



**Court Imposed Financial Obligations on Criminal  
Offenders:  
A Framework to Improve Texas Policies**

**Justice Center – Council of State Governments  
&  
Texas Office of Court Administration  
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### ***Executive Summary: Recommendations***

*Repaying Debts*, a 2007 report by the Justice Center of the Council of State Governments,<sup>1</sup> highlights the financial burdens facing the increasing population of criminal offenders re-entering society from confinement. The ability to pay of this population is marginal, yet their obligations may be many, and compelling: victim restitution, child support, fines, and a variety of user fees required by law for coming into contact with the courts and corrections. Successful re-entry is in tension with making victims whole, supporting blameless children whose own well-being is of paramount concern, satisfying a criminal judgment, and satisfying the variety of costs that the system imposes.

The Justice Center report encourages states to study these issues and integrate the policy governing diverse agencies and branches of government, so that the competing financial burdens are consolidated, collection of debts is improved, and prioritization of restitution and child support is achieved. This report represents the first step by the first state, Texas, to accept that challenge and take a close look at these issues, from the law and policy as well as the empirical perspective. Thematically, the recommendations address:

- Improved policy, organization, and simplicity in the statutory framework for court-imposed financial obligations;
- New tools to capture and maintain offender financial obligation information across the justice system; and
- Further study of the apparent gaps between what may legally be assessed and the amount actually assessed and between assessments and collections; the existence of a tipping point where overall obligations negatively impact collections and recidivism; and the implications for imposition of new fees to generate more revenue for programs/operations.

These ten recommendations should be viewed as the beginning of a long term approach to a complex situation.

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<sup>1</sup> See [http://www.reentrypolicy.org/finobs\\_about](http://www.reentrypolicy.org/finobs_about).

**The Legislature should:**

1. Clarify the priority of payment for offenders of limited means under community supervision and parole supervision.
2. Clarify the mechanism for providing due process to offenders sentenced to prison so that their court costs, fees and fines may be collected from their inmate trust account in appropriate cases.
3. Clarify and consolidate the sprawling variety of state and local fees and costs into a comprehensible package.
4. Encourage sentencing judges to obtain information about an offender's child support obligations and take that information into account for purposes of assessing a fine, and require the offender to identify any court that has issued a child support order and obtain relevant information from the clerk of the court.
5. Require that the Department of Criminal Justice instruct state jail felons, upon their release, to report to the clerk of the convicting court, to develop a plan for payment of any outstanding court costs, fees and fines.
6. Require the Department of Criminal Justice to capture information in computerized records on the governmental financial obligations of parolees, as part of supervision.
7. Fund further policy development, including the development of an automated "financial information" form that follows the offender through the criminal justice system.

**OCA should:**

8. Work with judicial education providers to assist judges in data-informed decision making in general, and to promote better utilization of information on the financial obligations of people in the criminal justice population in particular.
9. Seek funding to improve data collection to better understand the impact of the financial obligation burden on the criminal justice population.

**OAG should:**

10. Encourage incarcerated obligors to contact OAG Child Support offices to make arrangements to get back on track with payments, and OAG should reward that effort by making reasonable arrangements and providing information on employment resources.

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## **Part I. Introduction**

### The issue

Across the country, people released from prisons and jails often face a substantial amount of debt upon their return to the community, which can include court-ordered fines, fees, surcharges, victim restitution, and child support. These people typically have insufficient resources to pay their debts to their children, victims, and the criminal justice system. Nationally, two-thirds of people detained in jails report annual incomes under \$12,000 prior to arrest.<sup>2</sup> Most people returning to the community have difficulty finding employment and paying off these debts upon release from incarceration.<sup>3</sup>

Given these circumstances, it is not surprising that state and local agencies often end up competing for a share of small payments, and the financial obligations of people released from prisons and jails go unfulfilled. Courts, departments of correction, local probation departments, and other agencies increasingly rely on this money to offset some of the costs of operating the criminal justice system. For example, in Texas, probation fees made up 46 percent of the Travis County Probation Department's \$18.3 million budget in 2006.<sup>4</sup> Children and families rely on child support payments to help cover the costs of childrearing. For victims, restitution provides some reimbursement for the financial losses they have sustained.

Policies governing the collection of fines, fees, restitution, and child support are often at odds with one another, causing considerable confusion among judges and administrators of criminal justice agencies: Which agencies are responsible for collecting which debts? How do the collections practices of various agencies relate to one another? Which debts should be collected first?<sup>5</sup> States typically do not have a mechanism to track systematically what fines, fees, and charges are assessed, what restitution amounts are ordered, and what payments are being made. For example, in 2005, the Texas legislature found that the courts were unable to provide information

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<sup>2</sup> Doris James, *Profile of Jail Inmates, 2002*, US Department of Justice, Bureau of Justice Statistics, NCJ 201932 (Washington, DC: Department of Justice, 2004).

<sup>3</sup> Steven Steurer, Linda Smith, and Alice Tracy, *Three-State Recidivism Study* (Lanham, Md.: Correctional Educational Association, 2001). Sharon M. Dietrich, "Criminal Records and Employment: Ex-Offenders Thwarted in Attempts to Earn a Living for Their Families," in Amy E. Hirsch, Sharon M. Dietrich, Rue Landau, Peter D. Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein, *Every Door Closed: Barriers Facing Parents with Criminal Records* (Washington, D.C., and Philadelphia, Penn.: Center for Law and Social Policy and Community Legal Services, 2002). Nancy La Vigne, Christy Visher, and Jennifer Castro, *Chicago Prisoners' Reflections on Returning Home* (Washington, D.C.: Urban Institute, 2004).

<sup>4</sup> Personal communication, Donna Farris, Division Director of Operations, Travis County CSCD, Texas, December 28, 2006, February 13, 2007.

<sup>5</sup> Federal law requires that child support be collected separately by designated child support enforcement officials. However, respondents to an unpublished joint Justice Center/American Probation and Parole Association survey of 200 members of the association conducted in December 2005 reported that separate agencies within a given jurisdiction are often responsible for collecting probation supervision fees, court costs, fines, and restitution.

about what percentage of the total court fines and fees assessed were actually collected.<sup>6</sup>

### Repaying Debts report

In October 2007, with funding support provided by U.S. Department of Justice, the Justice Center released, *Repaying Debts*, a first-of-its-kind comprehensive guide that reviews many of the problems described above and details how policymakers can increase financial accountability among people leaving correctional facilities, improve rates of child support collection and victim restitution, and make individuals' transition from prisons and jails to the community safe and successful. Its release attracted national attention, including a lengthy editorial in the *New York Times*.

The guide's release prompted various requests among state officials for technical assistance to translate the report's recommendations into policy and practice. In particular, these states needed help bringing together the cross-section of agencies, across branches of government. Once such a group was assembled, the members needed help getting past anecdotal accounts of what was happening in their state and assembling an assessment, grounded in data and in a thorough review of existing policies and procedures.

### Texas "learning site"

The Justice Center selected Texas as one of two "learning site" states (along with Idaho) to develop a detailed analysis of the collections policies and laws, assess how these existing policies relate to the policy goals articulated in *Repaying Debts*, and formulate policy options that states can consider. In selecting the two "learning sites," the Justice Center used the following criteria:

- Bipartisan support among elected officials and the administrators of courts, corrections, and departments of probation and parole to address this issue
- Emergence of a state official to chair an interdisciplinary working group, which comprises representatives of agencies responsible for setting and implementing policies and procedures that govern the repayment of debts owed by people released from prisons and jails.
- Accessibility and availability of data that expert consultants can use to analyze state collections policies and their impact on prisoner reentry.

The Texas partner in this effort is the Office of Court Administration (OCA), which provides resources and information for the Texas judicial system. The Justice Center and OCA developed this report to inform policymakers in Texas working to implement some of the recommendations provided in *Repaying Debts* and highlight lessons learned through this process. As described below this report will provide guidance for policymakers in Texas and in other states who are hoping to develop initiatives to ensure

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<sup>6</sup>Texas Department of Criminal Justice, Board of Pardons and Paroles, Correctional Managed Health Care Committee, *Staff Report: Court Costs and Fees Study* (Austin, Tex.: Sunset Advisory Commission, 2006).

that people released from prisons and jails meet their financial obligations to victims, families, and criminal justice agencies.

### Past efforts in Texas to address this issue

Policymakers in Texas have engaged in a number of efforts to address this issue, and these efforts provide a foundation of existing research and analysis on which the Justice Center's technical assistance can build.

In 2002, the Texas House Committee on Corrections Interim Committee directed the Texas Department of Criminal Justice (TDCJ) to develop a report on fee collections in community supervision and corrections departments in the State. TDCJ presented the following findings to the Committee:

1. Community supervision and corrections departments collected approximately \$237 million in fees in FY 2001, with half of it disbursed to other entities.
2. The median annual salary of offenders in the study was \$18,200, which is one third lower than the Texas median wage for men.
3. Most of the district judges and district attorneys surveyed agree that: 1) fees cause undue hardship for probationers often or sometimes; 2) additional fees should not be added; 3) failure to pay fees is rarely a major consideration in revocations.
4. One-half of the community supervision and corrections department directors indicated that 50% of probationers have difficulty making full payments.
5. About two-thirds of the community supervision and corrections department directors indicate that they employ people solely dedicated to collecting fees.

In 2005, the Texas Legislature required the Sunset Commission to study the purpose, collection, and use of certain criminal court costs and fees, and parole, probation, and community supervision fees. The Texas Sunset Commission Report provided an inventory of court costs and fees; a description of various fines for certain categories of offenses; and three case studies that provide real-world examples of the types of court costs and fees certain individuals may face. The Report Identified a number of areas in which state and local agencies are not collecting data. For example, the courts were unable to provide information about what percentage of the total court fines and fees assessed were actually collected.<sup>7</sup>

### The Texas Office of Court Administration (OCA)

OCA provides resources and information for the efficient administration of the Judicial Branch of Texas.<sup>8</sup> As it turns out, the *Repaying Debts* policy dilemma connects in multiple ways to the OCA portfolio of operations.<sup>9</sup> The most obvious connection involves OCA's role in the collection of fines, fees and court costs, pursuant to Article 103.0033,

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<sup>7</sup> Texas Department of Criminal Justice, Board of Pardons and Paroles, Correctional Managed Health Care Committee, *Staff Report: Court Costs and Fees Study* (Austin, Tex.: Sunset Advisory Commission, 2006), available online at <http://www.sunset.state.tx.us/80threports/final80th/219.pdf>.

<sup>8</sup> See <http://www.courts.state.tx.us/oca/>.

<sup>9</sup> See Figure 2, p. 8, and <http://www.courts.state.tx.us/oca/pros-home.asp>.

Code of Criminal Procedure,<sup>10</sup> the Collection Improvement Program. The agency has described the purpose of the program in the Texas Administrative Code, Title I, § 175.1, as follows:<sup>11</sup>

(c) The OCA Collection Improvement Program applies to criminal cases in which the defendant agrees to or is required to pay all court costs, fees, and fines under a payment plan rather than when they are assessed and payment is requested. Although the program can be utilized by a judge in virtually every criminal case to effectuate the judge's financial orders, it is not designed to influence the judicial determination of whether to order payment of costs, fees and fines, or otherwise to affect the sentencing or other disposition decision that is within the judge's discretion. The program is simply designed to improve the collection of court costs, fees and fines that have been imposed, while helping defendants satisfy their obligations. The program is not intended to conflict with or undermine the provision to defendants of full procedural and substantive rights under the constitution and laws of this state and of the United States.

(d) *Although the program focuses on collection of court costs, fees and fines, it should be implemented in the context of local, state and national efforts to develop and apply systemic policy to the competing financial obligations of people in the criminal justice system.*

The rule adoption preamble made clear, and this report reflects, that §175.1(d) signifies the agency's "commitment to the Texas application of efforts by the Justice Center at the Council of State Governments to address the re-entry implications of currently incoherent policy on the competing financial obligations of the criminal justice population, particularly the re-entering population." So OCA has a publicly stated interest in reconciling the tension between a narrow focus on improving court collections, and the need to consider the bigger picture.

OCA also plays a growing role in providing information for judges to make better decisions. The Automated Registry system,<sup>12</sup> funded in 2007 and presently under design, will provide courts with several different sources of state database information, and in particular (for purposes of this report) may be able to provide sentencing judges with information about child support obligations.

Sentencing policy is of particular interest to the current Administrative Director of OCA.<sup>13</sup> The *Repaying Debts* initiative and the Automated Registry project converge on the question, "how can access to more information effectively be used at sentencing"?

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<sup>10</sup> See <http://tlo2.tlc.state.tx.us/statutes/cr.toc.htm>.

<sup>11</sup> See [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=1&pt=8&ch=175](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=8&ch=175).

<sup>12</sup> See General Appropriations Act, p. IV-27, OCA Rider 15, and the project webpage at: <http://www.courts.state.tx.us/oca/registry/reghome.asp>.

<sup>13</sup> The Director authored a special edition of the agency newsletter, *CourTex*, on state sentencing issues; see <http://www.courts.state.tx.us/pubs/pubs-home.asp>.



In addition, from the child support angle, OCA supports 43 “Title IV-D” associate judges who do nothing but hear child support establishment and enforcement cases and paternity cases within the expedited time frames established by Chapter 201.110 of the Texas Family Code.<sup>14</sup>

OCA also advises court clerks, collections staff, and judges about the imposition and management of fees and court costs. The incremental and fragmented adoption of costs and fees over time has obscured the overall view of state policy in this area, and has made summarization of costs and fees difficult. Figure 1, an excerpt from the Table of Contents of the 2005 edition of the OCA Court Costs and Fees Handbook, illustrates the tip of this iceberg of complexity.<sup>15</sup> This manual is 197 pages long, counting appendices.

This degree of complexity applies to fines as well as court costs; the Texas Municipal Courts Education Center<sup>16</sup> publishes a 100-page chart summarizing the panoply of fines allowable for imposition in fine-only offenses, sprinkled throughout more than 20 separate subject matter codes (e.g., Code of Criminal Procedure, Transportation Code, etc.).

OCA provides information about the judicial system to a variety of people, including judges and other personnel in the system, litigants, legislators, and the general public. In this role, OCA is keenly aware of the staggering complexity and localism of the Texas court system. Court costs, fees, and fines are merely one example of this complexity, which OCA constantly endeavors to minimize and explain. Any effort to make policy more coherent, and the court system more understandable, is worthy of OCA’s interest. Finally, OCA shares an interest with the interest of judges and policymakers, in reconciling the dilemma posed by the *Repaying Debts* report: the increasing financial obligations on offenders and their potential negative impact. Sharing this interest, the OCA Administrative Director relished an opportunity to work with Michael Thompson and Dr. Tony Fabelo of the Justice Center.

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<sup>14</sup> See <http://www.courts.state.tx.us/courts/specialty.asp>.

<sup>15</sup> See [http://www.courts.state.tx.us/pubs/cost\\_fee\\_handbooks/2005\\_mn.htm](http://www.courts.state.tx.us/pubs/cost_fee_handbooks/2005_mn.htm)

<sup>16</sup> See <http://www.tmcec.com/tmcec/>.

**Figure 1: Chapter 1 and 2 from Table of Contents of OCA Court Costs and Fee Handbook for Municipal Courts**

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In summary, Figure 2 shows the full OCA portfolio. Of the items listed, five connect directly to the Repaying Debts initiative: collection improvement, specialty courts, judicial information, publications and forms, and the Automated Registry project.

Figure 2: OCA Programs and Projects

<b>Programs &amp; Projects</b>	
Office of Court Administration, Texas Judicial Council & Judicial Committee on Information Technology	
<b>PROGRAMS</b>	<b>PROJECTS</b>
<ul style="list-style-type: none"><li>* Indigent Defense <a href="#">Funding &amp; Standards</a></li><li>* <a href="#">Collection Improvement</a></li><li>* <a href="#">Court Services</a></li><li>* <a href="#">Specialty Court</a></li><li>* <a href="#">Court Reporter Certification</a></li><li>* <a href="#">Guardian Certification</a></li><li>* <a href="#">Process Server Certification</a></li><li>* <a href="#">Judicial Information</a></li><li>* <a href="#">Publications and Forms</a></li></ul>	<ul style="list-style-type: none"><li>* <a href="#">Weighted Caseload/Judicial Needs Assessment</a></li><li>* <a href="#">Judicial Data Committee</a></li><li>* <a href="#">Texas Data-Enabled Courts for Kids (TexDECK)</a></li><li>* <a href="#">Texas Appeals Management &amp; E-Filing System (TAMES)</a></li><li>* <a href="#">Automated Registry</a></li><li>* <a href="#">Texas Path to NIEM</a></li><li>* <a href="#">Repaying Debts</a></li><li>* <a href="#">Mental Health Leadership Initiative</a></li><li>* <a href="#">Midland County Criminal Justice Process Study [pdf]</a></li></ul>

Texas working group

Justice Center staff have partnered with the Texas Office of Court Administration to spearhead the complicated task of compiling information on existing policies and practices that govern collection of court-ordered financial obligations, and gathering data on current collection rates of various fines, fees, restitution, and child support. To launch this effort, a small working group of staff and administrators of state and local government agencies was convened. Working group members include the court administrators, collections program managers, database and information systems specialists, and legal experts who are either responsible for collections in their department or agency, or familiar with collection policies and practices in their jurisdiction.

## Part II. The Financial Load of a Parolee: A Hypothetical Case Study<sup>17</sup>

When a person is released from prison on parole, he or she is generally faced with significant financial obligations imposed by state and local government. A parolee's "financial load" can consist of some (or even all) of the following financial obligations:

- 1) state and local court costs;
- 2) court-appointed attorney fees;
- 3) fine;
- 4) restitution;
- 5) parole fees;
- 6) accident response liability;
- 7) child support; and
- 8) driver's license surcharges.

Consider the following hypothetical case: In January of 2008, John Doe was 34 years old and living in an apartment complex in Cedar Park, Texas. Cedar Park is located in Williamson County. He was employed full-time as a department manager at a grocery store in Cedar Park. His annual gross salary was \$40,000. His salary was his only source of income and he had no savings. John essentially lived paycheck to paycheck.

John was divorced and had one daughter who lived primarily with his ex-wife. For child support purposes, John's net resources were calculated to be \$30,000 per year.<sup>18</sup> John had been ordered to pay child support at the rate of \$500 per month and he was up-to-date on his payments. The \$500 was 20% of his monthly net resources of \$2,500 and was thus in accord with statutory child support guidelines.<sup>19</sup> Money was withheld from

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<sup>17</sup> (1) Court Costs – Texas Comptroller's "Court Costs, Fees and Fines" publication for Justice, County and District Courts, [www.cpa.state.tx.us/lga/courtcosts07/96-865.pdf](http://www.cpa.state.tx.us/lga/courtcosts07/96-865.pdf) .  
(2) Court Appointed Attorneys Fees - Authorized by Code of Criminal Procedure, Article 26.05(g). Each county should have a fee schedule detailing the amounts paid to court-appointed attorneys for the provision of certain services. Go to <http://tfid.tamu.edu/Public/Default.asp> .  
(3) Fine – The fine range for most offenses classified as felonies is set out in Penal Code, Sections 12.31-12.35.  
(4) Accident Response Liability – See Code of Criminal Procedure, Article 102.0178(c)(2) for details.  
(6) Restitution – The topic of restitution is addressed in Code of Criminal Procedure, Article 42.037.  
(7) Parole Fees – Please see Government Code, Sections 508.182, 508.189 for information on parole fees.  
(5 & 8) Child Support – Chapter 154 of the Family Code details the subject of child support. Note: Federal law states that child support collection "must be given priority over any other legal process under State law" in respect to income withholding. 42 USC 666(b)(7).  
(9) Driver's License Surcharges – Chapter 708 of the Transportation Code details the surcharge program. See <http://tmcec.com/newsletter/summer2006/driverprogram.htm>

<sup>18</sup> See Family Code, Section 154.062.

<sup>19</sup> See Family Code, Sections 154.062, 154.125.

his bi-weekly paycheck to pay for his daughter's health insurance which he was legally obligated to provide.

In early January, John was driving his car while he was intoxicated. Due to his intoxication, John struck another car at a major Cedar Park intersection and killed the car's driver. John was charged with the crime of "intoxication manslaughter."<sup>20</sup> The offense is a second degree felony. As set forth in Section 12.33 of the Penal Code, a second degree felony is punishable by a prison term of 2 to 20 years and a fine of not more than \$10,000.

John was found to be indigent for the purpose of being able to afford an attorney. Accordingly, an attorney was appointed to represent him. After consulting with his attorney, John pleaded guilty in state district court. The judge accepted John's guilty plea and assessed his punishment at 8 years in prison and a \$5,000 fine. Pursuant to Article 42.037 of the Code of Criminal Procedure, the Judge ordered John to pay \$3,000 restitution to the estate of the driver of the other car in installments of \$50 per month upon his release from prison. This was roughly one-third of the amount of the other driver's funeral expenses. Because the judge ordered John to pay the restitution in installments, an additional \$12 fee was assessed.

The judge also ordered John to pay all court costs as required by law. Additionally, the judge determined that John had resources to enable him to fully offset the cost of his court-appointed attorney's services. Consistent with that finding, the judge ordered John to pay \$500 which is the amount that a court-appointed attorney in Williamson County receives for handling a routine felony plea.

The judge also made a finding that as a direct result of John's offense, the Cedar Park EMS squad and police department incurred an expense of \$1,000. The judge inserted a line in the judgment making John liable for the \$1,000 as authorized by Article 102.018(c)(2) of the Code of Criminal Procedure.

John went to prison where he was well-behaved and created no disturbances. During the two years he was in prison, John did not make any of the payments he had been ordered to make (including child support) because he was no longer earning any money. John had not had any money deposited in his inmate account during his stay in prison and thus no money was taken from his account to go toward any of his obligations.

After serving two years of his eight-year sentence, John was released on parole as authorized by Section 508.145(f) of the Government Code. John was fortunate enough to be hired back by his old employer at his old salary - \$40,000 per year. John felt confident that things would work out financially, but he had not considered the financial obligations he had to the government upon his release on parole. John's financial obligations to the government upon his release from prison were as follows:

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<sup>20</sup> See Penal Code, Section 49.08.

(1) Court Costs	
(a) Judicial Support Fee	\$ 6.00
(b) Juror Reimbursement Fee	4.00
(c) Consolidated Court Cost	133.00
(d) EMS Trauma Fee (intoxication convictions)	100.00
(e) Drug Court Fee (intox./drug convictions)	50.00
(f) Indigent Defense Fund	2.00
(g) Arrest Fee	5.00
(h) District Clerk's Fee	40.00
(i) Courthouse Security Fee	5.00
(j) Records Management Fee	25.00
(k) Time Payment Fee	<u>25.00</u>
Court Costs Subtotal	\$ 395.00
(2) Court-Appointed Attorney Fees	500.00
(3) Fine	5,000.00
(4) Accident Response Liability	1,000.00
<u>(5) Child Support (in arrears - \$500 x 24 months)</u>	<u>12,000.00</u>
Total Amount Owed Upon Release	\$18,895.00

Upon release from prison on parole, the amount John owed continued to increase. John was still responsible for monthly child support payments. The fact that John owed a considerable amount of money due to his criminal conviction did not work to change the calculation of his net resources for child support purposes. John had a continuing obligation to pay \$500 per month in child support.

As soon as John was released from prison on parole, he began to incur parole supervision charges of \$10 per month and parole administrative charges of \$8 per month.<sup>21</sup> John also learned that each time he made a payment toward his court costs, another \$2 transaction fee would be assessed.<sup>22</sup>

John was hit with another surprise when he received a notice from the Department of Public Safety (DPS) informing him that due to his conviction within the past 36 months for intoxication manslaughter, he would have to pay a surcharge of \$1,000 within 30 days in order to keep his driver's license from being suspended.<sup>23</sup> He did learn, however, that he would be able to pay the surcharge in installments over a period of time not to exceed 36 months.<sup>24</sup> John arranged to pay the \$1,000 over the next 36 months at roughly \$27 per month.

Thus, John's new monthly fees upon being released from prison (not including the \$2 court cost transaction fee) were as follows:

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<sup>21</sup> See Government Code, Section 508.182.

<sup>22</sup> See Code of Criminal Procedure, Article 102.072.

<sup>23</sup> See Transportation Code, Chapter 708.

<sup>24</sup> See Transportation Code, Section 708.153.

(6) Restitution	\$ 50.00
(7) Parole Fees	18.00
(8) Child Support	500.00
<u>(9) Driver's License Surcharge</u>	<u>27.00</u>
Total New Monthly Fees	\$595.00

John's financial situation can be recapped as follows:

Gross Income (Annual)	\$ 40,000
Net Income (basically equal to net resources as determined for child support purposes)	30,000
Monthly Net Income	2,500
<u>New Monthly Fees</u>	<u>(595)</u>
Available Monthly Income	<u>\$ 1,905</u>

John has \$1,905 to pay his monthly expenses and to put toward the \$18,895 that he owes upon his release from prison.

John's case is entirely hypothetical, and was devised prior to the development of empirical data on the financial burden of parolees as described in Part III. It is based on the potential exposure to various financial burdens as set out in Texas law.

John probably is in a better position financially than the typical parolee. He has a \$40,000 per year job upon his release from prison, while many ex-convicts will not be so fortunate. He has one child for whom he is responsible for paying child support. This seems fairly typical, but many parolees will have more than one child. John was ordered to pay restitution, court-appointed-attorney fees, and reimbursement for the accident response. The first two payments are fairly typical, while the third payment is somewhat unusual. The restitution payment of \$3,000 could certainly have been more. The \$5,000 fine could have been as much as \$20,000. By no means does this hypothetical example assume the maximum amounts that could have been assessed against John.



### **III. Repaying Debts Data Analysis**

#### Overview

Comprehensive analysis of the various types and amounts of financial obligations imposed on criminal offenders is scarce. The information that is available is mostly anecdotal or assembled in a manner that does not allow for focused analysis of the financial obligations based on the type of crime committed or other offender characteristics such as employment, risk assessments or whether or not the offender successfully completed their term of probation or parole. This section begins to address that information gap with a discussion of Texas data, assembled to explore the nature of the court-imposed financial burdens of felony offenders on probation and parole.

#### Subjects of Analysis

Probationers are under supervision in lieu of a jail or prison sentence and are supervised by locally operated Community Supervision and Corrections Departments overseen by the judiciary. Parolees are under supervision after serving a prison sentence and are supervised by the Texas Department of Criminal Justice – Parole Division (TDCJ-PD).

Court costs and fees, offense fines and restitution are imposed by the court for all offenders at the time of disposition. Probation supervision fees are imposed by the court for offenders granted probation while parole supervision fees are imposed upon release from prison based on provisions mandated in state law. Taken together, this variety of financial obligations is owed by the offender and usually designed to be paid in the form of monthly payments. The monthly payment amounts are more or less designed to satisfy all offense-related debt over the ordered term of supervision.

For those on probation, community supervision and corrections departments (CSCDs) are usually the agency collecting these fees and most of these departments have computerized records tracking what is owed and what is paid by probationers. However, these data are not compiled in a statewide case-level database.

For those on parole, local parole offices are charged with collecting the parole supervision fees as well as any programmatic fees associated with any treatment programs participated in by the parolee. Parolees can also owe court costs and fees, offense fines and restitution as part of their conviction, but TDCJ has no mechanism to track this debt information in their computer records at this time. While on parole, parolees must pay court costs and fees, offense fines and restitution to the district clerks in their county of conviction. However, these payments are not systematically tracked by TDCJ or any other state agency.

#### Aims and Limitations of Analysis

A fundamental requirement for the analysis was to obtain case-level data from various jurisdictions in an effort to characterize the financial burdens according to offense type,

employment, results of risk evaluations, and whether or not the offenders were successful in completing their term of probation or parole. To this end, the analysis focused around two groups:

1. Offenders beginning a term of probation or parole (placements), and
2. Offenders ending a term of probation or parole (terminations).

In addition to the offense-related financial obligations of probationers and parolees, the analysis sought to explore the degree to which these offenders also had child support obligations. The Texas Office of the Attorney General's Child Support Division (OAG) provided valuable assistance in this endeavor. The OAG is the enforcement body for child support cases in Texas and offered to match the offender data with their child support database to identify those with known child support cases involving the OAG. However, it is important to note that not all child support cases in Texas involve the OAG, so a match of all possible child support obligations is not possible.

The goal was to estimate the rate of child support-related obligations incurred by these populations. Child support obligations are not financial obligations imposed by the courts to generate revenue (like court costs and probation supervision fees) or to hold offenders accountable (like restitution or offense fines) but are additional financial burdens that may impact the ability of offenders to meet their court costs and fees, offense fines, restitution and monthly supervision payments.

### Data Sources

A request for data was submitted to four different entities charged with supervising adult felony offenders in Texas. Each data request was designed to obtain case-level records for felony offenders either placed on probation or parole between September 1, 2006 and August 31, 2007 or terminated from probation or parole between September 1, 2006 and August 31, 2007. This time period reflects Texas Fiscal Year 2007.

Adult felony probation data were obtained from three different CSCDs serving two of the state's major metropolitan areas and one "rural" area (which, according to the United State Census Bureau, is a county with fewer than 100,000 people). These departments are not identified by name in the report due to the exploratory nature of the study. They collected the necessary financial obligations information, while these data are not captured consistently across the state by CSCDs.

Parole data were obtained from the Parole Division of TDCJ. Statewide data were made available, but the decision was made, for consistency, to limit the analysis to the same three counties represented by the CSCDs. The parolees were convicted in these three counties.

All probation or parole offender data was finally matched to child support data from the OAG for purposes of attaching child support data relevant to the offenders. To accommodate confidentiality requirements associated with child support data, the

matched data returned by the OAG had to be stripped of all unique person-identifying information such as name, social security and other identification numbers, addresses and offense cause or case numbers.

The information returned by the OAG match identified cases with an active involvement by the OAG, those that once had an active involvement by OAG, and those with no match on record. Obligation amounts were only available for those with an active case.

Additional aggregate level data were obtained from the Collection Improvement Program (CIP) operated through OCA. These data are generated by audits conducted by the Texas Comptroller of Public Accounts on behalf of the CIP. The data were used to estimate average court costs and fees and offense fines for parolees originally convicted and sentenced in the three counties represented in this analysis. The collections data also provided insight into the collection rates for the financial obligations of these offenders.

Findings

1. *Community Supervision Placements – General Characteristics*

Offenders beginning a term of community supervision potentially face an array of financial obligations including: court costs and fees, offense fines, court-ordered restitution, monthly supervision fees, local program treatment fees and any number of other administrative fees (e.g. paying for mandated urinalysis testing).

Table 1 presents the general characteristics of the population placed on community supervision in the three localities studied. Generally, there was considerable similarity along major groupings between the three counties. Specifically:

- The three groups were assessed a term of between 4 and 5 years of community supervision.
- All three groups examined were similar in terms of offense type with drug and property offenders combined accounting for more than half of the placement populations.
- The employment rates were also comparable between the three groups with about half employed full-time and another 10 percent employed part-time at the time of placement.
- Risk characteristics were similar for two of the three groups but one group had fewer offenders classified as maximum risk. This may be due to different sentencing practices in that locality.

**Table I: General Probation Characteristics**

<b>FY07 FELONY PROBATION PLACEMENTS</b>	Probation Group 1: Large Urban	Probation Group 2: Medium Urban	Probation Group 3: Rural
AVG Ordered Length of Supervision Years	4.2	4.7	4.4
Most Prevalent OFFENSE Type	DRUG	DRUG	DRUG
% UNEMPLOYED	46%	37%	43%
% MAXIMUM RISK	30%	64%	61%

Table 2 shows the average total offense debt and the average monthly offense debt for probationers in the different counties. The monthly offense debt was calculated by dividing the total debt by the term of community supervision. Probationers in the large urban county had the lowest average offense debt at \$3,853 followed by probationers in the rural county at \$3,928 and the medium urban county at \$5,170. (In the hypothetical in Part II, the offense debt was approximately \$7000, which included \$1000 in accident response liability.) There was a total difference of \$1,317 in the average offense-related financial obligations for probationers in the large and medium urban counties.

**Table 2: Offense-Related Debt**

<b>FY07 FELONY PROBATION PLACEMENTS</b>	Probation Group 1: Large Urban	Probation Group 2: Medium Urban	Probation Group 3: Rural
AVG Offense Debt	\$3,853	\$5,170	\$3,928
AVG Monthly Offense Debt	\$76	\$92	\$75

Table 3 shows the percentage of probationers with known cases in the child support enforcement system, the percentage with a known monetary child support obligation and the average child support debt. Not all probation groups were shown to have the same portion of offenders with a known child support obligation, with probationers in the rural county having the highest proportion of known cases in the child support enforcement system at 20% and probationers in the large urban county having the lowest at 12%. However, for those with known orders, the average monthly obligation was roughly similar at between \$373 and \$412 per month. (This amount was \$500 in the Part II hypothetical.) In the following table, the average monthly child support obligation is based on those offenders that had a known amount returned from the OAG match.

**Table 3: Child Support Characteristics**

<b>CHILD SUPPORT (CS)</b>	Probation Group 1: Large Urban	Probation Group 2: Medium Urban	Probation Group 3: Rural
% w/ Known Case	12%	17%	20%
% w/ Known Amount	7%	13%	15%
Avg CS Monthly Debt	\$377	\$373	\$412

2. *Community Supervision Placements – Average Financial Obligation*

Table 4 shows the total financial obligations for the different probationer groups. The breakdown accounts for having a known child support enforcement case. Clearly those owing child support have a greater financial burden overall with a total financial obligation of between \$473 and \$479 monthly compared to about \$76 to \$91 for those with no known child support obligation. As shown in Table 4, most of the difference in total debt is due to the child support obligation, but there are differences in the offense-related debt as well. The rural county seems to assess lower offense-related obligations on those with a child support obligation while the other counties do not have the same distinction. The reason for this difference is unknown, but it is enough of a difference to merit further research.

**Table 4: Offense Debt and Child Support Obligations**

<b>DEBT DETAIL</b>	Probation Group 1: Large Urban		Probation Group 2: Medium Urban		Probation Group 3: Rural	
	<b>CS</b>	<b>no CS</b>	<b>CS</b>	<b>no CS</b>	<b>CS</b>	<b>no CS</b>
% w/ Known Child Support Debt	7%		13%		15%	
Avg Monthly Child Support Debt	\$377	---	\$373	---	\$412	---
Avg Monthly Offense-Related Debt	\$77	\$76	\$94	\$91	\$67	\$79
Total Monthly Debt	\$453	\$76	\$467	\$91	\$479	\$79

Table 5 shows the monthly offense debt by employment status (FT for full-time, PT for part-time, and UNEM for unemployed) for the probationer groups. There is no clear pattern evident across all three counties. In the rural county, unemployed offenders with child support obligations are assessed lower offense-related obligations than unemployed offenders without child support orders (\$50 average monthly versus \$61). Unemployed probationers with child support have about the same average monthly offense debts as full-time employed probationers in the large urban county but lower in the medium and rural counties. Unemployed probationers without child support have lower average monthly offense debts than employed probationers in all three counties. The rural county probationers with no child support have substantially higher average monthly offense debt across all three employment classifications.

**Table 5: Offense Debt by Child Support and Employment**

<b>MONTHLY OFFENSE DEBT by EMPLOYMENT</b>	Probation Group 1: Large Urban		Probation Group 2: Medium Urban		Probation Group 3: Rural	
	<b>CS</b>	<b>no CS</b>	<b>CS</b>	<b>no CS</b>	<b>CS</b>	<b>no CS</b>
	FT - Avg Mo Debt	\$88	\$97	\$120	\$123	\$80
PT - Avg Mo Debt	\$78	\$95	\$80	\$88	\$77	\$96
UNEM - Avg Mo Debt	\$89	\$80	\$84	\$90	\$50	\$61
All Probationers	\$88	\$89	\$104	\$107	\$67	\$82

Table 6 shows the monthly offense debt for each probationer group by risk level. As with the employment breakdown, no clear pattern emerges when analyzing probationer debt by risk level. Almost without exception, offenders scored as high risk have lower average monthly offense debts than those at lower risk levels. Perhaps, high risk offenders are expected to pay less.

**Table 6: Offense Debt by Child Support and Risk**

<b>MONTHLY OFFENSE DEBT by RISK</b>	Probation Group 1: Large Urban		Probation Group 2: Medium Urban		Probation Group 3: Rural	
	<b>CS</b>	<b>no CS</b>	<b>CS</b>	<b>no CS</b>	<b>CS</b>	<b>no CS</b>
	MIN - Avg Mo Debt	\$83	\$88	\$77	\$134	\$74
MED - Avg Mo Debt	\$77	\$78	\$95	\$90	\$77	\$82
HIGH - Avg Mo Debt	\$72	\$72	\$89	\$81	\$64	\$77
All Probationers	\$77	\$76	\$94	\$91	\$67	\$79

### 3. Community Supervision Terminations – General Characteristics

Table 7 presents the general characteristics of the population terminated from community supervision in the three localities studied. A higher percentage of probationers terminating due to a revocation were in the high risk category and were unemployed as compared to those successfully terminating. This relationship holds in each of the three locations. Within each location, those revoked had about the same monthly offense debt obligation as those successfully terminating. The same county-to-county similarity applies to the percentage of cases with a child support obligation, with those revoked having a higher percentage of probationers with a child support obligation than those successfully terminating. Finally, in all groups the percentage of cases revoked that had their debt paid at the time of termination was lower than those

successfully terminating. However, it is interesting to note that in the medium urban county those revoked from supervision had paid 38% of their offense debt compared to 45% of debt paid by those terminating successfully. This compares with a wider difference in the other locations (11% debt satisfaction for those revoked compared to 74% for those successfully terminating in the large urban county and 20% and 78% respectively in the rural county). This may point to differences in supervision strategies that can generate more successful collection of court imposed debts.

**Table 7: General Probation Characteristics**

<b>FY07 FELONY PROBATION TERMINATIONS</b>	Probation Group 1:		Probation Group 2:		Probation Group 3:	
	Large Urban		Medium Urban		Rural	
	Success	Revoke	Success	Revoke	Success	Revoke
Avg Mo Off Debt	\$74	\$77	\$72	\$88	\$95	\$98
% Off Debt Paid	74%	11%	45%	38%	78%	20%
% Unemployed	28%	56%	23%	54%	34%	47%
% High Risk	14%	61%	43%	72%	39%	78%
% w/ CS Case	13%	16%	12%	23%	16%	28%

Further analysis was done to explore if the financial obligation burden of offenders impacted their success under supervision. The data were suggestive of a potential relationship between the unemployed and revocation of probation, but the data and study design did not allow for a comprehensive examination of this question. A study will have to be designed to better explore this question.



4. Parole Placements – General Characteristics

Much less financial obligation information was available for the parole population mostly due to processes related to case management and data capture by supervising parole officers. For this reason, total supervision debt had to be estimated based on length of parole term and statutory monthly supervision fees, \$15 for sex offenders and \$10 for all others.<sup>25</sup> Estimates for court costs and fees and offense fines were obtained from information collected by the Office of Court Administration’s Collection Improvement Program.<sup>26</sup> Due to a lack of data, no attempt was made to estimate restitution.

Table 8 shows the general characteristics of the parolees in the three locations studied. There was considerable similarity along major parole groupings between the three counties. Specifically:

- The three parole groups had to serve between 3 and 5 years of parole supervision before satisfying their original sentence.
- All three groups examined were similar in terms of offense type with drug and property offenders combined accounted for more than half of the parole populations.
- The employment rates vary with higher unemployment indicated for the urban areas than the rural county.

**Table 8: General Parole Characteristics**

<b>FY07 PRISONERS RELEASED TO PAROLE</b>	Parole Group 1: Large Urban	Parole Group 2: Medium Urban	Parole Group 3: Rural
AVG Ordered Length of Supervision Years	4.9	3.1	3.8
Most Prevalent OFFENSE Type	DRUG	DRUG	DRUG
% UNEMPLOYED	43%	37%	28%

Table 9 shows the average offense debt for parolees in each of the localities studied. As can be seen, the average offense debt ranges from \$2,047 in the large urban county to \$625 in the medium urban county. This difference in average offense debt is driven primarily by the fact that the large urban county assesses much higher offense fines for those going to prison (and ultimately released to parole) than the other two counties. Fine amounts are completely within the discretion of the sentencing judge ranging from

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<sup>25</sup> Government Code §508.182.

<sup>26</sup> See <http://www.courts.state.tx.us/oca/collections/collections.asp>.

no fine to a maximum of \$10,000 for all non-capital felonies.<sup>27</sup> Additionally, the rural county assesses more in court costs and fees than the two urban counties. Based on the fact that the overall composition of offender types in the three counties is similar, the reason for differing court costs and fees cannot be determined by this study.

**Table 9: Offense-Related Debt**

<b>FY07 PRISONERS RELEASED TO PAROLE</b>	Parole Group 1: Large Urban	Parole Group 2: Medium Urban	Parole Group 3: Rural
% with Child Support	35%	34%	50%
AVG Offense Debt*	\$2,047	\$625	\$1,681
AVG Monthly Offense Debt*	\$34	\$17	\$37

\* Offense debt is estimated and only accounts for supervision fees, courts costs and fees, and offense fines.

Table 10 shows the percentage of parolees with a child support enforcement obligation and the average monthly debt. Between 14% and 25% of the parolees were shown to have a known child support obligation. And for those with known orders, the average dollar monthly obligation was similar at just under \$350 for those offenders that had a known amount returned from the OAG match.

**Table 10: Child Support Characteristics**

<b>CHILD SUPPORT (CS)</b>	Parole Group 1: Large Urban	Parole Group 2: Medium Urban	Parole Group 3: Rural
% w/ Known Case	14%	17%	25%
% w/ Known Amount	9%	12%	22%
Avg CS Monthly Debt	\$327	\$342	\$336

5. *Parole Placements – Average Financial Obligation*

Table 11 shows the average total monthly debt of parolees with and without a child support obligation. As previously stated, it is necessary to distinguish between those with and those without a child support obligation. Those owing child support have a greater financial burden overall. Comparing offenders with child support to those without, there is little difference in offense-related debt for those in the large and medium

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<sup>27</sup> See Penal Code §§12.32-12.35.

urban counties. Yet in the rural county there is actually higher offense-related debt for those with a child support obligation.

**Table 11: Offense Debt and Child Support Obligations**

<b>DEBT DETAIL</b>	Parole Group 1: Large Urban		Parole Group 2: Medium Urban		Parole Group 3: Rural	
	<b>CS</b>	<b>no CS</b>	<b>CS</b>	<b>no CS</b>	<b>CS</b>	<b>no CS</b>
% w/ Known Child Support Debt	9%		13%		22%	
Avg Monthly Child Support Debt	\$327	---	\$342	---	\$336	---
Avg Monthly Offense-Related Debt	\$35	\$34	\$17	\$17	\$48	\$31
Total Monthly Debt	\$362	\$34	\$359	\$17	\$385	\$31

Table 12 shows the monthly offense debt by employment status for parolees in each of the localities studied. With one exception, there is no discernable relationship between employment, the existence of a child support obligation and the amount of offense-related debt of a parolee. In the rural county, among the employed there are higher offense-related debts for those with a child support order than for those parolees without a child support order.

**Table 12: Offense Debt by Child Support and Employment**

<b>MONTHLY OFFENSE DEBT by EMPLOYMENT</b>	Parole Group 1: Large Urban		Parole Group 2: Medium Urban		Parole Group 3: Rural	
	<b>CS</b>	<b>no CS</b>	<b>CS</b>	<b>no CS</b>	<b>CS</b>	<b>no CS</b>
FT - Avg Mo Debt	\$30	\$30	\$16	\$15	\$48	\$29
PT - Avg Mo Debt	\$37	\$31	\$16	\$18	\$30	\$19
UNEM - Avg Mo Debt	\$51	\$41	\$19	\$20	\$59	\$57
All Parolees	\$35	\$34	\$17	\$17	\$48	\$31

6. *Parole Terminations – General Characteristics*

Table 13 shows the differences between parolees successfully terminated from parole and those revoked in terms of average monthly offense debt, employment status and child support. Those revoked from parole were not substantially different than their successful counterparts regarding employment (more than half unemployed in the large and medium counties with one-third unemployed in the rural county). Offenders

completing parole successfully had higher offense-related monthly debt. It is unknown whether revoked parolees, while experiencing difficulty adhering to the required conditions of supervision, could not pay their obligations and had these obligations reduced or waived. Unlike the probationers studied, successful parolees in these counties had higher incidence rates of known child support cases than their revoked counterparts.

**Table 13: General Parole Characteristics**

TERMINATIONS	Parole Group 1:		Parole Group 2:		Parole Group 3:	
	Large Urban		Medium Urban		Rural	
	Success	Revoke	Success	Revoke	Success	Revoke
Avg Mo Off Debt	\$45	\$16	\$19	\$13	\$46	\$24
% Unemployed	51%	58%	50%	57%	31%	22%
% w/ CS Case	15%	10%	18%	17%	28%	11%

Further analysis was done to explore if the financial obligation burden of offenders impacted their success under supervision. However, the data and study design did not allow for a comprehensive examination of this question. A study will have to be designed to better explore this question.

#### 6. *Collection of Offense-Related Financial Obligations*

A critical aspect of assessing financial obligations upon criminal offenders is the task of collecting that debt. Virtually any system involving the assessment of financial obligations relies upon collection as a measure of the success of that system, at least with respect to the degree that those debts are meant to penalize the offender and operate programs inherent to the judicial and community supervision systems. To that end, collections data from OCA's CIP were analyzed in an effort to depict the success that the three counties studied have experienced in their collections endeavors.

Table 14 illustrates that the three locations have varying degrees of success in collecting these debts. Additionally, the data illustrate that while financial obligations may be "satisfied," debt satisfaction doesn't necessarily mean that an offender has made actual monetary payments. Debt satisfaction may materialize as a result of an offender spending time in jail, performing community service or securing debt waivers from the court in lieu of actual payment. For this particular analysis, only collection of debt for probationers was included as it is misleading to include debt owed by those sentenced to prison given the fact they are incarcerated and therefore much less able to satisfy debts. Furthermore, it must be noted that the data presented in Table 14 are not a complete and comprehensive capture of each county's collections experience. The data

only reflect collections within the first 120 days after offense disposition and only address collection of debt related to court costs and fees and offense fines. However, it is fair to assume that higher collection rates of these debts over the first 120 days after disposition are leading indicators of that county's ultimate collection rate.

**Table 14: Collection of Probationers' Debts During Initial 120 Days**

County	% of Assessed Debt Satisfied by Cash Payments	% of Assessed Debt Satisfied by Other Means*	Total % of Assessed Debt Satisfied
Large Urban	9.5%	4.5%	14.0%
Medium Urban	31.4%	1.3%	32.6%
Rural	3.2%	38.6%	41.8%

\* Jail time, community service, indigency waiver and other debt credits

Debt satisfied by actual monetary payments is much higher in the medium urban county compared to the large urban and rural counties – more than 30% versus 10% and 3% respectively. In the rural county, a substantial proportion of debt satisfaction is accomplished through the use of other means.

#### **Part IV. Recommendations with Background**

##### **1. The Legislature should clarify the priority of payment for offenders under community supervision and parole supervision.**

Chapter 42, Code of Criminal Procedure, authorizes judges to impose a number of financial obligations on offenders who have been placed on community supervision. Most offenders are not in a position to pay the full amount of their financial obligations at the time the obligations are assessed. Accordingly, most offenders agree to make monthly payments toward their financial obligations.

This situation gives rise to the question of whether certain financial obligations should be satisfied before others. For example, should restitution be satisfied before court costs? Does a requirement to support one's dependents come before a requirement to pay a fine? The statutes do not specify any "priority of payment." Consequently, payment allocation practices differ across the state.

Often, priority-of-payment practices depend on the entity charged with collecting payments. For example, when community supervision and corrections departments (CSCDs) collect payments, money is typically first allocated to satisfy the offender's monthly community supervision fee of between \$25 and \$60.<sup>28</sup> This is understandable because the supervision fees fund the operation of the CSCDs. (In fact, supervision fees account for roughly half of the annual budget for a CSCD.) Any remaining money is directed to the offender's other financial obligations. While this practice is good for CSCDs, it may not represent the ideal priority-of-payment policy.

It is a difficult issue. From the probation perspective, community safety could be compromised if payments to CSCDs are legislated as a low priority for offender fees collected. Approximately 431,000 persons are under community supervision by 121 CSCDs. Offender fees account for almost 40% of a probation department's operating funds, but that figure goes up to almost 50% when non-formula grant funds are removed. For offenders placed on community supervision, fee payment requirements are prioritized by the local judges, not by the state. In Dallas County, the fee priorities vary greatly between different judges. According to the Assistant Director of the Dallas County CSCD, misdemeanor fee payments are currently down over \$1 million from last year. A number of CSCDs have established departmental policies and procedures that determine fee collection priorities. However, the local judge has the authority to override those priorities as he or she sees fit.

If offenders cannot meet all of their financial obligations (at least right away), a prioritization of payments would ensure that the most important financial obligations are satisfied first. The Legislature could prioritize the financial obligations of an offender who

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<sup>28</sup> See Code of Criminal Procedure, art. 42.12, §19.

has been placed on community supervision similarly to the way that the Legislature has already prioritized deductions from inmate trust accounts. Section 501.014(e) Government Code, the statute that prioritizes deductions from inmate trust accounts, states in part:

The department shall make withdrawals and payments from an inmate's account under this subsection according to the following schedule of priorities:

- (1) as payment in full for all orders for child support;
- (2) as payment in full for all orders for restitution;
- (3) as payment in full for all orders for reimbursement of the Texas Department of Human Services for financial assistance provided for the child's health needs under Chapter 31, Human Resources Code, to a child of the inmate;
- (4) as payment in full for all orders for court fees and costs;
- (5) as payment in full for all orders for fines; and
- (6) as payment in full for any other court order, judgment, or writ.

As noted, judges are authorized to impose a number of financial obligations on offenders as conditions of community supervision. Article 42.12, Code of Criminal Procedure (perhaps the most frequently amended statute in Texas law), Section 11(a), includes the following non-prioritized (and non-exclusive) financial obligation provisions in the laundry list of general conditions attending supervision:

- (8) Pay the defendant's fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums;
- (9) Support the defendant's dependents; . . .
- (11) Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending the defendant in the case, if counsel was appointed, or if the defendant was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;
- (12) Remain under custodial supervision in a community corrections facility, obey all rules and regulations of such facility, and pay a percentage of the defendant's income to the facility for room and board;
- (13) Pay a percentage of the defendant's income to the defendant's dependents for their support while under custodial supervision in a community corrections facility; . . .
- (18) Reimburse the compensation to victims of crime fund for any amounts paid from that fund to or on behalf of a victim, as defined by Article 56.32, of the defendant's offense or if no reimbursement is required, make one payment to the compensation to victims of crime fund in an amount not to exceed \$50 if the offense is a misdemeanor or not to exceed \$100 if the offense is a felony;
- (19) Reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;
- (20) Pay all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for

counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense;

(21) Make one payment in an amount not to exceed \$50 to a crime stoppers organization as defined by Section 414.001, Government Code, and as certified by the Crime Stoppers Advisory Council; . . . [and]

(24) Reimburse the county in which the prosecution was instituted for compensation paid to any interpreter in the case.

In addition, Section 11(g) permits assessment of “\$50 to a children's advocacy center . . . if the person is charged with or convicted of an offense under Section 21.11 or 22.011(a)(2), Penal Code” and Section 11(h) permits assessment of “one payment in an amount not to exceed \$100 to a family violence shelter center” for any offense under Title 5 Penal Code. Additional fees are contemplated by other subsections of art. 42.12, when an offender attends various treatment alternatives. (See, e.g., Sections 13C & 14). When an offender is sent to a community corrections facility under Section 18, the director of the facility:

“shall deposit the salary into a fund to be given to the defendant on release after deducting:

- (1) the cost to the center for the defendant's food, housing, and supervision;
- (2) necessary travel expense to and from work and community-service projects and other incidental expenses of the defendant;
- (3) support of the defendant's dependents; and
- (4) restitution to the victims of an offense committed by the defendant.”

Probation fees of not less than \$25 or more than \$60 per month (plus \$5.00 for certain sexual offenses) are governed by Section 19, art. 42.12. Restitution is governed by arts. 42.037 and 42.0371, C.C.P., and reimbursement for jail confinement expenses of up to \$25.00 per day is permitted by art. 42.038.

Similarly, but with considerably less detail, the parole statutes in Chapter 508 Government Code, specifically Sec. 508.182, also allow for payment of a supervision fee and an administrative fee, of \$10 and \$8, respectively, with the former going to the general revenue fund and the latter to the compensation to victims of crime fund. Article 42.037(o), Code of Criminal Procedure provides that “the pardons and paroles division may waive a supervision fee or an administrative fee...during a period in which the inmate is required to pay restitution. . . .”

The Legislature should promote prioritization of financial obligations facing offenders to ensure that the most important financial obligations are satisfied first, starting with child support (in recognition of federal law) and victim restitution. This goal must be achieved using different strategies in the community supervision and parole contexts, as the two systems, while superficially similar, have very different governance models.



Parole is a paramilitary, command hierarchy that is very susceptible to fairly rigid direction. In this context a legislated priority schedule, like the one governing inmate trust accounts in §501.014 Government Code, would work well.

In the community supervision context, judicial discretion and judicial oversight of CSCDs should be respected; the flexible approach used in other policy contexts provides some guidance. Judges are asked to come together and support a community justice plan, supported by the community justice council, in order to receive state funding.<sup>29</sup> Judges are also asked to cooperate in the development of a countywide procedure for timely and fairly appointing counsel for indigent defendants, with a default method specified (appointment from a system of rotation, often referred to as a “wheel”).<sup>30</sup> Similar to these systems, judges in each jurisdiction could be required to develop a standardized method of prioritizing the financial obligations of offenders under community supervision, with a default prioritization specified, but also with latitude for individualized discretion in cases that demand it.

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<sup>29</sup> Government Code § 509.007.

<sup>30</sup> Code of Criminal Procedure, art. 26.04.

**2. Clarify the mechanism for providing due process to offenders sentenced to prison so that their court costs, fees and fines may be collected from their inmate trust account in appropriate cases.**

Defendants who are convicted of felonies and ordered to serve time in prison are also required to pay court costs and may be required to pay a fine. As is the case with a prison sentence, a fine is intended as punishment. Court costs, on the other hand, are not intended as punishment. Rather, the rationale for the assessment of court costs is that law violators should help to pay for certain government activities. These activities include operation of the court system, training of court and law enforcement personnel, victim restitution, and crime prevention programs. The amount of a fine (within a certain statutorily-prescribed range) is discretionary with the judge or jury. The amount of the court costs is largely dictated by the state legislature. Nearly all fines are retained by the county. Court costs are divided between the county and the state.

Historically, only a small percentage of prisoners have voluntarily paid their fines and court costs. This fact has frustrated many district clerks who subscribe to the idea that a fine serves as punishment only if it is paid. These clerks have been equally disconcerted by the failure of prisoners to be responsible for their costs of court. The failure of prisoners to pay their fines and court costs has also adversely affected state and county revenues. The money collected from state inmates has traditionally been only a fraction of the fines and court costs these individuals have been ordered to pay.

Upon arriving at a state prison, inmates turn over any money on their persons to the Texas Department of Criminal Justice (TDCJ). This money is placed in an inmate account. Any money that an inmate receives during confinement (from family and friends, etc.) is also placed in his or her inmate account. Relying on Section 501.014(e) of the Government Code, district judges began about five years ago to order TDCJ to withdraw money from individual inmates' accounts to satisfy fines and court costs. Typically, judges would issue a separate order of withdrawal, independent of the judgment, several months after the date of sentencing.

The efforts to tap inmates' accounts to satisfy fines and court costs proved to be quite successful. In McLennan County, for example, judges had issued 1,522 orders of withdrawals from inmate accounts through November of 2006. These orders resulted in the collection of over \$65,000 in fines and court costs. More than 70 inmates sentenced in McLennan County had satisfied their obligations in full through the inmate account withdrawals. Bolstered by the success of the effort in McLennan County and other counties, more and more clerks requested judges to issue withdrawal orders. But in January of 2007, the movement to access inmate accounts to satisfy unpaid fines and court costs came to a sudden halt.

On January 12, 2007, the Texarkana Court of Appeals issued its opinion in *Abdullah v. State*, 211 S.W.3d 938 (Tex.App.—Texarkana 2007, no pet.), which involved inmate Zakee Abdullah's challenge of an order directing TDCJ to withdraw money from his

inmate account to satisfy fines and court costs. Abdullah contended that the court order served to deprive him of his property without due process of law. The court of appeals agreed.

According to the court of appeals, a judge cannot simply sign an order directing TDCJ to withdraw money from an inmate account. The court held that Abdullah was entitled to notice of the proposed withdrawal and an opportunity to respond. The court wrote that formal garnishment proceedings are necessary before withdrawals can be made from an inmate's account to satisfy a fine and court costs.

Two other appellate courts have recently addressed the *Abdullah* opinion. The Waco Court of Appeals chose to follow *Abdullah* in *In re Keeling*, 227 S.W.3d 391, 2007 Tex.App. LEXIS 4435 (Tex. App.-Waco June 6, 2007, orig. proceeding). The court of appeals agreed with the Texarkana court's analysis, held that Keeling was not afforded due process, and ordered that any funds withdrawn from Keeling's inmate account "must be returned to his account."

In *Gross v. State*, \_\_\_ S.W.3d\_\_\_, 2007 LEXIS 5780 (Tex.App.-Amarillo July 23, 2007), however, the Amarillo Court of Appeals declined to follow *Abdullah*. Specifically, the Amarillo Court of Appeals disagreed with the Texarkana Court of Appeals' determination that formal garnishment proceedings were necessary before the trial court could issue inmate withdrawal orders. The court's disagreement was critical to its ultimate dismissal of the case for want of jurisdiction because the inmate's appeal was untimely.

Complicating matters further, all three of the courts of appeals that have written on the issue of inmate account withdrawal orders have issued unpublished opinions dismissing the appeals of such orders because the appeals were determined to be untimely. See *Nichols v. State*, 2007 LEXIS 2156 (Tex.App.-Texarkana March 20, 2007); *Holley v. State*, 2007 LEXIS 5985 (Tex.App.—Amarillo July 25, 2007); *Martinez v. State*, 2007 LEXIS 6110 (Tex.App.-Waco August 1, 2007).

In response to *Abdullah*, TDCJ decided in 2007 to stop following court orders to withdraw money from inmate accounts to satisfy outstanding fines and court costs. (None of the orders in question have been issued pursuant to garnishment proceedings.) In early 2008 TDCJ announced that it would process orders that were signed within 30 days of the entry of judgment and sentence.

This issue is now before the state's high court for criminal cases, the Court of Criminal Appeals, and in another case styled as civil, before the Supreme Court of Texas. Regardless of the outcome of those cases, legislation should be enacted to address this problem. Appendix A is draft legislation to clarify the mechanism for providing due process. In particular it would:

- require that the judgment (art. 42.01, C.C.P.) include the amount of fines, court costs and fees, and the terms of any payment of the under art. 42.15, C.C.P.;
- amend art. 42.15 C.C.P. to include payment terms for court costs and fees;

- amend §501.014 to allow TDCJ to follow such orders and to establish a priority for payment; and
- clarify that the garnishment statute, §63.007 Civil Practice and Remedies Code (identified in *Abdullah* as the proper avenue) is only for use in enforcing a civil judgment against an inmate, not for purposes of enforcing criminal fines, court costs and fees.

**3. The Legislature should clarify and consolidate the sprawling variety of state and local fees and costs into a comprehensible package.**

OCA advises clerks and others on the imposition of fines, fees and costs. The following vignette illustrates the complexity of this advice.

*Quick Question:* What is the penalty range for the offense of aggravated perjury?  
*Quick Answer:* Two to ten years in prison and a fine not to exceed \$10,000. This is easy to determine. Section 37.03 of the Penal Code describes the offense of aggravated perjury and classifies the crime as a third degree felony. Section 12.34 of the Penal Code sets out the range of punishment for third degree felonies. Question answered, end of story, any district judge could tell you this.

*Quick Question:* What court costs will a defendant owe if convicted of aggravated perjury?  
*Quick Answer:* Sorry, there is no quick answer. Several different statutes would have to be examined to know for sure. Many district judges could probably tell you that the court costs would be about \$250, but couldn't be more exact than that.

*Long Answer:* There are four different state court costs that are assessed in every felony conviction in district court. (Note, however, that judges have discretion not to assess court costs when placing a defendant on community supervision.) These four costs total \$145.00 and (most of) the money is directed to the State of Texas. The four costs are as follows:

1) Consolidated Court Cost	\$ 133.00
- Local Gov't Code, Sec. 133.102	
2) Judicial Support Fee	6.00
- Local Gov't Code, Sec. 133.105	
3) Juror Reimbursement Fee	4.00
- Code of Criminal Procedure, Art. 102.0045	
4) Indigent Defense Fund Fee	2.00
<u>- Local Gov't Code, Sec. 133.107</u>	<u>..</u>
Total State Court Costs	\$ 145.00

There are other state court costs that are to be assessed in other felonies, but none of these court costs apply in an aggravated perjury case.

Having identified the relevant state court costs, we turn to local court costs. There are three local court costs that will be charged in every felony conviction in district court. These three costs total \$ 70.00 and the money is directed to the county. The three costs are as follows:

1) Clerk's Fee	\$ 40.00
Code of Criminal Procedure, Art. 102.005(a)	
2) Records Management and Preservation Fee	25.00
- Code of Criminal Procedure, Art. 102.005(f)	
3) Courthouse Security Fee	5.00

<u>- Code of Criminal Procedure, Art. 102.017</u>			
Total Local Court Costs	..	\$	70.00

There are other local court costs that are to be assessed in certain other felonies, but none of these court costs apply in an aggravated perjury case.

Having identified the state and local court costs that will be assessed in every felony conviction in district court, we turn to costs that may be assessed in an aggravated perjury conviction. These possible costs are as follows:

1) Jury Fee (If defendant was convicted by a jury)	\$	20.00	
- Code of Criminal Procedure, Art. 102.004			
2) Fees for Services of Peace Officers (if performed)			
- Code of Criminal Procedure, Art. 102.011			
a) executing or processing arrest warrant		50.00	
b) summoning a witness			5.00
c) serving a writ			35.00
d) taking & approving a bond		10.00	
e) commitment or release		5.00	
f) summoning a jury		5.00	
g) other services			(various)
3) Restitution Installment Fee (If defendant is ordered to pay restitution in installments)		12.00	
- Code of Criminal Procedure, Art. 42.037(g)(1)			
4) Time Payment Fee (If defendant pays any part of restitution, fine or court cost after 30 <sup>th</sup> day after entry of judgment)			25.00
- Local Gov't Code, Sec. 133.103			

<u>Recap:</u>	State court costs =	\$145.00	
	Local Court Costs =	<u>70.00</u>	
	Total Court Costs =	\$215.00	

There may be other court costs depending upon the particular case (such as the jury fee, fees for services of peace officers, restitution fee and time payment fee). So the court costs may vary for the exact same offense.

This rather complicated calculation of court costs illustrates the difficulty legislators face when considering whether a new court cost (to provide a funding source for another worthwhile cause) should be established. Often, there is not any recognition that the court costs already total at least \$215.00 and perhaps more.

Appendix B is one more illustration of complexity, a chart showing criminal court costs for districts courts. Across the top of the chart are the letters A through H. Each letter represents a particular type of offense that a district court can handle. (The key on the bottom of the page details the types of offenses.) So there are eight distinct categories of offenses (A through H) that will call for different amounts of court costs.

On the left side of the chart are the numbers 1 through 33. Each of these numbers represents a different court cost that may be assessed. Numbers 1 through 13 are court costs that are always to be assessed in the particular offense category. Numbers 14 through 33 are court costs that are only to be assessed if certain events have happened in a particular case.

Reducing this complexity is a major undertaking. The legislative proposal has three simplifying components, discussed further below:

- (1) Convert fees that are assessed only if certain events occur into fees that are assessed in all convictions;
- (2) Convert fees that are assessed only upon conviction of certain offenses into fees that are assessed in all cases (or at least all felonies, all misdemeanors, all Class C misdemeanors, etc.); and
- (3) Combine separate statutes that create criminal court costs into one broader statute that calls for the sum of the court costs, but continues to direct the total court costs to the same destinations as before.

*(1) Convert fees that are assessed only if certain events occur into fees that are assessed in all convictions.*

We do not suggest that the fees stay the same, but rather that the total amount realized from the fees stay approximately the same. For example, the court cost for a jury in county-level court and district court is \$20. Assume that juries are used in 5% of the criminal cases in these courts (recognizing this is a higher percentage than reality, but the math is easier). Accordingly, charge 5% of the current fee in all cases, or \$1 for each conviction in these courts, and realize the same revenue.

*(2) Convert fees that are assessed only upon conviction of certain offenses into fees that are assessed in all cases (or at least all felonies, all misdemeanors, all Class C misdemeanors, etc.).*

Another complicating factor in the calculation of court costs is the number of special fees that are assessed upon conviction of a particular offense. Here are three examples.

Drug Court Cost There is a \$50 fee for conviction of any Class B misdemeanor or any higher category of offense under Chapter 49 of the Penal Code (Intoxication and Alcoholic Beverage Offenses) or Chapter 481 of the Health and Safety Code (Texas Controlled Substances Act).<sup>31</sup>

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<sup>31</sup> Code of Criminal Procedure, Article 102.0178.

EMS Trauma Fund Court Cost There is a \$100 fee for conviction of an offense under Chapter 49 of the Penal Code (Intoxication and Alcoholic Beverage Expenses) other than Sections 49.02 and 49.031.<sup>32</sup>

Child Abuse Prevention Court Cost There is a \$100 fee for conviction of offense under Section 21.02, 21.11, 22.011(a)(2), 22.021(a)(1)(B), 43.25, 43.251, or 43.26 of the Penal Code (sex-related crimes).<sup>33</sup>

Because of these extra fees for convictions of certain offenses, one cannot say what the costs are in a felony case, for example, without inquiring as to what specific felony was committed and checking to see if that crime is on the list of those offenses that will require the assessment of an extra fee. This fact leads to the second suggestion for simplifying court costs; again, the idea would not be to increase or reduce revenues from the court cost change. Accordingly, we would set the amount of the new, broader fee at a lower amount than the current fee.

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<sup>32</sup> Code of Criminal Procedure, Article 102.0185.

<sup>33</sup> Code of Criminal Procedure, Article 102.0186.



*(3) Combine separate statutes that create criminal court costs into one broader statute that calls for the sum of the court costs, but continues to direct the total court costs to the same destinations as before.*

There are many statutes that call for the assessment of a court cost upon conviction of any crime (or at least most crimes). These statutes cause fewer complications than the offense-specific statutes mentioned above, but our system of criminal court costs could be simplified by combining these statutes into one broader statute.

For example, there is a statute<sup>34</sup> that calls for a \$5 courthouse security fee upon conviction of a felony. There is a separate statute<sup>35</sup> that calls for a \$133 consolidated court cost upon conviction of a felony. There is yet another statute<sup>36</sup> that calls for a \$40 fee for the services of the clerk in all convictions in a district court or county-level court (so the fee covers all felonies). These three fees are not the only fees that make up the total court costs, but we use just three fees to keep the illustration somewhat simple. In reality, all relevant fees would have to be considered.

The suggestion would be to combine these three statutes into one statute that calls for the assessment of a \$178 fee in felony cases (that is  $\$5 + \$133 + \$40 = \$178$ ). The new statute would direct that \$5 goes to courthouse security, \$133 goes to the consolidated fee destination (which is actually a set of destinations), and \$40 goes to the clerk. There would be no change in the amount of court costs assessed or the destination for those court costs. The only change would be a simplification that would allow a person to look at one statute and see that total court costs upon conviction of a felony are \$178. (Actually, the costs would be more, but this is a simplified example using just three fees.)

With these three suggested changes, Texas could have one court cost amount for felonies, a different court cost amount for Class A and B misdemeanors, and finally another court cost for Class C misdemeanors.

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<sup>34</sup> Code of Criminal Procedure, art. 102.017.

<sup>35</sup> Local Gov't Code, Section 133.102.

<sup>36</sup> Code of Criminal Procedure, art. 102.005

**4. The Legislature should authorize sentencing judges to obtain information about an offender’s child support obligations and to take that information into account for purposes of assessing a fine, and require the offender to identify any court that has issued a child support order and obtain relevant information from the clerk of the court..**

In Part III, Table 4 shows the total financial obligations for the different probationer groups. The breakdown accounts for having a known child support enforcement case. Those owing child support have a greater financial burden overall with a total financial obligation of around \$475 monthly compared to about \$82 to \$107 for those with no known child support obligation. Most of the difference in total debt is due to the child support obligation, but there are differences in the offense-related debt as well. The rural county seems to assess lower offense-related obligations on those with a child support obligation while the other counties do not have the same distinction.

This infers that the sentencing judge has some awareness of the child support obligation facing a defendant in her courtroom, which could plausibly be the case in a smaller jurisdiction where the same judge could handle both family and criminal matters. In larger jurisdictions this would not be the case, and the fact that federal law makes information about child support obligations confidential would foreclose any ability of the sentencing judge to take into account those competing financial obligations.<sup>37</sup> There is some indication that this federal constraint may soon change, and should that occur, sentencing judges could be systematically made aware of child support obligations. Until such time, the judge could require the defendant to obtain and provide the information.

The Automated Registry system,<sup>38</sup> funded in 2007 and presently under design, will provide courts with several different sources of state database information, and may be able to provide sentencing judges with information about child support obligations.

Sentencing judges have discretion over fines, as well as some other financial obligations. This is illustrated below.

Obligation Type	Offenders Sentenced to Prison		Offenders Sentenced to Probation	
	Can judge set debt to \$0?	Relevant Authority	Can judge set debt to \$0?	Relevant Authority

<sup>37</sup> 42 U.S.C. §654(a); see also Texas Family Code §231.108.

<sup>38</sup> See General Appropriations Act, p. IV-27, OCA Rider 15, and the project webpage at: <http://www.courts.state.tx.us/oca/registry/reghome.asp>.

Offense Fine	Yes	Fines are a form of 'punishment' which is the right of the judge to set. See <b>AG Opinion GA-0220 (2004)</b> .	Yes	Fines are a form of 'punishment' which is the right of the judge to set. See <b>AG Opinion GA-0220 (2004)</b> .
Restitution	Yes	CCP 42.037 allows a judge to forego restitution. Restitution is not 'punishment' making the justification of the judicial discretion different than that for offense fines. See <b>AG Opinion GA-0220 (2004)</b> .	Yes	CCP 42.037 allows a judge to forego restitution. Restitution is not 'punishment' making the justification of the judicial discretion different than that for offense fines. See <b>AG Opinion GA-0220 (2004)</b> .
Court Costs/Fees	No	Multiple statutes mandate court costs/fees upon conviction. See e.g. CCP 102.0045; LGC 133.105.	Yes	Payment of assessed obligations falls under a judge's right to 'set terms of supervision' pursuant to CCP 42.12 (taking precedence over all other statutes). See <b>AG Opinion DM-407 (1996)</b> .
Supervision Fees	not applicable	not applicable	No	A judge may not waive probation supervision fees. See <b>AG Opinion DM-407 (1996)</b> .
Attorney Fees	Yes	CCP 26.05 requires that a judge make an affirmative finding of 'ability to pay' in order to require repayment of attorney fees	Yes	CCP 26.05 requires that a judge make an affirmative finding of 'ability to pay' in order to require repayment of attorney fees

Note: A judge may set any desired payment priority for offenders sentenced to probation. See **AG Opinion DM-407 (1996)**.

**5. The Legislature should require the Department of Criminal Justice to instruct state jail felons, upon their release, to report to the clerk of the convicting court, to develop a plan for payment of any outstanding court costs, fees and fines.**

In 1991 the legislature prospectively repealed the Penal Code and established the Punishment Standards Commission to rewrite it and propose sentencing reform. One committee of the PSC worked through the entire Penal Code, proposing revisions to many offenses and the repeal of many others, in an effort to streamline and clean up the accumulated detritus of many a legislative session. Another committee ranked the felony offenses in terms of severity, using their collective expertise and reaching consensus about the nature of the “typical case” under each provision, then grouping them in terms of severity. The result of that effort was a fourth degree of felony in addition to the three that already existed (below the level of capital). This became the “state jail felony” when the legislature took up the PSC’s recommendations in 1993.

State jail felons serve a “flat time” sentence of up to two years; they do not earn good conduct time and are not eligible for any form of early release. When the sentence is complete, there is no supervision, and thus no mechanism for enforcement of outstanding payments owed by the offender. Requiring the offender to report to the district clerk of their originating county would provide some possibility that offenders would take care of these financial obligations.

Appendix C is draft legislation to address this issue.

**6. The Legislature should require the Department of Criminal Justice to capture information on the governmental financial obligations of parolees as part of supervision.**

In conducting the empirical research described in Part III, it became apparent that the parole information system contains very little information on financial obligations of parolees. This lack of information obviously impairs research, but more important, it defeats any effort to prioritize the satisfaction of financial obligations because those obligations are unknown to the parole officer. TDCJ should be required to pursue strategies that will address this information gap.

**7. The Legislature should fund further policy development, including the development of an automated “financial information” form that follows the offender the criminal justice system.**

In Part III, empirical research was presented, and at several points there were suggestions for further study:

- “The rural county seems to assess lower offense-related obligations on those with a child support obligation while the other counties do not have the same distinction. The reason for this difference is unknown, but it is enough of a difference to merit further research.”
- “The data were suggestive of a potential relationship between the unemployed and revocation of probation, but the data and study design did not allow for a comprehensive examination of this question. A study will have to be designed to better explore this question.”
- “[I]n the medium urban county those revoked from supervision had paid 41% of their offense debt compared to 54% of debt paid by those terminating successfully. This compares with a wider difference in the other locations (11% debt satisfaction for those revoked compared to 75% for those successfully terminating in the large urban county and 20% and 85% respectively in the rural county). This may point to differences in supervision strategies that can generate more successful collection of court imposed debts.”
- “Offenders completing parole successfully had higher offense-related monthly debt. It is unknown whether revoked parolees, while experiencing difficulty adhering to the required conditions of supervision, could not pay their obligations and had these obligations reduced or waived.”

*Research Agenda*

The analysis presented is a significant step forward in illustrating some very basic characteristics of the financial burdens borne by offenders on probation or parole in Texas. However, more research is needed to understand if there is a “tipping” point in which additional court imposed financial obligations may:

- a) Negatively impact the ability to collect on the obligations; and/or
- b) Negatively impact the ability of the offenders to successfully terminate their probation or parole.

It is worth mentioning that research already exists that explores the issue of a tipping point, or threshold that once crossed becomes a predictor of less compliance with repayment of financial obligations. One study focusing on child support enforcement has identified child support obligations set at 20 percent of the non-custodial parent’s

gross income as being the threshold between sustaining regular payments or failure to pay.<sup>39</sup> Additional research links regularity of making payments to better outcomes including less utilization of state assistance, maintenance of family relationships and involvement with children, and lower recidivism rates amongst those with prior arrests and incarceration. The research looks in-depth at lower income obligors, and there is considerable crossover between characteristics of that population and the supervision populations studied in this report.<sup>40</sup>

With the aid of more empirical research, policy can be better informed both at the state and local level. Therefore, further study is merited in the areas of recidivism, employment, and collections.

Many factors affect the recidivism of offenders. Different risk factors such as substance abuse and assaultive behavior have been correlated with the risk of recidivism. However, no study in Texas has tried to explore the level of court-imposed financial burden as a correlate with the risk of recidivism. If high levels of financial obligations correlate with supervision failure, policies can then be directed at integrating this factor in risk assessments and in designing supervision strategies that consider this as a critical element to address in trying to improve outcomes.

Of particular interest is the employment dynamic of these groups. All employment data used in this study are based on “point-in-time” assessments of the offenders at the time of their respective placements and terminations from supervision. As such, there is no true understanding of whether these offenders tend to be steadily employed over periods of time versus employed intermittently with little stability. It is possible that many employed at the beginning of supervision soon lose their jobs. This report illustrated that a greater portion of the revoked offenders were unemployed when compared to their successful counterparts. Further research could help shed light on the dynamics around this apparent relationship. Data from the Workforce Commission can be used to explore the employment history of offenders in relation to their payment records and recidivism.

Central to the assessment of fees and fines is the duty to collect what is owed by the offender. Greater understanding is needed about the “tipping point” where the amount owed by the offender is so great that collections begin to suffer. There is potentially a range of obligation amounts where collections can be expected to ultimately yield at or close to the full obligation. However, it may be the case that offenders begin to fall substantially short of staying current in their debts when such ranges are passed.

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<sup>39</sup> *Determining the Composition and Collectibility of Child Support Arrearages*, Washington State Department of Social and Health Services, May 2003.

<sup>40</sup> *Staying in Jobs and Out of the Underground: Child Support Policies that Encourage Legitimate Work*, Center for Law and Social Policy, March 2007, Brief No. 2.

As part of this area of research, it is worth exploring the assistance that could be provided from private sector groups that specialize in developing profiles of an individual's ability to repay debts. Many such entities exist and specialize in efforts related to the collection of offense-related debts. Informal discussions have already been undertaken by the authors of this report with one such group. Based on these informal discussions, the idea of creating a profile of an offender's likelihood of repaying their financial obligations is something that can be accomplished. To this end, it will be necessary to involve all parties involved (probation and parole departments, the OAG, etc.) due to certain factors such as confidentiality of offender information. The quality of the repayment profiles that can be developed is directly related to the volume and detail of data made available to the scoring agency. Whereas a minimum profile with predictive value can be developed based only on anonymous data, a considerably more sophisticated profile predictive of an offender's likelihood of repayment is possible with data inclusive of all available identification elements (name, social security number, etc.). As the financial burdens of offenders relate to the funding of programs, it is clearly important to have a realistic appreciation of what can be expected from these populations in terms of repayment of their debts.



**8. OCA should work with judicial education providers to assist judges in data-informed decision making in general, and to promote better utilization of information on the financial obligations of people in the criminal justice population in particular.**

In a decentralized court system like Texas, and with a deep respect for judicial independence and discretion, judicial education is one of the few strategies available to alter practice in the courts. Texas is one of four states in which the administrative office of the courts (OCA) has no responsibility for judicial education. In Texas, judicial education is administered by the [Court of Criminal Appeals](#), pursuant to Chapter 56, Texas Government Code, and Appropriations Act riders applicable to the Court of Criminal Appeals. Chapter 22, Texas Government Code mandates certain topics of judicial education: family violence, sexual assault, child abuse, diversions from prison, and guardianship.

Although OCA has no formal role in judicial education, OCA does play a growing role in providing information for judges to make better decisions. The Automated Registry system,<sup>41</sup> funded in 2007 and presently under design, will provide courts with several different sources of state database information, and in particular (for purposes of this report) may be able to provide sentencing judges with information about child support obligations.

Another OCA project (actually a suite of projects) is called TexDECK, for Texas Data Enabled Courts for Kids, and is specific to judges hearing child protection cases. TexDECK strives to integrate information for the child protective agency, the court, and related government entities in order to help courts and the Department of Family and Protective Services to work quickly and correctly to protect children. TexDECK will establish data interchange standards and enable software tools to facilitate the work of judges and DFPS to collaborate to improve safety, permanency and well-being of the children of Texas. The TexDECK project is federally funded through a [Court Improvement Program](#) Data Collection and Analysis grant.

One project within TexDECK is the Judicial Web Page, which specifically concerns providing data to judges. Since 1998, DFPS and the [Court Improvement Program \(CIP\)](#) have provided selected child protection case information lookup capability through the "Judicial Web Page" (JWP) to trial court judges. The intent of this web application is to make it possible for the courts to monitor more closely the progress of their CPS cases through the court system, and thus to allow the courts to make the best possible decisions concerning the disposition of those cases.

These "data-enabling" projects implicate the need for judicial training in the uses of such information. OCA should work with the Court of Criminal Appeals and its Education

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<sup>41</sup> See General Appropriations Act, p. IV-27, OCA Rider 15, and the project webpage at: <http://www.courts.state.tx.us/oca/registry/reghome.asp>.

Committee, as well as the various judicial training entities, to develop and provide such training.

**9. OCA should seek funding to Improve data collection to better understand the impact of financial obligation burden on the criminal justice population.**

The discussion of Recommendation 7, and all of Part III, should be reviewed as background for this recommendation. OCA did request funding of \$80,000 in its Legislative Appropriations Request<sup>42</sup> for Repaying Debts research.

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<sup>42</sup> See Sec 4.A., page 6 of 7, at: <http://www.courts.state.tx.us/oca/pdf/OCALAR.pdf>.

**10. OAG should encourage incarcerated obligors to contact OAG Child Support offices to make arrangements to get back on track with payments, and OAG should reward that effort by making reasonable arrangements and providing information on employment resources.**

Texas does not have any statutes that allow for the suspension of a child support order while a person is incarcerated. However, incarcerated parents can seek modification of a child support order due to a material and substantial change in their circumstances (i.e., becoming incarcerated).

In 2007 OAG began work to remove structural barriers for parents, the OAG, TDCJ, and the courts to streamline the process for incarcerated NCPs to request and, if the facts support it, receive a downward modification of their child support order. Structural barriers include inadequate sharing of accurate data between the OAG and TDCJ; difficulty with incarcerated NCPs having access to legal resources; and processing legal documents and gathering evidence when the NCP cannot appear in court.

The project aims to: ensure that orders are set at an appropriate level based on state child support guidelines; reduce accumulation of arrears; and promote compliance with child support orders upon release. Some aspects of the project are currently operational while others are in development.

OAG should be encouraged to continue this project and specifically to contact incarcerated obligors and provide incentives for them to be able to take care of their child support obligations.

## Part V. Background on the Imposition and Collection of Financial Obligations

### I. IV-D CHILD SUPPORT

#### A. Assessment and Modification of Child Support

Using the child support guidelines set forth in Subchapter C, Chapter 154 of the Family Code, the judge determines the amount of child support and sets the conditions for payment.

Texas does not have any statutes that allow for the suspension of a child support order while a person is incarcerated. However, incarcerated parents can seek modification of a child support order due to a material and substantial change in their circumstances (i.e., becoming incarcerated).<sup>43</sup>

To obtain a modification order, the party seeking the modification must provide evidence of his or her assets and liabilities by completing a child support review questionnaire. This presents strategic problems for incarcerated parents. They are essentially on their own when completing a fairly complicated legal document, and their reading and writing skills are generally below what is needed to complete it. At some prisons, the librarian will provide assistance to prisoners in filling out the questionnaire, while librarians at other prisons are reluctant to provide this assistance. The Office of the Attorney General (OAG) provides training for law librarians on a very simplified questionnaire for use in considering modifications, but some librarians have concern that they may be crossing the line into practicing law.

If the incarcerated parent's child support obligation was abated, reduced, or suspended during the period of incarceration, release from prison constitutes a material and substantial change in circumstances and is again grounds for modification of the child support order.<sup>44</sup>

#### B. Collection of Child Support

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<sup>43</sup> Section 156.401(a) of the Family Code provides:

- (a) Except as provided by Subsection (a-1) or (b), the court may modify an order that provides for the support of a child, including an order for health care coverage under Section 154.182, if:
  - (1) the circumstances of the child or a person affected by the order have materially and substantially changed since the earlier of:
    - (A) the date of the order's rendition; or
    - (B) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based; or
  - (2) it has been three years since the order was rendered or last modified and the monthly amount of the child support award under the order differs by either 20 percent or \$100 from the amount that would be awarded in accordance with the child support guidelines.

<sup>44</sup> Family Code §156.401(d).

The Child Support Division of the OAG is responsible for the collection and enforcement of child support in IV-D cases. There are currently 15,000 to 18,000 active IV-D child support cases involving parents incarcerated by the Texas Department of Criminal Justice (TDCJ).<sup>45</sup>

Of all child support collected in IV-D cases, 63.4 percent of current support is collected, and 67.3 percent of arrears is collected. The OAG does not maintain collection statistics specific to incarcerated non-custodial parents (NCPs).

For non-incarcerated NCPs, the OAG originally gets a child support case from either the custodial parent when that parent applies for child support services or the State when a custodial parent applies for welfare. The OAG enters the child support order information into the OAG's case management system, and sends an automatic wage withholding order to the NCP's employer. Child support is withheld from the NCP's wages and sent to the OAG's state disbursement unit, where it is processed and sent to the custodial parent.

If an NCP later becomes incarcerated, the OAG's automated system may receive notice but no other update is generally completed. While the OAG does have a data sharing match system with TDCJ, which is usually updated with information regarding incarceration, OAG field staff generally do not do anything with that information.

For incarcerated NCPs, the OAG still enters the child support order information into the OAG's case management system, and if OAG has a TDCJ address for the NCP, he or she will receive a payment notice and a monthly statement. If the OAG does not have an address, the monthly statement is suppressed. The NCP can make voluntary payments to the OAG state disbursement unit, where the payment is processed and sent to the custodial parent. If the NCP does not make payments, then arrears accrue. In addition, a legal action (e.g., license suspension) may be taken, but that generally does not happen.

A child support payment becomes delinquent if the payment is not received before the 31<sup>st</sup> day after the payment date stated in the child support order, or, if no date was specified in the order, on the date that an amount equal to the support payable for one month becomes past due.<sup>46</sup>

Delinquent child support is subject to interest accrual. For child support payments that became due on or after January 1, 2002, interest accrues at a rate of six percent per year from the date the support is delinquent until the date the support is paid, or, if the arrearages are confirmed and reduced to money judgment, from the date the order is rendered until the date the judgment is paid. Interest accrues at the same rate on money judgments for retroactive or lump-sum child support from the date the order is rendered

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<sup>45</sup> Source of incarceration data: OAG child support system data match with TDCJ.

<sup>46</sup> Family Code §157.266.

until the date the judgment is paid. Child support arrearages in existence on January 1, 2002, that were not confirmed and reduced to a money judgment on or before that date accrue interest at the rate that applied to the arrearages before that date.<sup>47</sup>

Accrued interest becomes "part of the child support obligation and may be enforced by any means provided for the collection of child support."<sup>48</sup>

Collected child support payments are applied to the NCP's obligations in the following order of priority:<sup>49</sup>

- 1) current child support;
- 2) non-delinquent child support owed;
- 3) interest on the principal amounts specified in 4) and 5) below;
- 4) the principal amount of child support that has not been confirmed and reduced to money judgment;
- 5) the principal amount of child support that has been confirmed and reduced to money judgment; and
- 6) the amount of any ordered attorney's fees or costs, or Title IV-D service fees authorized under Family Code section 231.103 for which the obligor is responsible.

State law provides a tool to collect child support specifically from incarcerated NCPs. Section 501.014 of the Government Code allows TDCJ to withdraw money from an inmate's trust account to pay child support, and child support obligations are given priority over all other obligations that the inmate may have.<sup>50</sup> Generally, the OAG will

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<sup>47</sup> Family Code §157.265.

<sup>48</sup> Family Code §157.267.

<sup>49</sup> Family Code §157.268.

<sup>50</sup> Section 501.014(e)-(g) of the Government Code provides:

- (e) On notification by a court, the department shall withdraw from an inmate's account any amount the inmate is ordered to pay by order of the court under this subsection. The department shall make a payment under this subsection as ordered by the court to either the court or the party specified in the court order. The department is not liable for withdrawing or failing to withdraw money or making payments or failing to make payments under this subsection. The department shall make withdrawals and payments from an inmate's account under this subsection according to the following schedule of priorities:
  - (1) as payment in full for all orders for child support;
  - (2) as payment in full for all orders for restitution;
  - (3) as payment in full for all orders for reimbursement of the Texas Department of Human Services for financial assistance provided for the child's health needs under Chapter 31, Human Resources Code, to a child of the inmate;
  - (4) as payment in full for all orders for court fees and costs;
  - (5) as payment in full for all orders for fines; and
  - (6) as payment in full for any other court order, judgment, or writ.
- (f) The department may place a hold on money in or withdraw money from an inmate account:
  - (1) to restore amounts withdrawn by the inmate against uncollected money;
  - (2) to correct accounting errors;

provide TDCJ with the court order of a lien or levy, so that they may begin the withdrawal of money from the inmate's trust account.

In about 2002, the OAG implemented a policy specifying that a Notice of Child Support Lien should only be filed against an inmate's trust fund account in cases where:

- the amount of child support arrears is equal to or greater than three (3) times the monthly PP1 obligation (*PP1 is the amount of current child support due each month; it does not include payment on any arrears or medical support*); and
- the Inmate Trust Fund Account balance is equal to or greater than \$500.

While payment of child support is a condition of community supervision,<sup>51</sup> it is not a condition of parole. Payment of child support, however, is not a condition of discharge from community supervision. An outstanding child support debt remains outstanding when community supervision ends.

The community supervision officer or parole officer is not normally aware of the amount of child support that is owed by an offender nor do they monitor the payment of child support.<sup>52</sup> The non-payment of child support is a technical violation. Typically, community supervision will not be revoked for non-payment of child support.

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- (3) to make restitution for wrongful withdrawals made by an inmate from the account of another inmate;
  - (4) to cover deposits until cleared;
  - (5) as directed by court order in accordance with Subsection (e);
  - (6) as part of an investigation by the department of inmate conduct involving the use of the account or an investigation in which activity or money in the inmate's account is evidence;
  - (7) to transfer money deposited in violation of law or department policy; or
  - (8) to recover money the inmate owes the department for indigent supplies, medical copayments, destruction of state property, or other indebtedness.
- (g) The department shall withdraw money from an inmate's account under Subsection (e) before the department applies a deposit to that account toward any unpaid balance owed to the department by the inmate under Section 501.063.

<sup>51</sup> Code of Criminal Procedure art. 42.12(11)(a)(13).

<sup>52</sup> It is important to differentiate between offenders placed on community supervision for criminal non-support and those placed on community supervision for other offenses but who are ordered as a standard condition of community supervision to support their dependents. When an offender is placed on community supervision for criminal non-support, the child support payments, including arrears, are much more likely to be treated as "restitution," with the supervision officer placing greater emphasis on enforcing the collection of these payments. When an offender who is convicted of an offense other than criminal non-support is ordered to support his/her dependents as a condition of community supervision, this condition is not given a high priority and in all likelihood the supervision officer would only monitor its enforcement if the custodial parent were to complain that the offender was not paying child support. It is not often that the custodial parent makes such a complaint to the supervision officer.



During the period 2003 through 2004, the OAG was involved in “The Family Reintegration Project: Increasing Collections from Paroled and Released Non-custodial Parents in Texas,” a federally funded grant project conducted in El Paso and Harris counties. The purpose of this project was to develop strategies for increasing child support payment, employment, and family reintegration among paroled and released parents. Those strategies included providing NCPs with connections to employers in order to help them obtain jobs upon release and fatherhood education to promote improved parenting knowledge and skill. However, this was a one-time pilot/demonstration project and is no longer in operation. The strategies are no longer being used.

In Travis County, there is currently an informal program to determine which individuals about to be released from state jail owe child support. The state jail works with the local child support office to transport NCPs with a pending capias to a court hearing so that the capias can be lifted before the NCP is released from state jail.

### *C. Enforcement of Child Support*

The custodial parent applies for child support services, including enforcement, from the OAG. Applicants do not have the right to select what enforcement actions are taken in their cases.

If a non-custodial parent (including an NCP on community supervision, parole or mandatory supervision) does not pay child support, he or she is subject to enforcement measures to collect regular and past-due payments. The OAG has many enforcement tools available to enforce child support orders:

- requiring employers to deduct court-ordered child support from the NCP’s paycheck through wage withholding;<sup>53</sup>
- intercepting federal income tax refund checks,<sup>54</sup> lottery winnings,<sup>55</sup> or other money that may be due from state or federal sources, if arrears are owed;<sup>56</sup>
- filing liens against assets, including real property and motor vehicles;<sup>57</sup>
- suspending driver’s, professional and occupational, hunting and fishing licenses;<sup>58</sup>
- filing a motion for enforcement requesting contempt;<sup>59</sup>
- possible jail until arrears or an agreed amount is paid;<sup>60</sup>

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<sup>53</sup> Family Code §158.001.

<sup>54</sup> 45 CFR 303.71 - .72.

<sup>55</sup> Government Code §466.4075.

<sup>56</sup> 42 USC 666(c)(1)(G)

<sup>57</sup> Family Code §§157.311 – .331 and Chapter 232.

<sup>58</sup> Family Code chpt. 232

<sup>59</sup> Family Code §157.061.

<sup>60</sup> Government Code §21.002.

- placement on community supervision and suspension of commitment if the court finds that the respondent is in contempt of court for failure or refusal to obey an order;<sup>61</sup>
- continued deductions from wages, retirement pay, disability benefits, and social security until debt is paid;<sup>62</sup>
- monthly reports to credit bureaus,<sup>63</sup> and,
- levying interest at one-half percent per month (six percent annually) on the unpaid balance.<sup>64</sup>

If the OAG or a court finds that the schedule for repaying arrearages would cause unreasonable hardship for the obligor, his or her family, or the children for whom support is due, the OAG or court may extend the payment period for a reasonable length of time.<sup>65</sup>

OAG has entered into contracts with six counties - Bexar, El Paso, Harris, Lubbock, Tarrant, and Travis – in order to provide community supervision for individuals found in contempt of court for their failure to pay child support pursuant to Section 157 Subchapter E of the Texas Family Code. The primary goal of the county programs is to see that participants remain in compliance with the orders of the court and refer non-compliant cases back to the court for appropriate action. The state-run and county-run ICSS projects are expected to be a significant growth area for government contracts during the next several years.

#### *D. Prioritization of Child Support Obligation*

Federal law prioritizes child support above all other financial obligations that an offender may have (e.g., restitution, supervision fees, court costs, fees, and fines).<sup>66</sup>

#### *E. State-Level Initiatives to Evaluate or Modify Child Support Policies*

##### *1. Policy Formulation Group Project*

The OAG's Child Support Division has a Policy Formulation Group, which is comprised of upper-level staff from all sections of the division and is led by the Deputy for Legal Counsel. Pursuant to the recommendation of the Policy Formulation Group, a project was started in 2007 to remove structural barriers for parents, the OAG, TDCJ, and the courts to streamline the process for incarcerated NCPs to request and, if the facts support it, receive a downward modification of their child support order. Structural barriers include inadequate sharing of accurate data between the OAG and TDCJ;

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<sup>61</sup> Family Code §157.165.

<sup>62</sup> Family Code Chapter 158.

<sup>63</sup> Family Code §231.114.

<sup>64</sup> Family Code §157.265.

<sup>65</sup> Family Code §158.007.

<sup>66</sup> 42 USC 666(b)(7)

difficulty with incarcerated NCPs having access to legal resources; and processing legal documents and gathering evidence when the NCP cannot appear in court.

The project aims to: ensure that orders are set at an appropriate level based on state child support guidelines; reduce accumulation of arrears; and promote compliance with child support orders upon release. Some aspects of the project are currently operational while others are in development.

One major unresolved issue in Texas is how incarceration is viewed by the courts when setting or modifying child support orders. Some judges view incarceration as “intentional” or “underemployment” to avoid payment of child support; and, as a result, they may order a minimum wage presumption for an incarcerated NCP. If the NCP provides evidence of earnings below the minimum wage presumption, that presumption is technically rebutted and warrants a downward modification of child support, potentially to zero. However, not all judges are of this mindset and therefore do not allow a downward modification.

## *2. Motions to Modify – Simplification of Child Support Review Questionnaire Completed by Incarcerated Non-custodial Parent*

The processing of modification requests filed by incarcerated NCPs is slowed or stymied by many logistical problems (e.g., the incarcerated NCP did not fill out the child support review questionnaire correctly, the OAG mails the form back to the NCP to be corrected and the NCP has been moved to another prison). The OAG is currently trying to develop a simple form for the NCP to use that still provides solid evidence of the NCP’s assets and liabilities.

The OAG has recently developed a letter to advise prisoners to not leave a section of the questionnaire blank, as the court is unable to know whether any assets or income are unreported, and to provide honest information in the questionnaire when they complete it, as inaccurate information may work to their disadvantage. For example, a prisoner should not indicate he owns a luxury car when he does not. In addition, as indicated earlier, the OAG has trained the law librarians on step-by-step procedures for helping offenders complete the child support review questionnaire.

### 3. Incarcerated Non-custodial Parents and Default Paternity Judgments

In 2006, the OAG implemented a policy whereby it would no longer seek default paternity judgments without first offering genetic testing. If there is no response to the initial offer for genetic testing (or if there is no agreed order), OAG staff must obtain a genetic testing order. Once the test is ordered and scheduled, genetic testing is completed if the NCP agrees. If the NCP refuses to be tested, OAG staff must obtain a Certification of Refusal to Submit to Genetic Testing from the genetic testing vendor before continuing to the next appropriate action in the case. The OAG has found that prisons are very cooperative about allowing genetic testing at prison facilities.

## II. VICTIM RESTITUTION

### A. Assessment of Restitution

Restitution may be ordered for offenses resulting in damage, loss, or destruction of property, and for offenses resulting in personal injury to a victim. The judge orders and determines the amount of restitution. If a judge does not order restitution or orders partial restitution, he or she must “state on the record the reasons for not making the order or for the limited order.”<sup>67</sup>

For offenses resulting in damage, loss, or destruction of property, the court may order the defendant to return the property; or if return of the property is impossible, impractical or inadequate, the court may order the defendant “to pay an amount equal to the greater of the value of the property on the date of the damage, loss or destruction”<sup>68</sup> or “the value of the property on the date of sentencing, less the value of any part of the property that is returned on the date the property is returned.”<sup>69</sup>

For offenses resulting in personal injury, the court may order the defendant to make restitution to “the victim for any expenses incurred by the victim as a result of the offense”<sup>70</sup> or “to the compensation to victims of crime fund to the extent that fund has paid compensation to or on behalf of the victim.”<sup>71</sup> If the victim or victim’s estate consents, the court may also “order the defendant to...make restitution to a person or organization, other than the compensation to victims of crime fund, designated by the victim or the estate.”<sup>72</sup>

When determining whether to order restitution and the amount of restitution, a judge is required to consider the amount of the loss and the amount paid to or on behalf of the victim by the compensation to victims of crime fund, as well as other factors the judge

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<sup>67</sup> Code of Criminal Procedure art. 42.037(a).

<sup>68</sup> Code of Criminal Procedure, art. 42.037(b)(1)

<sup>69</sup> Code of Criminal Procedure art. 42.037(b)(1).

<sup>70</sup> Code of Criminal Procedure, art 42.037(b)(2)

<sup>71</sup> Code of Criminal Procedure art. 42.037(b)(2).

<sup>72</sup> Code of Criminal Procedure art. 42.037(b)(3).

deems appropriate.<sup>73</sup> The court may order a community supervision and corrections department (CSCD) to obtain information related to those factors. The community supervision officer includes the information in either the presentence report or a separate report, as the court directs.<sup>74</sup> Article 42.12(9)(a) of the Code of Criminal Procedure specifically provides that a community supervision officer must include “the amount of restitution necessary to adequately compensate a victim of the offense” as part of the presentence report.<sup>75</sup> But a presentence report is not required in misdemeanor cases<sup>76</sup> nor in felony cases<sup>77</sup> in those instances specified by statute.

The judge is not required to consider the defendant’s ability to pay when determining the amount of restitution. It should be noted that prior to September 1, 2005, a judge was required to consider the defendant’s ability to pay. In 2005, the 79<sup>th</sup> Legislature removed that requirement.<sup>78</sup>

The judge may order payment of restitution “within a specified period or in specified installments.”<sup>79</sup> If the judge does not order otherwise, the defendant must make restitution immediately.<sup>80</sup>

If installment payments are ordered, the judge may require the defendant to pay a one-time restitution fee of \$12—\$6 of which the court retains for costs incurred in collecting the specified installments, and \$6 of which is paid to the compensation to victims of crime fund.<sup>81</sup> In addition, the payment period or the last installment may not be later than the end of the probation period (if applicable), five years after the end of the prison term (if no probation is ordered), or five years after the date of sentencing in all other cases.<sup>82</sup>

#### *1. Restitution as a Condition of Community Supervision, Parole or Release to Mandatory Supervision*

If an offender is placed on community supervision, the court may order restitution as a condition. If the offender is placed on parole or released to mandatory supervision, the parole panel may impose restitution in the amount previously determined by the court as a condition of parole or mandatory supervision.<sup>83</sup>

If an offender is sent to jail or a Substance Abuse Felony Punishment facility as a condition of community supervision, payment of restitution is suspended during that

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<sup>73</sup> Code of Criminal Procedure art. 42.037(c).

<sup>74</sup> Code of Criminal Procedure art. 42.037(j).

<sup>75</sup> Code of Criminal Procedure art. 42.12 §9(a).

<sup>76</sup> Code of Criminal Procedure art. 42.12 §9b).

<sup>77</sup> Code of Criminal Procedure art. 42.12 §9(g).

<sup>78</sup> Acts 2005, 79<sup>th</sup> Leg., ch.969 §1, eff. Sept 1, 2005.

<sup>79</sup> Code of Criminal Procedure art. 42.037(g)(1).

<sup>80</sup> Code of Criminal Procedure art. 42.037(g)(3).

<sup>81</sup> Code of Criminal Procedure art. 42.037(g)(1).

<sup>82</sup> Code of Criminal Procedure art. 42.037(g)(2).

<sup>83</sup> Code of Criminal Procedure art. 42.037(h) and Government Code §508.0441.

time. Upon release, however, the offender is expected to pay the total amount of restitution that was temporarily suspended, but that amount may be paid over time.

The court may also require as a condition of community supervision that an offender reimburse the compensation to crime victims fund for any amounts paid from the fund to or on behalf of a victim.<sup>84</sup> However, while the judge is not required to take into account the defendant's ability to pay when determining the amount of restitution the defendant is to pay, he or she must take this into account when ordering the defendant to make payments as a condition of community supervision.<sup>85</sup> And, the court must consider the defendant's ability to pay when determining whether to revoke community supervision for non-payment of restitution.<sup>86</sup>

To establish restitution as a special condition of parole or mandatory supervision, Board Policy BPP-POL.04-01.01 *Special Condition "R" (Restitution) (1/8/04)* of the Texas Board of Pardons and Paroles provides that a parole panel, upon a majority vote, shall impose restitution as a condition of release to parole or mandatory supervision only if the court entered into the judgment and sentence a specific finding of loss to a victim.<sup>87</sup> The restitution, except as mandated by law, does not include any criminal obligation such as fines or court costs, or any civil obligations such as personal injury judgments, attorney fees, reimbursement of police "buy money," or crime victims compensation fund fees.

Once imposed, the condition generally becomes effective the date the offender is served notice of the parole panel's decision in writing. The condition remains in effect for the duration of the supervision period or until the restitution has been satisfied. If a restitution balance remains outstanding when an offender is discharged from supervision, the parole officer will no longer attempt to collect it. However, if an offender voluntarily continues to make restitution payments after discharge, the agency will continue to receive the payments.

The supervising parole officer may require the offender to comply with any or all special condition "R" requirements, as directed in writing. The Parole Division determines the manner in which restitution will be paid.

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<sup>84</sup> Code of Criminal Procedure art. 42.037(j).

<sup>85</sup> Code of Criminal Procedure art. 42.12 §11(b) provides "a judge may not order a defendant to make any payments as a term or condition of community supervision, except for fines, court costs, restitution to the victim, and other conditions related personally to the rehabilitation of the defendant or otherwise expressly authorized by law. The court shall consider the ability of the defendant to make payments in ordering the defendant to make payments under this article."

<sup>86</sup> Code of Criminal Procedure art. 42.037(h).

<sup>87</sup> Board Policy BPP-POL.04-01.01 of the Texas Board of Pardons and Paroles provides that a special condition is a condition imposed in addition to the standard conditions of parole or mandatory supervision. In addition, it provides that members of the Board of Pardons and Paroles and parole commissioners determine conditions of parole and mandatory supervision. Members and commissioners act in panels comprised of three persons, and panel decisions are made by majority vote. The board presiding officer (chair) designates the composition of the respective panels.

## *B. Collection of Restitution*

District and county attorneys, clerks of district and county courts, sheriffs, constables, and justices of the peace, may collect restitution, court costs, fees and fines. A CSCD may also collect these obligations with the written approval of the clerk of the court or fee officer.<sup>88</sup>

A county commissioners court may enter into a contract with a private attorney or a public or private vendor to collect unpaid restitution, court costs, fees and fines.<sup>89</sup> The county commissioners court may authorize the addition of a collection fee in the amount of 30 percent on restitution, court costs, fees, or fines that are more than 60 days past due and have been referred for collection.<sup>90</sup> Thus, an offender who is behind in payments may have to pay a collection fee in addition to the balance owed. However, if the court of original jurisdiction determines the offender is indigent, has insufficient resources or income, or is otherwise unable to pay all or part of the underlying fine or costs, then the offender is not liable for the collection fees.<sup>91</sup>

If an offender is incarcerated, Texas has a federally-approved program for inmates to work for wages, some of which can go toward the payment of restitution. However, the program, the Prison Industry Enhancement (PIE) Certification Program, employs a very small number of inmates: in FY 2007, the program employed an average of 429 offenders in the various PIE industries. \$16,198 was deducted from offenders' wages for restitution and \$205,421 was deducted for the Crime Victims Compensation Fund. An offender who participates in the PIE Program must agree to the following wage deductions and distributions:

- 20% of gross earnings will be deposited into the offender's Inmate Trust Fund;
- Up to half of the offender's 20% will go to court-ordered child support;
- Appropriate deductions will be made for all state and federal taxes;
- 5% of the offender's gross earnings will be applied to the Crime Victims Compensation Fund;
- 20% of the offender's gross earnings may be contributed towards the support of the offender's legal dependents;
- 10% of an offender's earnings will be applied to court-ordered restitution; and
- Remaining funds are applied toward room and board.

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<sup>88</sup> Code of Criminal Procedure art. 103.0031(a).

<sup>89</sup> Code of Criminal Procedure art. 103.0031(a).

<sup>90</sup> Code of Criminal Procedure art. 103.0031(b).

<sup>91</sup> Code of Criminal Procedure art. 103.0031(d).

If an offender is placed on community supervision, the community supervision officer will check a copy of the judgment to determine whether the offender owes restitution, court costs, fees or fine(s); and if so, whether the judge has specified payment of the obligations immediately, within a certain period, or in installments.

If an offender is obligated to pay restitution, court costs, fees or fine(s) and the judge has not specified a payment schedule, then the community supervision officer will generally have the defendant complete a form that lists the offender's income and financial obligations in order to determine the maximum amount the offender can pay monthly toward his or her obligation. The community supervision officer may verify income by requesting a pay stub if the offender is employed, but usually does not verify the debts and expenses of the offender.

If an offender is currently unemployed, the community supervision officer may defer or lower the amount of payment until the following month. When the offender returns the following month, the community supervision officer should determine whether the offender is employed; and, if the offender is employed, the officer should re-calculate the amount to be paid monthly. If an offender remains unemployed, the officer should continue to inquire each month whether the offender has secured employment.

Generally, the community supervision officer will schedule the final payment two months before termination of the supervision period in felony cases, and one month before termination in misdemeanor cases.

Depending on the local practice of each CSCD, an offender is provided either a payment schedule form or monthly payment coupons, in which the amounts owed (i.e., restitution, supervision fees, court costs, fees and fines, etc.) are itemized. Also, if a payment schedule form is used, it varies among CSCDs as to whether the offender and the community supervision officer sign the form. A copy of the payment schedule form is maintained in the offender's records.

Generally, payments are required to be in the form of a money order or certified cashier's check payable to the CSCD. Some CSCDs allow payment by credit card or cash. When a payment is received, the cashier issues a receipt. The cashier also indicates in the computer system each time a payment is made. The offender shows the receipt to the community supervision officer.

If an offender is able to pay but fails to make all or part of a payment, the missed payment becomes delinquent and the offender is expected to make an extra payment, usually as determined by the community supervision officer to satisfy the delinquency.

The directors of CSCDs work with the local judiciary to specify written policies and procedures under Article 42.12(10) of the Code of Criminal Procedure wherein the community supervision officers may make recommendations to the courts regarding violations of conditions of community supervision, as well as when violations may be handled administratively. The availability of progressive interventions and sanctions as



alternatives to incarceration and incentives must be considered by the community supervision officer and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

Generally, if an offender fails to pay his or her obligations (i.e., restitution, court costs, fees, fine(s) or supervision fees), the community supervision officer will verbally admonish the offender to make payments. Examples of progressive sanctions that may be used if a verbal admonishment is not sufficient include requiring an offender who is not making payments to write a letter of explanation, report more frequently to the office, perform more hours of community service, and attend a compliance class. If the offender still does not pay and is able to do so, the judge may amend the conditions of community supervision and order the offender to spend one or more weekends in jail. If the offender still continues not to pay, the judge may amend the conditions of community supervision and order the offender to be confined in an intermediate sanctions facility or other community corrections facility. If all these sanctions fail, the community supervision officer may recommend that a motion to revoke be filed, but it is rare that community supervision is revoked and the offender is sent to prison for failure to pay.

In addition to the range of sanctions that may be used, the community supervision officer will attempt to identify the reason an offender is not making payments and refer the offender to a program or service, such as the Texas Workforce Commission, to file for unemployment insurance benefits, or the Attorney General's Office, to establish a child support payment plan that will enable him or her to make payments.

The judge may extend the community supervision period in a felony or misdemeanor case for nonpayment of restitution, courts costs, fees, fines or community supervision fees, but the period of supervision in a first, second or third degree felony case may not exceed 10 years, and the period of supervision in a misdemeanor case may not exceed five years.<sup>92</sup> The period of community supervision in a misdemeanor case may not exceed three years unless an offender has not paid the fine, costs, or restitution by the end of the supervision period and the judge determines that extending the period of supervision for any period not to exceed an additional two years beyond the three years "increases the likelihood that the defendant will fully pay the fine, costs or restitution."<sup>93</sup>

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<sup>92</sup> Code of Criminal Procedure art. 42.12(22)(c) provides that "the judge may extend a period of community supervision on a showing of good cause under this section..." The statute, however, does not define "good cause." The failure to pay restitution, supervision fees, and court costs, fees and fines is usually interpreted to be "good cause" in felony cases.

Several intermediate appellate courts have ruled that various types of community supervision are separate for purposes of calculating the maximum term of community supervision that a defendant may be required to serve. For example, in Thomas v. State, 54 S. W. 3d 907 (Tex. App. – Corpus Christi, 2001), the Corpus Christi Court of Appeals concluded that a defendant who had served a term on deferred adjudication probation could be placed on adjudicated probation without regard to the length of time previously served on the deferred adjudication.

<sup>93</sup> Code of Criminal Procedure art. 42.12, §22(c).

Generally, if the extension of the community supervision period is to allow for more time to pay the obligations, then the supervision officer will make the request. In some jurisdictions, the supervision officer will have the defendant sign an agreed order extending the term of supervision, bypass the prosecutor's office, and present the agreed order to the judge for the judge's signature. In other jurisdictions, the supervision officer may have the prosecutor's office review the agreed order before it is presented to the judge. An offender, however, does not have to agree to an extension for a judge to order it.

If an offender is placed on parole or mandatory supervision, Policy and Operating Procedure PD/POP-3.1.6 *Fees/Restitution/Post Secondary Education Reimbursement/Collection* (12/13/06) of the TDCJ Parole Division provides that the collection process for restitution is as follows:

1. Initially, a parole officer checks the Parole Certificate or the Offender Information Management System (OIMS) to determine whether an offender owes restitution. (*Note: the Parole Certificate is the certificate of release placing an offender under the jurisdiction of the Parole Division. It has a list of the terms and conditions of supervision*).
2. If an offender claims that he or she owes restitution or the victim claims he or she is owed restitution but no special condition was imposed by the parole panel, the parole officer may request to review the Parole Board file, which includes the judgment and sentence. If an offender does owe restitution, then the parole officer prepares a report that includes the judgment and sentence information and submits it to the Parole Board. The Parole Board will then determine whether to impose restitution as a special condition.
3. If an offender owes restitution, the parole officer investigates the offender's financial obligations in order to determine the maximum amount the offender can pay toward his or her restitution obligation. The parole officer completes the Monthly Restitution Payment Schedule (PSV-71), which includes a list of all of the offender's financial obligations and the offender's income. The parole officer must verify all the expenses claimed by the offender. In addition, the parole officer must identify any luxury items, such as expanded phone services, cable services, cigarettes, cell phones, or Internet services, that the offender can eliminate in order to pay the maximum amount based on the offender's ability to pay. The parole officer must complete and submit the initial PSV-71 no later than 60 workdays after the offender's initial arrival.
4. The parole officer then calculates the amount of restitution that needs to be paid monthly in order for the offender to pay the full amount of restitution before discharge. While there is no minimum amount that an offender is required to pay monthly, the offender will ideally pay the full amount of restitution prior to discharge. If the offender is unemployed, he or she is still required to make restitution payments. The parole officer is instructed to find the amount the offender can pay until he or she finds a job, and to raise that amount once he or she has stable employment. In those instances where the amount owed cannot realistically be paid in full before the offender's discharge date, the offender will be instructed to pay the maximum amount based on the individual's ability to pay.

5. The offender is given instructions, written on an offender advisement form, that include the amount, date the offender is required to pay each month (typically the first report day of the month), location, and method of making payments. The form includes all obligations. The form is signed by both the parole officer and offender and is maintained in the offender's records with a copy given to the offender.

6. Payments are required to be in the form of a money order or certified cashier's check payable to TDCJ. Cash and personal checks are not accepted. In addition, restitution, post-secondary education reimbursement, and sex offender public notice fees must be paid separately from supervision fees, victim compensation fund fees, and sexual assault fund fees.

7. When a payment is received, the cashier issues two receipts. One is forwarded to the parole officer, and the other is given to the offender. The parole officer must maintain the receipt in the offender's field file. The parole officer must also indicate in OIMS each time a payment is made. (It should be noted, that despite this policy, the data analysis efforts described in Part III of this report did not reveal the existence of this level of information.)

8. If the offender fails to make restitution payments as directed, the parole officer must investigate and document the violation in OIMS not more than 10 working days from the date he or she becomes aware of the violation. The parole officer then implements the appropriate intervention according to Policy and Operating Procedure PD/POP-4.1.1 *Processing Violations of the Rules and Conditions of Release* (3/1/05) of the TDCJ Parole Division. Designed to increase control of offenders and to direct offenders toward future compliance with the rules and conditions of release, these corrective measures include:

- *Warning/admonishment:*
  - Compliance counseling by the parole officer;
  - Written reprimand from the parole officer or unit supervisor; or
  - Case conference with the offender, parole officer and unit supervisor.
- *Increase control:*
  - Increase supervision level and/or increase contact with the offender;
  - Activity monitoring (job lists, daily diary, financial review); or
  - District Resource Center reporting and/or program attendance.
- *Increase monitoring/programming:* alcohol testing; electronic monitoring; treatment programming; or urinalysis.
- *Modifications of the conditions of release to parole or mandatory supervision pursuant to approved special condition request from a parole panel.*

9. Cases on minimum and quarterly supervision are placed on the next higher level of supervision if any non-compliance occurs. The parole officer also immediately calculates future payments and gives the offender new written instructions regarding payments until all missed payments are paid.

10. Each month Parole Division unit supervisors review all district supervision fee, Crime Victim Fund, PSER, restitution, and sexual assault collection reports available in the computer system to verify that parole officers implemented interventions according to policy for offenders who have not made the required payments. (But see the comment to number 7 above.)

11. Procedures are in place to ensure that an offender's information remains up-to-date. After receiving information of any financial change, the parole officer must submit a

subsequent PSV-71 no later than seven workdays to update the offender's information. If there are no financial changes for a year, the parole office must still complete and submit a new PSV-71 no later than seven workdays after the anniversary of the last PSV-71.

Parole offices throughout the state designate certain parole officers as restitution officers. Those officers closely supervise offenders who owe restitution. By having officers who focus on the collection of restitution, this helps to increase the collection of restitution.

In FY 2007, the following amounts were collected from offenders placed on parole or mandatory supervision: \$1,101,511.71 in restitution, and \$3,503,079.91 for reimbursement to the crime victims' compensation fund. The amounts collected represent collections for amounts assessed in FY 2007 and previous years. Also, in FY 2007, \$5,462,032.00 was assessed for reimbursement to the crime victims' compensation fund.

### *C. Enforcement of Restitution*

If an offender is incarcerated, money from an inmate's trust account can be withdrawn to pay restitution. It is second, behind child support, on the priority list of obligations for which trust account funds can be withdrawn to pay.<sup>94</sup>

For state jail felons who are released after serving their sentence, there is no authoritative individual, such as a parole officer, responsible for monitoring and ensuring they pay restitution. Thus, the payment of restitution by state jail felons is generally poor.

If an offender is on community supervision, parole or mandatory supervision, the court may revoke community supervision, and the parole panel may revoke parole or mandatory supervision, for failure to pay restitution.<sup>95</sup> The non-payment of restitution is a technical violation.

Typically, community supervision, parole or mandatory supervision will not be revoked for non-payment of restitution, court costs, fees, fines, or supervision fees. The decision to seek revocation of community supervision, parole or mandatory supervision is the decision of the community supervision or parole officer. Factors that may influence the decision to seek revocation of community supervision include the CSCD's progressive sanctions model and policies and procedures, or the policies and directives of the sentencing court. The recommendation of the community supervision officer to seek revocation of community supervision is generally reviewed by the officer's supervisor. In smaller CSCDs the director may ask the prosecutor to file a motion to revoke, while in larger departments the unit supervisor or supervisor of the satellite office will usually ask

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<sup>94</sup> Government Code § 501.014(e).

<sup>95</sup> Code of Criminal Procedure art. 42.037(h).

the prosecutor to file the motion. If a parole officer decides to seek revocation of parole, the officer will submit a recommendation to revoke parole to the Parole Board.

When determining whether to revoke community supervision, parole, or mandatory supervision for the non-payment of restitution, the court or parole panel must consider the defendant's employment status, current and future earning ability, and current and future financial resources. The willfulness of the defendant's failure to pay, any other special circumstances that affect the defendant's ability to pay, and the victim's financial resources or ability to pay expenses he or she has incurred must also be considered<sup>96</sup>

Another enforcement tool, is unrelated to community supervision or parole, is the restitution lien. This tool, however, is seldom used. Texas law provides that "an order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action."<sup>97</sup> In other words, once a court orders that restitution be made to a victim or the state, the victim or state has the right to seize property of the offender as a means to pay or satisfy the obligation.

#### *D. Prioritization of Restitution Obligation*

Other than the prioritization schedule set forth for inmate trust account funds, there are no statutes prioritizing the collection and payment of restitution.<sup>98</sup> Some judges, however, order that all restitution must be collected and paid before supervision fees and court costs, fees, and fines are collected and paid.

In practice, the collection and payment of restitution by offenders who are placed on community supervision is second in priority behind the collection and payment of supervision fees, unless the court orders otherwise.

In practice, there is no prioritization schedule for the collection and payment of restitution by offenders who are placed on parole or mandatory supervision.

#### *E. State-Level Initiatives to Evaluate or Modify Restitution Policies*

To help address the low payment rate of restitution by state jail felons, a provision was added approximately two years ago to the Felony Judgment form promulgated by OCA, requiring that an offender released from state jail proceed immediately to the appropriate court clerk to pay, or make arrangements to pay, any remaining unpaid restitution as ordered by the court.

### *III. COURT COSTS, FEES, AND FINES*

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<sup>96</sup> Code of Criminal Procedure art. 42.037(h).

<sup>97</sup> Code of Criminal Procedure art. 42.037(m).

<sup>98</sup> Government Code §501.014(e).

### A. Assessment of Court Costs, Fees, and Fines

The judge assesses punishment unless the defendant elects to have the jury to assess punishment or the state seeks the death penalty in a capital felony case.<sup>99</sup> The fine amounts that can be assessed for the respective offense categories (e.g., first degree felonies, state jail felonies, Class A misdemeanors) are set forth in chapter 12 of the Penal Code.

Both local court costs and fees, and state court costs and fees, are assessed in felony and misdemeanor cases. The amount of the costs and fees, and when they apply, are set forth in statute. The term “court cost” and the term “fee” are not defined in statute. The terms are used interchangeably throughout the statutes.

The general reasoning for the costs and fees is that those who violate the law should help pay for certain programs, such as those aimed at crime prevention, victim restitution, and training of court and law enforcement personnel.

When imposing a fine and costs, the court may direct the defendant to pay the entire amount when the sentence is imposed, to pay the entire amount at a later date, or pay in installments at designated intervals.<sup>100</sup>

Article 26.050(g) of the Code of Criminal Procedure provides that if a court determines that a convicted defendant who has been appointed counsel has financial resources to pay all or part of the attorney fees and costs of other legal services (i.e. investigation expenses and expert witness expenses), the court shall order the defendant to pay as “court costs the amount it finds the defendant is able to pay.”<sup>101</sup> Although statute provides that attorney fees and the costs of other legal services are “court costs,” the local practice in some counties is to treat them as something other than court costs.

If an offender is sent to jail or a Substance Abuse Felony Punishment facility as a condition of community supervision, payment of court costs, fees and fines is suspended during that time. Upon release, however, the offender is expected to pay the total amount of court costs, fees and fines that was temporarily suspended.

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<sup>99</sup> Code of Criminal Procedure arts. 37.07-.071.

<sup>100</sup> Code of Criminal Procedure art. 42.15.

<sup>101</sup> Code of Criminal Procedure art. 26.05(g).

## B. Collection of Court Costs, Fees, and Fines

The same individuals authorized to collect restitution, including a private attorney or private vendor, are able to collect court costs, fees, and fines.<sup>102</sup> (See *Collection of Restitution*)

The use of private collection agencies or private attorneys to collect court costs, fees and fines owed in felony and Class A and B misdemeanor cases has been very limited in Texas, but interest in this area is growing.

If an offender pays only part of the required court costs, fees, and fines when making a payment, the money collected must be allocated to court costs and fees first (both state and local) and then to fines (see Attorney General Opinion GA-147, 2004). That opinion provides in part:

...allocate monies received from a defendant first to pay costs and then to pay a fine. If the monies received do not cover all of the costs, then the monies must be allocated to costs on a pro rata basis.<sup>103</sup>

The costs-first allocation rule described above was developed by the Attorney General's Office over 65 years ago.<sup>104</sup> However, if a convicted defendant is placed on community supervision in accordance with article 42.12 of the Code of Criminal Procedure, the judge has the authority to determine the allocation of costs, fees and fines. In Attorney General Opinion DM-407 (1996), the Attorney General's Office found:

...express authorization for a judge to impose and allocate costs, fees and fines as the judge feels will "protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant." See Code Crim. Proc. Art. 42.12, §11(a). Because of its express authorization, article 42.12 falls outside the scope of the pro rata rule developed in Attorney General Opinion M-1076.<sup>105</sup>

In those counties where attorney fees and the expenses for other legal services are considered "other" costs (rather than court costs), it allows those items to fall outside the Allocation Rule and, as a result, the judge can order that they be collected and paid before court costs, fees, and fines.

In counties with either a voluntary or mandatory Collection Improvement Program under Article 103.0033, Code of Criminal Procedure, the practice varies as to whether the collection department(s) associated with the program collects attorney fees and the costs of other legal services -- in some counties, the department(s) collects those items, while in others the department(s) does not. If the payment of attorney fees and the costs of other legal services is a condition of an offender's community supervision, the court

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<sup>102</sup> Code of Criminal Procedure art. 103.003(a)-(b).

<sup>103</sup> Attorney General Opinion GA-147, 2004.

<sup>104</sup> Attorney General Opinion O-755, 1939; Attorney General Opinion O-469, 1939.

<sup>105</sup> Attorney General Opinion DM-407, 1996.

may elect to have the CSCD collect the attorney fees and the costs of other legal services.

If a defendant is placed on community supervision, the court may order the payment of a fine, if one is assessed, and all court costs in one or several sums as a condition of community supervision.<sup>106</sup> And “a parole panel may impose as a condition of parole or mandatory supervision any condition that a court may impose on a defendant placed on community supervision under Article 42.12, Code of Criminal Procedure...”<sup>107</sup>

If an offender is placed on community supervision, the community supervision officer will during the initial interview check a copy of the judgment to determine whether the offender owes court costs, fees and fine(s). If an offender does owe them, payments will be made to the office within the county given responsibility for collections from probationers (i.e., court clerk, collection department(s) associated with the Collection Improvement Program, or CSCD).

If the court clerk or collection department(s) associated with the Collection Improvement Program is responsible for the collection of payments, the offender must provide documentation of the payments to the supervising community supervision officer.

If the CSCD is responsible for the collection of court costs, fees and fines, rather than the clerk or a collection department(s) associated with a Collection Improvement Program, the collection process is the same as that for restitution, which is discussed on pages 9 and 10 in the *Collection of Restitution* section of this paper.

If an offender fails to make payments, the community supervision officer will implement the same sanctions and interventions that are used for the non-payment of restitution, which are discussed on pages 10 and 11 in the *Collection of Restitution* section of this paper.

If it is determined that an offender has no means to pay court costs, fees, or fine(s) (e.g., due to a permanent disability), then the supervision officer may petition the court to waive the imposition of them.

Community supervision offenders “who have been administratively released at the expiration of the community supervision period but who have failed to pay the fines, fees and court costs ordered as a condition of community supervision are no longer responsible for the those fines, fees, and court costs.”<sup>108</sup>

If an offender is placed on parole or mandatory supervision, the offender must make payments toward any outstanding fines, court costs, or fees adjudged against them at the time of sentencing. The payments are to be made to the appropriate court clerk,

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<sup>106</sup> Art. 42.12, sec. 11(8), Code of Criminal Procedure.

<sup>107</sup> Government Code §508.221.

<sup>108</sup> Attorney General Opinion GA-0413 (2006).



with the offender providing documentation of the payments to the supervising parole officer.

If an offender is on parole or mandatory supervision, Policy and Operating Procedure PD/POP-3.1.6 *Fees/Restitution/Post Secondary Education Reimbursement/ Collection* (12/13/06) of the TDCJ Parole Division provides that the collection process for court costs, fees and fines is as follows:

During the initial interview after release from prison, the parole officer directs the offender to report to the clerk of the court of conviction and pay all court costs, fees and fines owed or establish a payment schedule with the clerk. The parole officer documents this in OIMS.

After the initial interview with an offender, the parole officer will check with the court clerk regarding the payment schedule and balance owed by the offender. The response from counties for this information is often inconsistent.

While parole officers are not responsible for the actual collection of court-imposed court costs, fees and fines, it is their responsibility to ensure that offenders pay any outstanding court costs, fees and fines.

The offender is required to bring verification of payment or the payment schedule at the next office visit. A standard form may be developed by the county and utilized as needed to confirm compliance. If the clerk puts an offender on a payment schedule, the offender will provide verification to the parole officer that regular payments are being made. Once court costs, fees and fines have been paid in full, the offender will provide the parole officer with verification of payment in full from the court. Interventions are imposed if the offender fails to comply.

If a parolee fails to make payments as directed, the parole officer must investigate and document the violation in OIMS not more than 10 working days from the date he or she becomes aware of the violation. The parole officer then implements the appropriate intervention according to Parole Division policy 4.1.1, *Processing Violations of the Rules and Conditions of Release*, which is discussed on pages 12 and 13 in the *Collection of Restitution* section of this paper.

For state jail felons who are released after serving their time, there is no authoritative individual, such as a parole officer, responsible for monitoring and ensuring that they pay their court costs, fees and fines. Thus, the payment of court costs, fees, and fines by state jail felons is generally poor.

### *C. Enforcement of Court Costs, Fees, and Fines*

If an offender is incarcerated in prison, money from the inmate's trust account can be withdrawn to pay court costs, fees, and fines. Court fees and costs are fourth, and fines

are fifth, on the priority list of obligations for which trust account funds can be withdrawn to pay.<sup>109</sup> In November 2007, the general counsel for the Texas Department of Criminal Justice (TDCJ), wrote a letter indicating that TDCJ would withdraw funds from offender trust fund accounts when court costs are assessed by the criminal convicting court under the following circumstances:

1. The withdrawal order must be issued contemporaneously with the judgment;
2. The withdrawal order must be made part of or attached to the judgment; and
3. Both documents must be sent together to the TDCJ.

If a defendant does not pay court costs, fees, and fines, several enforcement tools are available to enforce payment. These include the following:

#### *DPS Failure to Appear or Pay Program*

The Texas Department of Public Safety (DPS) is authorized to contract with political subdivisions to deny the renewal of an individual's driver license for failure to appear on certain traffic violations or failure to pay or satisfy court judgments in a matter involving any offense that court has jurisdiction of under chapter 4, Code of Criminal Procedure.<sup>110</sup> DPS has contracted with OmniBase Services of Texas, a private company, to assist with the automation of the Failure to Appear or Pay Program. OmniBase places a hold on the renewal of a driver's license until an individual fully resolves his or her case with the court. In a 2006 opinion, the Attorney General concluded that DPS:

...may deny the renewal of a driver's license to any person who fails to appear in a justice or municipal court, but may not deny renewal to any person who fails to appear in a county or district court. The department may deny renewal of a driver's license to any person who fails to pay or satisfy a judgment ordering payment of a fine or costs for an offense in any court that has criminal jurisdiction.<sup>111</sup>

In practice, this enforcement tool is seldom used for offenders convicted of Class A and B misdemeanors or felonies.

#### *TxDOT Scofflaw Program*

A county tax assessor-collector or the Texas Department of Transportation (TxDOT) may refuse to register a motor vehicle if the owner of the vehicle owes the county money for a fine, fee, or tax that is past due. A county may contract with TxDOT to "flag" motor vehicle records of such vehicles.<sup>112</sup> In practice, this enforcement tool is currently only used when the offender has been convicted of a Class C misdemeanor.

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<sup>109</sup> Government Code §501.014(e).

<sup>110</sup> Transportation Code chpt. 706.

<sup>111</sup> Attorney General Opinion GA—0479 (2006)

<sup>112</sup> Transportation Code §502.185.

### *Execution*

An execution against the defendant's property may be issued for the fine and costs. "The execution shall be collected and returned as in civil actions."<sup>113</sup>

### *Capias Pro Fine*

A *capias pro fine* may be issued for the defendant's arrest when the defendant defaults on the payment of court costs, fees, and fines.<sup>114</sup>

After the defendant's arrest and a hearing, the court may order a defendant who is not indigent confined in jail for a sufficient length of time to discharge the fine and costs; may order the defendant to discharge the fine or costs in any other manner provided by article 43.09, Code of Criminal Procedure, or may waive payment of the fine or costs if the defendant is indigent and each alternative method of discharge would impose an undue hardship on the defendant.<sup>115</sup>

In practice, a *capias pro fine* is seldom issued for an offender placed on parole. If a collections department associated with a Collection Improvement Program is responsible for the collection of court costs, fees, and fines from offenders who are placed on community supervision, the department will sometimes request the issuance of a *capias* for those offenders convicted only of a misdemeanor.

### *Revocation of Community Supervision or Parole*

The non-payment of court costs, fees and fines is a technical violation. Typically, community supervision, parole or mandatory supervision will not be revoked for non-payment of court costs, fees, and fines. The decision to seek revocation of community supervision, parole or mandatory supervision is the decision of the community supervision or parole officer. Factors that may influence the decision to seek revocation of community supervision include the CSCD's progressive sanctions model and policies and procedures, or the policies and directives of the sentencing court.

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<sup>113</sup> Code of Criminal Procedure art. 43.07.

<sup>114</sup> Code of Criminal Procedure art. 43.015.

<sup>115</sup> Code of Criminal Procedure art. 43.03.

*D. Prioritization of Court Costs, Fees, and Fines Obligation*

Other than the prioritization schedule set forth for inmate trust account funds,<sup>116</sup> there are no statutes prioritizing the collection and payment of court costs, fees, and fines.

In practice, if a CSCD is responsible for the collection of court costs, fees, and fines from an offender placed on community supervision, the CSCD will collect the offender's financial obligations in the following priority order:

- 1) supervision fees,
- 2) restitution;
- 3) court costs and fees; and
- 4) fines<sup>117</sup>

However, in those counties where a collections department(s) associated with a Collection Improvement Program (*see below for information about the program*) is responsible for the collection of court costs, fees, and fines from offenders who are on community supervision and the judge has not ordered the payment of restitution first, court costs, fees, and fines will be collected first.

*E. State-Level Initiatives to Evaluate or Modify Court Costs, Fees, and Fines Policies*

Over a decade ago, the Office of Court Administration (OCA) started a Collection Improvement Program as a voluntary model. That model is a set of principles and processes designed to assist cities and counties with collecting court costs, fees, and fines assessed against persons convicted of misdemeanor or felony charges when they are not prepared to pay all court costs, fees, and fines, at the time of assessment and when time to pay is requested. The Collection Improvement Program requirements do not apply to the collection of restitution or supervision and related fees collected by a CSCD.

In 2005, the 79<sup>th</sup> Legislature recognized the importance of expanding the collection of court-ordered payments by adding article 103.0033 to the Code of Criminal Procedure. This statute requires cities with a population of 100,000 or more, and counties with a population of 50,000 or more, to implement a collection improvement program based on OCA's model. A total of 78 counties were affected during the FY 2006-2007 biennium. When time and resources permit, OCA staff also assist smaller counties and cities with implementing a collection improvement program.<sup>118</sup>

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<sup>116</sup> Government Code §501.014(e).

<sup>117</sup> Some CSCDs are not aware of the costs-first allocation rule and tend to collect fines before court costs and fees because they place the interests of the county above that of the state. (Generally, fines are retained locally, while a large percentage of court costs and fees are sent to the state.)

<sup>118</sup> Code of Criminal Procedure art. 103.0033.

To help address the low payment rate of court costs, fees, and fines by state jail felons, a provision was added approximately two years ago to the Felony Judgment Form promulgated by OCA, requiring that an offender released from State Jail proceed immediately to the appropriate court clerk to pay, or make arrangements to pay, any remaining unpaid court costs and fines as ordered by the court.

#### IV. SUPERVISION FEES

##### A. Assessment of Supervision Fees

###### 1. Community Supervision Fees

When granting community supervision, a judge must fix a fee of “not less that \$25 and not more than \$60 per month to be paid during the period of community supervision...”<sup>119</sup> Payment of the fee may be made a condition of community supervision. “The judge may waive or reduce the fee or suspend a monthly payment of the fee if the judge determines that payment of the fee would cause the defendant a significant financial hardship.”<sup>120</sup>

And if a convicted sexual offender<sup>121</sup> is placed on community supervision, the judge must require as a condition of community supervision that the offender pay to the community supervision officer supervising the offender a “community supervision fee of \$5 each month during the period of community supervision”<sup>122</sup> That fee is remitted to the Comptroller who deposits it into the Sexual Assault Fund.

If an offender is sent to jail or a Substance Abuse Felony Punishment facility as a condition of community supervision, the payment of supervision fees is waived during that time.

CSCDs receive approximately half of their funding from appropriations made at the state level. The other half of the budget is raised through the collection of supervision fees. The funding from the state passes through and is regulated by a state agency known as the Community Justice Assistance Division (CJAD) of TDCJ.

Unless a court orders the collection of restitution or court costs, fees, and fines before the collection of community supervision fees, CSCDs will often make the collection of supervision fees the top priority since their funding depends on those fees. And when the collection of supervision fees is the top priority, this can sometimes adversely affect the collection of court costs, fees, and fines.

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<sup>119</sup> Code of Criminal Procedure art. 42.12, §19(a).

<sup>120</sup> Code of Criminal Procedure art. 42.12, §19(a).

<sup>121</sup> The offender must have been convicted of one or more of the following offenses: indecent exposure, indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, sexual performance by a child, and possession of child pornography.

<sup>122</sup> Code of Criminal Procedure art. 42.12, §19(e).

## 2. Parole Supervision Fee; Administrative Fee (i.e., Crime Victims Compensation Fund Fee); Other Parole Fees

As a condition of parole or mandatory supervision, an offender is required to pay a monthly parole supervision fee of \$10, and an administrative fee of \$8, to the Parole Division. The Parole Division remits the fees collected to the Comptroller who deposits the \$10 parole supervision fee into the state's general revenue fund and the \$8 administrative fee into the crime victims compensation fund.<sup>123</sup>

On the request of the releasee, a parole panel may allow the releasee to defer one or more payments of the supervision fee or administrative fee (i.e., crime victims compensation fund fee). The releasee remains responsible for the payment of the fee and must pay the amount deferred "not later than the second anniversary of the date the payment becomes due."<sup>124</sup>

The following additional parole fees may be assessed for certain releasees:

- **Sexual Assault Fund Fee:** A five-dollar monthly fee assessed to sexual offenders under active supervision after September 29, 1994, whose offense included conviction of one or more of the following offenses: indecent exposure, indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, sexual performance by a child, and possession of child pornography.<sup>125</sup>
- **Sex Offender Public Notice Fee:** Offenders required to register under chapter 62 of the Code of Criminal Procedure for whom law enforcement authorities are required to publish public notice of the offender's release, must pay a fee that equals the cost to the law enforcement authority for publishing the notice. After September 1, 2005, this applies only to Level Three offenders (*Note: Level Three offenders are defined in article 42.12(3g) of the Code of Criminal Procedure.*)
- **Post-Secondary Education Reimbursement (PSER):** Inmates who enroll in post-secondary education courses at the expense of the state while incarcerated at a TDCJ facility on or after September 1, 1995, must reimburse the state for the costs of the secondary education programs. PSER is a statutorily-mandated condition imposed at the time of the printing of the release certificate.

### B. Collection of Supervision Fees

#### 1. Community Supervision Fees

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<sup>123</sup> Government Code §508.182(a) and (e).

<sup>124</sup> Government Code §508.182(c).

<sup>125</sup> Government Code §508.189.

If an offender is placed on community supervision, applicable supervision fees are assessed each month regardless of financial ability. The fees are collected by the CSCD. The collection process used by the CSCD is the same as that for restitution, which is discussed on pages 9 and 10 in the *Collection of Restitution* section of this paper.

If an offender fails to make payments, the community supervision officer will implement the same sanctions and interventions that are used for the non-payment of restitution, which are discussed on pages 10 and 11 in the *Collection of Restitution* section of this paper.

If it is determined that an offender has no means to pay supervision fees (e.g., due to a permanent disability), then the supervision officer may petition the court to reduce the amount owed or waive the imposition of them.

## *2. Parole Supervision Fee; Administrative Fee (i.e., Crime Victims Compensation Fund Fee); Other Parole Fees*

If an offender is on parole or mandatory supervision, Policy and Operating Procedure PD/POP-3.1.6 *Fees/Restitution/Post Secondary Education Reimbursement Collection* (12/13/06) of the TDCJ Parole Division provides that the collection process for supervision, administrative (i.e., crime victims compensation fund) and sexual assault fund fees is as follows:

1. Applicable supervision, administrative (i.e., crime victims compensation fund) and sexual assault fund fees are assessed each month regardless of financial ability and a current balance is automatically updated in the Fees Section of OIMS. Statute does not allow exemption of payment. If an offender owes fees from a previous period of supervision, he is responsible for satisfying the balance.
2. Post-secondary education reimbursement (PSER) payments may be made by the offender in a lump sum or in monthly payments. Monthly payments are determined based on the offender's documented and verified ability to pay. Once PSER has been paid in full, the parole officer indicates that the condition has been satisfied in OIMS, effective the date of the final payment.
3. The offender is given instructions, written on an offender advisement form, that include the amount, date the offender is required to pay each month (typically the first report day of the month), location, and method of making payments. The form is signed by both the parole officer and offender and is maintained in the offender's records with a copy given to the offender. The procedures for payment are the same as those for described in the *Collection of Restitution* section of this paper.
4. If the offender fails to make payments as directed, the parole officer must investigate and document the violation in OIMS not more than 10 working days from the date he or she becomes aware of the violation. The parole officer then implements the

appropriate intervention according to Policy and Operating Procedure PD/POP-4.1.1 *Processing Violations of the Rules and Conditions of Release (3/1/05)* of the TDCJ Parole Division. Those interventions, along with the review and verification by a unit supervisor that a parole officer implemented the appropriate intervention, are discussed on pages 12 and 13 in the *Collection of Restitution* section of this paper.

In FY 2007, the following amounts were assessed and collected from offenders placed on parole or mandatory supervision: \$10,143,890.00 was assessed, and \$7,427,717.49 was collected, in supervision fees; and \$47,655 was assessed, and \$36,397.64 was collected, in sexual assault fund fees. The amounts collected represent collections for amounts assessed in FY 2007 and previous years.

### *C. Enforcement of Supervision Fees*

#### *1. Community Supervision Fees*

The nonpayment of supervision fees is a technical violation. Typically, community supervision will not be revoked for non-payment of those fees. The decision to seek revocation of community supervision is the decision of the community supervision officer.

#### *2. Parole Supervision Fee; Administrative (i.e., Crime Victims Compensation Fund) Fee*

The non-payment of supervision and administrative (i.e. crime victims compensation fund) fees is a technical violation. Typically, parole or mandatory supervision will not be revoked for non-payment of those fees. The decision to seek revocation of parole or mandatory supervision is the decision of the parole officer.

An employed offender with excessive supervision and other fee balances may be required to attend weekly financial resource classes. This requirement oftentimes encourages those offenders to pay, since they would rather pay than attend the classes.

### *D. Prioritization of Supervision Fees*

There are no statutes prioritizing the payment of supervision fees. However, given that half of the budget for a community supervision and corrections department comes from supervisory fees, the collection of those fees by community supervision officers have often taken priority over the collection of court costs, fees, and fines and other obligations.

Article 42.037(o) of the Code of Criminal Procedure seemingly indicates that restitution has priority over parole supervision and administrative (i.e., crime victims compensation fund) fees. It provides that “the pardons and paroles division may waive a supervision fee or an administrative fee...during a period in which the inmate is required to pay restitution...”



## V. REHABILITATION PROGRAMS; RESIDENTIAL FACILITIES; OTHER EXPENSES

### 1. Community Supervision

Some offenders are required by the courts to live in special facilities while they complete their community supervision. Residential facilities allow judges to save prison beds for violent felons while giving all offenders the treatment or sanction that will serve them and society best. These community corrections residential facilities include court residential treatment centers, restitution centers, substance abuse treatment facilities, mentally impaired offender facilities, and intermediate sanction facilities.

An offender may have to pay a portion of the cost for residing at a facility. The Community Justice Assistance Division of the Texas Department of Criminal Justice (CJAD) allows a community corrections residential facility to collect up to \$18 per day for room and board from a resident. CJAD is soon going to increase this amount to \$21 per day. Not all residents, however, pay this fee. If a resident has to remain in a facility all day and cannot leave, then he or she does not have to pay for room and board. If a resident is staying at the facility and is working, then the resident is required to pay room and board.

In addition, CSCDs may offer various rehabilitation programs to offenders placed on community supervision. These programs include substance abuse treatment programs, sex offender surveillance and treatment, and cognitive programs. If an offender is not able to pay the fees associated with participation in a program, then the CSCD will pay all or the part of the fees that an offender is unable to pay. CJAD does not have information on the statewide average cost per defendant for each type of rehabilitation program. To give a sense of what each program may cost, the following is the estimated cost for programs in Bell County:

- sex offender counseling – individual counseling is \$50 per session; group counseling is \$30 per session
- substance abuse counseling\* – costs for individual and group counseling sessions are slightly less than those for sex offender counseling
- substance abuse screening (used to assist in determining the problem and the extent of the problem - \$30
- substance abuse evaluation (used to assist in determining the treatment modality) - \$40
- lifeskills classes - \$25 for two four-hour sessions
- parenting classes - \$15 per session
- batterer's intervention prevention programs – group counseling is \$20 per session, sliding scale
- anger management course – between \$45 to 60 per course.

Further, an offender may be required to submit to drug or alcohol testing, install an ignition interlock device, or wear an ankle monitor. An offender is required to pay for

these items, unless the offender is indigent. If an offender is indigent, then usually the CSCD will pay for the costs. The estimated cost for each is listed below:

- drug or alcohol testing - \$5 for a five panel test; \$6.50 for a ten panel test
- ignition interlock device - \$1,200 per year (includes installation)
- electronic monitoring device (e.g., ankle monitor) - \$8 to \$12 per day.

The costs for the above vary – the more units for which a CSCD contracts, the cheaper the cost per unit.

If a judge does not order a specific priority order of payment in the judgment, the priority of payment for an offender confined in a residential program is as follows:

- 1) residential facilities;
- 2) rehabilitation programs;
- 3) restitution;
- 4) court costs and fees;
- 5) fines;<sup>126</sup>
- 6) child support; and
- 7) supervision fees

Supervision fees are a low priority because they are often not collected, but waived, when an offender is confined in a residential facility. Even when supervision fees are imposed while a person is in a community corrections residential facility, it is not a high priority for a CSCD to collect supervision fees on a probationer referred to that facility from a different CSCD.

## *2. Parole or Release on Mandatory Supervision*

Some offenders are required to live in residential re-entry centers (also known as halfway houses). The average cost per day for a residential re-entry center is \$35. If an offender is working, 25 percent of the offender's gross wages are used to pay for his or her room and board.

Some offenders are required to participate in rehabilitation programs or testing as a condition of parole or mandatory supervision. For certain programs or testing (e.g., outpatient substance abuse treatment programs, anger management counseling, or drug testing), the offender is not required to pay, as TDCJ provides these through contracted services and at no charge to the offender. However, for other programs, such as batterers intervention, parenting classes, or domestic violence programs, the offender is referred to an outside vendor and required to pay for the services. The offender will

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<sup>126</sup> Some CSCDs are not aware of the costs-first allocation rule and tend to collect fines before court costs and fees because they place the interests of the county above that of the state. (Generally, fines are retained locally, while a large percentage of court costs and fees are sent to the state.)

often pay based on a sliding fee scale in which the amount owed is based on the offender's income. There is no payment priority for these items – an offender is required to pay them at the same time the offender pays any other financial obligations that are owed. TDCJ, however, may subsidize the payment for the programs, testing, or counseling for some offenders unable to pay. The estimated cost for each is listed below:

- sex offender counseling - average cost is \$25 -35 per session\*
- polygraph testing - \$225 per test (estimated)
- sex offender evaluation - \$150\*
- ignition interlock device – approximately \$2 per day (this does not include installation costs, which are paid by the offender).
- domestic violence classes – average cost is \$20 per class
- parenting classes – varies per provider
- GED test – average cost for test is \$100

**Appendix A**  
**Recommendation 2 - Proposed Legislation**

A BILL TO BE ENTITLED  
AN ACT

relating to prison inmates' obligations to pay court-ordered fines, court fees and court costs through deductions from inmate accounts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Article 42.01, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant. The sentence served shall be based on the information contained in the judgment. The judgment shall reflect:

1. The title and number of the case;
2. That the case was called and the parties appeared, naming the attorney for the state, the defendant, and the attorney for the defendant, or, where a defendant is not represented by counsel, that the defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel;
3. The plea or pleas of the defendant to the offense charged;
4. Whether the case was tried before a jury or a jury was waived;
5. The submission of the evidence, if any;
6. In cases tried before a jury that the jury was charged by the court;
7. The verdict or verdicts of the jury or the finding or findings of the court;
8. In the event of a conviction that the defendant is adjudged guilty of the offense as found by the verdict of the jury or the finding of the court, and that the defendant be punished in accordance with the jury's verdict or the court's finding as to the proper punishment;
9. In the event of conviction where death or any punishment is assessed that the defendant be sentenced to death, a term of confinement or community supervision, or to pay a fine, as the case may be;
10. The amount of any fine, court fees, and court costs and the terms of any order specifying the manner of payment entered pursuant to Article 42.15 of this code;
11. [~~10.~~] In the event of conviction where the imposition of sentence is suspended and the defendant is placed on community supervision, setting forth the punishment assessed, the length of community supervision, and the conditions of community supervision;
12. [~~11.~~] In the event of acquittal that the defendant be discharged;
13. [~~12.~~] The county and court in which the case was tried and, if there was a change of venue in the case, the name of the county in which the prosecution was originated;
14. [~~13.~~] The offense or offenses for which the defendant was convicted;
15. [~~14.~~] The date of the offense or offenses and degree of offense for which the defendant was convicted;

16. ~~[15.]~~ The term of sentence;  
17. ~~[16.]~~ The date judgment is entered;  
18. ~~[17.]~~ The date sentence is imposed;  
19. ~~[18.]~~ The date sentence is to commence and any credit for time served;  
20. ~~[19.]~~ The terms of any order entered pursuant to Article 42.08 of this code that the defendant's sentence is to run cumulatively or concurrently with another sentence or sentences;

21. ~~[20.]~~ The terms of any plea bargain;  
22. ~~[21.]~~ Affirmative findings entered pursuant to Subdivision (2) of Subsection (a) of Section 3g of Article 42.12 of this code;

23. ~~[22.]~~ The terms of any fee payment ordered under Article 42.151 of this code;

24. ~~[23.]~~ The defendant's thumbprint taken in accordance with Article 38.33 of this code;

25. ~~[24.]~~ In the event that the judge orders the defendant to repay a reward or part of a reward under Articles 37.073 and 42.152 of this code, a statement of the amount of the payment or payments required to be made;

26. ~~[25.]~~ In the event that the court orders restitution to be paid to the victim, a statement of the amount of restitution ordered and:

(A) the name of the victim and the permanent mailing address of the victim at the time of the judgment; or

(B) if the court determines that the inclusion of the victim's name and address in the judgment is not in the best interest of the victim, the name and address of a person or agency

that will accept and forward restitution payments to the victim;

27. ~~[26.]~~ In the event that a presentence investigation is required by Section 9(a), (b), (h), or (i), Article 42.12 of this code, a statement that the presentence investigation was done according to the applicable provision;

28. ~~[27.]~~ In the event of conviction of an offense for which registration as a sex offender is required under Chapter 62, a statement that the registration requirement of that chapter applies

to the defendant and a statement of the age of the victim of the offense;

29. ~~[28.]~~ The defendant's state identification number required by Section 60.052(a)(2) , if that number has been assigned at the time of the judgment; and

30. ~~[29.]~~ The incident number required by Section 60.052(a)(4), if that number has been assigned at the time of the judgment.

SECTION 2. Article 42.15, Code of Criminal Procedure, is amended to read as follows:

(a) If [When] the court orders a defendant [is] to pay a fine, court fees or court costs [fined], the court shall, after considering the financial circumstances of the defendant, specify in the judgment the manner in which [shall be that] the defendant shall pay [the amount of] the fine, court fees or [and all] court costs [to the state]. The court shall order the defendant to pay the

~~[(b) When imposing a] fine, court fees or ~~[and] court~~ costs ~~[a court may direct a defendant]:~~~~

- (1) ~~[to pay the entire fine and costs]~~ when sentence is pronounced;
- (2) ~~[to pay the fine and costs]~~ at some later date; ~~[or]~~
- (3) ~~[to pay a specified portion of the fine at specified intervals]~~ in

accordance with a schedule established by a collections office or by another office responsible for receiving the payment of fines, fees and court costs[-]; or

(4) by means of withdrawals from the inmate's account established pursuant to Section 501.014(a), Government Code, if the defendant is sentenced to imprisonment or confinement in the Texas Department of Criminal Justice.

SECTION 3. Section 501.014, Government Code, is amended by amending Subsection (e), and adding Subsections (h), and (i) to read as follows:

(e) On notification by a court, the department shall withdraw from an inmate's account any amount the inmate is ordered to pay by order of the court ~~[under this subsection].~~ Except as specified by Subsection (h), the ~~[The]~~ department shall make the ordered [a] payment ~~[under this subsection as ordered by the court]~~ to either the court or the party specified in the court order. The department is not liable for withdrawing or failing to withdraw money or making payments or failing to make payments under this subsection. The department shall make withdrawals and payments from an inmate's account under this subsection according to the following schedule of priorities:

- (1) as payment in full for all orders for child support;
- (2) as payment in full for all orders for restitution;
- (3) as payment in full for all orders for reimbursement of the Texas

Department of Human Services for financial assistance provided for the child's health needs under Chapter 31, Human Resources Code, to a child of the inmate;

- (4) as payment in full for all orders for court fees and court costs;
- (5) as payment in full for all orders for fines; and
- (6) as payment in full for any other court order, judgment, or writ.

(h) For purposes of withdrawals for items (4) and (5) on the schedule of priorities set forth in Subsection (e), the court's judgment directing the defendant to pay a fine, court fees or court costs by means of withdrawals from the inmate's account also constitutes notification and an order to the department to make withdrawals and payments from the inmate's account in the absence of any higher-priority payment orders. The department shall make payments to the court.

(i) The department shall initially withdraw an amount equal to the lesser of:

- (1) 20 percent of the inmate's account balance; or
- (2) the total amount of the inmate's fine, court fees and court costs.

In each month following the month in which payment is initially made, the department shall withdraw and pay an amount equal to the lesser of:

- (1) 10 percent of that month's deposits to the inmate's account; or
- (2) the total amount of the inmate's fine, court fees and court costs that

remain unpaid.

An inmate may authorize payment in addition to that required by this section.

SECTION. 4. Amend Section 63.007(a) Civil Practice and Remedies Code as follows:

(a) A writ of garnishment may be issued against an inmate trust fund held under the authority of the Texas Department of Criminal Justice under Section 501.014, Government Code, to encumber money that is held for the benefit of an inmate in the fund, for purposes of enforcing a civil judgment against the inmate for who the trust fund is held.

SECTION 5. (a) The changes in law made by Sections 1-3 this Act apply only to judgments entered on or after the effective date of this Act. A judgment entered before the effective date of this Act is covered by the law in effect on the date the judgment was entered, and the former law is continued in effect for that purpose. (b) The change in law made by Section 4 of this Act applies to judgments entered before, on or after the effective date of this Act.

SECTION 6. This Act takes effect September 1, 2009.

## Appendix B District Clerk's Felony Criminal Court Cost Chart – 01/01/2008

(description of offense categories 'A' through 'H' follows table)

<b>Fees Always Assessed</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
1 DNA Testing Court Cost – CCP art. 102.020	\$0	\$0	\$0	\$0	\$250	\$250	\$0	\$0
2 Consolidated Court Cost – LGC § 133.102(a)	\$133	\$133	\$133	\$133	\$133	\$133	\$133	\$133
3 EMS Trauma Fund Cost – CCP art. 102.0185	\$100	\$100	\$0	\$0	\$0	\$0	\$0	\$0
4 Child Abuse Prevention Fund Cost – CCP art. 102.0186	\$0	\$0	\$0	\$0	\$0	\$100	\$0	\$0
5 Drug Court Cost – CCP art. 102.0178	\$50	\$50	\$50	\$0	\$0	\$0	\$0	\$0
6 Juvenile Delinquency Prevention Fee – CCP art. 102.0171(a)	\$0	\$0	\$0	\$50	\$0	\$0	\$0	\$0
7 Clerk's Fee – CCP art. 102.005(a)	\$40	\$40	\$40	\$40	\$40	\$40	\$40	\$40
8 State Traffic Fine – Transportation Code § 542.4031	\$0	\$0	\$0	\$0	\$0	\$0	\$30	\$0
9 Records Management Fee – CCP art. 102.005(f)	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25
10 Judicial Support Fee – LGC § 133.105(a)	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6
11 Juror Reimbursement Fee – CCP art. 102.0045	\$4	\$4	\$4	\$4	\$4	\$4	\$4	\$4
12 Additional Court Cost – Transportation Code § 542.403	\$0	\$0	\$0	\$0	\$0	\$0	\$3	\$0
13 Indigent Defense Fee – LGC § 133.107	\$2	\$2	\$2	\$2	\$2	\$2	\$2	\$2
<b>Total of Fees that Are Always Assessed</b>	<b>\$360</b>	<b>\$360</b>	<b>\$260</b>	<b>\$260</b>	<b>\$460</b>	<b>\$560</b>	<b>\$243</b>	<b>\$210</b>
<b>Fees if Service Performed by Peace Officer</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
14 Execute or Process Arrest Warrant – CCP art. 102.011(a)(2)	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50
15 Make Arrest without a Warrant – CCP art. 102.011(a)(1)	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
16 Serve Writ – CCP art. 102.011(a)(4)	\$35	\$35	\$35	\$35	\$35	\$35	\$35	\$35
17 Take and Approve Bond – CCP art. 102.011(a)(5)	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
18 Convey Witness (charge per day) – CCP art. 102.011(c)	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
19 Summon Witness (charge per witness) – CCP art. 102.011(a)(3)	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
20 Commitment to Jail – CCP art. 102.011(a)(6)	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
21 Release from Jail – CCP art. 102.011(a)(6)	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
22 Summon Jury – CCP art. 102.011(a)(7)	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
23 Mileage Fees for No. 12-20 (29¢/mile) – CCP art. 102.011(b)	*	*	*	*	*	*	*	*
24 Meals/Lodging Expense for No. 12-20 – CCP art. 102.011(b)	*	*	*	*	*	*	*	*
25 Overtime Costs for Testifying at Trial – CCP art. 102.011(i)	*	*	*	*	*	*	*	*
<b>Fee if Payment Made after 30th Day after Judgment</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
26 Time Payment Fee – Local Gov't Code, § 133.103	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25
<b>Fee if Conviction by Jury</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
27 Jury Fee – CCP, Art. 102.004	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20
<b>Fee if DWI Defendant Visually Recorded</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
28 Visual Recording Fee – CCP, Art. 102.018(a)	\$15	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Fee if Conviction in District Court</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
29 Court Security Fee – CCP art. 102.017	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
<b>Fee if Conviction in Statutory County Court</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
30 Judicial Fund Court Cost – Gov't Code § 51.702	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15
<b>Fee unless Defendant Indigent &amp; Judge Waives</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
31 Evaluation for Drug/Alcohol Rehab. Ct. Cost – CCP 102.018(b)	**	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Discretionary Fees</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
32 Restitution Installment Fee – CCP art. 42.037	\$12	\$12	\$12	\$12	\$12	\$12	\$12	\$12
33 Transaction Fee – CCP, Art. 102.072	\$2	\$2	\$2	\$2	\$2	\$2	\$2	\$2

\* Amount dependent upon expense claims by officer

\*\* Amount dependent upon actual cost of evaluation



**Detailed Description of Offenses in each Felony Category**

- A 49.09 Driving While Intoxicated (DWI) if enhanced to a felony because of prior convictions - Penal Code, §§ 49.04, 49.09
- B Felony Intoxication Offense other than DWI (Penal Code § 49.04) – Penal Code, §§ 49.045 - 49.09
- C Felony Drug Offense – Health & Safety Code , Ch. 481
- D Felony Graffiti Offense – Penal Code, § 28.08
- E 1) Aggravated Kidnapping with intent to commit bodily injury or to violate or abuse sexually – Penal Code § 20.04(a)(4)
- 22.021 2) Sexual Assault or Aggravated Sexual Assault other than sexual assault of a child – Penal Code §§ 22.011, 22.021
- 30.02(d) 3) Prohibited Sexual Contact – Penal Code § 25.02
- 4) Burglary of Habitation with intent/attempt to commit or commission of a felony other than felony theft – PC § 30.02(d)
- 5) Compelling Prostitution – Penal Code § 43.05
- F 1) Continuous Sexual Abuse of Young Child or Children – Penal Code § 21.02
- 2) Indecency with a Child – Penal Code § 21.11
- 3) Sexual Assault of a Child – Penal Code § 22.011(a)(2)
- 4) Aggravated Sexual Assault of a Child – Penal Code § 22.021(a)(1)(B)
- 5) Sexual Performance by a Child – Penal Code § 43.25
- 6) Possession or Promotion of Child Pornography – Penal Code § 43.26
- G 1) Passing a School Bus if enhanced to a felony because of certain prior convictions – Transp. § 545.066(c)(2)
- 2) Counterfeit Airbag or Misrepresentation of Airbag Installation if enhanced – Transportation Code § 547.614(c),(d)
- 3) Failure of Motor Vehicle Operator to stop, return to, or remain at scene of accident involving death or injury – Transportation Code § 550.021
- H All Felonies not in one of the foregoing categories

## Appendix C Recommendation 5 – Proposed Legislation

SECTION 1. Amend Section 501.016(a) Government Code as follows:

(a) The department shall prepare and provide an inmate with the inmate's discharge or release papers when the inmate is entitled to be discharged or to be released on parole, mandatory supervision, or conditional pardon. The papers must be dated and signed by the officer preparing the papers and bear the seal of the department. The papers must contain:

- (1) the inmate's name;
- (2) a statement of the offense or offenses for which the inmate was sentenced;
- (3) the date on which the defendant was sentenced and the length of the sentence;
- (4) the name of the county in which the inmate was sentenced;
- (5) the amount of calendar time the inmate actually served;
- (6) a statement of any trade learned by the inmate and the inmate's proficiency at that trade; ~~and~~
- (7) for state jail felons, an admonishment to report to the district clerk of the inmate's county of conviction in order to resolve any outstanding court costs, fees, or fines; and
- ~~(8)~~(7) the physical description of the inmate, as far as practicable.