



NADCP

National Association of
Drug Court Professionals

James Eberspacher
Division Director
National Center for
DWI Courts

Carol Venditto
NADCP/NDCI Sr.
Consultant

©NADCP, 2022

The following presentation may not be copied in whole or in part without the written permission of the author of the National Association of Drug Court Professionals. Written permission will generally be given upon request.

NADCP RISE22 CONFERENCE

JULY 27, 2022

SESSION CS-47

CARRYING THE WEIGHT: THE IMPACT OF FINES & FEES ON PARTICIPANTS

From two separate articles found in local newspapers in different parts of the country touting the program.

Feel Good Stories

“... (the drug court program) is almost entirely funded by its typically impoverished participants with the help from Community Corrections, which likewise is almost entirely funded by fees from typically impoverished probationers.”

“If program user fees aren’t collected,” the judge told the finance committee, there is no money for even office supplies.’ The judge noted that the court levies requirements on participants to include payment of program user fees. The program user fee is \$25 a month for the duration the individual’s participation in the Drug Court program, which takes two years to complete successfully.”

An additional article from a prominent city touting the program.

Feel Good Stories

“Participants who are unable to meet payments are put on notice but given leniency if they have been laid off or are suffering other financial hardships.”

“The program costs an estimated \$550 a month.”

“At any given time, there are 300 people in the program, which lasts three to five years...”

That equates to \$19,800-\$33,000 in costs for a successful graduate to complete the program.

Just the Opposite

*Treatment courts are often targeted by
opponents for the perceived or real
attempt to support the system on the
backs of participants*

Presentation Summary

- ❖ **What Research/Policy Analysis Tells Us About Fines & Fees in the Criminal Justice System**
- ❖ **Research on the Impact of Fines & Fees on Participants in Treatment Courts**
- ❖ **Applying the Adult DC Best Practice Standards**
- ❖ **Strategies to Reduce the Negative Impact on Participant Outcomes**

SOURCES:

A. SCOTUS: 2019
Timbs v. Indiana

B. US Council of
Economic
Advisors Issue
Brief: Fines,
Fees, and Bail.
2015

What Does Research/Policy Analysis on CJ Fines/Fees Tell Us?

- A. *“Held:* The Eighth Amendment’s Due Process Clause is an incorporated protection applicable to the States under the Fourteenth Amendment’s Due Process Clause.”
- B. Fines and fees are typically assessed without considering a defendant’s ability to pay; they place a disproportionate burden on poor individuals, and they serve as a regressive form of punishment.

SOURCES:

ABA (2018) Ten
Guidelines on Court
Fines and Fees

What Does Research/Policy Analysis on CJ Fines/Fees Tell Us?

“Fees imposed should never be greater than an individual’s ability to pay...”. “No law or rule should limit or prohibit a judge’s ability to waive or reduce any fee, and a full waiver of fees should be readily accessible to people for whom payment would cause a substantial hardship.”

SOURCES:

Paying on Probation.
Criminal Justice
Policy Program.
Harvard Law School.
2020

The Impact of Court Debt

Some people who owe financial sanctions “remain trapped in the criminal legal system, and are exposed to greater debt, harsh punishments, longer involvement in the system, financial tumult, barriers to obtaining wealth and stability, and the near-constant threat of incarceration.”

SOURCES:

- A. The Steep Costs of Criminal Justice Fees and Fines. Brennan Center for Justice at NY University School of Law (2019)
- B. Turunen & Hiilamo. (2014). Health Effects of Indebtedness: a systematic review

The Impact of Court Debt

- A. Resources devoted to collecting and enforcing fees and fines could be better spend on efforts that actually improve public safety.
- B. Indebtedness has serious effects on health.

Drug Court Research

A Promising Practice: Participants are required to pay court fees. This research found:

- “Programs that required court fees had 208% higher cost savings than programs that did not.” (Cost savings refer to outcome costs)
- “Court fees are one way that Drug Court programs create an institutionalized, sustainable source of program funding.”
- “These fees must be proportional to a participant’s ability to pay and should not create a barrier to success or a disincentive to participate in the program.”

ACTIVITY

What's required of your participants?

- Write down all of the fines and fees required of your participants: court costs/fines, program fees, supervision fees, UA testing fees, technology fees, treatment costs...
- What does that equate to as a monthly responsibility?

ACTIVITY

Report Out

The Impact of Fines and Fees

Program Sustainability

- How much revenue is the program making from fees?
- Is it a reliable way to sustain your program?

Accountability and Responsibility

- What financial expectations do we have of our participants outside of fines and fees?
- What do we hope for our participants?
- How do fines and fees support program and participant goals?

Ho, Carey, &
Malsch.
(2018).

Racial and
Gender
Disparities in
Treatment
Courts: Do
They Exist
and Is There
Anything We
Can Do to
Change
Them?

*Journal for
Advancing
Justice (Vol. I)*

Drug Court Research

(Ho, 2018)

This research sought to answer the following questions:

- 1) Are there disparities in who gets into treatment courts?
- 2) Are there disparities in treatment court graduation rates across different demographic characteristics?
- 3) What treatment court practices are associated with reduced disparities in graduation rates between demographic groups?

Ho, Carey, &
Malsch.
(2018).

Racial and
Gender
Disparities in
Treatment
Courts: Do
They Exist
and Is There
Anything We
Can Do to
Change
Them?

*Journal for
Advancing
Justice* (Vol. I)

Drug Court Research

(Ho, 2018) continued

As to Question #2: This research found that two practices were related to greater disparities.

1) In order to graduate, participants must have a job or be in school.

Increase in Disparity: 88%

2) Participants are required to pay court fees.

Increase in Disparity: 197%

Standard IV: Incentives, Sanctions & Therapeutic Adjustments

I. Phase Promotion: “Phase promotion is predicated on the achievement of **realistic** and defined behavioral objectives...”

J. Jail Sanctions: “Drug Courts are significantly more effective and cost-effective when they **use jail sanctions sparingly.**”

Standard IV: Incentives, Sanctions & Therapeutic Adjustments

K. Termination: “Participants may be terminated from the Drug Court if they pose an immediate risk to public safety, are unwilling or unable to engage in treatment, or are too impaired to benefit from the treatments available in their community. **If none of these conditions are met**, then in most cases the most effective course of action will be to adjust a nonresponsive participant’s treatment or supervision requirements or apply escalating sanctions.”

Standard VI: Complementary Treatment & Social Services

B. Sequence and Timing

Responsivity Needs

First Phase(s):

Focus primarily on resolving conditions likely to interfere with retention or compliance in treatment

Such as: Severe mental illness, homelessness, withdrawal, cravings

Criminogenic Needs

Middle Phases:

Focus on resolving needs that increase the likelihood of criminal recidivism and substance use.

Such as: Impulsivity, family conflict, and delinquent peer affiliations

Maintenance Needs

Later Phases:

Focus on addressing needs that are likely to undermine the maintenance of treatment gains

Such as: Vocational or educational counseling, job training

State Guidelines on Fines/Fees in Treatment Courts

CO Problem Solving Courts Best Practices Manual:

1.7: “...but no one who is otherwise eligible shall be denied participation in the treatment court solely because of inability to pay. Subsidies and payment plans will be used to facilitate participation.”

PA Supreme Court Accreditation Program: (Adult/DUI)

Attachment #4: 7.3: “The court ensures that no one is denied participation in drug courts solely because of an inability to pay fees, fines, or restitution.”

State Guidelines on Fines/Fees in Treatment Courts

NC Minimum Standards for Drug Treatment Courts:

9.8(2): “No program fees shall be charged by Drug Treatment Courts to participants.”

MO Treatment Court Standards:

6-16: “All programs shall have a policy for indigent participants.”

“Participants shall not be prevented from entering a program, progressing in a program or commencement from a program due to their inability to pay treatment court fees.”

“Participants shall not be subject to jail sanctions for inability to pay fees.”

Treatment Court Specific Guidelines

Payment Alternatives

- Reduction of fees as an incentive for positive behavior
- Community Service in lieu of fees/fines
- Participant payments directly to a treatment provider agency can be deducted from any court fine/fee balance
- Provide credit towards fines/fees through participation in other court-approved instructional, educational or developmental programs.
- Treatment Court judge has the authority to waive/cancel/reduce fines/fees

Sources:
Statewide
Problem-
Solving Court
Publications
(Standards,
Guidelines,
Manuals, and
Court Rules)
found on
State
Judiciary
websites.

A List of Actions To Consider

- Advocate for changes to fee/fine requirements based on statute.
- Reduce reliance on participant payments to fund program operations.
- Institute “Ability-to-Pay Determinations”.
- Allow flexible payment plans or create other mechanisms to pay off debts.

A List of Actions To Consider

- Prohibit warrants and jail time for unpaid fees.
- Adopt practices that can help minimize failures to pay or appear in court.
- Collect & analyze data related to outcomes (retention, rates of graduation, and recidivism) based on demographics & financial factors (fees/fines imposed, payments made, and participant ability to pay factors).



NADCP

**National Association of
Drug Court Professionals**

RESOURCES

National Task Force on Fines, Fees, and Bail
Practices Resource Center

National Center for State Courts: [ncsc.org](https://www.ncsc.org)

©NADCP, 2022

The following presentation may not be copied in whole or in part without the written permission of the author of the National Association of Drug Court Professionals. Written permission will generally be given upon request.