

Supervision Fees

2006 Report to the Legislature

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Introduction

The 1999 Legislature authorized the Department of Corrections (DOC) to collect supervision fees from offenders on probation and supervised release pursuant to M.S. § 241.272. According to this statute, the purpose of this fee is to help offset costs related to correctional services. The 2001 Legislature amended M.S. § 241.272 per DOC request to allow supervision fees collected by DOC contract agents to be kept by the county and the fees collected by state agents deposited to the General Fund. This only has an impact on misdemeanor cases supervised by contract agents (see Appendix B, subdivision 6). This is the fifth report that contains a 12-month cycle of imposing and collecting the fees. Background information is provided as to the development process culminating in the implementation of collecting supervision fees from offenders. This report also provides the following information requested in the statute:

- Types of correctional services for which fees were charged
- Aggregate amount of fees imposed
- Aggregate amount of fees collected

Policy and Procedure

Shortly after the end of the 1999 legislative session, the DOC Director of Field Services appointed a committee to develop and recommend policies and procedures for the implementation of supervision fees. The committee was made up of Field Services supervisors and agents, all of whom had extensive experience in the probation field. The committee met with county probation officers and Community Corrections Act (CCA) staff to draw on their experience. These meetings were extremely helpful and, after extensive discussion, a policy on supervision fees was developed. A complete copy of the policy can be found in Appendix A. The following is a summary of this policy.

- ❑ The purpose of the policy is to guide the collection of fees from adult offenders under the community supervision of the DOC.
- ❑ M.S. § 241.272 (Appendix B) authorizes the DOC to collect supervision fees from offenders.
- ❑ All offenders covered by this policy shall be required to pay an annual fee of \$120. This fee will be assessed per offender and not by separate court case.
- ❑ Probationers will be assessed upon the first visit to their supervising agent, and annually on each subsequent sentencing anniversary date.
- ❑ Offenders released from Minnesota correctional facilities will be assessed upon their release and annually thereafter.
- ❑ Interstate cases will be assessed upon arrival to Minnesota and annually thereafter.
- ❑ Fees will not be prorated with the exception of offenders in their last year of supervision with less than one year to serve until expiration.
- ❑ The offender will have one year to pay the fee but will be strongly encouraged to pay it as soon as possible.
- ❑ Fees will not be collected from offenders with large restitution obligations unless adequate progress has been made toward the payment of restitution.

- ❑ Waivers will only be granted under extreme circumstances.
- ❑ Offenders will not be recommended for early discharge from their probation sentence if they are not current with the payment of supervision fees.
- ❑ Offenders on Intensive Supervised Release and the Challenge Incarceration Program Phase II and Phase III will not be allowed to move to a less restrictive phase if they are not current with the payment of supervision fees.

Waivers and Community Work Service

The collection of supervision fees by the DOC has been in effect for six years, and a lot has been learned. This is especially true in the areas of waivers and community work service. Initially it was believed that very few full waivers would be approved, and that the only reason for a full waiver would be if an offender were physically unable to perform community work service. The possibility of imposing community work service was seen as an encouragement to pay the fee. Imposing and supervising community work service are resource intensive. If an agent doesn't have a program to refer the offender to, the time it takes to set the service up detracts greatly from other duties and becomes a cost-benefit issue. The DOC allows agents to make the decision on whether to impose community work service.

Experience has shown that a significant number of offenders have large amounts of restitution to pay and that the imposition of community work service would take hours away that could be spent working. In addition, there were a number of offenders who were mentally and/or physically unable to work and were receiving some form of public support. Placing this group on community work service was deemed to be inappropriate as their disabilities prohibited them from meaningfully contributing to the program.

Another situation that the fees committee had not anticipated was the under-employed offender earning a low income with family obligations to meet. In these cases, the agent waives both the fee and community work service to avoid undue hardship on the family. The agent is in the best position to determine whether an offender is in a position to pay a fee or to perform community work service. Even with waivers being granted for the reasons stated above, the waiver rate is less than 15 percent.

A waiver is only considered after the fee has been due for at least nine months without any significant progress toward completion of payment (Appendix C). The goal of the fee is not to impose more community work service on offenders, but rather to collect the funds. Fees are commuted to community work service only under extreme or unique circumstances. A rate of \$5 per hour for each hour worked at community work service is applied toward the fee. Therefore, 24 hours of work are required to pay the \$120 fee. The Sentencing to Service (STS) program is considered first when possible, followed by an independent community work service site.

Table 1, on the following page, illustrates the reasons for waiver along with the percentages each waiver reason is to the number of fees imposed. During this past year, 13,501 fees were imposed with 1,929 waived. This is a waiver rate of less than 15 percent.

Table 1: Supervision Fee Waivers by Release Type (N = 13,501)

Waiver Type	CIP	ISR	Probation	Parole/ Supervised Released	Total Number of Waivers	Waiver Rates
Disability / Unemployable	0	3	183	17	203	1.5%
Extenuating Circumstances	0	9	589	35	633	4.7%
Revoked and Committed	5	137	478	133	753	5.6%
Significant Restitution	0	0	71	2	73	.5%
Treatment Costs	0	0	16	2	18	.1%
Under \$25 – No Revenue Recapture	0	5	37	11	53	.4%
Work Service	0	2	188	6	196	1.5%
Total Waivers	5	156	1562	206	1929	14.3%

Revenue Recapture

Field Services actively uses Revenue Recapture. If an offender has not paid within one year of fee imposition, there has been no waiver approval, and STS or community work service has not been assigned in lieu of the fee, the agents have been instructed to file Revenue Recapture (Appendix D). The Department of Revenue has automated their revenue recapture system allowing our offices to register the offender fee on-line. This has helped to expedite the payments received process.

An offender may contest the use of Revenue Recapture and initiate a hearing. At this time, very few hearings have been held and the DOC's right to impose Revenue Recapture for this purpose has been upheld in each instance. A significant number of hearings are not anticipated.

Since July 1, 2004, Revenue Recapture submitted for collection has been \$515,362; a total of \$192,711 has been received through this process.

Outcomes

The types of correctional services for which the fee is charged are:

- Probation
- Parole
- Supervised Release
- Challenge Incarceration Program Phases II and III (CIP)
- Intensive Supervised Release (ISR)

Table 2 illustrates the amount of supervision fees imposed and payments made during Fiscal Years 2004 and 2005. It is important to note that the fees imposed during any given year could be paid in a subsequent year due to the fact that offenders are allowed up to a year to pay the fee.

A significant amount of the fees imposed during one calendar year will be collected during the next calendar year.

When legislation was passed allowing the DOC to collect supervision fees, it was projected that \$720,000 would be collected each fiscal year after the first year of implementation. The initial projections assumed a 50 percent compliance rate with 12,000 adult offenders under active DOC supervision. This past fiscal year's fees were imposed on 13,501 offenders. The 50 percent compliance rate has been exceeded, but the original projection of 12,000 adult offenders did not take into consideration waivers or offenders not under active supervision. It remains difficult to project the compliance rate and number of offenders. If the DOC experiences continue, the compliance rate and overall dollars collected can be expected to increase over time.

Table 2: Supervision Fees Imposed and Collected for Fiscal Years 2004 and 2005

RELEASE TYPE	2004 FEES IMPOSED	2005 FEES IMPOSED
CIP	\$ 20,740	\$ 26,150
ISR	\$ 32,020	\$ 35,055
Parole	\$ 3,860	\$ 3,850
Probation	\$ 1,322,909	\$ 1,430,223
Sup. Release	\$ 77,040	\$ 81,750
Total	\$ 1,456,569	\$ 1,577,028
RELEASE TYPE	2004 FEES COLLECTED	2005 FEES COLLECTED
CIP	\$ 16,920	\$ 16,935
ISR	\$ 10,846	\$ 9,553
Parole	\$ 2,124	\$ 1,850
Probation	\$ 669,664	\$ 719,574
Sup. Release	\$ 34,341	\$ 34,731
Total	\$ 733,895	\$ 782,643
Disbursement 2005		
General Fund \$ 563,286 County \$ 219,357		

Issues

Initially there were a number of issues to overcome regarding the collection of supervision fees. Individual DOC field offices were not equipped to handle funds coming from offenders. The use of money orders to avoid the issues with handling cash became the method of collection. Even though this process is labor-intensive, the offices have integrated the process into their business practice.

Another initial concern was the amount of time that the probation officer spent as a collection agent. This issue was twofold: time spent by agents managing the process, and the philosophical issues related to supervision fees. There is no question that the collection of supervision fees continues to take away from time that could be spent supervising offenders, but this is most likely unavoidable. The DOC will continue to explore ways to limit the probation officer's time spent in the pursuit and collection of supervision fees.

State of Minnesota
Department of Corrections
Office Memorandum
Community Services Division

DATE: December 3, 1999
TO: Field Services Staff
FROM: William R. Guelker, Field Services Director
RE: Supervision Fees

By now you are all aware of the pending policy and procedure on the collection of supervision fees from offenders under our supervision. Attached to this memo is the division directive that is your authority to begin this process. Also attached is a memo form that must be given to offenders to inform them of this policy.

I am keenly aware of the ramifications of this policy. For many years debates have been held on the pros and cons regarding the collection of supervision fees from offenders. The debates have been held, the arguments have been made and the public policy has come forth. It now becomes our job to carry out this policy with the same attention and vigor as other duties related to our jobs.

The success of this policy lies largely with those of you directly involved with offenders. Your approach will impact its success. While the debate is certain to continue, the reality is upon us and we must do everything within our power to abide by this directive and enforce its principles.

During the process of discussing this policy, two questions have come up frequently. First, what is our ability to enforce the payment of these fees? Second, will agents be evaluated on the amount of fees that would be or could be collected? The requirement to pay supervision fees will not be a condition of probation agreements or supervised release agreements. Our authority to collect the fees comes from enabling legislation and does not require nor allow judicial action. As a result, offenders will not be charged with a violation solely on their failure to pay the fee. There will, however be no recommendations for early discharge if the offender is not current on payment of their fees. In the future, we will have a policy that will allow the offender to do community work service in lieu of the fee. If all else fails, we will use the state's revenue recapture law to recoup these fees. On the second question, agents will not be rated or evaluated on the amount of fees collected. This would be grossly unfair and extremely unproductive. However, like any other job duty, everyone involved with the process will be evaluated on his or her performance as it relates to the implementation of the policy.

We have not completed the policy on waivers and the use of community work service. These policies should be in place by March 1, 2000. The imposition of this fee will be in accordance with the attached policy regardless of an offender's situation.

It is never pleasant to announce new duties without additional resources. However, I am confident of your abilities to assimilate this process into your supervision routines. Please keep the supervisors informed of difficulties you encounter as a result of this policy.

Supervision Fees

AUTHORITY: 1998 Minnesota Session Laws: S.F. 2221. Article 4, Section 4

PURPOSE: To collect fees from adult offenders supervised by the Minnesota Department of Corrections Field Services Division that will offset a portion of the costs related to supervision and to ensure compliance with reporting requirements related to collection of supervision fees.

APPLICABILITY: Any non-juvenile, non-work release offender under DOC Field Services supervision.

DIRECTIVE: All offenders shall be required to pay an annual fee of \$120. This fee will be assessed on an annual basis by body, not by separate court case.

DEFINITIONS:

Sentencing date – For the purposes of this memo, sentencing date is the date of the offender's first sentence by which he/she came under our supervision, regardless of whether or not that sentence has expired, if there are other active sentences.

Incoming intra-state cases – Offenders who are supervised by a non-DOC agent and are transferring or who have transferred to the supervision of a DOC agent.

Outgoing intra-state cases – Offenders who are supervised by a DOC agent and are transferring or who have transferred to the supervision of a non-DOC agent.

Revenue Recapture – A legal process by which the DOC can collect fees owed but not paid through the Minnesota Department of Revenue.

Weekly log sheet – A record of all money orders received in an office.

Web site database – A database maintained in central office and accessible through the Internet for the tracking of the collection of supervision fees.

PROCEDURES:

A. Probationers sentenced prior to January 1, 2000 if they are under our supervision:

For offenders whose sentencing date is prior to January 1, 2000, the fee will be assessed on the anniversary of their sentencing date and each subsequent sentencing date every year until they have been discharged or their sentence has expired.

B. Probationers sentenced after January 1, 2000

For offenders who are sentenced after January 1, 2000, the fee will be assessed immediately, that is, upon their first visit to their agent. It will be assessed annually on each subsequent sentencing anniversary date.

C. Persons released from a Minnesota Correctional Facility:

The fee shall be assessed on the date a person is released from the facility and is put under the supervision of Field Services and annually on the anniversary of this date.

D. Incoming Intra-state cases:

The fee on incoming Intra-state cases will be assessed on the anniversary of the sentencing date regardless of whether or not an existing fee is owed to another jurisdiction.

E. Outgoing Intra-state cases:

The initial fee on outgoing intra-state cases shall be assessed immediately on cases sentenced after January 1, 2000 regardless of the duration for which we actually supervise the case; no exceptions will be made.

F. Incoming Interstate cases:

These cases will be charged the same amount as cases originating in our state.

G. Outgoing Interstate cases:

Per Compact rule 4-104, fees may not be assessed on outgoing Interstate cases. If the offender comes under our supervision even for a day, we may impose our \$120 fee for that term of supervision, viz. the time that we supervised the subject prior to he/she being transferred and accepted through Interstate. It is possible that the offender will transfer back to our jurisdiction, hence, the previously imposed fee, in addition to any new fees that may be imposed shall be collected. No prorating of fees will be allowed on Interstate cases.

H. Offenders with less than 1 year of supervision remaining:

For these cases, the fee will be prorated at the rate of \$10 per month. The amount the fee prorated shall not be divided by more than a per month basis, that is, \$10.

I. Revoked case:

If an offender is revoked and committed to prison this information will be entered into the waiver section of the database. No further action is required and fees not paid will not be pursued or submitted for revenue recapture.

J. Collection of fees:

General policy concerning collection:

Collection of these fees is allowed over a year's time. Agents are encouraged to collect the fee upon assessment or as soon as possible.

K. Restitution priority:

Minnesota law says:

“If an offender has been ordered by a court to pay restitution, the offender shall be obligated to pay the restitution ordered before paying the correctional fee. However, if an offender is making reasonable payments to satisfy the restitution obligation, the commissioner may also collect a correctional fee.”

If an offender has a large restitution obligation and it can be shown that the offender will be unable to pay the restitution over the term of his or her supervision, a waiver may be pursued.

L. Community Work Service in lieu of monetary payment:

Community work service is not available to offenders in lieu of this fee at this time. A policy on this issue is forthcoming.

M. Waivers:

Waivers shall never be granted immediately, regardless of the offender's circumstances. A waiver may be granted if at the next annual review the offender is still unable to make the payment and there is a quantifiable valid reason. If a waiver is granted, the waiver form must be filled out, approved by a supervisor and forwarded to the Field Services Director. If the supervisor approves the waiver, an entry must be made in the Department's fees assessment web site. A more specific policy on waivers is forthcoming.

N. Revenue Recapture:

In circumstances where an offender has failed to pay the fee, and a waiver has not been issued, the appropriate revenue recapture documents shall be filed with the Minnesota Department of Revenue at the end of each year or at the end of the supervision period.

O. Consideration for discharge:

Offenders who are not current on their supervision fees and who have not received a waiver will not be considered for early discharge from probation.

P. Payment Process:

Payment shall be made directly to the agent or support staff in all offices. No cash or personal checks will be accepted under any circumstances; only money orders or cashier's checks made out to the **Minnesota Department of Corrections** will be accepted. Upon receipt of the payment, the payment will be logged on a weekly log sheet (this form will be provided) and a copy of the money order or cashier's check shall be placed in the offender's file(s). In addition to this handwritten log, the appropriate payment entry will be made on the Department of Corrections fees assessment web site. Instructions on how to use this site will be provided at a later date. When the week has passed, all of the money has been logged on the log sheet and the duplicate entry has been made on the web site, the payments, along with a copy of the week's log sheet will be sent to Finance in central office. When the payments reach Finance, an entry will be made into the web site acknowledging the receipt of the payment.

Q. Data collection:

Minnesota law requires that an annual report be submitted to the legislature about our fees. The web site database contains all of the data elements necessary to produce this report. Consequently, it is very important that the data on the web site be kept current and accurate to ensure our compliance with the law. In the event that Internet access is unavailable this information will be kept on the "manual data collection form" and entered into the Internet database at a later time.

Forms forthcoming:

Manual data collection form
Waiver
Receipt
Ledger/log

M. S. § 241.272

241.272 Fee collection.

Subdivision 1. **Definition.** (a) As used in this section, the following terms have the meanings given them:

(b) "Correctional fees" include fees for the following correctional services:

- (1) community service work placement and supervision;
- (2) restitution collection;
- (3) supervision;
- (4) court-ordered investigations; or
- (5) any other service provided by a probation officer or parole agency for offenders supervised by the commissioner of corrections.

(c) "Probation" has the meaning given in section 609.02, subdivision 15.

(d) "Supervised release" has the meaning given in section 244.01, subdivision 7.

Subd. 2. **Correctional fees established.** To defray costs associated with correctional services, the commissioner of corrections may establish a schedule of correctional fees to charge persons convicted of a crime and supervised by the commissioner. The correctional fees on the schedule must be reasonably related to offenders' abilities to pay and the actual cost of correctional services.

Subd. 3. **Fee collection.** (a) The commissioner of corrections may impose and collect fees from individuals on probation and supervised release at any time while the offender is under sentence or after the sentence has been discharged.

(b) The commissioner may use any available civil means of debt collection in collecting a correctional fee.

Subd. 4. **Exemption from fee.** The commissioner of corrections may waive payment of the fee if the commissioner determines that the offender does not have the ability to pay the fee, the prospects for payment are poor, or there are extenuating circumstances justifying waiver of the fee. Instead of waiving the fee, the commissioner may require the offender to perform community work service as a means of paying the fee.

Subd. 5. **Restitution payment priority.** If an offender has been ordered by a court to pay restitution, the offender shall be obligated to pay the restitution ordered before paying the correctional fee. However, if the offender is making reasonable payments to satisfy the restitution obligation, the commissioner may also collect a correctional fee.

Subd. 6. **Use of fees.** Excluding correctional fees collected from offenders supervised by department agents under the authority of section 244.19, subdivision 1, paragraph (a), clause (3), all correctional fees collected under this section go to the general fund. Fees collected by agents under the authority of section 244.19 subdivision 1, paragraph (a), clause (3), shall go to the county treasurer in the county where supervision is provided. These fees may only be used in accordance with section 244.18, subdivision 6.

Subd. 7. **Annual report.** Beginning January 15, 2001, the commissioner shall submit an annual report on the implementation of this section to the chairs and ranking minority members of the senate and house committees and divisions with jurisdiction over criminal justice funding and policy. At a minimum, the report shall include information on the types of correctional services for which fees were imposed, the aggregate amount of fees imposed, and the amount of fees collected.

Subd. 8. **Sex offender treatment fee.** The commissioner of corrections may authorize sex offender treatment providers to charge and collect treatment co-pays from all offenders in their treatment program. The amount of treatment co-pay assessed to each offender is based upon a fee schedule approved by the commissioner. Fees collected under this authority are used by the treatment provider to fund the cost of treatment.

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June 1, 2000

Re: Revenue Recapture

Dear _____ :

On _____, you were convicted of the offense of _____ and placed on probation for a period of _____. In accordance with Minnesota Statutes 244.18 and 609.102, a probation supervision fee was subsequently imposed.

This letter shall serve as notification that your balance of supervision fees owed as of _____ has been submitted to the state of Minnesota Revenue Recapture Program. As such, we are requesting the state of Minnesota forward any refunds to which you are entitled to the Minnesota Department of Corrections. These include, but are not limited to:

- ✓ Individual income tax refunds
- ✓ Individual property tax credits or refunds
- ✓ Lottery winnings over \$600
- ✓ Political campaign refunds

If you wish to contest this claim, you must notify this office **in writing** within 45 days of this mailing. A hearing will then be initiated.

Sincerely,

State of Minnesota
Department of Corrections
Office Memorandum
Field Services

DATE: June 1, 2000

TO: Minnesota Department of Revenue, Revenue Recapture Unit

From:

RE: Revenue Recapture Act Certification

Agency name

Agency MN ID Number

Contact person

Name

Telephone number

Number of claims submitted

**Minnesota Department of Revenue
Revenue Recapture Program
Decertification/Modification Request**

Date: _____

**To: Revenue Recapture Unit
Minnesota Department of Revenue
Mail Station 4210
St. Paul, MN 55146-4210**

From:
Minnesota Department of Corrections

**Agency
Agency ID#
Contact person
Telephone number**

Regarding: (Check appropriate line)

- _____ Decertification
- _____ Modification

Fill in amounts:

- _____ Amount previously claimed
- _____ Change to claim (+ or -)
- _____ New balance of claim

Date claim was submitted (mm/yy) _____

For:

Last name, first name, middle initial

Social Security Number

**Minnesota Department of Revenue
Revenue Recapture Act Certification
Form ARAC-150**

Individual being certified:

Certifying Agency:

Minnesota Department of Corrections

Social Security Number

Agency MN ID number (by office):

Last name

Address:

First name

Middle initial

Agency contact person:

Last known address:

Agency telephone number:

Amount of liability

Agency account number (optional):

Date of debt:

Is debt for criminal restitution?

Yes No
