

## **SJ 3: Study the Board of Pardons and Parole**

### *Background Paper: Supervision Fees and Administrative/Programming Costs Charged to Parolees*

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for the Law and Justice Interim Committee  
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#### Background and Purpose

As part of its study of the Montana Board of Pardons and Parole (Board), the Law and Justice Interim Committee requested more information about supervision fees and other costs of programming or treatment that paroled offenders are required to pay. In most states, offenders are or can be required to pay certain costs that are incurred throughout the criminal justice process. In Montana, the state's correctional and sentencing policy is set out in statute and requires that sentences include restitution if the offender is able to pay. The policy also requires the sentence to include costs of trial and counsel and, for sex offenders, the cost of treatment.<sup>1</sup>

Although this policy outlines the general direction that Montana legislators and corrections officials should take with regards to financial obligations for offenders, other sections of law provide more specific financial requirements for offenders. In fact, no one section of Montana law compiles all of the financial obligations that can be imposed from trial to parole on an offender. Statutes imposing restitution, fines, fees, or other costs or granting authority for a state or local jurisdiction to collect fees are scattered around at least three MCA titles and many sections.

Montana is not alone in this area. A study conducted by the Brennan Center for Justice of 15 states with the highest prison populations found it was common for those states to have criminal justice financial obligations located in a wide variety of statutes. It also noted that none of the 15 states had a statewide process to track costs or collection of the costs from offenders, making it difficult to determine how much an offender might face upon release and affecting the success of agencies in recovering the assessed fines and fees.<sup>2</sup>

Research published by the Council of State Governments (CSG) reiterated this point and found that the offender is rarely responsible to a single agency or authority for

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<sup>1</sup>Section 46-18-101(2)(h), MCA.

<sup>2</sup>Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, "Criminal Justice Debt: A Barrier to Reentry," *Brennan Center for Justice at New York University School of Law*, Oct. 2010, p. 10 & 13, available from: <https://www.brennancenter.org/publication/criminal-justice-debt-barrier-reentry>, last accessed March 7, 2014.

payment of various financial obligations.<sup>3</sup> Highlighting the complexity of this issue, the CSG research accompanies a detailed guide and several recommendations for state policymakers about how to structure a comprehensive study to determine what laws impose financial obligations on offenders, prioritize collection of the financial obligations given many competing interests, and increase collection rates while maintaining the success of offenders who are reentering the community.

As a result of the broad scope of the topic, this paper is not an accounting of all the financial obligations an offender in Montana might face during the journey from trial to incarceration to the end of state supervision. Instead, it is an introduction to the subject and focuses only on those fees or costs related to parole and parole supervision.<sup>4</sup>

### Financial Obligations of Offenders in Montana

A person charged with and convicted of a misdemeanor or felony crime in Montana might incur financial obligations in several ways, including (but not limited to) paying for the cost of legal counsel or court costs, fines, restitution to victims, and other fees or costs assigned by statute or a local or state authority. Some financial obligations are spelled out specifically in statute, while others are left up to the discretion of a court to assign. Many statutes that assign financial obligations either include a method for the judge or other authority to reduce or waive the cost if the offender is unable to pay or require the judge to determine if the offender can afford to pay before assigning a cost.

Several statutes also give justices' courts and city courts the right to contract with a private person or entity to collect legal judgments along with a "reasonable fee" for collecting the payment.<sup>5</sup>

Fees, fines, and other financial obligations that an offender might face include:

- the cost of legal counsel provided by the Office of the State Public Defender, if imposed by a judge (46-8-113, MCA);
- the costs of a legal action, including expenses of taking depositions, creating and filing various papers and transcripts required in court proceedings, jury service, and costs of pretrial, probation, or community service supervision (46-18-232, MCA);
- restitution (46-18-241, MCA);
- the "total cost or a reasonable portion" of the costs of participating in a mental health court or drug court (46-1-1112 and 46-1-1212, MCA);

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<sup>3</sup>Rachel L. McLean and Michael D. Thompson, "Repaying Debts," *Council of State Governments Justice Center*, Oct. 2007, p. 8, available from: <http://csgjusticecenter.org/reentry/publications/repaying-debts-summary/>, last accessed March 7, 2014.

<sup>4</sup> While a study to compile all financial responsibilities that can be imposed in Montana on an offender is outside the scope of the SJ 3 study, which focuses on parole, it could be undertaken as a committee issue or as a stand-alone study requested by the Legislature.

<sup>5</sup>Sections 3-10-601(4) and 46-17-303, MCA, are examples.

- \$50 for a presentence investigation, which the Department of Corrections (DOC) may retain and use for contracts for day reporting programs as an alternative sanction or sentencing option (46-18-111, MCA);
- if required to participate in a restorative justice program, a fee of up to \$150 for program expenses (46-18-201(4)(p), MCA);
- a charge upon conviction of \$15 for a misdemeanor conviction, at least \$20 for a felony, and an additional \$50 for certain misdemeanors, including certain DUIs (46-18-236, MCA);
- the cost of providing a DNA sample if a sample is required (44-6-103, MCA);
- charges for room, board, and/or services provided by a community corrections facility, including a prerelease center (53-1-501, MCA); and
- "reasonable rates" established and charged by DOC for room, board, and ancillary services provided to an offender incarcerated in a correctional facility (53-1-502, MCA).

### Financial Obligations Related to Parole

In addition to the general financial obligations listed above, a person who is on parole in Montana may be required to pay other fees or costs.

#### *Supervision Fees*<sup>6</sup>

Offenders who are supervised by DOC while on probation, parole, or as part of a commitment to DOC are required to pay supervisory fees to DOC. Statute establishes a range of \$120 to \$360 a year or no less than \$10 a month. Currently, the fee is set by DOC at \$21 a month (\$252 a year). Proceeds are mainly used for probation and parole office rent and can be used for training and equipment cost as well.<sup>7</sup> DOC last adjusted the rate in 2007 after reviewing rates charged in other states and determining what might be reasonable for an offender to pay in addition to other fines, fees, and costs.<sup>8</sup>

Specialized supervision while on probation or parole might require additional fees. For example, offenders in the Intensive Supervision Program (ISP) pay \$25 a month (\$300 a year). An offender supervised in the ISP who is subject to GPS monitoring must also pay the \$3.94 a day cost for the monitoring.<sup>9</sup> The fee is capped by statute at \$4,000,

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<sup>6</sup>Section 46-23-1031, MCA.

<sup>7</sup>"Probation and Parole," *Montana Department of Corrections*, available from <http://www.cor.mt.gov/Facts/pandp.mcp.x>, last accessed March 18, 2014.

<sup>8</sup>Correspondence with DOC staff.

<sup>9</sup>Correspondence with DOC staff.

and the specific amount is to be set by DOC in administrative rule. A person subject to home arrest may also be required to pay supervisory fees.<sup>10</sup>

The district court, DOC, or Board may reduce, waive, or suspend a supervisory fee if the authority finds that the fee causes the person financial hardship.

These supervisory fees account for about 2% of the Adult Community Corrections Division's biennial budget, or about \$3 million for the 2015 biennium.<sup>11</sup> In FY 2011, DOC collected slightly more than \$816,000 from supervisory fees; in FY 2012, DOC collected slightly less than \$727,000.<sup>12</sup>

### *Restitution*

State law requires an offender to pay a set amount to defray the costs incurred by DOC to collect restitution. That amount is 10% of the total restitution ordered and must be at least \$5. A division of DOC is responsible for collecting restitution and costs from felony offenders and disbursing the restitution to the recipients. From FY 2004 to FY 2013, DOC collected and disbursed \$25 million in restitution, an average of about \$2.5 million per fiscal year. During that same time period, DOC received more than \$2.8 million in collection costs.<sup>13</sup>

The court is responsible for collecting restitution and payment from misdemeanor offenders, but may it order a restitution officer or other person to supervise payment of restitution.

### *Prerelease Center Costs*<sup>14</sup>

Prerelease centers charge residents and participants fees for room, board, and other services. Section 53-1-501, MCA, requires DOC to use administrative rules to set the rates and charges. It also requires that these charges be subject to the resident's ability to pay. Each resident must pay at least \$7 a day. Currently, most residents who are employed full time pay \$14. If a resident is enrolled in a full-time vocational, educational, or treatment program, the payment can be waived while the person is attending that program. A person who is enrolled part time in one of those programs is still subject to the \$7-a-day rate. A resident with special needs that affect the resident's

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<sup>10</sup>Section 46-18-1003, MCA.

<sup>11</sup>"2013 Session Fiscal Report, *Legislative Fiscal Division*, June 2013, p. D-82, available from: <http://leg.mt.gov/content/Publications/fiscal/FR-2015/Section%20D/6401-02.pdf>, last accessed March 18, 2014.

<sup>12</sup> 2013 Rainbow Book, p. 6.

<sup>13</sup>"Restitution Information," *Montana Department of Corrections*, available from: <http://cor.mt.gov/Resources/Restitution.mcp>, last accessed March 18, 2014.

<sup>14</sup> Title 20, Subchapter 2, Administrative Rules of Montana, available from: <http://mtrules.org/gateway/Subchapterhome.asp?scn=20%2E7.2>, and correspondence with Board staff.

ability to pay can also obtain a waiver. A \$4 fee is charged to offenders who check in periodically with the staff at a prerelease center as part of the DOC's Transition Living Program.

The funds are retained by the private, nonprofit organizations that contract with DOC to operate the prerelease centers.<sup>15</sup>

See the table starting on page 6 for a complete breakdown of charges.

#### *Treatment Costs*<sup>16</sup>

Several treatment programs operated by private, nonprofit organizations that contract with DOC to provide services also charge offenders fees. Connections Corrections in Butte and Warm Springs provides chemical dependency treatment to male offenders. Offenders in those programs pay \$7 a day for the program. The same rate applies to female offenders who receive treatment through Passages Alcohol and Drug Treatment, which operates in Billings. The funds are retained by the nonprofit organizations.

See the table starting on page 7 for a complete breakdown of charges.

#### *Other Costs*

DOC also coordinates the movement of offenders on community supervision between states. If an offender is allowed to transfer supervision to another state, that person pays a \$50 application fee, as required by section 46-23-1031, MCA. DOC has collected more than \$49,000 over the past two years from this fee.<sup>17</sup>

Section 46-23-1022, MCA, allows DOC to provide various services to assist parolees. The agency may also purchase services for parolees if the services aren't otherwise available and if the parolee cannot pay for them. Costs for these services may be assessed by DOC to the parolee in line with the parolee's ability to pay. Those services include:

- employment counseling, job placement, and assistance in residential placement;
- family and individual counseling and treatment placement;
- financial counseling;
- vocational and education counseling and placement; and
- referrals to other state or local agencies.

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<sup>15</sup> Correspondence with DOC staff.

<sup>16</sup> Correspondence with DOC staff.

<sup>17</sup> 2013 Rainbow Book, *Montana Department of Corrections*, Jan. 2013, p. 12, available from: <http://www.cor.mt.gov/content/Commcor/2013RainbowBook.pdf>, last accessed March 20, 2014. [cited as 2013 Rainbow Book]

**Appendix A: Adult Community Corrections Facility or Program Costs**

| <b>Facility/Programs</b>               | <b>Cost Per Day to DOC</b>                        | <b>Fees Charged to Offenders</b>               | <b>Who Receives the Fee?</b>   |
|--|---|--|--|
| Probation/Parole Supervision           | \$4.62  | \$21 a month                                   | DOC  |
| Intensive Supervision                  | \$9.75  | \$25 a month                                   | DOC  |
| GPS electronic monitoring              | Varies  | \$3.94 a day (but no more than \$4,000 a year) | The contractor providing the monitoring receives the fee. The fee is credited to DOC and DOC pays the contractor the difference between the fee charged and the cost of the service. |
| <b>Prerelease Centers<sup>18</sup></b> | <b>FY 2014<br/>Daily Rate to DOC<sup>19</sup></b> | <b>Fees Charged to Offenders</b>               | <b>Who Receives the Fee?</b>   |
| Butte PRC                              | \$49.97 - males<br>\$58.68 - females              | \$7 - \$14 a day                               | Community, Counseling, and Correctional Services, Inc. (CCCS)  |
| Bozeman PRC                            | \$68.21 - males                                   | \$7 - \$14 a day                               | Gallatin County Reentry Program  |

<sup>18</sup> All prerelease centers are operated by nonprofit Montana corporations that contract with DOC.

<sup>19</sup> These amounts do not include outside administrative costs or medical care. They also do not reflect fees that may be charged under contract by the prerelease for special beds provided to DOC, such as aftercare for WATCH or Boot Camp.

|   |   |                                  |  |
|---|---|----------------------------------|--|
| Great Falls PRC                             | \$49.19 - males<br>\$58.47 - females              | \$7 - \$14 a day                 | Great Falls Pre-Release<br>Services, Inc.                          |
| Missoula PRC                                | \$60.80 - males<br>\$78.00 - females              | \$7 - \$14 a day                 | Missoula Correctional<br>Services, Inc.                            |
| Billings PRC (Alpha House)                  | \$49.19 - males                                   | \$7 - \$14 a day                 | Alternatives, Inc.   |
| Helena PRC                                  | \$61.07 - males                                   | \$7 - \$14 a day                 | Boyd Andrew Community<br>Services                                  |
| Passages PRC (Billings)                     | \$73.07 - females                                 | \$7 - \$14 a day                 | Alternatives, Inc.   |
| Transitional Living Program                 | \$21.00 - both                                    | \$4 a day                        | All prerelease centers   |
| <b>Treatment Programs</b>                   | <b>FY 2014<br/>Daily Rate to DOC<sup>20</sup></b> | <b>Fees Charged to Offenders</b> | <b>Who Receives the Fee?</b>                                       |
| CCP West (chemical<br>dependency treatment) | \$69.40   | \$7 a day                        | CCCS   |
| CCP East (chemical<br>dependency treatment) | \$81.09   | \$7 a day                        | CCCS   |
| Nexus (meth treatment)                      | \$121.43  | No charge                        | Not applicable -- operated by<br>CCCS                              |
| Elkhorn (meth treatment)                    | \$128.78  | No charge                        | Not applicable -- operated by<br>Boyd Andrew Community<br>Services |

<sup>20</sup> These amounts do not include outside administrative costs or medical care.

|   |   |                                  |  |
|---|---|----------------------------------|--|
| Passages Alcohol & Drug Treatment                       | \$73.92   | \$7 a day                        | Alternatives, Inc.                               |
| WATCH West  | \$60.04   | No charge                        | Not applicable -- operated by CCCS               |
| WATCH East  | \$98.14   | No charge                        | Not applicable -- operated by CCCS               |
| Treasure State Correctional Training Center (Boot Camp) | \$105.42  | No charge                        | Not applicable -- operated by DOC                |
| <b>Other</b>  | <b>FY 2014<br/>Daily Rate to DOC<sup>21</sup></b>                       | <b>Fees Charged to Offenders</b> | <b>Who Receives the Fee?</b>                     |
| Missoula Assessment & Sanction Center (MASC)            | \$80.58   | No charge                        | Not applicable -- operated by DOC                |
| START (Anaconda)  | \$97.90 for the first 118 beds and \$75.48 for up to 20 additional beds | No charge                        | Not applicable -- operated by CCCS               |
| Passages ASRC (Billings)                                | \$73.92   | No charge                        | Not applicable -- operated by Alternatives, Inc. |

Sources: Adult Community Corrections Division 2013 Report to the Legislature (Rainbow Book), <http://www.cor.mt.gov/content/Commcor/2013RainbowBook.pdf>, contract information on file with DOC at <http://www.cor.mt.gov/Resources/Contracts/default.mcp.x>, and information provided by DOC staff. CI0124 4105rwma.

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<sup>21</sup> These amounts do not include outside administrative costs or medical care.