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Fees for Supervision

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FEEES FOR SUPERVISION

Introduction

In 1980, the Law Enforcement Assistance Administration released a monograph entitled Fees For Correctional Services: A Survey. The monograph, by Joseph H. Sasfy, reported that nine states were charging supervision fees to either probationers or parolees, with legislatures in three additional states considering establishing such programs. Sasfy concludes in his report that "...it would not be surprising to see other states...introduce legislation supporting the supervision fee practice." Sasfy's prediction has proven to be accurate. Due to the interest in current information about fees programs, LISI contract staff at the National Institute of Corrections Information Center surveyed state and federal probation and parole authorities in the spring of 1983. That survey identified twenty-three states that were charging supervision fees to probationers or parolees. The results of the survey are reported in the following pages.

The issue of fees for correctional supervision remains controversial within the field of corrections, despite the rapid expansion of the practice in recent years. Although supervision fees have won support for both philosophical and economic reasons, many correctional administrators continue to oppose them vigorously. The National Institute of Corrections has taken no position in support or opposition to the practice of collecting supervision fees. Therefore, it is the intent of the writers of this report, Larry Linke and Barbara Krauth, to remain neutral on this issue, while identifying both the positive features of existing supervision fee programs and the reasons for continued opposition to them by some correctional administrators.

Background

As reported by Sasfy in 1980, courts or paroling authorities have required a variety of financial payments as conditions of release for probationers or parolees. Those payments have been for fines, court costs, attorney's fees, victim restitution or compensation, or family support. But offenders are also being required to pay for correctional services associated with their supervision. Sasfy lists three types of services for which fees are being charged:

1. room and board for offenders in transitional residential programs (halfway houses, work release or pre-release centers, or restitution centers),

2. fees for specific services (substance abuse treatment, counseling, etc.), and

3. fees for general correctional supervision.

This report focuses only on the third type of fee, those collected for general supervision of offenders on probation or parole.

In 1980, Sasfy identified nine states in which supervision fees were collected. In a survey in the spring of 1983 by LISI contract staff at the NIC Information Center, the collection of supervision fees was reported in twenty-three states. Following is a list of those states, the offender groups (either probationers or parolees) being assessed the supervision fees, and the year the fees program began.

<u>Year</u>	<u>State</u>	<u>Probation</u>	<u>Parole</u>
1977	Alabama	•	•
1978	Arizona	•	
1982	California	•	
1949	Colorado	•	
1974	Florida	•	•
1982	Georgia	•	
1982	Indiana	•	
1982	Kentucky	•	•
1981	Louisiana		•
1929	Michigan	•(misd. only)	
1979	Mississippi	•	•
1983	Nevada	•	•
1960s	New Mexico	•	•
1982	North Carolina	•	•
1981	Oklahoma	•	•
1981	Oregon	•	•
1960s	Pennsylvania	•(2 counties only)	
1980	South Carolina	•	•
N/A	South Dakota	•	
1979	Tennessee	•	•
1960s	Texas	•	
1981	Virginia	•	•
1982	Washington	•	•

Supervision Fee Rates

The methods used to determine the amount of the supervision fees to be paid by offenders fall within five categories. Following is a summary of the categories:

A. Uniform monthly rates

This method of setting supervision fees is by far the most common within the 23 identified programs. It involves an established monthly fee (usually specified by statute) which is required of all offenders, regardless of their economic status. Ten states reported such systems:

<u>State</u>	<u>Monthly Fee</u>
Alabama	\$15
Mississippi	\$15
Nevada	\$12
North Carolina	\$10
Oklahoma	\$10
Oregon	\$10
South Carolina	\$10
Tennessee	\$10
Virginia	\$15
Washington	\$15

B. Flat rate fee

Colorado and Kentucky both report this system, which designates a predetermined, single fee within the period of supervision, regardless of the length of probation. The rates of supervision fees in Colorado are \$100 for felony cases and \$50 for misdemeanors. Kentucky's range from \$500 - \$2,500 for felonies and \$100 - \$500 for misdemeanors.

C. Monthly fees set within an allowable range

A third method for setting fee rates permits the courts or paroling authorities to establish a monthly rate within established minimum or maximum ranges. Such rates are then determined based on the offenders' ability to pay. Four states reported such systems.

<u>State</u>	<u>Monthly Range</u>
Florida	\$10-\$50
Georgia	\$10-\$50
New Mexico	\$15-\$85
Texas	up to \$15

D. Unspecified rates

A fourth method of establishing fee rates permits the fee schedule to be determined at the discretion of the sentencing court or paroling authority. The offender's ability to pay and/or the actual costs of supervision are factors considered in establishing

the individual fees. South Dakota and California provide two examples of states where rates are not specified or limited to specific ranges.

South Dakota law provides sentencing judges with the discretion of requiring payments for certain expenses associated with prosecution and probation costs. However the rate of payment is determined by the sentencing judge, usually based on the recommendation of a court services officer (probation officer). The practice of charging supervision fees was challenged in state court, but upheld as a valid condition of probation in *State v. Long* (1971) 85 SD 431, 185 NW 2d 472. While no specific rate guidelines have been established by statute or case law, the *State v. Long* decision did rule that a \$250 fee assessed in a burglary/larceny conviction was proper.

In California, state legislation authorizes assessment of probation supervision fees. While specific rates or ranges are not defined in the law, sentencing judges are to establish rates based on the following:

1. offenders' ability to pay, and
2. "reasonable costs" of probation services, "not to exceed...the actual average cost thereof."

E. Combined flat rate/monthly fee

In 1982, the Indiana legislature authorized a fee program which combines an initial probation user payment levied at the time of sentencing, with a monthly fee to be paid during the term of probation. Following is a listing of Indiana's fee rates:

	<u>Initial Fee</u>	<u>Monthly Fee</u>
Felony	\$25-\$100	\$5-\$15
Misdemeanor	\$50	\$10

Enabling Legislation

Following are examples of enabling legislation authorizing supervision fees and establishing fee rates or authorizing the determination of rates by criminal justice authorities:

A-Engrossed

Oregon

Senate Bill 589

Ordered by the Senate May 18
(Including Amendments by Senate May 18)

Sponsored by Senator MEEKER (at the request of President of the Senate Fred Heard)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires person on parole, [or] probation or other form of release, subject to supervision by either Corrections Division or community corrections program, to pay fee determined by releasing authority of at least \$10 each month. Provides that fee of person supervised by community corrections program will go to the program. Provides that fee of person supervised by Corrections Division will go to the division. Allows official in charge of supervisory program to waive payment of fee in certain cases.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to corrections; appropriating money; and declaring an emergency.

3 Be It Enacted by the People of the State of Oregon:

4 SECTION 1. (1) A person placed by an authority on probation, parole or other form of release, subject to
5 supervision by either the Corrections Division or a community corrections program established under ORS
6 423.500 to 423.560, shall be required to pay a monthly fee to offset costs of supervising the probation, parole or
7 other supervised release.

8 (2) The fee shall be determined and fixed by the releasing authority but shall be at least \$10. If the releasing
9 authority fails to establish the amount of a released person's fee, the fee shall be \$10. Fees are payable one
10 month following the commencement of probation, parole or other supervised release and at one-month
11 intervals thereafter. The county in which the released person's supervising officer is located shall accept fee
12 payments required under this section and shall cause such moneys to be retained or transferred as follows:

13 (a) If the county maintains a community corrections program under ORS 423.500 to 423.560, except
14 pursuant to ORS 423.535 (3), the fee collected from the released person under this section shall be retained by
15 the county and shall be used by the county in the funding of its community corrections program.

16 (b) If the county does not maintain a community corrections program under ORS 423.500 to 423.560 or
17 maintains a program only under ORS 423.535 (3), the fee collected from the released person under this section
18 shall be transferred to the Corrections Division not later than the 10th day of the month next following receipt
19 of the fee payment. Moneys received by the Corrections Division pursuant to this paragraph are continuously
20 appropriated to the Corrections Division for use in financing Corrections Division field services.

21 (3) Except in the case of a probation granted by a court before that date, the fee requirements imposed by
22 this section apply beginning July 1, 1981, to all persons under supervised probation, parole or other form of
23 supervised release pursuant to subsection (1) of this section, including persons on such supervised release in
24 this state under any interstate agreement. Timely payment of the fee is hereby made a condition of such

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted, complete new sections begin with SECTION.

1 probation, parole or other supervised release. In the case of a probation granted by a court prior to July 1,
2 1981, the court may amend its order granting probation to provide for payment of the fee.

3 (4) In cases of financial hardship or when otherwise advisable in the interest of the released person's
4 rehabilitation, the community corrections program director or the Assistant Director for Corrections,
5 whichever is appropriate, may waive the payment of the fee in whole or in part.

6 SECTION 2. This Act being necessary for the immediate preservation of the public peace, health and
7 safety, an emergency is declared to exist, and this Act takes effect on its passage.

Texas

CODE OF CRIMINAL PROCEDURE

Art. 42.12

Sec. 6a. (a) A court granting probation may fix a fee not exceeding \$15 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation.

(b) The court shall deposit the fees received under Subsection (a) of this section in the special fund of the county treasury provided by Section 4.05(b), Article 42.121 of this Code, to be used for the same purposes for which state-aid may be used under that section.

Mississippi

CHAPTER 462

HOUSE BILL NO. 76

AN ACT to require every offender who is placed on probation or is released on parole or earned probation to the custody of or under the supervision of the Department of Corrections or every offender who participates in the work release program or the supervised earned release program after the effective date of this act to pay \$10.00 monthly to the department, to require that such payments be deposited in the Community Service Revolving Fund through June 30, 1980, and then in the Discharged Offenders Revolving Fund; to amend Section 47-5-161, Mississippi Code of 1972, to delete the requirement that the Commissioner of Corrections retain \$10.00 monthly from the wages of any offender who participates in the work release program and the requirement that wages earned by offenders on work release be paid to the Commissioner; to amend Sections 99-37-5 and 99-37-15, Mississippi Code of 1972, to provide that offenders on probation, earned probation, work release, supervised earned release or parole who fail to make restitution as required by a court may have such probation, earned probation, work release, supervised earned release or parole revoked; and for related purposes.

California

§ 1203.1b. [Payment of probation costs as condition of probation.] (a) In any case in which a defendant is convicted of an offense and granted probation, the court may, after a hearing, make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of probation; and of conducting the presentence investigation and preparing the presentence report made pursuant to Section 1203. The reasonable cost of such services and of probation shall not exceed the amount determined to be the actual average cost thereof. The court may, in its discretion, hold additional hearings during the probationary period. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of such costs. At a hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court. If the court determines that the defendant has the ability to pay all or part of the costs, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

If practicable, the court shall order payments to be made on a monthly basis as directed by the probation officer. Execution may be issued on the order in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

A payment schedule for reimbursement of the costs of presentence investigation based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts.

(b) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the presentence report, and probation, and shall include, but shall not be limited to, the defendant's:

- (1) Present financial position.
- (2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.
- (3) Likelihood that the defendant shall be able to obtain employment within the six-month period from the date of the hearing.
- (4) Any other factor or factors which may bear upon the defendant's financial capability to reimburse the county for the costs.

(c) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time of rendering of the judgment.

(d) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(e) The provisions of this section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors. [1980 ch 555 § 1; 1981 ch 284 § 1.]

Colorado

S U P R E M E C O U R T O F C O L O R A D O

OFFICE OF THE CHIEF JUSTICE

DIRECTIVE TO ALL JUSTICES, JUDGES, DISTRICT ADMINISTRATORS,
CLERKS OF DISTRICT, COMBINED, AND COUNTY COURTS, AND CHIEF
PROBATION OFFICERS REGARDING IMPOSITION OF PROBATION SUPERVISION FEES

WHEREAS, Section 16-11-204(2), Colorado Revised Statutes, 1973, provides that the trial court may require a defendant to pay reasonable costs of supervision of probation, and

WHEREAS, levying such costs is not uniformly done in the courts, and

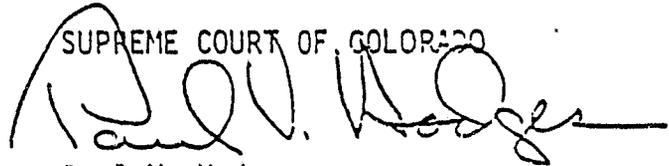
WHEREAS, after study and deliberation, the Supreme Court has decided that uniform fees for probation supervision should be set by the Supreme Court and uniformly assessed in all district and county courts;

NOW THEREFORE, pursuant to Article VI, Section 5(2) of the Colorado Constitution, it is ordered that in each case where supervision by the probation department is ordered, whether pursuant to sentence or suspension thereof following conviction, sentence following entry of a plea of nolo contendere, order of deferred prosecution, or order of deferred sentencing, the court shall impose upon the defendant to be supervised a probation supervision fee. If the charge upon which the defendant is convicted, pleads nolo contendere, agrees to deferred prosecution, or agrees to deferred sentencing is a misdemeanor or petty offense, including misdemeanor traffic offenses, the probation supervision fee shall be \$50.00. If such charge is a felony, the fee shall be \$100.00. The trial court may waive or reduce the fee in any case where the defendant is unable to pay the designated amount.

This directive supersedes Chief Justice Directive No. 10, 1973.

Done and signed in Denver, Colorado, this 6th day of March, 1979.

SUPREME COURT OF COLORADO



Paul V. Hodges
Chief Justice

Florida

945.30 Payment for cost of supervision and rehabilitation.—

(1) Any person under probation or parole supervision, except a person on probation or parole within or without the state under an interstate compact adopted pursuant to chapter 949, shall be required to contribute no less than \$10 or more than \$50 per month as decided by the sentencing court, to a court-approved public or private entity providing him with supervision and rehabilitation. Any failure to pay such contribution shall constitute grounds for the revocation of probation by the court or the revocation of parole by the Parole and Probation Commission. The Department of Corrections may exempt a person from the payment of all or any part of the foregoing contribution if it finds any of the following factors to exist:

(a) The offender has diligently attempted, but been unable, to obtain employment which provides him sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or course of vocational or technical training designed to fit the student for gainful employment. Certification of such student status shall be supplied to the Secretary of Corrections by the educational institution in which the offender is enrolled.

(c) The offender has an employment handicap, as determined by a physical, psychological, or psychiatric examination acceptable to, or ordered by, the secretary.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents, and the payment of such contribution constitutes an undue hardship on the offender.

(f) There are other extenuating circumstances, as determined by the secretary.

(2) In addition to the contribution required under subsection (1), the department shall provide a maximum payment of \$10 per month for each probationer who is contributing \$10 per month to the court-approved public or private entity providing him with supervision or rehabilitation. The department shall make such payment to the court-approved public or private entity providing supervision to the offender under this section. Such payment shall be implemented through a contract to be entered into by the Secretary of Corrections and the public or private entity. Terms of the contract shall state, but not be limited to, the extent of services to be rendered by the public or private entity providing supervision or rehabilitation. In addition, the public or private entity shall supply the department with a monthly report documenting the acceptance of each offender placed under its supervision by the court, documenting the payment of the required contribution by each offender under supervision or rehabilitation, and notifying the department of all offenders for whom supervision or rehabilitation shall be terminated. Supervisory records of the public or private entity shall be open to inspection upon the request of the department or its agents.

*History.—*s. 18, ch. 74-112; s. 2, ch. 76-238; s. 1, ch. 77-321; s. 1, ch. 77-421; s. 1, ch. 78-368; s. 100, ch. 79-3.

Indiana

35-38-2-1. Placing on probation — User's fee. — (a) Whenever it places a person on probation, the court shall specify in the record the conditions of the probation. In addition, if the person was convicted of a felony, the court shall order the person to pay the user's fee under subsection (b) of this section. If the person was convicted of a misdemeanor, the court may order the person to pay the user's fee under subsection (c) of this section. The court may:

(1) Modify the conditions (except a fee payment under subsection (b) of this section); or

(2) Terminate the probation;

at any time. If the person commits an additional crime, the court may revoke the probation.

(b) In addition to any other conditions of probation, the court shall order each person convicted of a felony to pay:

(1) Not less than twenty-five dollars [\$25.00] nor more than one hundred dollars [\$100] as an initial probation user's fee; and

(2) A monthly probation user's fee of not less than five dollars [\$5.00] nor more than fifteen dollars [\$15.00] for each month that the person remains on probation;

to the clerk of the court.

(c) In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay:

(1) Not more than a fifty dollar [\$50.00] initial probation user's fee; and

(2) Not more than a ten dollar [\$10.00] monthly probation user's fee for each month that the person remains on probation;

to the clerk of the court.

(d) All money collected by the clerk under this section shall be transferred to the county treasurer who shall deposit the money into the "supplemental adult probation services fund". The fiscal body of the county shall appropriate money from the supplemental adult probation services fund to the courts of the county for the courts' use in providing probation services to adults.

(e) The supplemental adult probation services fund may only be used for probation services. Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the supplemental adult probation services fund.

(f) A person placed on probation for more than one crime may not be required to pay more than:

(1) One [1] initial probation user's fee; and

(2) One [1] monthly probation user's fee per month;

to the clerk of the court. [IC 35-38-2-1, as added by P.L.311-1983, § 3.]

Indiana Law Review. Comment. Some Observations Regarding Crime Control (Andrew Jacobs, Sr.), 11 *Ind. L. Rev.* 403. Survey of Recent Developments in Indiana

Law, VII. Criminal Law and Procedure (Alan Raphael and Allen Steinberg), 14 *Ind. L. Rev.* 257.

DECISIONS UNDER PRIOR LAW

ANALYSIS

Commission of additional crime.

Conditions of probation.

—Acceptance of plea recommendation omitting punitive condition.

—Written statement to defendant.

Power to suspend sentence.

Sentence under prior law.

Commission of Additional Crime.

That probationer should not commit an additional crime is automatically a condition

of probation by operation of law without a specific provision to that effect. *Jaynes v. State*. — *Ind. App.* —, 437 N.E.2d 137 (1982).

Conditions of Probation.

—Acceptance of Plea Recommendation Omitting Punitive Condition.

If a trial court accepts a plea recommendation which does not include or specify a condition of probation which imposes a substantial obligation of a punitive nature, such as a restitution order, the court may not impose such

Waivers of Fee Payments

Supervision fee programs permit the waiver or reduction of payments in some situations. But the waiver/reduction of fees also presents one of the controversial aspects of fee programs. Questions raised by these procedures for modifying payments include the following:

- Do the efforts to verify and process fee modifications consume staff resources to the detriment of more important supervision/treatment functions?
- Are decisions to waive or reduce payments made consistently and equitably?

Regarding the first question, no information is available relating to the exact amount of time and effort devoted to various supervision fee activities (verification of ability to pay, collection, or processing fee modifications). Opponents of supervision fees argue that the fee collection consumes a disproportionate amount of staff resources and infringes on treatment/supervision activities of a higher priority.

With respect to the second question, a number of states have developed criteria and guidelines for fee modification decisions. In most states, the authority to waive or reduce fees rests with the official(s) granting release to the community, the sentencing judge or parole board.* However, in other states that authority is also vested in the Department of Corrections (Florida), the Chief Probation Officer (Nevada, Georgia), Deputy Commissioner of the State Department of Corrections (Mississippi). In Washington and Tennessee, the parole board may authorize waivers or reductions for both probationers and parolees.

The percentage of offenders receiving waivers for the fee payment requirement varies considerably among the states with fee programs. Following is a list of states that have documented the percentage of offenders receiving waivers for the supervision fee requirement:

State	% Waived
Alabama	15
Florida	10-15
Georgia	Less than 10
Louisiana	10
New Mexico	20
North Carolina	85
Oregon	25
South Carolina	11
Tennessee	30
Virginia	40

Following are selected examples of state guidelines for the modification of supervision fee requirements:

* Alabama, California, Colorado, Georgia, Louisiana, North Carolina, Oregon, South Carolina, Texas, Virginia

Tennessee

EXEMPTIONS

At the conclusion of this subsection, the exemptions created in Public Chapter 319 are listed. They correspond numerically with the exemptions listed on the Exemption Application. The eighth exemption on this application is provided for extenuating circumstances which the officer will explain on an attachment which is forwarded with the exemption application. This application is forwarded through channels to the Chairman of the Parole Board who, by return of the form will approve or disapprove the exemption. A client requesting an exemption is obligated to continue to pay the required fees until the exemption is granted. The exemption criteria are as follows:

1. If a client's sole income is from Social Security or welfare benefits.
2. If the client has doctor, hospital or medical expenses exceeding 25% of total gross monthly income and is not covered by insurance, workman's compensation or any other source of reimbursement.
3. If a client has a certificate from a doctor, whose residence is in Tennessee and is licensed to practice in the State of Tennessee, stating that s/he is physically or mentally incapable of working.
4. Any client transferred to or from other states under the supervision of the Interstate Compact for the Supervision of Probationers.
5. If a client has an excessive amount of gross monthly income obligated for court ordered expenses such as alimony, child support, etc.
6. Any person already paying restitution to a victim under a Department of Correction program shall be exempted from the contributions to the Criminal Injuries Compensation Fund, but shall not be exempt from contributions to the Rehabilitation and Supervision Fund required by sub-section (a) of this section.
7. Any person whose income falls below the poverty level according to the latest determination by the United States Bureau of Census.

Tennessee (Cont.)

FARM AND NON-FARM INCOME GUIDELINES

What follows are the income guidelines for farm and non-farm families:

Poverty Income Guideline - Revised (8/1/80)

<u>Family Size</u>	<u>Non-Farm Family</u>	<u>Farm Family</u>
1	3,790	3,250
2	5,010	4,280
3	6,230	5,310
4	7,450	6,340
5	8,670	7,370
6	9,890	8,400
7	11,110	9,430
8	12,330	10,460
9	13,550	11,490
10	14,770	12,520
11	15,990	13,550
12	17,210	14,580

Income limits for families of more than 12 persons are determined by adding \$1,220.00 for each additional member of a non-farm family and \$1,030.00 for each additional member of a farm family.

California (RIVERSIDE COUNTY
Prob. Dept.)

AVERAGE MONTHLY
INCOME (GROSS)

MONTHLY PAYMENT AMOUNT

Number of persons supported including probationer

	1	2	3	4	5	6	7	8	9	10
UNDER 580 -	-	-	-	-	-	-	-	-	-	-
581 - 660	\$5	-	-	-	-	-	-	-	-	-
661 - 740	10	5	-	-	-	-	-	-	-	-
741 - 820	15	10	5	-	-	-	-	-	-	-
821 - 900	20	15	10	5	-	-	-	-	-	-
901 - 980	25	20	15	10	5	-	-	-	-	-
981 - 1,060	30	25	20	15	10	5	-	-	-	-
1,061 - 1,140	35	30	25	20	15	10	5	-	-	-
1,141 - 1,220	40	35	30	25	20	15	10	5	-	-
1,221 - 1,300	45	40	35	30	25	20	15	10	5	-
1,301 - 1,380	50	45	40	35	30	25	20	15	10	5
1,381 - 1,460	55	50	45	40	35	30	25	20	15	10
1,461 - 1,540	70	65	60	55	50	45	40	35	30	25
1,541 - 1,621	75	70	65	60	55	50	45	40	35	30
1,622 - 1,702	80	75	70	65	60	55	50	45	40	35
or 1,703 - greater										

Florida

GUIDELINES FOR WAIVERS

A. All waivers must have beginning and ending dates of supervision as well as beginning and ending date of waiver on the waiver form. Ending dates of waivers shall not extend beyond supervision term. There are not open ended waivers.

1. Ninety days of unemployment should be the limit of this exemption including 30 days of unemployment and 60 days wait. Exceptional situations can alter this, but pressure should be continued by the officer on the case to find employment. Inability to secure employment must be verified through contact with Florida State Employment Services and/or Offender Job Bank.

To qualify for waiver consideration under "insufficiency of income criteria" an offender's individual income must be less than \$3,900 per year. (Include all sources of income.)

2. Participation in educational pursuits do not automatically qualify an offender for waiver consideration. Total income, less educational expenses, provides a figure for consideration in the "insufficiency of income category" as outlined previously. The officer's verification is sufficient to meeting educational certification requirement. (For example, if parental support is provided the person should be required to pay.)
3. Observable handicaps by the Probation and Parole Officers, such as loss of limb or vision, do not require physical examination. Again in order to qualify for waiver consideration "insufficiency of income criteria" must apply.
4. Legitimate retirement age does not qualify for waiver consideration unless "insufficiency of income criteria" applies. In addition, the offender's age must prevent him/her from obtaining employment. Likewise, the age of unusually young offender (juvenile) may on some circumstances prevent him/her from obtaining employment. However, parents or guardians should be encouraged to pay COS for juveniles.
5. Support of dependents does not qualify for waiver consideration unless the total family income meets "insufficiency of income criteria."

Minimum family income includes \$3,900 base plus \$750 additional allowance per year for each dependent.

Deductions from the offender's income for support payments for dependents not residing with offender are limited to the amount of verified payments.

6. Extenuating circumstances include only those not listed above and should be rarely used. Examples may include: participation in a drug treatment house; incarceration (not for violation) or other programs where the offender is not able to maintain employment because of program requirements.

Georgia

The Exempting Authority may be the Sentencing Judge or the Chief Probation Officer of the Judicial Circuit, if such authority has been delegated to the Chief.

Unreasonable hardship is deemed to exist when one or more of the following conditions exist:

A. Insufficient Monthly Net Income of less than:

<u>Probationer/Family</u>	<u>Income Level*</u>
1 person	\$202
2 persons	\$306
3 persons	\$366
4 persons	\$432
5 persons	\$494
6 persons	\$536
7 persons	\$580
8 persons	\$616
9 persons	\$648
10 persons	\$694
11 + persons	\$742

(*Statewide Welfare Table - DHR AFDC)

Insufficient income may be caused by:

1. Inadequate earnings.
2. Documented proof of court-ordered financial obligations, such as restitution, child support or alimony.
3. Verified uninsured medical expenses other than non-prescription drugs.

Oregon

WAIVER SCHEDULE

This schedule reflects the amount remaining to be paid. Balance of fees in excess of these amounts waived.

<u>Gross Monthly Salary</u>	<u>Number of Dependents</u>					
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6 or more</u>
0-299	0	0	0	0	0	0
300-349	5	0	0	0	0	0
350-399	7	5	0	0	0	0
400-449	10	7	5	0	0	0
450-499	15	10	7	5	0	0
500-549	20	15	10	7	5	0
550-599	25	20	15	10	7	5
600-649	30	25	20	15	10	7
650-699	35	30	25	20	15	10
700-749	40	35	30	25	20	15
750-799	45	40	35	30	25	20
800-849	50	45	40	35	30	25
850-899	55	50	45	40	35	30
900-949	60	55	50	45	40	35
950-999	65	60	55	50	45	40
1000-1049	70	65	60	55	50	45
1050-1099	75	70	65	60	55	50
1100-1149	80	75	70	65	60	55
1150-1199	85	80	75	70	65	60
1200-1249	90	85	80	75	70	65
1250-1299	95	90	85	80	75	70
1300-1349	100	95	90	85	80	75
1350-1399	105	100	95	90	85	80
1400-1449	110	105	100	95	90	85
1450-1499	115	110	105	100	95	90
1500-1549		115	110	105	100	95
1550-1599			115	110	105	100
1600-1649				115	110	105
1650-1699					115	110
						115

Revenue Generated and Recipients of Collections

Proponents of supervision fees argue that the programs can indeed generate revenue. The amounts of money collected during 1982 range as high as \$16.3 million in Texas, \$4.5 million in Florida, and \$1.2 million in Alabama. Following is a list of annual revenues generated in states collecting supervision fees in 1982:

Alabama	\$ 1,285,776
Colorado	392,451
Florida	4,500,000
Georgia	900,000
Indiana	300,000 (8 month period)
Louisiana	220,000
Mississippi	720,000
New Mexico	225,000
North Carolina	47,000
Oregon	418,125 (1981-83)
South Carolina	1,139,061
Tennessee	240,000
Texas	16,300,000
Virginia	500,000
Washington	3,665

An important controversy associated with fee programs forms around the issue of who receives the revenue and how it should be spent. Probation and parole agencies argue that expending resources to collect the fees should entitle them to use the revenues received to expand their agencies' services. As a "users fee," revenues should be applied exclusively to support or expand the services provided to probationers or parolees. Such revenues should be seen as a supplement to the agency's regular budget, though, and not as a source of income upon which basic probation and parole functions are dependent.

However, in 9 of the 23 states that collect fees (Colorado, Florida, Louisiana, New Mexico, North Carolina, Oregon, South Carolina, Virginia, and Washington) the revenues are simply returned to the state's general fund, with no stipulation that they be spent on correctional services.

Following is a summary of several states that restrict the expenditures from supervision fees to support correctional supervision:

California - (section 1203.1 b(c) of the Penal Code) "All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department."

Mississippi - Revenues deposited in a "Community Services Revolving Fund" which supplements payments to inmates discharged, pardoned, or paroled from the Department of Corrections.

Georgia - Funds used to support a newly-implemented intensive supervision program in the state.

South Carolina - (1980 Act No. 517, Sect. 6D) "It is the intent of the General Assembly that fees collected from probationers and parolees be used, in future years, for hiring additional parole and probation staff. The Budget and Control Board is to take this intent into consideration in developing budget recommendations..."

Oklahoma - (Section 991 c.) "The fee provided for in Section 991d of this title shall be paid to the State Treasurer and credited to the Probation and Parole Fund which is hereby created. Any and all monies credited to such fund are hereby appropriated for paying the expenses of supervising probationers and parolees and shall be paid out on claims properly approved by the Deputy Director of Probation and Parole of the Department of Corrections and otherwise complying with the requirements of state law. There shall be a three-year statute of limitation from the date of receipt of all restitution funds made payable to the Department of Corrections. All restitution funds which have not been disbursed at the end of this three-year period shall be transferred to the Victims Compensation Fund."

Virginia - While fees are deposited in the state's general fund, a pilot project during FY 1983-84 will designate \$50,000 for the purchase of services for probationers/parolees.

Tennessee - Fees in Tennessee are equally divided between a "Criminal Injuries Compensation Fund" and a "Supervision and Rehabilitation Fund" designated for correctional agency expenses.

Texas - (1971 Texas Attorney General's Opinion) statute dictates that collected fees may be used for "...salaries of probation officers, secretaries, and other office personnel, probation office expenses; auto travel allowance for probation officers, and bona fide educational training expenses for probation officers (including registration fees, travel, and subsistence expenses while attending seminars or taking academic training at colleges or universities or other appropriate institutions which sponsor courses of study or training relevant to the education and training of probation officers)."

Indiana - (Indiana Statute 35-38-2-1)
(d) All money collected by the clerk under this section shall be transferred to the county treasurer who shall deposit the money into the "supplemental adult probation services fund." The fiscal body of the county shall appropriate money from the supplemental adult probation services fund to the courts of the county for the courts' use in providing probation services to adults.
(e) The supplemental adult probation services fund may only be used for probation services. Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the Supplemental Adult Probation Services Fund.

Arizona - In accordance with the authority granted the Arizona Supreme Court, by Article 6 of the Arizona Constitution and pursuant to Chapter 2 of Title 12, Article 7, A.R.S. 12-267, the following guidelines are issued to govern the requirements and procedures for the use of monies deposited in the Probation Services Fund:

Probation Services Fund

- A. Probation Services fees collected pursuant to the provision of A.R.S. 13-901 shall be deposited in a special separate fund established by the County Treasurer.
- B. The County Treasurer shall maintain the Probation Services Fund and shall only issue warrants or allow disbursements upon the direction of the presiding judge of the superior court.
- C. Monies in the Probation Services Fund shall be expended primarily to pay the salaries and employee-related benefits of probation officers who provide presentence investigations and supervision services to the superior court, as required by A.R.S. 12-251.
- D. During a fiscal year, a minimum of 85% of all actual expenditures from this fund must be used in accordance with paragraph C and not more than 15% of total actual expenditures can be utilized to otherwise improve, maintain, or expand adult probation services provided within the county.
- E. On or before August 15 of each year, commencing on August 15, 1983, the presiding judge of the superior court shall provide the Administrative Director of Courts with a statement on a form provided by the Administrative Director which fully reflects all collections deposited into the Probation Services Fund and all expenditures for the preceding fiscal year.

Summary

The responses from probation administrators throughout the country who provided information for this report reveal the controversies associated with the practice of supervision fees. The expansion of supervision fees programs between 1980 and 1983 is evidence of support for such practices. However, opponents of the fees continue to raise questions about the programs and have been successful in thwarting efforts to establish fees programs in several states.

The concerns raised in opposition to supervision fees consist of the following issues:

- Funding sources for probation and parole agencies may come to rely on fees as a substantial source of funding, thereby shifting the emphasis of community supervision from affecting integration of offenders into society through traditional treatment/supervision efforts to becoming a "collection" agency.
- The additional burdens placed on correctional agencies to collect fees (documenting ability to pay, collecting fees, arranging waivers, etc.) may not justify the amount of staff resources consumed to generate the fee revenues.
- Many of the offenders responsible for paying supervision fees have enough financial responsibilities meeting costs of family support, victim restitution, fines, and similar obligations. The additional supervision fees may become counterproductive in the efforts to accomplish successful offender adjustment to society..
- Enforcing collection of supervision fees through revocation of parole or probation for failure to pay fees does not make sense economically. Incarceration costs are usually at least ten times the costs of community supervision.

Other questions have also been raised by jurisdictions considering supervision fees:

- Have challenges to the legality of supervision fees been resolved?
- What are the most efficient methods of collecting fees?

Because supervision fees programs are so new for many correctional agencies, sufficient data do not exist to resolve all of the questions raised by these programs. Some facts are established from information collected for this report, however:

- Substantial amounts of money can be raised from supervision fees programs.
- Moderate fees can be collected from a majority of the probation/parole populations.
- Guidelines can be established to assure equitable enforcement of supervision fee payments.
- No significant legal challenges have succeeded in curtailing the practice of collecting supervision fees.

Other aspects of supervision fees programs have not been clarified and require additional research. Those issues include the following:

- How much staff time is being devoted to collect fees within agencies in the 23 states assessing supervision fees?
- How has the collection of supervision fees affected the funding of probation/parole agencies from general revenue sources?
- What has been the effect of supervision fees on the staff assigned to collect fees in terms of role conflicts, job satisfaction, or client relations?
- What is the effect of supervision fees on probationers or parolees paying the fees?
- Which collection methods generate maximum revenues with a minimum of staff effort?
- Has the collection of fees changed the perceptions of the public, elected officers, or criminal justice officials regarding probation or parole?
- How many probation or parole cases are being revoked primarily or solely due to failure to pay supervision fees?

The answers to some of these questions should become available as more data are collected and analyzed with respect to this relatively new trend. As mentioned in the introduction, this report provides information on the various features and controversies associated with fee programs. In addition to the examples and summaries presented in this report, agency policies and procedures for collecting fees and additional examples of enabling legislation are available from the NIC Information Center. Requests for technical assistance for agencies considering establishment of fees programs can be forwarded to:

NIC Community Corrections Division
 320 First Street, N.W.
 Washington, D. C. 20534

Attachment A. Executive Summary of Fees for
Correctional Services: A Survey

Joseph H. Sasfy

January 1980
National Institute of Law Enforcement and Criminal Justice

There are a variety of financial obligations which may be assigned by the courts as conditions of probation, including fines, court costs and attorney fees, restitution or victim compensation payments, and child or family support payments. Additionally, the last decade has seen significant growth in the practice of charging probationers and parolees for specific or general costs of corrections. There are three types of fees for correctional services that may be assessed:

- room and board fees in various transitional residential settings (e.g., halfway houses or pre-release centers);
- fees for specific correctional services or programs (e.g., drug, mental health, employment services; bad driving schools); and
- fees for general correctional supervision.

The growth in this practice reflects the growing fiscal needs of correctional agencies. For the last decade, correctional agencies have attempted to reduce caseloads and provide more individualized, community-based treatment without, in most cases, the necessary resources. As the supposed beneficiary of the correctional process, the client then becomes a natural revenue source. Reinforcing the practice are the views that these assessments promote responsibility in the offender and that it is reasonable for society to ask the client to "pay his own way." The primary purpose of this report is to provide a nationwide description of the limited, but growing, practice of charging supervision fees and to examine the issues surrounding the practice.

Currently, in only nine states are probationers or parolees charged a supervision fee on a statewide or local level. Michigan and Colorado began the earliest (in the thirties and forties, respectively). In these two states, and in Pennsylvania, Arizona, Texas, and New Mexico, the practice emerged as a means by which the local government or jurisdiction could offset the costs of corrections. In Pennsylvania and Arizona fee charging has been practiced in only one or two counties.

The most significant development regarding this practice has been the emergence of "state" programs of fee charging during the 1970's. Alabama, Florida, and Oklahoma passed legislation making the payment of fees mandatory for all probationers (and parolees in Alabama and Florida) unless specifically waived and setting a specific fee or fee limit. Unlike the local fee practices in other states, this legislation and its administration has had the effect of routinizing the assessment and collection of fees for large numbers of correctional clients. In most cases, instead of the judge determining whether to make the fee a condition of probation, the judge only decides whether to waive the fee in financial hardship cases. In 1978, a Supreme Court order in Colorado was issued making a supervision fee mandatory for all probationers and establishing uniform flat rates for felons and misdemeanants in Colorado. Additionally, three states--Tennessee, Georgia, and South Carolina--have recently introduced legislation authorizing the type of

state system of supervision fees found in Alabama, Florida, and Oklahoma.

Although \$10 a month represents the most common supervision fee assessment, there is considerable range in the amounts charged in the eight states engaged in the practice. The two counties in Pennsylvania charge the smallest amounts, \$2 or \$2.50 a month. Pima County, Arizona-- which has just begun assessing supervision costs--assesses very few probationers. However, two clients were assessed \$2,190 over a three-year probationary period (or \$2 a day). In Alabama or Florida, a client serving three years' probation would pay a total of \$360. Colorado is the only state which assesses a flat fee instead of a monthly rate; this fee is payable on a monthly basis, however.

The amount collected through supervision fees is a function of three factors: the number of correctional clients eligible to pay, the fee amounts, and the proportion paying. Texas collects the most annually, over \$6 million, reflecting the large number of adult probationers, around 119,000, and a collection rate of around 60 percent. Texas, Alabama, Florida, and Oklahoma all have collection rates of about 50-70 percent. In all eight states except Florida, judges have the discretionary power to determine financial hardship and either not assess the fee or, where mandatory, waive it. In Florida, the Department of Corrections makes this determination. Florida and Alabama are the only states which promulgate explicit guidelines and criteria for determining hardship.

A wide variety of benefits and liabilities have been ascribed to the practice of charging supervision fees. Of these various claims for and against the assessment of fees, the only one that can be clearly substantiated is the fact that fees can be a significant source of revenue. Proponents of the practice have also argued that fees promote responsibility in offenders, have a deterrent effect and provide taxpayers with a form of symbolic restitution.

Opponents of the practice have argued against the assessment of supervision fees on a variety of legal grounds. The courts, however, have upheld the practice in a number of states. Only a California court case found the assessment of fees an unreasonable condition of probation; however, the issue of supervision fees per se was confounded in this case because of the large amount of the assessment and the fact that the costs of prosecution were included. The supervision fee practice has also been attacked on treatment grounds (e.g., it is a negative factor in the officer/client relationship or it places an additional financial burden on offenders) and on ethical grounds (e.g., it is unfair to make someone pay for their own punishment or it is unfair to make the offender, as taxpayer, pay twice for corrections).

Although some of the objections to the supervision fee practice seem either unrelated to the actual nature of the practice or represent philosophical or ethical judgments for which there is little substantiation available, important questions about the fee practice

remain unanswered. It seems the most important criticism has to do with the real impact of the fee, as one of numerous court-imposed financial obligations on the offender and on the quality of his relationship with his officer. This issue, however, is not specific to the supervision fee, but involves questions regarding the financial conditions of probation in general.

On the other hand, there is evidence to substantiate or, at least, support the following points:

- The need by correctional agencies for alternative revenue sources, like supervision fees, will increase.
- Supervision fees can generate substantial amounts of revenue.
- Supervision fees can be collected efficiently, that is, no major costs are incurred in implementing and maintaining the practice.
- It is likely that the courts will uphold the legality of fee systems like those in Florida, Oklahoma, and Alabama.
- The practice of charging fees is consistent with a philosophy of fiscal responsibility and support for taxpayers.

For these reasons, it would not be surprising to see other states join Tennessee, Georgia, and South Carolina and introduce legislation supporting the supervision fee practice. This seems particularly likely in the absence of any court decisions against the type of fee practices currently in operation.

Although this report suggests that this practice is likely to grow, this does not mean that various philosophical and legal problems inherent in the practice have been resolved. Additionally, it is clear that questions related to the impact of this practice on clients and the correctional process have still to be addressed. It is important to consider, however, that the supervision fee paid by an offender usually represents a very small amount of money. More important is the fact that the fee may be only one of the many financial obligations a probationer or parolee may face. It may be more useful, therefore, to examine these legal and extra-legal financial obligations as a whole in terms of their significance to society, to the criminal justice system, and to the offender. There are important questions regarding (1) the taxpayers' overall interest regarding these obligations and the relative priority the courts should assign to the various costs and fees, and (2) the impact of these obligations on the offender, on his rehabilitation, and on the long-term public interest.

It should be noted that the practice of charging a fee for correctional services conflicts with provisions of correctional standards promulgated by the Commission on Accreditation for Corrections (Standard #3192) and the American Bar Association (Standards for Probation #3.2). This report was not prepared to advance a position for or against charging for correctional services but to describe the contemporary practice.

Attachment B. Legal Issues of Fees for Correctional
Services: A Survey

Joseph H. Sasfy

January 1980
National Institute of Law Enforcement and Criminal Justice

The courts, in a number of legal decisions regarding the assessment of various courts and supervision fees in specific, have dealt with the issues inherent in this practice. The Michigan Supreme Court¹ held that the assessment of costs must be directly related to the expenses incurred by the people in connection with the apprehension, adjudication, and correctional supervision of the offender. The Court said that these costs are not punishment and should not include expenditures for criminal justice functions that the public must bear regardless of a specific law violation. In a later decision,² the Supreme Court held that items such as the police payroll, rental of space in police headquarters, expense of operating a courtroom, the salary of an assistant prosecutor, and a variety of other expenses tangential to the specific apprehension and prosecution of an offender were not legitimate items for assessing costs.

The only court decision³ which held that a condition of probation specifically involving supervision costs was invalid was issued by the California Appellate Courts in 1974. In this case, a medical doctor was sentenced to probation and ordered to reimburse the county and state in the sum of \$90,000--the estimated costs of prosecution and supervision under probation. The doctor appealed, contending that the \$90,000 in costs were invalid conditions of probation as either "reparation" or "reasonable conditions." Both "reparation" and "other reasonable conditions" are specified by law as within the court's decision to assign as part of probation.

The court held that these costs did not fit the definition of reparation, which involves payments to victims for actual losses incurred via a crime and clearly does not involve the general costs of prosecution or supervision. Regarding the question of whether the \$90,000 in costs was a "reasonable condition," the courts referred to the ABA's Standards Relating to Probation which, as already discussed, specifically recommends against the assessment of supervision costs. The court went on to argue that:

The uncertainty of such costs imposes on each defendant a potentially unlimited penalty for his crime. Conceivably, the spectre of costs may even deter him from exercising his right to a jury trial on the issue of guilt or innocence...Penal Code section 1203.1 explicitly authorizes the imposition of only limited fines as part of probation, which in turn should be oriented towards rehabilitation of the defendant and not toward financing the machinery of the state. Since we view imposition of costs of prosecution and probation as neither reparation nor a reasonable condition of probation under Section 1203.1, the \$90,000 liability as a condition of probation cannot stand.⁴

Unfortunately, because of the large amount of the assessment and the fact that the assessment of prosecution costs was a significant factor in the decision, it is not clear whether the court's decision would have been similar regarding a typical supervision fee assessment of \$10 a month. While even the \$10 fees are, in aggregate, generally directed towards financing, in part at least, the criminal justice "machinery," it can be

simultaneously maintained (as it is in most states assessing fees) that they are also directed toward rehabilitation by promoting fiscal responsibility.

This decision in California was cited by an appellate in Arizona who appealed the validity of the assessment of \$210 for the costs of incarceration as a condition of probation.⁵ In Arizona, the courts have broad discretion in imposing conditions of probation which aid in the rehabilitation process. In this case, the Appellate Court held that the assessment of these costs was reasonable and not an abuse of discretion. The court rejected the argument inherent in the California decision, which is that the assessment of costs faces defendants with potentially unlimited penalties. The court held that these objectives assume that the court has unlimited discretion in imposing conditions. In this case, the judge had assigned reasonable costs related to actual expenses and had determined that the defendant could pay.

As mentioned earlier, the state and federal constitutionality and administration of the assessment of supervision fees were challenged in Alabama in a class action suit.⁶ In this suit, the plaintiffs--who were two months delinquent in fee payment and subject to having probation revoked--alleged that the supervision fee legislation was either void, in violation of the intent of the legislation, or unconstitutional because:

- it authorizes imprisonment for debt;
- it creates penal sanctions incident to the commission of a criminal offense;
- it contains no procedural safeguards to insure that indigent defendants will not be revoked for inability to pay;
- it creates a ground for revocation which bears no relationship to any valid purpose of probation or parole;
- it conditions a probationer's or parolee's ability to maintain his status upon his financial ability;
- it requires payment of the fee by unemployed persons who receive no income or unearned income or by employed persons with insufficient income to pay the fee; and
- it limits the hardship exemption to only those hospitalized, physically incapacitated, or seriously ill.

The court ruled that the law, in content, was constitutional and focused instead on the administration and implementation of the fee system, which was, in fact, the defendant's main area of contention. The result was the establishment of the income guidelines and other criteria discussed in 2.2.

ENDNOTES

¹People v. Fisher, 237, Michigan 504.

²People v. Teasdale, 335, Michigan 1.

³People v. Baker, 37 California Appellate, 3rd, 108 (1974).

⁴Ibid.

⁵People v. Frank Allen Smith, Yavapai County, Cause 8326, 1978.

⁶Decree, Tinker, et al. vs. Ussery et al.; Circuit Court, Tenth Judicial Court; Case No. 203-060; August, 1977.