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**STATEN ISLAND ECONOMIC SANCTIONS PROJECT**

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**PRELIMINARY DATA REPORT  
DAY-FINE PILOT PROJECT**

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**Judith A. Greene  
Director of Court Programs**

**VERA INSTITUTE OF JUSTICE  
377 Broadway -- 11th Floor  
New York, N.Y. 10013  
(212) 334-1300**

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## INTRODUCTION

The Staten Island day-fine experiment has now completed one year of pilot operations. (The first day fine was imposed on August 12, 1988.) A review of preliminary data gives evidence that introduction of the day-fine system has resulted in a more just use of fines in sentencing criminal offenders -- and indicates that, if collection rates remain stable, the amount of City general fund revenues derived from fines will significantly increase under the new system. The findings also indicate that revenues would have risen by nearly eighty percent if current statutory fine maxima (fixed at relatively low levels) had not prevented Staten Island judges from utilizing the day-fine system to its full impact in determining fine amounts.<sup>1</sup>

First developed in Scandinavia in the 1920's and 30's, and introduced to West Germany during the broad-scale policy shift in the late 1960's and early 1970's when fines were substituted for short terms of incarceration, the day-fine system rests upon a simple two-step process in setting the fine amount that embraces both proportionality and equity. First, the court sentences the offender to a certain number of day-fine units (e.g., 15, 60, 120 units) according to the gravity of the offense, but without regard to his or her means. Then the value of each unit is set at a share of the offender's daily income (hence the name "day fine"), and the total fine amount is determined by simple multiplication. The percentage share of income used in valuing the day fine units varies across the different countries which use this system, as do methods for accounting for capital wealth or family responsibilities, but the basic idea assures routine imposition of equitable fine sentences, the punitive impact of which is in proportion to the crime.

The primary goal of the pilot project is to demonstrate the feasibility of the day fine concept as a replacement for the fixed-sum fines traditionally utilized in American sentencing practice. During the first year of pilot operations, 267 day fines were imposed as sentences for Penal Law offenses disposed in the court. These day fines represented seventy percent of all Penal Law fine sentences.<sup>2</sup> The high proportion of day fines indicates

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<sup>1</sup>New York Penal Law section 80.05 sets the maximum fine amounts for use by Criminal Court judges at \$1000 for an A misdemeanor; \$500 for a B misdemeanor; and \$250 for a violation. These maxima, set in 1965 and not adjusted for inflation, required judges to "cap" many fine amounts below the dollar amounts which resulted from using the day-fine method.

<sup>2</sup>"Day fine" cases were identified by a review of court docket papers which classified a fine sentence as a day fine only when the papers contained clear markings by the sentencing judge which specified the number of units and the unit value the judge had used to compute the fine amount. Many sentences classified as "fixed-sum" fines may have in fact been day fines -- but because the court papers lacked the required markings (or the papers themselves could not be found), this could not be documented. Conversations with court officials regarding the cases which resulted in fixed-sum fines indicate that some of these cases resulted from plea bargains where an Assistant District Attorney negotiated a specific fixed-sum fine amount. Many of the fixed-sum fines were imposed by Brooklyn judges who were assigned to the Staten Island bench for short intervals (the Brooklyn and Staten Island courts are jointly administered) and who were unfamiliar with the new system. Some resulted because the offenders had been arraigned and convicted on Penal Law charges which had not appeared among the sample of cases used to construct the day fine benchmark scales; these charges have since been assigned a prescribed number of day fine units and are being added to a revised version of the scales. A few more fixed-sum fines resulted as part of a "package deal" for Penal Law offenses which were coupled with Vehicle and Traffic Law offenses disposed at the same time; because the day fine system has not been extended to cover VTL cases, fixed-sum fines were given.

As can be seen in Table 1, the total dollar amounts ordered by the court have risen somewhat since the introduction of the day-fine system. The total amount ordered averaged \$19,705 per quarter during the pre-test period giving an annualized estimate of \$78,818. The total dollar amount ordered during the first year of the pilot period was \$93,078 -- an increase of eighteen percent. However, because of the relatively low statutory maxima (combined with plea-negotiation practices which cause the bulk of fine sentences to be imposed for conviction charges at the violation level) about one-quarter of the fines were "capped" below the dollar amounts which resulted from the judges' day-fine computations (see footnote 3, Table 1). For this reason, average fine amounts have risen by only eight percent (\$246 compared to \$226) since introduction of the day-fine system.

Some explanation of these findings is in order. In using the day-fine method to set the total amount of a fine, the number of day-fine units imposed in a particular case (as determined by the seriousness of the criminal activity involved) is multiplied by the value of each unit (set by the judge to reflect a fair share of an individual offender's daily net income). Therefore it is not unlikely that, in more serious cases and for more affluent offenders, a judge will find the dollar amount of the day fine exceeding the maximum fine amount allowed under the New York State Penal Law, as these limits have not been changed since 1965 despite substantial inflation.

For example, in an actual case involving damage to property in excess of \$1000, the number of day-fine units set by the judge in accordance with the benchmark scale prescribed for P.L. 145.00 (criminal mischief in the fourth degree, an A misdemeanor) was 60 units. The offender had a net daily income of \$64 (equivalent to an annual gross income of \$33,540), on which he supported a wife and child. Under the day-fine system, the fair-share unit value for this offender was \$23.23. The total amount of the day fine in this case, therefore, was \$1394. However, because the maximum fine allowed under the Penal Law for an A misdemeanor is \$1000, the judge was obliged to cap the day fine and sentence the offender to the statutory maximum.

During the first year of pilot operations, ninety-three "capped" day fines were imposed, comprising twenty-five percent of all Penal Law fines. In ten of these cases the day fine was capped at the \$1000 limit for an A misdemeanor, as illustrated above. In nine cases, the conviction was for a B misdemeanor so the fine was capped at the statutory limit of \$500. In the remaining cases the offender was convicted of a violation, so the cap was \$250.

As can be seen in Table 1, if the State's statutory fine maxima allowed the day fines to vary freely according to the benchmark scales and offender means, the mean fine amount would have been \$372, sixty-five percent higher than the \$226 mean for the pre-test period. Furthermore, this increase in average fine amounts -- when coupled with the modest increase in the use of fines -- would have caused total court-ordered fine dollars to increase by seventy-nine percent (from a pre-test average of \$19,705 per quarter to \$35,281 per quarter during the pilot year).

TABLE 1

COMPARISON OF FINE AMOUNTS IN PRE-TEST AND IN DAY-FINE PERIODS<sup>1</sup>

	N	TOTAL DOLLARS IMPOSED	MINIMUM FINE IMPOSED	MAXIMUM FINE IMPOSED	MEAN AVERAGE FINE IMPOSED	MEDIAN FINE IMPOSED
Pre-Test Data-Sample (Two Quarters):	175	\$39,409 <sup>2</sup>	\$25	\$1000	\$226	\$150
Test Year Fines; Actual Amounts Imposed:	379	93,078	20	1000	246	240
Test Year Fines; "Un-Capped" Amounts: <sup>3</sup>	379	140,825	20	3414	372	235

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<sup>1</sup>The pre-test sample is comprised of all 175 Penal Law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars during a six-month period (two quarters) from November 21, 1987 to May 20, 1988. The test year fine sample is comprised of all 379 fines imposed in Penal Law cases during the pilot year, from August 12, 1988 to August 11, 1989. All amounts in this and other tables are rounded off to the nearest dollar.

<sup>2</sup>This total figure gives an average of \$19,705 per quarter.

<sup>3</sup>In ninety-three of 379 fine cases (twenty-five percent) the dollar amount of the day fines imposed was less than it would have been if there were no statutory maxima. In these cases, the judges were obligated to "cap" the day fine at the maximum allowed under the Penal Law. The difference between the "capped" and "uncapped" fine amounts in these cases ranged from \$2.50 to \$3,164.00; the average difference was \$513.41.

The question remains as to why so many of the day fines had to be capped at the violation maximum, thereby depressing overall average fine amounts. The explanation lies in the plea negotiation process. As in many other jurisdictions, plea negotiations produce some charge reduction in most cases disposed in the Staten Island Criminal Court. Felonies are often reduced to misdemeanors (and -- more rarely -- to violations); misdemeanors are often reduced to violations at disposition. During the day-fine period, seventy-four percent of the fined cases were reduced to violations at disposition.

There are a variety of reasons why a case may result in a violation charge at disposition. In some cases, the evidence may not clearly meet the standard of proof required for a criminal conviction, yet the offender may admit to a violation offense such as disorderly conduct. Even when there is clear evidence of criminal conduct, however, a judge may feel that the offender should be spared a record of criminal conviction in the case if he or she has little or no prior record. This is a common practice in the Staten Island court.

In cases in which a conviction for a violation occurs to "give a break" to a deserving offender a judge may wish nonetheless to impose a fine penalty in an amount that reflects the seriousness of the provable criminal conduct. In other cases, the judge would impose the more nominal sum that is warranted when all the evidence sustains only the violation charge (such as disorderly conduct). When the former circumstances have arisen during the early days of the day-fine experiment, judges have tended to determine the number of day-fine units in accordance with the benchmark scale appropriate for the misdemeanor charge for which the offender could have been convicted, rather than the lower number prescribed for the violation-level offense for which the offender was sentenced after a plea. This practice was followed in ninety of the 267 day-fine cases, and accounted for sixty-five of the ninety-three capped fines.

One of the effects to be expected when a court system adopts procedures which allow for systematic imposition of fine amounts set in relation to the economic means of individual offenders is a general dispersion of fine amounts across the permissible range. In contrast, it is characteristic of the fixed-sum fining system that fine amounts will cluster at a limited number of "round figures" along the range (\$50, \$100, \$250, etc.) which comprise the "going rates" prevalent in local sentencing practice.

Table 2 illustrates, therefore, a second important effect of introduction of the day-fine method. During the pre-test period, fines did tend to cluster at a limited number of specific dollar values within the statutory permissible range of \$1 to \$1000. Fourteen percent of those fixed-sum fines were set at \$50; seven percent were at \$75; twenty-two percent at \$100; and so on. As expected, however, introduction of the day-fine method diminished this clustering effect. Despite the judges' common practice of rounding off the day-fine amounts (e.g., a day fine of \$48 becomes \$50), only eight percent were set at \$50; four percent at \$75; and eleven percent at \$100. Under the day-fine system there were fine amounts set at fifty-two specific dollar values within the permitted range (compared with seventeen during the pre-test period). Absent the statutory caps, this dispersion effect of

TABLE 2

COMPARISON OF FINE AMOUNTS IN PRE-TEST AND IN DAY-FINE PERIODS<sup>1</sup>

ACTUAL DOLLAR AMOUNTS IMPOSED	PRE-TEST DATA SAMPLE		TEST YEAR FINES <sup>2</sup>	
	N	%	N	%
\$20			1	0.3
25	4	2.3	5	1.3
30			2	0.5
35			1	0.3
45			2	0.5
50	24	13.7	29	7.7
52			1	0.3
59	1	0.6		
60			2	0.5
65			1	0.3
70			1	0.3
73			1	0.3
75	13	7.4	16	4.2
80			5	1.3
85			3	0.8
87			1	0.3
90			1	0.3
100	38	21.7	42	11.1
110			4	1.1
115			1	0.3
120			5	1.3
125	1	0.6	4	1.1
130			1	0.3
138			1	0.3
140			5	1.3
150	10	5.7	18	4.7
160			1	0.3
170			4	1.1
175	1	0.6	1	0.3
180			6	1.6
190			1	0.3
200	14	8.0	16	4.2
215			1	0.3

TABLE 2--Continued

COMPARISON OF FINE AMOUNTS IN PRE-TEST AND IN DAY-FINE PERIODS<sup>1</sup>

ACTUAL DOLLAR AMOUNTS IMPOSED	PRE-TEST DATA SAMPLE		TEST YEAR FINES <sup>2</sup>	
	N	%	N	%
220			1	0.3
225	3	1.7	2	0.5
230			1	0.3
232			1	0.3
235			1	0.3
240			4	1.1
250	40	22.9	125	33.0
300			4	1.1
320			1	0.3
350	2	1.1	1	0.3
387			1	0.3
400			2	0.5
425			1	0.3
450	1	0.6	2	0.5
500	9	5.1	24	6.3
650			1	0.3
750	2	1.1	3	0.8
924			1	0.3
950	3	1.7	2	0.5
1000	8	4.6	18	4.7
UNK	1	0.6		
TOTAL	175	100.0	379	100.8

<sup>1</sup>The pre-test sample is comprised of all 175 Penal Law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The test year fine sample is comprised of all 379 fines imposed in Penal Law cases from August 12, 1988 to August 11, 1989.

<sup>2</sup>The expected dispersion of fine amounts after introduction of the day-fine system has produced an array of dollar amounts with much less clustering at the previously dominant dollar figures. A few "peaks" still appear along the continuum of day-fine amounts, however, (such as those at \$100 and \$250). As discussed in the text, the \$250 cluster is caused by the capping of fines in violation cases due to the current statutory maximum. Reasons for clusters such as the one at \$100 are less clear; some of these day-fines were produced when judges rounded off dollar amounts which fell close to the \$100 mark.

the day-fine system would have been even more pronounced because the bulk of the 125 fines set at \$250 would have been spread across a wider and higher range, as determined by the day-fine method.

This dispersion, coupled with the increases in average fine amounts, suggests that judges are, for the most part, using the day-fine method as it was intended: to differentiate more widely among fined offenders on the basis of their means.<sup>3</sup>

## TYPES OF OFFENSES SANCTIONED WITH FINES

Another important dimension of the day fine's impact is revealed in a comparison between the pre-test period and the first quarter of the pilot in regard to the range of offense severity and the range of offense types drawing a fine sentence. Table 3 shows the distribution of Penal Law offenses which appear as arraignment charges in cases that received fine sentences before and after the introduction of the day-fine system. In Table 4 these arraignment charges are sorted into the severity classes provided in New York State Penal Law (i.e., D felonies, A misdemeanors, violations, etc.)

It can be seen that the introduction of the day fine has not had much effect on fine use patterns in terms of the charge severity of offenses drawing a fine sentence. The bulk of offenders fined during both periods were arraigned on class A Misdemeanor charges: seventy-one percent during the pre-test period; and somewhat less (sixty-two percent) during the day-fine period. The proportions of offenders arraigned on felony charges and on class B misdemeanors showed modest gains.

In contrast, an examination of arraignment offenses by charge type (in contrast to severity) does show more shifts in the categories of offenses drawing a fine sentence since the introduction of the day-fine system. Table 5 compares arraignment charges for both periods in terms of the type of offense charge. The cases are sorted among the four offense-type categories created by project planners in developing the day-fine benchmark scales for use in the experiment: 1) Property and theft offenses; 2) Offenses involving harm or threat of harm to persons; 3) Offenses involving drugs or contraband; and 4) Misconduct, obstruction, and sex offenses.

The greatest changes have occurred in the category involving drugs and contraband. During the pre-test period the proportion of drugs and contraband cases receiving a fine sentence was thirty-seven percent; during the first year of the experiment the proportion decreased to twenty-seven percent. For property and theft offenses as well as offenses involving harm to persons, the proportions rose somewhat.

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<sup>3</sup>In contrast, despite a formal shift to the day-fine method, judges could have attempted to retain the fining patterns inherent in the old system by "backing into" pre-determined fine amounts through manipulation of the figures they use in setting fine amounts.



TABLE 3

COMPARISON OF ARRAIGNMENT CHARGES BETWEEN PRE-TEST AND DAY-FINE PERIODS<sup>1</sup>

PENAL LAW CHARGE	DESCRIPTION	NUMBER IMPOSED IN PRE-TEST PERIOD		NUMBER IMPOSED IN DAY-FINE PERIOD	
		N	%	N	%
120.00 AM	Assault 3	8	4.6	22	5.8
120.05 DF	Assault 2	10	5.7	22	5.8
120.15 BM	Menacing			4	1.1
120.20 AM	Reckless Endangerment 2	1	0.6	8	2.1
120.25 DF	Reckless Endangerment 1			6	1.6
130.60 AM	Sexual Abuse 2			3	0.8
140.05 VIO	Trespass			1	0.3
140.10 BM	Criminal Trespass 3	1	0.6	6	1.6
140.15 AM	Criminal Trespass 2			3	0.8
140.20 DF	Burglary 3	1	0.6	4	1.1
110/140.20 EF	Attempted Burglary 3			1	0.3
140.25 CF	Burglary 2	1	0.6	5	1.3
140.30 BF	Burglary 1			1	0.3
140.35 AM	Poss. of Burglary Tools			2	0.5
145.00 AM	Criminal Mischief 4	3	1.7	2	0.5
145.05 EF	Criminal Mischief 3			2	0.5
145.10 DF	Criminal Mischief 2			1	0.3
150.05 EF	Arson 4			1	0.3
150.10 CF	Arson 3			2	0.5
110/155.30 AM	Attempted Grand Larceny			3	0.8
155.25 AM	Petit Larceny	20	11.4	49	12.9
155.30 EF	Grand Larceny 3	5	2.9	7	1.8
155.35 DF	Grand Larceny 2			3	0.8
160.05 DF	Robbery 3	1	0.6		
110/160.10 DF	Attempted Robbery 2			1	0.3
160.10 CF	Robbery 2	1	0.6	3	0.8
165.00 AM	Misapplication of Property	1	0.6		
165.05 AM	Unauth. Use of a Vehicle	3	1.7	3	0.8
165.09 AM	Auto Stripping 2			1	0.3
165.15 AM	Theft of Services			1	0.3
165.40 AM	Poss. of Stolen Property 5	7	4.0	19	5.0
165.45 EF	Poss. of Stolen Property 4	2	1.1	5	1.3
165.50 DF	Poss. of Stolen Property 3	2	1.1	9	2.4

TABLE 3--Continued

COMPARISON OF ARRAIGNMENT CHARGES BETWEEN PRE-TEST AND DAY-FINE PERIODS<sup>1</sup>

PENAL LAW CHARGE	DESCRIPTION	NUMBER IMPOSED IN PRE-TEST PERIOD		NUMBER IMPOSED IN DAY-FINE PERIOD	
		N	%	N	%
170.10 DF	Forgery 2	1	0.6	3	0.8
170.20 AM	Poss. of Forged Insts. 3	1	0.6	5	1.3
170.25 DF	Poss. of Forged Insts. 2	1	0.6	2	0.5
170.55 BM	Unlaw. Use of Slugs 2			1	0.3
175.30 AM	Offering a False Inst.	1	0.6		
176.20 DF	Insurance Fraud 3	2	1.1	12	3.2
190.05 BM	Issuing a Bad Check			1	0.3
190.25 AM	Criminal Impersonation 2	3	1.7	6	1.6
195.05 AM	Obstructing Govt. Admin. 2	2	1.1	5	1.3
200.00 DF	Bribery 2			1	0.3
200.25 EF	Receiving Reward 2	1	0.6		
205.30 AM	Resisting Arrest	12	6.9	21	5.5
210.45 AM	Making Pun. False Statement			1	0.3
215.50 AM	Criminal Contempt 2	1	0.6	1	0.3
220.03 AM	Poss. of Cont. Substance 7	26	14.9	45	11.9
220.06 DF	Poss. of Cont. Substance 5	1	0.6	2	0.5
220.09 CF	Poss. of Cont. Substance 4			3	0.8
220.16 BF	Poss. of Cont. Substance 3			4	1.1
220.39 BF	Sale of Cont. Substance 3	3	1.7	5	1.3
220.45 AM	Poss. of a Hypo. Instr.			4	1.1
220.50 AM	Poss. of Cont. Substance 6			1	0.3
221.05 VIO	Poss. of Marijuana	1	0.6	2	0.5
221.10 BM	Poss. of Marijuana 5	2	1.1		
221.15 AM	Poss. of Marijuana 4			1	0.3
221.25 DF	Poss. of Marijuana 2	2	1.1		
221.40 AM	Sale of Marijuana 4	11	6.3	8	2.1
225.10 EF	Promoting Gambling 2	2	1.1	4	1.1
225.30 AM	Poss. of a Gambling Device	4	2.3	1	0.3
230.00 BM	Prostitution			1	0.3
240.15 EF	Criminal Anarchy			1	0.3
240.20 VIO	Disorderly Conduct	3	1.7	2	0.5
240.25 VIO	Harassment			1	0.3
240.30 AM	Aggravated Harassment 2	1	0.6		
240.36 BM	Loitering 1			1	0.3

TABLE 3--Continued

COMPARISON OF ARRAIGNMENT CHARGES BETWEEN PRE-TEST AND DAY-FINE PERIODS<sup>1</sup>

PENAL LAW CHARGE	DESCRIPTION	NUMBER IMPOSED IN PRE-TEST PERIOD		NUMBER IMPOSED IN DAY-FINE PERIOD	
		N	%	N	%
240.37 AM	Loitering for Prostitution	1	0.6	1	0.3
240.50 BM	False Rept. Incident 3			1	0.3
245.00 BM	Public Lewdness			4	1.1
250.05 EF	Eavesdropping			1	0.3
265.01 AM	Possession of a Weapon 4	8	4.6	17	4.5
265.02 DF	Possession of a Weapon 3	4	2.3	5	1.3
265.03 CF	Possession of a Weapon 2	1	0.6		
265.35 AM	Prohibited Use of a Weapon	1	0.6		
270.00 BM	Unlaw. Dealing w. Fireworks	1	0.6	5	1.3
UNKNOWN		11	6.3		
TOTAL		175	100.4	379	100.8

<sup>1</sup>The pre-test sample is comprised of all 175 Penal Law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The test year fine sample is comprised of all 379 fines imposed in Penal Law cases from August 12, 1988 to August 11, 1989.

**TABLE 4**  
**CHARGE SEVERITY OF FINED CASES DURING PRE-TEST PERIOD AND**  
**DAY-FINE PERIOD<sup>1</sup>**

	PRE-TEST PERIOD		TEST-YEAR PERIOD	
	<u>N</u>	<u>%<sup>2</sup></u>	<u>N</u>	<u>%</u>
ARRAIGNED FOR ALL FELONIES:	41	25	116	31
ARRAIGNED FOR BF:	3	2	10	3
ARRAIGNED FOR CF:	3	2	13	3
ARRAIGNED FOR DF:	25	15	71	19
ARRAIGNED FOR EF:	10	6	22	6
ARRAIGNED FOR ALL MISDEMEANORS:	119	73	258	68
ARRAIGNED FOR AM:	117	71	234	62
ARRAIGNED FOR BM:	2	1	24	6
ARRAIGNED FOR VIOLATIONS:	4	2	5	1
UNKNOWN:	11			
TOTAL	<u>175</u>	<u>100</u>	<u>379</u>	<u>100</u>

<sup>1</sup>The pre-test sample is comprised of all 175 Penal Law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The test-year fine sample is comprised of all 379 fines imposed in Penal Law cases from August 12, 1988 to August 11, 1989. Charge severity is measured by the severity levels provided in New York State Penal Law.

<sup>2</sup> Percentages sub-totalled in this column may not add up precisely due to rounding. Unknown cases were not included in the base for calculating percentages.

TABLE 5  
CHARGE TYPE OF FINED CASES DURING PRE-TEST PERIOD AND  
DAY-FINE PERIOD<sup>1</sup>

	PRE-TEST PERIOD		TEST-YEAR PERIOD	
	<u>N</u>	<u>%<sup>2</sup></u>	<u>N</u>	<u>%</u>
PROPERTY AND THEFT OFFENSES:	55	34	159	42
OFFENSES INVOLVING HARM TO PERSONS:	21	13	72	19
OFFENSES INVOLVING DRUGS AND CONTRABAND:	61	37	102	27
MISCONDUCT, OBSTRUCTION, AND SEX:	27	16	46	12
UNKNOWN:	11			
	—	—	—	—
TOTAL	175	100	379	100

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<sup>2</sup> Unknown cases were not included in the base for calculating percentages.

The available data do not allow for an examination of case-processing changes which could explain these shifts; such analysis must await the full evaluation. However, the decrease in the proportion of drug and contraband offenses drawing a fine sentence seems unlikely to have been caused by the introduction of the day-fine system. Broad shifts in the handling of drug cases by the New York courts have occurred in recent months in response to renewed demands for "get-tough" policies to combat the spiraling problem of drug abuse. It may be that more drug cases are being indicted and waived to the Supreme Court in Staten Island, and that stiffer sentences are being meted out in those drug cases being handled in the lower court.

### TYPICAL OFFENDERS RECEIVING DAY FINES

The following case summaries represent typical examples of the offenders who have received a day-fine sentence during the first year of pilot operations. The names of these offenders have been changed, but all other information is drawn from project files and court records of actual cases.

#### RICHARD SMITH

Richard Smith was prosecuted for threatening a police officer and resisting arrest. When stopped for a traffic violation, he told the officer that he knew where he and his family lived, and threatened to "get" him. When placed under arrest, he refused to be handcuffed. He was arraigned for resisting arrest (P.L. 205.30, an A misdemeanor); harassment (P.L.240.25, a violation); and disorderly conduct (P.L. 240.20, also a violation). He pleaded guilty to disorderly conduct.

Mr. Smith is a single, 20-year-old white male who lives with his mother. He works at the City Department of Transportation, where his take-home pay is \$800 every two weeks. He is self-supporting, and reported no dependents.

Mr. Smith was sentenced to pay a five-unit day fine. His unit value was fixed at \$32.00, for a total fine of \$160 -- which he paid in full at sentencing.

#### JOSEPH BURKE

Joseph Burke was prosecuted for stealing a car "valued at over \$100" according to court records. He was arraigned for grand larceny (P.L. 155.30, a class E felony); possession of stolen property (P.L. 165.45, a class E felony); and unauthorized use of an auto (P.L. 165.05, a class A misdemeanor). He pleaded guilty to attempted unauthorized use of an auto (a class B misdemeanor).

The available data do not allow for an examination of case-processing changes which could explain these shifts; such analysis must await the full evaluation. However, the decrease in the proportion of drug and contraband offenses drawing a fine sentence seems unlikely to have been caused by the introduction of the day-fine system. Broad shifts in the handling of drug cases by the New York courts have occurred in recent months in response to renewed demands for "get-tough" policies to combat the spiraling problem of drug abuse. It may be that more drug cases are being indicted and waived to the Supreme Court in Staten Island, and that stiffer sentences are being meted out in those drug cases being handled in the lower court.

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The following case summaries represent typical examples of the offenders who have received a day-fine sentence during the first year of pilot operations. The names of these offenders have been changed, but all other information is drawn from project files and court records of actual cases.

#### RICHARD SMITH

Richard Smith was prosecuted for threatening a police officer and resisting arrest. When stopped for a traffic violation, he told the officer that he knew where he and his family lived, and threatened to "get" him. When placed under arrest, he refused to be handcuffed. He was arraigned for resisting arrest (P.L. 205.30, an A misdemeanor); harassment (P.L.240.25, a violation); and disorderly conduct (P.L. 240.20, also a violation). He pleaded guilty to disorderly conduct.

Mr. Smith is a single, 20-year-old white male who lives with his mother. He works at the City Department of Transportation, where his take-home pay is \$800 every two weeks. He is self-supporting, and reported no dependents.

Mr. Smith was sentenced to pay a five-unit day fine. His unit value was fixed at \$32.00, for a total fine of \$160 -- which he paid in full at sentencing.

#### JOSEPH BURKE

Joseph Burke was prosecuted for stealing a car "valued at over \$100" according to court records. He was arraigned for grand larceny (P.L. 155.30, a class E felony); possession of stolen property (P.L. 165.45, a class E felony); and unauthorized use of an auto (P.L. 165.05, a class A misdemeanor). He pleaded guilty to attempted unauthorized use of an auto (a class B misdemeanor).

Mr. Burke is a 21-year-old black man who is single, and lives with his mother, to whom he contributes support. He works at a restaurant, and reports take-home pay of \$180 per week.

Mr. Burke was sentenced to pay a ten-unit day fine, and his unit value was set at \$11.78. His fine totals \$115. He was given an installment schedule for payment, and has paid a total of \$100 in four payments over two months. His outstanding balance is \$15.

#### LOUIS MARTINI

Louis Martini 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 (P.L.176.20, a class D felony), and pleaded guilty to making a punishable false written statement (P.L. 210.45, a class A misdemeanor).

Mr. Martini is a 30-year-old white male. He is married, and lives with his wife and three children in a home they own. At his arraignment he claimed to be unemployed, but he was represented by private counsel, and it seemed apparent to the Judge that Mr. Martini was not indigent and had significant assets. The Judge asked him to return to court with tax records so that a fair day fine unit value could be estimated in his case.

Mr. Martini was sentenced to pay a 40 unit day fine. On the basis of his tax records (which showed an annual income in the mid-30s), the judge estimated his unit value at \$23.10 -- resulting in a total fine of \$924. Mr. Martini paid his day fine in full on the day he was sentenced.

#### ROBERT SILVER

Robert Silver was prosecuted for trying to prevent the arrest of his brother, and for possession of a pellet gun. He was arraigned for obstructing governmental administration (P.L. 195.05, a class A misdemeanor) and A.C. 10-131(2)(6) (an administrative code violation). He pleaded guilty to disorderly conduct (P.L. 240.20, a violation).

Mr. Silver is a 23-year-old white male. He lives with his brother. When he was arrested, he was working as a stock clerk in a store, but at sentencing he said he was unemployed, and living on savings. The judge assumed he could easily find another job, and estimated his potential income at about \$6.00 per hour.

Mr. Silver was sentenced to pay a five unit day fine with a unit value set at \$19.64 -- for a total amount of \$100. He paid the day fine in two installments over a period of a month.



## CONCLUSION

Obviously, without the thorough examination of the total universe of cases handled by the Staten Island Criminal Court before and after the introduction of the day-fine system that will be provided by the full evaluation of the pilot, it is not possible to give a precise accounting of the effects of the introduction of this innovation in economic sanctioning. Using the limited data now available, any conclusions made regarding changes in the patterns of fine use will be -- at least in part -- speculative, until such time as findings from the comprehensive research effort now underway by staff of Vera's Research Department become available. Nevertheless, project planners are encouraged by the results of the simple comparisons described above.

That the volume of fines imposed in Penal Law Cases remained stable suggests that despite the introduction of new procedures requiring calculation of fine amounts using heretofore unfamiliar methods, the day fine proves an attractive sentencing option with advantages over the fixed-sum fine. That seventy-one percent of all fines imposed during the first year of the pilot were set using the new procedures further attests to the workability of the system designed by the project's planning workgroup.

The eighteen-percent increase in total dollar amounts ordered by the court, coupled with the rise in the average fine amounts since introduction of the day-fine system demonstrates that the new system has a revenue-enhancing effect. Indeed, the seventy-nine percent rise in total dollars ordered which would have occurred but for the current low statutory fine maxima gives strong evidence that, if the legislature were to establish fine maxima sufficiently high to allow day fines to float freely to the proper dollar amount as determined according to each individual offender's means, revenues derived from fines would rise sharply.

The greater dispersion of fine amounts within the currently permitted ranges offers significant evidence that judges have made use of the new procedures as the planning workgroup intended -- to differentiate more fairly among offenders of differing economic circumstances. The stable rates of distribution of fine sentences across Penal Law severity classes demonstrates that judges have not been timid about using the day fine in the full range of criminal cases where they would have previously imposed a fixed-sum fine.

Taken together, these preliminary findings give planners reason to speculate that if a more deliberate sentencing policy shift were to be undertaken by the court (driven either by jail crowding pressures or by some broader effort to structure sentencing practices more rationally), the day fine could play a major role as an intermediate sanction -- and (as in European practice) could provide a significant alternative to a jail sentence for appropriate offenders.