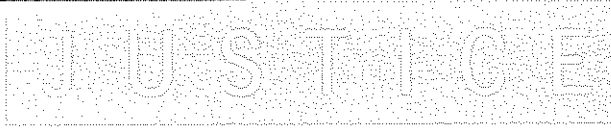


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Structured Fines

Day Fines as Fair and
Collectable Punishment
in American Courts

Structured Fines

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Collectable Punishment
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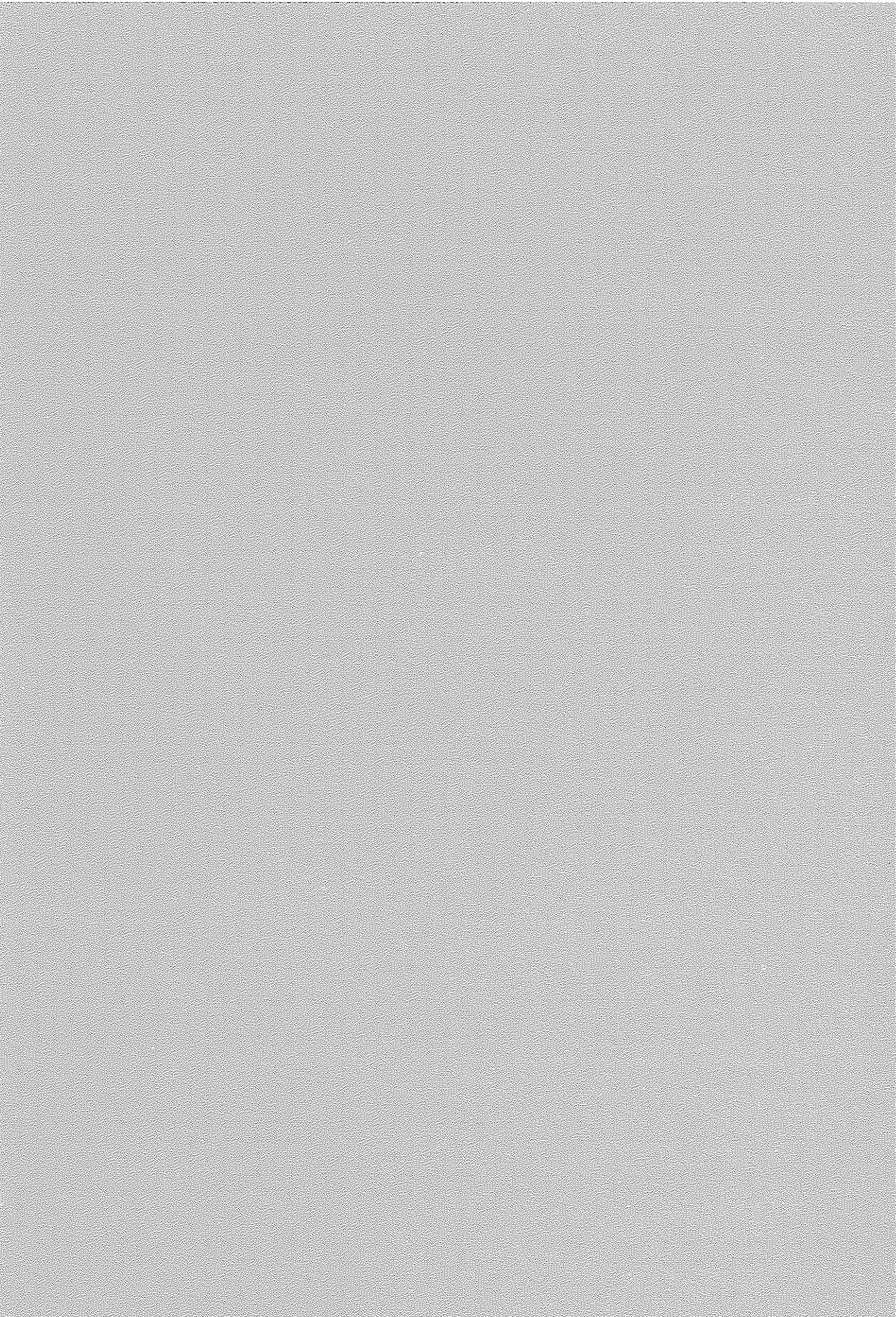
Across the United States, criminal courts are structuring and collecting fines in a new way – fines that punish fairly, raise revenue, and conserve city and county resources.

These courts are using day fines. Unlike a standard fine expressed in dollars, day fines are stated in units, each unit representing the offender's daily disposable income. By stating the fines in units rather than dollars, judges are able to impose similar punishment on offenders who have committed similar offenses but have very different incomes. Rich or poor, you might be fined 20 units for shoplifting or 70 units for assault; but what you pay for each unit is determined by your income.

Once a system of day fines is in place, judges can impose fines more widely, and courts can collect them more effectively. As a result, day fines can advance justice and raise revenue at the same time. However, as with other sentencing reform efforts, achieving the benefits available from a system of day fines requires an initial investment of time and resources.

The Vera Institute of Justice began designing and organizing the first American demonstration of day fines in Staten Island, New York in 1987. Since then, the Vera Institute has helped court administrators and criminal justice agencies in Arizona, Connecticut, Iowa, and Oregon launch their own demonstrations. Each endeavor has produced a slightly different system, and each has revealed new aspects of day fines in action.

This booklet draws on that experience to describe how a day-fine system works in practice, what benefits it can be expected to yield, and how it should be planned. At the back is a bibliography and a list of people who can answer questions and provide assistance. In addition, a detailed implementation manual is available from the Vera Institute of Justice as a companion to this booklet.



A Practical Approach to Fining Offenders

Making individuals literally pay for their crime by sacrificing income is not a new concept; however, making the financial burden proportionate to their economic resources is a new way of levying fines and executing justice.

European Roots of Day Fines

Day fines were developed in Sweden in the 1920s and were quickly adopted by other Scandinavian countries. In the late 1960s, West Germany established day fines to help reduce the incidence of short-term incarceration. The policy was remarkably successful: from 1968 to 1976, the number of prison sentences for terms of less than six months dropped from more than 110,000 to approximately 10,000 – a 90 percent decrease. Currently, day fines are used as the sole penalty for three-quarters of all offenders convicted of property crimes and two-thirds of those convicted of assaults. Many northern European countries now use day fines as the penalty of choice in a large proportion of criminal cases.

Traditionally, criminal fines are low, fixed amounts set to accommodate low-income offenders. Consequently, fixed fines are not effective penalties for persons with higher incomes, and they are unreasonably harsh punishments for persons with very low incomes or for those dependent on government subsidies. Offenders for whom the fixed rate exceeds their ability to pay often don't pay anything at all. Some of these delinquent offenders eventually receive jail terms or community-service sentences. However, these cases consume judicial and administrative resources and represent lost revenue. The limitations of fixed fines have bred widespread skepticism among criminal justice professionals. They have also spurred research into other ways of setting fines.

Designers of and practitioners involved in recent day-fine demonstrations seek to increase the credibility and practicality of fines and to encourage the use of criminal fines as a sentencing option. There are good reasons for making fines more useful and more common. Specifically, a monetary penalty is the most cost-effective way to exact retribution and deter further criminal activity,

when incarceration isn't necessary, because an offender doesn't pose a danger to the community, and

when probation services aren't required, because an offender doesn't need supervision or rehabilitation.

The challenge is to set an amount that is large enough to punish and deter yet is fair and collectable. The answer: design a flexible system that tailors the fine to the severity of the crime and, independently, to an offender's ability to pay, measured by the individual's daily disposable income. This is exactly the definition of a day fine.

How Day Fines Work

Day fines are executed using a two-step process. In the first step, the judge determines how many units to impose based on the severity of the offense. In the second step, the value of each unit is determined according to the offender's net daily income. The day fine is the product of the number of units times the value of one unit.

¹ Henry Johnson, Martin Foster, and Frank Bruno are composite characters drawn from court records of persons receiving day fines.

The easiest way to understand day fines is by example. The following case summaries¹ suggest offenders likely to receive a fine, rather than probation or jail. A partial list of offenses and the number of corresponding day-fine units (table 1), along with a table showing the dollar value of one day-fine unit, according to income and number of dependents (table 2), illustrate the process of calculating a day fine.

Henry Johnson was prosecuted for striking a man during a bar-room brawl. He was arraigned for *assault* (a misdemeanor). He pleaded guilty to *attempted assault* (a misdemeanor) and was sentenced to 15 day-fine units. (See table 1.)

Mr. Johnson is 23 years old and lives with his brother. At the time of arrest, he said he worked as a stock clerk but, at sentencing, said he was unemployed and living on savings. The judge assumed he could easily find another job and estimated his potential earnings at \$6 per hour, for a net daily income of approximately \$24. Using table 2, adjusting the amount by one dependent, Mr. Johnson's unit value is \$13.46. His total fine (\$13.46 times 15) is \$201.90. He paid the fine in four installments over a period of two months.

Martin Foster was prosecuted for stealing a car, valued at \$500. He was arraigned for *grand larceny, possession of stolen property, and unauthorized use of an auto* (all felonies). He had no prior record, and the prosecutor allowed him to plead guilty to *attempted unauthorized use of an auto* (a misdemeanor). He was sentenced to 15 day-fine units. (See table 1.)

Mr. Foster is 21 years old, single, and lives with his mother, to whom he contributes support. He holds a low-paying restaurant job and reports take-home pay of \$180 per week. His net daily income (\$180 divided by seven) is approximately \$26. Using table 2, adjusting the amount by two dependents (the defendant and his

Table 1

2 To provide a common starting point, each offense is assigned a presumptive number of day-fine units.	Offense and Degree	Day-Fine Units ²		
Further, each offense is given a discount and premium number of units. The judge can use these numbers to account for the presence of mitigating or aggravating circumstances.	Assault 3			
	<i>Substantial injury</i> – between strangers or where the victim is weaker	81	95	109
	<i>Minor injury</i> – between strangers or where the victim is weaker	59	70	81
	<i>Substantial injury</i> – between acquaintances; brawls	38	45	52
	<i>Minor injury</i> – between acquaintances; brawls	17	20	23
	Attempted Assault 3			
	<i>Substantial injury</i> – between strangers or where the victim is weaker	38	45	52
	<i>Minor injury</i> – between strangers or where the victim is weaker	30	35	40
	<i>Substantial injury</i> – between acquaintances; brawls	17	20	23
	<i>Minor injury</i> – between acquaintances; brawls	13	15	17
	Unauthorized Use of a Vehicle (valued at)			
	\$1,000 or more	51	60	69
	\$700 – \$999	42	50	58
	\$500 – \$699	34	40	46
	\$300 – \$499	25	30	35
	\$150 – \$299	17	20	23
	\$1 – \$149	13	15	17
	Attempted Unauthorized Use of a Vehicle 3 (valued at)			
	\$1,000 or more	25	30	35
	\$600 – \$999	17	20	23
	\$500 – \$599	13	15	17
	Making a Punishable False Written Statement	51	60	69
	Sale of Marijuana 4	42	50	58
	Possession of Marijuana 4	30	35	40
	Disorderly Conduct	13	15	17

Adapted from *The Staten Island Economic Sanctions Project: Day-Fine Workbook* (New York: Vera Institute of Justice, 1988).

mother), Mr. Foster's unit value is \$12.01, and his total fine (\$12.01 times 15) is \$180.15. Mr. Foster is paying his fine in installments. After four weeks, his outstanding balance is \$20.15.

Frank Bruno was prosecuted for falsely reporting the theft of a car in order to defraud his insurance company. He was arraigned on a charge of *insurance fraud* (a felony) and pleaded guilty to *making a punishable false written statement* (a misdemeanor). Mr. Bruno had no prior record and was sentenced to 51 day-fine units (See table 1.)

Mr. Bruno is 30 years old and lives with his wife and three children in a home they own. At his arraignment, Mr. Bruno claimed to be unemployed, but he was represented by private counsel. The judge asked him to return to court with tax records so that a fair day-fine unit value could be calculated. Mr. Bruno's tax records showed a gross annual income of \$36,000, for a net daily income of approximately \$71. Using table 2, adjusting the amount for five dependents, his unit value is \$16.40 and his total fine (\$16.40 times 51) is \$836.40. Mr. Bruno paid his fine in full on the day he was sentenced.

Table 2

	Number of Dependents					
	1	2	3	4	5	6
Net Daily Income (\$)						
3	1.28	1.05	.83	.68	.53	.45
4	1.70	1.40	1.10	.90	.70	.60
5	2.13	1.75	1.38	1.13	.88	.75
10	4.25	3.50	2.75	2.25	1.75	1.50
20	11.22	9.24	5.50	4.50	3.50	3.00
21	11.78	9.70	5.78	4.73	3.68	3.15
22	12.34	10.16	6.05	4.95	3.85	3.30
23	12.90	10.63	6.33	5.18	4.03	3.45
24	13.46	11.09	6.61	5.40	4.20	3.60
25	14.03	11.55	6.89	5.63	4.38	3.75
26	14.59	12.01	7.17	5.85	4.55	3.90
27	15.15	12.47	7.45	6.08	4.73	4.05
28	15.71	12.94	7.73	6.32	4.90	4.20
29	16.27	13.40	8.01	6.54	5.07	4.35
30	16.83	13.86	8.29	6.77	5.25	4.50
40	22.44	18.48	14.52	11.88	9.24	7.92
50	28.05	23.10	18.15	14.85	11.55	9.90
60	33.66	27.72	21.78	17.82	13.86	11.88
70	39.27	32.34	25.41	20.79	16.17	13.86
71	39.83	32.80	25.77	21.09	16.40	14.06
100	56.10	46.20	36.30	29.70	23.10	19.80

Adapted from *The Staten Island Economic Sanctions Project: Day-Fine Workbook* (New York: Vera Institute of Justice, 1988).

Setting Up the System

The mechanics of day fines are simple. However, to ensure their practicality, interested criminal justice practitioners and policy-makers need to consider variables that affect the local application of day fines. Careful planning, sound design, and thorough education and training are key ingredients for the successful introduction of day fines.

Forming a planning committee. For a day-fine system to work effectively, a representative group of criminal justice leaders should be involved in planning, implementing, and monitoring the demonstration. The participation of judges is crucial. Site reports indicate that day fines are applied more consistently – and, in general, the projects are more successful – when a chief or presiding judge is actively involved in shaping and using the system.

³ An annotated list of Vera-supported day-fine demonstrations is provided at the back of this booklet.

In Bridgeport, the test site for Connecticut's day-fine demonstration project,³ judges, court administrators, and policymakers were familiar with and had established a wide array of alternative penalties. The day-fine project was initiated by the judiciary's Office of Alternative Sanctions, in collaboration with the Center for Effective Public Policy – a private, nonprofit organization based in Washington, D.C. that provides technical assistance, especially in the area of intermediate sanctions. In this instance, planners could bring prior related experience to organizing a day-fine demonstration. The planning committee, which later split into implementation and operations subgroups, met for several months prior to inception to carefully define the project's goals. Connecticut Superior Court Justice Lawrence L. Hauser describes the project's genesis: "I early on became a believer in the day fines program and [its] philosophical underpinnings... We worked long hours in Connecticut devising a program that we could feel comfortable with, while striving to remain true to the essence of what day fines are all about."

Sample Planning Committee

- director of alternative sanctions
- director of court operations
- presiding judge
- supervising prosecutor
- supervising public defender
- chief clerk
- chief bail commissioner
- chief probation officer

Source: Bridgeport, Connecticut
Day-Fine Demonstration

Iowa's day-fine demonstration was initiated by the state's Department of Human Rights, Division of Criminal and Juvenile Justice Planning. A state-level policy group met to discuss the merits of testing day fines in Iowa and then to decide which county should host a demonstration. Polk County was selected as the test site. The local planning committee included the Chief Judge, Director of Correctional Services, District Court Administrator, Clerk of the District Court, County Attorney, and a representative from the Public Defender's office. The County Attorney's office served as the project's operational base.

Designing a Model

Crime varies from place to place. Before testing day fines, the planning committee should consider anew how fines function within overall sentencing practices. To set realistic goals and measure the relative success of using day fines, planners need to know:

what types of crime are currently fine-eligible offenses, what commonly characterizes a fine-eligible offender, the average fine amount imposed, and how the use of day fines may widen the pool of fine-eligible offenders.

Answers to these questions will focus the planning group on specific populations of offenders in their jurisdiction. In Arizona, for example, planners targeted nonviolent felony offenders. In one of Oregon's sites, judges focused on alcohol-related motor vehicle offenses; in another locale, fish and game violations were primary fine-eligible offenses.

Although each day-fine model generates a unique set of advantages and liabilities, there are two common limitations in applying fines that should inform the design process.

1 "Fine ceilings." Theoretically, day fines have no upper boundaries. In reality, however, the amount of a day fine is constrained by law. All states have upper limits, or "ceilings," for fines.

In New York, for example, the maximum fine for a Class A misdemeanor is \$1,000. Consider a single woman, with an income of \$35,000, sentenced to 50 day-fine units for selling marijuana. Although her actual fine is \$1,750, the judge is limited to the \$1,000 ceiling prescribed by law. Researchers evaluating New York's day-fine demonstration found that the state law reduced potential revenue by 50 percent. An understanding of how state laws affect fine amounts should inform the design of any day-fine demonstration.

2 "Fine floors." Many states also have mandated minimum fine amounts, or "floors," for certain offenses. Legislated minimum fines contradict the principles of a day-fine system, and in practice, minimum fine amounts are often too high to be collectable from low-income offenders. In Iowa, the legislature suspended

minimum requirements in the test county for the duration of the day-fine demonstration.

In Oregon, mandatory fees for victim compensation, indigent defense, probation, and the court's administrative costs produced a similar problem. The total fine amount – these assessments plus the day fine – created a “false floor” beyond the means of many low-income offenders. To avoid this problem and make day fines more broadly applicable, planners of the Arizona demonstration created a package fine, incorporating all customary fees (with the exception of victim restitution) and scaled to an offender's income. Portions of each comprehensive monetary penalty were allocated to the funds that were to have received money, thus preserving the integrity and efficacy of the system.

Collecting fines. For a day fine to be credible and effective, it must be collected. Clearly, a court should strive to collect as much as possible at sentencing. Nevertheless, site reports underline the importance of creating a central, computer-generated collections system, in which individualized payment plans can be crafted and monitored, when fines cannot be paid in full immediately. For example, in Polk County, Iowa, if a fine is not paid in full on the date of sentencing, a personal payment schedule is created, taking into account the fine amount, the offender's income and how often the offender is paid. Typically, payments are due two business days after the offender's pay date. Payments are closely monitored using a computer database. One week before each due date, the offender receives a computer-generated notice. If an offender misses a scheduled payment, the computer automatically issues a series of warning letters. In addition, a collections officer attempts to contact the offender by phone. If these measures fail to prompt payment, an arrest warrant is requested from the court.

If an efficient collections system is already functioning, the introduction of day fines involves fewer procedural changes and is a more expedient transition. In any case, planners should thoroughly investigate:

- how fines are currently collected,
- who is responsible for collections,
- how many offenders currently pay their fines in full,
- how many pay a portion, and
- how fines are enforced when offenders don't pay.

Because the introduction of day fines should improve offender accountability, answers to these questions serve as vital comparison points for evaluating any change in collections rates.

Preparing practitioners. Criminal justice professionals, court and administrative staff, and – to a lesser degree – the public should be informed about the benefits of moving to a day-fine system and about the project’s specific goals. Judges and attorneys need training on when to impose and how to calculate a day fine. Court officials and administrative staff need information on how to process cases and collect fines. Fundamentally, the system should be open to change, as practical problems occur, and ongoing education should reflect the addition of new procedures and new personnel.

Findings from the Demonstrations

Despite some initial fears that a day-fine system would be too cumbersome for use in a busy court, site reports indicate that practitioners who have been adequately prepared have found day fines easy to use. Calibrating the system according to the court's specific needs and constraints demands planning and ongoing adjustment, but recent demonstrations prove that it is feasible to implement and operate a day-fine system. Moreover, judges, prosecutors, and defense attorneys overwhelmingly agreed that day fines provide a more equitable form of punishment than traditional, fixed fines.

How well day fines worked in a particular jurisdiction is measured by their impact on retribution, revenue, and sentencing patterns. These effects can remain obscure, however, if project results cannot be measured against conditions prior to the introduction of day fines. Evaluation should be built into the project design during the planning stages.

Real punishment. A good way to demonstrate the reliability of day fines is to prove that, compared to fixed fines, day fines hold offenders more accountable for their criminal actions. Why? Because day fines are by definition scaled to an offender's ability to pay, and a rational monetary penalty should be more collectable. Therefore, offender accountability can be measured by collection rates: How many offenders sentenced to day fines actually pay them, and how much do they pay?

In New York's Richmond County, the court already had a high collections rate – 76 percent of fined offenders paid in full. After day fines were implemented, the rate of full compliance rose to 85 percent, and the number of offenders making at least a partial payment increased significantly from 78 percent to 94 percent.

In Polk County, Iowa, the percentage of offenders paying in full increased dramatically from 32 percent to 72 percent, and the number of offenders paying at least partially increased from 45 percent to 85 percent. Significantly, in Richmond and Polk Counties, collections staff used automated, individualized payment plans to increase compliance.

In Maricopa County, Arizona, where fines were considerably higher because the court was sentencing primarily felony offend-

ers, collections records for a sample population (those offenders receiving day fines during one year of the project's operations) show a full compliance rate of 89 percent. Pretest figures are not yet available.

In many courts – not only busy, urban ones – offenders often fail to pay their fines because the courts make little or no attempt to collect them. For example, in the Oregon and Connecticut test sites, prior to the introduction of day fines, there were no systems for tracking payments or imposing back-up penalties when offenders failed to pay. For these demonstrations, there is no record of prior collection rates, so the relative effect of using day fines cannot be measured. However, the impression of practitioners in these sites is that the simultaneous introduction of day fines and proactive collections procedures is producing lower default rates in these locales.

Revenue. Introducing day fines affects revenue in two ways. Unlike fixed fines, day fines increase incrementally, potentially boosting revenue; as discussed, day fines are also more collectable.

In Richmond County, New York, where “ceilings” significantly diminished potential revenue, the average fine amount still increased 25 percent – from \$206 before the demonstration to \$258 under the day-fine system – producing 14 percent more revenue. Absent these caps, the total fine amount would have increased from \$82,060 to \$137,660, a 67 percent increase in revenue.

In Polk County, Iowa, changes in revenue were evaluated using the average day-fine amounts imposed and collected for the five most common offenses. These common offenses accounted for 89 percent of all day-fine cases. Although the average fine amount imposed decreased from \$509 to \$469, the average fine amount collected increased from \$197 to \$360.

Sentencing patterns. In each of the five demonstration projects that Vera advised, planners hoped to widen the pool of fine-eligible offenders. The reason: to conserve probation resources. The model designed for implementation in Maricopa County, Arizona is an example of how a strategic use of day fines can dramatically shift sentencing patterns. The court wanted to concentrate their probation resources in surveillance-oriented or service-rich programs, so planners created a structured, but unsupervised

form of probation for low-risk, low-needs offenders called F.A.R.E. (Financial Assessment Related to Employability) probation. Offenders sentenced to F.A.R.E. probation receive a day fine. Compliance with a payment plan is the only probation requirement, and supervision is automated. Preliminary results supplied by the RAND Corporation show that, as planned, the demonstration drew primarily from the ranks of low-risk felony offenders bound for supervised probation.

None of the other Vera-supported day-fine projects structured their demonstrations to test specifically whether day fines could function effectively as a new intermediate penalty and effectively conserve probation resources. However, anecdotal reports from program organizers in Oregon, for example, indicate that the general use of day fines did not affect sentencing patterns. The success of the Maricopa County model should encourage future day-fine planners to explore the system's full potential.

Practitioners involved in continuing day-fine projects are refining their systems to incorporate lessons learned. Their tenacity and confidence are the best indications of the actual and potential success of day fines. What is most clear from experience thus far is that a day-fine system is a powerful, flexible method for making monetary penalties more fair and effective. What is yet to be fully revealed is how day fines will, in the near future, help courts develop necessary and potent intermediate sanctions.

Sources for Information on Planning and Evaluating Day-Fine Programs

Judith Greene, *Director*
State-Centered Program
377 Broadway, 11th Floor
New York, NY 10013
(212) 334-1300

Sally Hillsman, *Assistant Director for Research and Evaluation*
National Institute of Justice
633 Indiana Avenue, N.W.
Washington, DC 20531

Barry Mahoney, *President*
Justice Management Institute
1900 Grant Street, Suite 815
Denver CO 80203
(303) 831-7564

National Center for State Courts Information Service
(800) 616-6164

Susan Turner, *Senior Researcher*
RAND Corporation
1700 Main Street, Box 2138
Santa Monica, CA 90407-3297
(310) 393-0411, extension 6416

Laura Winterfield, *Senior Research Associate*
Criminal Justice Agency
305 Broadway
New York, NY 10007
(212) 577-0519

Descriptions of Vera-Supported Day-Fine Demonstrations

Staten Island Day-Fine Demonstration (1987–1989)

This first American demonstration of day fines was conducted in the Criminal Court of Richmond County (Staten Island), New York. The project was a joint venture between the county court, the Vera Institute of Justice, and the National Institute of Justice. The demonstration showed that a day-fine system could be successfully implemented in a typical American court of limited jurisdiction, that is, one processing misdemeanor cases. While the project has closed, there is extensive documentation of its design and results. (See the bibliography published in this booklet for a partial list of articles.)

Maricopa County F.A.R.E. Probation Project (April 1991–present)

This project, initially funded by grants from the State Justice Institute and the National Institute of Corrections, now operates with county support. Located in the Maricopa County (Phoenix, Arizona) Superior Court, the demonstration introduced a new intermediate penalty based on a day-fine system, called F.A.R.E. (Financial Assessment Related to Employability) Probation, which targets indicted felony offenders with little need for supervision or treatment who have nonetheless historically received supervised probation. In place of supervised probation, offenders receive a monetary penalty. The RAND Corporation is currently preparing a complete report documenting the effects of using F.A.R.E. Probation.

Contact:

Meri Romero, *Program Manager*
Maricopa County Adult Probation Department
45 West Jefferson, Suite 210
Phoenix, AZ 85003
(602) 506-3239

Ed Mansfield, *Program Manager*
Maricopa County Adult Probation Department
45 West Jefferson, Suite 210
Phoenix, AZ 85003
(602) 506-3680
email eddie@ramp.com

Connecticut Day-Fine Demonstration (May 1992–present)

Initiated by the Judicial Branch's Office of Alternative Sanctions, the project, which is located in Connecticut's Geographical Area 2 Court (Bridgeport), initially processed approximately 20 cases – primarily misdemeanors – per week. The caseload is currently increasing and collections results have been good. Originally funded by a grant from the Bureau of Justice Assistance, the project is now supported by the judiciary's budget.

Contact:

Julia Paulson, Esq., *Day Fines Officer*
Office of Alternative Sanctions
172 Golden Hills Street
Bridgeport, CT 06604
(203) 579-6360

Iowa Day-Fine Demonstration (January 1992–present)

Initiated by the state's Department of Human Rights, Division of Criminal and Juvenile Justice Planning, the project is located in Polk County, the most populous county in the state, and operates from the County Attorney's office. A wide range of offenses are fine eligible, but in practice, offenders charged with alcohol-related motor vehicle offenses are the most common day-fine recipients. Fine payments are closely monitored, and collections rates are very good. The Criminal and Juvenile Justice Planning Division hopes to demonstrate the feasibility of day fines in four additional court settings in an effort to expand their use statewide. The Iowa legislation that enables the use of day fines expires in June 1995. A proposal to extend the time limit as well as permit expansion has been filed with the state legislature and awaits approval.

Contact:

Richard Moore, *Administrator*
Criminal and Juvenile Justice Planning
Iowa Department of Human Rights
Lucas State Office Building
Des Moines, IA 50319
(515) 242-5823

Oregon Day-Fine Demonstrations (July 1992–present)

Day fines have been implemented in four Oregon counties: Marion, Malheur, Josephine and Coos. The demonstrations were organized by the Oregon Criminal Justice Council. While two sites closed at the end of the demonstration period, projects in Marion and Malheur are continuing.

Contact:

David Factor, *Director*
Oregon Criminal Justice Council
155 Cottage Street, N.E.
Salem, OR 97310
(503) 378-2053

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