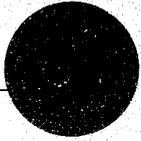


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Economic Sanctions
in Community Corrections

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ECONOMIC SANCTIONS
IN
COMMUNITY CORRECTIONS

by

Fahy G. Mullaney

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I would like to thank the National Institute of Corrections for providing an opportunity to investigate the use of economic sanctions for the purpose of providing local jurisdictions with data and tools to develop policy regarding such sanctions.

Special thanks go to George Keiser, chief of the Community Corrections Division of NIC, for conceiving this monograph and for many useful suggestions during my research and writing. I would also like to thank the professionals in criminal justice around the nation who shared their experiences and insights.

Finally, I wish to acknowledge an unknown probationer who wrote these words on his probation office's bathroom wall: "I've never seen so many people interested in \$15!" His graffiti reminded me to consider economic sanctions from the offender's point of view, as well as from that of community corrections professionals and the general public.

FOREWORD

Economic sanctions have proliferated more dramatically than any other form of criminal sanctions during this decade.

While court-imposed penalties such as fines and restitution are not new, the dramatic growth in the assessment of user fees is a new phenomenon. Criminal justice policymakers and practitioners have followed the general societal trend of imposing user fees to cover a portion of the cost of doing business.

The bulk of this growth in economic sanctions appears to be unplanned, resulting from a wide variety of motivations. New fees are created and imposed without any policy foundation for the total body of economic sanctions within a jurisdiction. While individually the assessments appear appropriate, taken in total, the assessments levied on an individual offender may result in limited likelihood of collection and a competition among agencies for what monies are collected.

The challenge presented by this monograph is to state and local policymakers to consider what they want to accomplish with the total body of sanctions in their jurisdictions and to articulate that purpose in public policy. The author has provided tools for identifying what sanctions already exist, who can impose them, and who collects them, as well as agencies' experiences with collection and disbursement. The use of these tools will aid justice officials in deciding whether any modification of existing sanctions is required and, if new sanctions are to be added, what should be considered in structuring them.

Raymond C. Brown

Raymond C. Brown, Director
National Institute of Corrections

PREFACE

In the spring of 1987, I was asked by George Keiser, Chief of NIC's Community Corrections Division, if I wished to study service fees and special assessments within the context of all economic sanctions currently levied against offenders. Like many in the community corrections field, I was aware of the tremendous growth in the use of service fees and special assessments. As a former program operator at both the local and national level, and then as a trainer and consultant, I had heard increasing debate over the use, variety, effectiveness, and appropriateness of such sanctions. That debate, of course, touched all levels of government.

The chance to research and develop a profile of current practices presented an opportunity to provide material that would be of real use to planners, legislators, judges, agency directors, and others with significant interest in community corrections.

Against this backdrop of the proliferation of fees, there were growing concerns and emerging assumptions. For me, they provided an important "arena" for the study. This "arena" is marked by the following assumptions and circumstances:

- the types and total number of user fees in criminal justice have grown dramatically in the last ten years.
- in certain jurisdictions, collection rate and information management have not kept pace with the increased use of fines and fees.
- the proliferation of user fees has been driven by individual program decisions instead of by comprehensive policy considerations at the jurisdictional level.

Two important policy implications have drawn less notice. First, wherever fees have come from individual program decisions, rather than from comprehensive policy, those jurisdictions are left with de facto policy that is void of meaning for overall aim, impact, or underlying values.

Second, many new economic sanctions have developed with "add-on's" to state statute or policy, and without analysis of impact or clarification of the priority of particular economic sanctions among others.

It is within this larger context that I began this study. Research methodology for this monograph was designed to provide a national profile of current economic sanctions. It was not my aim to generate exhaustive, statistical data for each state or the entire nation. The methodology included the following:

- Personal Interviews. Twenty-one persons representing ten states were interviewed. They included judges, staff in state offices of

probation, directors of community agencies, line staff in community programs, health department officials, staff in state offices of community service, staff in state offices of courts, and academicians.

- Telephone Interviews. Fourteen persons representing 11 states were interviewed by phone using the format mentioned above.
- Literature Search. The National Institute of Corrections Information Center and the National Criminal Justice Reference Service provided abstracts of more than 220 documents related to this monograph. Review of these led to selection of approximately 25 documents whose full texts were obtained and reviewed.

My aim is to be descriptive, not prescriptive; thus, most space is given to reporting current practices, successes, and problems in imposing fines, fees, and special assessments. It is not my aim to provide the reader with "right answers." No program will be presented as "The Model" for use in economic sanctions.

My intention is to provide legislators, judges, and state and local administrators with a variety of lenses through which to view the labyrinth of fines, service fees, and special assessments. Beyond that, I hope to provide tools for assessing their own jurisdictions and for plotting comprehensive policy.

Program operators will find it useful to contrast their own experiences with fines and fees against the broader national experience, and to guide any impulses to "add-on" a service fee.

Data collection tools are provided to help policymakers interpret their own jurisdictions with greater accuracy. The chapter on "Unresolved Issues" raises questions that do not so much prescribe actions as alert policymakers to consider certain matters as they develop policy and procedure.

This monograph focuses on sanctions of an economic order -- those that require cash payment. A brief review will also be made of non-cash sanctions that have a decidedly economic impact.

"Sanction" is here defined as "A penalty with the binding force of a court of law." An "economic" sanction is to be understood as any penalty that is decidedly financial in nature.

This monograph identifies three general types of economic sanction. They are:

- 1) Fines, Costs, and Restitution - Traditional penalties explicitly stated in the court's sentence of the offender.
- 2) Service Fees - Costs implicit in the court's sentence whenever the sentence (especially conditions of probation) requires the offender to use certain services, such as a community service program or an alcohol counseling center.

- 3) Special Assessments - Costs, somewhat like surcharges, levied automatically on every offender who comes before that court or on all persons guilty of a particular offense. Special assessment sanctions include such costs as "Criminal Justice Planning Fee" (assessed every offender) or "Victim Services Program Fee" (assessed for crimes against a person).

Some will argue that only penalties in 1) above are truly criminal sanctions, since they are listed in the criminal code as penalties justified for levying. A case can surely be made for that position. But it is reasonable to broaden our definition to include costs imposed in 2) and 3) for three reasons:

- Neither is optional. All three general types of costs are imposed as explicit or implicit elements in a sentence. Offenders do not "choose" a service to which the service fee is attached.
- All rely on the same source of sanctioning power, namely the coercive power of the court. Failure to pay a surcharge can result in a return to court for review and further sanctioning in the same way as for failure to pay a fine imposed by the court.
- Each is experienced by the offender in the same way. Others may distinguish among these types of cost, considering some sanctions and some not. But the offender experiences each of these binding financial penalties imposed as a direct result of the sentence. Such fees and special assessments are therefore experienced as official sanctions.

This monograph is intended for use by elected officials, judges, prosecutors, and appointed administrators and agency directors in community corrections. Comments are invited. Direct responses to the Community Corrections Division, National Institute of Corrections, 320 First Street, N.W., Washington, D.C., 20534.

FAHY G. MULLANEY

HISTORY OF ECONOMIC SANCTIONS

Economic sanctions are not new. Monetary penalties, such as restitution and the imposition of fines, have been in place since Biblical times to punish moral and criminal violations (Kocoureck and Wigmore). Prisoners have historically been required to defray some of the costs of their confinement, most often through labor committed to prison maintenance or public works.

What is new is the exponential growth of sanctions, especially in the form of fees and special assessments during the last two decades. There are five aspects to this growth.

1. Growth in the sheer **variety** of monetary sanctions. For 50 centuries, their number remained stable at a handful. In the last two decades, we have added over 20 new sanctions, almost all of the fee or special assessment types.
2. Increase in the courts' **use** of economic sanctions, especially fines, restitution, and reparations to the victim.
3. Dramatic increase in the percentage of offenders against whom the courts levy **multiple** economic sanctions as a result of a single offense.
4. Escalation of the **size** of fees in many, but not all, jurisdictions.
5. **Geographic expansion** of economic sanctions in the past 20 years from being a new practice in a few states to becoming standard practice in most states. For example, the number of states charging a probation fee grew from 9 in 1980 (Sasfy, p. 3) to 24 in 1986. (Baird, p.14)

In some instances, the development of economic sanctions grew by quantum leaps in states where policy allows or mandates fees. Concurrent with these leaps has been an incremental growth resulting from the piecemeal adoption of fees, program by program, agency by agency.

What has fueled this proliferation of monetary sanctions? There appear to be three driving forces.

First, and foremost, there has been financial pressure. Faced with shrinking budgets and expanding caseloads, our probation departments, community service programs, and residential treatment agencies have sought additional revenues. Community corrections administrators, with only occasional exceptions, acknowledge that fiscal considerations are primary. Many state legislators and county commissioners have focused on the fiscal aspects of these sanctions, seeing them as revenue sources to reduce public expenditure in community corrections. In other cases, the revenue was designed to be retained by the general treasury and public investment in community corrections held constant or reduced.

Second, apart from revenues, community corrections administrators have discovered that charging a "user fee" or "fee for service" gives the appearance of being fiscally responsible and/or partially self-sustaining. This has become vital political leverage at budget time. Even in cases where revenue

generated by fees represents a minute part of the agency's budget, the value of being able to present the agency as "fiscally responsible" is cherished. Thus, some programs have begun charging a fee even though funds are currently adequate. (Lest anyone see this as a compelling argument to establish fees, it is instructive to consider the case of the Securities and Exchange Commission, which collects fees in excess of twice its budget annually and returns them to the general treasury. Yet the SEC has faced resistance at every turn when seeking a modest increase in its appropriation.) (Congressional Record-Senate, July 10, 1987.)

Third, the growth in fees has been supported by the emergence of a broader, complementary philosophy in our society. The taxpayer revolt, as it was called, expressed a general and growing resistance to taxes in the 1970s. One remedy was to expand the practice of assessing user fees on the grounds that those who use various publicly funded services ought to bear a larger part of the cost. For some, it was an easy, even logical, step to move from freeway tolls to probation fees and from there to fees for entry into a community service program. Some public administrators felt that any attempt to exempt offenders from this phenomenon would be considered "soft on crime."

This rising wave of economic sanctions for offenders has not come ashore without controversy. The arguments against it have been grounded in the Constitution (How can "equal protection" be guaranteed?), in values (Where is justice when the sanction of choice, namely economic, is applied to those most economically vulnerable?), in program pragmatics (How can I achieve the purpose of community corrections when I have become a bill collector?), in economic principles (Isn't the user fee an economic disincentive for the offender to stay crime-free?), in applied economics (Where is the public's financial gain when those who fail to pay are incarcerated at enormous cost to that public? Or, after paying many financial sanctions, the offender and family must resort to public welfare.) and in logic (It's society's punishment system for our benefit so the argument that offenders should pay for the service does not wash).

The controversy is not over but continues at the edge of widespread acceptance of fees as either proper or inevitable.

A CATALOGUE OF ECONOMIC SANCTIONS

It is useful to list the wide range of economic sanctions now in place. Included in this listing are economic sanctions of all three types: (1) fines, costs, and restitution, (2) service fees, and (3) special assessments. No single jurisdiction uses all these fees, although some may use as many as 15 fees from the list.

A brief description of each sanction under the three categories is given. In some cases, a single sanction is known by different designations, each jurisdiction choosing its own term for the fee.

Fines, Costs, and Restitution

Restitution. A court-ordered payment to compensate the victim for loss or damage. It may be collected at probation or, increasingly, at parole stages.

Fine. The traditional monetary penalty, usually imposed according to severity of crime.

Court costs. A court-set fee imposed on most convicted persons. Uses of the fees are determined by the jurisdiction, but often include maintenance of court facilities, service of warrants, and law enforcement officers' retirement fund.

Reparations. A court-ordered payment by the convicted person to the victim for reparation, frequently counseling after rape and domestic violence.

Service Fees

Bail Investigation Fee. A charge for assessing the likelihood of the accused appearing at trial.

Presentence Report. A fee to gather data that influence the sentence.

Dispute Settlement Fee (Pretrial). A charge to cover public mediation services to settle prior to trial.

Residential Fee. A fee levied on convicted persons in a residential or work release center. Usually a percentage of gross income, or a flat fee for room and board.

Public Defender Fee. A fee set by the judge for offenders who have used public defenders or court-appointed attorneys. Often the amount is equal to the cost (hours x rate per hour) of the attorney's work on the case. Also known as attorney fee reimbursement fund and counsel fee judgments.

Client-Specific Planning Fee. Fee paid to a state, local, or private agency to develop a creative sentence for the offender and present it to the court.

Restitution Collection Fee. A percentage of the total restitution amount paid by the offender to defray collection costs.

Alcohol or Drug Assessment Fee. A fee charged when the court orders evaluation of the offender.

Alcohol or Drug Counseling Fee. A fee paid by the offender to the agency providing counseling as a condition of probation.

Driver Education Fee. A fee for driver training as a condition of probation. (Usually attached to convictions for driving while under the influence.)

License Revocation Fee. A fee for reinstatement of a driver's license following revocation for driving while under the influence. The driver's license may be suspended from the day of arrest, and the reinstatement fee applies whether the defendant is found innocent or guilty.

Urinalysis Fee. A fee assessed weekly or on a one-time basis for those in drug or alcohol treatment. In some residential settings, this fee is charged only if analysis results are positive.

Counseling Fee. A cost paid by the offender to the public or private agency that provides general counseling as a condition of probation.

Deferred Adjudication Fee. A fee assessed when an accused pleads guilty and the court defers its finding and places the person on probation.

First Offender Fee. Usually a flat, one-time fee paid by a first time offender sentenced to a special program for such offenders.

Domestic Offender Education Fee. A weekly fee charged as part of a sentence to an education program for males who assault females. Also known as Family Abuse Program.

Pretrial Jail Fee. A per diem fee imposed on convicted persons for incarceration before trial.

Postconviction Jail Fee. A per diem fee imposed on convicted persons for incarceration after trial.

Probation Supervision Fee. Occasionally a flat fee, but more often a monthly fee for supervision during the probationary period.

Out-of-State Fee. An additional charge that may be added for probation supervision when the probationer is not a state resident.

Parole Supervision Fee. A fee for supervision after release from incarceration. May be a flat, one-time fee or a monthly fee for the duration of parole.

Community Service Fee. A program admission fee paid by offenders sentenced to community service.

House Arrest Fee. Usually a per diem fee assessed convicted persons sentenced to house arrest. May be based on rental cost of electronic device to monitor movement.

Special Assessments

Late Payment Interest. An interest charge assessed when fines, fees, and/or court costs are not paid by the deadline.

Victim Advocate Fee. Revenues charged to support a victim advocate office in the jurisdiction.

Victim Compensation Fund. Revenues charged to support a money pool for payment to victims. Also known as a Criminal Injuries Compensation Fund.

Criminal Justice Planning Fee. A fee imposed on every offender in some jurisdictions and selected offenders in others to generate revenues for a law library, training, etc.

Crime-Stoppers Fee. Depending on the judge, this fee may be imposed on every convicted person placed on probation or only on those convicted based on Crime Stoppers information.

The total financial impact on an offender is not merely the sum of the above listed sanctions. Other nonmonetary economic sanctions that can be imposed are listed below.

Nonmonetary Economic Sanctions

Community Service. Hours sentenced to "volunteer" work for the general public good. The economic impact is the loss of potential hours at a wage-generating job.

Disqualification from Certain Occupations. State statutes disqualify a person for specific occupations (e.g., barber, bank teller) when convicted of selected crimes. Often includes ineligibility for public office.

Residual Economic Sanctions

Costs that accrue to the convicted (and sometimes the accused) as a natural consequence of arrest, trial, and/or conviction may include:

Attorney Fees. The cost of defending the accused.

Increased Insurance Rates. A standard result of conviction for driving while intoxicated or under the influence of drugs.

Loss of Job or Potential Job. Pretrial incarceration, time in court, and community service hours can jeopardize existing or potential employment.

Bail Bond. Prior to trial, the accused may be required to post a money bond with the court. The cost to the accused is usually 10 percent of the bond.

Telephone Installation and Maintenance. If placed on electronic monitoring, the offender will have to install and maintain a telephone at his/her own expense.

The fines, fees, and special assessments have unique characteristics, such as amount, type of offender on whom they are imposed, authorizing body, and recipient of revenues produced. Virtually all of these sanctions are subject to local state variance.

Table 1 shows the most common characteristics for each.

Clusters

To understand the financial impact of economic sanctions on offenders, it is useful to distinguish the number and types of sanctions that can be imposed simultaneously on a single offender. Table 2 contains two examples of "clusters" of economic sanctions that can be imposed simultaneously.

It is highly unlikely that all would be imposed in any given case. But there are no local or state statutes to preclude imposing the entire list.

Other examples of clusters could be developed. The issue here is recognizing the combined impact of such sanctions and asking if the impact is: (a) equitable, (b) what society wants in a sanctioning package, (c) known to the public, the offender, and the courts, (d) driven by explicit aims and reasons, or (e) a matter of accident.

Table 1
ECONOMIC SANCTIONS MATRIX

<u>Sanction</u>	<u>Type of Offender</u>	<u>Typical Amount</u>	<u>Source of Authority</u>
FINES, COSTS, AND RESTITUTION			
Restitution	Any personal or property crime	Unlimited range	State
Fine	Any	\$50 and up	State
Court Costs	Any	\$20-\$150	State and local
Reparations	Any personal injury crime	Unlimited	State code
SERVICE FEES			
Bail Investigation Fee	Any	\$25	Local
Presentence Report	Any	\$30	Local
Dispute Settlement (pretrial)	Pretrial misdemeanants	\$25-\$50	Local
Work Release	Misdemeanants, low rank felons	% of work income	Local
Public Defender Fee	Any	\$150 and up	State
Client Special Planning	Misdemeanants, low rank felons	\$75-\$300	State and local
Restitution Collection Fee	Any	2% of gross	State
Alcohol/Drug Assessment	DWI and drug	\$100	State or local
Alcohol/Drug Counseling	DWI and drug	\$15/week	State or local

Table 1
ECONOMIC SANCTIONS MATRIX (continued)

<u>Sanction</u>	<u>Type of Offender</u>	<u>Typical Amount</u>	<u>Source of Authority</u>
Driver Education	DWI	\$50	State or local
License Revocation	DWI	\$25	State
Urinalysis	DWI and drug	\$7/test	State or local
Counseling	Assault	\$10/week	Local
Deferred Adjudication	Misdemeanants, low rank felons	\$30	Local
First Offender	Misdemeanants, low rank felons	\$75	State
Domestic Offender Education	Assault	\$25/week	Local
Pretrial Jail	Accused, any charge	\$5/day	State
Post-Conviction Jail	Misdemeanants, low rank felons	\$5	State
Probation Supervision	Any	\$5-\$20/month	State
Parole Supervision	Any state-held offender	\$25/month	State
Community Service	Misdemeanants, low rank felons	\$50-\$100	State and local
House Arrest	Misdemeanants, low rank felons	\$7/day	State or local
SPECIAL ASSESSMENTS			
Late Payment Interest	Any	% of late amount	State or local

Table 1

ECONOMIC SANCTIONS MATRIX (continued)

<u>Sanction</u>	<u>Type of Offender</u>	<u>Typical Amount</u>	<u>Source of Authority</u>
Victim Advocate Fee	Any	\$10	Local
Victim Compensation Fund	Any	\$15 and up	State
Criminal Justice Planning	Any	\$5	State or Local
Crime Stoppers	Any	\$5	State
NON-MONETARY ECONOMIC SANCTIONS			
Community Service	Misdemeanants, Low rank felons	20-2000 hours	State or Local
Job Disqualification	Felons	NA	State
RESIDUAL ECONOMIC SANCTIONS			
Attorney Fees	Any	\$100 and up	Private Enterprise
Insurance Rate Increase	DWI	\$150-\$500/year	Private Enterprise
Loss of Job or Potential Job	Any	NA	Employer
Bail Bond	Any	10% of Bond	State (All)
Telephone	Misdemeanants, Low rank felons	\$75 installation \$15/week	Local

Table 2

SAMPLE CLUSTERS OF ECONOMIC SANCTIONS

Cluster A

Characteristics of Offender--25 years old, high school graduate, employed part-time.

Charge--Driving While Under the Influence (DWI)

Cluster of Sanctions

Monetary Sanctions:	Common	Potential
Public Defender Fee	\$ 175	\$ 175
Victim Compensation Fund		25
Fine	500	750
Court Costs	35	50
Urinalysis	15	35
Drug/Alcohol Assessment Fee		100
Drug/Alcohol Counseling Fee		150
License Revocation Fee		25
Criminal Justice Planning Fee		10
Pre-Trial Jail Fee		10
Community Service Fee	50	100
Probation Supervision Fee	100	250
Out-of-State Fee		25
	<hr/>	<hr/>
Monetary Sanctions Total	\$ 875	\$1,705
 Non-Monetary Sanctions:		
Community Service Hours	30 hours	200 hours
 Residual Sanctions:		
Increased Insurance	\$ 100/year	\$ 500/year
Bond	\$ 50	\$ 150
	Common	Potential
CLUSTER A GRAND TOTALS	\$1025 30 hours	\$ 2355 200 hours

Table 2

SAMPLE CLUSTERS OF ECONOMIC SANCTIONS (continued)

Cluster B

Characteristics of Offender--28 years old, unemployed, no high school diploma, divorced, two children.

Charge--Burglary of dry cleaners and auto parts store.

Cluster of Sanctions

Monetary Sanctions:	Common	Potential
Public Defender Fee	\$ 250	\$ 600
Client Special Planning		400
Restitution	900	2000
Restitution Collection Fee		30
Victim Compensation Fund		20
Fine	500	1500
Court Costs	40	100
Criminal Justice Planning Fee		10
Crime Stoppers Fee		5
Pre-Trial Jail Fee		25
Post Conviction Jail Fee		75
Probation Supervision Fee	250	500
Out-of-State Fee		25
Community Service Fee	25	100
	<hr/>	<hr/>
Monetary Sanctions Total	\$1,965	5,390
 Non-Monetary Sanctions:		
Community Service Hours	200 hours	500 hours
 Residual Sanctions:		
Bail Bond	\$ 200	\$ 500
Loss of potential job during trial and incarceration	NA	NA
	 Common	 Potential
CLUSTER B GRAND TOTALS	\$2,165 200 hours	\$6,390 500 hours

FINDINGS

After a decade of growth in the use of economic sanctions, what does reflecting on the experience tell us? What follows is a list and description of major findings that have emerged. These can be grouped under the following headings:

- Absence of policy
- Revenues
- Collection of economic sanctions
- Enthusiasm for economic sanctions
- Unintended consequences.

Absence of Policy

The development of the large family of economic sanctions listed on pages 2-5 grew without overarching, articulated values or guiding policies. Instead, the development was piecemeal. Without raising larger value/policy issues, events such as the following take place within a single state during a single calendar year.

- A Community Service Program serving four counties decides to collect a \$50 fee per client, consults with appropriate judges, and begins assessing the fee.
- A state legislator attends an out-of-state conference, hears about probation fees in a nearby state, consults state probation leadership, copies the other state's legislation without regard for social, political, and fiscal differences with his state, and introduces legislation. The legislature adopts the bill.
- Under public pressure to rid the roads of drunk drivers, the state legislature passes a law requiring a \$25 license revocation fee and an alcohol assessment, which has a locally established \$75 fee.

In such cases, there was no discussion (not to mention agreement) on the values or philosophy underlying this choice of economic sanctions. No policy was adopted to set limits on such sanctions, define the desired outcome of sanctioning, set priority of sanctions, establish collection policies, care for coordination issues, outline authority for adoption of fees, or provide for monitoring of results.

This author has found no adopted policy that addresses the "family of fees" or the larger body of fees, fines, and costs known as economic sanctions. The consequences are that most jurisdictions exercise a variety of economic sanctions that are neither coherent philosophically, nor coordinated procedurally. As a result, they may create conflicting aims, such as revenues versus restoration of victim and offender.

Even at the agency level, there is often no policy with regard to fees. The fee may have simply been suggested by the agency administration as a way to supplement its budget. Receiving no resistance from "above," the agency adopts the fee. Likewise, informal policies often emerge as practice, becoming de facto operating policies, which may never result in formal poli-

cies describing what and why. Instead, attention is on procedures: How will notices of late payment be sent? Which form is used to record payment? What records must be kept?

The absence of a practical, philosophic base and guiding policy leaves the practice of economic sanctioning open to various ailments: contradictory practices; extra demand on offenders and criminal justice personnel in the absence of coordination; vulnerability to attack on ethical grounds; inequities among agencies regarding revenue received; inequities among offenders who are assessed costs disproportionate to both the severity of their offenses and their ability to pay; and negative impact on traditional roles of community corrections staff.

Guidelines for policy development are offered in the section "Policy Considerations."

Revenues

No one knows the total revenues produced by economic sanctions, but estimates by researchers go as high as two billion dollars annually. (Fines in Sentencing, p. 19) A county health department collects in excess of \$70,000 annually, performing urinalysis for drug offenders. Probation agencies report that 10 to 40 percent of their total budgets is raised through fees. (Baird, p. 7) The community service program in North Carolina generates more than \$141,000 per month.

Yet it is clear that revenue will never be sufficient to offset the entire cost of most services. This is true for several reasons.

- The offender population is largely low income. Thus, there are limits to the revenue that can be generated by the imposition of fines, court costs, surcharges, and fees.
- There is evidence of a point of diminishing returns; that is, a point at which any additional increase in fine or fee will result in a decreased amount collected (Baird, p. 12).
- There are significant monetary costs in the use of economic sanctions. As increasing staff time is spent on collection, there is need for additional personnel. The tasks of collection and information management require staff, office space, computer time, equipment and utilities, and notification costs.
- No one has dispassionately determined what amount or percentage of additional revenue is net gain. Some policymakers and administrators have sold the idea of more revenue without identifying real costs. Others attempting to avoid fees have emphasized undocumented costs and projected lower revenues. We currently lack an objective and verified cost/benefit analysis to apply to a comprehensive, economic sanctions package.

Accurate projections of revenues and costs are critical to policymakers. No model exists for projecting revenue from a mix of fine costs with fees and surcharges; nor is there a verified formula for projecting attendant costs.

Collection of Economic Sanctions

Fines, the oldest of economic sanctions, are routinely ordered. If collection were simple, a process would surely exist. In fact, the fine collection rate fell from 1970 to 1980 from 80 percent to 57 percent. By 1983, the rate was down to 34 percent (U.S. Congressional Hearing, statement by W.A. Strauss, chief counsel to a subcommittee of the Senate Committee on Governmental Affairs, 1983).

What appears to be a rather straightforward task is, in fact, fraught with obstacles. These obstacles appear in the following forms:

- Lack of a clearly communicated purpose for imposing the fine.
- Fragmented responsibility for collection and enforcement. This responsibility is typically scattered within and among many agencies, including the judges, police, parole, clerk of courts, probation and other community corrections agencies. Too many people share too much of the collection responsibility.
- Imposition of "uncollectible" fines, costs, fees. When economic sanctions are set at a level above the offender's ability to pay, less is collected than if the amount were lower. With the emergence of sanctions in the absence of policy and coordination, often no one knows the aggregate of economic sanctions for a given offender.
- Absence of a central information system. Most jurisdictions utilize multiple economic sanctions but without a centralized data bank. When basic data are unavailable concerning what an offender owes, in what amounts, in which priority, to which agencies, by what date...then collection is difficult at best.

Difficulties appear, for example, in notification. It is common for an offender sentenced to prison and given a fine and court costs to be taken immediately into custody. During the prison stay, the offender has no income and makes no payment. Three years after sentence, the clerk of courts discovers lack of payment, but no record of where the offender is, and so sends no notification. On release from prison, the parole officer learns of this non-payment and informs the offender that he/she has a fine and costs to pay, plus a healthy interest payment accrued during the prison stay. In other cases, the offender is never confronted with this financial obligation on release, with the assumption that time served dissolves any responsibility for court-ordered economic sanctions. This can be as true of restitution as it is of fines, which leaves a frustrated victim who thought that some of his/her loss was to be repaired.

There are collection systems in place that have apparently overcome these obstacles. These systems share common characteristics including:

- Central collection office for the jurisdiction.
- Computerized record-keeping able to track payment and notification records.
- Graduated fee schedule, reducing the number of uncollectible fees.
- Priorities for disbursement of payments.

- Specified schedule of payments.
- System of notification for payments due or late.
- Firm followup if no response is made to notification, including return to court and potential for additional sanction.
- One person with responsibility to monitor payment of fees and meet regularly with the offender.

Enthusiasm for Economic Sanctions

State legislators and locally elected officials are often the ones who initiate such sanctions, especially service fees. Fiscal considerations are the key driving force. Their avid support is also reflected by ongoing concern for a high collection rate and denial of any waivers. In one state, pressure from the legislature was so great that the state probation administration sent informal directives to its probation officers not to make any recommendation to the judge regarding the ability of any offender to pay, even if they had knowledge of his/her indigency. If the judge asked, they were free to share their information.

Probation administrators and local agency heads show less zeal for fees, yet there is widespread support for them at this level. One study shows that 59 percent of administrators supported the concept of fees. However, opposition to fees (as opposed to support or neutrality) is ten times greater for administrators of agencies that do not collect fees than for those that do. Administrators were also twice as likely as their staffs to view fees as rehabilitative. (Baird, p. 3)

The community corrections staff, working directly with offenders and charged with tracking the fee collection process, is, with many exceptions of course, the least enthusiastic.

Unintended Consequences

The use of multiple economic sanctions has had unanticipated results. Observation offers the following examples.

- Extension of the time an offender is under supervision. Failure to pay usually results in an extension of time, rather than incarceration or termination. In fact, some offenders are kept on intensive supervision although they completed all their probation conditions except final payment on a fee.
- Requirement for more staff. (Collection-related tasks reportedly require 10 percent additional staff time [Baird], and extending supervision time increases the total number served at any one time and thus demands more staff.)
- Subtle value shifts in community corrections agencies, raising the priority of fiscal matters rather than of community safety, community justice, or human restoration.
- Competition by agencies for priority in payment of fees. This is largely overcome when the jurisdiction establishes policy on priority for payment. However, judges have power over priorities at the time of sentence and an agency may be tempted to urge judges to raise its fee in the priority list.

Although there are no significant data to support the following, they are possible outcomes, given the nature of economic sanctions.

- Increase in absconding as offenders choose to flee rather than face past-due payments and potential sanctions for failure to pay.
- Increased crime when offenders face multiple economic sanctions and feel unable to raise money through legitimate means. Some evidence exists. (Cretelli and Crawford, p. 6)
- Incentive for community corrections agencies to needlessly increase the number of those in their control, and become inflexible on waivers and reduction of payment, if the agency's budget is tied to fees.
- Agencies left financially worse off if their appropriations are reduced by the amount of fees generated or projected. Agencies are then left with more work (service plus fee-monitoring), but on the same or a reduced budget.
- Increase in the number of people incarcerated as the penalty for failing to complete a community corrections sentence. (See item on absconding above.)
- Competition between financial and nonfinancial sanctions. The community service supervisor may be concerned with signing up the unemployed offender to do his/her volunteer hours in community service, while the probation officer wants that person to look for a job so he/she can begin paying off the probation fee, fine, or restitution.
- Loss of credibility for the entire system of economic sanctions when persons who fail to pay fines, fees, or special assessments are not held accountable.

UNRESOLVED ISSUES

We are in the midst of a new experience. Never before have so many distinct economic sanctions been levied by such diverse agencies on so many people. It is understandable that there would be unresolved issues. These issues, however, cannot be ignored if we are to avoid grave, long-term consequences. Some of the salient ones and some suggested remedies follow.

Guiding Philosophy

New economic sanctions are often introduced into a state or community by someone who has heard of a community service fee, for example, or a house arrest fee in some other state. In concert with others, the sanction is put into place without discussion of underlying assumptions, values, or whether this sanction is compatible with existing ones. Those urging this new sanction have a philosophy or, more likely, several philosophies at once, but none is made explicit.

What will be the philosophy to guide this new fee? For example, is a community service fee of \$100 per person imposed as punishment? Or is the

underlying value one of rehabilitation of offenders, based on the assumption that paying the fee will teach responsibility? Or is deterrence the overriding value, with the assumption that high fees will deter future crime? Or is there no philosophy, just a need for funds?

Beyond the need for a clear philosophy is the need to acknowledge more pragmatic goals. Is the goal to increase the budget of the community service program? Or to reduce cost to the general taxpayer? Or to generate public interest and enthusiasm for the program?

It has been said: "If you don't know where you're going, you're likely to wind up somewhere else."

Avoiding Inequity

The rich easily pay monetary sanctions and are able to withstand the impact of nonmonetary and residual sanctions, while the poor see their meager resources dramatically depleted. This situation exists because: (a) some economic sanctions are flat fees, applied equally to all, (b) some courts and agencies do not require information on the offender's ability to pay, and (c) waiver of the entire fee is viewed in some jurisdictions as an option to be avoided.

Several remedies are available:

- Adopt a statute that requires courts to consider by systematic means the financial resources of offenders and their obligation to support dependents. However, the downside to this remedy leads to administrative structure and staff time, and invites appeal.
- Require courts to enter into the record at the time of sentence a list of all monetary sanctions to apply to the offender and their total in dollars. This procedure, however, could cause delays in sentencing.
- Institute a day-fine* procedure as the sole expression of all economic sanctions. A legislative model for the creation of a day-fine type system is described in "Fines In Sentencing: A Study of the Use of the Fine as Criminal Sanction." It consists of:
 - Establishment of relatively high maximum fines.
 - Enactment of a requirement that judges consider offenders' means when imposing fines.
 - Provisions allowing judges discretion to use the fine as the sole sanction for a broad range of offenses.
 - Elimination of statutes providing for flat "dollars-to-days" conversion of unpaid fines into jail or work program time on default.

* Day-fine is a Scandinavian system that seeks to equalize the impact of fines for rich or poor by graduating the fine according to: (a) the offender's income per day and (b) the severity of the crime.

- Establishment of a two-stage approach to setting fines, in which the fine is initially calculated in terms of units of punishment reflecting the gravity of the offense and the offender's prior record. These units would then become the basis for conversion to jail or work program times in the event of nonpayment.
- Develop clear measures for assessing ability to pay, including information on the offender's income, realizable assets, actual standard of living, maintenance responsibilities, normal expenditures, and family situation.
- Allow for adjustments in monetary sanctions at any point prior to termination so that changes in ability to pay (more or less) can be accommodated.

What Penalty Should Accompany Nonpayment?

The dilemma is this: If no penalty or a mere wrist slap is applied on failure to pay, the impact and credibility of economic sanctions will be eroded. If incarceration is chosen as the penalty, court calendars and jails and prisons will become still more crowded and attendant costs could easily neutralize revenues realized from fees. Or if, as is often done, the time in community corrections programs is extended to allow full payment, the supervising agency faces ballooning caseloads, the need for more staff, and increased costs.

In one state, the community service program alone averages 140 unsuccessful completions per year because of offenders' failure to pay the fee. Other offenders fail by absconding, but it is known that some abscond because they have past-due payments.

The range of possible penalties is the same as that used for violation of probation, since many of the economic sanctions are established as conditions of probation. Incarceration is an option in all states, except California.

At this point, there is insufficient information on the interrelationship of fees, penalties for nonpayment, offender behavior in light of those penalties, and the resultant costs, measured in caseloads, court time, and/or increased jail/prison crowding.

Can We Resolve the Legal Questions?

There have been too few legal decisions to dispel the legal questions raised by use of economic sanctions.

The Michigan Supreme Court held that assessment of costs must be directly related to expenses incurred by those connected 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. (People versus Fisher, 237, Michigan 504.)

The California Appellate Court in 1974 heard the appeal of a medical doctor who was put on probation and ordered to pay \$90,000 in costs and super-

vision fees. In declaring the costs and fees invalid, the Court cited Penal Code section 1203.1, which explicitly authorizes the imposition of only limited fines as part of probation, which in turn should be oriented toward rehabilitation of the defendant and not toward financing the machinery of the state. (People versus Baker, 37 California Appellate, 3rd, 108 [1974].)

Unanswered legal questions also fall under two broad constitutional categories: Equal Protection and Due Process.

Equal Protection. The equal protection guarantee could be violated if economic sanctions are shown to be disproportionately severe on the poor. The use of flat fees and the absence of waivers or graduated fees contribute to the likelihood that economic sanctions will be challenged on such grounds.

Likewise, if community corrections programs limit participation to those who are financially able to pay the fees (as a matter of policy or informal practice), this may invite a challenge on equal protection grounds, arguing discrimination on the basis of financial status. The poor will argue that they are unfairly excluded; the financially able will argue that they are the only ones bearing these particular sanctions.

The courts, in general, and the Supreme Court of the United States in particular, have been concerned with the imposition of jail terms on offenders who, but for inability to pay a fine or fee, would not have been sentenced to jail.

The California Supreme Court concluded, using a similar equal protection rationale, that those "unable but willing" to pay assessed fines could not be imprisoned for failure to pay. (Sentencing to Community Service, National Institute of Law Enforcement and Criminal Justice, October 1977, p. 39.)

Similarly, the courts are concerned that a fine or fee not be such that an offender cannot or does not pay.

Due Process. In Argersinger Hamlin, the Supreme Court prohibited the state from imposing a statutory sentence of imprisonment on indigents without assistance of counsel. (Argersinger versus Hamlin, 407 U.S. 25 [1972]). But do these requirements apply when a maximum sentence provides for only a fine and when imprisonment results from an inability to pay the fine or some fee?

The service fees and special assessments are, for the most part, unmentioned in state criminal codes. Thus, offenders are unaware what possible penalties are. Does such a failure to give notice constitute a violation of a legal nature?

Ostensibly, offenders consent to probation in most jurisdictions. They agree to a probation order. Is the court in violation of the offender's rights if it does not clarify in the order all costs which the offender must pay as a condition of probation?

In time, case law will clarify these matters. In the interim, community corrections programs can establish policies that take these legal issues into account.

What Will Be the Impact on Community Corrections?

It is still too early to determine what impact this large family of economic sanctions will have on community corrections. But our brief experience to date raises questions for pondering.

Will the financial resources of community corrections agencies be improved? It is clear that some agencies have raised large sums of money. However, a recent study in probation states that "...it does not appear that fee collecting agencies have more resources at their disposal than noncollecting probation departments." (Fees for Probation Services, Baird)

Will the roles of community corrections staff be changed by numerous economic sanctions? Will values of efficiency and fiscal solvency take precedence over public safety and human restoration?

TOOLS TO STUDY YOUR JURISDICTION

There is wide variance from jurisdiction to jurisdiction. What are solutions in one community may simply create problems in another. Each jurisdiction must work out the policy and practice that best suits its unique mix of tradition, values, fiscal resources, leadership, and vision.

Policymakers and administrators will need to collect data on their jurisdiction before being able to propose new policy or procedure. The worksheets provided on pages 22-29 should help in collecting and analyzing data related to economic sanctions in a given jurisdiction.

POLICY CONSIDERATIONS

My intent is not to suggest what policy should be adopted, but rather to provide both a process for policy development and a check list for determining the policy content. This process is meant for policy development in a jurisdiction, but aspects of it will also be helpful in setting agency policy.

The process of policy development is enhanced by these factors:

1. Clear purpose: To develop written policy according to the jurisdiction's philosophy of economic sanctions, and the imposition, collection, and enforcement of such sanctions.
2. Involvement of those affected (agency administrators, judiciary, prosecutors, defense bar, welfare department, etc.).
3. Availability of clear, accurate data on the jurisdiction's current practice in economic sanctions.
4. Awareness of policy in other jurisdictions and attention to dangers in adopting someone else's policy whole cloth.
5. Access to data showing other jurisdictions' experience with various policies and procedures.
6. A trial period to test proposed policies (perhaps in a sub-unit of the jurisdiction), followed by a review period and revision before formal adoption.

The policy content of economic sanctions should include the following:

1. Parameters of policy and definitions. (Does it apply to all agencies? What is meant by economic sanctions? etc.)
2. Statement of philosophy (the values and assumptions of the policies).
3. Statement of goals (extending philosophy into goals, such as minimizing public cost, increased use of nonincarcerative sanctions, etc.).
4. Provide clear direction on fundamental issues:
 - a. Who sets fees?
 - b. How should fee amounts and types be determined?
 - c. What provisions are there for waiver or graduation of fees?
 - d. Who monitors the offender's payment?
 - e. Who collects the payment?
 - f. What is the priority among fees?
 - g. What sanctions are recommended for failure to pay?
 - h. How shall revenues be used and distributed?

The NIC monograph, "The Goals of Community Sanctions" by Kay Harris, is a useful guide to policy development in community corrections. It is available from the NIC Information Center.

SUMMARY

In the early history of incarceration, offenders were required to pay for admission to jail, to pay the jailer for food and bedding while there, and finally to pay upon release. Today we are aghast that such counterproductive, unjust practices could ever exist.

Across this country, we are swiftly adopting new sanctions, especially fees and special assessments, that have a dramatic financial impact on those who go through our criminal justice system. Without thoughtful development of policy and practice to guide and limit this movement, we may well repeat history rather than learn from it.

Worksheet Number 1

A SELF-DIRECTED APPRAISAL

If you are uncertain whether your jurisdiction's* current use of economic sanctions needs comprehensive review, this worksheet will be helpful.

Answer each question by placing a check mark by the response to the right that best depicts the situation in your jurisdiction.

	Column A	Column B	Column C
1. The number of fees and special assessments in this jurisdiction is:	0-4 _____	5-8 _____	9+ _____
2. Offenders pay fines, fees, and restitution at how many locations?	1-2 _____	3 _____	4+ _____
3. The percent collected of assessed economic sanctions is:			
Fines	90% _____	70-80% _____	Under 70% _____
Fees	90% _____	70-80% _____	Under 70% _____
Restitution	90% _____	70-80% _____	Under 70% _____
Special Assessments	90% _____	70-80% _____	Under 70% _____
4. At the time of sentencing, the judge knows and states what percent of the total financial cost the offender will have to pay to complete sentence?	Always _____	Usually _____	Sometimes _____
5. The priority for application of paid fines and fees is:			
Formally established	_____		
Informally established		_____	
Not established			_____
6. The penalty for failure to pay is:			
Clear	_____		
Somewhat clear		_____	
Unclear			_____

*A geographic territory with multiple criminal justice elements (courts, probation, private/non-profits, etc.). Usually a county, state, or municipality.

Page 2 of Worksheet Number 1

	Column A	Column B	Column C
7. The imposition of the penalty for failure to pay is:			
Consistently applied	_____		
Somewhat inconsistent		_____	
Inconsistent			_____
8. The policy for taking into account the offender's ability to pay is:			
Established	_____		
Informal		_____	
No policy			_____
9. The basic purpose of fees is:			
Written and communicated	_____		
Assumed		_____	
Disputed			_____
10. Support for fees is mainly from:			
Line and supervisors	_____		
Mid-management		_____	
Top management			_____
Total check marks in each column	_____	_____	_____
	A	B	C

If the total number of check marks in Column A is 10 or more it suggests that your jurisdiction has a relatively clear policy and practice with regard to economic sanctions and will likely function adequately without review.

If the total number of check marks in Columns B and C combined is 5-7, it suggests that your jurisdiction could benefit from review of its policy and practice, and that failure to do so will lead to escalating dysfunction.

If the total number of check marks in Columns B and C combined is 8 or more, it points to an immediate need to review current policy and practice of economic sanctions in your jurisdiction.

Worksheet Number 2

A LISTING OF FEES

List the fees* that can be assessed an offender as an implicit or explicit part of a sentence or court appearance in your jurisdiction.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.
- 18.
- 19.
- 20.

*For example probation supervision fee, presentence report fee, community service fee, drug-testing fee, surveillance fee, public defender fee, counseling fee, crime-stoppers fee, etc.

Worksheet Number 3

ANALYSIS OF ECONOMIC SANCTIONS

	Fines Court Costs	Restitution	Probation Fee	Other Fees
Type(s) of offenses most often assessed				
Amount or range (in dollars)				
Does a waiver or sliding scale policy exist?				
Most likely penalty for non-payment				
Amount (in dollars) assessed last year				
Amount (in dollars) collected last year				

Worksheet Number 4

COLLECTION AND DISBURSEMENT

1. Does your jurisdiction have an established policy on the order for paying economic sanctions? If so, list the sanctions in priority order below:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____

2. If there is a priority, is it formal or informal policy? _____
Who established the policy? _____
If it were to be changed, what would be the process? _____

3. Who collects? What office or person is responsible for actually receiving the offender's cashier check, money order, check, or cash? (e.g., clerk of courts, probation office).

Fines	_____
Court Costs	_____
Restitution	_____
Probation Fee	_____
Other Fees (Name)	_____
_____	_____
_____	_____
_____	_____

Page 2 of Worksheet Number 4

4. What is the estimated annual cost of collections for each type of sanction?

Fines	\$ _____
Court Costs	\$ _____
Restitution	\$ _____
Probation Fees	\$ _____
All Other Fees	\$ _____

5. To whom is the revenue allocated? General fund of the state or county? Probation department? Courts? Private, nonprofit agency? Special fund? Other?

Fines	_____
Court Costs	_____
Restitution	_____
Probation Fees	_____
All Other Fees (Name)	_____
_____	_____
_____	_____
_____	_____

Worksheet Number 5

GOALS OF CURRENT ECONOMIC SANCTIONS

What are the stated goals of the economic sanctions in your jurisdiction in terms of the intended beneficiary? If there is no written policy or statute, leave the space blank.

			Beneficiaries		
			Offenders	Victims	Society/Criminal Justice System
Fines					
Court Costs					
Restitution					
Probation Fees					
Other Fees (Name)					
- _____					
- _____					
- _____					
- _____					

Worksheet Number 6

CHECKLIST FOR THOSE CONSIDERING A NEW ECONOMIC SANCTION

	YES	NO
1. Do I have a complete list of the existing fees, special assessments, and circumstances for restitution?	_____	_____
2. Do I know what type of offense is generally given each of the fees, special assessments, and restitution?	_____	_____
3. Have I projected the impact of this proposed new fee on the payment of existing economic sanctions?	_____	_____
4. Is the policy on waiver or reduction of fees, fines, restitution, and special assessments formally established and comprehensive enough to cover this new fee?	_____	_____
5. Is the priority for paying fines, including this new fee, clear?	_____	_____
6. Will the collecting agent for this proposed fee be an existing agent?	_____	_____
7. Have the legal implications of this proposed fee, its collection, and penalties for nonpayment been explored?	_____	_____
8. Do I know the cost for collecting this fee, including staff time, equipment use, postage, and phone use?	_____	_____
9. Is the penalty for nonpayment clearly understood by all parties (judge, offender, probation office)?	_____	_____
10. Have I projected the impact, if any, this fee (and failure to pay it) will have on the number of persons revoked and incarcerated?	_____	_____
11. Is there agreement among relevant parties on the intended beneficiary of this new sanction (offender, victim, society, criminal justice system)?	_____	_____
12. Do I have the support of line staff for this proposed new fee?	_____	_____

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