

Federal Probation

Bulging Prisons, an Aging U.S. Population, and the Nation's
Violent Crime Rate *Darrell Steffensmeier*
Miles D. Harer

Accreditation: Making a Good Process Better **N.C.J.R.S.** *Lynn S. Branham*

Texas Collects Substantial Revenues From Probation Fees *Peter Finn*
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Factors Influencing Probation Outcome: A Review of the
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Public Policy, Prison Industries, and Business: An Equitable Balance
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Teen Court: Juvenile Justice for the 21st Century? *Deborah Williamson*
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Comparing Hair and Urine Assays for Cocaine and Marijuana *Tom Mieczkowski*
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Looking at the Law—Are Clarifying Amendments to the Sentencing
Guidelines Retroactive? *Toby D. Slawsky*

JUNE 1993

**U.S. Department of Justice
National Institute of Justice**

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Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LVII

JUNE 1993

NUMBER 2

This Issue in Brief

Bulging Prisons, an Aging U.S. Population, and the Nation's Violent Crime Rate.—Have rapidly rising rates of imprisonment reduced the Nation's violent crime rate? No—according to authors Darrell Steffensmeier and Miles D. Harer—who analyzed data for the years 1980-92 from the two main sources of national statistics on violent crimes—the Uniform Crime Reports and the National Crime Survey. Their findings indicate not only that violence levels have been increasing in recent years but that changes in the population's age structure have had a major impact on violent crime trends. In light of these findings, the authors urge policymakers to rethir... whether spending more and more money on incarcerating more and more offenders will solve the crime problem.

Accreditation: Making a Good Process Better.—The accreditation of correctional facilities and programs has led to substantial improvements in the conditions and practices in such facilities and programs across the country. Yet there are a number of ways in which the accreditation process can be improved. Author Lynn S. Branham, a member of the Commission on Accreditation for Corrections, discusses steps that the Commission can and should take to ensure that accredited facilities meet constitutional requirements, that the information provided by auditors to the Commission is accurate and complete, and that the accreditation decisions of the Commission are reliable.

Texas Collects Substantial Revenues From Probation Fees.—With correctional costs skyrocketing, many government officials and legislators have decided that offenders should help pay for the cost of their own supervision and rehabilitation. A recent approach to this strategy is to require employable probationers to pay for at least some of the costs of their supervision. Authors Peter Finn and Dale Parent describe how many probation field offices in Texas—motivated by legislation that provides strong incentives to collect fees—raise substantial amounts of money from assessing probation fees. The authors note that other states and counties may be able to increase revenues from probation fees considerably by adopting some of the statutory incentives and local practices implemented in Texas.

Factors Influencing Probation Outcome: A Review of the Literature.—Past research has provided important insight into what factors influence probation outcome and which offenders are more likely to succeed or fail under probation supervision. Research has pointed to significant relationships between certain variables—such as age, gender, employment, educational attainment, and prior criminal record—and probation success or failure. Author Kathryn D. Morgan reviews some of those studies and their findings. She focuses on studies reporting probation failure

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Texas Collects Substantial Revenues From Probation Fees

BY PETER FINN AND DALE PARENT*

WITH CORRECTIONAL costs skyrocketing in recent years, more and more government officials have decided that offenders should help pay for the cost of their own supervision and rehabilitation. Of course, judges have long imposed court costs on defendants, and most jail and prison work programs already require inmates to contribute a share of their earnings to their own upkeep.

A more recent approach to recouping some of the taxpayers' dollars spent on punishing criminals is to require offenders who are put on probation (and who are capable of working) to pay for at least some of the costs of their supervision. With nearly 2.5 million offenders on probation in the states in 1989, even a fee of \$30 a month for half a year would generate up to \$450 million annually depending on how many probationers regularly met their monthly obligation. And despite the common perception of the criminal as penniless and unemployable, most offenders on probation who have committed misdemeanors—and even many felony offenders—can afford reasonable monthly supervision fees. Texas collects fees from 90 percent of all misdemeanor offenders on probation and from 65 percent of all felony offenders on probation.¹

Already, more than half the states allow local probation departments to charge fees to probationers. Many of these states have raised substantial amounts of money from these assessments; in some states, such as Texas, correctional fees pay for up to one-half of the cost of basic probation supervision. Some probation departments—such as Yakima County's in the State of Washington—have become completely self-supporting through probation fees—and even make a "profit."

The increasing use of probation fees has prompted heated debate among some corrections professionals. Some assert it is unethical or even illegal to force convicted offenders to pay for services they are required to receive. Others argue that correctional fees are not an efficient way to generate revenue, noting that many correctional clients are indigent or that the cost of collecting fees may exceed the money obtained. It has also been claimed that creating

incentives to accumulate probation fees may induce probation officers to neglect their supervision responsibilities in favor of bill collection. Finally, government officials may lose control over local probation departments if these departments achieve significant fiscal independence from the state and county.

While some of these objections are policy questions that are beyond the scope of this article, the experience of Texas shows that revenue from fees can exceed the costs of administering collection and that the quality of probation supervision need not decline as probation collections increase. In 1990, Texas spent more than \$106 million to supervise probationers but collected more than \$57 million in fees. This accomplishment was due to legislative enactment of several statutes deliberately calculated to encourage local probation departments to levy fees—and to diligently monitor their collection. However, some counties in Texas have been more successful than others in capitalizing on these incentives. In 1986, seven counties collected over 80 percent of their expenses in fees, while three counties recovered less than 40 percent of their expenses through fees. While many factors explain these differences (for example, the mix of employed and unemployed offenders), some probation departments in Texas have been particularly innovative in the collection approaches they have adopted.

This article reviews the approaches taken by the Texas Legislature and some counties in the state to make offenders pay for a large proportion of the costs of their own supervision.

The Texas Legislature Encourages Vigorous Fee Collection

In 1990, local probation departments in Texas collected over \$57 million in probation fees; several counties collected over \$1 million. About three-quarters of the state's 110 counties collected fees equal to half or more of their total expenses.

County probation departments in Texas are funded through a combination of state aid and fees assessed on probationers. However, since the early 1970's the Texas Legislature has enacted a number of pieces of legislation designed to motivate local probation departments to increase their total revenues through the energetic pursuit of probation fees.

The most important incentive the legislature provided was to allow departments to carry forward into the next fiscal year a portion of the supervision fees

*Peter Finn and Dale Parent are senior research analysts at Abt Associates Inc. The research reported in this article was supported by the U.S. Department of Justice, National Institute of Justice, contract OJP-89-C-009. Opinions stated in this article are those of the authors and do not necessarily represent the position or policies of the U.S. Department of Justice.

they collect when their combined revenue from probation fees and state aid is greater than their expenses—that is, they take in more money than they spend. If a department collects more in probation fees and state aid than it spends—that is, it has an end-of-year surplus—it gets to keep a portion of the surplus equal to the share of its total revenue generated by probation fees.

Suppose that a department has \$1 million in revenues, with \$400,000 coming from the state and \$600,000 from probation fees. Suppose further that the department spends only \$900,000 during the year, leaving it with a surplus of \$100,000. The department gets to keep 60 percent of its surplus—\$60,000—since 60 percent of its total revenues (\$600,000) came from probation fees. Under this formula, the larger the percentage of revenues a department collects from probation fees compared with state aid, the larger the percentage of its surplus it gets to carry forward to the next fiscal year. So a department that has managed to collect a great deal of money from fees and whose total revenues, as a result, come 80 percent from probation fees and only 20 percent from the state, would get to carry forward 80 percent of any surplus of revenues over expenses that it realizes.

Texas law also permits fees to be levied on offenders convicted of misdemeanors as well as offenders convicted of felonies. As noted above, misdemeanor probationers in Texas are more likely to fully pay their fee obligations than are felony probationers. The ability to levy fees on misdemeanants increases the proportion of offenders who pay regularly and decreases the proportion for whom a department must incur substantial collection costs.

The Texas Legislature enacted two other incentives designed to motivate local probation departments to increase their fee collections. *First, local probation departments have broad discretion in deciding how to spend fee revenues.* Money collected from fees may be used for salaries, operating expenses, and even starting new services for probationers by hiring additional staff or contracting with vendors that offer educational, treatment, or supervision services to the criminal justice system.

Second, the Texas Legislature has made sure that probation departments can collect enough revenue from fees to cover—and substantially exceed—the staffing costs necessary to collect the money. Legislators realized that when supervision fees are low (for example, \$5 to \$10 per month), it may cost a department more to collect these small amounts than it gets back in payments. As a result, when the Texas Legislature first authorized supervision fees in 1965, it set the maximum monthly fee at \$15. In 1985 the legislature increased the maximum to \$40.²

What Local Probation Departments Did to Increase Collections

Jefferson County, Texas (population 250,000), was able to capitalize on the legislature's incentives to increase dramatically the amount of money it collects from fees. The county collected \$437,519 in 1982 but \$945,438 in 1990—an increase of over 100 percent. The increase cannot be attributed solely to rising caseloads because the average fee collected per probationer also rose considerably, increasing from \$128 in 1982 to \$298 in 1990. During this time, revenues from fees provided between 42 and 61 percent of the department's total expenses.

Using Fee Collections to Assess Staff Performance

According to Montie Morgan, director of adult probation for Jefferson County, one early step the department took to increase fee collections was to include the amount of money collected in staff performance reviews. Every month, the department reports how much each probation officer is expected to collect based on such considerations as the number of probationers supervised. At the end of the month, another report shows the percentage of fees each officer has actually collected.

According to Mr. Morgan, supervisors consider fee collection performance heavily in evaluating performance among officers. As a result, officers keep their own tally of their caseload's payments and check it against the computer-generated list to make sure the automated system did not short-change them. (In another Texas county, a supervisor reported he posts his officers' collection rates every month on a bulletin board to stimulate competition among officers to achieve a favorable performance record.)

Judicial Priority on Fee Collections

In addition to probation fees, judges in every state can impose a variety of financial obligations on probationers, including fines, restitution, court costs, and attorney's fees. In Texas, judges have the right to decide which kinds of payments they will require probationers—who typically have limited funds—will pay first. However, since 1974, judges in Jefferson County (as well as many other counties in Texas) have generally ordered that payments be credited first to supervision fees and only then to other court-ordered financial obligations. Judges in Jefferson County have also generally charged the highest monthly fee allowed by law—currently \$40.

In some Texas counties, judges do not state a preference for which type of court-ordered payment will be collected first; they leave this decision to the probation department. As a result, the probation administrator of Dallas County said he has programmed his department's computer "to credit payments first to probation

fees until the balance due is zero and only then do payments go for other obligations," although this sequence can be overridden if required by a judge or a change in legislation.

Strong No-Waiver Policy

State law in Texas requires judges to impose supervision fees, unless the offender is truly unable to pay. However, as early as 1974 judges in Jefferson County delegated responsibility for determining the offender's ability to pay to the probation department, and the department rarely recommends a waiver unless the offender has a documented work disability. Furthermore, as in other counties in Texas, probation officers must get their supervisor's approval in order to recommend that fees be waived. Probation officers sometimes determine later that a probationer who they anticipated could find employment in fact cannot find a job. When this happens, the officer recommends that the conditions of probation be amended to waive the fees the court initially imposed.

Probation administrators in several Texas counties report that even judges who make their own decision about whether offenders have the ability to pay typically show a very strong presumption in favor of ordering payment. One of these administrators goes a step further in discouraging judicial waivers: every month he issues a report that shows how often each judge in the county waived payments and how much in arrears each judge's probationers have been. The administrator believes that, because judges are sensitive to how they perform compared to their peers, the report encourages them to impose fees more often and take stronger enforcement actions against probationers who are in arrears than they might otherwise be inclined to do.

Strict Enforcement of Payment

Before jail crowding became a serious problem, judges in Texas would sometimes jail offenders who willfully failed to pay fees if the probationers had also violated other conditions of probation. With today's widespread jail crowding, however, offenders on probation are much less likely to be locked up, and those who are reincarcerated often serve only a few days. As a result, the Jefferson County Probation Department now recommends that judges sentence probationers to 10 days of community service rather than jail time for willful nonpayment. According to Mr. Morgan, faced with "the prospect of two weeks of hard work," probationers often catch up on delinquent payments.

Recent Changes Have Made Vigorous Fee Collection Still More Desirable

Texas introduced three important changes in the 1980's designed to increase fee collections still further.

Two Changes in Legislation

In addition to raising the maximum fee from \$15 to \$40, the legislature also made it more difficult to waive fees. Several legislators had become concerned that judges in some counties were waiving fees for many offenders who actually had the ability to pay. As a result, in 1987 the legislature required that all probationers be automatically assessed at least \$25 a month unless they could show they were too poor—and likely to remain so—to pay even this small amount.

Introduction of Automated Tracking Systems

By the early 1980's, many of the large counties in Texas had developed their own customized and automated accounting systems for keeping track of fee payments. The Harris County Adult Probation Department has shown how these systems can increase fee collections while at the same time reduce staff time involved in keeping track of collections. Designed by county information system staff, the Harris County system automates routine accounting functions, such as recording payments and issuing receipts. Using this capacity, the department can:

- Issue monthly reports to each probation officer summarizing the payment status of every offender on his or her caseload so the officer can identify quickly delinquents who need to be contacted about their arrearage.
- Automatically mail probationers a monthly "bill" that states how much they owe, and time the bill to arrive when offenders receive their wages or government benefit checks.
- Automatically write a letter to probationers who are more than 90 days overdue reminding them of their unpaid balance and what to do about it.

To make these and other benefits of computerized accounting available to smaller departments, the Texas Community Justice Assistance Division (formerly the Texas Adult Probation Commission) developed specialized accounting software in 1983 that operates under a popular database management program (Dbase III). Commission staff will customize the software to suit the needs of specific probation departments and train local officials to use it. Over one-third of the adult probation departments in Texas already use the software. According to John Owen, director of community supervision and corrections for Jack County, introduction of the software has "definitely helped to increase collections—probably by 30 percent—" because officers can find out which probationers are in arrears (and by how much) at the push of a button and can then target them for special attention.

The Recent Changes Have Worked

These changes in legislation and computerization appear to have had the intended effect: total revenues

from fees, and the average monthly fee collected per probationer, continued to increase in Texas during the 1980's—even when caseload rates remained the same. As the figure shows, while caseloads remained the same from 1986 through 1989, the average fee collected per year increased from \$132 to \$191; total revenues from fees during this period jumped from nearly \$37 million to over \$57 million.

Anticipated Problems Have Not Materialized

Initially, skeptics expressed concern that reliance on probation fees as a significant source of funding for probation services would create a host of serious problems.

State Contributions Have Not Decreased

Critics charged that, as local departments generated more and more operational income from probation fees, the state would likely decrease its contribution to local probation departments in proportion to the increase in fee collections, leaving departments with the same amount of money they had before they began collecting fees. As a result, critics predicted that fee collections would reduce the state budget and presumably the tax burden but would prove no benefit to local departments.

In some states, probation fees are routinely offset by decreases in state aid. Where this is done, fee collections are generally lower than in states without this offset. However, continuing increases in fee collections in Texas have not led to a decline in state funding. At the same time that collections from probation fees were increasing, state appropriations for salaries and operating expenses also increased, jumping from slightly over \$19 million in 1980 to over \$53 million in 1990—an increase of almost 300 percent. State funding did drop in 1986 and 1988, but this was because of the recession in Texas, not because of increases in fee revenues during those years.

Collecting Fees Does Not Detract from Casework

Some probation officers, supervisors, and other corrections staff warned—and still claim—that strong incentives to collect fees would turn county probation departments into “collection agencies” that devote all or most of their energies to “fund raising” and neglect their obligation to provide substance abuse, employment, and rehabilitation services to probationers.

It is true that many probation officers in Texas “hated” fee collections when they were first introduced in the early 1970's, Mr. Morgan recalled. However, from the beginning, Texas probation administrators have made clear to new employees that fee collection is part of the job description. As a result, line staff today generally accept their fee col-

lection responsibilities as a matter of course. “Some staff have a mindset opposed to acting as a bill collector,” another chief probation officer observed, “but the number who feel that way are a minority. Most [probation officers] see fee collection as a condition of the job.” In addition, they eventually realize that they are not just collecting bills; by enforcing fee payments they are benefiting the probationer with improved casework (see below).

A few probation officers still complain that the emphasis on fee collection reduces the time they have to help probationers with problems related to substance abuse, employment, and other areas of their lives that are crucial to staying “straight.” Because fees are always the first topic of discussion during an office visit, casework can be addressed only in the remaining time. If an offender is having difficulty meeting payments, the office visit can be consumed entirely by this one issue.

Another problem with emphasizing fees is that some probationers are reluctant to meet with their officer at all if they are behind in their payments and know they are going to have to explain their tardiness.

Benefits of Fees

Fee Collection Is Good Casework

Of course, probation officers must still spend time—sometimes the entire office visit—motivating offenders to make their payments and working out a plan for doing so. However, Montie Morgan believes that rather than detracting from casework, aggressive fee collection actually furthers the goal of helping probationers to avoid relapsing into criminal behavior. He argues that the regularity of fee payments is a good barometer of probationers' overall adjustment on supervision. According to Mr. Morgan, “There is a direct correlation between probation compliance and fee payment.” Nonpayment usually means there are underlying adjustment problems that the probation officer needs to identify and address that otherwise might have gone undetected. “For example,” one county director said, “if the probation officer and offender were not discussing failure to pay fees during the client interview, they would be talking about the client's drinking problem which is the cause of his not making payments. So the fee is only an ‘entrée’ to get into [addressing] the offender's life problems.”

Some probation staff believe the emphasis on fee collection provides an opportunity to teach offenders how to budget and meet ongoing financial obligations on time. More generally, discussing problems with paying the fee can help teach offenders how to structure their lives in a manner that enables them to make payments regularly.

Fee Revenues Fund Expanded Services

Finally, probation administrators in Texas have been able to use money from probation fees to add services they had previously been unable to afford. Montie Morgan reports that increased collections in Jefferson County enabled him to contract for additional services for offenders, including several group intervention programs, a sex offender program, and substance abuse programs. In some counties, fees have been used to fund intensive supervision programs for high risk offenders who require frequent reporting to probation officers—and therefore more staff. Electronic monitoring—fitting a probationer with a bracelet that emits a signal if the person strays beyond a fixed distance from his or her home—has also been funded in some counties with the money collected from fees. Electronic monitoring makes it possible to keep much closer tabs on an offender than requiring periodic visits to a probation officer or making telephone calls to the home.

Texas' Success Is Not Unique

Texas is not the only state that secures considerable funding from probation fees. When the Yakima County, Washington, branch probation office continued to run up annual deficits in the early 1980's even after the state authorized all county offices to collect and keep supervision fees, the county government told the probation administrator that all county funds would be cut off as of January 1, 1997—and the office would have to make up its deficit to the county.³

With their jobs on the line, what had been a conscientious attempt to increase collections in the past turned into an extremely vigorous effort. As a result, by 1990 revenues from fees exceeded the Yakima County branch office's expenses by \$133,000. What changed?

Yakima's success is due in large measure to increased caseloads, which rose almost 50 percent between 1987 and 1990. Many of these new probationers are individuals charged with drunk driving who can usually afford to pay probation fees and have a strong incentive to do so if they want the charges against them dismissed.

However, the administrator also instituted several changes designed to increase fee collections. He automated the existing manual system of recording collections so that the computer prints late notices automatically for all probationers who are 30 days in arrears. Unlike the past, when little could be done if probationers stopped paying their fees, today delinquent probationers are assigned to the office's own community service program normally used for offenders who cannot pay fines imposed by the court.

Finally, by assigning four full-time clerical staff to handle all the scheduling of probationer meetings,

filing reports, and monitoring collections, the administrator freed probation officers to devote all their time to supervising their caseload—including time to work with delinquents to help them meet their fee payments.

Probation and parole branches in 12 of Oregon's 36 counties are permitted to keep the supervision fees they collect and to spend the money on any purpose the law allows—but they are responsible for purchasing their own supplies and services for probationers. As a result, one would expect these counties to generate more fee money than the other 24 counties that have to return all the fee revenues they collect to the State Department of Corrections.⁴

This turns out to be the case. From 1987-89, the counties that do not keep fee revenues collected fees equaling 6 percent of their expenses for basic supervision, while the counties that keep fee revenues collected fees equaling over 15 percent of their expenses.

What do the 12 counties with the incentives do differently than the other counties that enables them to collect more fee revenues? Some of the actions the 12 branch offices have taken are the following:

- Supervisors in a few of these counties are rewarded with a salary increase if, in addition to high ratings on other measures of performance, their staff collects more fees than planned.
- Some branch office administrators have tightened their criteria for recommending waivers and reductions in fees to the judge; as a result, a larger percentage of their caseload is assessed—and pays—fees (including high fees) than in the offices that turn over the fee money they collect to the state.
- One county administrator took over collection responsibilities from the clerk of court, who had no particular incentive to enforce fee collections, who had been tabulating payments with pencil and paper, and who kept no records of whether payments were credited to supervision fees, fines, court costs, or restitution. The administrator instituted an automated accounting system that made it easy to track payments, and he made a concerted effort to get probationers to pay. As a result of these changes, total receipts for fees went from \$12,000 to \$140,000 in 1 year.

Recently, the Oregon Legislature discontinued the practice of penalizing the no-incentive counties and also raised the minimum supervision fee from \$10 to \$25. As a result of these changes, the two groups of counties now collect a more similar percentage of their expenses in probation fees than they did in 1987—testament to the power of state legislature to enact legis-

lation that can create incentives for county probation departments to increase probation fee collections.

NOTES

¹The data in this article were provided to the authors by telephone and mail by Edmund Peterson, formerly acting director, Community Justice Assistance Division, Texas Criminal Justice Division, and currently director, Internal Audit Section, January 7, 1992; James McDonough, former director, Community Justice Division, Texas Criminal Justice Division, April 9, 1991; Montie Morgan, director of adult probation, Jefferson County (Texas) Community Supervision, April 9, 1991, and December 3, 1991; and John Owen, director of community supervision and corrections, Jack County, Texas, April 10, 1991.

²No analysis has documented the cost of collecting the supervision fees in Texas. Most practitioners, however, believe that revenues from monthly fees of \$30 to \$40 substantially exceed collection costs,

while revenues from monthly fees of \$5 to \$10 fall short of collection costs. The exact break-even point is unknown and, in fact, probably varies among departments according to the nature of the caseloads (e.g., the proportion of misdemeanants versus felons) and the nature and cost of enforcement procedures used and sanctions imposed on probationers who willfully refuse to pay.

³Data on Yakima County were provided by Edward Hosack, chief probation officer, Yakima County District Court Probation, in telephone calls May 1, 1991, and correspondence dated May 9, 1991.

⁴Data were provided in telephone calls with Barbara McGuire, director of field services, Oregon Department of Probation and Parole, March 18, 1991, December 6, 1991, and January 9, 1992, and with David Caulley, fiscal services administrator, Oregon Department of Corrections, March 14, 1991.