

# **A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes**

## **Interim Report**

March 2, 2009

by

Carl Reynolds

Mary Cowherd

Andy Barbee

Tony Fabelo

Ted Wood

Jamie Yoon



This project was supported by Grant No. 2007-DD-BX-KO04 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this document are those of the authors and do not represent the official position or policies of the U.S. Department of Justice or the Council of State Governments' members.

The Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice reserves the right to reproduce, publish, translate, or otherwise use and to authorize others to publish and use all or any part of the material contained in this publication.

Council of State Governments Justice Center, New York  
Texas Office of Court Administration, Texas

© 2009 by the Council of State Governments Justice Center and the Texas Office of Court Administration  
Published 2009.

## **About the Bureau of Justice Assistance, U.S. Department of Justice**

The Bureau of Justice Assistance (BJA), Office of Justice Programs, U.S. Department of Justice, supports law enforcement, courts, corrections, treatment, victims services, technology, and prevention initiatives that strengthen the nation's criminal justice system.

BJA provides leadership, services, and funding to America's communities by:

- emphasizing local control, based on the needs of the field;
- developing collaborations and partnerships;
- providing targeted training and technical assistance;
- promoting capacity building through planning;
- streamlining the administration of grants;
- creating accountability of projects;
- encouraging innovation; and
- communicating the value of justice efforts to decision makers at every level.

Read more at [www.ojp.usdoj.gov/BJA/](http://www.ojp.usdoj.gov/BJA/).

## **About the Texas Office of Court Administration**

The Texas Office of Court Administration (OCA) is a state agency in the judicial branch that operates under the direction and supervision of the Supreme Court of Texas and the chief justice, and is governed primarily by Chapter 72 of the Texas Government Code.

Read more at [www.courts.state.tx.us/oca/](http://www.courts.state.tx.us/oca/).

## **About the Council of State Governments Justice Center**

The Council of State Governments Justice Center (Justice Center) is a national non-profit organization serving policymakers at the local, state, and federal levels from all branches of government. The Justice Center provides practical, nonpartisan advice and consensus-driven strategies, informed by available evidence, to increase public safety and strengthen communities.

Read more at [www.justicecenter.csg.org](http://www.justicecenter.csg.org).

## Table of Contents

Acknowledgments .....	iv
Introduction .....	1
Part I: Assessments .....	7
Findings	
Recommendations	
Part II: Collection and Enforcement .....	13
Findings	
Recommendations	
Part III: Systems Administration .....	21
Findings	
Recommendations	
Endnotes .....	31
Appendices	
Appendix A: Hypothetical Case Study .....	37
Appendix B: Draft Legislation on Inmate Trust Accounts .....	41
Appendix C: Draft Legislation on State Jail Felons .....	45
Appendix D: Data Analysis Report .....	47
Appendix E: Background .....	57

## Acknowledgments

The Council of State Governments Justice Center and the Texas Office of Court Administration thank the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice for its support of this project. The development of this report was guided by the project steering committee members, whose contributions helped make this a more useful resource for the field:

### **Office of Court Administration**

Carl Reynolds, Administrative Director\*  
Mary Cowherd, Deputy Director\*  
Jim Lehman, Collections Program Manager  
Ted Wood, Assistant General Counsel\*  
Andy Barbee, Research Specialist\*

### **Office of Attorney General, Child Support Enforcement Division**

Alicia Key, Director  
Michael Hayes, Deputy for Family Initiatives

### **Texas Department of Criminal Justice**

Pam Thielke, Director, Specialized Programs, Parole Division  
Bonita White, Director, Community Justice Assistance Division, Texas Department of Criminal Justice

### **Justice Center, Council of State Governments**

Dr. Tony Fabelo, Director of Research\*  
Jamie Yoon, Policy Analyst\*

The authors are grateful to the following individuals for their valuable advice and feedback on this project: Jason Bryl, Database Analyst, Council of State Governments Justice Center; Mary Jane Esquivel, Collections Coordinator, Court Collections Section, Bexar County; Todd Jermstad, Staff Attorney, Bell/Lampasas Counties Community Supervision and Corrections Department; Barry Macha, Wichita County Criminal District Attorney; Suzanne McDaniel, Victim Assistance & Communications Director, Office of the Attorney General; Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, Child Support Division; Michael Thompson, Director, Council of State Governments Justice Center; April “Cheri” Watkins, Budget Coordinator, Parole Division, Texas Department of Criminal Justice; and the members of the Texas Judicial Council.

The authors also thank the county and district judges who responded to our survey, and whose perspectives and observations helped shape the recommendations in this report.

\* These project steering committee members are also the authors of this report.

## Introduction

### Overview

This report describes how fines, fees, and restitution are assessed in criminal courts in Texas, how these court-ordered financial obligations are collected, and how these assessments and collections account for child support that defendants may already owe. This report reviews the challenges court officials encounter under the current system and recommends strategies to clarify and streamline existing policies. Using the findings and recommendations in this report, state and local government policymakers can launch an effort to increase financial accountability among people who commit crimes, improve rates of collection for child support and victim restitution, and ensure people's transition from prisons and jails to the community is safe and successful.

### Background

Criminal defendants are subject to a vast array of fines, fees, and surcharges, and are frequently ordered to pay restitution. In addition to these court-ordered financial obligations, many people making appearances in criminal courts also owe child support. Distinct state and local agencies are charged with collecting each of these court-ordered financial obligations.

Judges presiding over these cases frequently observe that these court-imposed financial obligations are significant. It is not unusual for someone who is unemployed and is without marketable job skills to be leaving jail or prison owing thousands of dollars in fines and fees and surcharges – and, on top of that amount, owe tens of thousands of dollars more in child support. Without realistic payment arrangements, state and local agencies often end up competing for a share of small payments, and much of the original debt imposed is never paid.<sup>1</sup> In other cases, people are overwhelmed with the financial obligations they owe and they stop making payments altogether.

This situation frustrates the various parties who expect to receive, and depend on, these payments. Courts, correction departments, local probation departments, and other agencies increasingly rely on this revenue to cover their expenses. For example, in 2006 probation fees made up 46 percent of the Travis County (Texas) Community Supervision and Corrections Department's \$18.3 million budget.<sup>2</sup> Families depend on child support payments to help cover the costs of child rearing. Restitution provides victims some reimbursement for their financial losses.

Policies governing the collection of these financial obligations are often at odds, causing considerable confusion among judges and criminal justice agency administrators: Which agencies are responsible for collecting which financial obligations?

How do the collections practices of various agencies relate to one another? Which debts should be collected first? <sup>3,4</sup>

Collection of court-ordered fees and fines has drawn a considerable amount of attention not only from policymakers, but also the media as evidenced by recent articles in major media outlets in Texas. A regular contributor to the *Dallas Morning News* wrote on separate occasions in June 2008 of instances where the Dallas County Commissioners Court discussed the budget impacts of reduced collection of court-imposed fees and fines and the effects on local government.\* A recent article published in the *Houston Press* highlighted the fact that restitution often goes unpaid.\*\* The paper conducted its own investigation of collection rates in Texas and concluded that many parolees who have been successfully discharged in the last five years still owe their victims court-ordered restitution. Regardless of the points of view or objectives of these articles, they underscore the importance of this issue and the need to improve how fees and fines are assessed and collected from criminal defendants.

\*Krause, Kevin.

\*\**Crime Doesn't Pay(back): A Houston Press Special Report on Court-Ordered Restitutions in Texas*, Vogel, Chris, Houston Press, December 4, 2008.

Furthermore, no one entity is charged with coordinating every agency's collections efforts, so there is no way to ensure collection and prioritization rules are followed across systems. Because no one entity is tracking the financial obligations a person convicted of a crime owes to state and local government agencies and private vendors, judges, clerks, and supervision officers are unable to determine how much that person can reasonably be expected to pay. Policymakers seeking to generate revenue for new or existing initiatives are unable to project how any new fines or fees will affect the collection of the myriad financial obligations a judge can already impose under existing law.

Over the past decade, Texas policymakers have engaged – and succeeded – in a number of efforts to significantly increase the rates of collection of court costs, fines, and parole and probation supervision fees.

In 2002, the Texas House Interim Committee on Corrections directed the Texas Department of Criminal Justice (TDCJ) to develop a report on fee collection in state Community Supervision and Corrections Departments (CSCDs). The report presented data on collection rates and information about how money collected by CSCDs is distributed across state agencies. The report also highlighted findings from a survey of district judges and district attorneys about their perceptions of the assessment and collection of fees from people under community supervision.<sup>5</sup>

In 2005, the Texas Legislature required the Sunset Advisory Commission to study the purpose, collection, and use of certain criminal court costs and fees and parole and probation supervision fees. The Texas Sunset Commission Report provided an

inventory of court costs and fees; a description of fines for certain categories of offenses; and three case studies that provide real-world examples of the types of court costs and fees and supervision 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>6</sup>

### **Role of the Texas Office of Court Administration**

The Texas Office of Court Administration (OCA) provides resources and information for the Texas judicial system. Much of the responsibility for sorting through these issues falls to the courts; therefore, OCA has a vested interest in these issues. OCA plays a growing role in providing information for judges to make better decisions. In addition, from the child support angle, OCA supports 43 “Title IV-D” associate judges who only handle child support establishment and enforcement cases and paternity cases within the expedited time frames established by Chapter 201.110 of the Texas Family Code. OCA also advises court clerks, collections staff, and judges about the imposition and management of fees and court costs.

OCA also 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 contribute to the complexity of the court system that OCA constantly endeavors to minimize and explain.

The Texas Office of Court Administration (OCA) established the Collections Improvement Program in 1996 to increase rates of collection of court costs, fines, and fees from criminal defendants while helping them satisfy their obligations.<sup>7</sup> In 2005, the Texas Legislature required the largest cities and counties in the state to implement the Collection Improvement Program pursuant to Article 103.0033, Code of Criminal Procedure.<sup>8</sup>

The House Interim Committee’s Report, the Sunset Advisory Commission’s Report, and the Collection Improvement Program provide an important foundation of research and analysis. These efforts have not considered, however, how restitution and child support are relevant to the collection of court costs, fines, parole and probation supervision fees, and other charges. Courts, of course, play a key role in ordering and enforcing restitution and child support orders, which are essential to victims, survivors, and families. At the same time, restitution and child support can substantially contribute to an individual’s overall debt load, so it is important to consider these financial obligations in the effort to effectively and efficiently collect debts from people convicted of crimes. Treatment program and vendor fees have also been overlooked and deserve consideration.



Strategies for managing the assessment and collection of the full range of financial obligations people face when released from prisons and jails were examined in *Repaying Debts*,\* a national report issued by the Council of State Governments Justice Center. This report, also made possible through funding support by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, explains 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.

OCA officials expressed interest in becoming a national learning site, where the Justice Center could test the applicability of strategies reviewed in this guide. BJA approved Texas as a learning site because it demonstrated the following:

- Bipartisan support among elected officials and the administrators of courts, corrections, and departments of probation and parole to address this issue.
- The willingness of a key state official (in this case, the state court administrator) to chair an inter-branch working group, which includes 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.
- The accessibility and availability of data that expert consultants can use to analyze state collection policies and their impact on prisoner reentry.

After a series of planning meetings between OCA and Justice Center staff, the court administrator formally launched this project by convening the first meeting of a working group in November 2007. This working group included staff and administrators of state and local government agencies such as court administrators, collection 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. Working group members 1) discussed the challenges of collecting court costs, fines, parole and probation supervision fees, restitution, and other charges from people convicted of crimes; 2) identified gaps in knowledge; 3) explored the availability of data to conduct an analysis of the collection rates and debt load of people under probation and parole supervision; and 4) defined the scope of work for a research project to better understand current collections practices in Texas.

The Justice Center and OCA collaborated to collect relevant information and data, and compiled findings from this research effort in a draft report. The working group reconvened in October 2008 to review the draft report and discuss potential policy recommendations.

\* McLean, Rachel and Michael Thompson. *Repaying Debts*. New York: Council of State Governments Justice Center, 2007. ([www.reentrypolicy.org/finobs\\_pubs\\_tools](http://www.reentrypolicy.org/finobs_pubs_tools)).

Based on the research and data analysis described above, as well as working group meeting discussions, the Justice Center and OCA developed this interim report to inform policymakers in Texas working to implement some of the recommendations provided in *Repaying Debts*. The interim report offers a framework in which to review and consider policy recommendations for improving how court costs, fines, parole and probation supervision fees, restitution, and child support are assessed and collected from people convicted of crimes. It also encourages policymakers to begin to consider financial obligations within a broader context of prison and jail reentry, suggesting strategies to ensure accountability while maximizing the likelihood that a person's transition to the community is successful.



## Part I: ASSESSMENTS

### Findings

1. *Court officials are expected to assess a wide range of court costs, fines, probation supervision fees, as well as restitution, when sentencing a criminal defendant.*

Judges sentencing defendants can assess court costs, criminal fines, probation supervision fees, and victim restitution. These court-ordered financial obligations, especially when coupled with child support, can total significant amounts.<sup>9</sup> A hypothetical case study developed by OCA demonstrates that a person convicted of “possession of a controlled substance, 1-4 grams,” a third degree felony, could owe \$2,362 in court costs, attorney’s fees, and criminal fines. If the person owed child support (estimated at \$500 per month for 24 months for case study purposes), he or she could owe nearly \$15,000 upon release from prison (see Appendix A for the full case study). The following table illustrates the variety and amounts of financial obligations associated with such a conviction.

#### Financial Obligations of an Individual Convicted of Possession of a Controlled Substance

<b>Court Costs:</b>	<b>\$</b>	<b>362</b>
<i>Consolidated Court Cost</i>	\$	133
<i>Drug Court Cost (intoxication/drug convictions)</i>	\$	50
<i>Arrest Pursuant to Warrant Fee</i>	\$	50
<i>Clerk's Fee</i>	\$	40
<i>Records Management Fee</i>	\$	25
<i>Time Payment Fee</i>	\$	25
<i>Take and Approve Bond</i>	\$	10
<i>Judicial Support Fee</i>	\$	6
<i>Commitment to Jail Fee</i>	\$	5
<i>Release from Jail Fee</i>	\$	5
<i>Court Security Fee</i>	\$	5
<i>Juror Reimbursement Fee</i>	\$	4
<i>Indigent Defense Fee</i>	\$	2
<i>Transaction Fee</i>	\$	2
<b>Court Appointed Attorney Fees:</b>	<b>\$</b>	<b>500</b>
<b>Offense Fine:</b>	<b>\$</b>	<b>1,500</b>
<b>Child Support Arrears (\$500 x 24 months)</b>	<b>\$</b>	<b>12,000</b>
<b>Total Debt Upon Release from Prison</b>	<b>\$</b>	<b>14,362</b>

A preliminary study conducted by OCA found that defendants placed on felony probation owe from \$4,000 to \$5,000 in offense-related financial obligation, including restitution. Ten to 20 percent of felony probationers also owe child support. People released to parole owe anywhere from \$500 to \$2,000 in offense-related debt (not including restitution); 15 to 25 percent of parolees also owe child support.

<b>FY07 FELONY PROBATION PLACEMENTS</b>	Probation Group 1:	Probation Group 2:	Probation Group 3:
	Large Urban	Medium Urban	Rural
AVG Offense Debt	\$3,853	\$5,170	\$3,928
AVG Monthly Offense Debt	\$76	\$92	\$75
% w/ Known Child Support Case	12%	17%	20%
% w/ Known Amount	7%	13%	15%
Avg CS Monthly Debt	\$377	\$373	\$412

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

<b>FY07 PRISONERS RELEASED TO PAROLE</b>	Parole Group 1:	Parole Group 2:	Parole Group 3:
	Large Urban	Medium Urban	Rural
AVG Offense Debt*	\$2,047	\$625	\$1,681
AVG Monthly Offense Debt*	\$34	\$17	\$37
% w/ Known Child Support Case	14%	17%	25%
% w/ Known Amount	9%	12%	22%
Avg CS Monthly Debt	\$327	\$342	\$336

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

*2. How and when court officials obtain and use information to guide decisions about court costs, fines, probation supervision fees, and restitution varies greatly among judges within a given county and among judges across the state.*

Probationers are under supervision in lieu of a jail or prison sentence and are supervised by probation departments, which the judiciary oversees. Parolees are under supervision after serving a prison sentence and are supervised by the Texas Department of Criminal Justice – Parole Division (TDCJ-PD). If an individual is sentenced to probation, a judge has discretion over court costs, fines, probation supervision

fees, and restitution.<sup>10</sup> If an individual is sentenced to prison, a judge has discretion over the assessment of court costs, fines, and restitution. Judges are not involved in assessing or collecting parole supervision fees.<sup>11</sup>

Sentencing judges cannot alter child support orders, which are collected and enforced by the Office of the Attorney General (OAG).<sup>12</sup> See chart below.

Obligation Type	Individual Sentenced to Prison		Individual Placed on Probation	
	Can judge waive debt?	Relevant Authority	Can judge waive debt?	Relevant Authority
Offense Fine	Yes	Fines are a form of 'punishment,' which is the right of the judge to set. See <i>AG Opinion GA-0220 (2004)</i> .	Yes	Fines are a form of 'punishment,' which is the right of the judge to set. See <i>AG Opinion GA-0220 (2004)</i> .
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 <i>AG Opinion GA-0220 (2004)</i> .	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 <i>AG Opinion GA-0220 (2004)</i> .
Court Costs/Fees	No	Multiple statutes mandate court costs/fees upon conviction. See CCP 102.0045; LGC 133.105 for an example.	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 <i>AG Opinion DM-407 (1996)</i> .
Supervision Fees	Not applicable	Not applicable	Yes	"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." <i>Art. 42.12 §19(a)</i> .
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 placed on community supervision. See AG Opinion DM-407 (1996).

Not included in this table are court-ordered treatment and program costs.<sup>13</sup> Judges can also order a defendant to live in a residential facility or to complete drug abuse treatment, anger management classes, or other programs as part of community supervision (probation). These programs may be administered by the county, state, or private vendors, and the defendant may be required to pay for all or some of the costs associated with participating in them.

Court officials should consider the defendant's financial situation when assessing court costs, fines, probation supervision fees, and restitution. Child support obligations, which federal law prioritizes ahead of all other financial obligations, may be

particularly important to consider.<sup>14</sup> It is often the largest single financial obligation a person convicted of a crime must repay, and child support enforcement officials can garnish as much as 65 percent of a noncustodial parent's wages toward repayment of this financial obligation under federal law; in Texas, no more than 50 percent may be garnished.<sup>15,16</sup>

No guidance or general instructions are provided to judges, however, to obtain information about a person's child support obligations; and state law and policy does not suggest how, if at all, child support should affect the level of fines, fees, and restitution imposed on criminal defendants.

Similarly, no policies exist to guide judges who are unsure how to consider other information when assessing fines, fees, and restitution. For example, no guidelines exist for calculating an individual's income. Does monthly income reflect current monthly wages or potential income? What about tax refunds, alimony, disability and unemployment benefits, education grants, and other sources of income? No policy exists that reviews how answers to these questions should be verified or when and how to tap relevant, useful sources of information, such as presentence investigation reports or affidavits of indigence. If and when this information is obtained, state and local policies are silent about how these data should inform their decisions.

When judges seek information about a defendant's ability to pay, whom they consult, how the information is conveyed, and what is done with this information depends on a wide range of factors. In plea bargain cases, fines and restitution amounts are set by the prosecution and defense during plea bargain negotiations. Some prosecuting attorneys solicit information about a defendant's financial circumstances, including whether he or she owes child support, when negotiating fine and restitution levels. In other cases, it is up to the defense to offer this information.

For non-plea bargain cases, judges set fine and restitution levels. An informal survey of trial judges in Texas revealed that the extent to which judges consider a defendant's financial situation ranged from "as much as possible" to "almost never." Among judges who do consider ability to pay, some order the completion of brief presentence investigations, which include basic financial information such as employment status and income. Others are limited to the information presented during the trial. Few are able to investigate and verify a defendant's financial information and must rely on self-report; several judges highlighted this self-reporting as a problem.

There was no consensus among judges about the parameters for waiving court costs, fines, probation supervision fees, and restitution. Judges who waive these financial obligations said they make the determination on a case-by-case basis.

This trend is further demonstrated by the tables below, which suggest that, at least for people on probation, rural counties assess lower offense-related obligations on those with a child support obligation but other counties do not make the same distinction. The reason for this difference is unknown, but it merits further research. This finding infers the sentencing judge has some awareness of a defendant’s child support obligation, which is plausible in a smaller jurisdiction where the same judge could handle both family and criminal matters. In larger jurisdictions this would be less likely.

<b>DEBT DETAIL</b>	Probation Group 1: Large Urban		Probation Group 2: Medium Urban		Probation Group 3: Rural	
	CS	no CS	CS	no CS	CS	no CS
% 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

<b>DEBT DETAIL</b>	Parole Group 1: Large Urban		Parole Group 2: Medium Urban		Parole Group 3: Rural	
	CS	no CS	CS	no CS	CS	no CS
% w/ Known Child Support Debt	9%		12%		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

## Recommendations

1. *Encourage sentencing judges to obtain information about defendants’ child support obligations and consider that information when assessing court costs, fines, probation supervision fees, and restitution. Require defendants to identify any court that has issued a child support order and obtain relevant information from the clerk of the court.*



There is currently no systematic way for judges to consider defendants' child support obligations at sentencing in criminal cases. This information cannot be provided through data maintained by OAG, which collects and enforces child support payments, because of federal confidentiality constraints. Self-reporting is typically the only way information about child support obligations is brought to the attention of a sentencing judge. Given these constraints, judges should actively seek information about child support obligations, and defendants should be required to provide sentencing judges with appropriate court documents regarding their child support obligations.

- 2. Enable judges to consider defendants' ability to pay at sentencing. Develop an automated "financial information" form that follows people through the criminal justice system.*

Information about a person's financial resources and obligations may be developed early in the criminal justice process, due to a request for appointed counsel, or for a payment plan for court costs and fees according to OCA's model Collection Improvement Program. Under current practice and with a lack of data-sharing or "integrated justice," that information does not travel with a person through the criminal justice system, to probation, to prison, to parole, or back to the court when the person recidivates, and the information is not updated with changing circumstances. Decisions that involve the individual's ability to pay, and the collection of payments, would be dramatically advanced by the system's ability to sustain this flow of information. Better coordination between recipients of payments could also be accomplished. (See Systems Administration, Recommendation 3.)

- 3. Charge judicial education providers with training judges on how to obtain and use relevant information about defendants' financial circumstances.*

OCA should work with the Court of Criminal Appeals and its Education Committee, as well as the various judicial training entities, to develop and administer training on how to access and use relevant information about defendants' financial circumstances.<sup>17</sup>

## Part II: COLLECTION AND ENFORCEMENT

### Findings

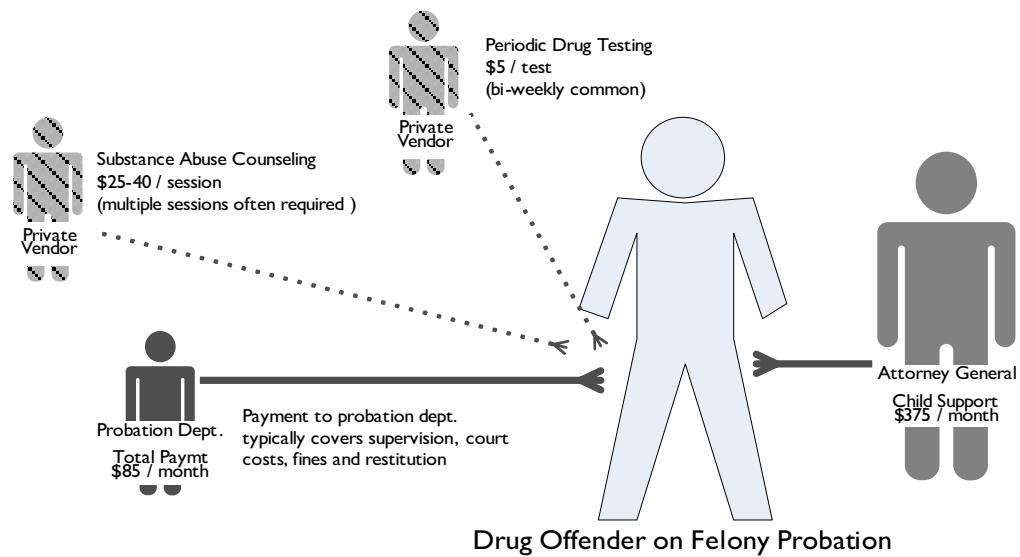
1. *State law does not require the collection of court-ordered financial obligations in any particular sequence.*

A number of state and local agencies collect debts from people convicted of crimes. Depending on the county, the courts or local probation departments are responsible for collecting court costs, fines, and restitution. Local probation departments collect probation supervision fees, and TDCJ collects parole supervision fees. Child support payments are coordinated by the OAG; collection of these dollars is done independently of efforts to collect debts resulting from criminal convictions. In some counties, probation supervision fees are consolidated with court costs, fines, and restitution into one single payment plan. In other counties, courts are responsible for collecting court costs, fines, and restitution while probation departments collect supervision fees separately.

Counties will often contract with private vendors to provide services such as drug screening and treatment classes that people are ordered to pay for themselves. These are frequently “point of service” payments and not part of any arranged payment plan. Private vendors are responsible for collecting their own fees; however, some counties track payments to vendors.

The responsibility for developing the various debt payment plans and then collecting the debt is assigned to different agencies, depending on the county. There are, however, some common statewide themes regarding the development of payment plans and collections – namely, it is not unusual for a person convicted of a misdemeanor or a felony, who also owes child support, to have four separate payment plans and a different agency collecting the monthly payments under these plans.<sup>18</sup>

The following graphic depicts a fairly typical scenario for people sentenced to felony probation for the possession of a controlled substance (1-4 grams). This scenario could be even more complex if the individual were on parole and court fines and fees were collected separately from parole supervision fees.



As mentioned earlier, federal law prioritizes collection of child support over all other debts to the state. Judges have discretion over the relative priority of criminal fines, fees, restitution, and probation supervision fees. However, the extent to which judges exercise this discretion varies across counties. In some counties, judges establish a prioritization schedule that clerks, probation officers, and collections program officers must follow. In others, judges do not include probation supervision fees in their prioritization schedules. In yet other counties, judges have little say over what debts are prioritized. For example, in Nolan County, court fees and charges are always top priority. For the remaining debts, the county commissioner determines the priority – criminal fines second and restitution third.

2. *There is little coordination among agencies responsible for collecting various debts, and debts are not necessarily collected according to the prioritization schedule set by the relevant authority.*

Despite the fact that judges can set prioritization schedules, the entities charged with collecting payments often influence the order in which debts are repaid. Debts that are most aggressively pursued tend to have higher collection rates. For example, in some jurisdictions where local probation departments collect monthly payments, money is typically first allocated to satisfy the individual’s probation supervision fee (between \$25 and \$60).<sup>19</sup> This is understandable because the supervision fees fund local probation departments’ operations. (In fact, supervision fees account for roughly half of the annual budget for a probation department.) Any remaining money is directed to the individual’s other financial obligations. Although this practice is good for local probation departments, 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 local probation departments were legislated as a low priority. Supervision fees account for almost 40 percent of a probation department's operating funds, but that figure goes up to almost 50 percent when non-formula grant funds are removed. For people placed on community supervision, fee payment requirements are prioritized by the local judges, not by the state. In Dallas and Bexar Counties, for example, the fee priorities vary greatly among different judges. A number of probation departments 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.

The lack of coordination in the collection process undermines what effort has been made to prioritize the satisfaction of financial obligations. For example, because outstanding restitution payments are unknown are made to a parole officer, he or she may collect supervision fees before restitution payments even if the sentencing judge prioritized restitution over all other financial obligations. Although child support is prioritized above all other debts to the state by federal law, if OAG cannot identify people in their system who also owe money to TDCJ, local probation departments, or the courts, it cannot ensure child support is collected first from those individuals.

The following table illustrates the various rates at which different fee types are paid by probationers in a large urban county. The process in which the probationers pay the fees is unknown. For instance, it is possible that the probationer pays some fees, such as for substance abuse treatment, directly to a treatment provider rather than to the probation officer. Due to the lack of information on the repayment process, it is difficult to understand why certain types of fees are paid at better rates than others. Not surprisingly, probationers revoked from probation paid less across all fee types than those who successfully completed probation. However, even within the group of successful probationers, certain fees are satisfied at higher rates than other fees.

**Amount of Assessed Fees Paid at Time of Termination**

Probation Group I: Large Urban

Type of Fee (treatment, supervision, educational, restitution)	% of Debt Paid at Time of Termination	
	Successful	Revoked
Delinquent Probation Fees	98.7%	46.6%
Substance Abuse Counseling	93.7%	56.3%
Crime Stoppers	80.1%	19.3%
Sex Offender	73.7%	8.6%
Hot Check Fees	73.3%	1.7%
Diversion Programs	69.2%	---
Electronic Monitoring (equip.)	68.4%	29.3%
Probation Supervision Fees	65.7%	8.3%
Restitution	60.7%	7.5%
Court Costs	57.9%	26.5%
Urinalysis Fees	54.4%	4.8%
Anger Management Classes	52.6%	33.3%
Curfew Fees	34.5%	---

3. *Various agencies' efforts to enforce repayment are not well coordinated.*

Agencies not only have their own payment plans and billing methods to collect financial obligations, they also have distinct approaches for enforcing repayment of these financial obligations. For example, OAG has a number of tools to enforce child support orders such as requiring employers to deduct court-ordered child support from paychecks; suspending driver's, professional, and occupational licenses; and imposing jail time until arrears or an agreed amount is paid.<sup>20,21,22</sup> To enforce fines, fees, and surcharges, the courts can, for example, issue warrants and prevent people from registering motor vehicles or renewing driver's licenses.<sup>23,24,25</sup> Enforcement of parole and probation supervision fees is less structured, as it is largely left to the supervising officer's discretion, but could include special conditions of supervision or revocations.

Because OAG, courts, and probation and parole departments do not coordinate collection and enforcement efforts, implementing one agency's enforcement tools may have an unintended impact on another agency's collection rates. For example, if OAG suspends a probationer's driver's license, he or she would be unable to drive to work to earn money for monthly supervision fees. The interplay between the agencies' enforcement techniques is not well understood. Further research is needed to develop strategies for improving coordination in this area.

4. *Because of conflicting appellate court decisions about what discretion the Texas Department of Criminal Justice (TDCJ) has in drawing from inmates' trust accounts to repay court-ordered financial obligations, TDCJ had to suspend this practice for some time, and both high courts in Texas were asked for clarification of the law.*

Upon arriving at a state prison, inmates turn over any money on their persons to TDCJ. This money is placed in an inmate account. Any money that an inmate receives during confinement (from family and friends, or others) is also placed in his or her inmate account. However, it is unclear what discretion TDCJ has to withdraw from inmate trust accounts to repay court-ordered financial obligations.

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.<sup>26</sup> But in January 2007, the movement came to a sudden halt due to a decision styled *Abdullah* from the Texarkana Court of Appeals.<sup>27</sup> Two other appellate courts have recently addressed the *Abdullah* opinion and further supported this decision.<sup>28</sup>

In July 2007, the Amarillo Court of Appeals declined to follow *Abdullah*.<sup>29</sup> 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.

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 it would process orders signed within 30 days of the entry of judgment and sentence. This issue was litigated to 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.<sup>31</sup>

5. *It is especially challenging to collect court-ordered financial obligations that state jail felons owe.*

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.<sup>32</sup> Furthermore, they are not subject to post-release supervision. Accordingly there is no mechanism to enforce outstanding payments owed by the individual when the sentence is completed.

*6. It is not unusual for people who owe child support to accumulate large sums of arrears while incarcerated because of structural barriers to obtaining child support modifications.*

Texas does not have standard policies for identifying people sentenced to prison who owe child support to address potential changes in a noncustodial parent's ability to make monthly payments.<sup>33</sup> In the absence of such direction, people must proactively file motions to modify child support orders. Incarcerated parents can seek modification of a child support order due to a material and substantial change in their circumstances (i.e., becoming incarcerated). As indicated in the graphic on page 11, 15 to 25 percent of people released to parole have known child support obligations with monthly obligation amounts exceeding \$300. Many of these individuals may be unaware they can seek child support modifications and/or have limited access to legal resources to do so.

In 2007 the OAG launched an initiative to remove the structural barriers to modifying child support orders. Structural barriers have included inadequate sharing of accurate data between OAG and TDCJ; incarcerated parents having difficulty accessing legal resources; and problems processing legal documents and gathering evidence when the incarcerated parents cannot appear in court. The project aims to ensure 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.

Structural barriers are not the only obstacles to modifications of child support for incarcerated noncustodial parents. Some judges view incarceration as “voluntary unemployment,” a designation used when a person has chosen not to work. In these cases, judges may order a minimum wage presumption for the noncustodial parent during the period of incarceration for the purposes of calculating child support monthly dues. Consequently, people continue to accumulate child support obligations while incarcerated, and it is not uncommon for someone to be released from prison owing huge sums in child support arrears.

## **Recommendations**

*1. Clarify the priority of payment for individuals who are under probation or parole supervision.*

Judges in each jurisdiction could be urged (but not required) to: (1) consider all financial obligations facing each individual, and (2) develop a standardized method (with allowance for individualization) of prioritizing the financial obligations of people under community supervision. In the community supervision context, judicial

discretion and judicial oversight of local probation departments 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, to receive state funding.<sup>34</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>35</sup>

2. *Convene representatives of the OCA, OAG, TDCJ-PD, county and district courts, and local probation departments to develop strategies for improving how these agencies coordinate the collection and enforcement of court-ordered financial obligations.*

As explained in the preceding subsection, it is not unusual for a person owing various fines, fees, and other court-ordered financial obligations to be pursued by three or four distinct agencies, each of which is responsible for collecting a distinct payment. An interagency effort among state and local governments is needed to sort out how each of these agencies should interface, and ideally integrate, their efforts.

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

Legislation (See Appendix B) should be enacted to:

- Require the judgment (art. 42.01, C.C.P.) to include the amount of court costs, fines, and restitution, and the terms of any payment under art. 42.15, C.C.P.;
- Amend art. 42.15 C.C.P. to include payment terms for court costs, fines, and restitution;
- Amend §501.014 to allow TDCJ to follow such orders and to establish a priority for payment;
- Clarify that the garnishment statute, §63.007 Civil Practice and Remedies Code, (identified in Abdullah as the proper avenue) is for use only in enforcing a civil judgment against an inmate, not for enforcing court costs, fines, and restitution.

4. *Require the TDCJ 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, fines, and restitution.*

Requiring the individual to report to the district clerk of their originating county would provide some possibility that he or she would take care of these financial obligations. (See Appendix C for draft legislation to address this issue.)



5. *Connect noncustodial parents to OAG to address changes in employment status and make arrangements to stay on track with child support payments while incarcerated, and connect these parents to employment services, such as Project RIO, upon release.*<sup>36</sup>

The OAG should work to help incarcerated parents trying to meet their child support obligations keep current on their payments. As the OAG works to help individual parents, it should continue its initiative to address broader structural barriers to obtaining child support modifications when appropriate.

## Part III: SYSTEMS ADMINISTRATION

### Findings

1. *The sprawling number of state and local fees and court costs that state law prescribes as a result of a criminal conviction amounts to a nearly incomprehensible package that is difficult for court systems to administer.*

The fine ranges for various offenses are set by statute, and judges ultimately have discretion over the amount assessed within these boundaries. There is a huge number of fees, surcharges, and costs that vary between state and local courts, across different types of criminal convictions, depending on case-specific circumstances. This complicated system of court costs makes it difficult not only for judges, court clerks, and others to administer the collections system, but also for legislators when considering new fees and surcharges.

For example, there are seven standard court costs that apply to all felony convictions in district court. Four state court costs are assessed, and most of this money is directed to the state. (Note, however, that judges have the discretion to not assess court costs when placing a defendant on community supervision.) Three local court costs are charged in every felony conviction in district court, and most of this money is directed to the county. These costs are as follows:

<b>Court Costs Assessed for All Felony Convictions</b>	
State Court Costs	
Consolidated Court Costs	\$133
Judicial Support Fee	\$6
Juror Reimbursement Fee	\$4
Indigent Defense Fund Fee	\$2
County Court Costs	
Clerks Fee	\$40
Records Management Fee	\$25
Courthouse Security Fee	\$5
<b>Total State and County Court Costs</b>	<b>\$215</b>

Depending on the case and conviction type, other state and local court costs, such as jury fees, peace officer fees, restitution fees, and time payment fees, may be assessed. Therefore, the court costs a defendant must pay can vary for the exact same offense.

The following chart illustrates an additional layer of consideration in assessing court costs for districts courts. The letters A through H across the top of the chart represent the eight distinct categories of offense a district court can handle. These will call for different amounts of court costs.

The numbers 1 through 33 on the left side of the chart each represent a different court cost that may be assessed. Numbers 1 through 13 are always to be assessed in the particular offense category. Numbers 14 through 33 are to be assessed only if certain events have happened in a particular case.

**District Clerk’s Felony 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(j)	*	*	*	*	*	*	*	*
<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

<b>Detailed Description of Offenses in each Felony Category</b>	
A	Driving While Intoxicated (DWI) if enhanced to a felony because of prior convictions - Penal Code, §§ 49.04, 49.09
B	Felony Intoxication Offense <u>other than</u> 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) 2) Sexual Assault or Aggravated Sexual Assault <u>other than</u> sexual assault of a child – Penal Code §§ 22.011, 22.021 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

The statutes, as currently written, foster confusion among judges, clerks, and collections program officers about what financial obligations to assess under what circumstances.<sup>37</sup> OCA devotes a substantial amount of staff time to field hundreds of calls a year from trial court officials about how to assess and prioritize fines, fees, and surcharges in criminal cases.<sup>38</sup> It also prepares annual training materials to combat the confusion. Furthermore, fees and surcharges are sometimes, perhaps frequently, imposed even in the absence of the situation that by statute should trigger the obligation: if the clerk does not know whether each defendant owes a peace officer fee, one response is to charge the peace officer fee to every defendant.

Given this complex array of financial obligations and related rules and statutes, it is difficult to take stock of the overall picture. Thus, legislators considering new fees and surcharges cannot determine whether, on the margin, a new fee is too onerous to support.

*2. No mechanism exists to ensure adherence to the prioritization of payments.*

State and local officials are responsible for ensuring compliance with federal laws that prioritize child support collection above all other court-ordered financial obligations that a judge imposes. At the heart of this problem is the lack of processes and systems for information-sharing.

For example, probation departments usually collect 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. Local parole offices are charged with collecting parole supervision fees and any programmatic fees associated with treatment programs in which the parolee participates. Parolees can also owe court costs, fines, and restitution as part of their

conviction, but TDCJ currently cannot track this debt information in their computer records. Subsequent payments toward these debts are not systematically tracked by TDCJ or any other state agency.

As mentioned in Finding 1 of Collection and Enforcement, it is not uncommon for an individual to owe money to multiple agencies without the agencies knowing that others are collecting from the same individual. Without a coordinated collections effort, the agencies compete for their share of these people's limited resources and the financial obligations often go unfulfilled.

3. *State officials currently do not collect or analyze data that enables them to determine, annually and system-wide, how much court officials have assessed in restitution and in each category of court costs, fines, and fees. Nor do they track the amount collected for each category of court-ordered financial obligations.*

Even if all the recommendations in this report were adopted, there still needs to be a way to ensure policies for collecting court costs, fines, parole and probation supervision fees, restitution, and child support from criminal defendants are implemented appropriately on an ongoing basis. Currently, there is no way to track all of the different revenue streams and collection rates and analyze interplay among them.

4. *It is unclear what an appropriate level of debt burden is for someone convicted of a crime.*

Comprehensive analysis of the various types and amounts of financial obligations imposed on people convicted of crimes is scarce. The information available is mostly anecdotal or assembled in a manner that does not allow for focused analysis of the financial obligations based on factors such as employment, risk/need levels, or whether or not the person successfully completed his or her term of probation or parole.

As part of this review, a data analysis was conducted to address this information gap, which was assembled to explore the nature of the court-imposed financial burdens of people convicted of felonies who are on probation and parole. (See Appendix D for complete findings from the data analysis.) To this end, the analysis focused on two groups:

1. People beginning a term of probation or parole (placements)
2. People ending a term of probation or parole (terminations)

A request for data was submitted to four different entities charged with supervising adults convicted of felonies in Texas. Each data request was designed to obtain case-level records for people convicted of felonies 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 probation departments 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).<sup>39</sup>

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

In addition to the offense-related financial obligations of probationers and parolees, the analysis sought to explore the degree to which these people also had child support obligations. All probation and parole data were matched to child support data from OAG for the purposes of attaching child support data relevant to the individual. The information returned by OAG matches identified cases with an active involvement by OAG, those that once had an active involvement by OAG, and those with no match on record. Obligation amounts were available only for those with an active case.

Additional aggregate level data were obtained from the Collection Improvement Program operated through OCA. These data are generated by audits conducted by the Texas Comptroller of Public Accounts on behalf of the Collection Improvement Program. 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 of these people's financial obligations. Key findings from this data analysis include:

- Felony probationers owe from \$4,000 to \$5,000 in offense-related financial obligation.
- 10-20 percent of felony probationers owe child support ranging from \$375 to \$400 per month.
- 35-45 percent of felony probationers are unemployed at the time of placement.
- Parolees owe from \$500 to \$2,000 in offense-related financial obligation (excluding restitution).
- 15-25 percent of parolees owe child support ranging from \$325 to \$350 per month.
- 30-45 percent of parolees are unemployed at the time of placement.

However, more research is needed to understand if there is a “tipping point” at which additional court-imposed financial obligations may: 1) negatively impact the ability to collect on the obligations, and/or 2) negatively impact the person’s ability to successfully terminate his or her probation or parole.

It is worth mentioning that there is research 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 identifies child support obligations set at 20 percent of the noncustodial parent’s gross income as being the “tipping point” between sustaining regular payments and failing to pay.<sup>40</sup> Additional research links regular payments to better outcomes including less use of state assistance, maintenance of family relationships and involvement with children, and lower recidivism rates among those with prior arrests and incarceration. This in-depth research looks at lower income obligors, and there is considerable crossover between characteristics of that population and the supervision populations studied in this report.<sup>41</sup>

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

Many factors, such as substance abuse and assaultive behavior, have been correlated with the risk of recidivism. However, no study in Texas has explored the level of court-imposed financial burden as correlating 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 individuals at the time of their respective supervision placements and terminations. As such, there is no true understanding of whether they tend to be steadily employed over periods of time or employed intermittently with little stability. It is possible that many employed at the beginning of their supervision soon lose their jobs. This report illustrated that a greater portion of the people whose probation or parole was revoked were unemployed when compared with their successful counterparts. Further research could help shed light on the dynamics of this apparent relationship. Workforce Commission data can be used to explore the employment history of people under community supervision 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

person convicted of a crime. Greater understanding is needed of the “tipping point,” where the amount owed is so great 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 that people begin to fall substantially short of staying current in their financial obligations when such ranges are passed.

As part of this research, it is worth exploring the assistance that could be provided by 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 financial obligations. Based on informal discussions with one such group, the authors of this study believe creating a profile of an individual’s likelihood of repaying his or her financial obligations can be accomplished.

To this end, it will be necessary to include all involved parties (probation and parole departments, OAG, etc.) due to factors such as the confidentiality of information about people convicted of crimes. 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 individual’s likelihood of repayment is possible with data inclusive of all available identification elements (name, Social Security Number, etc.). As the financial burdens of people convicted of crimes 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 financial obligations.

## **Recommendations**

1. *Clarify and consolidate the sprawling variety of state and local fees and costs into a comprehensible package.*

The legislative proposal has three simplifying components:

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

It is not suggested that the fees stay the same, but rather that the total amounts 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 juries are used in 5 percent of the criminal cases in these courts (recognizing this is a higher percentage than reality, but the math is easier). Accordingly, charge 5 percent 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 assessed upon conviction of a particular offense.<sup>42</sup> Because of these extra fees, one cannot state the costs 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 offenses that 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.

- (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.

Many statutes 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, upon conviction of a felony, there is a statute that calls for a \$5 courthouse security fee and a separate statute that calls for a \$133 consolidated court cost. There is yet another statute that calls for a \$40 fee for the clerk's services in all convictions in a district or county-level court (so the fee covers all felonies).<sup>43,44,45</sup> These three fees do not make up the total court costs, but we use three fees to simplify the illustration. In reality, all relevant fees would have to be considered.

It is suggested that these three statutes be combined 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 of those court costs. The only change would be a simplification allowing 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, one court cost amount for Class A and B misdemeanors, and one court cost for Class C misdemeanors.

2. *Provide the legislature with annual reports detailing the rates at which court costs, fines, probation supervision fees, restitution, and child support assessed were collected over the preceding year so that the state officials can monitor whether the collection of these financial obligations was properly prioritized.*
3. *Require the TDCJ to capture in computer records information on parolees' governmental financial obligations as part of their supervision. The development of an automated "financial information" form that follows individuals through the criminal justice system will facilitate this process. (See Assessments, Recommendation 2.)*
4. *Fund further research and policy development and seek funding to improve data collection to better understand the impact of the financial obligation burden on the criminal justice population.*



## End Notes

- <sup>1</sup> Nationally, two-thirds of people detained in jails report annual incomes less than \$12,000 prior to arrest. See Doris James, *Profile of Jail Inmates, 2002*, U.S. Department of Justice, Bureau of Justice Statistics, NCJ 201932 (Washington, D.C.: US Department of Justice, 2004).
- <sup>2</sup> Personal communication, Donna Farris, Division Director of Operations, Travis County CSCD, Texas, December 28, 2006, February 13, 2007.
- <sup>3</sup> 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. For example, the 2005 edition of the OCA Court Costs and Fees Handbook, illustrates the tip of this iceberg of complexity. This manual is 197 pages, counting appendices.  
  
This degree of complexity applies to fines as well as court costs; the Texas Municipal Courts Education Center publishes a 100-page chart summarizing the panoply of fines allowable for imposition in fine-only offenses; scattered throughout are more than 20 separate subject matter codes (e.g., Code of Criminal Procedure, Transportation Code, etc.).
- <sup>4</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 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.
- <sup>5</sup> 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 people 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 percent of probationers have difficulty making full payments.
  5. About two-thirds of the community supervision and corrections department directors indicate they employ people dedicated solely to collecting fees.
- <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), available online at <http://www.sunset.state.tx.us/80threports/final80th/219.pdf>.
- <sup>7</sup> Texas Administrative Code, Title I, § 175.1. 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>8</sup> See <http://tlo2.tlc.state.tx.us/statutes/cr.toc.htm>.
- <sup>9</sup> Article 42.12 (possibly the most frequently amended statute in Texas) goes on to authorize judges to impose a myriad of financial obligations on offenders who have been placed on community supervision. 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.

<sup>10</sup> Probation fees of not less than \$25 or more than \$60 per month (plus \$5 for certain sexual offenses) are governed by Section 19, art. 42.12. Section 19(a) also states "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>11</sup> The parole statutes in Chapter 508 Government Code, specifically Sec. 508.182, 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. Subsection (f) of 508.182 provides that a releasee subject to revocation only for failure to make a supervision fee payment has an affirmative defense of inability to pay, and subsection (c) of 508.182 provides:

On the request of the releasee, a parole panel may allow the releasee to defer one or more payments under this section. The releasee remains responsible for payment of the fee and shall pay the amount of the deferred payment not later than the second anniversary of the date the payment becomes due. In addition, 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. . . ."

<sup>12</sup> Child support obligations are not financial obligations imposed by the courts to generate revenue (such as court costs and probation supervision fees) or to hold offenders accountable (such as 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.

<sup>13</sup> Additional fees are contemplated by other subsections of Article 42.12, when an offender attends various treatment alternatives. (See, e.g., Sections 13C & 14).

<sup>14</sup> 42 U.S.C. § 666.

<sup>15</sup> 42 U.S.C. § 1673.

<sup>16</sup> Texas Family Code §159.009.

<sup>17</sup> In a decentralized court system such as 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 has no responsibility for judicial education. OCA does, however, play a growing role in providing information for judges to make better decisions. For example, OCA has worked with judges to help them navigate various databases and information systems in child protection cases. These projects implicate the need for judicial training in the uses of such information. In 2007 the legislature funded \$3 million in OCA Rider 15, which requires OCA to “contract for creation of an automated registry system to coordinate the sharing of information from various state agency databases and the judicial system.” OCA has worked on implementation with the Judicial Committee on Information Technology and with the following data sources in scope for the project, sooner or later:

DPS and TDCJ	DPS: Criminal history, warrants, concealed handgun licenses, citizenship status, driver’s history, vehicle registration, sex offender alerts, probation violators, protection order status, and threat to law enforcement alerts. TDCJ: Probation, parole, and incarceration information (current and historical)	Implemented.
DSHS-MH	Mental health history, diagnosis, and drug regimen for persons who have been in the state mental health system	Agency teams are working toward agreement.
DSHS-VSU	Court of continuing jurisdiction and acknowledgement of paternity from the Vital Statistics Unit (VSU)	DSHS-VSU priorities during the contract period may not allow for timely participation.
DFPS-CPS	Child Protective Services (CPS) case information	Agency teams are working toward implementation.

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 the 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.

- <sup>18</sup> An individual convicted of a felony who is released on parole would owe parole supervision fees to the TDCJ.
- <sup>19</sup> See Code of Criminal Procedure, art. 42.12, §19.
- <sup>20</sup> Family Code §158.001
- <sup>21</sup> Family Code chpt. 232
- <sup>22</sup> Government Code §21.002
- <sup>23</sup> Code of Criminal Procedure art. 43.015
- <sup>24</sup> Transportation Code chpt. 706
- <sup>25</sup> Transportation Code §502.185
- <sup>26</sup> In McLennan County, for example, judges had issued 1,522 orders of withdrawals from inmate accounts through November 2006. These orders resulted in the collection of more than \$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.
- <sup>27</sup> 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. 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.
- <sup>28</sup> The Waco Court of Appeals chose to follow *Abdullah* in *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.”
- <sup>29</sup> *Gross v. State*, \_\_\_ S.W.3d\_\_\_, 2007 LEXIS 5780 (Tex.App.-Amarillo July 23, 2007). 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.
- <sup>30</sup> 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).
- <sup>31</sup> In 2008, the Court of Criminal Appeals held that it did not have jurisdiction.
- <sup>32</sup> 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.

<sup>33</sup> Currently, TDCJ provides a monthly data dump to OAG, which searches for incarcerated individuals who also have child support obligations.

<sup>34</sup> Government Code § 509.007.

<sup>35</sup> Code of Criminal Procedure, art. 26.04.

<sup>36</sup> See <http://www.twc.state.tx.us/svcs/rio.html>.

<sup>37</sup> This confusion is demonstrated by an unreported decision in Texas, *Riley v. State*, (1997 Tex. App. LEXIS 5564), in which the defendant was charged with speeding, and was assessed a number of fees that made no sense in the context of such a ticket; the Court of Appeals remanded the case for the trial court to determine the proper fees.

<sup>38</sup> Interview with Ted Wood, OCA Special Counsel for Trial Courts

<sup>39</sup> These departments are not identified by name in the report due to the exploratory nature of the study.

<sup>40</sup> Carl Fomoso, *Determining the Composition and Collectability of Child Support Arrearages*, (Olympia, Wash.: Washington State Department of Social and Health Services, 2003).

<sup>41</sup> Vicki Turetsky, *Staying in Jobs and Out of the Underground: Child Support Policies that Encourage Legitimate Work*, (Washington, DC.: Center for Law and Social Policy, 2007).

<sup>42</sup> Three examples include:

**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).

**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.

**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>43</sup> Code of Criminal Procedure, art. 102.017.

<sup>44</sup> Local Gov’t Code, Section 133.102.

<sup>45</sup> Code of Criminal Procedure, art. 102.005





## **APPENDIX A: THE FINANCIAL LOAD OF A PAROLEE: A HYPOTHETICAL CASE STUDY <sup>1</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. fines;
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 2006, John Doe was 34-years-old and living in an apartment complex in Cedar Park, Texas. Cedar Park is in Williamson county. He was employed full-time as a department manager at a grocery store. His annual gross salary of \$40,000 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>2</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 percent of his monthly net resources of \$2,500 and was

---

<sup>1</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 – range for most offenses classified as felonies is set out in Penal Code, Sections 12.31-12.35.

(4) Restitution – the topic of restitution is addressed in Code of Criminal Procedure, Article 42.037.

(5) Parole Fees – please see Government Code, Sections 508.182, 508.189 for information on parole fees.

(6) Accident Response Liability – see Code of Criminal Procedure, Article 102.0178(c)(2) for details.

(7) 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).

(8) Driver’s License Surcharges – Chapter 708 of the Transportation Code details the surcharge program. See <http://tmcec.com/newsletter/summer2006/driverprogram.htm>

<sup>2</sup>See Family Code, Section 154.062.

thus in accord with statutory child support guidelines.<sup>3</sup> Money was withheld from his bi-weekly paycheck to pay for his daughter's health insurance, which he was legally obligated to provide.

In early January, John was arrested during a drug sting at a friend's house pursuant to a search warrant for illegal drugs. John was charged with possession in an amount of one gram or more but less than four grams of cocaine.<sup>4</sup> The offense is a third degree felony punishable by a prison term of two to ten years and a fine of not more than \$10,000.<sup>5</sup> Upon arrest, John was transported to the county jail where he was held for a short time until he was released on bond.

John was found to be indigent for the purpose of affording 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 five years in prison and a \$1,500 fine.

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 a court-appointed attorney in Williamson County receives for handling a routine felony plea.

John went to prison where he was well-behaved and created no disturbances. After serving two years of his five-year sentence, John was released on parole.<sup>6</sup> 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. No money was deposited in John's inmate account during his prison stay; therefore, no money was taken from his account to go toward any of his obligations.

---

<sup>3</sup>See Family Code, Sections 154.062, 154.125.

<sup>4</sup>See Health and Safety Code, Section 481.115 (c).

<sup>5</sup>See Penal Code, Section 12.34.

<sup>6</sup>See Government Code, Section 508.145(f).

John was fortunate enough to be hired back by his old employer at his old salary - \$40,000 per year. John felt confident things would work out financially, but he had not considered his financial obligations to the government upon his release from prison. They were as follows:

<b>Court Costs:</b>	<b>\$ 362</b>
<i>Consolidated Court Cost</i>	\$ 133
<i>Drug Court Cost (intoxication/drug convictions)</i>	\$ 50
<i>Arrest Pursuant to Warrant Fee</i>	\$ 50
<i>Clerk's Fee</i>	\$ 40
<i>Records Management Fee</i>	\$ 25
<i>Time Payment Fee</i>	\$ 25
<i>Take and Approve Bond</i>	\$ 10
<i>Judicial Support Fee</i>	\$ 6
<i>Commitment to Jail Fee</i>	\$ 5
<i>Release from Jail Fee</i>	\$ 5
<i>Court Security Fee</i>	\$ 5
<i>Juror Reimbursement Fee</i>	\$ 4
<i>Indigent Defense Fee</i>	\$ 2
<i>Transaction Fee</i>	\$ 2
<b>Court Appointed Attorney Fees:</b>	<b>\$ 500</b>
<b>Offense Fine:</b>	<b>\$ 1,500</b>
<b>Child Support Arrears (\$500 x 24 months)</b>	<b>\$ 12,000</b>
<b>Total Debt Up on Release from Prison</b>	<b>\$ 14,362</b>

After John's release from prison on parole, the amount he owed continued to increase. John was still responsible for monthly child support payments. The fact that he 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>7</sup> John also learned that each time he made a payment toward his court costs, another \$2 transaction fee would be assessed.<sup>8</sup> Given that offense-related debt is typically expected to be paid fully over the course of a parolee’s term of supervision, the number of months to be served on parole can be used as a proxy denominator for determining an estimate of how much John will have to pay each month, in addition to his supervision fees, to satisfy his offense-related debts. Considering John served two years of his five-year sentence in prison, he would serve on parole for three years (36 months). Excluding his child support arrears, John would have to pay \$65.61 plus supervision fees of \$18 for a total of \$83.61 per month to satisfy his offense-related financial obligations.

John’s financial situation can be recapped as follows:

<b>Gross Annual Income</b>	<b>\$ 40,000</b>
<b>Net Annual Income</b> (net resources as determined for child support)	<b>\$ 30,000</b>
<b>Monthly Net Income</b>	<b>\$ 2,500</b>
<b>New Monthly Fees</b>	<b>\$ 585</b>
<i>Current Child Support</i>	\$ 500
<i>Offense-Related Debt (rounded from \$83.61 to \$85)</i>	\$ 85
<b>Remaining Monthly Income</b>	<b>\$ 1,915</b>

John has \$1,915 to pay his monthly expenses and put toward the \$12,000 he owes in child support arrears.

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 have more than one child. John was ordered court-appointed-attorney fees, which is fairly typical. The \$1,500 fine could have been as much as \$10,000. By no means does this hypothetical example assume the maximum amounts that could have been assessed against John.

---

<sup>7</sup>See Government Code, Section 508.182.

<sup>8</sup>See Code of Criminal Procedure, Article 102.072.

## **APPENDIX B: 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 judgments 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. 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. In the event of acquittal that the defendant be discharged;
13. 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. The offense or offenses for which the defendant was convicted;
  15. The date of the offense or offenses and degree of offense for which the defendant was convicted;
  16. The term of sentence;
  17. The date judgment is entered;
  18. The date sentence is imposed;
  19. The date sentence is to commence and any credit for time served;
  20. 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. The terms of any plea bargain;
  22. Affirmative findings entered pursuant to Subdivision (2) of Subsection (a) of Section 3g of Article 42.12 of this code;
  23. The terms of any fee payment ordered under Article 42.151 of this code;
  24. The defendant's thumbprint taken in accordance with Article 38.33 of this code;
  25. 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. 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. 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. 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. 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. 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 the court orders a defendant to pay a fine, court fees or court costs, the court shall, after considering the financial circumstances of the defendant, specify in the judgment the manner in which the defendant shall pay the fine, court fees or court costs. The court shall order the defendant to pay the fine, court fees or court costs:
  - (1) when sentence is pronounced;
  - (2) at some later date;
  - (3) in accordance with a schedule established by a collections office or by an other 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. Except as specified by Subsection (h), the department shall make the ordered payment 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 C: 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.



## APPENDIX D: DATA ANALYSIS

### 1. Community Supervision Placements – General Characteristics

People 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 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 1: 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. 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 people 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 percent and probationers in the large urban county having the lowest at 12 percent. However, for those with known orders, the average monthly obligation was similar – between \$373 and \$412 per month. In the following table, the average monthly child support obligation is based on those people 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, owing between \$473 and \$479 a month, compared to those with no known child support obligation who owe \$76 to \$91 a month. 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**

<i>DEBT DETAIL</i>	Probation Group 1: Large Urban		Probation Group 2: Medium Urban		Probation Group 3: Rural	
	CS	no CS	CS	no CS	CS	no CS
% 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 probationers with child support obligations are assessed lower offense-related obligations than unemployed probationers 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	\$76	\$80	\$103	\$98	\$80
PT - Avg Mo Debt	\$67	\$73	\$80	\$88	\$77	\$96
UNEM - Avg Mo Debt	\$79	\$73	\$84	\$82	\$50	\$61
All Probationers	\$77	\$76	\$94	\$91	\$67	\$79

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, people 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 the large urban and rural counties, 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 percent of their offense debt compared to 45 percent of debt paid by those terminating successfully. This compares with a wider difference in the other locations (11 percent debt satisfaction for those revoked compared to 74 percent for those successfully terminating in the large urban county and 20 percent and 78 percent 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 whether the financial burden impacted people’s success under supervision. The data were suggestive of a potential relationship between unemployment 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, which was 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>1</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>2</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%

<sup>1</sup> Government Code §508.182.

<sup>2</sup> See <http://www.courts.state.tx.us/oca/collections/collections.asp>.

Table 9 shows the average offense debt for parolees in each of the localities studied. The average offense debt ranges from \$2,047 in the large urban county to \$625 in the medium urban county. (In the hypothetical in Part II, the offense debt was approximately \$2,500.) 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 no fine to a maximum of \$10,000 for all non-capital felonies.<sup>3</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	14%	17%	25%
AVG Offense Debt*	\$2,047	\$625	\$1,681
AVG Monthly Offense Debt*	\$34	\$17	\$37

\* Offense debt is estimated and accounts only 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 percent and 25 percent 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. (This amount was \$500 in the Part II hypothetical.)

**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

<sup>3</sup> See Penal Code §§12.32-12.35.

## 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 people with child support to those without, there is little difference in offense-related debt for those in the large and medium 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%		12%		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 who successfully terminated from parole and those revoked in terms of average monthly offense debt, employment status, and child support. Rates of employment for those revoked from parole were not substantially different than those who successfully completed their parole term (more than half unemployed in the large and medium counties with one-third unemployed in the rural county). People 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**

<b>TERMINATIONS</b>	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 burden of people under community supervision 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.

## 7. Collection of Offense-Related Financial Obligations

A critical aspect of assessing financial obligations upon people convicted of crimes is the task of collecting that debt. Virtually any system involving the assessment of financial obligations relies upon rates of 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 individual and operate programs inherent to the judicial and community supervision systems. To that end, collections data from OCA’s Collection Improvement Program 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 does not necessarily mean that an offender has made actual monetary payments. Financial Obligations satisfaction may materialize as a result of a person 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 representation 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 fines and court costs and fees. 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 percent versus 10 percent and 3 percent respectively. In the rural county, a substantial proportion of debt satisfaction is accomplished through the use of other means.

## **APPENDIX E: 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>1</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>2</sup>

---

<sup>1</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>2</sup>Family Code §156.401(d).

## **B. Collection of Child Support**

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>3</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 31st 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>4</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

---

<sup>3</sup> Source of incarceration data: OAG child support system data match with TDCJ.

<sup>4</sup> Family Code §157.266.

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 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>5</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>6</sup>

Collected child support payments are applied to the NCP’s obligations in the following order of priority:<sup>7</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>8</sup> Generally,

---

<sup>5</sup>Family Code §157.265.

<sup>6</sup>Family Code §157.267.

<sup>7</sup>Family Code §157.268.

<sup>8</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;



the OAG will 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>9</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>10</sup> The non-payment of child support is a technical violation. Typically, community supervision will not be revoked for non-payment of child support.

- 
- (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;
    - (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>9</sup> Code of Criminal Procedure art. 42.12(11)(a)(13).

<sup>10</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 pay check through wage withholding;<sup>11</sup>
- intercepting federal income tax refund checks,<sup>12</sup> lottery winnings,<sup>13</sup> or other money that may be due from state or federal sources, if arrears are owed;<sup>14</sup>
- filing liens against assets, including real property and motor vehicles;<sup>15</sup>
- suspending driver’s, professional and occupational, hunting and fishing licenses;<sup>16</sup>

---

<sup>11</sup> Family Code §158.001.

<sup>12</sup> 45 CFR 303.71 - .72.

<sup>13</sup> Government Code §466.4075.

<sup>14</sup> 42 USC 666(c)(1)(G)

<sup>15</sup> Family Code §§157.311 – .331 and Chapter 232.

<sup>16</sup> Family Code chpt. 232

- filing a motion for enforcement requesting contempt;<sup>17</sup>
- possible jail until arrears or an agreed amount is paid;<sup>18</sup>
- 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>19</sup>
- continued deductions from wages, retirement pay, disability benefits, and social security until debt is paid;<sup>20</sup>
- monthly reports to credit bureaus;<sup>21</sup> and,
- levying interest at one-half percent per month (six percent annually) on the unpaid balance.<sup>22</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>23</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>24</sup>

---

<sup>17</sup> Family Code §157.061.

<sup>18</sup> Government Code §21.002.

<sup>19</sup> Family Code §157.165.

<sup>20</sup> Family Code Chapter 158.

<sup>21</sup> Family Code §231.114.

<sup>22</sup> Family Code §157.265.

<sup>23</sup> Family Code §158.007.

<sup>24</sup> 42 USC 666(b)(7)

## **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; 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>25</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>26</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>27</sup>

---

<sup>25</sup> Code of Criminal Procedure art. 42.037(a).

<sup>26</sup> Code of Criminal Procedure, art. 42.037(b)(1)

<sup>27</sup> Code of Criminal Procedure art. 42.037(b)(1).

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>28</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>29</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>30</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 deems appropriate.<sup>31</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>32</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>33</sup> But a presentence report is not required in misdemeanor cases<sup>34</sup> or in felony cases<sup>35</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 79th Legislature removed that requirement.<sup>36</sup>

The judge may order payment of restitution “within a specified period or in specified installments.”<sup>37</sup> If the judge does not order otherwise, the defendant must make restitution immediately.<sup>38</sup>

---

<sup>28</sup> Code of Criminal Procedure, art 42.037(b)(2)

<sup>29</sup> Code of Criminal Procedure art. 42.037(b)(2).

<sup>30</sup> Code of Criminal Procedure art. 42.037(b)(3).

<sup>31</sup> Code of Criminal Procedure art. 42.037(c).

<sup>32</sup> Code of Criminal Procedure art. 42.037(j).

<sup>33</sup> Code of Criminal Procedure art. 42.12 §9(a).

<sup>34</sup> Code of Criminal Procedure art. 42.12 §9(b).

<sup>35</sup> Code of Criminal Procedure art. 42.12 §9(g).

<sup>36</sup> Acts 2005, 79th Leg., ch.969 §1, eff. Sept 1, 2005.

<sup>37</sup> Code of Criminal Procedure art. 42.037(g)(1).

<sup>38</sup> Code of Criminal Procedure art. 42.037(g)(3).

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>39</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>40</sup>

## **B. 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>41</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 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>42</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>43</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>44</sup>

---

<sup>39</sup> Code of Criminal Procedure art. 42.037(g)(1).

<sup>40</sup> Code of Criminal Procedure art. 42.037(g)(2).

<sup>41</sup> Code of Criminal Procedure art. 42.037(h) and Government Code §508.0441.

<sup>42</sup> Code of Criminal Procedure art. 42.037(i).

<sup>43</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>44</sup> Code of Criminal Procedure art. 42.037(h).

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>45</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.

### **C. 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>46</sup>

---

<sup>45</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.”

<sup>46</sup> Code of Criminal Procedure art. 103.0031(a).



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>47</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>48</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>49</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 percent of gross earnings will be deposited into the offender's Inmate Trust Fund;
- Up to half of the offender's 20 percent will go to court-ordered child support;
- Appropriate deductions will be made for all state and federal taxes;
- 5 percent of the offender's gross earnings will be applied to the Crime Victims Compensation Fund;
- 20 percent of the offender's gross earnings may be contributed towards the support of the offender's legal dependents;
- 10 percent of an offender's earnings will be applied to court-ordered restitution; and
- Remaining funds are applied toward room and board.

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.

---

<sup>47</sup> Code of Criminal Procedure art. 103.0031(a).

<sup>48</sup> Code of Criminal Procedure art. 103.0031(b).

<sup>49</sup> Code of Criminal Procedure art. 103.0031(d).

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>50</sup> The period of community supervision in a misdemeanor

---

<sup>50</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.

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>57</sup>

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 to the Parole Board. The Parole Board will then determine whether to impose restitution as a special condition.

---

<sup>51</sup> Code of Criminal Procedure art. 42.12, §22(c).

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:
    - o Compliance counseling by the parole officer;
    - o Written reprimand from the parole officer or unit supervisor; or
    - o Case conference with the offender, parole officer and unit supervisor.
  - Increase control:
    - o Increase supervision level and/or increase contact with the offender;
    - o Activity monitoring (job lists, daily diary, financial review); or
    - o 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.

#### **D. 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>52</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>53</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 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.

---

<sup>52</sup> Government Code § 501.014(e).

<sup>53</sup> Code of Criminal Procedure art. 42.037(h).



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>54</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>55</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.

### **E. 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>56</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.

### **F. 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.

---

<sup>54</sup> Code of Criminal Procedure art. 42.037(h).

<sup>55</sup> Code of Criminal Procedure art. 42.037(m).

<sup>56</sup> Government Code §501.014(e).



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

#### 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>57</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>58</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>59</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.

---

<sup>57</sup> Code of Criminal Procedure arts. 37.07-.071.

<sup>58</sup> Code of Criminal Procedure art. 42.15.

<sup>59</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>60</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>61</sup>

The costs-first allocation rule described above was developed by the Attorney General's Office over 65 years ago.<sup>62</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>63</sup>

---

<sup>60</sup> Code of Criminal Procedure art. 103.003(a)-(b).

<sup>61</sup> Attorney General Opinion GA-147, 2004.

<sup>62</sup> Attorney General Opinion O-755, 1939; Attorney General Opinion O-469, 1939.

<sup>63</sup> Attorney General Opinion DM-407, 1996.

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 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>64</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>65</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 in the Collection of Restitution section of this paper.

---

<sup>64</sup> Art. 42.12, sec. 11(8), Code of Criminal Procedure.

<sup>65</sup> Government Code §508.221.

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>66</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, 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.

---

<sup>66</sup> Attorney General Opinion GA-0413 (2006).

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>67</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:

---

<sup>67</sup> Government Code §501.014(e).

<sup>68</sup> Transportation Code chpt. 706.

### 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>68</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>69</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>70</sup> In practice, this enforcement tool is currently only used when the offender has been convicted of a Class C misdemeanor.

### 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>71</sup>

---

<sup>69</sup> Attorney General Opinion GA—0479 (2006)

<sup>70</sup> Transportation Code §502.185.

<sup>71</sup> Code of Criminal Procedure art. 43.07.

### 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>72</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>73</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.

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

Other than the prioritization schedule set forth for inmate trust account funds,<sup>74</sup> there are no statutes prioritizing the collection and payment of court costs, fees, and fines.

---

<sup>72</sup> Code of Criminal Procedure art. 43.015.

<sup>73</sup> Code of Criminal Procedure art. 43.03.

<sup>74</sup> Government Code §501.014(e).

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>75</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 79th 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>76</sup>

---

<sup>75</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>76</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 than \$25 and not more than \$60 per month to be paid during the period of community supervision...”<sup>77</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>78</sup>

And if a convicted sexual offender<sup>79</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>80</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.

---

<sup>77</sup> Code of Criminal Procedure art. 42.12, §19(a).

<sup>78</sup> Code of Criminal Procedure art. 42.12, §19(a).

<sup>79</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>80</sup> Code of Criminal Procedure art. 42.12, §19(e).

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.

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>81</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>82</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>83</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.)

---

<sup>81</sup> Government Code §508.182(a) and (e).

<sup>82</sup> Government Code §508.182(c).

<sup>83</sup> Government Code §508.189.

- **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*

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 supervi-

sion 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**

#### **A. 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.

## **B. 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 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