

Sentencing for Dollars: Policy Considerations

In New York, and all across the country, state legislatures are increasing existing fees, fines, and surcharges and creating new ones. Parole and probation supervision fees, surcharges for convictions of violations, misdemeanors, and felonies, incarceration fees, and DNA databank fees are all examples of financial penalties.

The scramble for new and increased sources of revenue is driven by the budget crises faced by state and local governments: financial penalties are used in part to close budget gaps and continue funding of correctional services, including probation. While revenues are needed to support probation and parole departments, financial penalties placed on those who can least afford them are questionable ways to support these vital community corrections services.

Whether the support for these fees comes from legislators wishing to support community corrections, those who are determined to mete out more punishment to show that they are "tough on crime," or those who seek to shift costs to the offender, there are several policy issues to be considered. The financial impact on an individual cannot be ignored. Policy makers who add new fees tend to do so in a vacuum. The impact of each fee is evaluated in isolation rather than being viewed as part of the total burden imposed on a single defendant or his/her family. If the total of all fees, fines, and surcharges is considered, there is a better appreciation for the fact that multiple fees may have unintended consequences. There is a need to develop policy and practice guidelines that will assist in creating a comprehensive plan for the judicious use of fees and promoting public safety.

Fees, Fines, and Surcharges: Collateral Consequences and Reentry

Two emerging concerns should inform policy considerations. First, is a developing awareness of the collateral consequences of criminal convictions. Whether it is the invisible punishment that people who were convicted of crimes experience in employment, housing, public assistance, licensing, voting, or education, we have become increasingly conscious that the consequences of a criminal conviction extend well beyond the service of the sentence. Second, are the difficulties faced by over 600,000 prisoners each year who are reentering their communities in search of a second chance. With these two concerns in mind there should be an examination of how these ever-increasing fines, fees and surcharges will impact on the ability of released prisoners to reenter their communities and live healthy, crime-free, and productive lives.

In a growing number of states, including New York, financial penalties create additional collateral consequences. A person who fails to pay a fine, surcharge, or fee may face subsequent imprisonment. New York's Criminal Procedure Law provides for civil proceedings to collect fines and restitution as well as surcharges and fees. The civil proceedings include the filing of an order which has the same effect as a civil judgment, enforceable in collections proceedings. For those who do not or cannot pay, the taint of a "bad" credit history is thus added to the stigma of a criminal conviction. Bad credit will make it more difficult, if not impossible for people looking to reestablish their lives to get a car loan or borrow money to buy a house. Moreover, employers are increasingly using credit histories as a factor in hiring decisions.

Financial penalties are increasingly used in addition to sentences of incarceration. Prison and jail officials are authorized by law to collect the fees and surcharges imposed at sentencing, by taking money from

inmates' accounts, thereby reducing the funds available to people leaving prison to reenter their communities in a healthy and constructive manner.

Further Questions for Research and Practice

In the coming months, Justice Strategies will provide training and information to defense attorneys so that they can better inform their clients about financial penalties and obligations. In addition, we plan to collect and share information on several key questions so that we can better understand the collateral and reentry consequences of fees and other financial penalties:

- How much money is actually collected by fees and surcharges?
- Do collections practices vary by jurisdiction and how does this affect equal justice?
- What sanctions are imposed for non-payment?
- How does fee collection affect the ultimate goal of public safety?
- Do multiple fees, imposed in isolation, have unintended consequences?

Conclusion

Financial penalties, especially restitution, have a place in a restorative justice system. However, financial penalties should not be used to close budget gaps. Rather, responsible policy analysis should focus on the purpose of the fine, fee, or surcharge. Where appropriate, such penalties should be used judiciously, recognizing the fact that these financial charges disproportionately affect the poor who make up the vast majority of the criminal justice population. The goal should be to strike the proper balance between shifting costs along to offenders when the penalty bears some relationship to the offense, and the need to promote successful reentry with a minimum of unnecessary, harmful, and unintended collateral consequences.