

CORRECTIONAL USER FEES

**JOHN HOWARD SOCIETY OF ALBERTA
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EXECUTIVE SUMMARY

Correctional user fees, or any fee that an offender is compelled to make that generates revenue for correctional purposes or that recovers all or a portion of the cost of services provided to an offender, have been in existence for hundreds of years. “Jailer’s fees” date back to 18th century England, when jailers collected fees from prisoners because jail supervision was not state-funded. Although the state eventually accepted responsibility for the cost of this service, the notion of correctional cost recovery has persisted and remains a policy issue.

Today, correctional user fees exist in a variety of forms. Probation, electronic monitoring, and parole supervision fees are widely used in the United States and, in several states, account for a significant portion of the cost of community-based supervision. User fees for other community-based correctional initiatives are gaining popularity across North America and they include fees for diversion programming, as well as fees for programming imposed as part of a sanction. In the United States and Canada, room and board fees are commonly charged to incarcerated offenders both in jail and prison and in community correctional centres. While discussions about correctional user fees tend to focus on state-imposed fees, these fees may also be imposed by non-government correctional service agencies who provide treatment or diversion programming in collaboration with state correctional services.

Proponents of correctional user fees point to their immense potential for cost recovery and, undoubtedly, that potential is a powerful temptation. In Texas alone in 1990, thanks to aggressive legislation encouraging fee collection, probation supervision fees brought in \$57 million, which is over half of that state’s total probation supervision budget. Even the most popular arguments against correctional user fees cannot outweigh the benefits posed by revenue generation. As has been the conclusion in virtually all of the academic examination of this issue, concerns about systemic abuses can be effectively allayed through careful administrative design.

If concerns about correctional user fees were strictly related to implementation, it would appear that correctional user fees are a panacea, but this is not where the debate ends. There are serious philosophical concerns that require attention and examination before a truly informed conclusion about the imposition of correctional user fees can be made. Among other things, correctional user fees foster two-tiered justice, they force individuals to pay for state-imposed services and they undermine the intended role of both community-based corrections and corrections in general. These concerns are central to the debate over correctional user fees and they must not be dismissed or forgotten.

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INTRODUCTION

Correctional user fees are heralded by proponents as an important source of revenue and a way of promoting responsibility in offenders. However, correctional user fees have been subject to considerable criticism and debate. This paper will examine the various types of correctional user fees and the imposition of such fees throughout North America. As well, a brief overview of the most common issues that arise over correctional user fees will be provided, beginning with an examination of more superficial issues and moving to a broader policy discussion.

USER FEES DEFINED

Correctional user fees are any payment that an offender is compelled to make that generates revenue for correctional purposes or that recovers all or a portion of the costs of services provided. Correctional user fees may be imposed either by the state or by agencies working in collaboration with the state. Although correctional user fees have traditionally been defined in terms of convicted offenders (Parent, 1990, p. 4), the current discussion includes fees that are imposed at any level of involvement in the criminal justice process:

1. The *diversion* level, which is usually arrived at after an individual is charged with an offence but before the charge gets to court - fees at this level generally relate to alternative measures programs;
2. The *sentencing* level - fees at this level generally relate to community-based sanctions; and
3. The *post-imprisonment* level - fees at this level are usually related to the costs of parole.

There are two types of correctional user fees, and these types of fees may exist at any of the above levels: *program* fees and *service* fees. Program fees are typically imposed universally and are the largest revenue generators (Parent, 1990). Examples of program fees are fees for programming such as anger management, parenting, substance abuse and sex offender treatment programming, room and board fees and supervision fees for electronic monitoring, probation and parole. Service fees are only imposed if a specific service is used, such as drug use testing or pre-sentence report preparation; they do not generate significant general revenue compared to revenue generated from program fees.

A BRIEF HISTORY

Correctional user fees in their most primitive form date back hundreds of years. In the 1700s, when criminal justice advocate John Howard began his work for prison reform, "gaoler's fees" were collected by jailers from prisoners because jailers were not paid by the state for their services (Carlson, 1990, pp. 5-7). The first American experience with correctional user fees took place in Michigan in 1846, when a law was passed to allow counties to charge incarcerated offenders for medical services (Parent, 1990, p. 1). In the 125 years that followed, correctional user fees were most commonly imposed on incarcerated offenders. Fees for community-based services were added over time. Probation fees were first adopted in Michigan and Colorado in the 1930s and 1940s (Ring, 1989, p. 43).

USER FEES TODAY

Today, correctional user fees are well-established and widely used in the United States. They are not as common in Canada and the Canadian experience is vastly different than that of the United States. The following section details correctional user fee initiatives in the United States and Canada, with particular attention to the province of Alberta.

The United States

The majority of correctional agencies in the United States impose fees on their clients (Abadinsky, 2000, p. 390). While the most common user fee initiatives involve a monthly fee for probation supervision, user fees are also charged for a broad range of other services (Ring, 1989, p. 45), including fees for electronic monitoring programs, ignition interlock equipment, work release programs and preparing pre-sentence reports. It is estimated that at least 26 states were imposing correctional user fees by 1989 (Ring, 1989, p. 43). Abadinsky (2000) provides the following general summary of the current situation in some American states:

Illinois requires the imposition of a fee of \$25 for each month of probation supervision ordered by the court. Instead of collecting monthly fees, Kansas imposes a one-time probation fee: \$50 for felonies and \$25 for misdemeanors. Alabama charges probationers and parolees a \$20 per month supervision fee. Kentucky charges not less than \$10 per month; the maximum for a felony is set at \$2,500; for a misdemeanor, \$500. New York state law permits a 5 to 10 percent fee on restitution cases, the higher amount when actual collection costs exceed 5 percent. The Onondaga (Syracuse), New York Probation Department imposes a variety of fees for different services (e.g., \$200 for a custody/visitation investigation and \$150 to \$500 for an adoption investigation), depending on adjusted gross income. The department charges \$50 for alcohol/drug testing; probationers under supervision for driving while intoxicated pay \$30 a month. In Suffolk County, New York, probationers must pay a supervision fee of \$30 a month; they are charged an additional \$10 for each month they are tested for drug use. In Iowa, the Sixth District Department of Correctional Services requires those on probation or parole to pay a one-time fee of \$150 if they were convicted of a felony, \$125 for an aggravated misdemeanor, and \$100 for a simple misdemeanor. The state of Washington charges parolees \$20 to \$40 a year, depending on the nature of their classification level and supervision status. (p. 390)

The Oregon legislature passed enabling legislation in 1979 allowing judges to impose supervision fees on probationers (Parent, 1990, p. 39). While no upper limit for probation supervision fees has been set, a minimum fee of \$10 per month is required where fees are imposed. Further, the Parole Board in Oregon has been granted the authority to impose supervision fees on parolees; parole supervision fees are set at \$20 per month.

Texas operates the most “successful” user-pay programs in the United States. In 1990, Texas’ probation departments spent over \$106 million to supervise probationers but raised over \$57 million, or around 54% of that amount, through probation fees (Finn & Parent, 1993, p. 17). Around three-quarters of the probation departments in Texas raised fees totalling at least half of their total expenses. While

probation departments in Texas are funded jointly by state aid and user fees, the Texas legislature has passed numerous pieces of legislation aimed at encouraging probation departments to increase revenue generated through probation fees. Further, the law in Texas requires judges to impose probation fees on all offenders with some exceptions (Finn & Parent, 1993, p. 19). Indeed, in 1987, the Texas Legislature passed a requirement that all probationers pay at least \$25 a month in probation service fees, except those who could prove that they were too poor to pay (Finn & Parent, 1993, p. 19). Fee waivers at the time of sentencing are very rare. Rather, offenders are often required to pay probation supervision fees on a 3 month trial basis after which time delinquent probationers are examined to determine whether a waiver should be granted (Finn & Parent, 1993, p. 19).

Texas also introduced computerized tracking in the 1980s to assist probation officers in keeping track of payments. This allowed probation departments to issue monthly statements on payment status to both offenders and probation officers, and to automatically issue letters to probationers who were delinquent by over 90 days to remind them to pay their fees. Many Texas probation departments have built in their own incentives to increase revenue generated from fees (Finn & Parent, 1993, p. 18). One such incentive is building fee collection success into staff performance evaluations. Another incentive used is to post each probation officer's collection rate on a bulletin board, thereby stimulating competition among officers (p. 18).

In Michigan, offenders must pay a wide variety of costs to offset the costs of corrections:

- Health care co-payment - With some exceptions, prisoners pay a \$3 co-payment when they request medical care.
- Prisoner Reimbursement Act - This law allows the state to seek reimbursement of up to 10% of the costs of imprisonment if the prisoner has enough money.
- Payment for electronic monitoring - Offenders pay a daily fee for the cost of electronic monitoring.
- Community corrections - Offenders must pay room and board fees when staying in Community Corrections Centers. Those who are unable to pay are required to perform community service in lieu of payment.
- Parole and probation supervision fees - These fees range from \$10 to \$30 per month depending on the offender's ability to pay. (Michigan Department of Corrections, 1998)

While the American experience varies widely from state to state and even from county to county, it is clear that correctional user fees are more widely accepted and used in the United States than they are in Canada.

Canada

The federal government in Canada does not impose supervision fees on offenders. Parole supervision is entirely state-funded, and, other than post-secondary education, which are normally paid for by offenders (Correctional Service of Canada, 2000), all programming available to offenders is also state-funded. Further, parolees receive \$5 per session for cognitive skills training, living skills programming, and other core programming. This initiative is only about a year old but it seems to be a very successful incentive for offenders to take core programming while they are on parole. (Personal communication with program clerk, Correctional Service of Canada, October 5, 2000.) The funds that are provided to

parolees are considered “risk management” - they help ensure that the offender will be able to attend the program by defraying some of the costs to the offender associated with taking core programming. Other assistance such as bus tokens and child care may also be available to offenders who do not have the financial means to travel to a program location or who have small children who require supervision while the offender is in programming. (Personal communication with regional community program manager, Correctional Service of Canada, October 5, 2000.)

While it does not impose supervision fees, Correctional Service of Canada does impose room and board fees on adult offenders both in prison and while they are in the community. Commissioner’s Directive No. 860, entitled “Inmate’s Money,” (Correctional Service of Canada, 1998) as modified by Interim Instruction dated March 30, 2000, reads as follows concerning the payment of room and board fees by federal offenders:

Deductions

9. Permissible deductions from the inmates’ income to be deposited in the Inmate Trust Fund shall include, in the following order of priority:
 - a. reimbursement for any indebtedness to the Crown;
 - b. contributions to the Inmate Welfare Fund as set out in this directive;
 - c. room and board. This deduction will amount to 25 per cent of the inmate’s total income which exceeds the top offender pay rate of \$69 per pay period, after deductions noted in a. and b. above. Deductions for room and board shall not exceed \$5 per week day (Monday to Friday) to a maximum of \$25 per week.

...

Community Correctional Centres

10. Offenders residing in a Community Correctional Centre shall be charged room and board amounting to 25 per cent of the income from the sources listed in paragraph 6 which exceeds the living allowance set out in Commissioner’s Directive 870, entitled “Maintenance Allowance for Offenders”. The charge for room and board shall not exceed \$5 per week day (Monday to Friday) to a maximum of \$25 per week.

In addition to Correctional Service of Canada and each province’s own government correctional service, a variety of agencies in Canada also provide correctional services, some of which impose user fees.

The Salvation Army in Winnipeg offers diversion programming for a variety of offences. Individuals charged or who may be charged with an offence may be eligible for diversion programming - if the individual attends the program, the charge against the individual will not proceed. Potential candidates are referred to the Salvation Army by the police (pre-charge) or the Crown (post-charge). For nonviolent summary offences, the Salvation Army offers programming that helps to develop life skills. The vast majority of offenders eligible for this type of diversion programming are first-time offenders. The Salvation Army also offers diversion programming for both prostitutes and their customers. The program for individuals charged or who may be charged with communication for the purposes of

prostitution is a one day program designed to educate the individual about the dangers and harms of prostitution [these types of programs are sometimes referred to as “John School”]. Information about sexually transmitted disease, the impact of the criminal charge on the offender’s family and liberty and the impact of prostitution on prostitutes’ lives and families are offered to the offender. The cost of the program is \$400 and the fee is used to cover the cost of administering the program and also to fund diversion programming for prostitutes. For individuals charged with prostitution, the Salvation Army offers diversion programming at no cost. Potential candidates have an intake assessment meeting with the Salvation Army’s diversion programs manager. If they are eligible for programming, they will spend two nights and three days in a “camp” setting learning about the role of the police and the courts in dealing with prostitution, the dangers associated with prostitution and potential alternatives to living as a prostitute. The camp is intended to provide an experience of positive social interaction for candidates in a safe environment. (Personal communication with Diversion Programs Manager, Salvation Army, Winnipeg, October 10, 2000.)

Similar to the prostitution diversion programming offered by the Salvation Army in Winnipeg, the John Howard Society of the Lower Mainland of British Columbia operates the Prostitution Offender Program, or “POP,” for men charged with communication for the purposes of prostitution. The program is similar in content to the program offered in Winnipeg and it is offered with the intention that the offender will come to understand that prostitution is not a victimless crime. The program is entirely self-funded. Like the program offered in Winnipeg, the “tuition fee” for the program is \$400. (Personal communication with Executive Director, John Howard Society of the Lower Mainland of British Columbia, September 28, 2000.)

In Ontario, some of the local John Howard Societies impose user fees for diversion programming. For example, the John Howard Societies of Niagara, Waterloo-Wellington and Hamilton Burlington & Area impose adult diversion fees and one Society (Durham Region) has developed a cost recovery system for its programs. (Personal communication with Executive Director, John Howard Society of Ontario, September 29, 2000.) Specifically:

- In Niagara, the Society offers diversion services for individuals who are charged with certain offences for the first time. Individuals charged with a first-time offence may be referred to the Society by the Crown. The charged individual is given a remand by the Court and, during the remand period, must complete a diversion initiative administered by the Society. The particular initiative may be determined by the Crown or it may be left to the Society’s discretion. For minor offences such as shoplifting, the Society supervises the charged individual and ensures that she or he completes a certain community service, pays restitution, writes a letter of apology, or performs some other initiative. In situations involving domestic violence, the charged individual must complete a ten-week domestic violence program offered by the Society. At the end of the remand period, if the individual has completed the required diversion initiative, his or her charge is dropped. The fee for adult diversion services offered by the John Howard Society of Niagara is based on income but it tends to be in the \$100 range. (Personal communication with Executive Assistant, John Howard Society of Niagara, October 3, 2000.)
- The adult diversion fees imposed by Hamilton Burlington & Area are imposed to cover the costs of diversion programming offered by the Society. People who are charged with minor offences such as theft under \$5000, simple possession of narcotics and mischief may, with the consent of the Crown, have their charges dropped upon successful completion of a diversion initiative

offered by the Society. The individual must appear in court on one occasion and, if the Crown consents, be given a ten-week remand. During the ten-week remand, the individual completes programming as required by the Society. The nature of the programming is entirely within the discretion of the Society and it may range from restitution or community service work to cooking or making crafts for charities. The fee for adult diversion programming through the Society in Hamilton Burlington & Area is determined by the Society. The fee is calculated on a sliding scale and may range from \$100 to \$500. The cost to the Society to administer adult diversion programming is approximately \$125 per person and last year, the Society recovered approximately \$130 per person in fees. Upon payment of the fee and successful completion of any initiative imposed by the Society, the charge against the individual is dropped. Confirmation of successful completion of the Society's adult diversion programming is made at a court appearance by a John Howard Society worker at the end of the ten-week remand period. No appearance by the individual is necessary. (Personal communication with Executive Director, John Howard Society of Hamilton Burlington & Area, October 2, 2000.)

- In Durham Region, the Society operates a variety of programs that may be offered to correctional clients, including an anger management program and parenting programs. Clients may be referred to the Society as part of their sentences or they may be required to complete a program before their charges are processed. The cost recovery system is a fee that is calculated on a sliding scale, and no one is turned away from the Society due to inability to pay a fee. (Personal communication with Assistant Executive Director of the John Howard Society of Durham Region, October 2, 2000.)

Although each local Society in Ontario is free to determine whether and to what extent it will impose correctional user fees, the John Howard Society of Ontario requires each local Society to adhere to a minimum standard that mandates that no person will be refused a service because they are unable to pay a fee:

Service Delivery Responsibilities

The Provincial Society and its affiliates/branches are responsible for ensuring that:

- iv) No fee charged to clients for programs or services shall prevent client access to that service or subject clients to the possibility of increased sanction. Successful completion of the program shall not be determined by payment. The client shall have knowledge beforehand from outreach material that the program has a [fee.] The program shall have a sliding scale with a rationale, capacity to consider other factors, negotiate an agreed on fee and enter a discussion about change in circumstances. (John Howard Society of Ontario, 2000, p. 3)

It would appear from the above that, regardless of the fact that no formal waiver system is in place, or even that a court may order an offender to pay a fee to the John Howard Society as part of the diversion process or any other initiative, the Society itself has determined internally that it cannot involve itself in a situation where a client may be subject to an increased sanction as a result of a failure to pay a fee to the Society.

Alberta

There are no fees currently in place for probation supervision in Alberta. While the issue was considered by Alberta Justice a number of years ago, no decision was made to impose supervision fees. As well, most treatment and self-improvement programming that is required to be taken by offenders on probation is paid for by Alberta Justice, who contracts with various agencies to provide programming for offenders. (Personal communication with probation officer, October 5, 2000.) An example of an agency-contracted program is CARE (Communicating Anger in Relationships Effectively), a program run by Edmonton John Howard Society that helps offenders deal with violent or harmful behaviour (Personal communication with staff member, Edmonton John Howard Society, September 29, 2000).

While Alberta Justice does not impose probation supervision fees or recover any of the costs of treatment programming, it does operate a number of adult correctional centres that may charge a room and board fee. The Bow River Correctional Centre in Calgary is a community residential centre that houses minimum security offenders who are either serving their entire sentences or who may be serving the last portion of a term of incarceration at the centre. The centre houses primarily offenders who are employed. Offenders who are employed pay \$6 a day in fees for room and board to a maximum of \$30 a week. The size of the fee suggests that the primary motivation for imposing the fee is likely not cost recovery. While the offender does have to sign an agreement acknowledging that he will pay the fee, a large portion of the fees remain unpaid and collection procedures are not taken. Rather, it seems that the reason for imposing the fee is to assist the offender with community reintegration through financial responsibility and money management. (Personal communication with staff member, Adult Centre Operations, Alberta Justice, September 29, 2000.)

Similar to Alberta Justice, a number of agencies that operate community residential correctional facilities in Alberta impose room and board fees on offenders. For example, Independence Apartments, a halfway house for federal offenders that is operated by Edmonton John Howard Society, charges \$5 per working day to a maximum of \$100 per month for room and board to employed offenders (Personal communication with staff member, Edmonton John Howard Society-Independence Apartments, October 5, 2000). Bedford House is a halfway house and community supervision facility in Calgary operated by Calgary John Howard Society. The facility is open to both federal and provincial offenders. Correctional Service of Canada and Alberta Justice contract with John Howard Society for a number of beds in the facility. Bedford House is a treatment facility to help offenders get on their feet and attain employment. The room and board fee at Bedford House is also \$5 per working day to a maximum of \$100 per month. (Personal communication with staff member, Calgary John Howard Society-Bedford House, October 6, 2000.) Other than room and board fees, there are no fees charged to offenders for any programs or services offered by the John Howard Society in Alberta. All of the Society's programs are funded either by government or private agencies.

The ignition interlock program is one of very few correctional initiatives in Alberta that imposes cost recovery user fees on offenders. As of 1997:

Repeat license suspensions for high-risk and impaired drivers are administered by the Alberta Driver Control Board (DCB), which consists of two full-time civil servants and 30 community members appointed by the legislature. To help manage impaired drivers, the DCB began a pilot program involving the ignition interlock device in 1990, with 48

cases considered for use that year. The ignition interlock device is currently required before license reinstatement for drunk drivers under certain circumstances. (Weinrath, 1997, p. 46).

The ignition interlock device forces the driver of the car to pass a breath alcohol test before starting the car and to blow at random intervals after that to keep the vehicle running. Currently, ignition interlock equipment in Alberta is installed and managed by a private firm, Guardian Interlock. The offender is charged an installation fee of \$133.75, followed by a monthly maintenance fee of approximately \$101.65 (p. 47) for Class 5 drivers - other classes of drivers may have to pay a higher fee. As of 2000, Alberta and Quebec are the only Canadian provinces using interlock. (Personal communication with staff member, Alberta Driver Control Board, October 13, 2000.)

In Edmonton, the Prostitution Awareness and Action Foundation of Edmonton administers a prostitution offender program similar to the programs being delivered in British Columbia and Manitoba. As with similar programs, the fee is \$400. The program is administered with the assistance of Edmonton City Police (Hanon, 2001, p. 6).

ISSUES

The issues surrounding correctional user fees have not been widely canvassed in the academic sphere and the scope of the academic writing in this area is rather narrow, focussing more on economic issues than on policy implications. The most commonly discussed issues revolve around implementation issues, such as cost effectiveness and systemic inconsistencies. While these issues contribute to an overall understanding of correctional user fees, they do not address the root problems that lie at the heart of this debate. Following a brief analysis of the more superficial issues surrounding the implementation of correctional user fees, several more fundamental ethical and philosophical issues will be examined.

Implementation Issues

Implementation issues assume that correctional user fees are a *fait accompli* and, as such, they address concerns about the proper implementation of correctional user fees by correctional agencies.

Benefits

Cost recovery.

Given that correctional user fee initiatives aim to generate revenue, much of the debate surrounding user fees focuses on the financial impact of such fees. Cost recovery is the most obvious and attractive feature of correctional user fees and their ability to generate revenue should not be underestimated. Parent (1990) noted that "experience has shown that, with efficient policies and administrative practices, fees can be a substantial cost-effective revenue source" (p. 2). Indeed, in the U.S., it is reported that probation service fees constitute about one-fifth of probation budgets at the county level, and close to 10% of state probation program budgets (Baird, Holien & Bakke, 1986, cited in Wheeler et al., 1989, p. 15). There

is considerable political popularity to the notion of cost recovery because it is seen as making offenders “foot the bill” (Ring, 1989) for services that they created the need for through the crimes they committed.

An example of the potential for revenue generation through correctional user fees is found in the state of Texas with respect to probation supervision fees. In Texas, probation fees account for well over half of that state’s entire probation budget and have become a massive income source for probation departments. As a result of aggressive fee implementation strategies in Texas, services have been expanded, staff levels have increased and collection methods have been refined. Texas’ attention to probation fees is reflected in the very language that is used to describe its programs and collection efforts. In a 1990 report on strategies to improve probation officers’ fee collection rates, the authors (Wheeler & Rudolph) wrote:

In the present study we proposed that an enhanced feedback procedure providing greater and more specific information to probation officers (termed revenue enhancement procedure) would lead to improved performance. (p. 81)

When measuring a probation officer’s success, it is important to note that although absolute dollar amount of supervision fee payments made may increase, this may not represent a corresponding increase in recovery rate or decrease in client delinquency rate. (p. 87)

While it is acknowledged that the above study was specifically about improving collection rates, it would seem that the authors have clearly identified the role of the probation officer as a fee collector and legitimized the measurement of his or her “success” by these terms which, in turn, is reflected in the attention that Texas probation departments pay to their bottom lines. Finn and Parent (1993) noted that:

The most important incentive passed by the Texas Legislature was to allow departments to carry forward into the next fiscal year supervision fees they collect even when their revenue from probation fees and State aid combined is greater than their expenses - that is, they take in more money than they spend. (p. 17-18)

Legislation encouraging probation departments to generate fee revenue in excess of the costs of fee collection was enacted in Texas; fee maximums were increased to ensure that probation departments could recover the costs of fee collection. Further, Texas legislation gives local probation departments broad discretion in the allocation of revenue generated through probation fees (Finn & Parent, 1993, p. 18), creating a strong incentive to generate returns.

Although revenue generation is the reason that is most often cited in support of correctional user fees, the types of services that are covered by user fees tend to be those that are least costly (Morgan, 1995, p. 62). In Canada, it costs approximately \$13,000 (Correctional Service of Canada, 2000) to supervise an offender on parole for a year. For the year ending March 31, 2000, the cost of supervision by a probation officer in Alberta was \$3.29 per person per day, which works out to approximately \$1,200 per person per year. [This figure is the average cost of supervision of individuals on probation or a conditional sentence, awaiting trial or performing alternative measures under the supervision of a probation officer. The figure includes the cost of supervising young offenders in Alberta with the exception of young offenders in Edmonton and Calgary.] (Personal communication with Research

Manager, Research Unit, Correctional Services Division, Alberta Justice, October 10, 2000.) By comparison, it costs anywhere from \$59,661 (for males) to \$113,610 (for females) to incarcerate an individual in a federal institution and over \$39,000 to keep an offender in a provincial institution (Goff, 1999, p. 141). About 80 percent of the cost of corrections is consumed by incarceration, yet only about 25 percent of offenders are handled by incarceration (Sluder, Sapp & Langston, 1994, p. 8). The fact that the state permits the recovery of correctional costs through user fees for its most cost-efficient services indicates that there is a lack of importance that is placed on these services. As stated by Nelson, Segal & Harlow (1984):

Community corrections often seems to bear the brunt of cuts in criminal justice budgets, in part because expenditures for other functions are either mandated or fixed. Its base of public support in the past also has been smaller and less dedicated than those underlying institutional corrections or the judiciary. Those responsible for allocating resources to the various public services often find the probation and parole agency one of few places they can conveniently cut. (p. 7)

While public support for alternative measures has increased significantly in the sixteen years since the above passage was written, the very existence of correctional user fees is evidence that, while public attitudes may have changed, these attitudes are not reflected in the funding that is allocated to community-based corrections.

Expansion of services.

Revenue generated from correctional user fees may be and is often put back into correctional service programming. In Texas, Jefferson County reports that probation fees have enabled probation departments to provide additional services to probationers such as substance abuse and sex offender programs (Finn & Parent, 1993, p. 21). In Canada, the John Howard Society of the Lower Mainland has decided that any surplus generated from tuition fees for their Prostitution Offender Program will go to programs to help prostitutes, although because the program is only a year old, no surplus has been generated yet. This process is similar in other agencies offering prostitution offender programming.

Concerns

Over the past fifteen years or so, there have been several facile arguments against correctional user fees that are canvassed in virtually every discussion of this topic. It is to be borne in mind that none of these issues can discredit the concept of correctional user fees because each may be resolved through careful administration and planning. Nonetheless, they are useful cautionary remarks.

Actual cost effectiveness.

Some argue that the costs of collecting user fees may actually exceed the fees collected. Finn and Parent (1993, p. 18) have asserted that the cost of collecting user fees is more likely to exceed the fees collected if correctional agencies are limited to collecting only a small monthly fee, although it is possible that an increase in fees will result in diminished returns due to defaults (Wheeler et al., 1989, p. 16 and 18; Parent, 1990, p. 7). Each of these arguments is, of course, pure speculation. In a study of the impact of increased fees on revenue generated, Wheeler et al. (1989) found “moderate evidence of diminishing returns” (p. 20). Collection rates decreased as fees increased, but revenue generated increased along with higher fees. Obviously, simple accounting can determine exactly what fee levels and collection efforts will yield the greatest return.

Remedies for default.

In 1989, Ring (p. 47) reported that most states respond to a failure to pay user fees in the same manner as a breach of a condition of probation or parole. Therefore, it is argued that user fees may increase the rate of breach of probation or parole (Baird, Holien, & Bakke, 1986, cited in Wheeler et al., 1989, p. 16). If incarceration is imposed as a sanction for defaulters, then the original goal of decreased costs is not realized since incarceration is more expensive than community-based sanctions. However, several studies have found that incarceration is an unlikely penalty for user fee defaulters:

The use of probation violations as a fee-compliance mechanism has been rare, and prison overcrowding makes judges reluctant to revoke probation even for willful failure to pay. Instead, intermediate punishments, such as short jail stays or several weeks of community service may be imposed. (Abadinsky, 2000, p. 390)

An added counterargument to this issue is the fact that, at least in the United States, probation cannot be revoked because of a genuine inability to pay a correctional fee. In 1983, the Supreme Court in Beardon v. Georgia held that to do so would be a violation the fourteenth amendment, which guarantees equal protection under the law. All available literature on the Beardon case suggests that the ruling applies equally to user fees as to fines and restitution (Abadinsky, 2000, p. 391-392). It would appear in light of the Beardon decision that only those defendants who willfully refused to pay fees would be in danger of revocation or incarceration for breach of such a condition and, as noted above, this would be rare.

Further, Ring (1989) contended that “probationers who refuse to pay fees despite their ability to do so are most often the same individuals who are unable or unwilling to abide by other conditions of probation” (p. 47). Therefore, it is argued that user fee initiatives are not likely to increase payment default rates or, in turn, incarceration rates. While there may be empirical evidence to support Ring’s contention, this is a dangerous argument because it ties poverty to criminality when these are two distinct social problems. The fact that Ring links these two circumstances highlights the serious potential for abuse that exists where correctional user fees are concerned.

Impact of default on client relations.

Another point of contention about correctional user fees is the impact that payment default may have on offenders. With respect to probation fees, some argue that probation fees have a negative impact on probationers; Texas has experienced problems with probationers failing to report to their probation officer if they are behind in their payments (Finn & Parent, 1993, p. 20). However, according to one director of adult probation (cited in Finn & Parent, 1993), "There is a direct correlation between probation compliance and fee payment" (p. 20) and fee payments may be a measure of a client's overall adjustment on supervision. Therefore, a failure to report due to a failure to make fee payments may point to a deeper problem that the probation officer can provide assistance with, resulting in enhanced service to the client.

Additional burden on correctional service providers.

Some argue that the collection of user fees places an added burden on correctional agency staff. For example, probation officers who must collect fees are given the additional responsibility of keeping track of payments, taking time away from more traditional probation duties such as supervision and counselling (Ring, 1989, p. 47). Indeed, in Texas, some probation officers report that fee collection duties often interfere with their other probation duties. As Finn and Parent (1993) pointed out:

Because fees are always the first topic of discussion during an office visit, casework can be addressed only in the remaining time. Probation officers report that if an offender is having difficulty meeting payments, the office visit can be consumed entirely by this one issue. (p. 20)

However, a study conducted by the National Council on Crime and Delinquency (1986) found that probation fee collection rarely occupies more than 2% of probation officers' time (cited in Ring, 1989, p. 47). Further, a study of the effects of probation service fees on probation services in Arizona found that after probation service fees were introduced, probation officer caseloads were reduced (Wilcox, 1985, cited in Wheeler et al., 1989) because probation fees were used to expand probation services and hire additional probation officers (pp. 16-17).

Impact on role of correctional service providers.

The purpose of corrections, particularly community corrections, should be restorative rather than retributive. Early probation officers were simply volunteers from the community who were dedicated to helping offenders become functioning members of society. Goff (1999) described these early officers as "volunteers who simply needed to have 'a good heart'" (p. 140). The role of the probation officer and other correctional service providers as assistants remains today (p. 146). Parent (1990) has noted that the traditional helping role of probation officers may be undermined by fee collection, noting the following glaring example:

The Washington County (Hillsboro, Oregon) Community Corrections Department has a performance based compensation plan for supervisors that links their take-home pay

to how well their units achieve a number of job performance objectives, including levels of fee collection. (p. 19)

Although there is validity to the argument that correctional user fees undermine the helping role of the correctional service provider such as the probation officer, Ring (1989) pointed out that this concern can be addressed by having administrative personnel collect fees (p. 48), although this approach may also bring with it a host of difficulties. As well, Ring's dismissal of this concern is hardly reassuring given the following recent commentary in Federal Probation on the changing role of probation officers:

The fact that offenders tend to view officers more as helpers than as collectors may have some implications for probation practice. It appears that probation officers may have a bias toward the helping role. In order to avoid conflict in the dual role of helper and collector, it is important that this issue be addressed through training and recruiting. Hiring officers with accounting training and experience would provide some specialization in the supervision of offenders. This would make the collection process more effective and efficient. It would also head off possible future conflict between the "helper" versus the "enforcer" role of the probation officer. This is necessary to preserve the professional service delivery aspect of probation work. (Allen & Treger, 1994, p. 39)

Net widening.

It has also been asserted that since revenue generated would be linked directly to the number of clients paying correctional user fees, net-widening is a tangible risk (Ring, 1989, p. 45; Harlow & Nelson, 1982, cited in Wheeler et al., 1989, p. 16). However, a study of the Harris County Adult Probation Department conducted by Wheeler et al. (1989) found that "there was no evidence that the presence of higher fees acted as a stimulus for placing more offenders on probation" (p. 18). Further, Ring (1989, p. 46) speculated that it would be far more likely that community-based sanctions would be regarded as a viable alternative to incarceration; therefore, any net-widening effect would be a positive one in that it would lead to the diversion of some offenders from prison. While this may indeed be the effect, it only creates another form of net widening in that each community-based sanction is expanded to include a fee on top of the sanction.

Priority.

User fees may conflict with clients' other financial obligations (Ring, 1989, p. 44; Baird, Holien, & Bakke, 1986, cited in Wheeler et al., 1989, p. 16). Indeed, many offenders have other financial sanctions such as victim/witness fees, restitution payments and fines. In 1989, Wheeler et al. reported "no significant correlation between probation supervision fee collections and restitution fee collections" (p. 20). Whether this is true for all corrections agencies is not certain, but it is notable that Texas allows probation departments to give priority to supervision fees over other financial obligations ordered by the court (Finn & Parent, 1993, pp. 18-19). Given that Texas probation departments get to keep a certain portion of extra funds generated by probation fees each year, they obviously choose to place priority on probation fees over other financial obligations. As with the previous argument, this concern is possible to remedy but experience has shown that it is not always carefully addressed.

Payment of fees through further criminal activity.

As with any financial sanction, probationers may resort to criminal activities to pay their fees. However, Ring (1989) asserted that "persons who commit crimes to pay their probation fees will be the same individuals who will commit crimes to pay the rent, buy a car, go to the movies, or get a fix" (p. 44). Whether this is true or not, the mere possibility that a person might resort to crime to pay a fee is not a terribly strong reason to do away with correctional user fees unless it is also argued that the plethora of other correctional fees that offenders might have to pay as part of their sanction must also be cancelled due to the threat of committing a crime in order to pay such fees.

Conclusion.

While the above concerns highlight some of the economic and administrative risks associated with correctional user fees, none of them is adequate to entirely refute the user fee concept itself. This is because each concern can be addressed through careful planning. As stated by Ring (1989) concerning probation supervision fees:

On balance, it appears that most of the objections raised against probation fees can be addressed either in the enabling legislation or the actual administration of the fee program. Concerns that individuals might be incarcerated solely for their inability to pay their fees can be resolved with provisions for indigency exclusions and community service alternatives. Fears that probation fees will compete with and sometimes displace restitution payments can be allayed by establishing a formal procedure for determining the order in which various financial obligations shall be satisfied. (Ring, 1989, p. 48)

The above are some of many suggestions that have been made as to how the state can guard against abuses of fee collection programs and, indeed, where correctional user fees are an inevitability, these suggestions should be implemented. Unfortunately, given the complexity and diversity of concerns surrounding this issue, it seems unlikely that any correctional system could be constructed carefully enough to address each concern adequately. Further, the real issue is whether the very concept of correctional user fees is acceptable. The following discussion concerns the deeper philosophical and ethical questions surrounding correctional user fees.

Philosophical Issues

Just as there are two sides to the practical, administrative side of the debate over correctional user fees, there are two sides to the philosophical debate as well.

Benefits

Encouragement of responsibility.

It is interesting to note that the maximum fees of \$25 per week for room and board in Commissioner's Directive No. 860 (cited above) were reduced effective April 1, 2000. Prior to that date, they were \$400 per month but, according to Policy Bulletin No. 86 (Correctional Service of Canada, March 30, 2000), the policy was changed "so that offenders, while still contributing to their maintenance cost, as per our earlier commitments, will be encouraged to save money for their release and to help their families." There is wisdom in this directive from a restorative perspective. An individual who has been incarcerated for a long period of time may have totally lost touch with the outside world and the responsibilities of freedom. Room and board fees may be an effective introduction to the financial realities of free society. In the area of probation, administrators in Texas have asserted that "the regularity of fee payments is a good barometer of a probationer's overall adjustment while on supervision" (Finn & Parent, 1993, p. 20). It is also believed by some probation officials that fees help teach probationers the essentials of budgeting and financial responsibility (Finn & Parent, 1993, p. 20). On the other hand, Parent (1990) reported that "there is no empirical evidence either to confirm or refute a therapeutic effect from fee payment" (p. 2). Further, although correctional user fees are one way that an offender can learn financial responsibility, many other financial obligations such as child support and restitution may be available to achieve this end. On balance, it appears that certain modest fees that genuinely seek to promote responsibility rather than to recover costs or impose punishment may be positive from a policy perspective.

Concerns

Discrimination based on ability to pay.

As reiterated by the Supreme Court in the Beardon case (1983), "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has" (p. 664, citing Griffin v. Illinois). That this is a genuine risk was unwittingly articulated by Finn and Parent (1993) in their discussion of the "success" of the Yakima County, Washington probation department:

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. (p. 21)

The John Howard Society of the Lower Mainland has faced similar criticism over their Prostitution Offender Program. Some consider the \$400 fee too steep or argue that it is just a way for sexual

offenders to pay their way out of the criminal justice system. That Society has responded to these criticisms as follows:

- Although there is no formal waiver system in place, offenders who are not able to pay the tuition would be eligible for a waiver - no person who is truly unable to pay would be refused participation in POP. Further, it is unlikely that a person who can afford to pay for sexual services would not be able to front \$400 for the program. The Executive Director of the John Howard Society of the Lower Mainland indicated that, in the year that POP has been running, the Society has never even received a request for a waiver from an offender.
- The program does not amount to a “get out of jail free card.” It is a legitimate alternative measure and it provides important information to offenders. Indeed, many offenders are surprised to learn about the serious risks associated with buying sex, such as the risk of contracting a sexually transmitted disease. Some offenders have indicated that they did not know that they could pass these diseases on to their wives or girlfriends. (Personal communication with Executive Director, John Howard Society of the Lower Mainland of British Columbia, September 28, 2000)

As mentioned previously, some John Howard Societies have taken the waiver concept a step further and established a minimum standard that no individual will be refused a program on the basis of an inability to pay.

Admittedly, concerns about discrimination based on ability to pay can, to some extent, be allayed through a carefully constructed waiver system. Ring (1989, p. 44) concluded that the real issue is ensuring that individual circumstances and needs are considered. Two common approaches to the problem are, first, to use a means test to determine whether an offender has the ability to pay user fees. Second, if an offender is unable to pay, community service could be imposed as an alternative. Thus, the option to waive correctional user fees must be in place in order to avoid commonly cited problems such as higher probation failure rates, extreme corrections-related financial obligations for offenders and increased collection costs due to efforts to collect payments from offenders who are truly unable to pay (Parent, 1990, p. 10). However, even if every correctional service agency had a perfectly fair and consistent waiver system that applied to diversion, probation, parole and all other criminal justice measures, this still would not address the fundamental difficulty that underlies this particular concern with correctional user fees: they are designed to recover correctional costs. The very fact that there are waivers available for those who are unable to pay points to the fact that correctional user fees are primarily cost recovery and not a form of correction. In order to recover costs, most people must be able to pay the fees, which means that waivers are undesirable, creating the risk that only those who can pay the set fee will be granted that sanction, or will even be given the option of receiving the sanction.

It will be recalled that the John Howard Society of the Lower Mainland has not received any requests for a waiver of the \$400 tuition fee for their prostitution offender program. While it is possible that this is because every sex offender who wishes to be diverted by taking this program has enough money to cover the tuition fee, it is also possible that the reason no one has asked for a waiver is because every potential candidate for the program assumed that, because it was not advertised, no waiver would be available. Those without \$400 may, therefore, have considered that they did not really have the “option” to enroll in the program. While it is arguable that a person who can afford to pay for sex can also afford \$400 for diversion programming, this may not be realistic where a person has paid only \$15 or \$20 for a sex act and who is unemployed, addicted to drugs or alcohol or simply in a desperate state of mind.

A variety of potential problems arise out of the philosophical concern that correctional user fees create discrimination based on ability to pay. First, correctional user fees may result in disproportionate attention being paid to minor but wealthier offenders. Rather than providing anger management, domestic violence, addictions or cognitive learning skills programming for incarcerated offenders who cannot afford to cover programming costs, correctional agencies may choose to focus instead on administering prostitution offender programming to those who have \$400 available for tuition. Second and related to the first potential problem, by shifting the financial responsibility for corrections from the state to the individual offender, correctional user fees may have a negative effect on the overall availability of state funding for correctional services. As well, those programs remaining that are not user funded may suffer diminished quality, effectiveness or legitimacy. Third, correctional user fees may have a negative impact on family members who cover fees for a relative who is an offender in order to ensure that the offender remains in the community or outside of the formal administration of justice. While not all of these potential problems are destined to manifest themselves in a system where correctional user fees exist, the possibility that they may develop must be considered.

To highlight the above concerns and potential problems, we need only look at the over-representation of poor people in North American jails and prisons. Clearly, poverty strips people of their options in the criminal justice system. It is questionable whether correctional use fees are or will be any different from every other option that has historically been unavailable to the poor. This point alone should signal the need to be extremely cautious about policy development in this area.

Offenders are involuntary consumers.

One of the most basic arguments against correctional user fees is that it is unethical to force offenders to pay for the services imposed on them. Indeed, as Parent (1990) pointed out, offenders are 'involuntary consumers': "when the state compels its citizens to partake of a particular service, it is argued, the state should foot the bill" (p. 1).

The imposition of user fees on offenders is reminiscent of the jailer fees and debtors' prison systems of the past. These are the very conditions which were criticized by John Howard in his work The State of the Prisons, which was first published in 1777 (Carlson, 1990). According to Carlson (1990), jail keepers "were unpaid by the Crown and consequently exacted fees from prisoners. The profit margin, unrestrained by accountability and limited in reality, meant indiscriminate committal to these insecure and unruly dwellings of physical and moral corruption" (p. 9). Arguably, user fees appear to be a regression to the historical maltreatment of offenders. Mullaney (1988, cited in Abadinsky, 2000, p. 392) stated:

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

And yet these conditions exist today. We have situations in Canada where a man caught buying sex can, *for a price*, avoid having his charge processed by the courts.

The notion of a criminal as an involuntary consumer may be absurd to some. Indeed, in most cases the client is a convicted offender - he has been found to have broken the law. However, according to restorative models of justice, he is also a wounded human being in need of community support. Just as

the state does not force smokers who contract lung disease to pay for their own health care, neither should the state force people in conflict with the law to pay for their own correction. To place the burden for an offender's care on the offender personally dismisses the community responsibility for crime that lies at the heart of restorative justice. This issue flows smoothly into the final and most critical concerns about correctional user fees.

Impact on the intended role of community corrections.

When they are imposed in the context of community-based sanctions, correctional user fees undermine the intended role of community-based sanctions and correctional service providers. Writing about the history of probation, Abadinsky (2000) noted that early probation was a period of judicial reprieve for custody-bound offenders whose behaviour could possibly be corrected in the community rather than behind bars. A member of the community would, with permission of the court, take an offender into his charge and assist him in getting his life back on track (Abadinsky, 2000, p. 101). In Canada, probation services appear to have developed around 1922 (Goff, 1999, p. 141) and today the role of probation is described as follows:

It allows for large numbers of offenders to be supervised but at the same time remain in the community. As a result, they do not suffer the psychological or physical hardships of incarceration. Just as important, they are able to maintain their employment, family ties, friendship networks, and hopefully remain a productive citizen. Remaining in the community also allows them to more easily meet any specific conditions (e.g., therapy) of their probation order, pay fines and/or make restitution to victims, and to avoid the stigma of imprisonment. (Goff, 1999, p. 141)

Diversion or alternative measures programs as well as probation and parole developed out of an acknowledgement of the inherent value of community-based justice initiatives. Almost thirty years ago, the President's Commission on Law Enforcement and Administration of Justice in the United States recognized that, "for many persons who come to the attention of the criminal justice system, criminal sanctions would be excessive; however, these persons are often in need of treatment or supervision" (Abadinsky, 2000, p. 197). Too often, community-based sanctions are perceived as "getting off" when in fact they are valid sanctions in their own right, designed to meet particular needs of particular types of offenders.

This fundamental misunderstanding about the nature of community-based justice measures is nowhere more clear than in commentary about correctional user fees. Reporting on officer attitudes about supervision fee collection in Alabama, Morgan (1995) showed:

The data indicate that probation and parole officers in Alabama favor fee collection for clients under supervision; 78 percent agreed that imposition of fees places responsibility on the clients to pay their own way and 86 percent agreed that supervision fees are a *small price to pay for conditional freedom* [emphasis added]. (p. 63)

Probation, parole, fines, restitution, and personal assistance programs are not privileges awarded to those who can foot the bill. They are entirely legitimate criminal justice initiatives in their own right, implemented with specific rehabilitative objectives, that exist because they are a more appropriate

sanction for certain types of offenders. This must be borne in mind if the issues surrounding correctional user fees are to be kept in perspective.

Correction is not for sale.

The correctional system aims to reduce crime so that the community can be safer. Because the whole of society is the beneficiary of community safety, the whole of society should be responsible for the cost of ensuring that safety.

This fundamental concern with the imposition of correctional user fees applies not only to supervision fees but also, and to some extent more critically, to program fees. Most often, programming imposed as part of a sanction is treatment programming for non-criminal problems associated with criminal behaviour, such as anger management, substance abuse or sexual addiction problems. Just as it is the community that benefits from a reduction in criminal activity through treatment programming, it should be the community that bears the cost of this programming.

DISCUSSION

Most of the debate over correctional user fees over the past ten years has concerned the American experience. However, the situation in Canada is very different from the United States in that correctional user fees are not nearly as broadly imposed. There still seems to be a prevailing perception in Canada that the state has primary responsibility for corrections, although recent provincial cutbacks to correctional services such as those in Ontario have forced some agencies to impose user fees as a method of cost recovery and, as a result, this perception may change.

As well, most of the debate over correctional user fees has focussed on surface issues concerning economics and fair implementation of fees, while policy-oriented discussion about this topic is sparse. In his early work on probation supervision fees, Ring (1989) commented as follows about those who have a fundamental opposition to correctional user fees:

Persons on both sides of the debate over probation fees advance strong arguments in support of their respective positions. Too often, however, this debate merely reflects basic philosophical and policy considerations over which reasonable persons will always differ. For example, many individuals are convinced that charging fees inevitably undermines probation departments' emphasis upon rehabilitation and assistance. For that reason alone, they will oppose fees even in the face of the most enthusiastic revenue projections or a desperate need for new funds. By the same token, persons who are determined to punish probationers more severely or shift costs to the offender whenever possible are often willing to support even the most ill-conceived fee proposals. In between these two extremes there is ample room for compromise. (p. 48)

By acknowledging and then immediately dismissing basic philosophical difficulty with correctional user fees, Ring ignored both the importance and the impact of this perspective to the area of corrections. Indeed, any "ample room for compromise" necessitates an acceptance of the State's refusal to take responsibility for rehabilitating its own citizens. These core issues must be kept at the forefront of any policy discussions concerning this issue.

CONCLUSION

Mullaney (1988, cited in Abadinsky, 2000), who was most critical of correctional user fees during the period in the late 1980s and early 1990s when these issues were canvassed with some regularity among academics, wrote her conclusions rather resignedly:

Across this country, we are swiftly adopting new sanctions, especially fees and special assessments, that have a dramatic financial impact on those who go through our criminal justice system. Without thoughtful development of policy and practice to guide and limit this movement, we may well repeat history rather than learn from it. (p. 392)

While this is a satisfactory conclusion if the John Howard Society is to accept that user fees are inevitable, it is not satisfactory from a policy standpoint. The Society, as a correctional service agency with a primary focus on the fair treatment of offenders, should not treat this issue with the same resignation as the few academics who have informed the debate over correctional user fees. In particular, the Society should not simply advocate for the fair implementation of correctional user fees. To do so would be to depend on complex administrative structures to protect people from an inherently unethical practice. Rather, the Society should be at the front lines of the battle over correctional user fees, fighting for fully state-sponsored diversion, treatment and reintegration programming.

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