fund many governmental programs and services. Following this trend, correctional fee legislation has grown rapidly. In contrast to the early focus on confined offenders, most recent legislation has emphasized fee collection from offenders on probation or parole, who are more likely than incarcerated offenders to be employed. Thus,

seventy-three percent of the states which today authorize fees for persons on probation or parole enacted their enabling legislation since 1970. (By contrast, of the states authorizing fees for jail and prison inmates, only about a third enacted their enabling statute since 1970.) The greatest growth has been within the past ten years, as the number of states authorizing fee collection from probationers or parolees has tripled from 9 to 28.

Policy Issues and Concerns

The increased use of correctional fees has prompted heated debate among corrections professionals. While some practitioners and policy analysts have embraced fee collection enthusiastically, others believe it to be impractical, unprofessional, or inherently unfair. The major areas of controversy include the following:

Legal Issues. Opponents note that convicted offenders are "involuntary consumers." Unlike users of other governmental services for which fees are charged, correctional clients are not permitted to forego the services, consume less of them, or obtain them elsewhere. When the state compels its citizens to partake of a particular service, it is argued, the state should foot the bill. In addition, opponents assert that because probation or parole revocation cannot be based on inability to pay, (due to constitutional guarantees against imprisonment for debt), enforcement efforts have no teeth.

Proponents, however, respond that effective enforcement tools are available. They note that case law has uniformly upheld the legality both of imposing correctional fees and of revoking probation or parole for willful refusal to pay. (See Summary of Case Law in Appendix D.) According to some officials, offenders who refuse to pay fees typically commit many other violations as well, for which revocation and imprisonment are appropriate as a matter of law and practice. Additionally, it is asserted, effective administrative procedures and creative use of non-confinement sanctions—such as imposing terms of community service—can give most offenders sufficient "incentive" to pay their fee obligations, without having to resort to use of confinement.

Fiscal Concerns. A key issue is whether correctional fees are a cost effective source of revenue. Opponents of correctional fees note that many correctional clients are indigent (and hence should have fee payment waived), and even non-indigent offenders may be poor payment risks. As such, they assert, collection costs could exceed fee revenues generated.

Proponents, however, cite several jurisdictions in which correctional fees generate substantial revenues, apparently far in excess of collection costs. In several of the jurisdictions discussed in this report, experience has shown that, with efficient policies and administrative practices, fees can be a substantial cost-effective revenue source. While fees must be waived for those offenders who are truly indigent, most offenders appear able to pay moderate fees on a regular basis.

Some practitioners fear that reliance on offender fees may invite legislatures to diminish public funding of probation and parole. The resulting overdependence on fees paid by offenders, it is asserted, would place basic community correctional services at the mercy of an inherently unstable revenue source that could vary greatly with economic conditions.

In some states studied for this report, corrections officials and legislators reached agreements which assured that increased fee collection would not be met by a dollar-for-dollar reduction in state appropriations. In agencies that keep the fees they collect and control how they are spent, administrators felt the increased fee revenues gave them more flexibility to develop new programs or to contract with vendors for enhanced services.

Even in cases in which collection of correctional fees results in a gradual shift from full dependence upon state appropriations to partial dependence upon offender payments, proponents argue that this is actually an advantage. Offenders' abilities to pay fees, they assert, are less affected by variations in the economy than are receipts from public taxes; hence, fees are a more stable source of revenue than general fund appropriations. Additionally, offenders are under a continuing compulsion to pay, while state appropriations may fall prey to political concerns.

Finally, opponents argue that increasingly courts are levying multiple obligations on offenders—such as court or attorney costs, restitution, assessment for victims' compensation funds, or fines—in addition to fees. In some cases, convicted offenders may owe hundreds of dollars each month in total court-ordered obligations. Opponents maintain that such practices "set up" offenders for failure, often prompting them to abscond from supervision when they cannot make their payments. Worse still, it is argued, they may neglect other important obligations such as care of dependents or payment of court-ordered child support—or may commit new crimes to get money to make the payments.

At a minimum, these concerns emphasize the importance of setting reasonable fee levels, adequately coordinated with other obligations, and which provide for fee waivers in appropriate cases. Fee supporters assert that, in a properly run program, offenders will not have increased economic motivation to commit new crimes. Most important, they add, the specter of crimes committed to pay fees can be avoided

(and fee revenues increased) if probation and parole agencies emphasize helping clients obtain and keep jobs.

Programmatic Issues. Opponents argue that fee collection undermines the helping role of probation or parole officers. This argument suggests that probation officers' contact time with offenders will be spent mostly on payment issues, and that collection procedures will impose new and burdensome paperwork. Some also fear that emphasis on fees might inappropriately influence classification decisions. In this view, fees could create an incentive to remove poor payment risks from supervision prematurely. At the same time, new programs and longer probation terms might emerge for those convicted of minor crimes, merely because they are better payment risks, or because more revenue is generated from their fees than they consume in services.

Advocates of correctional fees assert that fee collection is compatible with sound case work. Most offenders pay regularly, requiring little time to be spent on fee issues. In fact, the regularity of payments becomes a visible measure of success which can be used, it is argued, to motivate offenders to address other problems. Conversely, non-payment signals underlying problems which case workers should identify and resolve. Thus, a missed payment is an opportunity for effective casework intervention.

As the debate surrounding correctional fees suggests, the decision whether to implement fee collection involves crucial policy judgments regarding correctional goals. Some practitioners have suggested that fee payment has a therapeutic effect. They maintain that offenders demonstrate accountability and responsibility to the victim and to the criminal justice system when they successfully complete payment of court-imposed financial obligations—including fines, restitution, court costs, or supervision fees. To these practitioners, such a therapeutic effect is grounded in and confirmed by daily experience. Skeptics note, however, that if offenders who regularly pay fees perform better on supervision, their better performance may be due to other factors, like steady employment, absence of serious drug use problems, etc., not from paying fees. On balance, there is no empirical evidence either to confirm or refute a therapeutic effect from fee payment.

A remaining purpose for offender fees is to raise revenue to help fund correctional services. Over the last decade, a growing number of legislatures have answered in the affirmative the basic policy question of whether fees should be used to finance at least part of correctional services. As states face continuing fiscal pressure, it is likely that more will turn to fees with the hope of recovering a greater share of the resources required to operate correctional programs and services. Thus, the question of primary interest appears to be not whether to use fees, but how to realize their potential benefits if fees are implemented.

Current Study

This report has two objectives. The first is to inform policy debates by drawing on the profession's growing experience—both positive and negative—with correctional fees. The second is to help jurisdictions now collecting correctional fees to improve their policies and procedures, incorporating those collection methods which have proven most efficient and effective. The report describes current correctional fee collection practices for adult offenders, including a full range of correctional agencies (jail, prisons, probation, and parole).

Because the intent was to learn from documented experience, this study was confined to states where correctional fees for adult offenders were authorized by statute.² In order to highlight *state* policies that affect fee collection, attention was focused on state agencies that operate prisons, provide parole supervision, or operate or oversee probation services for adult offenders.

The study included:

- *Review of literature and statutes.* The study began with a review of existing literature on fee collection and an assessment of data from prior studies. Particular attention was focused on a 1985 study that the National Council on Crime and Delinquency (NCCD) conducted for the National Institute of Corrections, entitled *Fees for Probation Services*. Statutes from all states authorizing correctional fees were also collected and analyzed.
- *Survey of state practices.* All states with laws permitting collection of correctional fees from adult offenders were contacted by mail and asked to provide information about their fee collection practices and results. Because fee collection practices vary by setting, different questions were addressed to correctional administrators in (a) large urban jails, (b) state prisons, and (c) state parole agencies and state and local probation agencies. Surveys were sent to these officials during the spring and summer of 1988.

— *Jail:*

Sheriffs in all 96 counties over 100,000 in population received the survey; 29 (or 31.9%) responded. Responding jails slightly over-represented larger counties, and accounted for 39.0 percent of the population in counties over 100,000 in states authorizing fees for jail inmates.

— *Prisons:*

Departments of Corrections received the survey in all 36 states where fees are authorized for prison inmates. Of them, 26

(or 72.2%) responded. Smaller states were more apt to respond. Responding prisons were in states that accounted for 59 percent of the total population of states permitting use of fees for prison inmates.

— *Probation and Parole:*

Twenty-eight state agencies that either a) provide probation and/or parole services, or b) oversee the provision of probation by local agencies received the survey. Of these, twenty (or 71.4%) responded. These agencies represented states containing 69.3 percent of the population in states permitting fees for probationers or parolees.

Two states using fees—California and Indiana—do not have a state agency that oversees local probation. Therefore, all local probation departments that supervise adult felons received the survey. In California, 20 of 58 (34.5%) of the departments responded. In Indiana, 32 of 111 responded (28.8%).

(In both California and Indiana responses overrepresented small counties, making it difficult to reliably estimate state wide practices. Because all other responding probation agencies provided state-level data, the local responses from California and Indiana have been reported separately in Appendix E. In the main report aspects of fee collection in which California or Indiana appear to differ substantially are noted.)

- *Site visits.* Early in the study it became clear that supervision fees and work release room and board fees accounted for the great majority of fee revenue generated from adult offenders. Therefore, site visits were conducted in three states—Texas, Florida and Oregon—to see how supervision and work release fee collection worked in practice. The three sites provide special insights about the operation of fee collection systems.

— Texas has had extraordinary success in generating revenue through fee collection, with supervision fees now providing over half of the \$90.6 million operating budget for basic probation. Indeed, the \$45.7 million collected from the state's probationers exceeded the *total operating budget* of any other state studied (including those states which reported combined probation and parole budgets).

- Florida has had outstanding success in fee collection, generating over one-third of its \$45.2 million probation and parole budget through offender fees. Florida also has made effective use of work release room and board fees; on a given day, about 10 percent of Florida's inmate population are housed in DOC community work release centers.
- Oregon provides a unique opportunity to compare the effectiveness of various collection policies described in this report. Under Oregon's Community Corrections Act (CCA), counties participating under different CCA funding options have very different financial incentive to collect fees. By visiting the various sites and comparing data, it was possible to determine which policies maximized fee collection.

Observations and data from the survey of state practices and from the site visits are discussed in context with fee imposition practices in Chapter 2 and with fee collection practices in Chapter 3. Chapter 4 presents policy and program recommendations for improving fee imposition and fee collection practices.

Appendices A, B and C are each devoted to in-depth descriptions of the three site visit states. Appendix D contains a statutory and case law analysis. County level programs from California and Indiana, representing primarily less populous counties, are addressed in Appendix E.

At the outset, it is important to define terms used to categorize the types of fees discussed in this report.

- *Correctional fees* is a general term that refers to any payment a convicted offender is compelled to make that generates revenue for correctional purposes or that recovers all or a portion of the

costs of services provided. Correctional fees are divided into two broad categories: *program fees* and *service fees*.

- *Program fees* typically are levied on a large proportion of the offenders on whom they may be charged. The two most common types of program fees are *supervision fees* and *room and board fees*.
 - *Supervision fees* - refer to payments offenders are required to make each month they are under supervision.
 - *Room and Board fees* - are payments offenders in residential programs are required to make to offset the cost of providing them with shelter and food.
- *Service fees* cover a wide range of fees charged (typically only for a relatively small proportion of eligible offenders) to cover all or part of the cost of programs they are required to attend or services they are compelled to use.
 - Common examples are fees for drug use testing, antabuse, community service, and health services.

NOTES

1. See Tables 1-4, Appendix D, for a complete list of states authorizing correctional fees for these four categories.
2. We presumed, at the outset, that correctional agencies would implement offender fee collection programs only where that practice was authorized by enabling legislation. After our data collection and analysis was completed, however, we learned that in two states—Georgia and New Jersey—probation fees are not authorized by statute, but are collected under other authority. Hence, collection practices in those two states are not addressed in this study.

Chapter 2: Correctional Fee Program Administration

The effectiveness of correctional fees as a revenue source varies greatly among the states authorized to collect fees. Among the 29 jails responding, only 58 percent collected correctional fees. Two-thirds of those that did not collect fees did not operate work release, the jail program for which fees are most commonly levied. About two-thirds of the prison respondents collect correctional fees, again, mostly room and board fees for work release.

Fourteen of the responding eighteen state probation agencies collect fees. Three of the four not collecting fees are authorized to levy only service fees, not supervision fees. Eleven of the 13 state parole agencies collect fees. Half of the responding California County probation departments collect fees. (California law gives individual departments discretion to levy fees.)

Among those states which do collect correctional fees, there is a wide range in effectiveness as a revenue source. Table 2-1 shows the correctional fee revenues collected by state probation and parole programs, as compared to the agencies' total operating budgets during their most recent completed fiscal year at the time of our survey.

Among all probation and parole agencies responding, fee receipts averaged 23.6 percent of their total operating budgets. But that figure was inflated by two large states with exceptional track records in fee collection—Texas, where fees provided half of the cost of operating adult probation, and Florida, where they provided 34 percent of the cost of operating probation and parole for adult felons. Together, Texas and Florida accounted for 77 percent of the total fee revenue reported by all probation and parole agencies responding; with Texas and Florida removed, fee revenues averaged 10.1 percent of total operating budgets for the remaining agencies. In five states, correctional fees provided revenue equal to less than five percent of the agencies' operating budget.

The Texas Adult Probation Commission provided additional data on the supervision fee collection performances of 110 district probation offices during fiscal year 1986. That data show that fee revenues as a percent of operating expenses also varied greatly across departments (although overall levels of fee collection were much higher in Texas) from a low of 24.6 percent to a high of 89.3 percent. The district probation

Table 2-1:
Correctional Fee Revenues as Percent of
Probation and Parole Operating Budget

Probation and Parole Agency	Correctional Fee Revenue	Total Operating Budget	Fees as % of Total Operating Budget
Texas (probation only)	\$45,677,784	\$90,558,700	50.44%
Florida	15,600,000	45,231,624	34.49%
Alabama	2,700,000	8,900,000	30.34%
Arkansas (probation only)	369,559	1,270,090	29.10%
North Carolina	5,502,662	32,757,893	16.80%
South Carolina	3,482,692	21,200,000	16.43%
Arizona (parole only)	396,008	2,892,300	13.69%
Louisiana	1,894,482	15,691,726	12.07%
Idaho	442,649	4,000,000	11.07%
Nevada	701,956	6,694,542	10.49%
Oklahoma	969,704	9,851,251	9.84%
Oregon	2,826,843	38,343,305	7.30%
New Hampshire	166,671	2,500,000	6.67%
Washington	1,193,076	27,374,885	4.36%
Virginia	850,406	21,200,000	4.01%
Kentucky	271,230	8,975,995	3.02%
Colorado (probation only)	452,928	16,082,479	2.82%
TOTAL, State Agencies	\$83,498,650	\$353,524,790	23.60%

department whose fee revenue as a percent of total operating expenses was the *lowest* in Texas, still exceeded the average for all state probation and parole agencies responding to the survey.

Analysis of jail and prison data was hampered because many respondents' either did not provide the cost of work release, or could not separate the cost of work release programs from other institutional budgets, making it impossible to measure fee collection in comparison to program cost. Seven jails, however, did report separate work release costs. In these jails, work release fee revenues totalled \$1,890,767, and accounted for 23.3 percent of the cost of operating work release programs.

Other Offender Obligations

In most states, correctional fees were only one of several types of fees collected from offenders by state probation and parole offices. While correctional fees represented the greatest single type of collection (41.8 percent), other substantial levies included restitution payments (28.6 percent) and fines (20.8 percent). Table 2-2 below lists total revenues collected from offenders by state probation and parole agencies.

Table 2-2:

Collections by State Probation and Parole Agencies

Type of Collection	\$	(N = 20)
		%
Fines	39,980,859	20.8
Court Costs	11,867,558	6.2
Attorney Fees	404,986	0.2
Restitution	54,837,288	28.6
Victim Compensation Fund Assessment	4,616,090	2.4
Correctional Fees	80,213,005	41.8
Total Collections	191,919,786	100.0

The 29 local jails who responded to the survey collected \$3,094,950 in correctional fees. The 26 responding state prisons collected \$13,500,000 in correctional fees.

In all states, offenders may also have civil or quasi-criminal child support obligations, other legally adjudicated debts, dependents to care for, and, of course, personal living expenses. For example, in California, child support constituted 7.3 percent of collections from offenders. (See Appendix E for California and Indiana collection distribution.) These factors demonstrate the importance of determining reasonable offender fees in context of other necessary budgetary demands.

Types of Correctional Fees Collected

The types of fees charged to offenders will determine, in large measure, their revenue potential. Correctional fees fall into two broad types: program fees and services fees.

Program fees are levied on broad categories of offenders within a specified type of program. Specifically, they include 1) supervision fees for offenders on probation or parole, and 2) room and board fees for offenders in work release or other residential programs. Typically, program fees are imposed on all probationers, all parolees, or all participants in a given work release or residential program, unless waived due to indigency.

Program fees—that is, supervision fees and room and board fees—were by far the most commonly and effectively used type of correctional fees. Program fees produced over 95 percent of the total fee receipts collected by the agencies responding to the survey.

Among probation and parole agencies, supervision fees accounted for 98 percent of the total offender fee revenues. Among jails, room and board fees produced 95.7 percent of the total jail fee collections. Among prisons which collected fees, work release or pre-release room and board fees accounted for 77.5 of the total fee revenue.

In most cases, program fees generate additional revenue for programs that states would have to provide, even if no fees were collected. In this sense, they are direct revenue producers.

Service fees, by contrast, are levied on relatively small numbers of offenders to defray the cost of specific services they use. Fees for health care, drug testing, or home detention, for example, would be service fees, imposed only if and when a specific service was used.

Service fees were not, in general, significant revenue producers. Although at least 26 different types of service fees are authorized among the states,¹ all of them together produced less than 5 percent of the total fee receipts collected by agencies responding to the survey.² While the number of fees permitted for specific types of services has grown substantially, in practice their use is very limited.

Table 2-3 below shows the number of jails, prisons, probation departments and parole programs which collected various types of program and service fees.

In addition to offering greater gross revenues, program fees may require relatively less cost and staff time to collect. While it was impossible to estimate cost of fee collection separately for program fees and service fees from data obtained in the survey, practitioners interviewed expressed the strong belief that service fees are more costly to collect. This, they believed, was because offenders on whom service fees are levied are less likely to be regularly employed and, hence, are less able

Table 2-3
Types of Correctional Fees Collected
by State Correctional Agencies

	Jails N=17	Prisons N=18	Probation N=18	Parole N=13
Program Fees				
Supervision	—	—	14	3
Room & Board				
Agency Work-release Program	16	14	7	3
Inter-agency Work Release (state inmates in local jail)	5	—	—	—
Pre-trial Detention	1	—	—	—
Post-trial Confinement	3	3	—	—
Inter-agency Confinement (state inmates in local jail)	3	—	—	—
Prison Pre-release	—	6	—	—
Residential Center	—	—	7	3
Other	—	—	1	1
Special Service Fees				
Health Services	5	1	0	0
Mental Health Services	0	1	0	0
Drug Use Testing	2	1	4	2
Antabuse-Trexan	—	—	1	0
Community Service	—	—	2	1
Presentence Investigation	—	—	2	—
Restitution Surcharge	—	—	3	0
Other	4	6	2	2

to pay. Therefore, they believe that staff invests more time in collection efforts per dollar of service fees collected.

The study did not include state agencies that provide probation and parole supervision only to juveniles. However, a number of respondents supervised both adults and juveniles, but only four reported collecting correctional fees from juveniles they supervised. Of those, three collected room and board fees for juveniles placed in residential centers, and one levied a surcharge for juvenile restitution collections. Juvenile corrections fees in these states produced negligible revenue. For this reason, fee collection from juveniles is not addressed in the body of this report. However, because county-based programs in California and Indiana reported some experience with juvenile collections, that topic is briefly addressed in Appendix E.

Amount of Fees

Realistic fee scales are an important component of an effective fee system. Unreasonably high fees could encourage non-compliance while unduly low fees will render collections meaningless. At a minimum, the amounts of fees charged should be high enough that fee revenues substantially exceed the cost of collection.

The amount of correctional fees also must be considered in the context of the total amount of court-ordered obligations that offenders must pay. While a \$30 monthly supervision fee may be realistic for most offenders, if judges also routinely impose fines, restitution, court costs, attorney fees and other obligations, offenders' total monthly payments may be several hundred dollars. In addition, if judges accord a higher priority to collection of other court-imposed obligations, collection of probation fees may suffer. Hence, it is important for correctional officials to view probation fees in relation to total offender financial obligations.

Changes in the amount of supervision fees charged can produce quick and substantial changes in total fee revenues. Officials in Texas attribute most of their recent surge in probation supervision fee revenues to increases in fee amounts. In 1985, the Texas Legislature increased the maximum supervision fee from \$15 to \$40 per month. Then, in 1987, the Legislature set a minimum fee of \$25 per month.³ These two changes (along with increased caseloads and improved collection methods) were major factors in increasing supervision fee revenue from \$11.4 million to \$45.6 million between 1980 and 1988.

In 1988 the Oregon Governor's Task Force on Corrections Planning, as part of its research to develop a correctional master plan, examined collection of supervision fees from probationers and parolees. They found that the average fee being charged was very near the statutory minimum of \$10 per month. They concluded increasing the imposition rate or collection rate would have little immediate impact on fee revenues. However, they projected that raising the average fee to \$30 per month, coupled with modest improvements in collection rates, would increase total fee revenue by more than 250 percent.

The survey collected data on the average monthly fee rates among states for the two major types of program fees (room and board for jail and prison work release programs, and supervision for probation and parole), as well as some of the more common specific service fees.

Average room and board rates for jail and prison work release programs are displayed in Table 2-4.

Table 2-4:

Room and Board Fees for Jail and Prison Work Release Programs

Type of Fee	Jails		Prisons	
	# of jails	ave.\$/mo.	# of prison systems	ave.\$/mo.
Flat Fee	5	\$105	10	\$190
Variable Fee	10	\$218	4	\$162

Prisons are more apt to use higher average flat fees than jails, while jails are more apt to use variable work release fees (that is, a sliding scale, or a fee based on a percent of inmates' earnings). Average variable fees charged by jails are higher than those charged by prisons.

The Florida Department of Corrections recently streamlined their work release fee schedule. Previously, they used a multi-tiered fee table, in which monthly fees increased as inmates' net income rose to higher levels. In April 1988 they changed to a flat rate: fees now equal 45 percent of each inmate's gross earnings. Officials do not expect the new flat fee rate to have much effect on total fee revenue, but they think it will be simpler to apply. However, staff of women's work release centers believe the change will increase slightly the amount of fees female offenders pay, because they tend to earn somewhat less than men, and the prior scale charged a lower rate for the lower income inmates.

Fees for other jail and prison services were used too sparsely to provide meaningful summary data on amounts of fees charged.

Table 2-5 shows amounts charged for supervision fees by responding probation and parole agencies.

Table 2-5:

Supervision Fees by Probation and Parole Agencies

Type of Fee	Flat Fees		Variable Fees	
	ave.\$/mo.	range	ave.\$/mo.	range
Probation Supervision	\$22.18	\$10-\$50	\$25.95	\$10-\$265
Parole Supervision	\$20.60		—	\$10-\$50
Intensive Supervision	\$41.33	\$10-\$180	—	\$10-\$50

Agencies are somewhat more prone to use flat than variable supervision fees. For regular supervision, fees typically average between \$20 and \$26 per month, while intensive supervision fees tend to be higher.

Table 2-6 shows the amounts of common probation or parole service fees.

Table 2-6:

Probation and Parole Service Fees

Type of Fee	Average Amount	Range of Fees
Drug Testing	\$17.11/test	\$10-\$125
Home Detention	\$110.54/mo.	\$30-\$450
PSI Preparation	\$221.25/psi	\$100-\$584

Fees for other services were used too infrequently to compute averages.

Characteristics of Offenders on Whom Fees Are Levied

Offenders vary rather systematically in terms of their probability of paying correctional fees that are levied. Practitioners interviewed emphasized that, on the whole, those convicted of misdemeanors (including drunk driving offenses) are relatively good payment risks. They also noted that the probability of non-payment increases directly with offenders' prior records, with the frequency and seriousness of substance abuse, and with the frequency and seriousness of factors that impaired employability.

Texas adult probation officials noted that between 1980 and 1988 their caseloads grew 125 percent (during the same time fee revenues grew over 300 percent). Misdemeanors accounted for much of that growth in caseload, particularly due to changing attitudes by the public and criminal justice officials toward drunk driving. Thus, the big growth in Texas probation caseload occurred among those offenders most likely to pay fees regularly, and, on the whole, least likely to consume expensive probation services. Texas officials

estimated that 85 percent of the misdemeanor probationers paid their fees in full, compared to about 60-65 percent of the felons. When drunk drivers were ordered to attend special alcohol education programs, Texas judges typically imposed a service fee for that purpose.

While this change in caseload made fees a more "profitable" enterprise for Texas probation agencies, it also linked fee revenue to changes in drunk driving enforcement. In fact, in 1988 admissions to probation for drunk driving flattened out, and some probation departments found their fee revenues were below levels projected in budget planning.

Fee Waiver Policies

For parole supervision and for jail and prison work release programs, corrections officials typically have the final authority in decisions to order or waive fees and set amounts of fees charged. For example, of the 16 jails collecting work release fees from local inmates, 12 had final authority to order or waive fees. Correctional officials in ten of the 14 states that collect prison work release fees have final authority to order or waive fees. In probation, however, judges typically have the final authority to order or waive fees.

Fee waiver is rarely an issue for inmates in jail or prison work release programs. Most jurisdictions require inmates to have a job in order to enter or remain in work release. Thus, most work release inmates have the means to pay room and board fees. (Some jurisdictions, however, use work release as the mechanism to let a few prisoners attend educational programs in the community. In these cases, room and board fees usually are waived.)

In probation and parole settings, waiver of fees is more common and serves three important functions:

- 1) It avoids exposing offenders to potential imprisonment based solely on indigence (although, in practice, officials assert that revocation virtually never happens when non-payment is the only violation).
- 2) It prevents the imposition of extreme total financial obligations that offenders cannot possibly pay or that would adversely affect persons dependent on the offender.
- 3) By eliminating cases in which it is unrealistic to seek payments, waiver of fees cuts collection costs.

The salience of waiver decisions varies with the amount of the fees charged, the offender's circumstances, and the total court imposed financial obligations. If only a supervision fee (usually running \$10-\$40 per month) is involved, waivers are less common. However, if offenders are charged multiple service fees (like residential treatment, drug testing, and health services), and also must pay restitution, fines, and court costs, their total obligations could be two or three hundred dollars a month. In addition, the offenders who need the intensive

services or controls that sometimes are funded by special services fees probably are less likely to have stable jobs and, hence, may be less able to pay large obligations.

Criteria for waivers. Most correctional fee statutes do not define specific criteria for fee waiver. [For a description of statutory criteria, see Appendix D.] For jails and prisons, about 80 percent of the statutes enabling fees do not contain criteria for making fee waiver decisions. For probationers, 54 percent of the statutes are silent on waiver criteria. By and large, agencies are left to define waiver criteria, if at all, in rules, policies, or practices.

Table 2-7 depicts criteria respondents commonly considered in fee waiver decisions.

Table 2-7:
Fee Waiver Criteria

Criteria	Jails n = 17	Prisons n = 17	State Probation and Parole Agencies n = 20
Employment handicap/ unable to work	3	10	16
Undue hardship on dependents	4	5	15
No assets/unable to pay	4	8	15
Unable to find job	5	8	16
Student status	9	8	14
Interstate supervision	0	5	8
Special circumstances	7	10	17
Other	4	3	4

Respondents were asked how many persons were under their jurisdiction at the end of their most recent fiscal year, and how many of those had been ordered to pay correctional fees. (While virtually all could give a precise end of year population count, most had to estimate the number ordered to pay fees.) This data was used to compute an estimated percent of those under supervision who were ordered to pay.

Overall, among state probation and parole agencies that use supervision fees, officials estimate that 92.5 percent offenders under supervision are ordered to pay fees. The range for state agencies extended from a low of 75 percent to a high of 100 percent.

Of course, if fees are rarely imposed on offenders, substantial fee revenues cannot be achieved. But the data shows that estimated fee imposition rates are fairly high among responding probation and parole agencies, and, in fact, that among these agencies differences in fee revenue as a percent of total operating budget are not related to differences in imposition rates. For example, probation and parole agencies

whose fee revenues as a percent of total operating budget was above the median reported an estimated fee imposition rate of 89 percent, compared to 91 percent for those below the median. This underscores the importance of other factors—such as amounts of fees levied, rates of collection, and administrative commitment to fee collection—in affecting the amount of revenue actually generated from fees.

Administrative practices. It is important to strike a balance in waiving fees. While fees should be waived for those who are truly indigent, or for whom fee payment would constitute an extreme hardship, overuse of waivers can undermine generation of fee revenues. In jurisdictions where fee collections provide a large portion of operating budgets, agencies cannot afford overuse of waivers.

Most of the sites visited have some administrative procedure to curb overuse of fee waiver recommendations by probation or parole officers. Texas probation officers must get their supervisor's approval in order to recommend that fees be waived, either in a presentence investigation or in a post-sentencing petition to adjust conditions of probation. The Texas Legislature also discouraged indiscriminate use of fee waivers by enacting a law requiring judges to impose supervision fees unless there is an affirmative finding that the offender is unable to pay.

In jurisdictions where line probation or parole staff resist collecting fees, administrative controls are needed to prevent them from unduly encouraging waivers in their recommendations to judges. In Oregon, officials reported that in Multnomah County (Portland), supervision fees were waived in about half the cases. In Washington County, which borders Multnomah County on the West, officials cut waivers to less than 10 percent by requiring supervisors to review and approve all recommendations for fee waiver contained in a presentence investigation. While other structural and administrative factors also influence fee revenues in the two counties, in 1987 Washington County collected supervision fees equal to about 25 percent of the cost of supervision, compared to about six percent in Multnomah County.

Some practitioners interviewed were reluctant to waive fees based on offenders' present circumstances, noting that if their financial conditions improved during probation, they should be required to pay fees. Thus, in some cases, they urge judges to order fees, but to defer collection. If the probationer's financial condition does not improve, they do not institute collection procedures.

The process of deciding to waive fees itself imposes costs, because staff must assess offenders' financial situations, formulate recommendations, and present them to the court. These assessments summarize such information as offenders' sources of income, outstanding debts, number of dependents, and living expenses. Of course, if presentence investigations routinely are done for all cases subject to fees, a financial assessment may be only a slight increase in cost. But if

presentence investigations are done only when ordered by the courts, or if they are not done routinely for large classes of fee-eligible offenders (such as, misdemeanants), staffing presentence fee waiver decisions can be a substantial added cost.

Officials in the Harris County (Houston, Texas) Adult Probation Department use postsentencing financial screening, instead. They noted that judges imposed fees on over 90 percent of the sentenced misdemeanants and felons. They also noted that a high proportion of offenders fully pay their ordered fees—about 90 percent for misdemeanants, and about 65 percent for felons. Therefore, they decided it would be cheaper to do postsentencing financial assessments only for probationers who fall three months behind in fee payments. Harris County officials noted that the rights of the truly indigent are protected at sentencing, because the defendant (aided by counsel) has the right to argue that fees should be waived, and can present evidence supporting that position.

Harris County's postsentencing financial assessments may result in waiver of the fees originally ordered, or reductions in the amounts of fees ordered, or the deferral, reduction, or elimination of other court-ordered obligations. This limited use of "back-end" financial assessments greatly reduces the total staff time required and targets its use on cases where offenders' abilities to pay are at issue.

In some other Texas counties visited, it appeared that use of "front-end" financial assessments (in pre-sentence investigations) produced only a small improvement in fee payment rates. For example, in Travis County (Austin, Texas) probation officers routinely do financial assessments as part of the pre-sentence report for felony offenders. Yet their fee collection rate from felons is only slightly higher than in Harris County—70 percent versus 65 percent.

Conclusion

Correctional fees are most likely to generate substantial amounts of revenue when:

- Officials emphasize program fees (mainly supervision fees and room and board fees) rather than service fees (e.g., fee for drug testing);
- Fees are set at moderate levels, and well within offenders' abilities to pay, given their total court-imposed obligations;
- Fee collection is accorded high priority, both by judges and correctional administrators;
- Fees are levied on a large proportion of the correctional population, including misdemeanants; and
- Persons truly unable to pay fees are screened out initially, or upon first evidence of payment problems.

NOTES

1. Fahy G. Mullaney, "The Fee Fad: Punishment Without Public Policy," *Perspectives*, Fall, 1988, pp. 6-8.
2. The survey probably understated, somewhat, the extent to which service fees are used, since, in some instances offenders are ordered to pay service fees directly to a third party service provider. In these instances, probation agencies do not collect the money directly, and, in fact, would have no role in enforcement unless the service provider notified them that an offender had not made payment and requested their assistance in enforcement.
3. However, in that same year in response to concern that judges were not imposing fees on all probationers able to pay, the Legislature made fee use mandatory unless judges found that offenders did not have the ability to pay. Because the Texas Adult Probation Commission does not maintain central case-level fee data for the district probation offices, it is not possible to separate out the effects of changing fee amounts from changing frequency of imposition. However, Texas practitioners believe that the mandatory provision did little to increase the frequency of fee imposition.

Chapter 3: Effective Collection Methods

A 1985 study¹ sponsored by the National Institute of Corrections (NIC) found that 27 percent of responding local and county probation departments said they collected more than 81 percent of the fees ordered. Thirty-six percent said they collected between 61 and 80 percent of ordered fees, and 23 percent said they collected between 41 and 60 percent of ordered fees. Only 12 percent of the respondents said they collected less than 40 percent of ordered fees. Those findings, however, may have been inflated by a large number of responses from local and district probation departments in Indiana and Texas, states with exceptional track records of fee collection.

In the present study, respondents were asked to identify the number of offenders under their jurisdiction ordered to pay fees, and the total amount of their payments ordered. This data would have permitted direct measurement of overall collection rates. Unfortunately, most agencies' accounting systems either did not record the amounts that individual offenders were ordered to pay or the amounts of their payments, or those systems could not be used to generate summary reports. Thus, few answered those questions, and the few who did estimated both the number of offenders ordered to pay, and the amounts of their ordered payments. The data was too incomplete for meaningful analysis.

Because officials could not provide data on actual obligations and collections, estimated supervision fee collection rates were computed for each respondent who supplied (a) the estimated average number of offenders under supervision who were ordered to pay supervision fees, and (b) the average supervision fee charged. By multiplying the two, a hypothetical maximum monthly fee revenue figure was obtained (which assumed, of course, that everyone paid in full). That figure was multiplied by twelve to estimate an annual maximum fee revenue figure. Actual fee receipts in the last year were divided by this estimated annual maximum to obtain an estimated effective collection rate. Among state probation and parole agencies the estimated effective collection rate was 45.8 percent.

The limits of this approach should be clearly stated. Respondents provided no information on the average duration of probation or parole supervision. For departments that supervise large numbers of misdemeanants whose durations of probation are substantially less than a year, this method of estimation will overstate maximum potential fee revenue and understate the estimated effective collection rate. Nonetheless, it is a useful vantage point from which to assess actual collections.

As in the 1985 NIC study, respondents also were asked to estimate the proportion of offenders under their jurisdiction who paid all of the correctional fees they were ordered to pay. The results are shown in Table 3-1, and generally support the estimates of collection rates among probation and parole agencies.

**Table 3-1:
Full Payment of Fees**

Organization	Number of Agencies Responding	Percent of Offenders Estimated to Have Made Full Payment
Jails	15	86.3%
Prisons	11	86.9
State Probation and Parole	8	46.5
Local Probation:		
California	8	43.1
Indiana	16	66.8

Several factors account for the substantially higher full collection rates for jail and prison work release programs. First, as noted earlier, employment usually is a condition of participation. Second, work release offenders are literally a "captive" clientele. Because they must return to a facility or institution each day immediately after work, they have virtually no chance to spend their earnings. In fact, most programs require work release inmates to turn over paychecks to facility staff, who deposit them in a bank after deducting amounts owed by the inmate for room and board fees or other court ordered obligations.

Such programs, however, are not immune from non-payment. For example, as Florida inmates enter the last few weeks of their sentences, they are more willing to spend those weeks in prison, if necessary. They also recognize that DOC officials become increasingly reluctant to return a work release inmate to prison for only a few days. Thus, the Florida DOC experiences a rising non-payment rate during the last two or three weeks inmates are in work release.

In sum, it is possible that fee collection rates in probation and parole agencies are somewhat less impressive than the estimates reported in the 1985 NIC study. In some departments visited—such as in Texas—their 60-65 percent collection rates for felons, and 85-90 percent collection rates for misdemeanants, were based on hard data, not impressions. Nonetheless, there may be substantial room for increasing fee revenue in many states by increasing collection rates for probation and parole supervision fees.

Collection of Payments

In a recent study, Hillsman, et. al.² concluded that effective fine collection systems are likely to involve:

- Collection procedures that are clear, encourage prompt payment, and are consistently followed; and,
- Enforcement efforts that involve a progression of responses that reflect mounting pressure and increased threat of more coercive methods.

The same features characterized agencies with effective fee collection.

In the Harris County (Houston, Texas) Adult Probation Department offenders receive monthly bills in the mail, notifying them of the amount they owe and the date it is due. If they are not scheduled to see their probation officer in person, they may mail the payment. If they are scheduled to see their probation officer, after checking in with the receptionist they are directed to the teller's window, where an account clerk takes and records their payment, and issues a receipt. The offenders then present their receipt to their probation officer at the outset of the visit. For offenders who regularly pay, fee collection tasks are almost entirely done by clerical staff.

In interviews, Harris County probation officials stressed the importance of responding quickly to non-payment of fees (as well as other court ordered financial obligations) so as to intervene before the arrearages get too large. Quick response makes obligations to pay real and credible to offenders. It also reduces the chance that offenders will abscond, thus creating separate revocable violations. Finally, in the long run, it cuts probation enforcement costs.

When a fee payment is missed, the probation officer is expected to advise and counsel the probationer in order to facilitate or encourage payment. For example, the probation officer may help an offender set up a budget, and encourage him to change his spending patterns to stay within it.

However, under Harris County policies, probation officers typically do not take formal action until offenders fall two or three months behind in fee payments. At that point, the probation officer does a complete financial assessment on the offender, and the offender and the probation officer appear at a hearing before a probation supervisor. Probation officials note that, in most cases, the threat of a supervisor's hearing is sufficient to cause the offender to pay.

At the supervisor's hearing, the probation officer documents the steps he or she has taken to secure payment, and presents the financial assessment of the offender. The probation officer will recommend either that (a) the fee be waived, (b) the amount of the fee be reduced, or (c) the payment schedule for fees or other court-ordered payments be adjusted. Probation administrators emphasized the importance of

waiving or reducing fees whenever the financial assessment suggests an inability to pay. Harris County adult probation officers, on the other hand, stressed they felt pressure to restructure payment schedules rather than to reduce or waive fees. They believed that if supervisors thought they were too quick to waive or reduce fees, it might affect their job performance evaluations.

At the supervisor's hearing, if the probationer contends that he or she does not have the ability to pay, that question is referred to the judge for determination. Reportedly, few probationers assert that claim, because if the judge rules that the offender has the ability to pay, the judge implicitly has found that past non-payment was willful, and therefore, possible grounds for revocation. If the supervisor recommends changes that require amendment of the sentencing order (for example, to waive or reduce the fee), the case is referred to the judge for action. Officials note that, in most cases, offenders comply with the results of the supervisor's hearing, and resume payments.

If the probationer fails to comply, and falls farther behind in payments, officials will commence a revocation proceeding. Again, in the departments we visited, the policy is to move quickly, before a sizeable additional arrearage develops. The probation officer develops a recommendation to the court either to reinstate probation, reinstate with amended conditions or revoke the probation. Probation officials emphasized that revocation and confinement is rarely used, even if non-payment was willful, unless other revocable violations also had occurred.

In the survey, officials were asked what forms of payment they accept for correctional fees. The results are shown in Table 3-2.

**Table 3-2:
Forms of Payment for Correctional Fees**

Forms of Payment	Jails n = 16		Prisons n = 18		State Probation & Parole n = 20	
	#	%	#	%	#	%
Cash	12	75.0	7	38.9	13	65.0
Cert. Checks or Money Orders	10	62.5	11	61.1	20	100.0
Travelers Checks	5	31.3	5	27.8	14	70.0
Personal Checks	6	37.5	5	27.8	12	60.0
Credit Cards	0	—	0	—	2	10.0
Automatic Deductions	2	12.5	8	44.4	1	5.0

In most agencies, cash and certified checks or money orders are the primary forms of payment. Increasingly, state probation and parole agencies (as well as local departments responding from California) take offenders' personal checks. For prison work release programs, automatic deductions

from offenders' bank accounts are the second most common form of payment.

Officials interviewed believed that accepting cash payment increases collection rates, because offenders do not have to take the additional time to obtain money orders or cashiers checks. Departments in large urban areas typically do not accept cash payments in branch offices, but may do so in central offices, where security can be tighter and police response time shorter. Officials also emphasized that accounting and auditing procedures must be more rigorous if agencies accept cash payments.

Use of private agencies to collect overdue correctional fees is rare. Only two jails and one prison reported any experience with private collectors, and the amounts of fees involved were minimal. Among probation and parole agencies, two county probation departments in California reported using private collectors. In those two counties, private agencies collected over \$52,000 in overdue correctional fees. At the time of our site visit, officials in Clackamas County, Oregon, were negotiating a contract with a private agency to collect overdue correctional fees. (The agency also had a contract with Clackamas County to collect delinquent payments due the Mental Health Department.) Officials proposed to pay the agency one-third of the delinquent fees it collected.

Most banks can pay customer's bills through automatic deductions from their checking accounts. The Arizona Administrative Office of the Courts, which oversees county probation departments, has collaborated with a local bank to use automatic deductions to collect intensive supervision fees. Offenders on intensive supervision are required, as a condition of supervision, to open a checking account and deposit their earnings at the bank. Since the bank already had invested in the equipment and software to offer bill payment services to its regular customers, it had negligible new cost to add supervision fee collections. At the outset, this collection method has been limited to persons on intensive supervision.

Judging from state experiences with child support collections, wage assignment may be another promising approach to fee collections. Child support collections have increased markedly in recent years, in part due to a federal requirement that states use wage assignments to collect overdue payments. In most states, the recipient of the payments must trigger wage assignment by petitioning the court after payments have been missed. Thereafter, the obligees' employer must deduct child support payments from the employees' wages (just as they would deduct taxes and social security), and forward them to the appropriate agency. In most states, wage assignment ends if the obligee catches up in payments, and later must be reinstated if more delinquencies occur. Critics note that

turning wage assignment on and off in this manner involves high administrative costs.

Arizona has gone further, by implementing an automatic and continuous wage assignment procedure for all new child support orders. Officials expect it will substantially increase collections without the high costs of the prior practice.

Several issues would need to be resolved to make wage assignment work for correctional fees. First, it would make sense only if the collection by wage assignment costs less than fee collection by the agencies. It could apply only to offenders who earn wages. During our site visits, officials emphasized that most probationers who earn wages pay their fees regularly. For these offenders, agencies' collection costs are thought to be very low. Careful study would be needed to determine how much savings, if any, could be expected from wage assignment. If offenders change jobs frequently, administrative costs of a wage assignment system would be higher.

Second, employers would have to be compensated for their added costs. Most child support wage assignment laws let employers add a surcharge—for example, a percent of the amount withheld, or a flat dollar amount per pay period—which, in effect, is added to the offender's monthly fee obligation.

Third, it is possible that wage assignment could make it even more difficult for offenders to get and keep jobs. States enacting wage assignment for child support typically have made it illegal for employers to refuse to hire or to fire someone just because they are the subject of a wage assignment order. Policy makers might have to be willing to extend the same employment protections to convicted offenders.

Enforcement of Fee Orders

Enforcement of fee obligations places correctional agencies in a dilemma. If the main purpose for correctional fees is to raise revenue, enforcement costs must be contained. If maximum fee revenues are modest to begin with (because, for example, the law sets low upper limits on the amount of fees that can be charged), then the costs of vigorous enforcement easily could exceed the revenues generated. If a significant number of offenders are confined for willful non-payment, the system bears a very high enforcement cost because imprisonment is far more expensive than community supervision. Yet, if officials do not enforce fee payment orders, offenders probably will stop paying altogether.

Process

Respondents were asked to indicate the types of sanctions they used in response to non-payment. Table 3-3 shows their response.

**Table 3-3:
Sanctions Used to Enforce Fee Payment**

Types of Sanction	Jails n = 17	Prisons n = 17	State Probation & Parole n = 17
Confinement	6	6	13
None	4	4	5
Reprimand	1	4	13
Increase payments	1	0	5
Prison disciplinary system	-	6	-
Extend Supervision	-	-	8
Community Service	0	-	10
Other	7	9	6

The use of confinement to enforce fee payment varies among the agencies. Among the state probation and parole agencies, 76.5 percent reported using confinement under some circumstances. Only 35.3 percent of the prison and jail agencies reported using confinement as a sanction. Only one California probation department reported using it; in fact, California law prohibits revocation of probation and imprisonment of an offender solely because of non-payment of fees.

Other sanctions, such as reprimands or community service, are widely used among state probation and parole agencies. Due to crowding, the Jefferson County (Texas) adult probation department stopped using jail confinement to enforce fee payment. Instead, they impose community service requirements, noting that the prospect of two weeks of hard labor is a more effective enforcement tool than the threat of two weeks of jail confinement. Some sanctions are seldom used—for example, increasing the amount of payments. However, Indiana probation agencies' most common sanction was to extend the duration of supervision. This has the effect of increasing offenders' total fee obligation by making them liable to pay fees for longer terms.

Despite the apparent difficulty in administering suitable sanctions, respondents were moderately confident that effective responses could be made. When asked to respond to the statement "Officials cannot enforce effective sanctions for non-payment of correctional fees" on a scale from one (strongly disagree) to nine (strongly agree), the median responses of administrators of jails, prisons and probation and parole programs all ranged between 5 and 6.

The corrections officials interviewed believed that, ultimately, offenders must face a credible threat of imprisonment if they willfully refuse to pay fees. However, those same practitioners uniformly stressed that offenders in their jurisdictions seldom were revoked and imprisoned solely for non-payment of fees.

As noted earlier, non-payment of work release room and board fees tended to be a problem only for inmates nearing

the end of their term of confinement. For others in work release, enforcement was somewhat easier because they legally were classified as inmates, not parolees. Hence, non-payment could be handled as an institutional disciplinary violation. Therefore, the process for revoking work release is less complex, and the standards of proof are lower, than for a revocation of probation or parole.

For those on probation or parole, officials emphasized that fee payment was closely linked with offenders' overall adjustment on supervision. Thus, those who wilfully refused to pay fees often had numerous other violations, on which revocation and imprisonment could be based.

But, in terms of system cost, the key question is not the rationale(s) used to justify revocations. Rather, it is the extent to which non-payment of fees, independently or in conjunction with other violations, has increased revocation rates and the number of inmates imprisoned. Further research is needed to shed light on that question.

Parole revocations have been increasing for the past several years. For example, the proportion of prison admissions who were technical parole violators increased from 16 to 21 percent between 1982 and 1986. Information on probation revocation is harder to obtain, because many states count as new prison admissions both those (a) sentenced directly to prison and (b) imprisoned after probation revocation. But, based on data from a few states, and practitioners' assessments in others, it appears that probation revocation rates also are rising. This apparent rise in revocations may stem from three factors: first, increased emphasis on control and surveillance (especially the advent of widespread drug-use testing); and, second, adding more conditions to probation (supervision plus treatment plus restitution plus community service plus, perhaps, fees); and third, the placement of a larger number of higher risk, higher need offenders on probation and parole due to prison and jail crowding.

The extent to which non-payment of fees has tipped the balance in favor of revocation and imprisonment for individual offenders remains unknown. If, however, increased reliance on fees has contributed to rising revocation and imprisonment rates, the costs of the added confinement could quickly and completely erode any system-wide financial benefit from added fee revenue.

Cost of Collection

It is difficult to measure the real cost of collecting correctional fees. There are *agency-level costs* that involve mainly allocations of staff time in the agency collecting the fees. *System-level costs* are incurred when judges decide whether to impose or waive fees, or hold subsequent hearings to adjust amounts or payment schedules, or when judges, defenders and prosecutors hold revocation hearings for those who willfully refuse to pay. Finally, if offenders are jailed or

imprisoned for willful non-payment, law enforcement and corrections agencies bear added operating costs, and, in the long-term, perhaps capital costs as well.

At the agency level, some collection costs are apparent—for example, a cashier takes fee payments from offenders and issues receipts. But the cashier probably also collects other payments, such as restitution, fines, and court costs. To determine how much fee collection adds to costs, every transaction the cashier makes (what it was and how long it took) must be recorded over a representative period to find out what percent of the cashier's time was spent on fee collection tasks. It is also necessary to know what it cost the agency to fill the cashier's position, including salary, retirement contributions, and other benefits.

To get a complete and accurate picture of an agency's fee collection costs, that process must be repeated for each employee who performs fee collection tasks. In most agencies, many employees spend a small part of their time in fee collection activities. Clerks open incoming mail and route those with fee payments to a cashier. Accountants balance cash and checks on hand with recorded receipts. Probation officers exhort clients to pay, process requests to amend payment orders, and, perhaps, commence revocation for willful non-payment. Supervisors review subordinates' performance of fee-related duties, and institute changes to improve them. Thus, the true cost of collecting fees is spread across many agency employees.

There may be administrative costs associated with fee collection that are buried in agencies' indirect costs. Part of the cost of a new computer system may be allocated to fee collection, or renovations may be needed to make the teller area more secure after a decision to accept cash payments from offenders.

Measuring costs of fee collection is even more complicated, because it is not always self-evident when a cost should be attributed to fees or to a job responsibility unrelated to fees. For example, offenders often miss fee payments due to problems with employment, drugs, housing, or money management—problems that probation officers probably should address, even if fees were not involved. Thus, is the time a probation officer spends giving counseling on money management to an offender who has missed a fee payment, a cost of fee collection, or a cost related to some other job responsibility? If an offender has failed to pay restitution and fines, as well as fees, how should time spent on money management counseling be apportioned?

Clearly, in the current study such detailed cost of collection analysis was impractical. Instead, respondents were asked to estimate (1) the number of agency personnel whose job duties included fee collection tasks, (2) the average percent of time these employees spent performing fee collection duties, and (3) their average salary, including benefits. An estimated

cost of collection was computed and divided by actual correctional fee revenue to show collection costs as a percent of fee revenue.

For prisons and jails, estimated costs of collection (mainly for work release room and board fees) were about eleven percent of fee revenue. For probation and parole agencies, the figure was somewhat higher—18 percent.

In general, agencies did not add additional employees when they began collecting correctional fees. For example, four jails were already collecting other offender payments when they began collecting fees, and none added new employees for fee collections. Among the 13 that were not collecting other payments when they began collecting work release fees, nine added no new employees, three added one employee, and one added two.

Among prisons, of the 16 which were not collecting other offender payments when they began collecting correctional fees, 15 added no new employees, and one added eight positions. (The latter added one bookkeeper at each of eight new work release centers. These individuals do all bookkeeping and accounting functions for the centers, not just fee collection.)

This finding suggests, however, that another type of cost may be involved in fee collection—opportunity costs. That is, if fee collection mainly is done by staff already on board, were existing job functions eliminated or diminished in order to free their time for the collection duties? Did the agency forego adding new programs or services in order to preserve staff time required to collect fees?

Incentive to Collect

Throughout the study, practitioners emphasized that in order to generate significant revenues, agencies had to have an incentive to collect fees. The nature of that incentive appears to be fairly subtle and complex. For example, in the analysis, there was no clear relationship between disposition of fee collections (retained by the collecting agency versus deposited in a general fund) and fee collections as a proportion of total operating costs. The two states with the most impressive track records in supervision fee collection—Texas and Florida—clearly illustrate the general finding. In Texas, adult probation departments keep fee revenues and have complete discretion to spend them for any authorized purpose. In Florida, the Department of Corrections deposits all fee receipts in the state's general fund, where the Legislature controls its subsequent allocation. Officials interviewed in both states believed they had a high incentive to collect fees. Almost all jail and prison work release programs responding to our survey deposit fee collections in general funds; yet jail and prison respondents said that they had a high incentive to collect.

The extent to which administrators think they have an incentive to collect is based on their perceptions of two key factors: (a) cost of collection, and (b) whether fee revenues offset appropriations. Administrators' assessments of incentive to collect permeate an agency and determine, in large measure, the emphasis that mid-level and line staff place on fee collection tasks.

If the difference between fee revenue and the cost of its collection is perceived to be small, administrators are likely to have little incentive to emphasize collections. If costs of collection exceed revenues (for example, because the law sets fees at unreasonably low levels) administrators, in fact, may have an incentive to minimize fee collection in order to cut losses. Conversely, if administrators perceive that fee revenues will substantially exceed the cost of collection, their incentive to collect is likely to be high.

It is difficult to "prove" whether fee revenues offset appropriations, because there is no way to know how much the legislature would have appropriated if there had been no fee revenue. Yet, seventy-seven percent of the jails, 89 percent of the prisons, and 94.7 percent of the state probation and parole agencies responding to the survey believe that legislatures do not use fee revenues to offset correctional appropriations. So long as total appropriations remain level or increase, corrections officials probably will conclude that fee receipts have not offset appropriations, and will believe they have a strong incentive to collect fees.

Correctional administrators in both Texas and Florida view fee revenue as additional money that is available for correctional purposes. Florida DOC officials fervently believe that they get a dollar from the Legislature for each dollar in fees they deposit in the state's general fund. In a word, they do not believe that fee revenues offset or reduce their appropriation, but indeed, supplement it. Texas adult probation officials note that the Legislature has increased, not reduced, its total funding for adult probation during the same period of time when total fee collections tripled.³

However, where fee revenues do, in fact, offset appropriations, incentive to collect is undermined. Oregon's experience demonstrates this in concrete terms. Oregon's Community Corrections Act sets up three options for county involvement. The differences among the options are fairly complex, but two are relevant. Under Option I, counties take over providing probation and parole supervision from the Department of Corrections; thereafter, they keep all probation fees they collect, and have total control over how they are spent. In Option II and III counties, the DOC operates probation and parole and deposits all fee collections in a centralized state account earmarked for purchase of supplies and services. However, the Legislature explicitly reduces the DOC's budget request in the supplies and services account by the amount of fee revenue anticipated during the biennium. For each

dollar of fees anticipated from Option II and III counties, the DOC's appropriation is cut a dollar.

Oregon practitioners believe this difference in incentive to collect has produced differences in collection performance from county to county. For example, in 1987 Option I counties probation agencies collected correctional fees averaging 13 percent of their operating costs, while Option II and III counties averaged only 6 percent. (See Appendix B for more details.) In 1988 the Governor's Task Force on Corrections Planning recommended several changes to increase incentive to collect in Option II and III counties. Most notably, it recommended that the Legislature stop using fee revenue as an appropriation offset. It also recommended that managers of branch field services offices in Option II and III counties be given control over how to spend at least a substantial portion of the fees collected by that office.

Very few survey respondents reported having any special incentives under state laws to collect correctional fees. They also said they gave about the same emphasis to the collection of correctional fees as to the collection of other offender obligations.

While special incentives were rare, one was especially notable. In Texas, adult probation departments have two sources of income. The first is state aid, appropriated by the Legislature and apportioned among the departments (on a workload formula) by the Texas Adult Probation Commission. Within each biennium, the levels of state aid to each department are fixed. The second source of income is supervision fees collected and retained by each department. Within each biennium, fee revenues may vary in each department according to the amount of emphasis given to fee collection. If a department collects more fee revenue than anticipated, its total income can exceed its operating costs. When that happens, the district probation department pays the state a portion of their surplus equal to the percent of the departments' total revenue provided by the state. But the department keeps the rest of the surplus in its local probation fund.

For example, assume a Texas district probation department has a total income in 1989 of \$3,000,000, of which one-third comes from state appropriations, and two-thirds from fee collections. If its expenses for the fiscal year are \$2,750,000, it will return to the state 33 percent of the \$250,000 end-of-year balance (or \$83,333). Thus, the department must return to the state an amount equal to about 4 percent of the total revenue it raised in fees (that is, \$83,333 of \$2,000,000). Conversely, it retains about 96 percent of its total fee collections.

This return provision is intended to discourage probation departments from accruing large surpluses (which could become an inviting target for a state legislature strapped for revenues). Yet even this provision has a built-in incentive to

further emphasize fee collection. If a department can increase its total fee revenues, it can decrease the proportion of its total revenues that come from the state, and thereby decrease the proportion of year-end surplus it must return to the state.

Administrative Practices

The vast majority of agencies responding to the survey indicated that they did not use employee's fee collection performance as a criteria for performance reviews, job promotions, or salary increases.

However, some agencies did report such performance-based supervisory practices. For example, in the Texas adult probation departments we visited, supervisors review monthly reports (generated by computer) showing how much each officer's caseload owed in fees that month, and how much they paid. Supervisors pointed out that each officers' collection performance must be assessed individually. For some, a high percent of their caseload may have stable jobs, while for another, a high percent may be virtually unemployable. Likewise, supervisors did not place much weight on month to month variation in an officer's fee collection performance.

However, if a long-term pattern of poor fee collection performance emerged, supervisors said they would confer with the probation officer, and emphasize the importance of giving high priority to fee collection responsibilities. They might conduct caseload audit to assure that departmental policies in dealing with non-payment were being observed.

Texas probation administrators made it clear that fee collection was part of the job description new probation officers were hired to perform. They said that probation officers who consistently performed collection duties poorly would not be promoted, or would be transferred to units that only did presentence investigations. Administrators also observed that employees who did poorly on fee collection tasks usually performed poorly on other areas as well. Hence, just as few offenders were violated solely for non-payment, few Texas probation officers are disciplined just for poor fee collection performance.

The Washington County (Hillsboro, Oregon) Community Corrections Department has a performance based compensation plan for supervisors that links their take-home pay to how well their units achieve a number of job performance objectives, including levels of fee collection. Each year the agency Director negotiates individually with each supervisor, using the bottom of the salary range as a starting point. Performance objectives are established for each major task performed by employees in the supervisor's unit. If the supervisor's unit achieves high performance levels on all measures—including fee collection—the supervisors can raise their salary to the top of the range.

In some agencies, supervisors use individualized incentives to spur line staff to higher levels of fee collection. For example, in Benton County (Corvallis), Oregon, the Director of Community Corrections establishes an annual spending plan for the fee revenues the agency will realize if it meets or exceeds its overall fee collection goal. The spending plan includes some items that benefit offenders (e.g., purchased services), some that benefit all staff (e.g., an agency-wide training program), and some that benefit individual employees (e.g., trips to professional conferences, new office furnishings, a computer, etc.). This gives employees an advance look at the total benefits that will result from fee collection, and links the provision of a specific benefit for the individual officer to achievement of the agency collection goal.

Some supervisors give special recognition to employees that excel in fee collection. One Texas probation supervisor had a "4000 Club" that consisted of each probation officer whose clients paid fees totalling \$4,000 or more in a month. Another took the probation officer out to lunch each month whose caseload produced the most fees. Some supervisors, however, cautioned that such special recognition can cause discord among other employees, especially if they think that differences in caseloads, rather than the honored employee's collection skills, accounted for the high payment level.

Other practitioners noted an evolutionary pattern in which personalized incentives remained common practice so long as fees accounted for a small part of total agency revenue, but declined and ultimately vanished once fee revenues provided a large proportion of operating budgets. At that point, staff fully recognized fees' importance, and responded without the need for such incentives.⁴

In Texas adult probation departments, line staff we interviewed generally accepted their fee collection responsibilities as a matter of course. To them, fee collection was merely one part of the job they had been hired to do. The notion of being rewarded (through individualized incentives) for performing tasks related-to fee collection struck them as strange.

It appears that few agencies provide specific training to staff to improve correctional fee collection. The agencies we visited—which included some with outstanding track records in fee collection—provided, at most, an occasional in-service training program taught by someone in the agency who performed well at fee collection. No training curriculum or program from outside sources was used. Just before our visit to the Dallas (Texas) County Adult Probation Department, administrators had monitored a private training program for bill collectors, to see if it would be a useful experience for line probation officers. The administrators concluded that their department's clients were far worse credit risks than those around whom the training program was designed. Hence, they

felt the collection methods presented in the training were not relevant to a correctional clientele.

In the Dallas County Adult Probation Office one staff member sometimes taught an in-service training course on collection techniques. Before becoming a probation officer, she had worked for the state welfare department, where she had received relevant and useful training on collecting child support payments from absent parents of children receiving AFDC funds. She attributed her success in correctional fee collection to the training she got in this former position.

Management Information

Respondents were asked whether their accounting system for corrections fees was automated, manual, or a combination. Table 3-4 shows their responses.

Table 3-4:
Status of Accounting Systems

Number responding that system is:

Type of Agency	#	Manual	Computer	Both
Jails	15	6	2	7
Prisons	16	4	1	11
State Probation and Parole	20	6	5	9
Local Probation:				
California	10	5	1	4
Indiana	26	15	1	10

Small-scale and relatively centralized programs (for example, county work release operating out of one jail) may function adequately with a manual accounting system, or a computerized system that is not capable of generating management information. But if accounting systems for larger and decentralized agencies cannot give managers the information they need to administer fee collection effectively, fee collection will be handicapped.

The potential of well-designed computerized accounting systems to support improved management was well illustrated in the Texas probation departments we visited. In Houston, the Harris County Adult Probation Department has a computerized accounting system designed by county information systems staff. The system automates routine accounting functions, such as recording payments and issuing receipts. It enables the Department (at virtually no additional cost) to collect fines and other court-imposed payments, thereby letting offenders make all their payments at one stop. Otherwise, offenders would have to pay court costs at the Court, fines at the Sheriff's office, and fees at the Probation Department, each located in a different building. Officials report that by providing a "one-stop" payment office for probationers, collections for fees, fines, and other obligations

have increased. The system reconciles accounts daily, so that the Probation Department can write checks to the agencies entitled to receive those collections at the end of each business day.

The system also automatically mails offenders a monthly "bill" that states how much is due for each court-ordered obligation. The bill is timed to arrive when employed offenders get paid, or when government benefit checks arrive. It also automatically mails delinquency notices when payments are missed.

The system provides important management information on a routine basis. For example, each week the director gets a report showing collections for the week and for the year to date, along with a comparison of actual and projected collections for the year to date. The director can quickly see if collections are running ahead of or behind expected levels. If the latter, he can examine additional information to pinpoint reasons for the lag, and can begin to plan corrective action. For example, he could see if fee collections had dropped in only one or two branch offices, or across the entire department. If a drop appeared to have been caused by a rise in fee waivers or by reductions in amounts of imposed fees, the director could obtain data to see if the reductions stemmed from recommendations by a particular supervision unit, or by actions of a particular judge or group of judges. He could see if a drop in fee collections was related to changes in the types of offenders being placed on probation—for example, fewer misdemeanants and more felons.

The system provides management information for mid-level staff via monthly summary reports to supervisors on the collection performance of each probation officer in their units. This report shows the total fees due that month and the total fee payments actually made by persons assigned to each officer's caseload. It also computes for each officer the percent of fees owed that actually were collected.

One supervisor said he posts this report on a bulletin board. Thus, without singling any one officer out for specific praise or criticism, he stimulates competition among the officers, as each strives for a favorable performance record—or at least one that avoids the bottom of the list. Supervisors said that they took steps to improve collection performance, provided that an officer ranked consistently low on collection performance, and when his or her caseload did not appear to be less able to pay.

The system also issues monthly reports to each probation officer summarizing the status of each person on their caseload with respect to payment of all court-ordered obligations, including fees. By scanning the monthly report, each probation officer can quickly identify cases for which he or she must commence collection efforts according to departmental policy.

The Texas adult probation departments visited for this study were larger agencies that each had custom-designed accounting systems that performed similar functions. In order to extend the management benefits of computerized accounting to smaller departments, the Texas Adult Probation Commission (TAPC) has developed specialized accounting software that will run on MS-DOS personal computers equipped with hard disks. The software operates under dBase III, a popular data-base management program. TAPC staff will customize the software to suit the needs of specific departments, and will document the software and train local officials in its use. TAPC staff will help the department, if requested, to specify hardware best suited to their specific application. Departments may use their state-aid payments or fee revenues to buy the computer and data-base management program. There is no charge for the TAPC software or support services. To date, about one-third of the adult probation departments in Texas use the TAPC accounting software.

Conclusion

Fee collection efforts are most likely to be successful when:

- Agency administrators believe they have a high incentive to collect fees. That is most likely when (a) the agencies keep the fees they collect, or (b) when the legislature does not use fees receipts to offset appropriations. In addition, fee revenues must substantially exceed costs of collection;
- Administrators clearly communicate the importance of fee collection to managers and supervisors;
- Policies provide swift and certain responses to non-payment, using several sanctions graduated

in terms of severity, and reserving confinement only for cases of chronic willful non-payment;

- Administrative procedures shift most routine payment duties to non-professional staff; and,
- Monitoring of offender payments is computerized, thus giving line staff and supervisors timely and accurate information on offender payments, and providing managers and administrators with periodic policy-relevant data on collection practices within the agency.

NOTES

1. Chris Baird, Douglas A. Holien, and Audrey Bakke, *Fees for Probation Services*. Washington, D.C.: National Institute of Corrections (January, 1986).
2. Sally T. Hillsman and Barry Mahoney, "Collecting and Enforcing Criminal Fines: A Review of Court Processes, Practices, and Problems," *Justice System Journal*, Vol. 13, number 1 (1988), pp. 34-35.
3. While the Texas Adult Probation Commission did cut its per diem state aid formula for basic probation services during this time, total state funding for basic probation went up from \$19.2 million to \$35.9 million between 1980 and 1987 due to rising caseloads. In addition, the legislature appropriated over 19 million new dollars in fiscal year 1987 to fully fund major probation enhancements, like residential centers, intensive supervision, etc.
4. In Travis County, Texas, an event in the early 1980s drove the message home to probation staff in a forceful manner. The Travis County Adult Probation Department faced a severe budget shortfall (the factors leading to the shortfall were confined to Travis County). In order to balance their budget, they terminated a large percent of the probation staff. Caseloads for remaining staff tripled to more than 300. The Department launched an aggressive program to increase fee collection, and later was able to re-fill most of those positions, in large measure due to their success in raising fee revenues.

Chapter 4: Recommendations and Future Research Issues

Increasing Revenues from Correctional Fees

Revenue generation is the principal rationale for using correctional fees. Given the right choice of policies and administrative procedures, correctional fees can be a substantial source of new operating revenue for corrections. Agencies using correctional fees should examine all policies and procedures affecting fee imposition, collection, and enforcement in terms of how well they support revenue generation.

For policy makers and correctional practitioners who want to increase revenue from fee collections, several recommendations emerge from this study.

Maximize Correctional Agencies' Incentives to Collect

Correctional officials instituting new correctional fee programs should work with policy makers to reach and maintain an agreement that regular appropriations will not be reduced in direct relation to new revenue generated by fees. Unless that agreement can be reached, it is unlikely that the incentive to collect fees can be deeply instilled among supervisors and line staff. Rather, they are likely to believe that all or most of their fee collection efforts go to back-fill cuts in appropriations.

Policy makers should authorize fee levels that are high enough that the revenues obtained substantially exceed the cost of their collection.

Policy makers should take other steps to strengthen incentives to collect fees. If legislatures are unwilling to give correctional agencies full discretion in how to spend fee revenue, they might, instead, permit fee revenue to be earmarked for specified purposes, which are highly valued by correctional administrators and staff.

Emphasize Supervision and Room and Board Fees

Supervision fees have the greatest potential to generate substantial new revenue for correctional agencies. Even though the amount of monthly supervision fees levied on individual offenders is fairly modest, they usually can be levied on a large portion of the population under supervision. Room and board fees, though typically higher per month per case, apply to fewer offenders, and, hence, generate considerably less total revenue. Nonetheless, where offenders (a) live in a highly structured setting and (b) are employed

and can afford to pay, room and board fees can substantially reduce the cost of residential programs, and, thus, free up funds which agencies might then spend for other purposes.

Service fees are likely to produce insignificant amounts of revenue. They typically are imposed on a relatively small number of offenders whose lives are more dysfunctional and whose behavior is more erratic—hence, the need for the added controls and services whose costs are partly paid by such fees. Collection costs per dollar of service fee revenue are likely to be high, thus cutting net revenue and incentive to collect.

Under ideal circumstances, departments that emphasize supervision fee collection can use the resulting revenue like an insurance pool. A sizeable number of offenders (most of whom pay fees regularly and who “consume” minimal supervision resources) can generate a sizeable amount of revenue which can be spent to provide or purchase services for a smaller number of offenders who need them.

Levy Fees on Large Numbers of Offenders

Officials should levy fees on a large percent of the offender population. If for example, a probation department now supervises both misdemeanor and felony offenders, but state law permits supervision fees to be levied only on felons, officials might consider seeking a change in the law so fees can be levied on misdemeanants as well. While care should be taken to waive fees for indigent offenders, or those for whom fees would constitute an undue hardship, officials should develop procedures to prevent overuse of fee waiver. They might consider laws (as in Texas) that make fees mandatory, unless judges make an affirmative finding to the contrary. They should establish procedures that require administrative review and approval of fee waivers or reductions.

Do Not Consider Fee Issues in Setting Length of Supervision

Officials should adopt classification systems and case management standards which assure that offenders who pay regularly will not be kept on supervision longer than necessary. For offenders who experience continuing payment problems, departments should move to waive fees, but decisions to terminate supervision should be based on offender's needs and problems and case management criteria, rather than on fee payment issues. Where states provide part of the cost of supervision to local probation and parole departments, state aid standards should be set to discourage

keeping offenders who are good payment risks under supervision longer in order to collect more fees.

Avoid Low Supervision Fees

A low average monthly fee (say, \$5 per month) may cost more to collect than it produces in revenue. Supervision fees should be set at moderate levels, somewhere between \$30 and \$50 per month. Costs of collection appear to be relatively fixed — that is, it costs about as much to collect a \$10 fee as it does to collect a \$40 fee. Thus, higher fee levels will generate more revenue, lower collection costs as a percent of revenue, and increase agency incentive to collect.

Officials noted that when the average monthly fee in Texas doubled, non-payment rates were virtually unchanged. Therefore, raising the average fee levied is the fastest way to increase total fee revenue.

If the law sets a range for fees, decision-makers probably will set fees for individual offenders near the low end. Increasing maximum fees (for instance, from a range of \$10-\$40 per month to \$10-\$60 per month) might have little effect, while increasing minimum fees (for example, from a range of \$10-\$40 to \$25-\$40 per month) might have a big impact on revenues.

Establish Cost-Effective Fee Waiver Procedures

Practitioners should set up mechanisms to assure that officials making fee imposition or waiver decisions have the information they need to waive or reduce fees (or other obligations) when required in the interest of justice. If presentence reports are done routinely for all cases subject to fees, information on offenders' financial situations should be included.

For cases in which presentence reports are not routinely done, the experience in Harris County, Texas, suggests that it may be less expensive to provide that financial information after sentencing for offenders who experience payment problems, rather than before sentencing for all offenders.

Give Fees High Priority in the Imposition and Collection of Court-Ordered Obligations

Correctional practitioners should confer with other relevant officials (judges, county commissioners, state legislators, etc.) to set clear policies governing the priority to be accorded to fee collection, vis-a-vis other financial obligations set by the court or required by law. These policies should establish priorities for (a) fee imposition, (b) recording payments, and (c) reduction or waiver of obligations. For example, if an offender is ordered to pay \$40 each month for supervision, \$50 in fines, and \$150 in restitution, but in a particular month pays only \$75, which obligation(s) should be credited fully

and which partially? If payment difficulties continue, which obligations should be first to be reduced or eliminated?

If multiple financial obligations are routinely used, and if fees are consistently accorded a low priority in imposition and collection, they are not likely to produce substantial revenue. Under these conditions, officials may want to abandon fees altogether and thus avoid the additional costs of their collection.

Develop Certain and Credible Responses for Non-Payment

Officials should devise responses for non-payment that are immediate and certain, and which involve graduated and increasingly severe consequences for repeated non-payment. Prompt action is essential, both to deter future non-payment and to prevent accumulation of large arrearages which might later cause the offender to abscond or judges to find non-payment willful.

A first missed payment should evoke immediate counseling. A second missed payment should prompt a complete review of the offender's financial condition, and, preparation of a budget for the offender. If offenders fall further behind in payment, an administrative hearing may be appropriate. At this point, officials should carefully reassess the offender's ability to pay. If the probability of regular future payment is low, officials should move to waive the fee. Otherwise, it may be necessary to reduce or restructure obligations or payment plans.

If payment delinquencies continue for those for whom fees are not waived, conditions of probation should be tightened, perhaps by adding community service requirements, or imposing curfew. The certainty and credibility of the responses are more important than their severity. In two counties we visited — Jefferson County, Texas and Washington County, Oregon — jail and prison crowding have prompted officials to cease using confinement altogether for non-payment. Each county developed less severe responses that were capable of being enforced. Both counties were leaders in their respective states in fee collection rates.

Revocation and confinement should be minimized, although its threat may be needed ultimately to deter a few offenders from non-payment. Due to the high cost of total confinement, the net system-wide benefit from fee revenues can be quickly lost if revocations for non-payment are common.

In addition, probation and parole officials must work out agreements and procedures with judges, court personnel, and other relevant criminal justice officials, so that the use of graduated responses to non-payment do not add appreciably to the hearing loads of judges or strain resources controlled by other relevant decision makers.

Provide Effective Management Information on Fee Collection

Corrections officials should consider computerizing fee collection accounting systems, both to handle an increased volume of payment transactions more accurately and efficiently, and to give administrators and supervisors timely and useful management information.

Computerized systems can improve collection by automatically issuing billing and delinquency notices, and by permitting on-line entry and crediting of payments. They also can give administrators, middle-managers, and line staff regular and useful reports on fee collection performance and revenues. For line officers, such reports could summarize the payment status of each case under supervision. For supervisors, the reports could summarize key fee collection performance measures for each unit and each line staff, such as collection rates, and adherence to policy for dealing with non-payment cases. For top administrators, management reports could focus on overall trends, noting whether fee collections are ahead of or behind projections.

If correctional agencies do automate their systems, they often may take over collection of other offender payments now made to clerks of court or sheriffs, at virtually no additional cost to corrections. Some correctional agencies reported that their more efficient collection systems increased both fee revenue, as well as revenue from fines, or other court-imposed obligations. The enhanced collections of these other obligations, in turn, improved relations between corrections and the criminal justice agencies which ultimately received the payments.

Evaluate Employees' Fee Collection Performance

Correctional officials should evaluate employees on the basis of how well they perform fee collection duties, along with other important tasks included in their job descriptions. Job promotions and sanctions should be tied to performance of fee collection duties, just as they are tied to how well employees perform other basic job functions. Such performance-based assessment should extend to both line staff and to their supervisors.

Future Research Issues

Despite much rhetoric and many years of experience, there is little hard data on several important policy questions relating to fee collection. These questions include:

What does it cost to collect correctional fees?

The real cost of collecting correctional fee remains uncertain. Practitioners who use fees believe that they are a cost-effective source of revenue, but they lack hard data on the real costs

involved. Their estimates of collection costs vary considerably from agency to agency. (In general, this study found that estimated collection costs as a percent of gross fee revenue were high where gross fee revenue was low, and decreased as gross fee revenue increased. Those estimates are consistent with practitioners' assertions that collection costs are relatively fixed, and that higher fees, which produce higher gross fee revenues, have little effect on collection rates or costs.)

It is important to conduct detailed studies of the costs of fee collection, in order to gain a clearer understanding of their nature, location and magnitude, so changes can be made that improve the effectiveness of fee collection efforts while reducing net collection costs. As noted in Chapter 3, such studies involve detailed analysis of tasks performed by staff whose job duties include fee collection.

Such research also should determine the costs of fee collection that are born by other agencies. For instance, what does it cost the court system to make initial fee waiver decisions, amendments or modifications in payment orders, and revocations for willful non-payment? What costs are born by jails or prisons due to increased revocations due to non-payment of fees?

What is the effect of increasing fee collection on offenders' payments of other court-ordered financial obligations?

Some critics suggest that if fee collections go up, collections for fines, restitution, and other court ordered financial obligations will go down. In short, they think offenders' capacity to pay is limited and fixed, and that emphasizing fee collection just re-allocates offender payments among different funds. Supporters of fees respond that offenders' capacity to pay is substantial and largely untapped. Hence, they think that with appropriate policies and procedures it is possible to increase collections of fees as well as other court imposed obligations.

In our site visits, Texas practitioners believed strongly that collections for fines and other court imposed obligations had increased, along with increases in probation fee collections. Their beliefs were confirmed by statewide data from the Texas Adult Probation Commission, at least insofar as total payments collected by probation departments. (However, because courts and sheriffs also collect some offender payments, we were unable to get data on total amounts collected from offenders.)

More detailed study is needed to determine how increasing fee collections affects other offender payments. Such a study would need to look at case-level, not aggregate state-level data, over a period of time during which policies were changed to increase fee collection. The study would determine for each type of financial obligation:

-
- the number of offenders were ordered to pay;
 - the amounts they were ordered to pay; and,
 - the amounts actually collected.

As noted in Chapter 3, this type of case-level data on offender obligations often are not readily available. Such a study would be possible only in an agency that has maintained case-level data on offender's financial obligations and payments for a substantial period of time. If two or more agencies were involved in collecting court-ordered obligations from offenders, each would have to maintain such case-level data.

What effects does fee collection have on correctional service delivery?

Despite much passionate debate, there is little hard evidence on the effects of fee collection on correctional service delivery. In agencies that emphasize fees, contacts between clients and probation officers may tend to be spent more on payment issues; however, increases in fee revenues may enable agencies to develop or purchase a wider range of services needed by

some clients, or to hire more probation officers in order to cut caseloads.

Additional study should document and measure qualitative and quantitative changes in service delivery for correctional agencies which (a) substantially increased fee collections, (b) did not increase fee collections, and (c) did not collect fees at all during the period of the study.

Conclusion

Jurisdictions can exercise policy control over the key factors needed for correctional fees to generate substantial revenue. Given the proper choices of policies, correctional fees can be a significant source of revenue to support or enhance correctional services. To maximize fee revenues and manage fee collection more effectively, jurisdictions need to develop computerized accounting systems to track obligations and payments by individual offenders. Such systems also can support research on key policy questions that can help administrators improve both fee collection and correctional service delivery.

APPENDIX A

**Probation Supervision Fee
Collection in Texas**

Appendix A: Probation Supervision Fee Collection in Texas

In the past eight years, Texas probation departments have dramatically increased the revenues they receive from probation supervision fees. Officials at the Texas Adult Probation Commission (TAPC) expect that, once final fiscal year 1988 figures are in, revenues from supervision fees will exceed 60 percent of the cost of basic probation services. Eight years ago, they provided 37 percent (itself, a figure many states envy).

A. Description of Probation Supervision Fee Collection in Texas

Texas adult probation departments are organized by judicial districts. While counties must provide office space, utilities, and equipment for adult probation departments, funding for probation operations comes from state appropriations and supervision fees. There are two types of state funding.

- *Per Capita aid* supports salaries and operating expenses for basic probation services. The size of individual department's allocation is determined by multiplying a per capita formula times the local probation departments' felony and misdemeanor caseloads.
- *Enhancement funds* are used to provide supplemental probation programs, like intensive supervision, residential treatment centers, restitution centers, surveillance probation, and specialized caseloads.

Between 1980 and 1987 misdemeanor and felony probation caseloads in Texas rose 125 percent, from 124,699 to 280,820. During that same time, total revenues from supervision fees rose nearly 300 percent, from \$11.4 million to \$45.6 million, while state appropriations for probation (per capita aid plus enhancements) increased 148 percent, and total probation resources (fee revenues plus state appropriations) rose 204 percent. (See Table A-1.)

The Legislature created the Texas Adult Probation Commission in 1978 and empowered it to set standards, provide training and technical assistance, and to audit both performance and finances of local probation departments. TAPC also formulates legislative budget requests, and administers state appropriations for probation services and enhancements.

In recent years there has been an important shift in state funding strategies for probation in Texas. The Legislature has reduced the percent of basic probation costs paid by state revenues, and has encouraged local adult probation departments to increase supervision fee collections. The state's share of basic probation costs dropped from 63 to 44 percent between 1980 and 1987, even though the amount of state per capita aid for basic probation increased from \$19.2 million to \$35.9 million due to rising total caseloads.

At the same time, the Legislature made a strong commitment to fully fund major enhancements to basic probation. Intermediate sanctions, such as intensive supervision,

Table A-1:
Sources of Adult Probation Funding in Texas, FY 1980-87

Fiscal Year	Total Caseload	Supervision Fee Revenue	Per Capita Aid (State \$)	Total Funds for Basic Probation	Fees as % Total Funds for Basic Probation	Enhancement Programs (State \$)	Total Funds for Basic Probation & Enhancement	Average Fee Collected Per Case
1980	124,699	\$11,462,000	\$19,223,852	\$30,685,852	37.4%	\$0	\$30,685,852	\$91.92
1981	143,902	\$13,855,000	\$19,723,852	\$33,578,852	41.3%	\$0	\$33,578,852	\$96.28
1982	162,744	\$16,839,000	\$22,000,000	\$38,839,000	43.4%	\$2,500,000	\$41,339,000	\$103.47
1983	201,960	\$19,918,000	\$22,000,000	\$41,918,000	47.5%	\$3,000,000	\$44,918,000	\$98.62
1984	229,603	\$25,709,000	\$33,950,000	\$59,659,000	43.1%	\$11,958,034	\$71,617,034	\$111.97
1985	256,397	\$29,642,000	\$39,690,000	\$69,332,000	42.8%	\$14,965,399	\$84,297,399	\$115.61
1986	278,810	\$36,902,000	\$30,669,950	\$67,571,950	54.6%	\$11,729,375	\$79,301,325	\$132.36
1987	280,820	\$45,677,000	\$35,950,750	\$81,627,750	56.0%	\$11,729,375	\$93,357,125	\$162.66
Percent Increase 1980-1987	125.2%	298.5%	87.0%	166.0%			204.2%	

residential treatment centers, restitution centers, surveillance probation, and specialized caseloads, are intended to serve offenders who otherwise would be imprisoned. In FY 1982 the Legislature provided \$2.5 million for such diversion programs. That figure will grow to \$19.4 million by FY 1989. Thus, increased use of fee revenues to operate basic probation has permitted the state to fully fund a greatly expanded level of enhanced probation programs and services.

During early May, 1988, staff from Abt Associates and the National Institute of Justice visited the following Texas agencies:

- Dallas County (Dallas) Adult Probation Department;
- Harris County (Houston) Adult Probation Department;
- Jefferson County (Beaumont) Adult Probation Department;
- Travis County (Austin) Adult Probation Department; and, the
- Texas Adult Probation Commission (TAPC).

During visits to these departments, interviews were conducted with the Chief Probation Officers, mid-level managers, line probation officers, and clerical and fiscal staff. Don Stiles, then Executive Director of TAPC, coordinated the visits to local probation departments, and helped obtain statewide fee collection data from TAPC records.

B. State Policies Affecting Supervision Fee Collection

Five factors give Texas probation departments strong incentive to collect supervision fees.

- *First, they keep virtually all the supervision fees they collect.*

If a department has no end-of-year surplus (i.e., its expenses equal its revenues) it keeps 100 percent of the supervision fees collected during the year. If a probation department has a surplus at the end of the fiscal year, it returns to the state treasury a portion of the surplus equal to the percent of the department's total revenues provided by the state. The local probation department keeps the remainder.

- *Second, local probation departments have broad discretion in deciding how to spend fee revenues.*

While fee revenue can be used for any purpose for which per capita aid or enhancement funds may be used, local probation officials believe they have more flexibility with fee revenues to start up new programs, either by hiring additional staff or contracting with private vendors. If they want to develop specific programs, they often can raise the necessary additional funds by more vigorous enforcement and collection efforts.

In short, administrators say they feel more in control of their department's priorities than they would if all revenues came from legislative appropriations. Chief Probation Officers were asked what would happen if all fee collections were turned over to the state, and if the Legislature fully funded probation's operating costs. All said they thought total fee collections would drop sharply.

- *Third, local officials think supervision fees are a more stable source of funding than legislative appropriations.*

While revenues from state income and sales taxes may drop sharply during a recession, (forcing the Legislature to cut appropriations), Texas officials argued that offenders' abilities to pay supervision fees are only marginally affected by general economic cycles. Data on Table A-1 support that view. When state appropriations for basic probation and enhancements dropped in 1986 during a severe downturn in the Texas economy, total collections and average fee collections per probationer both increased. Texas officials also believe that increasing (within reason) the amount of fees levied will increase net revenue from fees, but have little, if any, effect on rates of non-payment, and hence, little effect on the costs incurred to secure payment.

- *Fourth, Texas policies assure that fee revenues can substantially exceed the costs of collection.*

When supervision fees are low (e.g., \$5 to \$10 per month) costs of collection may exceed fee revenues. The Texas Legislature first authorized supervision fees in 1965 and set the maximum monthly fee at \$15 for both felony and misdemeanor probationers. In 1985 the Legislature increased that maximum to \$40. Later, legislators became concerned that judges were waiving fees in many cases in which offenders had the ability to pay. In 1987 it passed a law mandating imposition of a minimum supervision fee of \$25 per month for felons and misdemeanants, with provision, of course, for waiving the fee for those truly unable to pay.

- *Fifth, changes in the probation caseload have increased fee revenue potential.*

The misdemeanor probation caseload has grown more rapidly in Texas than the felony probation caseload, due mostly to changes in enforcement of drunk driving laws. Texas officials estimate that about 85 percent of the misdemeanor probationers typically pay all their assigned supervision fees (compared to 60 to 65 percent for felony probationers). Thus, the probation population has a larger proportion of offenders who are better payment risks than in the past.

C. Local Policies and Practices Affecting Fee Collection

State policies set the general framework within which supervision fee collection occurs. But local policies, procedures, and practices have a significant effect on the

amounts and rates of collections. In Texas, local probation departments have substantial flexibility to experiment with collection methods that both maximize revenues and are sensitive to local factors.

1. Types of fees imposed

In Texas, local criminal justice officials must decide what kinds of fees to impose on convicted offenders. Although Texas law mandates imposition of general supervision fees, judges also have discretion to impose a variety of service fees on offenders who "consume" specific services, like drug testing, alcohol abuse education programs, intensive supervision, or electronic monitoring.

Like supervision fees, the amounts of service fees can be adjusted (or even waived) according to offenders' abilities to pay. Generally, they recover a portion of the cost of a relatively expensive probation service and, thus, may let officials redirect some existing funds to other uses. Service fees are most likely to be charged to those offenders who are more dysfunctional and less employable, and, hence, who are less likely to pay fees regularly. This means collection costs per dollar of service fee revenue probably will be higher than with supervision fees.

Texas officials note that supervision fees can be employed to generate revenues, because they are charged to all or almost all offenders under supervision, not just to those who consume certain services. They also can use supervision fee revenues like an "insurance pool." That is, fees paid by a large number of offenders (most of whom pay regularly and require minimal supervision or services) can be spent to improve supervision or purchase services for a relatively small number of offenders who are poor payment risks, and who require a higher level of supervision and services, thereby eliminating the need to fund those programs with service fees.

Texas officials also emphasized that private vendors are not eager to develop new programs (or to admit offenders to existing programs) if their costs are to be covered by special service fees levied on offenders who are among the worst payment risks in a probation department's caseload. However, private vendors are more likely to develop new programs if the probation department has the funds (derived from supervision fees) to pay for them.

All the departments we visited charged general supervision fees. All also assessed some service fees. For example, Dallas County charges offenders for electronic monitoring and DWI education programs, while Harris County charges special service fees for drug testing, and electronic monitoring. But in general, the Texas agencies assessed service fees sparingly, and placed much greater emphasis on imposition and collection of supervision fees.

2. Setting policies on relative priority of supervision fees

In the judicial districts visited, judges have adopted policies that give high priority to supervision fee collection. Nonetheless, priorities vary among counties—in some cases, top priority goes to fines or restitution. But generally, collection of supervision fees ranks as a first or second priority.

In each judicial district, Texas judges establish policies governing the amounts of supervision fees that will be charged within the range permitted by law. Priorities differed among the counties we visited. In Harris County, judges give top priority to fines. Recently they decided to keep the monthly supervision fee for misdemeanor probationers at \$25, rather than to raise it to the maximum figure of \$40 permitted by law, because they feared increasing the fee would reduce fine collection. In Travis County judges tend to give higher priority to supervision fees, and typically charge a \$40 monthly fee for both felony and misdemeanor probationers.

Policies also need to be set to govern crediting of offender payments to different obligations ordered by the court. In some cases state law defines the priority. For example, if an offender is ordered to reside at a probation restitution center and to pay supervision fees, state law gives priority to collection of probation restitution center room and board fees.

In most cases, however, judges can set a priority for the crediting of individual offenders' payments to different obligations ordered—such as fines, restitution, and fees. Probation officials in both Jefferson and Dallas counties noted that judges generally order payments to be credited first to supervision fees, and second, to other financial obligations they have imposed on offenders. This practice reportedly reflects the judges' belief that vigorous supervision fee collection is essential to provide the level of probation supervision and services they want. Officials said Travis County judges typically order that payments be credited first to restitution, and second to fees, while judges in Harris county reportedly emphasize fines above fees or restitution.

Each of the agencies visited had established accounting procedures that maximized fee collections within the framework of judicially-established policies and orders in individual cases. For example, if a judge said nothing about the order of crediting payments for a particular offender, then under departmental policy payments were credited first to fees and then to other obligations.

3. Waiver of supervision fees

Critics of supervision fees sometimes argue that a large proportion of the offender population is unable to pay, and hence, should have fee payment waived. Indeed, in many states fees are waived in a large proportion of the cases.

However, the Texas probation departments that were visited proceed on a virtual presumption that offenders have the ability to pay fees. State law makes imposition of supervision fees mandatory, unless the offender is truly unable to pay. Probation officials maintained that probationers' abilities to pay do not vary much with changes in the economy. Hence, in recessions (when public tax revenues might drop) fee receipts will be fairly stable. Moreover, they maintain that when fee amounts are increased (within reason) non-payment rates will not change much. If they are correct, then lowering the waiver rate is likely to increase revenues substantially without increasing substantially either non-payments or departments' collection costs.

In Harris County, presentence reports rarely are done for felony or misdemeanor cases, so little information about the defendant's ability to pay is available to the court unless it is provided by defense counsel; therefore, judges order supervision fees to be paid in virtually all cases. Officials note that defendant's legal rights are protected, because at sentencing defense counsel has the opportunity to assert and prove their client's inability to pay. (Some probation officials noted, however, that private defense counsel—themselves eager to have the defendant pay their legal fees—are more likely than public defenders to make those assertions on behalf of their clients.)

Later, if an offender does not pay, probation staff will do a thorough financial assessment and return to court with a recommendation either to waive the fee, to reduce the amount, or to re-structure the payment schedule. In a sense, Harris County does "back-end" financial screening for the minority of offenders who do not pay as required. Harris County probation officials estimated that each month they collect about 65 percent of the supervision fees which felons were obliged to pay, and about 85 percent of the fees misdemeanants were obliged to pay.

In Travis County, about 90 percent of the felony cases get presentence investigations, which includes an extensive financial assessment. As in other Texas counties, presentence investigations for misdemeanants are rare. Despite this heavier investment in "front-end" financial screening for felons, Travis County probation officials still described a very strong presumption by judges in favor of ordering payment of supervision fees. Moreover, they estimate that each month about 70 percent of the felony supervision fees owed are actually paid, a figure only slightly higher than in Harris County with virtually no front-end screening.

Texas probation officials noted that even offenders who lacked regular jobs typically could come up with funds to pay supervision fees. They observed that if probationers were not spending the money on supervision fees, they would be spending it on beer, cigarettes, or other discretionary purchases. Critics of supervision fees, of course, have

suggested that probationers may commit more crimes to get money to pay their supervision fees. Texas probation officials discounted that. One line probation officer observed that offenders steal to live, not to pay fees. Moreover, Texas officials maintained that good probation officers do not view regular fee payments as "hush money"—that is, if the probationer pays fees punctually, but has no visible means of legitimate support, and other evidence suggests the probationer may be involved in crime, probation officers are likely to scrutinize the case very carefully.

4. Response to Non-Payments

Probation officials stressed the importance of responding quickly to non-payment of fees (as well as other court-ordered financial obligations). Quick response serves many important functions. First, it makes the offenders' obligation to pay real and credible. Second, it reduces the chance that the offender will abscond, thus creating a separate revocable violation. Third, it reduces the chance that judges will view non-payment as willful. Finally, in the long run, it cuts probation enforcement costs.

When a fee payment is missed, the probation officer is expected to advise and counsel the probationer to facilitate or encourage payment. However, under department policies, probation officers typically takes no formal action until offenders fall two or three months behind in fee payments. At that point, the probationer and his probation officer appear at a hearing before a probation supervisor. Probation officials note that, in most cases, the threat of a supervisor's hearing is sufficient to prompt payment.

At the supervisor's hearing, the probation officer documents the steps he or she has taken to secure payment, and presents a detailed assessment of the offender's financial condition. The probation officer also will recommend either that (a) the fee be waived, (b) the amount of the fee be reduced, or (c) the payment schedule be adjusted. Probation administrators emphasized the importance of waiving or reducing fees whenever the financial assessment suggests an inability to pay. Probation officers, on the other hand, stressed they felt pressure to restructure payment schedules rather than to reduce or waive fees. They believed that if supervisors thought they were too quick to waive or reduce fees, it might affect their job performance evaluations.

At the supervisor's hearing, if the probationer contends that he or she does not have the ability to pay, that question is referred to the judge for determination. Reportedly, few probationers assert that claim, because if the judge rules that the offender has the ability to pay, the judge implicitly has found that past non-payment was willful, and therefore, possible grounds for revocation. If the supervisor recommends changes that require amendment of the sentencing order (for example, to waive or reduce the fee), the case is referred to the judge for action.

If the probationer fails to comply with changes stemming from the supervisor's hearing and falls farther behind in payments, officials will commence a revocation proceeding. Again, in the departments visited, the policy is to move quickly, before a sizeable additional arrearage develops. The probation officer develops a recommendation to the court either to reinstate probation, reinstate with amended conditions or revoke the probation. Probation officials emphasized that revocation and confinement is rarely used, even if non-payment was willful, unless other revocable violations also had occurred.

In all four Texas counties visited, the prosecutor presents the case at the revocation hearing and, generally, the probation officer is not present. Reportedly, prosecutors sometimes negotiate settlements with the defense counsel that involve payment of delinquent fees in exchange for dropping all other alleged violations. Probation officials voiced concern about this practice because, typically, cases that proceed to a hearing (especially with a recommendation for revocation and imprisonment) involve numerous violations of other conditions, not related to delinquent fees. For such cases, probation officers frequently have made an earnest recommendation that probation be revoked and the offender imprisoned.

Probation officials noted that prison and jail crowding has diminished the threat of revocation. Prosecutors and judges are reluctant to occupy limited prison or jail space with minor probation violators. For those who are confined, early release policies often result in such violators serving very short confinement terms—sometimes only a few days. To "toughen" the sanction for non-payment the Jefferson County Adult Probation Department now recommends ten days of community service rather than jail time for willful non-payment of supervision fees. Faced with the prospect of two weeks of hard work, probationers reportedly often catch up on delinquent payments.

5. Impact of fee collection on supervision

Texas probation administrators believe that aggressive fee collection is consistent with sound probation case work practices. They argued that regularity of fee payments is a good barometer of offenders' overall adjustment on supervision. Non-payment usually means there are underlying adjustment problems that the probation officer needs to identify and address in any event.

Because employment is so closely linked to offenders' ability to pay fees, Texas officials believe that probation departments that rely heavily on fees have a stronger incentive to improve offenders' employability. In both Harris and Dallas counties, probation departments have added job readiness training and employment programs to specialized probation caseloads in high-unemployment areas of the counties.

Line probation officers we interviewed generally echoed these views. They noted that regular fee payments are a small success which they can cite to reinforce the offender's overall satisfactory adjustment, or that they can use as an example to bolster offenders' compliance with other conditions of supervision. Most line probation officers said non-payment was an opportunity to identify and deal with offenders' more basic adjustment problems.

A few probation officers, however, thought the emphasis on fees impaired their case work relationship with probationers. They noted that fees were the first topic of discussion during an office visit. If offenders were having difficulty meeting payments, the limited time available for office visits could be consumed quickly and entirely on financial issues. During our interview with one Dallas County probation officer, a probationer telephoned to say he would not report that day because he could not pay the fee. The probation officer spent several minutes convincing the probationer to keep the appointment anyway in order to avoid a more serious violation of conditions.

Some probation officers also complained that screening for ability to pay was inadequate and, as a result, judges sometimes imposed total financial obligations that were unrealistically high. Even if fees were waived, an offender's monthly court-ordered obligation (from fines, restitution, court costs, attorneys fees) might drop only from, say, \$250 to \$225, and still be far beyond their ability to pay. Finally, a few probationer officers said some of their clients viewed fee payment as a form of "hush money"—that is, they assumed that so long as fees were paid regularly, probation officers would not hassle them over their performance (or lack of performance) in other aspects of supervision.

6. Administrative Practices

In the Texas probation departments that were visited, administrators, managers and line staff viewed fee collection as essential to the agencies' survival. In general, probation officers thought that fee collection was merely one aspect of the job they had been hired to do. No one we interviewed argued against the concept of fee collection or objected strongly to having to perform fee collection duties.

Officials noted that resistance from individual probation officers was commonplace in the past. But that resistance faded over time as fee collection became standard operating procedure, as veteran staff retired, and as total revenue from fees grew.

Veteran probation administrators noted a threshold effect. So long as fee collections were a small part of a department's total revenues, line staff could afford to resist and managers often had to use personalized incentives (e.g., probation officers with highest collection rates are first to get assigned new county cars, etc.) to spur increased collection. However, when

fee receipts passed a threshold and supplied a large part of the department's total revenues, fee collection became essential if probation officers were to preserve their jobs. At that point, personalized incentives were less important, and fee collection became internalized as part of the organization's ethos.

While Texas probation departments do not use personalized incentives, some rely on peer pressure among probation officers to spur fee collection. In Harris and Jefferson counties administrators post monthly lists ranking probation officers in terms of fee collections. Administrators thought posting the rankings created a healthy level of anxiety and competition among probation officers.

Administrators in all four counties noted that they considered probation officers' fee collection performance in performance evaluations and in promotions. However, they emphasized that raw data on rates or amounts of collections must be analyzed and interpreted with care, because probation officers' caseloads differ markedly in risk of non-payment. For example, probation officers with specialized caseloads, or those stationed in low-income, high-unemployment neighborhoods will have more bad payment risks on their caseload than those with regular caseloads or those stationed in mixed-income neighborhoods. Therefore, administrators stressed that each probation officer's collection performance must be judged individually in light of their caseload's ability to pay, and in terms of their long-term fee collection performance when assigned to different kinds of caseloads.

Where such reviews showed chronically poor fee collection performance, administrators said they would first counsel employees and offer advice or in-service training on collection methods. If performance failed to improve, officials in one county noted they would transfer probation officers to other assignments, such as investigations, which did not involve fee collection.

None of the probation departments visited had well-developed fee collection training programs. In Dallas and Harris counties, probation officers who had consistently high rankings on fee collection provided in-service training to other employees. Dallas County officials explored contracting with a firm that trains employees of private business firms in collection methods. However, after observing the training, officials decided that probationers were far worse payment risks than the clientele of the private companies, and hence, the course was of little use.

In Dallas County, one probation officer noted that in her prior job as a child welfare worker she had gotten valuable training in child support payment collection, which she found especially useful in collecting supervision fees.

7. Cutting Costs

a. Reducing Screening Costs

As noted above, the Harris County Adult Probation Depart-

ment invests more in back-end financial assessments for persons who fail to make required payments than in front-end screening for waivers. That practice greatly reduces the costs of implementing a fee system. Of course, if presentence reports, including financial assessments, already were being done before fees were introduced, they would not represent an added cost of implementing fees.

b. Reducing collection and enforcement costs

I. Impose fees on good payment risks

One way to reduce collection and enforcement costs is to assess fees on persons who are better payment risks. In Texas, as in many states, the rising numbers of misdemeanor probationers (particularly due to changes in drunk driving enforcement) has increased the proportion of relatively good payment risks in the probation caseload. In all the counties we visited, misdemeanor probationers accounted for a large majority of the supervision fee collections. Therefore, the initial effects of increases in the fee structure will be felt quickly due to the rapid turnover of misdemeanor offenders. That will be followed by a slower rate of increase as the old felony cases are replaced with new ones subject to the higher fees.

It follows, therefore, that in states where different agencies operate misdemeanor and felony probation, there is less potential to increase supervision fee receipts to enhance services for felony probationers. It also follows that the revenues will fall if the proportion of misdemeanor probationers on their caseload drops. In fact, that has happened in the past year in many Texas probation departments, again, due to apparent changes in drunk driving enforcement practices. Critics sometimes note that reliance on supervision fee revenues gives an incentive to keep offenders who pay regularly under supervision for longer terms. To guard against that, TAPC regulations limit per capita payments for misdemeanor probationers to six months.

II. Use clerical staff to receive and record payments

The departments visited also cut collection costs by using clerical personnel to receive and post payments of financial obligations. In none of the counties did probation officers take money or checks from probationers or issue receipts. This reduced potential for corruption, because payment transactions could be centralized at one point within the agency (or at least within each branch office) and, therefore, could be monitored and audited more closely. Centralized receipts of payments also lets departments develop the more secure teller areas needed for handling cash payments.

III. Computerized accounting systems

Texas probation departments have cut costs by developing computerized systems for recording and posting payments.

All four departments had computerized accounting systems that automatically issue receipts, post payments (according to criteria set by the judge or to default values set by the department) to different accounts, and issue monthly management reports. In Harris and Jefferson Counties, for example, the Chief Probation Officer gets a monthly report showing whether actual receipts are ahead of or behind projections for the year. Supervisors get reports summarizing the collection performance of each probation officer in his or her unit. Line probation officers get lists of persons on their caseload who are behind in payments.

In Harris County, the system also issues a monthly report showing fee imposition and collection rates by each judge. This report is circulated to the judges. Probation officials noted that the report contributes to a sense of competition on fees among the judges. Finally, Harris County officials have programmed the system to mail monthly payment reminder notices to probationers, that arrive on the dates they get their paychecks.

Once computerized accounting became operational, the four probation departments were able to take over collection of other court-ordered obligations from persons on probation at virtually no additional cost. For example, in Harris County the Adult Probation Department collects fines (formerly collected by the Sheriff), restitution, court costs, and public defender fees (formerly collected by the Clerk or Court) from persons on probation. This lets probationers pay all their court ordered obligations at one location. The probation department writes checks at the end of each business day to the other agencies for whom it collects payments.

The Texas Adult Probation Commission has developed a computerized accounting program that about one-third of the probation departments use to track their fee collections. The package, which is intended for small to mid-sized departments, consists of customized templates for dBase III, a popular database management software program. Counties must provide an IBM-PC compatible personal computer with a hard disk. TAPC will provide technical assistance to the Departments, if needed, on any computer equipment purchases. Counties can use state probation funds to purchase the basic database program. Thereafter, TAPC staff will customize the templates to each department's specific needs,

provide documentation, and train department staff to use the program, all at no charge.

IV. Rapid Response to Non-Payment

Finally, probation departments also can cut costs by responding quickly to non-payment. By rapidly waiving or restructuring fee obligations after non-payment, probation departments minimize their long-term collection costs from poor payment risk cases.

8. Security and Accountability

Critics have argued that the collection of probation fees make probation departments and officers an inviting target for robberies, and create a greater potential for staff corruption. Texas probation departments have taken special steps to avoid these potential problems.

Probation officers themselves do not take payments in any form from offenders. Therefore, they are not more vulnerable to robberies while in the field, and opportunities for staff corruption, or simple carelessness in the handling of cash, are diminished.

Three of the four departments accept cash payments from probationers at their central office (but not branch locations). Officials believe this improves collection somewhat because probationers do not have to take the extra step of getting a money order.

In departments that aggressively collect fees, heightened security is needed. Particularly when cash payments are accepted, the department's teller area must be secure, and an appropriate vault or safe must be provided. In each department visited, bank deposits are made daily. Collections are stopped early in the afternoon, so staff can complete accounting and deposit funds before the bank closes. The Harris County Adult Probation Department contracts with an armored car service to pick up fee payments and deposit them in the bank.

It also is important to conduct timely and thorough audits. In Travis County, for example, the county conducts monthly audits of the probation department's financial records. The TAPC conducts an annual audit of each department's financial records.

APPENDIX B

**Collection of Probation and Parole
Supervision Fees in Oregon**

Appendix B: Collection of Probation and Parole Supervision Fees in Oregon

ORS 137.540, enacted in 1979, gives judges discretion to impose supervision fees on all persons convicted of misdemeanors and felonies who are placed on probation. Court rules establish a minimum fee of \$10 per month, but set no upper limit on the maximum fee that may be charged each month.

The Parole Board has discretion to impose supervision fees on those placed on parole. Parole Board rules set a parole supervision fee of \$20 per month. Supervision fees ordered by the courts or the Parole Board are collected by the agencies that administer probation and parole supervision.

A. Effect of Community Corrections Act Options on Incentive to Collect Correctional Fees

Oregon presents an interesting case study of supervision fee collection practices because the agencies that administer probation and parole supervision in different counties have distinctly different incentives to collect the fees. Those incentives vary depending on the counties' level of participation in Oregon's Community Corrections Act (CCA).

1. Variations in Incentive to Collect

Briefly, Oregon's CCA lets counties participate under one of three options. The differences among options are fairly complicated, but with respect to fee collection, only a couple are relevant. For the ten counties in Option I, local community corrections agencies administer probation and parole supervision. For the 26 counties in Options II and III, the Department of Corrections administers probation and parole supervision from local field services branch offices.

In Option I counties, local community corrections agencies have a high incentive to collect supervision fees. They keep the supervision fees that they collect and decide how those funds will be spent. By contrast, Department of Corrections field service staff in Option II and III counties have much less incentive to collect supervision fees. In those counties fee receipts are remitted to the Department of Corrections, where they are deposited in a central account used to purchase services and supplies for the branch offices in the 26 counties.

In Option II and III counties, benefits from fee receipts (for example, the purchase of equipment or contracted services that would not be available otherwise) are indirect and often intangible to branch office staff. One branch office may receive less in purchased services or supplies than it remitted in fees—in effect, it may subsidize another office. Even if a

branch office gets back an amount of services and supplies equal to (or greater than) the amount of fees it remitted to the central account, line staff may not be aware that a specific service or supply was obtained using fee receipts, or they may attach a low priority to the benefits—that is, probation officers may think that equipment and supplies are less important than more staff or higher salaries.

In Option II and III counties, the incentive to collect supervision fees also is lowered because the Legislature reduces the Department of Correction's biennial appropriation in the services and supplies account by an amount equal to anticipated fee receipts. Thus, a dollar collected in fees replaces a dollar lost in general fund appropriations.

Correctional administrators can dampen this offset effect by conservatively estimating fee revenues during the appropriations process, and later aggressively promoting fee collection during the biennium. For example, if the Department estimates fee collections at \$750,000 (and the Legislature cuts the appropriation request by that amount), but actual collections are \$1,000,000, only 75 cents of each dollar collected in fees goes to backfill reduced appropriations, and 25 cents is added revenue. (Of course, in the subsequent biennium the Legislature's knowledge of how many dollars actually were collected during the prior two years limits a continuing strategy of under-projecting fee revenues.)

In the ten CCA Option I counties, the rules are very different. The local Community Corrections agencies, who supervise probationers and parolees, keep supervision fees they collect. Option I CCA administrators have discretion to spend fee receipts on any purpose authorized by law.

Moreover, there is no budget offset for supervision fee collections in Option I counties. There are four sources of local corrections funding in Option I counties—state CCA allocations, state field services allocations, county general fund appropriations, and fees. The criteria that govern both the CCA and Field Services allocations are promulgated in DOC administrative rules. Those criteria do not reduce either the CCA or Field Service allocations by amounts of fees collected. State law forbids Option I counties from reducing their general fund support for community correctional funding. (In fact, because state CCA appropriations increased less rapidly than inflation between 1978 and 1988, county governments have funded an increasing proportion of the cost of community corrections in Option I counties.)

2. Impact on Collections

Option I counties, in fact, appear to be more successful and effective in collecting supervision fees from offenders. According to projections from data supplied by the Oregon Department of Corrections, in the 1987-89 biennium Option I counties will collect supervision fees equalling 13.7 percent of their field services allocation, while Option II and III counties will collect supervision fees equalling only 6.1 percent of their field services allocation. (The Field Services allocation—and not the CCA allocation is considered—because the former is intended to cover the cost providing basic supervision for probationers and parolees. The CCA allocation is intended to provide enhanced community-based programs, such as specialized treatment, residential placement, etc.) Table B-1 provides a breakdown of fee revenue projections by county.

B. Other Factors Affecting Correctional Fee Collection

These variations in collection performance cannot be attributed solely to differences in financial incentives. There also are differences between Option I and the other counties in caseload, and in judicial and administrative emphasis on fees.

1. Caseloads

In all Option I counties the local Community Corrections agencies supervises both felons and misdemeanants. In some Option II and III counties, including the largest—Multnomah—the Oregon Department of Corrections Field Services staff supervises only felons, while a separate local probation department supervises misdemeanants. Evidence from other jurisdictions suggests that misdemeanor probationers are more likely than felons to pay supervision fees imposed on them.

2. Judicial Emphasis on Fees

There is substantial variation in supervision fee collection patterns among individual Option I CCA counties. For example, in Marion County (Salem), judges emphasize collection of restitution over fees. While judges in Marion County seldom waive supervision fees altogether, they are likely to (a) set a low fee (the typical fee in Marion County is \$15 per month, although it may be reduced according to ability to pay) and (b) order that offender payments be credited first to restitution.

In Washington County, judges emphasize fee collection. Only about 5 percent of the cases have fees waived at sentencing. However, in about 40 percent of the cases fees are reduced or deferred by judges or by probation supervisors. The average supervision fee for all persons under supervision is \$25 per month.

3. Administrative Emphasis on Fees

Soon after the statute authorizing supervision fees was enacted, Oregon's probation and parole officers secured passage of another law that prohibits forcing probation officers to collect supervision fees. Supervisors have responded literally—in all departments we interviewed clerical staff actually collect fee payments and issue receipts. Washington County officials have written specific tasks in probation officer's job descriptions relating to fee collection. Officers' personnel evaluations are based on how well they perform tasks in the job description, including those related to fee collection.

Probation supervisors in Washington County Community Corrections are paid on an incentive basis. Each year the supervisors' salaries are set at the bottom of the salary range for their classification. The Community Corrections Administrator defines a series of performance measures for the supervisory staff. One set of performance measures relate to fee collection performance. The administrator and each supervisor negotiate individually to determine a specific set of performance objectives, and to identify salary increases linked to attainment of each objective. Thus, if fee collections from the supervisor's probation unit exceed the performance standard, his or her salary will increase.

Washington County Community Corrections officials recently took steps to increase fee collections to offset a drop in the state field services allocation stemming from changes in the allocation criteria. Administrators tightened their criteria for probation-recommended waivers and reductions in fees. They set an objective to increase fee collection rates to at least 50 percent of those ordered.

In 1974 Clackamas County became the first county in Oregon to impose supervision fees on misdemeanor probationers. Clackamas County became an Option I CCA county in 1979, and thus retains supervision fees from parolees and felony and misdemeanor probationers under its supervision. But until 1981 the Clerk of Court collected supervision fee payments for probationers and remitted them to Community Corrections. The Clerk of Court had little incentive to emphasize collection of supervision fees. In addition, at the time, the clerk's antiquated accounting system made it difficult to determine how many dollars of each offender's payment had been credited to supervision fees. In 1981 total receipts for supervision fees were \$12,000. The following year the Clackamas County Community Corrections took over responsibility for collecting supervision fees, and their total fee receipts for the year exceeded \$140,000.

Clackamas County leads the state in fee collection. According to DOC data, Clackamas County was expected to collect about \$393,000 in supervision fees in the 1987-89 biennium, or about 25 percent of its field services allocation.

Table B-1:
Oregon Supervision Fee Collections Projections for
1987-89 Biennium By CCA Option

OPTION I COUNTIES	Total Fees Collected First Seven Months	Projected Total Fees, For 1987-89 Biennium	Field Services Appropriation For 1987-89 Biennium	Fees as a Percent of Field Service Appropriation
Baker	\$ 5,241	\$ 17,969	\$ 141,114	12.7%
Benton	14,846	50,901	475,790	10.7%
Clackamas	114,605	392,931	1,591,482	24.7%
Curry	10,509	36,031	251,568	14.3%
Marion	59,977	205,635	3,159,807	6.5%
Polk	8,802	30,178	490,075	6.2%
Union/Wallowa	6,900	23,657	234,587	10.1%
Washington	96,697	331,533	1,916,484	17.3%
Yamhill	38,986	133,666	632,680	21.1%
Total Option I	\$356,563	\$1,222,502	\$8,893,587	13.7%
OPTION II COUNTIES				
Clatsop	\$ 4,960	\$ 17,006	\$ 498,162	3.4%
Columbia	4,213	14,445	398,169	3.6%
Coos	18,522	63,504	1,095,577	5.8%
Douglas	22,237	76,241	976,635	7.8%
Grant/Harney	4,261	14,609	82,504	17.7%
Josephine	13,690	46,937	1,273,474	3.7%
Lane	58,589	200,877	3,459,949	5.8%
Malheur	5,660	19,406	491,551	3.9%
Morrow/Umatilla	15,957	54,710	1,080,004	5.1%
Multnomah	166,667	571,430	10,821,001	5.3%
Tillamook	1,496	5,129	246,208	2.1%
Wasco/Sherman	6,050	20,743	292,313	7.1%
Total Option II	\$322,302	\$1,105,035	\$20,715,547	5.3%
OPTION III COUNTIES				
Crook	\$ 5,748	\$ 19,707	\$ 206,608	9.5%
Deschutes	18,781	64,392	816,640	7.9%
Gill/Jeff/Wheeler	4,491	15,398	385,571	4.0%
Hood River	2,939	10,077	94,435	10.7%
Jackson	29,704	101,842	1,273,474	8.0%
Klamath	20,792	71,287	930,802	7.7%
Lake	1,628	5,582	72,704	7.7%
Lincoln	20,038	68,702	705,703	9.7%
Linn	41,510	142,320	1,421,391	10.0%
Total Option III	\$145,631	\$499,306	\$5,907,328	8.5%
TOTAL OPTIONS II & III	\$467,933	\$1,604,342	\$26,622,875	6.0%

In Clackamas County a \$20 monthly supervision fee is included as a standard condition of probation. Waivers at sentencing are rare. Officials estimate that they collect about 60 percent of the supervision fees that are ordered. At the time of our visit, Community Corrections officials were considering hiring a private contractor to collect unpaid probation supervision fees. The contractor with whom they were negotiating also had a contract to collect unpaid fees assessed by the local welfare agency. Under that agreement, the contractor kept one-third of any fees collected.

In Benton County (Corvallis), community corrections administrators emphasize direct and personal incentives to spur supervision fee collections by line probation officers. Each year the agency director develops a spending plan for monies anticipated from fee revenues. The plan, which he shares with probation officers, shows the benefits that will accrue to each officer (for example, a new computer, a trip to the ACA Congress) and to the department as a whole (for example, training programs, purchased services for offenders) from supervision fees collected. The plan shows the individual and departmental benefits that will result from collection of a base level of fees, as well as additional benefits resulting from exceeding that base level.

In Benton County, administrative rules give either the judge or the CCA manager power to waive fees. Judicial waivers are rare and CCA manager waivers are non-existent. There is a strong presumption that supervision fees will be imposed in all cases—the only question is one of amount. Probation officers do a full financial plan for each case to identify all income and obligations, and recommend a monthly supervision fee ranging from \$10 to \$50, depending on ability to pay. Community Corrections in Benton County is located within the Sheriff's Department. Therefore, the Sheriff's Department's Civil Division handles actual fee collection for Community Corrections.

C. Reforms Recommended by the Governors' Task Force on Corrections Planning

In 1987 the Governor's Task Force on Corrections Planning was created by executive order and charged with completing a correctional master plan for the state of Oregon by September, 1988. As part of its planning effort, the Task Force examined use of probation and parole supervision fees. They found that data on supervision fee collection was not adequate to support extensive analysis. In Option II and III counties the DOC did not maintain data on judicial imposition of supervision fees. Thus, it was not possible to identify waiver rates or to analyze differences in waiver rates among judges or in different parts of the state. Central records were not kept on the amounts of fee payments ordered for individual offenders. Hence, it was impossible to determine how many dollars in fees were due each month, and what percent of fees receivable actually were collected. No central

data existed on probation officers' recommendations (in presentence investigations) regarding fee imposition or waiver. No data were readily accessible to determine what percent of offenders actually paid as ordered, paid less than their full fee obligation, or defaulted entirely on fee payments. Moreover, it was not possible to analyze the cost of fee collection, or to analyze, as many probation and parole officers staunchly maintained, whether it cost more to collect fees than they produced in revenues. Thus, the Task Force could not measure the efficiency of fee collection operations in counties where the DOC provided probation and parole supervision.

The situation was only slightly better in Option I counties. While somewhat better records were maintained, each county had developed its accounting procedures independently, and thus, fee data was not comparable across Option I counties. Again, data on collection costs, amounts of fees ordered, and waivers in individual cases often were not routinely available.

The Task Force, however, relied on existing aggregate data as well as interviews with state and local officials to conduct a general analysis of fee collections and to project the impact of future fee collection policy options. For example, it computed an effective collection rate for the entire state by dividing the projected 1987-89 biennial collections by hypothetical revenues that would result from uniform imposition and collection of the \$10 minimum monthly figure.

Based on preliminary DOC data, the Task Force estimated that field services in Option I, II, and III counties would collect \$2.835 million in the 1987-89 biennium. They observed that if all Oregon offenders on probation and parole paid the \$10 minimum monthly supervision fee, hypothetical revenues would exceed \$6.7 million during the biennium. By dividing the estimated fee revenues by the hypothetical total, the Task Force concluded that, in effect, Oregon field services was collecting about 42 percent of this hypothetical revenue figure. [Of course, this overstates hypothetical collections by not correcting for (a) waivers of fees and (b) offenders who failure to pay as ordered. Nonetheless, the Task Force found it useful, not as a description of actual practice, but as a benchmark from which to assess impacts of changes in fee collection.]

The Task Force projected the effects of changing the two basic parameters—the effective collection rate and average minimum fee. The Task Force found that fee revenues would increase faster by increasing the minimum fees levied than by increasing the effective collection rate. Thus, increasing the minimum fee to \$15 would increase revenues by 50 percent. To get that same amount of revenue with a minimum \$10 fee, the effective collection rate would have to jump to about 65 percent, a figure the Task Force deemed unrealistic. Raising minimum fees levied also was the fastest way to counter the objection—commonly voiced by Oregon probation officers—that collection costs exceeded fee revenues.

Ultimately, the Task Force adopted several recommendations intended to increase the amount of revenue generated by supervision fees. First, they urged the Legislature to stop treating supervision fee collections as an appropriation offset in Option II and III counties. They thought this was necessary to establish a strong incentive for fee collection in counties where the DOC provides probation and parole supervision. Second, the Task Force recommended that the DOC set up separate services and supplies accounts for each branch office, and that a large portion of the fee receipts from each office be deposited in their specific account. The Task Force observed that DOC rules might require each branch office to earmark some proportion of fees to provide emergency or transition costs for offenders, or to purchase services they need. Otherwise, the Task Force suggested that the DOC

require each branch office manager to devise a spending plan for remaining fee receipts.

Third, the Task Force recommended that substantial improvements in the existing statewide training program for probation and parole officers be funded from a portion of the increased supervision fee revenues. Fourth, the Task Force recommended that Court and Parole Board rules be amended to raise the minimum supervision fee from \$10 to \$30. Finally, the Task Force recommended that administrative changes be instituted to reduce waiver of fees and to improve collection practices, so that the effective collection rate could be increased modestly to 50 percent. According to the Task Force's projections, these changes would produce biennial fee revenues of approximately \$10 million, an increase of over 250 percent above anticipated revenues in the 1987-89 biennium.

APPENDIX C

Work Release Room and Board Collection in Florida

Appendix C: Work Release Room and Board Collection in Florida

The Florida Department of Corrections (DOC) operates 37 work release centers, 29 for males and 8 for females. In addition, the DOC contracts with private vendors for work release beds in 29 other residential facilities. The Salvation Army is the largest private provider of work release space.

A. Overview of Florida's Work Release Program

As shown in Table C-1, on May 13, 1988 there were an average of 96 inmates in each state-run work release center for males, an average of 19.9 inmates in each state-run center for females, and an average of 10.5 inmates in each privately-run center.

Table C-1:

Population of Florida Work Release Centers, 5-13-88

	State-run Centers		Contract Centers
	Male	Female	
Centers	29	8	29
Population	2,791	159	305
Ave. per Center	96.2	19.9	10.5

The Florida DOC's total work release capacity on May 13, 1988 was 3,839. On that date, 3,255 inmates were in work release and 584 beds, or about one-sixth of the capacity, were empty. On an average day, about 10 percent of Florida's prison population is housed in work release centers. About one-half of the inmates released from Florida's prisons exit via work release.

The DOC uses work release to help manage prison crowding. Under provisions of a court order to reduce crowding, when the prison population reaches 98 percent of capacity, 20 days of additional gain-time are credited to each inmate. This increases the pool of inmates available for work release. Some inmates with short sentences go directly from the DOC reception center to work release, bypassing prison altogether. DOC officials report that crowding has prompted them to modify criteria for acceptance into work release, and to shorten the period of work release (from about 150 to about 83 days). However, they have experienced no serious problems with work releasees.

To be eligible for work release, prison inmates must:

- be in the last 18 months of their sentence;
- be in a minimum custody classification;
- have satisfactory institutional adjustment (under DOC rules, they must have no disciplinary convictions for the past 90 days);

- have no detainers; and,
- must have completed the mentally disordered sex offender treatment program, if they were convicted of a sex offense.

Classification staff at each institution begin the selection process by screening inmates on their caseload for work release. The superintendent of each institution then reviews cases identified by classification staff, and forwards information on each case—along with his or her recommendation—to the Director of Work Release in the DOC central office, who makes the final decision. If an offender has been convicted of a violent crime (or has a sentence of ten years or longer), he or she must be approved by two members of a special three-member central office review panel.

On an average day, about 15 percent of Florida's work release beds are empty. Nonetheless, DOC officials believe they are using work release to its maximum potential as a population safety valve. They note that the real congestion in Florida's prison population is at the close custody level, and those inmates are not eligible for work release. Also, if work release was expanded substantially, it would compete with other institutions who rely on inmate labor to perform certain basic maintenance and operational functions.

B. Fee Collection from Work Release Inmates

Work release fees collected by the Department of Corrections (indeed, all fees collected by the DOC) are returned to the state's general fund. Thus, there is no apparent direct financial incentive for the DOC to collect fees. On its face, work release fee collection appears to impose costs on the DOC, without conferring clear economic benefits.

However, officials throughout the Department of Corrections uniformly expressed firm belief that the Legislature does not use receipts from fee collection as a budget offset. Rather, officials are convinced that the Legislature appropriates a dollar to the DOC for every dollar in work release fees it collects. Thus, officials and line staff believe that if fee collection receipts increase, total DOC appropriations will increase by an identical amount.

There is no sentiment among DOC officials to seek changes in the law to let the DOC to keep fee receipts. The officials we interviewed think that such an arrangement would not be politically viable in Florida due to the widespread and longstanding practice of having all state agencies deposit fee collections in the general fund. Florida DOC officials have

made a strong administrative commitment to collecting correctional service fees in general, and work release fees in particular.

1. Types of Fees Charged

DOC work release centers collect room and board fees which they call "subsistence fees" based on 45 percent of each inmate's net income, that is, after taxes, restitution, or other court-ordered obligations are withheld. Thus, if an inmate earns \$160 per week after taxes and all withholdings, his weekly subsistence fee will be \$72 ($\$160 \times .45$). Officials estimate that subsistence fees cover about one-third of the cost of running work release centers.

The DOC also collects a \$2 transportation fee per day if the inmate uses the center's van to get to and from work. In many cases, inmates can use public transportation to get to and from their jobs, and thus are not charged the transportation fee.

The contract work release centers charge inmates \$4 per day for room, and charge extra if the inmate wants to get his or her meals at the center. (The contract centers do not provide transportation). The DOC pays the vendors \$17 per day for each inmate placed in the work release facility. Thus, whereas fees reportedly cover one-third of the cost of state-run work release, they cover only about 19 percent of the costs of the contract programs.

2. Fee Levels

Until April, 1988 the DOC set subsistence fees on a sliding scale, based on the offender's weekly gross income. They abandoned that practice because the flat rate was easier to apply. The Director of Park House, a Tallahassee work release center for females, suggested that the flat rate would increase the amount of subsistence fees paid by women, because in the past they earned less money and paid a lower rate of fees on the sliding scale. Other DOC officials disputed that position, because they believed there are not big differences in wages earned by male and female work release inmates. In general, they do not expect the new fee schedule to affect overall amounts collected.

3. Collection Procedures

Inmates must turn over their wages or paychecks to work release center staff. Staff deduct taxes (if not withheld by the employer) and deduct all obligations the offender owes, including restitution, fines, court costs, subsistence fees, and transportation fees. They give the inmates personal expense money (not to exceed \$30 per week), and deposit the balance, if any, into an account for the inmate at a local bank. The inmate gets the balance in the account when he or she completes the work release program.

In larger work release centers, a single staff member collects inmate's paychecks, allocates funds to the various accounts,

and issues receipts. In smaller centers, several different staff members may, from time to time, perform these functions. Cash and paychecks typically are deposited daily in a local bank. Work release centers often use different drivers and vary routes between the center and the bank as added security measures. All work release centers have a safe on the premises (larger ones have a drop safe sunk in a concrete floor) in which cash and checks are held between deposits. Officials noted that it is rare to have more than \$200 in cash in a center at one time, but it is not uncommon to have \$9,000 to \$10,000 in checks.

Each center maintains records showing the amount of inmates' paychecks turned in, deductions for taxes, subsistence, transportation, restitution, fines, court costs, or personal expense, and amounts deposited (and current balance) in the inmate's account at the bank.

4. Enforcement

Collection of work release fees is enforced by threat of (and, when necessary, use of) return to prison. Offenders in work release centers legally are prison inmates, not parolees. Failure to turn over their wages or paychecks is an institutional disciplinary offense, not a violation of the conditions of parole. Therefore, revocation of work release can proceed under different (and less stringent) set of criteria and procedures than for parole revocation. In theory, at least, work release inmates have a less substantial liberty interest in work release than a probationer or parolee would have in their probation or parole status.

In addition, it is easier to prove that non-payment of work release subsistence fees was a willful violation. After the inmate gets a job and begins earning money, ability to pay is no longer an issue. If they fail to turnover their wages or paychecks, it is *per se* a violation of program rules.

Still, officials note problems collecting fees from inmates whose sentences are about to expire. Parole and parole supervision were abolished under Florida's 1982 sentencing reform act. Therefore, many offenders leave work release when their sentences expire. The Department, understandably, is reluctant to violate work release and return an offender to prison for the last week or two of their sentence. Near the end of sentences, it may be logistically impossible to return offenders to prison, given the time required to process the paperwork and transport the offender. Work release inmates also realize this, and fee collection rates (which are very high during initial periods on work release) drop sharply during the last few weeks.

C. Levels of Collections

Table C-2 shows DOC work release fee collections from April 1987 to March 1988.

In that year, Florida work release inmates earned almost \$12.1 million dollars, after deduction of taxes and social security,

Table C-2:
Florida Community Release and Furlough Program
Inmate Earnings and Distribution, 4/87 to 3/88

Month/Year	Inmate Earnings				Deductions							Balance to Inmate Account
	# of Inmates	Gross Earnings	Minus Social Security & Tax	Net Earnings	Subsistence Fee	Transportation Fee	Dependents	Restitution	Prior Debts	Personal Expenses	Total Deduction	
April, 1987	3,233	\$1,198,605	\$180,995	\$1,017,610	\$451,374	\$34,248	\$77,179	\$13,137	\$7,818	\$315,176	\$898,932	\$118,678
May, 1987	3,211	\$1,247,766	\$185,808	\$1,061,958	\$441,586	\$34,326	\$76,707	\$10,885	\$4,676	\$374,357	\$942,537	\$119,421
June, 1987	3,173	\$1,320,009	\$194,925	\$1,125,084	\$459,944	\$31,224	\$72,172	\$10,090	\$9,641	\$336,110	\$919,181	\$205,903
July, 1987	3,184	\$1,103,935	\$166,089	\$937,846	\$429,384	\$33,262	\$81,986	\$9,823	\$8,084	\$323,014	\$885,553	\$52,293
August, 1987	3,072	\$1,247,430	\$191,883	\$1,055,547	\$421,350	\$28,491	\$93,484	\$10,632	\$5,808	\$287,223	\$846,988	\$208,559
September, 1987	3,212	\$1,147,736	\$174,814	\$972,922	\$416,308	\$27,428	\$87,983	\$9,404	\$6,974	\$314,718	\$862,815	\$110,107
October, 1987	3,599	\$1,242,882	\$194,488	\$1,048,394	\$442,562	\$30,921	\$84,597	\$9,229	\$8,931	\$320,038	\$896,278	\$152,116
November, 1987	3,296	\$1,122,071	\$174,908	\$947,163	\$383,316	\$27,738	\$79,295	\$6,991	\$4,702	\$295,573	\$797,615	\$149,548
December, 1987	3,344	\$1,260,807	\$194,504	\$1,066,303	\$473,255	\$31,704	\$105,698	\$6,028	\$5,760	\$352,177	\$974,622	\$91,681
January, 1988	3,355	\$1,098,565	\$169,852	\$928,713	\$385,308	\$28,715	\$84,576	\$8,421	\$6,543	\$273,545	\$787,108	\$141,605
February, 1988	3,447	\$1,121,729	\$178,510	\$943,219	\$370,042	\$29,314	\$81,218	\$5,719	\$6,510	\$290,107	\$782,910	\$160,309
March, 1988	3,472	\$1,176,524	\$192,881	\$983,643	\$498,531	\$33,995	\$80,821	\$6,187	\$5,628	\$309,974	\$935,136	\$48,507
Total	39,598	\$14,288,059	\$2,199,657	\$12,088,402	\$5,172,960	\$371,366	\$1,005,716	\$106,546	\$81,075	\$3,792,012	\$10,529,675	\$1,558,727
Average/Month	3,300	\$1,190,672	\$183,305	\$1,007,367	\$431,080	\$30,947	\$83,810	\$8,879	\$6,756	\$316,001	\$877,473	\$129,894
Average/Month/ Inmate		\$360.83	\$55.55	\$305.28	\$130.64	\$9.38	\$25.40	\$2.69	\$2.05	\$95.76	\$265.91	\$39.36

or about \$305 per inmate per month. Those inmates paid slightly over \$5.5 million in subsistence and transportation fees, or about 45.5 percent of their net earnings. The average inmate paid about \$130 per month in subsistence fees, and an additional \$9 per month in transportation fees. Each inmate received about \$96 per month in expense money, while an average of about \$39 was deposited in inmates' accounts (to be given them when they completed work release). The balance of the inmates' net earnings were used to pay other court-ordered obligations, such as restitution or child support.

D. Auditing Procedures

Correctional services in Florida are organized under five regional offices. Typically, there are two or three audits by the regional office of each work release center's financial records each year. Audits by the DOC Inspector General are less frequent and are done on a "spot check" basis. However, if a spot check turns up a problem, then the Inspector General will do a full audit. Each year five or six state correctional institutions (usually including at least one work release center) are selected for a full management review, which involves an in-depth financial and performance audit.

APPENDIX D

**Statutory and Case Law
Provisions Relating to Imposition
of Correctional Service Fees**

Appendix D: Statutory and Case Law Provisions Relating to Imposition of Correctional Service Fees

I. Description of Correctional Service Fees

Correctional fees are charges levied against sentenced offenders (a) to defray all or part of the costs of correctional custody, care, supervision or services provided to them, or (b) to generate revenue to provide new or enhance existing correctional services for those offenders. Thus, they are distinguished from other financial obligations imposed on sentenced offenders to inflict punishment (e.g., fines), to restore victim losses (e.g., restitution), or to enforce performance of obligations (e.g., child support payments). Likewise, correctional fees are distinguished from assessments levied on convicted offenders to support programs or services in which the offender does not partake—e.g., an assessment paid to a crime victims' reparation fund.

Correctional fees currently are authorized in one form or another in 48 states, the District of Columbia, and the Virgin Islands. They are authorized for four general groups of offenders: (1) prison inmates, (2) jail inmates, (3) probationers, and (4) parolees.

In the analysis that follows, the prison inmate category covers all offenders under the legal custody of state commissioners of corrections, including inmates:

- confined in state prisons;
- placed, at the commissioner's discretion, in community-based pre-release, work release, or furlough programs (some of which may be operated out of local jails); and,
- serving state confinement sentences in local jails due to state prison crowding.

The probation category includes persons receiving "split sentences" in which a jail term (which may include work release) is imposed by the court, followed by a period of community supervision. The jail category includes offenders with "straight" jail sentences. The parole category includes persons released from prison at the discretion of a parole board, as well as persons transferred to a period of required community supervision following completion of a determinate prison sentence.

Statutes enabling the collection of correctional fees for these four offender groups are distributed as follows:

Table D-1:

Number of States with Correctional Fee Enabling Legislation

Offender Group Subject to Fees	Number of Jurisdictions with One of More Enabling Statutes
Prison Inmates	36
Jail Inmates	26
Parolees	15
Probationers	28

Michigan enacted the first correctional fee statute in 1846 when it authorized counties to charge jail inmates for the costs of medical care. For the next 125 years fee legislation dealt mostly with *confined* offenders. Table D-2 shows the distribution of enabling statutes by offender types before and after 1970.

Table D-2:

Number of State Correctional Fee Enabling Statutes Passed Before and After 1970

Years	Prison Inmates	Jail Inmates	Parolees	Probationers	Total
before 1970	12	17	3	8	49
1970 and after	15	9	12	20	56
Total	36	26	15	28	105

The pace of correctional fee legislation enactment has increased and its focus has shifted since 1970. More states enacted correctional fee statutes between 1970 and 1987 than in the previous 125 years. Sixty-two per cent of the states imposing service fees on confined offenders enacted their legislation before 1970. By contrast, 74 per cent of the states imposing fees on offenders under community supervision passed their laws in the last 17 years.

Complete listings of states with correctional fee laws are provided in Tables D-6 through D-9, at the end of this report. In the material that follows, the *statutes* enabling correctional fees, and not the states, are the unit of analysis. Some states have two or more laws affecting the same general offender

category. For example, one state may have two statutes authorizing fees for different classes of prison inmates, i.e., one for those on work release, and another for those working in prison industries.

Statutes governing fees for prison inmates

In the 36 states noted above there are 51 statutes permitting imposition of fees on classes of prison inmates.

Offender classes covered. Twenty-five statutes permit fees for inmates placed on work release, work furlough, or pre-release status, making them the most frequent class on whom fees are imposed. Inmates in such programs usually reside in community residential facilities, local jails, or minimum security units outside prisons' main security perimeter. Nonetheless, they remain under the custody of the Commissioner or Corrections and are legally classified as prison inmates.

Nineteen statutes permit fees to be charged to any inmates who have the ability to pay. For example, eight statutes enable fees to be charged to inmates working in paid employment, while three permit service fees for inmates employed in prison industries. A breakdown of specific criteria follows:

<u>Inmate category</u>	<u>Number of Statutes</u>
Inmates working in paid employment	9
Inmates able to pay	3
Inmates working in prison industries	3
Inmates working while in custody	2
Inmates earning minimum wage	1
Inmates in job training programs	1

In many states, these more general statutory criteria (i.e., ability to pay; working in paid employment) also could be used to impose fees on inmates participating in community work release or pre-release programs.

Three statutes authorize fees to recover costs of inmates' medical care. Two statutes permit imposing fees on inmates who escape and are recaptured. Finally, two statutes authorize charging fees to all state prison inmates.

Purposes and disposition of fees. Forty statutes authorize correctional fees to defray all or part of the cost of confinement, including room and/or board, either in prisons or work release centers. Two statutes permit imposition of fees to recoup cost of medical care provided to inmates. One statute permits fees to be levied equal to the cost of recapturing and returning inmates who have escaped or absconded.

Only four statutes require fees to be deposited in the state's general fund, where they are not directly available for allocation to correctional purposes. Under 47 statutes, or 92 percent of the total, fees collected are retained by Depart-

ments of Corrections. Four of these require fees to be deposited in a special fund earmarked for a specific correctional purpose—e.g., a Prison Industries Fund, a Prisoner Benefit Fund, etc. Under the remaining 43 statutes corrections officials have somewhat more discretion in deciding how to expend fee receipts within the general purpose authorized (typically, to defray costs of confinement.)

Limits on fees. Thirty-one statutes (61 per cent of the total) set no limits on the amount of fees that may be charged to prison inmates. Seven permit fees representing "reasonable costs." Five limit fees to no more than 50 percent of inmates' monthly wages. One statute allows fees equal to the average per capita cost of confinement, while another permits fees based on cost of care reflected in the Department of Correction's current budget. One statute limits fees to no more than 90 percent of monthly wages, and another to no more than 25 percent of wages. One limits fees to the lesser of \$4 per day or 20 percent of wages.

Statutes authorizing fees for jail inmates

The 26 states permitting correctional fees for jail inmates enacted a total of 31 statutes.

Offender classes covered. Sixteen statutes (52 percent of the total) authorize fees for persons on work release, while six permit fees to be assessed to all jail inmates. Five statutes enable fees for jail inmates who are employed or have earnings. One statute permits fees only for sentenced jail inmates. Employed jail inmates residing in community residential facilities can be charged fees under one statute, and one allows fees to be charged to jail inmates receiving unemployment compensation or job training benefits.

Purposes and disposition of fees. Twenty-two statutes (71 percent of the total) allow fees to be used to defray costs of confinement, including room, board, and jail maintenance. One statute allows receipts to be used to pay for costs of community residential placements.

Under twenty-seven statutes (87 percent of the total) jail inmate fees are retained by the jailing authority. In twenty-five of these the Sheriff retains collected fees and may spend them for the purposes authorized. Because those purposes are typically worded in general terms (i.e., "costs of confinement") jail administrators have substantial discretion in spending collected fees. Two statutes create special funds earmarked for specific jail purposes. Seven statutes require that collected fees be deposited in a state or county general fund, where they are not available for direct expenditure for jail or correctional purposes.

Limits on fees. Seventeen statutes (55 percent of the total) set no limits on fees that may be charged to jail inmates. One statute limits fees to an amount equal to the sheriff's daily allowance for room and board, while two permit the imposition of "reasonable" fees. One statute gives judges the authority to determine the level of fees for jail inmates.

Other statutes employ a variety of criteria, including:

<u>Criteria</u>	<u>Number of Statutes</u>
\$5 per day	1
\$10 per conviction	1
Lesser of \$10 per day or 10% of wages	1
25 percent of wages	1
33 percent of wages	1
50 percent of wages	1
75 percent of wages	2

Statutes governing fees for parolees

Fifteen states enacted seventeen statutes enabling imposition of service fees on parolees.

Offender classes covered. Eleven statutes (65 percent of the total) allow fees to be imposed on all persons granted parole, while two apply to parolees in a residential community centers who are gainfully employed. Two apply to parolees receiving treatment or other necessary services from public or private agencies outside parole. One permits fees to be levied on all gainfully employed parolees, and one allows fees to be imposed on parolees who abscond and are recaptured and returned.

Purposes and distribution of fees. Twelve statutes (71 percent of the total) authorize fees to defray all or part of the costs of supervision, service or treatment. One is imposed to defray costs of capturing and transporting parolees who escape or abscond.

Fourteen statutes (82 percent of the total) allow the parole agency to retain collected fees. Under ten of these statutes the parole authority retains fees and has some discretion to expend them for the range of purposes authorized. One statute splits collected fees between the state's general fund and a special fund earmarked for intensive parole supervision. Three statutes require that fees be deposited in a fund earmarked for special parole purposes. Under the remaining three statutes, fees are deposited in the state's general fund.

Limits on fees. Six statutes (35 percent of the total) set no limits on the amounts of fees that may be levied on parolees. Five statutes set flat fees:

\$10 per month	2
\$15 per month	2
\$20 per month, \$40 per month if on intensive supervision.	1

Two statutes set upper limits on fees, but give parole officials discretion to establish lower amounts. One of these limits fees to \$35 per month or less, and another to 25 percent of monthly wages or less. One statute sets a lower, but not an upper, limit—that is, fees may not be less than \$12 per month.

The balance of the statutes set ranges within which fee amounts are set by administrators:

\$10 - \$50 per month	1
\$30 - \$50 per month	1
\$500 - \$2,500 if felony, and \$100 - \$500 if misdemeanor.	1

Under the latter statute a total fee amount is established at the outset of supervision, which may be collected in a lump sum, or on a monthly basis.

Statutes governing fees for probationers

The twenty-six states using correctional fees for probationers enacted a total of twenty-nine statutes.

Offender classes covered. Fourteen statutes (48 percent of the total) permit imposition of fees on all persons placed on probation. Five statutes limit fees to persons who are performing work release while serving the jail portion of a "split" (jail/probation) sentence. One statute limits fees to gainfully employed probationers. Another authorizes fees only for misdemeanants placed on probation. One statute limits fee imposition to those convicted of certain substance abuse laws.

Four statutes permit fees to be levied on offenders subjected to specified conditions of probation. These include two statutes authorizing fees for offenders required to be in a community residential facility, one authorizing fees for probationers in home confinement, and one authorizing fees for offenders required to undergo drug testing. Finally, three statutes allow probation agencies to impose a surcharge fee to defray administrative costs of collecting restitution, support payment, or other court-imposed obligations.

Purposes and disposition of fees. Under twenty-three statutes (79 percent of the total) probation agencies retain collected fees and use them for authorized purposes. Of these, eleven permit the probation agency to retain the fees and use them for supervision and operational expenses. Six statutes require fees to be deposited in earmarked funds, available only for specified probation purposes. Three statutes require that collected fees be used to defray the costs of community residential services provided to offenders paying the fee. Three permit sheriffs to retain fees to defray costs of work release programs operated as part of a split sentence. One statute allows fee receipts to be used to defray costs of drug testing. Finally, seven statutes require fees to be deposited in state or county general funds, where they are not directly available for correctional purposes.

Limits on fees. Eleven statutes (38 percent of the total) do not set limits on amounts of fees. For the remaining statutes limits vary widely. Four set "flat" probation fees:

\$10 per month
\$15 per month

\$50 (one time fee)

\$20 per month if regular, \$40 per month if on intensive supervision.

Three set ranges within which judges determine actual fees:

\$10 – \$50 per month

\$30 – \$50 per month

\$500 – \$2,500 if felony; \$100 – \$500 if misdemeanor.

Again, under the latter statute, a fee within the range is established at the outset of supervision. That fee may be paid as a lump sum, or in monthly installments.

Two statutes set upper limits on fees. For example, one limits fees to no more than \$40 per month, while another limits fees to no more than \$35 per day. One statute establishes both an initial fee and a monthly fee. For felons, the initial fee can vary between \$25 and \$100 while subsequent monthly fees may not exceed \$50. For misdemeanants, the initial fee is fixed at \$15, while subsequent monthly fees may not exceed \$10.

Finally, three statutes set fees as a percent of other costs the probation agency is ordered to collect. For example, under one statute probation departments may levy a surcharge equal to 10 percent of the restitution a court orders an offender to pay. Another authorizes the probation agency to levy a surcharge equal to one percent of court-order child support payments. Finally, one statute authorizes the probation agency to levy a surcharge of not more than five percent of any other court imposed costs that probation is required to collect.

II. Provisions Governing Exemption of Offenders from Payment of Correctional Service Fees

The following table, D-3, shows mandatory versus discretionary imposition of fees, and the proportion of statutes with no stated waiver criteria from service fees in the four offender categories:

Table D-3:
Statutes Mandating Fees for Offenders

<u>Offender Category</u>	<u>Percent Mandatory</u>	<u>Percent with No Stated Waiver Criteria</u>
State Prisoners	72%	84%
Jail Inmates	64%	79%
Parolees	68%	26%
Probationers	56%	54%

Most statutes for all four categories apply the fees in a mandatory fashion. In theory, this should promote more uniform application of service fees, and result in higher levels of revenues than discretionary application. Except for parol-

ees, a majority of statutes do not list criteria for waiving fee imposition. While a bare majority of the probation fee statutes do not list waiver criteria, the rate (54%) is considerably lower than that for confined offenders (prisoners, 84%; jail inmates, 79%). Hence, in general, statutes enabling fees for persons in community supervision are more likely to include waiver fee criteria than statutes dealing with confined populations.

It also is important to examine the procedures prescribed in statutes to determine factual questions for invoking waivers. Just as most statutes are silent on waiver criteria, an even higher number are silent on the procedures to govern decisions about granting or denying waivers.

Prison Inmates:

The most commonly listed grounds for a fee waiver is “unable to work,” which is enumerated in five statutes. Two statutes permit exemptions for inmates supporting dependents. One permits waivers of inmates who have no assets. One statute permits waivers that are warranted by special circumstances or just and reasonable cause.

Only three statutes contain language relative to the decision making process used in granting waivers. One merely requires an inmate’s ability to work to be “considered” by the Commissioner of Corrections. Another requires the Commissioner of Corrections to promulgate administrative rules to protect inmates’ due process rights in exemption decisions. One grants inmates the “opportunity” to present reasons for opposition to fee assessment.

Jail Inmates:

Five statutes permit waivers if the inmate is unable to pay, and one if the imposition of fees would create an undue hardship. In two statutes, a separate judicial hearing is scheduled (if requested) to determine jail inmates’ ability to pay. In one statute that determination is made by the County Board of Commissioners.

Parolees:

There is greater diversity in waiver criteria among parolees. Six statutes permit exemptions based on “undue” or “unnecessary” hardship. Five permit exemptions based on inability to pay. One statute contains a three-fold criteria for exemption, based on inability to pay, existence of an employment handicap, or inability to find employment after a good faith attempt. One statute has a five-fold set of criteria, permitting exemption if the offender:

- has made a diligent, but unsuccessful, attempt to find employment;
- is a student (or is engaged in course of academic or vocational study to prepare one for employment);

- has an employment handicap;
- has dependents which he supports, and on whom the fee would pose an undue hardship;
- has some other extenuating circumstance.

One statute provides for a court hearing (if requested) on issues of exemption from parole service fees. Otherwise, the statutes are silent on issues of process.

Probationers:

Six statutes permit waivers based on inability to pay, while four enable exemptions based on undue hardship. One statute exempts offenders supervised in other states under the Interstate Compact. One statute has a three-fold criteria: unable to pay; employment handicap; and inability to find job after good faith effort. Three statutes contain a five-fold criteria:

- Inability to find work after good faith effort;
- Student Status
- Employment handicap;
- Offender supports dependents and fees would produce an undue hardship;
- Other extenuating factors exist bearing on ability to pay.

Four statutes require court hearings, if requested, on factual issues surround granting of exemptions. Two require hearings by the DOC to determine factual questions on exemption requests.

III. Synopsis of Case Law

There is little case law on correctional fees. Generally, case law has upheld imposition of statutorily authorized fees for persons in prison, on work release, and on probation, and has established procedural requirements governing revocations of probation for failure to pay supervision fees.

In *Cumbey v. State*, 699 P.2d 1094 (1985), the Oklahoma Supreme Court held constitutional a statute authorizing the State to recover costs of confinement by imposing fees on prison inmates not to exceed 50 percent of the income they earned in employment outside prison industries. The Court reaffirmed the principle that inmates' labor *belongs* to the state and that inmates' compensation is solely by the grace of the state and governed by rules promulgated by legislative direction. The Court held that the State may authorize use of inmate labor outside of state prison industries, but that compensation received by inmates is a gratuity, subject to reasonable restriction by the State. Finally, the Court held that withholding up to 50 percent of inmates' wages to pay for costs of incarceration is reasonably related to the legitimate state goal of maintaining state prisons in conformity with constitutional standards.

In *State v. Mears*, 654 P.2d 29 (1982), the Arizona Supreme Court upheld a statute mandating imposition of a probation supervision fee. The appellant argued that the statute violated the division of powers clause of the state constitution, by making the judge's sentencing decision little more than a clerical function. The Supreme Court rejected that position, noting that the sentencing judge had broad discretion to determine whether a defendant was able to pay a fee, and to set supervision fees at lower levels consistent with ability to pay. The Court cited an earlier Arizona case upholding mandatory imprisonment laws, noting that the Legislature has an "inherent power" to prescribe punishment for acts its has prohibited as criminal. The appellant also argued that the probation fee violated due process because it was not rehabilitative and did not further the goals of criminal justice. The Court rejected that position, noting that probation fees should be beneficial in the rehabilitation of offenders, and would strengthen the state's ability to finance its probation services.

In *Ervin v. Blackwell*, 733 F.2d 1282 (1984), a former Missouri inmate filed a civil rights action in Federal District Court to recover maintenance costs deducted from wages he earned in a work release program operated by the Division of Corrections. The Federal District Court denied his petition, and he appealed to the Eighth Circuit Court of Appeals. At the time of Ervin's participation, work release was broadly described in statute, but the maintenance fee was authorized and defined in administrative rules promulgated by the Division. (Missouri later passed legislation specifically enabling collection of maintenance fees.)

The Circuit Court of Appeals noted that Ervin would have to show he had a protectable property interest—a legitimate claim of entitlement—to the full salary earned in the program in order to invoke the civil rights statute. The Court found that the Director of the Division of Corrections had authority to develop rules for the work release program under a general statute permitting him to promulgate rules and regulations, consistent with state law, which he deemed proper for the government and management of state prisons. The Court found that the rules promulgated to govern the work release program clearly stated that payment of maintenance fees was a condition of participation, and concluded, therefore, that withholding maintenance fees was not an arbitrary action of government demanding of due process protection.

Three Florida cases deal with probation revocation for failure to pay supervision fees. In *McCrary v. State*, 464 So.2d 670 (1985) the Florida District Court of Appeals reaffirmed an earlier doctrine established in *Coxon v. State*, 365 So.2d 1067 (1979), holding that probation cannot be revoked solely for violation of a condition to pay supervision fees without evidence that the probationer was able to make the payments. For seven months McCrary failed to pay a \$10 supervision fee, and was \$70 in arrears when he absconded from supervision.

The State argued that his absconding prevented them from providing evidence of his ability to pay the fees. The Court of Appeals noted that the State had ample time during the seven months he remained on supervision to develop evidence regarding his ability to pay supervision fees.

In *Robinson v. State*, 468 So.2d 1106 (1985) the Florida District Court of Appeals held that to establish proof that a probationer had the ability to pay monthly supervision fees, the judge must have evidence about the probationer's financial resources, and the nature of the burden that payment of the fee would impose upon the probationer.

IV. Conclusions

Systematic differences in statutory provisions are evident among the four offender categories. Because most statutes enabling service fees for offenders with community sentences have been enacted in the past 17 years, these differences may reflect more recent trends in fee legislation affecting both criminal and non-criminal populations.

Table D-4 shows differences in the use and disposition of collected fees among the four offender categories:

	<u>Collecting Agency Retains?</u>		
	<u>Yes, limited discretion to spend</u>	<u>Yes, but specified or earmarked</u>	<u>No, deposited in state general or special purpose fund*</u>
State Prisoners	84%	8%	8%
Jail Inmates	80%	7%	13%
Parolees	59%	23%	18%
Probationers	37%	40%	23%

*This might include, for example, deposit of fee receipts in a fund used to pay compensation to crime victims.

Correctional fees collected from offenders under community supervision are somewhat more likely to be deposited in general funds than fees collected from confined inmates. Still, about four out of five statutes permit fees collected from offenders under community supervision to be used for a correctional purpose. There is, however, a marked increase in the use of special purpose earmarked funds for probation discretion in the expenditure of collected fees.

Table D-5 shows a similar shift in statutory limits on amounts of fees:

**Table D-5:
Percent of Correctional Fee Statutes that Set Limits on Fee Amount**

<u>Offender Category</u>	<u>Limits on Fees</u>	
	<u>No</u>	<u>Yes</u>
State Prisoners	61%	39%
Jail Inmates	55%	45%
Parolees	35%	65%
Probationers	37%	63%

Statutes enabling fees for prison and jail inmates usually specify no limits on the amount of fees that can be charged. Conversely, most statutes authorizing fees for persons on probation or parole set explicit limits on amounts of fees imposed.

**Table D-6:
States With Legislation Permitting Service Fees to be Levied on Prison Inmates**

- | | |
|-------------------------|--------------------|
| 1. Alabama | 19. Missouri |
| 2. Alaska | 20. Montana |
| 3. Arizona | 21. Nebraska |
| 4. Arkansas | 22. Nevada |
| 5. Colorado | 23. New Jersey |
| 6. Connecticut | 24. New Mexico |
| 7. District of Columbia | 25. New York |
| 8. Florida | 26. North Dakota |
| 9. Georgia | 27. Oklahoma |
| 10. Hawaii | 28. Pennsylvania |
| 11. Illinois | 29. Rhode Island |
| 12. Iowa | 30. South Carolina |
| 13. Kansas | 31. Texas |
| 14. Maine | 32. Utah |
| 15. Maryland | 33. Vermont |
| 16. Massachusetts | 34. Washington |
| 17. Michigan | 35. Wisconsin |
| 18. Minnesota | 36. Wyoming |

**Table D-7:
States With Legislation Permitting Service Fees to be Levied on Jail Inmates**

- | | |
|------------------|--------------------|
| 1. Alabama | 14. Nevada |
| 2. Arkansas | 15. New Hampshire |
| 3. California | 16. New Jersey |
| 4. Colorado | 17. New York |
| 5. Illinois | 18. North Carolina |
| 6. Iowa | 19. Ohio |
| 7. Maryland | 20. Oregon |
| 8. Massachusetts | 21. Pennsylvania |
| 9. Michigan | 22. South Dakota |
| 10. Minnesota | 23. Tennessee |
| 11. Missouri | 24. West Virginia |
| 12. Montana | 25. Wisconsin |
| 13. Nebraska | 26. Wyoming |

Table D-8:
**States With Legislation Permitting Service Fees
to be Levied on Parolees**

- | | |
|----------------|--------------------|
| 1. Alabama | 9. Montana |
| 2. Arizona | 10. Nevada |
| 3. Arkansas | 11. North Carolina |
| 4. Florida | 12. Oklahoma |
| 5. Idaho | 13. South Carolina |
| 6. Kentucky | 14. Vermont |
| 7. Louisiana | 15. Washington |
| 8. Mississippi | |

Table D-9:
**States With Legislation Permitting Service Fees
to be Levied on Probationers**

- | | |
|-------------------|--------------------|
| 1. Alabama | 15. Nebraska |
| 2. Arizona | 16. Nevada |
| 3. Arkansas | 17. New Hampshire |
| 4. California | 18. North Carolina |
| 5. Colorado | 19. Oklahoma |
| 6. Florida | 20. Oregon |
| 7. Idaho | 21. South Carolina |
| 8. Illinois | 22. South Dakota |
| 9. Indiana | 23. Texas |
| 10. Louisiana | 24. Utah |
| 11. Massachusetts | 25. Vermont |
| 12. Minnesota | 26. Virgin Islands |
| 13. Mississippi | 27. Washington |
| 14. Missouri | 28. Wisconsin |

APPENDIX E

Fee Collection by Local Probation Agencies in California and Indiana

Appendix E: Fee Collection by Local Probation Agencies in California and Indiana

In most states, probation is a state function, with centralized policy setting, administration and accounting, although services are delivered through regional offices. In some other states (like Texas) probation is run locally, but a state agency exists with authority to oversee local agencies and set standards. Thus, in all states responding to our survey (other than California and Indiana), information was provided on a statewide basis.

In Indiana and California, however, probation administration is totally decentralized. In California probation is run by counties. In Indiana, it is run by the courts, which themselves are decentralized. In order to get information on fee collection practices, we sent survey forms to 58 California County probation departments, and 111 court-based probation agencies in Indiana. Twenty California probation departments responded, or 34.5%, responded. Thirty-two Indiana probation departments – or 28.8% responded.

In both states respondents over-represented small probation departments. None of the largest counties in either state responded. We decided against trying to infer statewide fee collection patterns from such unrepresentative data. Rather, we have chosen to present the California and Indiana data separately in a descriptive format.

Fee usage varies greatly among responding agencies in California and Indiana. Half the California respondents (10 of 20) do not collect correctional fees (California law does not mandate fee use), while 31 of 32 responding Indiana departments collect correctional fees.

As shown in Table E-1, priorities differ among respondents in the two states in terms of imposing financial obligations on offenders. In California, fees were the second most common financial obligation imposed on offenders, while restitution was the most common. In Indiana, the order was reversed. In both states responding counties give less emphasis to fines than in state-run probation agencies.

**Table E-1:
Collections by Local Probation Agencies**

Type of Collection	California (N = 20)		Indiana (N = 32)	
	\$	%	\$	%
Child Support	456,098	7.3	59,627	3.6
Fines	682,983	11.0	83,703	5.1
Court Costs	39,951	0.6	20,773	1.3
Attorney Fees	62,728	1.0	0	—
Other Court Costs	77,825	1.3	0	—
Restitution	2,926,097	47.1	443,071	26.9
Victim Compensation				
Fund Assessment	417,257	6.7	68,000	4.1
Other Special Funds	77,277	1.2	0	—
Correctional Fees	1,658,181	26.7	981,829	59.6
Total Collections	6,212,046	100.0	1,647,603	100.0

In Indiana, correctional fee collections equalled about 27 percent of the agencies' operating budgets, compared to only four percent in the responding California departments that collect fees. In addition, collection of child support was more common in California probation agencies than in Indiana or among other states.

Another unusual feature in the California and Indiana reporting was that they were the only probation departments to report any significant experience in collecting corrections fees from juvenile offenders. Table E-2 shows the types of correctional fees collected by local probation agencies responding from California and Indiana, including both adult and juvenile collections.

Table E-2:

Types of Fees Charged by Responding California and Indiana Probation Departments

Type of Fee	Adult		Juvenile	
	Cali- fornia n = 10	Indi- ana n = 26	Cali- fornia n = 8	Indi- ana n = 17
Program Fees				
Supervision Fee	6	26	1	17
Work Release (Room & Board)	4	4	1	1
Residential Center (Room and Board)	1	2	6	2
Other Room and Board	1	2	2	1
Service Fees				
Presentence Investigation	5	1	8	0
Health Services	1	0	3	0
Mental Health	0	5	2	0
Drug Use Testing	4	11	1	6
Community Service	6	2	2	0
Antabuse/Trexan	1	3	5	1
Restitution Surcharge	10	1	5	1
Other	2	2	0	5

In addition to the use of juvenile collections, an important pattern stands out in Table E-2. Indiana, it can be seen, places a particularly strong emphasis on program fees, while California emphasizes service fees. Since, as discussed in Chapter 2, program fees are far more effective in raising revenues than service fees, this provides a powerful explanation of why the Indiana departments collect fees equal to over 27 percent of their operating budgets, while California collections average less than 4 percent of their operating budgets.

Table E-3 below shows the criteria used in the California and Indiana local departments for waiving correctional fees.

**Table E-3:
Fee Waiver Criteria**

Criteria	California n = 10	Indiana n = 26
Employment handicap/ unable to work	9	16
Undue hardship on dependents	8	12
No assets/unable to pay	10	14
Unable to find job	8	12
Student status	5	12
Interstate supervision	2	7
Special circumstances	9	15
Other	1	5

Table E-4 shows the forms of payment accepted in collecting correctional fees.

Table E-4:

Forms of Payment for Correctional Fees

Form of Payment	California n = 10		Indiana n = 26	
	#	%	#	%
Cash	10	100.0	25	96.1
Certified Checks or Money Orders	10	100.0	26	100.0
Travellers Checks	9	90.0	9	34.6
Personal Checks	8	80.0	9	34.6
Credit Cards	2	20.0	0	—
Automatic Deductions	0	—	3	11.5

Both California and Indiana respondents are more likely to accept cash payments than are probation departments in other states. California respondents also have a higher rate of accepting personal checks than probation departments elsewhere.

Table E-5 shows the sanctions used by the Indiana and California local probation departments to enforce the payment of correctional fees.

**Table E-5:
Sanctions Used to Enforce Fee Payment**

Types of Sanction	California n = 10	Indiana n = 26
None	3	6
Reprimand	7	18
Community Service	2	10
Increase Payments	2	6
Extend Supervision	3	19
Confinement	1	11
Other	4	3

There are clear differences in use of sanctions to enforce fee payment among respondents in California and Indiana. Only one California agency (10% of the respondents collecting fees) reported using confinement as a sanction for non-payment, compared to 42 percent of the Indiana respondents. In fact, California law prohibits imposing confinement based

solely on non-payment of fees. Indiana departments also were more likely to extend supervision (73.1%) for non-payment, compared to California (30%). The availability of community service as a sanction was twice as common in Indiana (38.5% vs. 20%).