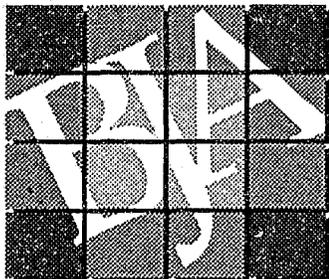


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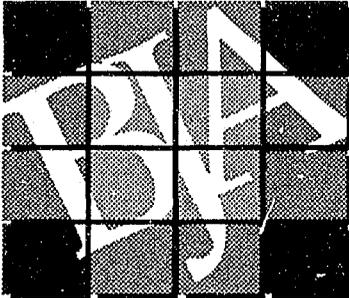
Bureau of Justice Assistance

**Dedicated Funding for
State and Local
Anti-Drug Programs**

MONOGRAPH

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Bureau of Justice Assistance

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State and Local
Anti-Drug Programs**

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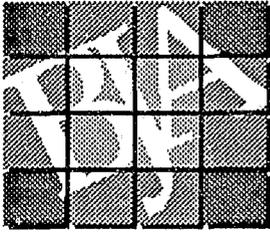


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EXECUTIVE SUMMARY

This monograph explores the issue of dedicated funding sources and provides examples of some State and local approaches to collecting monetary penalties for arrest, conviction, or pretrial diversion for a drug or other offense. These funds may be used in any manner the State or community sees fit, such as drug abuse prevention, treatment, law enforcement, and criminal processing. Typically, the various forms of revenue production are appropriated or "ear-marked" for certain programs or purposes. Sometimes convicted criminals are required to pay, in whole or in part, the costs of their own prosecutions. In this way,

taxpayers are relieved of at least some of the expense of crime.

Although the many examples of dedicated funding sources included in this monograph may seem to be quite different, they all have certain objectives in common: to reduce and eliminate the profit motive from illegal drug trafficking; to help streamline processes and procedures to help unclog crowded court dockets; and to alleviate the tax burden on law-abiding citizens for these crimes.

INTRODUCTION

The will to accomplish our drug control goals and objectives of reducing both the demand for and supply of illegal drugs is evident throughout the United States. Federal, State, and local strategies have been developed and implemented. Communities throughout the United States have formed anti-drug coalitions and task forces. Volunteer anti-drug efforts have increased. Federal, State, and local budgets for enforcement, treatment, and prevention have grown to new levels of commitment. Our court calendars and prisons are burdened by the success of enforcement efforts.

If there is one message in the public's response to the menace of illegal drugs, it is that the sale and use of

drugs must be stopped. Yet many State and local officials involved in anti-drug programs have told of the increasing challenge they face in obtaining funding for new anti-drug efforts. These difficulties are especially prevalent in prevention programs where the long-range benefits are not as evident as the immediate payoff of an enforcement budget increment. It is essential, however, that those programs get increased attention without decreasing other activities. A program such as New Jersey's assessment on drug offense convictions is well worth considering: it yields \$9 million per year for drug education and demand reduction efforts. This monograph offers additional examples of State and local approaches to the issue of dedicated funding sources.

DEDICATED MONETARY PENALTIES FOR CONVICTED OFFENDERS

The collection of monetary penalties for arrest, conviction, or pretrial diversion for a drug offense (or in some cases for any arrest, conviction, or pretrial diversion) provides funds that can be dedicated to drug abuse prevention, treatment, law enforcement, or criminal processing.

The drug problem and the war against drugs cost taxpayers billions of dollars each year. The purpose of assigning monetary penalties to those arrested for drug-related crimes is to shift the cost of drug trafficking to those who unlawfully deal in controlled substances, and to provide an immediate deterrent to drug traffickers. Some examples of State statutes providing dedicated monetary penalties follow.

New Jersey

A New Jersey statute¹ monetarily penalizes anyone arrested, convicted, or diverted at pretrial for a drug offense. The amount of the penalty is determined by the offense committed, as shown in chart 1.

Chart 1

Monetary Penalties in New Jersey

Severity of Crime	Amount of Fine
First-degree	\$3,000
Second-degree	\$2,000
Third-degree	\$1,000
Fourth-degree	\$750
Petty offense*	\$500

*(e.g., possession of marijuana)

Funds collected through this mechanism are paid into a Drug Enforcement and Demand Reduction plan that in turn supports county-based alliances dedicated to the prevention of alcoholism and drug abuse in high-

risk communities. The program, in place since 1987, has raised more than \$26 million for anti-drug abuse programming. Collections are now averaging about \$9 million per year.

Colorado

Colorado recently enacted the Drug Offender Surcharge, implemented in July 1991.² Under this statute, any offender convicted of a drug crime or given a deferred sentence is required to pay a surcharge in addition to any criminal penalty. The surcharge is intended to offset some of the court costs incurred by the offender's prosecution and the costs of prevention and treatment programming, as outlined in chart 2.

Chart 2

Surcharge Amounts in Colorado

Degree of Crime	Amount of Surcharge
Class 2 felony	\$3,000
Class 3 felony	\$1,000
Class 4 felony	\$1,000
Class 5 felony	\$750
Class 6 felony	\$500
Class 1 misdemeanor	\$400
Class 2 misdemeanor	\$300
Class 3 misdemeanor	\$150

The funds are allocated at 5 percent to the court clerk, 4 percent to cover the cost of fingerprinting and photographing, 1 percent to the county sheriff, and 90 percent to a Drug Offender Surcharge Fund within the State treasury for annual appropriation to the Departments of the Judiciary, Corrections, and Health, and the Division of Criminal Justice of the Department of Public Safety. These four agencies must dedicate the funds to the costs associated with substance abuse assessment, testing, education, and treatment.

It has been estimated that the new law will collect between \$680,000 and \$1.13 million in felony assessments and another \$400,000 to \$680,000 in misdemeanor surcharges that will be used to decrease the burden of the drug war on the public.

Utah

In April 1989, Utah established a Substance Abuse Prevention Account. The account was funded by a \$150 fee imposed on offenders in addition to any fines or fees that the courts otherwise imposed for violations of Utah's controlled substances, imitation controlled substances, and drug paraphernalia laws. Of the revenue collected, 50 percent was appropriated to the juvenile court for the administration of community service penalties assessed for drug law violations, and 50 percent was appropriated to the Utah State Office of Education for programs in substance abuse prevention and education in the public schools, which included training for teachers and administrators.

In a 1991 effort to streamline the State's fine system, the Utah legislature eliminated all fines and fees that were not part of a criminal sentence. In their place, the legislature created a uniform surcharge on all criminal fines, penalties, and forfeitures imposed by the courts. The surcharge was established at 85 percent for felonies, class A misdemeanors, driving under the influence of alcohol or other drugs, reckless driving, and class B misdemeanors; and at 35 percent for any other offenses—with the exceptions of non-moving traffic violations (that stipulate community service work) and penalties assessed by the juvenile court as part of the nonjudicial adjustment of a case. Under the new surcharge system, the Substance Abuse Prevention Account currently receives approximately 3 percent of the total collected surcharges. These total revenues are allocated in the same manner as were the 1989 fees—50 percent to the juvenile court and 50 percent to the Utah State Office of Education.

Since the implementation of the 1991 legislation, administrators have identified some inadequacies in the current surcharge allocations. As a result, legislators have proposed some minor adjustments to the system, which will be considered during Utah's current 1993 legislative session. If the 1993 legislation passes, the Substance Abuse Prevention Account will

receive 5 percent of the total collected surcharges. These moneys will continue to be shared equally by the juvenile court and the Utah State Office of Education for the purposes specified in the original 1989 legislation.

Arizona

Arizona, like many States, statutorily requires the inclusion of a monetary penalty with other penalties at sentencing when a defendant is convicted of a serious drug crime.³ In Arizona, however, these funds are dedicated to the Drug and Gang Enforcement Account, a fund supporting drug enforcement efforts in the State as well as the criminal justice system.⁴ In addition to these statutory fines, any conviction for a felony allows the court to assign an additional \$100 penalty.⁵

Arizona statutes also require that a surcharge of 40 percent of all other fines and forfeitures be imposed on an offender convicted of any crime. Funds collected by this surcharge are dedicated to the Criminal Justice Enhancement Fund to alleviate the financial burden of the criminal justice system on law-abiding taxpayers.⁶

Rhode Island

Funding for Rhode Island's Substance Abuse Prevention Act is collected by assessing an additional penalty of \$20 for all speeding violations.⁷ The funds are placed in a restricted purpose receipt account and transferred to the Department of Mental Health, Retardation, and Hospitals where up to 10 percent of the moneys may be used for substance abuse prevention. The monetary penalties are also used to fund substance use and abuse programs in public junior high and middle schools.⁸ In 1992, \$1.6 million was dedicated to drug prevention programs through the department, and an additional \$1.6 million was dedicated to school students assistance programs for a total of \$3.2 million.

Illinois

Illinois has two statutes assigning financial penalties for the conviction of offenses and dedicating the funding to the State's battle against drug and alcohol abuse. In order to have a driver's license reinstated after summary suspension for driving under the influence of drugs or alcohol, an individual must pay a

fine of \$60. Half that amount is dedicated to the Drunk and Drugged Driving Prevention Fund.⁹ Moneys in this fund are used to enhance and support regulatory inspections and investigations conducted by the State Police Department under the Illinois Alcoholism and Other Drug Dependency Act.¹⁰ Illinois collected \$875,100 through this program in fiscal year 1991. Illinois has a second statute that allows the court to impose a fine in addition to any other penalty on a person convicted of a controlled substance violation.¹¹ The Juvenile Drug Abuse Fund receives 12.5 percent of the funds collected that are dedicated to juvenile services for drug abuse treatment, prevention, and education. The remaining 87.5 percent is divided between law enforcement units of local government, county general corporate funds, and the State treasury, depending on the combination of personnel who participated in the seizure. All funds are dedicated to the enforcement of laws regulating controlled substances through the Drug Traffic Prevention Fund and the Intergovernmental Drug Laws Enforcement Act. Illinois collected nearly \$3 million through this program in fiscal year 1991.

Indiana

Since July 1, 1990, Indiana courts may assess a drug abuse, prosecution, interdiction, and correction fee of between \$200 and \$1,000 against a person convicted of a controlled substance offense.¹² The State also collects an alcohol and drug countermeasures fee of \$200 from persons convicted of drunk driving.¹³ Half these funds are dedicated to a County Drug-Free Community Fund.¹⁴ The community programs are comprehensive and operate in the areas of prevention, education, treatment, and criminal justice services.¹⁵ The other half of the funds is dedicated to specific State programs through the State User Fee Fund, including the Drug Interdiction Fund, the Drug Prosecution Fund, and the Corrections Drug Abuse Fund, with any unexhausted moneys paid back into the Community Fund.¹⁶ Indiana collected nearly \$1.5

million in fees between January and June 1991. It is estimated that the program's annual collections will reach \$3.5 to \$4 million during the next few years.

Florida

The County of Hillsborough, Florida, authorizes by ordinance that any person found guilty of or pleading nolo contendere to a controlled substance charge may be assessed an additional surcharge up to the amount of any other monetary penalty authorized for the violation. This amount is dedicated to drug abuse treatment and education through the Drug Abuse Trust Fund.¹⁷

Michigan

The City of Inkster, Michigan, a suburb of Detroit, has implemented a program called "Operation Push Off," which is designed to alleviate the overcrowding of local jails without easing drug enforcement penalties in areas with high rates of drug trafficking. The program also raises funds that can be dedicated to Drug Abuse Resistance Education (DARE) and other community-based, anti-drug abuse programs.

Due to extremely limited jail space for Inkster arrestees, drug arrest had become a mere inconvenience to offenders arrested for drug purchasing in the city. Operation Push Off was designed to pursue civil forfeiture of the automobile of anyone driving into the area to purchase drugs. After arrest and before starting forfeiture proceedings, interviews are held with each arrestee. A \$750 fine option is offered to the arrestee to retain ownership of his or her car. The program has been given a great deal of publicity; consequently, many people have stopped going to Inkster to purchase drugs. The funds raised are available for programs like DARE and community-organized efforts within Inkster so that those who support the drug trade in the city are financially responsible for the costs to its citizens.

DEDICATED ASSET SEIZURE AND FORFEITURE FUNDS

The National Drug Control Strategy emphasizes that the seizing and forfeiting of drug-related assets is a powerful weapon in the war on drugs. Forfeiture laws and programs, if properly fashioned, can deprive drug traffickers of their ill-gotten gains, thereby reducing the profit motive associated with drug trafficking. As a secondary benefit, funds derived through the forfeiture of seized assets may be used to further law enforcement efforts.

As discussed in greater detail in the February 1991 National Drug Control Strategy and in the *State Drug Control Status Report*, an Office of National Drug Control Policy white paper published in November 1990, State asset forfeiture laws should achieve the following objectives:

- Allow the use of civil proceedings.
- Authorize the forfeiture of real property or leasehold interests held by drug traffickers.
- Confer in personam jurisdiction over criminal defendants to permit the seizure of assets that may be located out of State.
- Allow for the substitution of equivalent assets when the drug-related assets are leased or mortgaged.
- Protect the interests of innocent asset owners by protecting the value and assuring the expeditious return of such assets.

All States now have civil or criminal forfeiture provisions in their controlled substance acts.¹⁹ Importantly, most States ensure that the proceeds of asset forfeitures are dedicated to future anti-drug efforts, primarily law enforcement.

Dedication of forfeiture proceeds to law enforcement has the advantage of providing a basis for conducting further asset forfeiture and other law enforcement programs. However, extreme caution must be exercised to ensure that pursuit of seizures and forfeitures do not become the driving force behind the investigative and prosecutorial process. Adequate safeguards must be built into these processes to avoid a negative public perception of this valuable law enforcement strategy. Accordingly, it is important that asset forfeiture statutes continue to require that the majority of forfeiture funds be earmarked for further law enforcement efforts. Remaining funds should be dedicated to other anti-drug efforts such as prevention and treatment rather than added to the general revenue fund.

FEES FOR PROBATION SERVICES

Assessing fees for probation services has proven a viable method of increasing dedicated funding for this vital criminal justice activity. Charging fees to probationers provides a method for establishing program self-sufficiency. State legislation and court orders are the usual methods for making the assessment and payment of fees a condition of probation. State legislation could be enacted to provide that all persons convicted of drug use or trafficking and sentenced to probation be assessed 100 percent of their own probation service costs. The fees collected could be used for direct funding of probation department activities. The idea is based on strict and appropriate accountability for a user or user/dealer, and is also consistent with rehabilitation concepts. The fees collected from probationers are allocated to various resources. New Mexico deposits the collected fees in the district court general funds. Alabama, Oklahoma, and Texas allocate their collected fees back into probation services by creating special probation/parole district funding. Some States such as Colorado, Florida, and Michigan allocate moneys into State or county general funds.

Existing Legislation and Probation Assessment Programs

Many States have existing legislation governing conditions of probation. Alabama requires monthly contributions by parolees and probationers toward the cost of their supervision and rehabilitation.¹⁹ Colorado requires defendants pay the reasonable costs of court proceedings and costs of probation supervision. The amount of fee assessment in Colorado is determined by the court.²⁰ In Texas, probationers are required to pay a fee to the court. The court then distributes those fees to the county or counties over which it has jurisdiction in administering the probation laws.²¹ The National Institute of Justice has published a study of the Texas system entitled *Making the Offender Foot the Bill*; it is available from the National Criminal Justice Reference Service.

According to a National Association of Criminal Justice Planners study of 32 jurisdictions, 14 jurisdictions did not assess probation supervision fees:

For those jurisdiction that did use probation supervision fees, they were levied on a sizeable portion of the probationers. In six jurisdictions, over 80% of the probationers had to pay supervision fees. For example, in Dallas County, ninety-six percent of the probationers were assessed supervision fees. Among those jurisdictions that impose supervision fees, the average dollar assessment ranges from \$1,161 in Bexar County, Texas to \$41 in Baltimore County.²²

A National Institute of Corrections (NIC) survey of 207 agencies in 1985 indicated that 66 percent of probation agencies assess fees and 34 percent do not. For the agencies that assess fees, the moneys supplement the funding base and avoid dependency on a single source of funding. No probation system is wholly funded by fees, but in many instances, fees collected amounted to more than 50 percent of an agency's budget. According to the NIC survey, collections averaged \$270,000 for 104 surveyed agencies and these agencies collected nearly \$30 million.

In general, fees represent a greater proportion of total budgets for county agencies than State agencies. However, many State agencies that collect fees have only recently initiated such programs and are anticipating increased revenues as collections become part of standard operating procedures. Of the State agencies reporting, Florida and South Carolina collect the most fees in relation to overall budgets (20.9 percent and 15 percent, respectively). Florida collected a total of \$9.2 million in fiscal year 1985, while South Carolina fee collections totaled \$1.5 million. Texas probation has had a successful program for decades. Collections by Texas judicial districts increased from \$11.5 million in 1980 to \$25.8 million in 1984, a 224-percent increase in just 5 years (see chart 3).

Chart 3

Correctional Fee Revenues as Percent of Probation and Parole Operating Budget

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

Source: Dale Parent, 1990. *Recovering Correctional Cost Through Offender Fees* (Washington, D.C.: National Institute of Justice), p. 50.

Advantages

A major advantage of using probation fees is reduced dependence on tax-generated appropriations, thus allowing the States to allocate additional money to enforcement, treatment, and prevention programs. A second advantage is that fees propel probation programs toward self-sufficiency. Public opinion strongly supports offenders paying a portion of their supervision costs. Assessing fees can assist in making crime unprofitable and criminals more accountable. This type of dedicated funding measure is

easily incorporated into existing collection procedures such as those for criminal fines and victim restitution; thus, it creates a minimal additional workload.

Collection and Payment Methods

Two common collection methods are (1) solicitation of payment by probation officer advisement of payment due and (2) automated collection, which sends direct billing to the probationer and keeps track of the

accounting records. Regardless of which method is used, it has been concluded that effective collection systems involve

[c]ollection procedures that are clear, encourage prompt payment, and are consistently followed; and, enforcement efforts that involve a progression of responses that reflect mounting pressure and increased threat of coercive methods.²³

Forms of payment for correctional fees include cash, personal checks, certified checks, money orders, travelers checks, credit cards, and automatic deductions from work-release program pay.

Determination of Fee Amount

Each probation agency must have a standard method of assessing a probationer's ability to pay. Because economic situations change, the assessment should be done periodically to reflect changes in the probationer's economic status. Often State legislation provides for fee collection from probationers. In many cases, such legislation sets limits on the amount of money that may be charged. The most common monthly payments are \$10 or \$15, but fees can range anywhere from \$5 to \$50. In Colorado, where legislation does not set guidelines for fee amounts, the chief justice of the State supreme court ordered annual payments of \$50 for misdemeanor probationers and \$100 for felony probationers. In jurisdictions where fee ranges do exist, the court determines the monthly charge. Probation fee assessments range from 21 percent for probationers convicted of robbery to 40 percent for those convicted of larceny. Drug offenders have a low incidence of probation fee assessment (22 percent).

Consequences of Failure To Pay

In all fee-collecting States except California, fees are enforced the same as any other court-imposed condition. Failure to pay can lead to penalties similar to those for other violations of probation, including the

revocation of probation and the sentencing of prison or jail terms. In California, legislation prohibits criminal court penalties for nonpayment. Instead, recourse is sought through the civil court process.

The percent of total assessment paid varies by jurisdiction, ranging from 95 percent in Kings County, New York, to 24 percent in Baltimore, Maryland. Statistics show a strong relationship between the fee amount assessed and the percentage of fees paid; the higher the fee assessment, the lower the percentage of payment. Consequently, legislation usually allows for the waiver of probation fees under "hardship" conditions:

Criteria generally refer to financial inability to pay due to unemployment, family support obligations, student status, unemployable condition or handicap. Excepting the States of Florida and Alabama, determination of "hardship" is left to the discretion of the court. In Florida and certain jurisdictions of Alabama, specific guidelines for hardship have been defined.²⁴

Drug User's Probation Service Fees Charged to the Seller

No jurisdiction currently employs this concept, but State legislation or court orders could provide that felony sale or distribution convictions that result in probation include an order for the seller to pay the treatment costs of any identified user who bought drugs from that seller.

JAIL REVENUE AND INDUSTRY

Work release, weekend sentencing, and alternative work programs can help pay for themselves in much the same manner as probationer payments. Most U.S. counties have some mechanism to seek proportional reimbursement for housing or administrative costs. This is especially true for alcohol or drug use violations. Most programs are based on the ability to pay. Payment is considered an integral part of treatment and rehabilitation.

Allocation of Fees

Collected funds are used to offset jail costs or the funds flow into the general fund of the jurisdiction.

Montgomery County, Maryland, charges inmates on weekend sentences and collects an estimated \$48,000 per year.²⁵

There are currently 26 States with a total of 31 statutes enabling them to subject jail inmates to fees (see chart 4). Twenty-two of these statutes authorize fees to offset the costs of incarceration, including room and board and jail maintenance:

Under twenty-seven statutes, jail inmate fees are retained by the jailing authority. In twenty-five of these, the Sheriff retains collected fees and may spend them for the purposes authorized. Those purposes are typically left to the discretion of jail administrators. Two statutes

Chart 4

States With Legislation Permitting Service Fees To Be Levied on Jail Inmates

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

Source: Dale Parent. 1990. *Recovering Correctional Cost Through Offender Fees* (Washington, D.C.: National Institute of Justice), p. 58.

create special funds earmarked for specific jail purposes. There are seventeen statutes which set no limits on fees charged to jail inmates. One statute limits fees to an amount equal to the sheriff's daily allowance for room and board, while two permit the imposition of "reasonable" fees. One statute authorizes judges to determine the level of fees for jail inmates."²⁶

At the Hennepin County Adult Correctional Facility in Minneapolis, Minnesota, \$109,060 was collected from working inmates in 1990.²⁷ The program deducts money from the inmates' pay and allocates it to room and board and a crime victim assistance program.

Strafford County, New Hampshire, has developed a private-sector jail employment program. Inmates earn wages comparable to people working at similar jobs outside of jail. Fees deducted from earnings are dedicated to room and board costs, administrative costs, and victim assistance programs. The private-sector jail employment program makes Strafford County eligible for Federal employment funding via the Job Training Partnership Act. Strafford County receives

approximately \$60,000 per year to render its services as a private employer and a training place for inmates.

"In most programs, inmates receive no or low wages. Their work often serves the public sector, and they are usually credited with good time. Thus the offenders pay for crime with public service labor, and their early release makes room for other offenders."²⁸

Various Federal prison industry and contract statutes limit the use of these mechanisms and must be consulted before a program is started.²⁹

Benefits

Taxpayers, communities, inmates, and jails benefit from jail industry programs. Taxpayers save money by having services needed in communities performed by inmates; inmates decrease their jail time and are less likely to become repeat offenders; and jails gain new bedspace.³⁰

COURT FEES, ASSESSMENTS, AND MONETARY RESTITUTION³¹

Court rules or State legislation in some jurisdictions allow courts to assess fees on offenders to cover the costs of a criminal's court case and his or her punishment (probation or imprisonment), and to compensate the victim for actual losses due to criminal activity. The use of these fees can help make the functioning of the criminal justice system at least partly the financial burden of the offenders clogging court dockets. According to a recent study of the fees assigned to probationers in 32 counties, approximately 84 percent of probationers were required to pay some financial assessment. Three out of four probationers were required to pay two or more different assessments. There are three major categories of financial assessments that may be imposed on a drug offender by the court: court related fees, other assessments, and monetary restitution. For those criminals convicted of drug trafficking, 82 percent pay one or more assessments.

Court-Related Fees

Court-related fees contribute to the payment of court costs, public defender costs, and the State's cost of prosecution. In the drug trafficking crime category, 46 percent of the probationers are assessed this type of financial penalty. That figure is about equal to other crime categories; 45.5 percent is the average assessment for all crime categories. However, court fees are not used at all in 18.8 percent of the jurisdictions studied. Where they are assigned, the amount varies greatly. For instance, the average court fee assigned in Denver is \$16, while the average in Dade County is \$4,729.

Other Assessments

Other assessments for items such as the cost of drug testing, administrative overhead, and payments into victim compensation funds are levied against

58 percent of the probationers. The crime category of drug trafficking probationers pays a higher percentage of these other assessments than any other crime category, due primarily to assessment of drug testing costs. Other assessments, such as court fees, vary greatly between jurisdictions. Such fees were assigned most often, or 96 percent of the time, to probationers in Santa Clara County, California, while they were assigned in only 2 percent of the cases in Kings County, New York.

Monetary Restitution

Monetary restitution, or payments to actual victims for tangible losses, is paid by only 9 percent of the drug trafficking probationers. This sort of payment is made as often as 51 percent of the time in other crime categories such as larceny. The difference is probably due to the problem of identifying actual victims and actual losses with reference to drug crimes.

Ability To Collect

Drug trafficking assessments are paid at approximately 63 percent of the amount assessed, which is better than the average probationer's payment record. Statistics show that of all probationers, about 45 percent of the fees assessed are paid, but that average is highly variable between jurisdictions. The range stretches from 95 percent payment in Kings County, New York, to 24 percent in Baltimore, Maryland. The figures reveal that the higher an assessment is, the less likely it is to be paid in full. Probationers without drug abuse histories are assessed more than twice the amount of those with drug abuse histories, at \$3,058 versus \$1,373. The difference is probably based on perceived ability to pay.

LOTTERY PROCEEDS

As of March 1993, 37 States and the District of Columbia had State lotteries (in 3 of these States, the lotteries were authorized but not yet operational). Lottery revenue, when dedicated, is dedicated to issues the public cares about deeply.

Dedication of lottery proceeds is generally done for issues of universal importance within a State (e.g., general education in California, Florida, Illinois, Michigan, New Hampshire, New Jersey, New York, and Ohio). Arizona allocates its lottery funds to transportation, sociocultural projects, county government, and a general fund. Colorado allocates its funds to

parks and recreation and capital construction. Iowa, Oregon, and Kansas allocate funds to economic development. Wisconsin allocates its funds to property tax relief, and Pennsylvania dedicates its funds to senior citizen programs.³²

None of the 29 existing lottery statutes dedicates proceeds to anti-drug programs. Because States continue to earmark lottery funds to major public concerns, earmarking a portion of their lottery revenue to anti-drug programs, especially prevention or treatment, would be appropriate and useful.

EXPANSION FOR REIMBURSEMENT TO THE PUBLIC OF NOTORIETY-FOR-PROFIT LAWS

Notoriety-for-profit laws can be expanded from the current limited application so that profits made by a notorious criminal from publication of his or her story may be used to reimburse the public for costs arising from the criminal activity after any actual victims collect funds. Much of our Nation's crime bears a close relationship to drug use and abuse. According to a recent study, one in three State prison inmates was under the influence of a drug when he or she committed crime. Violent crimes as well as drug violations and property offenses are related to drug use and abuse.³³ It is justifiable to force criminal offenders to carry the costs of their conduct and their prosecution from profits they make from publication and media payments.

Notoriety-for-Profit Laws

Television movies dramatizing actual crimes are viewed in homes coast to coast when convicts sell their stories to the networks. Bookstores are flooded with the gruesome accounts of serial killers, kidnapers, and rapists, and the exploits of members of organized criminal networks and white-collar felons. Morning and afternoon interview programs introduce the public to all sorts of perpetrators using monitors from security prisons or post-parole studio appearances. Many criminals find they can make money through the notoriety of their crimes. America's curiosity about the criminal mind and lifestyle allows criminals to profit financially. In 42 States, however, laws provide victims or victim programs with royalties from a criminal's publication about a well-known crime.³⁴

There is justification for extending notoriety-for-profit laws to allow collection by the public or by public or private anti-drug abuse programs from the profits of criminal offenders who benefit financially from publicity about their crimes.

State Legislation Eliminating Offenders' Profits

Notoriety-for-profit laws preclude offenders from collecting any profit from a publication, radio, or television account of a notorious crime for a prescribed time period. The original notoriety-for-profit law in New York, which lent its popular name "Son of Sam Law" to other State statutes, was enacted in response to public outrage about the fact that David Berkowitz, the serial killer Son of Sam, was offered considerable payment for exclusive rights to his story. Notoriety-for-profit laws should not be held to infringe on freedom of expression because the press may report any crime and may offer payment for any criminal's story. Criminals, similarly, are free to tell their stories. It is only the offender's ability to collect profits that is curtailed. However, the New York statute was overturned by the Supreme Court on December 10, 1991, and all similar statutes may be in jeopardy.³⁵ Funds can also be collected by actual victims as compensation under notoriety-for-profit laws after civil proceedings. Unexhausted funds may be paid to victim compensation programs. The laws do not ban profits for publications on any subject about life in prison or about a trial; they are applicable only when a criminal attempts to profit by describing or reenacting the crime or by describing his or her thoughts, feelings, or emotions during the crime.

Justification for Expanding the Principle

There are grounds that justify the extension of the notoriety-for-profit laws to allow the State or public or private drug programs to bring civil proceedings to collect royalties on the profits made by criminal offenders when they receive payment for accounts of their notorious offenses. The first ground is the cost to

the public at large of the criminal's prosecution and incarceration. The second ground is the heavy financial burden on communities and victims of drug crime and of fighting and preventing drug-related crime.

The Cost of Processing Offenders to the Public

The basic premise of notoriety-for-profit laws is that it is unjust for a criminal to profit financially when his or her actions have injured an innocent victim financially, physically, or emotionally. These profits rightfully should go to the victim who may obtain a civil ruling against the offender. Likewise, felons cost the public money through the criminal justice system for investigation, prosecution, and incarceration. If a criminal can make an illegal activity financially profitable, then it is just that the profits go into an escrow account for a certain period of time and be available to the public through civil proceedings that establish the cost of processing that criminal through the justice system. Expanded notoriety-for-profit laws that reimburse the public have the potential to decrease the cost of the criminal justice system and free up funding for

dedication to anti-drug programming. Such measures also might discourage publication of stories about notorious crimes, thereby discouraging the glorification of drug criminals and helping to change attitudes about illegal drugs.

Victim, Treatment, and Prevention Programs Should Receive Profits

Drug crimes are not victimless. A dealer's victims are his or her customers; a user's victims are his or her neighbors and the public when violence or thievery results from the drug use and his or her need to fund the habit. Alcohol and drug use have been related statistically to victimization and criminal conduct in one-third of the crimes leading to incarceration. Requiring royalty payments by convicts for publication payments and media-generated funds about criminal offenses could help to build a support system for the many victims of drug crime and assist in needed expansion of prevention and treatment facilities. These profits could go into an escrow account where they would be available to anti-drug programs through civil proceedings.

INNOVATIVE CONCEPTS

State and local governments are currently experimenting with new funding concepts. These efforts often have the potential to dedicate funds to anti-drug programs. Some examples follow:

Day Fines

The Staten Island day-fine experiment began the first systematic use of day fines in American courts (see chart 5). Day fines are a substitute for short-term incarceration and involve a two-step process in determining the amount of the fine:

First the court sentences the offender to a certain number of day-fine units (e.g., 15, 60, 120 units) according to the gravity of the offense but without regard to his or her means. Then the value of each unit is set at a share of the offender's daily income. If two offenders with similar prior records (and no particular threat to community safety) were convicted of crimes of equal gravity, they might each be assessed a 5-day fine. If one earned only minimum wage, however, he or she would be fined \$135. If one earned 10 times as much, the fine would be \$1,350. If both failed to pay the fine, each defaulter would serve the same number of days—5—in jail.³⁶

An advantage of the day-fine system is that it "brings money into the justice system, in contrast with the cost of incarceration—which sometimes drains tax resources up to \$35,000 a convicted person per year."³⁷ The money received from these fines could be allocated back into the jail system to create new bedspace or used for prevention and education programs within the jails.³⁸ The National Institute of Justice has published an Issues and Practices manual based upon Staten Island and Milwaukee day-fine experiments (see chart 6).³⁹

Inmate Welfare Fund

In most counties, jail phones are set up so that inmates can make only collect calls. A California statute allows Santa Clara County to negotiate arrangements with the telephone company to raise funds for inmate welfare programs using the money collected for the use of phones. A telephone company, whose long-distance service is chosen for use in the jail facility, tracks the cost of each long-distance, collect call made from the jail and pays the county a commission for the use of that company's services. The company pays a 20-to-25 percent commission on the gross revenue from the charges to inmates while incarcerated. The commission is paid to the county sheriff who in turn deposits the funds into an Inmate Welfare Fund. The statutorily created fund is dedicated to the benefit, education, and welfare of the jail inmates.⁴⁰

Drug-Free Communities, Inc.

Concerned citizens of Freeport, Illinois, formed a tax-exempt [501(C)(3)] corporation, Drug-Free Communities, Inc., to raise funds and award the funds to drug enforcement, treatment, and prevention programs, including government programs and police activities.

Funds are raised by business or individual gifts, loans, or bond issues. Local banks are also involved. Funds will be disbursed by the board of directors for drug programs during the next 10 years. All elements of the community will be involved in the activities.

Exactions

Exactions are payments by developers to municipalities for services to an expanding population base.

Chart 5*

Dollar Value of One Day-Fine Unit by Net Daily Income and Number of Dependents

Net Daily Income(s)	Number of Dependents (Including Self)							
	1	2	3	4	5	6	7	8
3	1.28	1.05	.83	.68	.53	.45	.37	.30
4	1.70	1.40	1.10	.90	.70	.60	.50	.40
5	2.13	1.75	1.38	1.13	.88	.75	.62	.50
6	2.55	2.10	1.65	1.35	1.05	.90	.75	.60
7	2.98	2.45	1.93	1.58	1.23	1.95	.87	.70
8	3.40	2.80	2.20	1.80	1.40	1.20	1.00	.80
9	3.83	3.15	2.48	2.03	1.58	1.35	1.12	.90
10	4.25	3.50	2.75	2.25	1.75	1.50	1.25	1.00
11	4.68	3.85	3.03	2.47	1.93	1.65	1.37	1.10
12	5.10	4.20	3.30	2.70	2.10	1.80	1.50	1.20
13	5.53	4.55	3.58	2.93	2.28	1.95	1.62	1.30
14	7.85	4.90	3.85	3.15	2.45	2.10	1.75	1.40
15	8.42	5.25	4.13	3.38	2.63	2.25	1.87	1.50
16	8.98	5.60	4.40	3.60	2.80	2.40	2.00	1.60
17	9.54	5.95	4.68	3.83	2.98	2.55	2.12	1.70
18	10.10	6.30	4.95	4.05	3.15	2.70	2.25	1.80
19	10.66	8.78	5.23	4.28	3.33	2.85	2.37	1.90
20	11.22	9.24	5.50	4.50	3.50	3.00	2.50	2.00
46	25.81	21.25	16.70	13.66	10.63	9.11	7.59	4.60
47	26.37	21.71	17.06	13.96	10.86	9.31	7.75	4.70
48	26.93	22.18	17.42	14.26	11.09	9.50	7.92	6.34
49	27.49	22.64	17.79	14.55	11.32	9.70	8.08	6.47
50	28.05	23.10	18.15	14.85	11.55	9.90	8.25	6.60
51	28.61	23.56	18.51	15.15	11.78	10.10	8.41	6.73
52	29.17	26.02	18.88	15.44	12.01	10.30	8.58	6.86
53	29.73	24.49	19.24	15.74	12.24	10.49	8.74	7.00
54	30.29	24.95	19.60	16.04	12.47	10.69	8.91	7.13
55	30.86	25.41	19.97	16.34	12.71	10.89	9.07	7.26
96	53.86	44.35	34.85	28.51	22.18	19.01	15.84	12.67
97	54.42	44.81	35.21	28.81	22.41	19.21	16.00	12.80
98	54.98	45.28	35.57	29.11	22.64	19.40	16.17	12.94
99	55.54	45.74	35.94	29.40	22.87	19.60	16.33	13.07
100	56.10	46.20	36.30	29.70	23.10	19.80	16.50	13.20

Source: Sally Hillsman. 1990. "Fines and Day Fines," *Crime and Justice: A Review of Research* edited by Michael Tonry and Norval Morris. Vol. 12 (Chicago: University of Chicago Press).

*This table contains portions of the table used by the Staten Island judges to calculate the day-fine value for each case.

Chart 6

Types of Offenses for Which Fines Are Commonly Imposed, by Type of Court

	Limited Jurisdiction N = 74	General Jurisdiction (Felony, Misdemeanor, and Ordinance) N = 28	General Jurisdiction (Felony Only) N = 24	Total N = 126
Driving while intoxicated/DUI	54	22	2	78
Reckless driving	30	9	0	39
Violation of fish and game laws and other regulatory ordinances	24	3	0	27
Disturbing the peace/breach of the peace/disorderly conduct	32	8	1*	41
Loitering/soliciting prostitution	15	4	0	19
Drinking in public/public drunken- ness/carrying an open container	14	5	0	19
Criminal trespass	10	2	1	13
Vandalism/criminal mischief/ malicious mischief/property damage	9	3	3	15
Drug-related offenses (including sale and possession)	23	10	11	44
Weapons (illegal possession, carrying concealed, etc.)	6	2	1	9
Shoplifting	17	3	0	20
Bad checks	14	2	0	16
Other theft	19	9	8	36
Forgery/embezzlement	2	3	2	7
Fraud	1	4	1	6
Assault	?	14	5	48
Burglary breaking and entering	2	6	6	14
Robbery	0	1	3	4

Source: *Fines as Criminal Sanctions*, National Institute of Justice, September 1987.

*Superior Court, Cobb County—1 percent of caseload includes misdemeanors.

Ordinarily, an exaction would be a cost incurred by a developer as part of the approval for a development project. Physical improvements such as roads or sidewalks would be common exactions. Exactions are a controversial source of municipal funds.⁴¹ However, potential for use of other types of exactions exists, as indicated by an Occidental Petroleum Corporation-sponsored ballot initiative designed to convince voters to allow drilling by pledging to pay taxes of \$60 million per year for police and other municipal activities.⁴²

Law Enforcement Fee

Putnam County, Florida, has an ordinance allowing the assessment of an additional \$2 fee in all criminal proceedings and dedicating the funds collected to law enforcement education and training. This \$2 is in addition to any other financial penalty assigned.

ASSET FORFEITURE THROUGH ILLEGAL DRUG TRAFFICKING TAXES

Dual Benefit of Illegal Drug Trafficking Taxes

Placing a tax on illegal drugs can serve a dual purpose for States. Taxation of illegal drug possession, manufacture, and sale through excise taxes, controlled substance stamps, or income taxes allows governments to benefit from the multibillion dollar drug trade while creating revenue that may be used for drug abuse prevention and treatment programs, law enforcement efforts, and the criminal justice system. The measure also attacks the trafficker's profitability.

Taxation allows a government to collect money and use it for the public benefit. Some taxes, often referred to as "sin taxes," are assigned to lucrative businesses that produce socially distasteful products to collect funds for discouraging unhealthy or destructive activities. Basic economic principles show that one of the best ways to decrease the supply of and demand for a product is to increase the cost of production and distribution and the price of the good.

A total of 22 States now have some form of drug tax in place (see chart 7). The taxes do not affect legal drug activity such as the legal manufacture and distribution of controlled substances for medical purposes and under prescription, but solely target the illegal drug trade. The money raised by the penalties for tax violation may be diverted to drug programs. At least four States have allocated funds collected to drug abuse education and treatment. North Carolina allocates funds to law enforcement agencies, Oklahoma to drug abuse education, Louisiana to treatment programs, and Montana to rehabilitation. Other States earmark the funds collected by these measures for law enforcement and criminal justice.

Although States may not expect payment of the taxes, penalties against violators may be collected through civil proceedings. In addition to the tax itself, penalties for nonpayment for as much as 100 percent of the tax

may be collected. The tax may attach at harvesting or production and lapse after a statutory period, for instance, 3 months in Kansas. The State may collect interest from the time the tax was affixed and require a separate tax payment from traffickers at each stage in the distribution chain (i.e., manufacture, distribution, and sale). Robert Ebel of the Advisory Commission on Intergovernmental Relations called the drug tax "one of the best pieces of anti-narcotics legislation to have come along in years."⁴³

State Legislation and the Collection Process

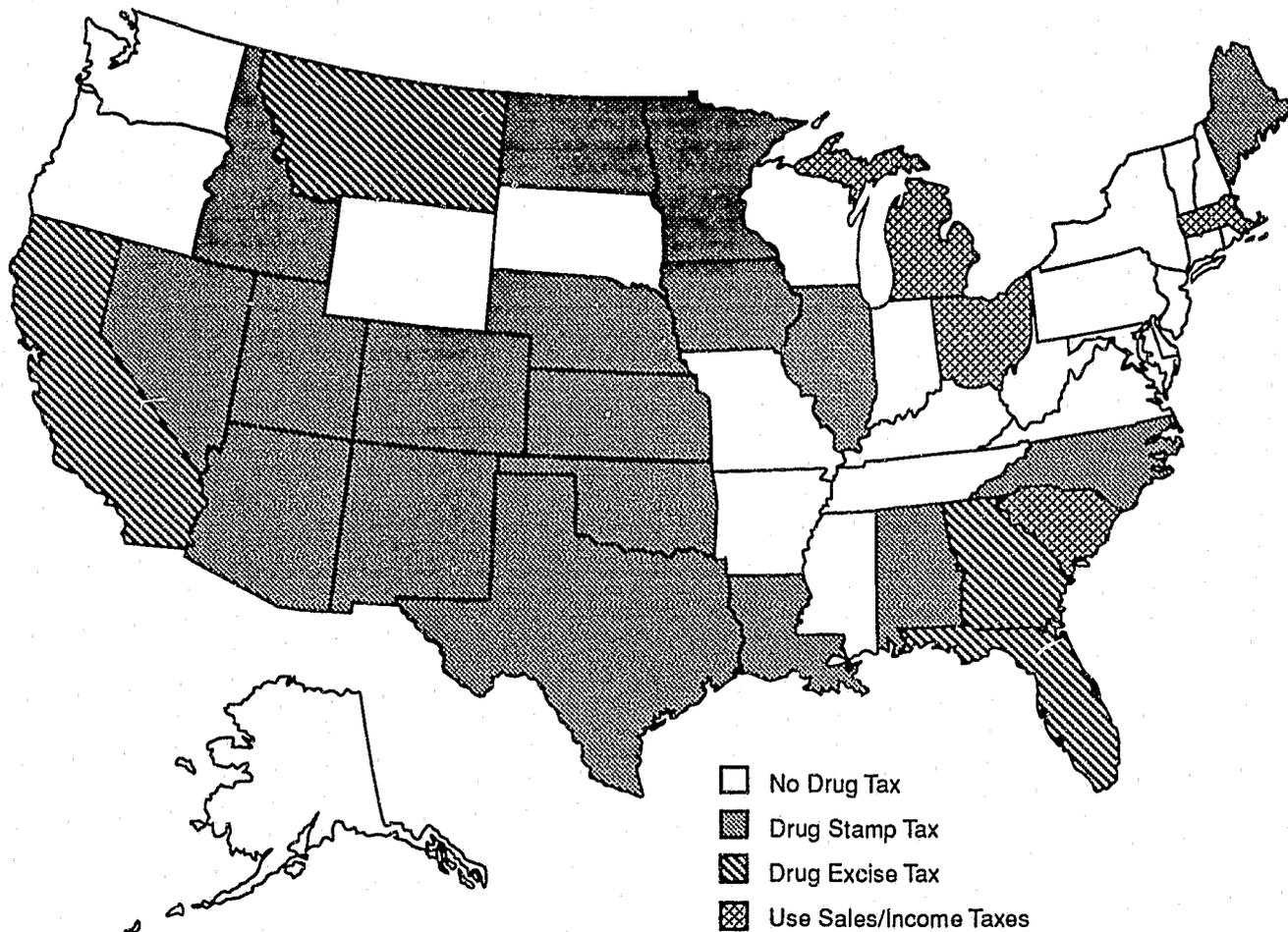
The Minnesota statute, a stamp requirement, is often cited as a model for other States.⁴⁴ The revenue mechanism is set in motion by imposing a penalty for tax violations on an arrestee for a drug crime if the drugs in question failed to carry a valid stamp. The State Department of Revenue issues a jeopardy assessment against the offender's assets and demands immediate payment. If the payment is not made immediately, the tax and penalty may be collected by asset forfeiture methods without awaiting the expiration of normal statutory time periods. Thus, the stamp requirement is a swift method of collecting revenue.

Advantages of Employing an Illegal Drug Trafficking Tax

A State benefits in several ways by developing illegal substance tax programs. First, the civil nature of the revenue collection method for nonpayment of taxes does not require proof of criminal guilt. Thus, the State may collect unpaid taxes even when subsequent criminal prosecution for drug crimes fails. Further, criminal conviction and punishment will not necessarily bar tax penalties because the doctrine of double jeopardy may be inapplicable and, in any

Chart 7

State Drug Tax Programs



Source: Federation of Tax Administrators, May 1991.

case, does not bar separate punishments by separate sovereigns even if both cases arise out of the same activity.⁴⁵ Tax penalties may be broader than criminal penalties because tax law "permits a far broader range of property forfeiture than under criminal statutes where a direct link has to be shown between drugs and property."⁴⁶ Second, the burden of proof in a tax proceeding is on the tax violator and not the government. The violator must prove either that the tax has been paid or that the violation charges are unfounded. Third, the programs strike financially at dealers while providing funds for prevention and treatment, thereby attacking the drug problem from both sides.

Funds Collected Through Illegal Drug Tax Measures

The heavy burdens of illegal drug taxes have the potential to create a large fund for important prevention and treatment programs. The standard tax assessment is \$3.50 per gram of marijuana (about \$100 per ounce and \$1,600 per pound) and \$200 per gram of cocaine (about \$5,670 per ounce and \$90,700 per pound). Drugs sold in manufactured dosage units are taxed at about \$50 per unit, but this figure varies for each State. The success of the measures rests on cooperation between law enforcement and tax authorities. In Minnesota, taxes on illegal drugs netted \$1.7 million from the \$33 million levied during 4 years. On the other hand, Arizona collected only \$210,000 and assessed only \$3.6

million during 7 years. It should be made clear that the tax department programs need not compete with other agencies' recovery of drug assets⁴⁷ or with criminal fines.⁴⁸

Considerations in Establishing Taxation Programs

The most successful opposing argument to these programs is that they implicate the fifth amendment right against self-incrimination because the trafficker may be, in effect, confessing to his or her involvement in illegal drugs by paying the tax. This argument caused a South Dakota court to strike down an illegal drug taxation statute as unconstitutional. However, many legislatures, such as Minnesota's, allow dealers to pay the tax anonymously, eliminating self-incrimination challenges. Also, in many States, the use of information obtained from tax collection cannot be used as evidence in criminal prosecution unless there is an independent source for obtaining the information.

State tax administrators must be prepared to litigate tax matters as well as enforcement issues such as double jeopardy, due process, res judicata, and eighth amendment excessive penalty claims. However, none of these arguments has proven to present insurmountable obstacles to drug tax laws to date. According to the Supreme Court, there "has been widespread and settled administrative and judicial recognition of the taxability of unlawful gains of many kinds."⁴⁹

CONCLUSION

The dedicated funding measures highlighted in this monograph display some of the mechanisms that State and local governments have developed to support efforts to eliminate illegal drugs from their communities despite recent budgetary constraints. The variety of innovative means of funding State or local drug control and prevention programs have the potential for targeting resources not yet tapped in drug control efforts. The American people should not, through their tax dollars, carry the entire financial burden of the Nation's drug problem. The programs represented here offer alternatives that involve community and corporate efforts and force those individuals who participate in the drug trade to contribute monetarily.

SOURCES FOR FURTHER INFORMATION

Additional literature is available on dedicated funding sources. The resources noted below are intended as a partial list of materials for readers desiring more information. They may be ordered through the Bureau of Justice Assistance Clearinghouse by calling 800-688-4252.

■ **Asset Forfeiture Series, Bureau of Justice Assistance (1 through 14):**

1. *Civil Forfeiture: Tracing the Proceeds of Narcotics Trafficking*. 1988. 15 pp.
2. *Public Record and Other Information on Hidden Assets*. 1988. 22 pp.
3. *Management and Disposition of Seized Assets*. 1988. 9 pp.
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7. *Uncovering Assets Laundered Through a Business*. 1989. 30 pp.
8. *Starting Forfeiture Programs: A Prosecutor's Guide*. 1989. 44 pp.
9. *Developing Plans To Attack Drug Traffickers' Assets*. 1989. 28 pp.
10. *Profile Factors After Sokolow*. 1989. 35 pp.
11. *Tracking Money Proceeds: Bank Secrecy Act Reports*. 1989. 28 pp.
12. *Protection of Third Party Rights*. 1990. 64 pp.
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14. *Forfeiture of Real Property: An Overview*. 1991. 64 pp.
15. *Guide to Preseizure Planning*. 1993. 36 pp.
16. *How To Present the Forfeiture Case to the Prosecutor*. 1993. 24 pp.

■ *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*. 1990. 20 pp.

■ *Illegal Money Laundering: A Strategy and Resource Guide for Law Enforcement Agencies*. 1988. 81 pp.

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In 1990, BJA collaborated with the National Sheriffs' Association to develop *Preventing Law Enforcement Stress: The Organization's Role*.

This 121-page training manual shows administrators how to manage law enforcement stress using an organizational health model that eliminates organizational stressors.

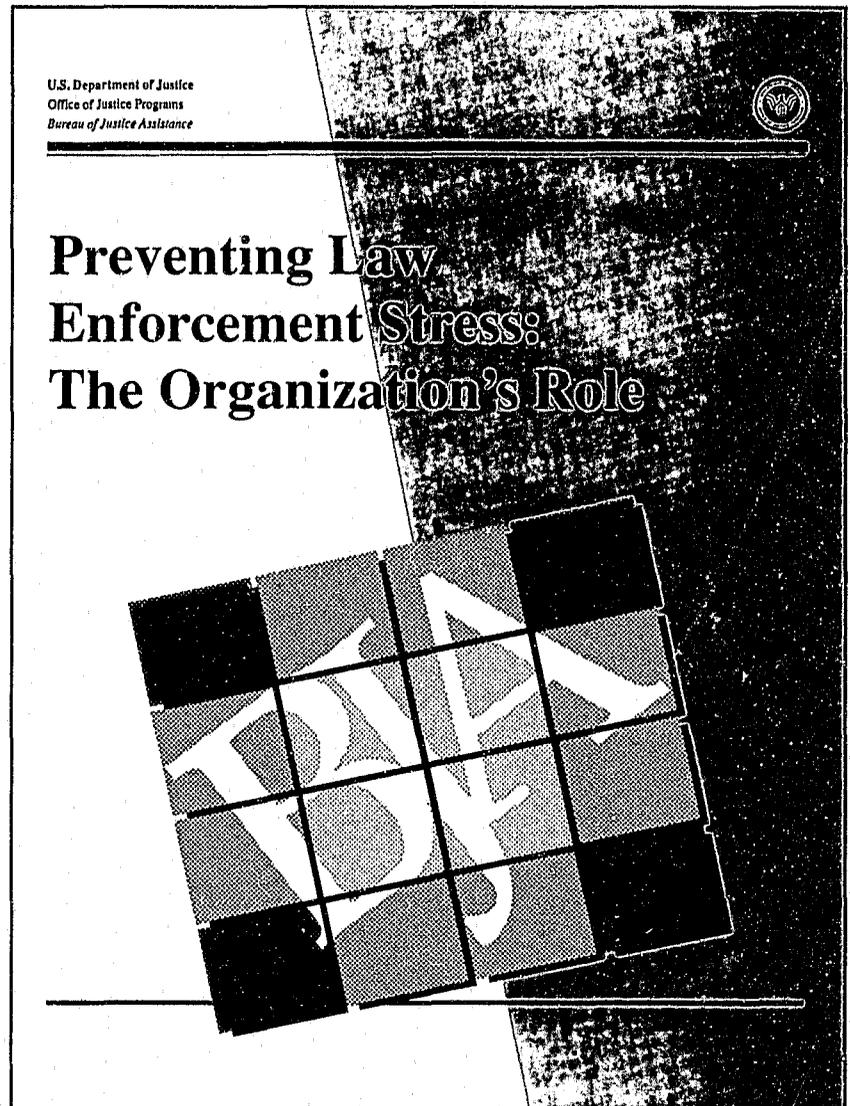
Designed for law enforcement administrators, managers, and supervisors, *Preventing Law Enforcement Stress: The Organization's Role* helps trainers foster a safer, more pleasant work environment and groom well-adjusted, more proficient officers.

Topics discussed in the publication include:

- Law Enforcement Stress: A Clinical Perspective.
- Management Practices/Organizational Factors Causing Law Enforcement Stress.
- Implications of Higher Education on Law Enforcement Stress.
- Management Strategies for Developing a Healthy Workplace.

The manual helps administrators customize their own training by providing sample law enforcement organizational principles, techniques for encouraging constructive communication, and a model stress management curriculum. It also includes overheads that can be reproduced onto transparencies and a lengthy reference list of related materials for further investigation.

Call the BJA Clearinghouse toll free at 1-800-688-4252 to order Law Enforcement Stress: The Organization's Role for \$19 and obtain this helpful and informative training tool.



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