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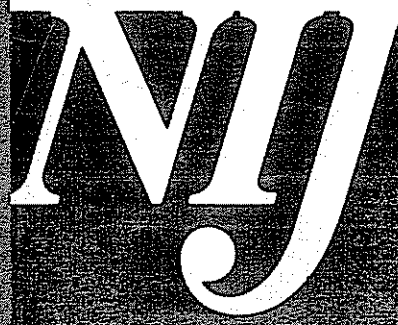

National Institute of Justice

Executive Summary

Fines in Sentencing:

A Study of the Use of the Fine as a Criminal Sanction

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by

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ABSTRACT

This Executive Summary presents findings from an exploratory study of law and practice with respect to the use of fines as a sanction for criminal offenses. The principal sources of empirical data are a national telephone survey of administrators in 126 trial courts in 21 states; site visits, for interviews and observation, to 38 courts in seven states; and examination of a sample of case records in New York City's five limited and five general jurisdiction trial courts. The study has also taken account of secondary materials including federal and state statutes, appellate court decisions, and books and articles dealing with sentencing. Particular attention has been given to the recent experience of three Western European countries--England, Sweden, and West Germany--that use fines very extensively as a sentence for criminal offenses.

The data indicate that patterns of fine utilization in the United States vary widely, even within the same state or metropolitan area, as do practices with respect to fine collection and enforcement. Despite this diversity, however, there are some common themes. First, fines are widely used as a criminal sanction and their use is not confined to traffic offenses and minor ordinance violations. Many American courts depend heavily on fines, alone or as the principal component of a sentence in which the fine is combined with another sanction. Fines are used most extensively in limited jurisdiction courts, but some courts that handle only felonies also make considerable use of them. Practitioners who favor broad use of the fine note that it is less costly than jail or probation and maintain that it can be both a meaningful punishment and an effective deterrent.

Second, although large amounts of revenue are involved--probably well over a billion dollars annually--very few courts have reliable information on fine utilization and enforcement. Few judges or court administrators have a sound working knowledge of aggregate fine amounts, collection rates, or the effectiveness of particular approaches to enforcement. Development of sound fines management information systems could significantly enhance the capacity of courts to use, collect, and enforce fines effectively.

Third, while the poverty of offenders is frequently cited as an obstacle to broad use of fines, there is evidence that a number of courts frequently impose fine sentences upon offenders with limited means and are relatively successful in collecting them. Factors associated with high collection rates include limited use of installment payment plans, allowance of relatively short periods for payment of the fine, and strict enforcement policies that include imposition of a jail term in the event of default.

Several Western European countries have adopted sentencing policies that explicitly make fines the sentence of choice for offenses (including some crimes of violence) that would result in jail sentences in many American courts. In West Germany, legislation designed to minimize the imposition of custodial terms of less than six months has been coupled with adoption of an innovative "day-fine" system. Based on a Swedish idea, the day-fine system enables fines to be set at amounts which reflect the gravity of the offense but also take account of the resources of the offender. This has resulted in greater fine use and has contributed to a dramatic drop in the number of short-term custodial sentences imposed by the courts. The study recommends experimentation with this approach in American courts. More generally, the study recommends a fresh look at laws and practices affecting the use and enforcement of fines and other monetary sanctions, with a view to development of a more consistent overall approach that will (1) provide expanded sentencing options; (2) reduce reliance on short-term jail sentences; and (3) better meet the needs of crime victims.

ACKNOWLEDGMENTS

A complex and multi-faceted research effort such as this draws upon the talents and support of many individuals. The work done by each member of the project staff enriched the work being carried out by all the others as we sought to explore facets of the criminal justice system here and abroad that had received very little previous attention. Coordinating this effort, which was taking place simultaneaously in New York, Denver, and London would have been impossible without the readiness of each staff member to share generously of his or her individual talents, and to offer understanding (and patience) to colleagues.

Michael E. Smith and Harvey E. Solomon, Directors of the Vera Institute of Justice and the Institute for Court Management, respectively, deserve our special thanks for their support and general good humor in the face of the project's ever-broadening horizons and its occasionally chaotic appearance. They provided encouragement and wise advice as the work progressed, and their suggestions were enormously helpful throughout the study.

Jonathan Casper, George F. Cole, Malcolm Feeley, Daniel J. Freed and David Moxon provided very useful comments on drafts of the full report. The contents of that report and of this Executive Summary owe much to their careful and thoughtful reviews. We are also grateful to the Research and Planning Unit of the British Home Office for its cooperation with the several parts of this study that were conducted through the Vera Institute's London Office. The Home Office has facilitated Vera's research efforts in England for a number of years. It has had a continuing interest in issues of fine use and enforcement, and our own research has benefitted substantially from its past experience with research and policy-making in this area of sentencing.

We would also like to thank a number of people at the National Institute of Justice for their contributions to this project. In addition to providing the

primary funding for this project, NIJ provided much of the initial stimulus and conceptual background for the research. Pre-publication inquiries about the results of our work, which have already come from judges, court administrators, scholars, and the United States Senate, suggest that the National Institute's interest in encouraging research on criminal fines was timely. We very much appreciate the help and guidance along the way of NIJ staff members Jonathan Katz, Bernard Auchter, Betty Chemers, Sidney Epstein and Cheryl Martorana.

Finally, while the National Institute provided the majority of the funds for this study, we also wish to express our thanks to both the City of New York and to the German Marshall Fund of the United States for their financial support of the overall project. The City of New York provided Vera with the opportunity to deepen the empirical base of this research by collecting extensive court record data on the New York's experience with fine sentences and their enforcement. The resulting body of information is the only one of its kind on an American jurisdiction. The German Marshall Fund's support enabled us to expand the scope of the research by collecting original data on fining in English magistrates' courts and by visiting courts and researchers in Sweden and the Federal Republic of Germany where, by national policy, fines are the sentence of choice for most criminal offenses. The experience of these countries with the use of fines as a sanction provides valuable insights into issues of central concern to American policymakers who want to explore further the use of fines and other monetary penalties in American courts and to understand more about the closely related issues of collection and enforcement. We hope that the results of this study will contribute to the cross-national exchange of knowledge and experience, and will stimulate further American research and policy development in this area of sentencing.

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I. Introduction

Sentencing policy in the United States has undergone major changes in recent years, with the introduction in many jurisdictions of sentencing guidelines, mandatory minimum sentences, and determinate sentencing schemes of various types. These changes reflect a trend away from the concept of individualized justice and the concern with rehabilitation that have dominated American sentencing philosophy during most of the twentieth century, and toward an emphasis on incapacitation, deterrence, and punishment as explicit policy objectives. While the full consequences of these shifts in theory and law have yet to be determined, one result appears to be a substantial increase in the populations of prisons and jails (Bureau of Justice Statistics, 1982; Galvin and Polk, 1982). At the same time, however, there has been a growing concern with targetting scarce jail and prison space for those offenders who appear to be most deserving of it, and a renewed interest in using meaningful alternatives to incarceration.

Given the limitations on custodial facilities, there is a perceived need for a wider range of enforceable sanctions for offenders whose behavior calls for more than admonition, but where incarceration may not be necessary or desirable. A number of such sentencing possibilities exist, alone and in combination, including probation, community service, suspended jail or prison sentence, conditional discharge, restitution, and the fine. The fine is one of

the oldest, and one of the most widely used of these sanctions, yet very little has been known about the extent to which fines are used as criminal penalties across the many different types of American courts, about how they are collected and enforced, or about their real (or perceived) efficacy as sanctions. The objective of the research summarized here has been to help fill this large gap in knowledge. Key findings include the following:

- It is useful and feasible to consider substantially expanding the use of fines as a criminal sanction in American courts.

- While there is considerable scope for broader and more effective use of fines, they are already used widely as a criminal sanction in American courts. Limited jurisdiction courts are the heaviest users of fines, but some courts that handle only felonies also make surprisingly extensive use of them.

- Fine use in the United States is not confined simply to traffic offenses and minor ordinance violations. On the contrary, it is clear that many courts depend quite heavily on fines, alone or as the principal component of a sentence in which the fine is combined with another sanction, in sentencing criminal defendants for a wide variety of offenses including some generally considered serious. Other courts, however, use fines only for a narrow range of relatively minor offenses.

- There is a glaring lack of reliable and readily available information on fine utilization and enforcement in American courts. Few judges, court administrators, or other practitioners have a sound working knowledge of aggregate fine amounts imposed, collection rates, or the effectiveness of particular approaches to enforcement. Development of sound fines management information systems could significantly enhance the capacity of courts to use, collect, and enforce fines effectively.

- Although the poverty of offenders is frequently cited as an obstacle to broad use of the fine as a sanction, a number of courts regularly impose fine sentences upon persons whose financial resources are extremely limited. The amounts of such fines, and the extent to which judges take account of the offender's means in imposing the sentence, vary considerably across jurisdictions.

- Despite the difficulty of obtaining valid and reliable data on fine utilization and enforcement, there is evidence that some American courts which use fines frequently (and in cases involving defendants who are poor) are relatively successful in collecting them. Factors that appear associated with high collection rates include limited use of installment payment plans, allowance of relatively short periods for payment of the fine, and strict enforcement policies that include imposition of a jail term in the event of default.

- In contrast to the great diversity of practice regarding fine use in America, some Western European countries have adopted sentencing policies that explicitly make fines the sentence of choice for many offenses, including some crimes of violence, that would result in jail sentences in many American criminal courts. In West Germany, legislation designed to minimize the imposition of custodial terms of less than six months has been coupled with the adoption of an innovative "day-fine" system that enables fines to be set at amounts which reflect the gravity of the offense but also takes account of the means of the offender. This has resulted in a sharp increase in the proportion of sentences that involve a fine and a dramatic drop in the number of custodial terms imposed by the courts.

- It should be possible to adapt the day-fine approach for use in American courts that handle criminal cases. Experimentation with such an approach is feasible and should be encouraged.

The study has been conducted jointly by the Vera Institute of Justice and the Institute for Court Management. Given the lack of prior empirical research on fines, the study has been essentially exploratory, focusing on description of the varied patterns of law and practice with respect to fining and upon examination of key policy problems. It has drawn upon three principal sources of empirical data: a national telephone survey of administrators in 126 courts in 21 states; site visits, for interviews and observation, to 38 courts of varying types in seven states; and an in-depth case record study of fine use and collection in New York City's five limited and five general jurisdiction criminal trial courts. It has also taken account of a wide range of secondary materials, including federal and state statutes, appellate court decisions, and books and articles dealing with sentencing in general and fines in particular. Special attention has been given to the recent experience of three Western European countries--England, Sweden, and West Germany--that use fines very extensively as a criminal sanction.

This attempt to take a broad view of fining policy and practice has produced materials having some important limitations. The data collected from our varied sources tend to be uneven in their depth and in the extent to which

they support generalizations. Nevertheless, they make it possible to develop a general overview of American law and practice with respect to fining, to draw comparisons between American and European approaches to similar issues, and to identify problem areas and potential avenues of policy development. This Executive Summary discusses our central findings with respect to fine use, collection, and enforcement, and our principal recommendations for practitioners and policymakers. More detailed discussion of the findings and recommendations can be found in the project's Final Report and in ten working papers prepared during the course of the project.*

II. Use of the Fine as a Sanction

A. Contrasting Perspectives on Fine Use

There is a striking contrast between American and Western European theory with respect to the use of the fine as a criminal sentence. In the United

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* The Final Report, entitled Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction, by Sally T. Hillsman, Joyce L. Sichel, and Barry Mahoney, is published by the National Institute of Justice (1984). The ten working papers, which encompass some 900 pages of material, have been compiled into five volumes available through the National Criminal Justice Reference Service and the Vera Institute of Justice. The first volume contains Working Papers #1-#3, which report on our review of the American State Statutes, Model Codes, and Federal Statutory Law Relating to Fine Use (all by Joyce L. Sichel); it also contains Working Paper #4 on the Case Law and Constitutional Problems in Default on Fines and Costs (by Alice Dawson); and Working Paper #5, the Review of the United States Fine Literature (by Ida Zamist and Joyce L. Sichel). The second volume, authored by Barry Mahoney, Roger Hanson, and Marlene Thornton, is Working Paper #6 on the Use of Fines as a Criminal Sanction in American State and Local Trial Courts: Findings from a Survey of Clerks and Court Administrators. The third volume is Working Paper #7, Ida Zamist's empirical study of the Use of Fines in the New York City Courts. The fourth volume contains Working Papers #8 and #9 which report on Visits to Selected State and Local Courts and on U.S. District Court Fine Imposition and Collection Practices, both by Joyce L. Sichel. The fifth and final volume is Working Paper #10, a report on Fines in Europe by Silvia S. G. Casale.

States during most of the twentieth century, scholarly thought and legislative policy have tended to discourage broad use of the fine, except for minor offenses and crimes involving pecuniary gain. To a significant extent, this negative view of the fine has been based on a feeling that, as one federal commission report phrased it, "Fines do not have affirmative rehabilitative value" (National Commission on Reform of Federal Criminal Law, 1971: 296). Although rehabilitation now occupies a much less prominent place among sentencing goals than it did 10-20 years ago, fines have not become recognized as an effective form of punishment or as a potential alternative to incarceration. Sentencing statutes passed by American states in recent years have generally attempted to establish longer prison terms and provide for mandatory minimum periods of incarceration, but have seldom sought to increase fine ceilings, strengthen fine enforcement practices, or address the difficult problem of imposing meaningful (and enforceable) monetary sanctions upon offenders with limited means. Even when monetary penalties have been written into law, they have usually been intended for use as supplements to other sentences, and the emphasis has been more on restitution than on fines.

By contrast, legislators and other policymakers in Britain, Sweden, and West Germany have taken a more affirmative stance with respect to the use of fines as criminal penalties. Broad use of fines has become explicit national policy in these countries, with the express aim of reducing reliance upon short-term custodial sentences. About two-thirds of all offenders sentenced for crimes against a person in West Germany are fined, as are about half of all such offenders in England and Sweden. The fine is the sentence of choice for most criminal offenses and the primary alternative to short-term incarceration in the criminal justice systems of each of these countries. Further-

more, its use as an alternative has been increasing steadily--most dramatically in West Germany--over the past 15 years.

The emphasis upon use of the fine in Western Europe springs from a clear objective of sentencing policy: punishment of the offender. Fines are regarded as "unequivocally punitive" (Morgan and Bowles, 1981: 203). It is also thought that they may have some deterrent value and that they are less likely to produce harmful effects on subsequent behavior than is a jail or prison sentence (id.; also Harris, 1980: 10, McKlintock, 1963: 173; Softley, 1977: 7-9).

American practitioners interviewed during this study presented a wide range of views on the desirability of using the fine as a sanction. Not surprisingly, most of the respondents in state general jurisdiction courts that handle only felony cases tend to take a negative view of the fine's effectiveness as a sanction in the types of cases they deal with. Judges and other practitioners in these courts typically feel that fines do not have sufficient deterrent effect on defendants convicted of crimes of violence. They also tend to believe that felony defendants are generally too poor to pay fines of sufficient magnitude to reflect the severity of their offenses. However, these views are not universally held. There are a few jurisdictions in which fines are viewed as an appropriate penalty for many serious offenses, particularly when imposed in combination with probation or a suspended jail or prison sentence. Personnel in this group of upper-level courts express the view that even relatively poor defendants can pay, and do pay, especially when their behavior is monitored. They also tend to believe that this sentencing approach represents a deterrent as well as a punishment. As more than one respondent put it, "when you hit the pocketbook, you hit home."

Among practitioners in American limited jurisdiction courts, the view that a fine can be a meaningful punishment and an effective deterrent is much more common. But even lower court practitioners who feel that the fine has the potential to achieve these sentencing objectives often express ambivalence about its application. This stems from two widespread perceptions: (1) that many offenders cannot pay more than a token fine amount because of their poverty; and (2) that most fines, even relatively small ones, are not routinely collected by the courts. Although these are assumptions that remain untested empirically (and are contradicted by some of the data from this study; see below, pp. 24-25), they hold sway among practitioners in many courts and contribute to perpetuating the notion that the fine is a weak sanction.

B. Frequency of Fine Use

Patterns of fine use vary widely from court to court even within the same state or metropolitan area, as do practices with respect to collection and enforcement. There are, however, some clear themes with respect to use that emerge from the data we have gathered.

First, it is apparent that practices with respect to fining tend to be consistent with attitudes toward the efficacy of the fine as a sanction. Thus, fines tend to be used relatively rarely in most felony-only courts. As Table 1 shows, respondents in 15 of the 24 felony-only courts contacted in our telephone survey (63%) indicated that they seldom or never use fines. These responses are consistent with data from our sample of case records in New York City's general jurisdiction trial courts, where it appears that fines are used in fewer than five percent of the sentences imposed (Zamist, 1982). Similarly, Eisenstein and Jacob report that fines represented less than five percent

of the sentences imposed on convicted felony defendants in their samples of cases in Detroit, Baltimore, and Chicago (1977: 274).

Interestingly, however, Table 1 also shows five respondents from felony-only courts reporting that fines are used in most cases in their courts. This suggests that there are exceptions to the general practice of rarely using fines in felony cases, and raises the possibility that there may be more room for expanded use of fines in at least some felony cases than is generally thought feasible. This possibility is reinforced by Gillespie's findings that in two Illinois counties 20 and 25 percent of the felony defendants receiving either a conditional discharge or a court or probation supervision sentence were sentenced to a fine, most often in combination with probation (1982: 11-12).

In limited jurisdiction courts, where practitioners tend to have appreciably more favorable views toward the fine as a sanction, fines appear to be the predominant sanction. Table 1 shows that 19 of the 74 telephone survey respondents in limited jurisdiction courts (26%) said that their courts use fines in all or virtually all cases excluding parking and routine traffic matters. An additional 38 respondents (51%) reported that their courts use fines in most of these cases; only 7 (9%) reported that they seldom used them.

The heavy fine use reported by these respondents in cases other than parking and routine traffic matters is consistent with data found in the few other recent studies that have dealt with the sentencing process in misdemeanor courts (e.g., Feeley, 1979; Ryan, 1980; Ragona and Ryan, 1983). Our own examination of case records in the New York City Criminal Court indicates that the fine is used less frequently in that court than in some other misdemeanor courts, but it is nonetheless the court's most commonly used sanction.

Analysis of a sample of 1,945 sentences imposed in cases that had been initiated by an arrest shows that, on a citywide basis, fines make up 31% of the sentences in these cases (see Table 2). The frequency of use varies considerably from county to county, ranging from 21% in New York County (Manhattan) to 50% in Queens County and 52% in Richmond (Staten Island) (Zamist, 1982).

These findings highlight a second theme with respect to fine use: the fine is used very widely as a sanction in American criminal courts--far more extensively than was generally thought to be the case. It is possible that the very limited use of fines in most general jusrisdiction courts (which, until very recently, had been the main focus of attention from researchers and legal scholars) has encouraged the widely prevailing notion that fines in American courts are almost exclusively restricted to routine traffic cases and relatively minor criminal offenses. The telephone survey and collateral data clearly suggest much broader use--mainly in the lower courts, but also in a small proportion of felony courts. Direct comparisons with countries such as England, Sweden, and West Germany are extremely difficult because of the diversity of American structure and practice and the lack of any truly national data for the U.S. However, our data indicate that differences in the extent to which the fine is utilized as a sanction in the United States vis-a-vis Western Europe may not be as great as some have thought.

C. Types of Offenses for Which Fines are Used

Table 3, based upon data from a sample of case records in the New York City Criminal Court, shows that fines are used in New York City with considerable frequency for a wide variety of misdemeanors. Conviction charges resulting in fine sentences include driving while intoxicated (DWI), reckless driving, gambling, disorderly conduct, loitering, possession and sale of con-

trolled substances, lesser degrees of assault and theft, and criminal trespass. It should be noted that many of the misdemeanor cases that resulted in fines in New York City were not defined as trivial by either the police or the prosecutors. Forty-seven percent of the misdemeanor convictions that resulted in a fine in Bronx County had originally entered the court as a felony charge (after initial screening by the District Attorney's Office), as had 51 percent of the misdemeanor convictions in Kings County and 13 percent in New York County (Zamist, 1982: 80).

The data from New York City, which reflect considerable diversity in the treatment of similar offenses from county to county within the city,* show patterns similar to those found from the telephone survey of court administrators. Table 4, which summarizes answers to an open-ended question asking survey respondents to indicate the types of offenses for which fines are commonly used in their courts, helps provide a sense of the kinds of cases in which fines are imposed by different courts. Perhaps the most striking thing about this table is the wide range of offenses for which fines are reported to be commonly used in the 126 surveyed courts. It is clear that relatively serious motor vehicle offenses (e.g., driving while intoxicated (DWI), reckless driving), which may enter the courts either as misdemeanors or felonies, are often

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* As Table 3 indicates, approximately 40% of the Criminal Court sentences for disorderly conduct/loitering and for drug-related offenses involved fines, as did about two-thirds of the gambling convictions and a quarter of the assault convictions. There is, however, considerable variability from county to county. For example, only 13.9% of the prostitution convictions in New York County (Manhattan) resulted in a fine, compared to 35.9% in Kings County (Brooklyn) and 86.7% in the Bronx. The use of fines in assault cases ranged from less than 10% (1 of 12 cases in Kings County) to 60% (3 of 5 cases in Queens County). Whereas all the gambling convictions in the other counties resulted in fines, only about half the gambling offenders in New York County were fined (Zamist, Working Paper #7, 1982:82-86). This diversity probably reflects, inter alia, differences in the nature and seriousness of the behavior within the same offense category, the socio-economic status of the defendants, and the political environments of the counties.

dealt with by fines. So also are the variety of behaviors that comprise disorderly conduct/breach of the peace offenses, drug-related offenses (sale and possession), some thefts, and assaults. In each of these categories except for DWI (where almost two-thirds of the courts report commonly using fines), almost a third of all the courts report that fines are commonly used.

D. Forms of Fine Sentences: The Fine Alone and in Combination with Other Sanctions

One of the important ways in which fine use varies across courts is in the extent to which fines are imposed in combination with other sanctions.* The use of a fine together with another sanction (or set of sanctions) obviously affects the severity of the overall sanction, and may also have a bearing on the effectiveness of fine collection and enforcement. In our telephone contacts and site visits, we encountered a wide range of practices with respect to imposing sentences that included a fine, of which the following are illustrative:

- Fine plus jail or prison term. In this type of sentence, the fine is essentially an added punishment, often used to deprive an offender of illegal gains. This combination is fairly common in cases involving fraud, corruption, other types of white collar crime, and large-scale sale of narcotics.

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* The diversity of practice with respect to use of the fine in combination with other sanctions is illustrated by the findings of Ragona and his colleagues in their study of three misdemeanor courts that used fines very extensively (1981: 7-8). In two of the courts (Tacoma and Mankato) fines were used in combination with other sanctions in less than 10% of all sentences. In Austin, however, such combination sentences accounted for 71.2% of all sentences; fines alone were imposed in only 6.8% of the cases in which defendants were convicted. Ryan's data from Columbus also pictures a court that makes extensive use of fines in combination with other sanctions: in criminal cases in that court, one defendant in five is both fined and incarcerated, and in traffic cases half of all defendants receive sentences that involve some combination of fines, incarcerations, suspension of the driver's licence, and attendance at special programs for drivers who drink (1980: 99). In New York City's Criminal Court, fines are rarely combined with other sanctions (see Table 2) and the same appears to be true in New Haven (Feeley, 1979: 137-139).

- Fine plus probation. This combination is commonly used in some southern states and in many federal courts, particularly in relatively serious cases that involve steep fines. The probation department acts as the fine collection agent, and periodic meetings of the offender and the probation officer provide a means of monitoring payments. Payment of the fine is often made a condition of probation, and nonpayment thus becomes grounds for revoking probation.

- Fine plus suspended jail or prison term. In this situation, the fine is usually the principal sanction. The length of the jail or prison term may indicate the seriousness with which the judge views the offense; suspension of it (usually on condition that the fine is paid by a certain date) provides an incentive for timely payment of the fine.

- Fine or jail alternative. This is the traditional "$30 or 30 days" type of sentence. In some jurisdictions, a dollars-to-days ratio is established by statute; elsewhere it is up to the judge to establish the alternative. While in some sense the "choice" of penalty is left to the defendant, this type of sentence is usually meant to be a fine and the jail "alternative" serves mainly as an enforcement device to be employed by the court only if necessary.

- Fine alone, partially suspended. Like the suspended jail sentence, the partially suspended fine appears to be aimed mainly at encouraging prompt payment of the net fine amount.

- Fine alone. Although some courts often use fines in combination with other sanctions, others do not. The "stand-alone" fine is clearly the most frequently employed type of sanction in a great many limited jurisdiction courts.

The differences in the ways fines are used in combination with other sanctions appear to reflect a variety of factors, including the types of charges involved, the extent to which jail and probation resources are available, statutory limitations, and judges' objectives in imposing sentences. In some jurisdictions, for example, certain types of offenses are punishable only by fine (e.g., many ordinance and traffic violations), while other offenses may not be punishable by fine at all (e.g., certain felonies or in repeat felony offender cases). Additionally, the more a judge is aware of (and concerned about) collection and enforcement, the more likely he may be to impose a fine in combination with another sanction in a fashion designed to encourage payment.

E. Fine Amounts

Most state penal codes establish dollar ceilings on fine amounts for particular offenses or classes of offenses defined by their seriousness, but these ceilings vary dramatically from state to state. For example, Arizona, the state authorizing the highest fines, provides for a $1,000 fine maximum for disorderly conduct, a $150,000 fine maximum for auto theft, a $172,500 fine maximum for sale or possession of a narcotic drug by an individual, and a $1,000,000 fine ceiling for a felony committed by a corporation. By contrast, Vermont has fine maxima of $500 for disorderly conduct, $500 for auto theft, and $1,000 for possession of a large amount of a narcotic drug. It has no special provisions for corporate defendants.

In practice, trial judges set most fines at amounts well below the statutory maximum for the offense. Feeley (1979) calls attention to the low fines, as well as to the few jail sentences, imposed on convicted defendants in New Haven's Court of Common Pleas as examples of how judges in misdemeanor courts tend to be lenient in sentencing. While jailing seems more frequent in New York City than in New Haven (compare Table 2 with Feeley, p. 138), fines in the New York City Criminal Court are also low. The median fine amount for sentences in our sample of arrest cases was $75. The mean fine amount was $106, reflecting a small number of relatively high fines; only 20% of the cases involved fines greater than the mean. Nevertheless, as Table 5 shows, the "going rate" for particular charges varies considerably from court to court within the city.

Outside New Haven and New York, fine amounts vary widely in the lower courts. Although data on fine amounts are not readily available from courts themselves, it appears that substantially higher fines are commonly imposed in some limited jurisdiction courts. Our interviews and examination of court

records in Georgia, for example, suggest that despite the poverty of most defendants, many fines were above $250 in 1981. In Fulton County (Atlanta), $250 appears to be considered a "low fine" for a misdemeanor.

F. Setting Fine Amounts

Most criminal court defendants are poor, but some are not. The heart of the problem, with respect to the use of the fine as a sanction, is how to set fine amounts at a level which will reflect the seriousness of an offense yet also be within the ability of the offender to pay. Courts vary widely in how they deal with this problem. One approach is to use a kind of "tariff" system. The judges who follow this approach make sentencing judgments more or less across the board for defendants convicted of particular offenses, after developing a presumption about their "typical" defendants' degree of poverty and the fine amount most are likely to be able to pay. Similar offenses result in fines of similar amounts and little or no inquiry is made into the financial situation of individual defendants. For instance, the presumption among many New York City judges seems to be that few defendants have money to pay fines and that almost no one will be able to pay a substantial fine. Therefore, they limit the amounts of most of the fines they impose in Criminal Court and seldom use fines at all in felony cases. In contrast, some courts visited in Georgia use fines extensively in felony cases. They tend to assume that defendants, however poor, will be able to pay substantial fines and to make restitution payments as well, if given the duration of a probation sentence to pay and pressure from probation officers to do so. Only when default occurs do they seem to consider seriously the offender's actual ability to pay.

At the other end of the spectrum, some judges inquire carefully into the economic situations of convicted defendants for whom a fine is a possible sentence. This approach is consistent with the ability-to-pay concept that has been incorporated into many state statutes. For example, New Jersey's statutes provide that:

> In determining the amount and method of payment of a fine, the court shall consider the financial resources of the defendant and the nature of the burden that its payment will impose (New Jersey Revised Statutes, 2C-44-2).

This statutory directive is followed by judges who ask offenders questions about the reality of their day-to-day living. For example, one judge in the Newark Municipal Court typically asks defendants such questions as: "Do you have a car? Do you buy gas? Do you smoke?"

Many of the judges interviewed during this study, when asked how they determined whether a defendant would be likely to pay a fine, tended to talk about a "feel" for the individual defendant's financial condition based on whether he was working, his age, his personal appearance, and his address of residence. Some of them would ask the defendant what he could afford (sometimes directly and sometimes through the defense attorney) and would then tailor the fine to that amount. And when court papers showed that a defendant failed to raise even a low bail, judges sometimes used this information as a basis for setting a low fine. Especially if the offense was minor and the fine set was relatively small, judges appeared to be comfortable with these "soft data." When they were contemplating a high fine or restitution in a more major case, they would be more likely to rely on presentence reports prepared by probation staffs.

The principal problem with a tariff system is that its impacts upon defendants convicted of similar offenses can be grossly inequitable. Some

poverty-stricken defendants are fined more than they can possibly pay, while some relatively affluent defendants are given fines that are meaningless as punishment. Both results undermine the fine's effectiveness as a sanction. But an approach centered on the defendant's ability to pay also has conceptual and practical difficulties. If poor defendants are given very low fines (and no other punishment), there is a risk that the public will perceive such sentences as unduly lenient. On the other hand, if a judge's inquiry into the defendant's ability to pay indicates that the defendant is seriously impoverished, the sentencing decision may be jail instead of a fine.

Data from Western European countries, as well as our own findings on the rather widespread use of fines in American courts, suggest that in fact the poor <u>are</u> being fined in many courts. Moreover, there is evidence that a high proportion of these offenders--on both sides of the Atlantic--are paying their fines. It seems apparent that some degree of poverty does not necessarily preclude imposition of a fine or payment of it, but there is an obvious need to develop effective ways of tailoring fines to both the seriousness of the offense and the financial circumstances of the offender.

G. <u>Day-Fine Systems: Reconciling Consistency and Equity</u>

The "day-fine" is a Swedish innovation which is now also firmly entrenched in West German sentencing practice. It is designed to enable a sentencing judge to impose a level of punishment which is commensurate to the seriousness of the offense and the prior record of the offender, while at the same time taking account of his or her poverty or affluence.

In a day-fine system, the amount of the fine is established in two stages. The first involves setting of the number of units of punishment to be imposed, taking account of the seriousness of the offense (and perhaps the

defendant's prior history, too), but without regard to the means of the offender. In the second stage, the monetary value of each unit of punishment is set in light of information about the offender's financial circumstances. Thus, at least theoretically, the degree of punishment should be in proportion to the gravity of the offense, and roughly equivalent (in terms of severity of impact on the individual) across defendants of differing means.

In both Sweden and West Germany, the problem of assessing offenders' means has generally been dealt with by relying on offenders' self-reports of their employment and financial circumstances. In Sweden, veracity is encouraged by the fact that police and courts can have access to income tax statements. In West Germany (as in England and the U.S.), this method of checking accuracy is not available, but German courts do not seem to feel the need for a stringent means test. "Soft" data can be elicited by questioning the defendant in court, and when a very high fine is a realistic possibility some information can be obtained from banks.

In West Germany, the day-fine system was adopted at about the same time that legislation was enacted providing that custodial terms of less than six months were to be replaced by fines or probation in all but exceptional cases. Together, these innovations appear to have produced significant changes in sentencing patterns. As Table 6 shows, more than 113,000 sentences to custodial terms of less than six months were imposed by West German courts in 1968, the year before the legislation was passed. By 1976, this number had dropped to less than 11,000 (1.8% of all sentences). During the same period, the proportion of fine sentences rose from 63% of the total to 83%.

III. Collection and Enforcement

The potential efficacy of the fine as a criminal sanction depends in large measure upon the ability of some appropriate authority (usually the court or probation service but sometimes another agency such as the police, the sheriff's department, or local tax office) to collect the fine. If the fine cannot be collected--if offenders can for practical purposes ignore the imposition of a fine--then its use as a penalty becomes at best an empty gesture. On the other hand, if fine collection is taken seriously, and if responses to default are effective, offenders must either pay their fines or suffer more serious consequences. Then the fine may have real meaning as punishment, and perhaps as a deterrent as well. In addition, success in fine collection may have an impact on utilization. If judges believe that fines are being collected, they may be more inclined to use them (and to consider more extensive use) than if they believe offenders ignore them with impunity.

Fine collection practices may also have an important bearing on the success or failure of other sentencing alternatives that have an economic impact on defendants. For example, although the ultimate beneficiary of a restitution order, "penalty assessment," or court costs may be different from the recipient of fine revenue, the practical problems of collection and enforcement are similar to those involving fines. Indeed, the administrative mechanics are often exactly the same. A court or other government agency that does a poor job of collecting and enforcing fines is not likely to do a better job of collecting restitution payments or court costs. Thus, improving our understanding of fine collection techniques and approaches should be helpful in enhancing the utility of all economic sanctions.

A. Amount Involved

Fines are a big business for American courts. Our telephone survey reached only a small fraction of the state and local trial courts in the United States, but the amount collected in these courts alone is very substantial. A total of about $110,000,000 was reported to have been collected in a single year in the 106 survey courts where respondents knew (or could estimate) the amount collected. Projecting from these reports, we estimate that the annual total is well over a billion dollars and may well exceed two billion--especially if we include other monetary penalties collected. In terms of total amounts collected, municipal courts are far ahead of other courts. One court alone--the Los Angeles Municipal Court--reported collecting over $15,000,000 in 1981.

B. Collection Rates

To what extent are fines imposed but not collected? What is the gap between what should be collected, under optimum collection practices, and what is actually collected? This is obviously an important question for assessing policies involving the use of fines and other economic sanctions. However, very few courts can provide the requisite information. Although courts maintain records on payments in individual cases, they seldom keep aggregate data on fines imposed and fines collected. Generally their record-keeping systems do not even enable this information to be readily compiled when requested. Only 15 of the 126 courts contacted in our telephone survey could report the total dollar amount of fines imposed in the court's most recent fiscal year.

In most jurisdictions, it is necessary to analyze individual case records in order to obtain reliable data on the extent to which fines imposed are actually collected. Undertaking this type of examination for our sample of

arrest cases in the New York City Criminal Court, we found that even with only minimal enforcement effort this major urban court system manages to collect three-quarters of the money it has imposed in fines within one year of sentencing (Table 7). Of those fined, 19% paid on the day of sentence and another 48% paid in full within a year (Table 8). As Tables 7 and 8 indicate, there are substantial variations in collection rates by county within the city. In Queens, where individual fine amounts are relatively high, collection rates are appreciably higher than in New York County (Manhattan) where fines tend to be low. The difference shows up both in the proportion of total fine amounts collected (83% in Queens compared to 59% in Manhattan) and in the proportion of fined offenders who pay in full (77% in Queens compared to 59% in Manhattan).

Because there appear to be few courts in the United States or Western Europe that routinely analyze their own records to learn about their collection rates, it is difficult to know how representative New York City's performance is with respect to collecting fines from criminal defendants. Two other studies suggest that the range of variation in collection rates is very wide from jurisdiction to jurisdiction in the U.S., ranging from 83% in Peoria, Illinois (Gillespie, 1982: 10) to 33% in Beaver County, Pennsylvania (Bradley-Steck, 1983). Estimates of collection rates provided by limited jurisdiction administrators contacted in our telephone survey also suggest a wide range, from a low of 10% to a high of 95%.

C. Collection Practices

How do court systems collect the fines they impose? Imposition of a fine (or other monetary sanction) is a different matter for a court than the imposition of other sentences because the court must ordinarily execute and en-

force it. Very little about this aspect of fining is regulated by statute, and courts have had little formal guidance in developing their collection methods.

In practice, American courts employ a wide range of approaches and techniques in seeking to collect fines they have imposed. Here again, there appear to be significant differences between general jurisdiction "felony-only" courts and limited jurisdiction courts that handle misdemeanors and/or ordinance violations. Differences in collection practices reflect the different types of cases handled. When a felony court imposes a fine, alone or in combination with another sentence, the amount is likely to be higher than in a limited jurisdiction court, the offender may need more time to pay it, and a probation service--often available in a felony court, but not in many limited jurisdiction courts--is likely to be involved in the collection process. Three aspects of the collection process warrant particular attention:

(1) Same-day and delayed payment systems. If a fine can be collected from a defendant immediately after it is imposed, the court can obviously save itself a great deal of paperwork and subsequent effort aimed at collection. However, relatively few courts report a high percentage of same-day fine payments. Only 24 of our 126 telephone survey respondents (19%) indicated that more than three-quarters of the offenders in their courts pay their fines in full on the same day they are imposed. By comparison, 41 respondents (33%) indicated that a quarter or fewer of the fined defendants in their courts paid in full on the same day. Deferred payment arrangements are explicitly authorized by statute in 35 states and are commonly used by courts in every state.

Installment payment systems under which a fined offender pays a certain proportion of the fine on a regular basis (e.g., weekly, monthly) have been advocated by some writers, but do not appear to be used widely. Court admin-

istrators interviewed during this study expressed strongly negative views about them. Such systems are said to require more record-keeping and follow-up (thus requiring more staff), and are perceived as relatively ineffective because of a high incidence of failure of defendants to make timely payment. Given a choice, it is clear that virtually all clerks and court administrators would prefer to see a defendant given a specific date by which the full amount of the fine must be paid.

(2) Incentives for prompt payment. One possible method of encouraging prompt payment would be to impose an interest charge or some other type of fee when offenders do not pay within a relatively short period of time set by the court. It appears, however, that this technique is rarely used. When asked directly whether interest, or a special collection fee or surcharge, was charged on fine amounts not paid immediately, only three of the 126 telephone survey respondents--all from municipal courts--answered affirmatively. In New York City, penalties for late fine payments are applied routinely by the City's Parking Violations Bureau for parking tickets but no such system exists for other types of summons or criminal fines. Some of the courts we surveyed reported that they charged defendants with court costs when a notice or warrant was issued, but this practice does not appear to be a common one.

A possible method of encouraging immediate payment in full, at least in routine types of cases from offenders who are not poor, is to accept payment by credit card. Six courts we surveyed told us that they did so. All were high volume courts that handle misdemeanors and/or ordinance violations. Based on our site visits to three of these courts (Milwaukee and Madison, Wisconsin, and Phoenix, Arizona), credit card payment appears to be feasible but to be a convenience largly for middle-class offenders paying traffic fines. Even then this mechanism did not involve a large number of fine-payers. De-

spite the willingness of credit card companies to work out arrangements so that courts can pass on service charges to their clients, the administrative staff of many courts have never even considered the possibility of this payment mode or have rejected it out of hand as "too much hassle."

(3) Record-keeping and information systems. For purposes of keeping track of payments by fined offenders and flagging cases in which notices or warrants should be issued, the record systems in most courts probably are adequate. This is certainly the perception of most of the clerks and administrators contacted in our telephone survey, only one-quarter of whom felt that there was need for improvement in their court's record-keeping system.

However, in terms of their ability to provide relevant management information about the court's overall collection activities, the effectiveness of many of these systems seems questionable. As we have noted, only 15 of the 126 survey respondents were able to answer a question asking for fine amounts imposed during the past year, and several of these answers were estimates. There are no readily accessible statistics on fine amounts by type of charge, on the relationship of charge and/or fine amount to collection rates, or on other issues related to the formation of policy and the management of resources. Although the relevant data elements are in court files, the courts' record-keeping systems are not organized to provide the information that is essential to measure performance, to identify problems, and to aid in planning for improvements in court operations. Lacking the ability to aggregate and analyze the data in these records, court managers cannot gauge the effectiveness of collection efforts and they have no reliable way of identifying the types of cases that pose particular collection and enforcement difficulties or of learning what strategies work well. These failings are not simply the result of a lack of automated record systems; only one of the ten survey re-

spondents who said that their court had a fully computerized system was able to answer the question about the amount of fines imposed during the year.

D. Characteristics of Courts that Appear Successful in Fine Collection

One way to begin the process of identifying characteristics of courts that appear successful in collecting fines is to compare them with those that appear less successful. Our measures in this area are primitive, but two questions in our survey of court clerks and administrators do provide us with rough indicators of apparent collection success. One question asked respondents for an estimate of the proportion of those who, when granted time to pay the fine, actually pay the entire amount during the period allowed by the court. Using responses to these questions, we have identified limited jurisdiction courts that claim "high collection rates" insofar as they report that at least 60 percent pay on the day the fine is imposed and that at least 80 percent of those given additional time ultimately pay in full. Courts reporting that 40 percent or less pay immediately and that 50 percent or less of those given time to pay ultimately do are considered to have "low collection rates." Table 9 compares these two groups of limited jurisdiction courts along several dimensions. The comparison shows some striking differences in practices and attitudes in the two sets of courts. In particular, limited jurisdiction courts that appear to have relatively high collection rates are characterized by the following:

1. Limited use of installment payment plans. Respondents in courts indicating high collection rates were much less likely to report that their courts commonly use installment systems than were respondents in courts with less apparent collection success.

2. Short time periods for payment. Only one of the 24 courts reporting high collection rates typically allows more than 30 days for payment, and eleven reported that a period of two weeks or less is used. By contrast, four of the twelve courts reporting low collection rates indicated that the usual period was over 30 days, with two reporting time periods as long as 180 days.

3. Perception of indigency as a minimal problem. Respondents in the courts reporting high collection rates are less likely to see defendants' indigency as a reason for non-collection. Only 17% of them feel that indigency is frequently a reason for non-collection, compared to 50 percent of their counterparts in courts reporting low fine collection rates.

4. Relatively strict enforcement policies. Responses to two different questions suggest that courts which appear successful in collection are more likely to report relatively strict enforcement policies than are the courts with low collection rates. First, respondents in the high collection courts tend to feel that their courts are prepared to impose sanctions on defendants who fail to pay, and that defendants know it. Only one of the 24 said that defendants' knowledge that nothing serious will happen to them was a frequent reason for non-collection in their courts. Second, three-quarters of the respondents in high collection courts said that, when defendants were before the court for nonpayment, jail was often used as a response; this compares with half the courts reporting low collection rates.

Although these factors appear to characterize limited jurisdiction courts that are successful in fine collection, it is by no means clear that these are causal factors. In fact, it is very likely that other characteristics of defendants, of offenses, and of court process are influential in determining the effectiveness of collection. Multi-jurisdictional research that collects a wide range of data about each court will be required before we can establish what factors affect the success of various collection strategies with different offender populations.

E. Enforcing Fines: Imprisonment as a Threat and Sanction

When a court imposes a fine, it either requires the offender to pay immediately or sets a time period within which the fine must be paid. "Enforcement" refers to the process by which courts (and/or other governmental agencies involved in fine collection) seek to ensure that a fine is paid when the time originally fixed by the court has passed without full payment. As Carter and Cole observed (1979: 160), both the real difficulties with enforcement and the perception that such difficulties are insurmountable create drawbacks to

the fine's use as a sanction. Enforcement of a fine may require substantial resources and administrative effort (including the costs of notification, issuing warrants, conducting hearings on the reasons for nonpayment, and perhaps jailing the offender); thus the concern is often expressed that enforcement could exceed the original amount of the fine. Enforcement also raises a variety of legal as well as practical and humanitarian issues when the nonpaying offender is poor and failure to pay may not be willful. However, as with virtually all aspects of fine use, there have been little data available to help assess the extent to which these concerns reflect problems in actual practice.

The specific procedures used to enforce fines vary considerably from court to court, and are influenced by political, administrative, and legal factors. State statutes contain many provisions relating to enforcement of fines, and authorize a wide variety of coercive devices to compel payment. These include garnishment of wages, public employment, forced labor, and execution of distress warrants for the seizure and sale of offenders' property, as well as imprisonment. Imprisonment is, however, by far the most frequent coercive enforcement mechanism provided by state statutes, although it is sometimes found in the guise of probation revocation or punishment for contempt of court.

When an offender does not pay within the time initially allowed by the court, there are a variety of actions that the court can take before confronting the serious issue of whether to impose a jail sentence as an alternative sanction or as a method to compel payment. One obvious approach is for the clerk of court simply to send a letter reminding the offender of the overdue amount, asking for prompt payment, and possibly suggesting that more serious consequences will follow if payment is not forthcoming. In the same vein, the

court may send the offender a summons to appear in court to explain why he has not paid, or may make a telephone call to tell him that unless payment is made within a short period of time a warrant will be issued for his arrest.

Such notification procedures appear to be a potentially successful (as well as relatively inexpensive) method of enforcement. There is some evidence, from courts in England and West Germany as well as the U.S., that notification to an offender that fine payments are in arrears--generally also making it clear that the court is prepared to pursue more coercive methods to ensure collection if payment is not made--has positive results.* Yet, as obvious--and inexpensive--as this strategy may seem, it appears from our telephone survey and site visits that relatively few American courts of any type make such notification or reminder calls to offenders who are in arrears.** Federal district courts and state courts of general jurisdiction, where probation services are often involved in the fine collection process, appear to be more likely to make this type of more personal contact than are other courts. While virtually all courts sooner or later will issue an arrest warrant in the

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* In two English courts studied by Vera, almost a third of those "reminded" paid in full after receiving such a letter, and in the German town studied by Albrecht almost half responded to reminder letters with full payment (Casale, 1982). A brief experiment with telephone notification by the Englewood, Colorado, Municipal Court, indicated that use of telephone "reminders" produced a response in 53% of cases in which a warrant would otherwise have been issued (Mahoney et al, 1981: 31).

** In contrast, in the English system, the reminder is the most common first step taken to collect the fines after the time for payment has passed. Data collected by Vera's London Office suggest that courts not using reminders in this way were the least successful in obtaining payment of the several courts studied. Other cross-jurisdictional research in England has emphasized the promptness with which action is taken once the court identifies someone as in default. Softley and Moxon (1982: 9) report that the speed with which action is taken (be it reminder, a letter, a means warrant, etc.) is strongly correlated with the court's success at collecting fines. They also report a strong relationship between collection success and the average interval between enforcement actions when the first attempt was unsuccessful (p. 9).

event of continued nonpayment, the telephone survey suggests that limited jurisdiction courts (which are the heaviest users of fines) are somewhat more likely than general jurisdiction courts to move immediately to an arrest warrant without first making efforts at notification.

In a few jurisdictions, offenders who fail to pay a fine when it is due can (at least under some circumstances) be arrested on a warrant and taken directly to jail, usually to serve a jail term that was suspended at the time of the original sentence. More typically, however, an arrest warrant is issued for the return of a defaulting offender to court, but the warrant is not served. Reasons differ but it appears generally to be because sheriffs or police do not have sufficient resources to pursue nonserious offenders vigorously (as is also the case in the English system). Sometimes, however, they choose not to serve the warrant because they do not expect the offender to be punished if returned. Thus warrants for nonpayment of a fine tend to have low priority with the police or sheriff's offices that are charged with serving them, and the warrant is activated only when (and if) the offender is rearrested.

The enforcement situation (or apparent lack thereof), however, may not be as bleak as this suggests. One fairly common approach when an arrest warrant has been issued for nonpayment is for the police or sheriff's department to send a letter to the defaulting offender informing him that a warrant has been issued for his arrest and that it will be executed if he does not pay promptly. As a practical matter, the issuance of a warrant simply shifts the "reminder" function from the court to the police. The effectiveness of such an approach then depends on the capabilities of the administrative machinery of the police. At least superficially, the court staff is relieved of direct accountability for collection in the cases where a warrant is issued.

Generally, in New York and elsewhere, an offender who has failed to make timely payment of a fine, and who either returns to court voluntarily or is arrested for nonpayment or on a new charge, will be brought before a judge who will inquire into the reasons for nonpayment and decide what is to be done. We were told over and over again, in the United States and in England, about how effective the threat of imminent jailing was in getting offenders to pay the full amount of their fines at this point, often after making a phone call to family members. This "miracle of the cells" phenomenon, as one court clerk described it, has been noted repeatedly by observers in European courts that use fines heavily, and it is documented in much of the research they have done.* It is one of the reasons practitioners and policy makers are often extremely hesitant to abandon the threat of imprisonment as the ultimate enforcement device.**

When offenders have financial resources, the threat of imprisonment for failure to pay a fine can be backed up with actual jailing in the event of willful nonpayment. With offenders who do not have resources, or who claim not to have them, however, the situation is much more complex both legally and practically. Many people, including lawmakers and judges, apparently believe

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* Because this phenomenon is so common in English lower courts, Wilkins (1979) has urged the establishment of reception centers where fine defaulters might be held prior to their transfer to prison so that arrangements for paying their fine might proceed without the costly administrative task of full admission to prison.

** It is not only in the enforcement of fines that the threat (and actual use) of jail is considered essential. In the collection of child support payments, there is evidence that serious enforcement efforts backed up by the threat and imposition of jail sentences is extremely effective. David Chambers, in a recent and detailed study of child support enforcement, reports: "Genesee and many other Michigan counties are remarkably successful at their job. Michigan as a whole collects more money per case from its fathers than any other state in the country....[I]n the context of child support, the use of jailing, when coupled with a well-organized system of enforcement, produces substantial amounts of money both from men who are jailed and from men who are not" (1979: 4,9).

that decisions of the U.S. Supreme Court bar imprisonment of any indigent who defaults in payment of a fine. Some even believe that indigents may not be fined at all. This view of the law has apparently created a situation where, in some places, the poor are sentenced directly to short jail terms to avoid the apparent illegality of enforcing fines. Research conducted by the New York State Bar Association in rural areas of the state during the 1970s found that impoverished defendants were sometimes sentenced to jail because judges did not believe they could legally fine them (Spiegler, 1980). In fact, however, although statutes and case law establish some restrictions upon the jailing of indigents for failure to pay a fine, these constraints are quite limited.

In three major decisions spanning the period from 1970 to 1983, the Supreme Court has addressed Due Process and Equal Protection questions arising from state court efforts to jail indigent defendants for nonpayment of a fine.* In all of these decisions, the Court has taken pains to make it clear that, as Justice White phrased it in a concurring opinion in the 1983 case of Bearden v. Georgia, "poverty does not insulate those who break the law from punishment." Courts can impose fines on indigents, and if the individual does not pay the fine the court can impose sanctions for nonpayment. Under the cases, however, there are some important limits on the range of sanctions that can be imposed and there are procedural requirements that must be met if imprisonment is to be used as a sanction. Thus, it is clear that when an indigent defendant has been convicted and fined for an offense for which imprisonment is not a statutorily authorized sanction, a court may not imprison him for nonpayment without--at a minimum--inquiring into the reasons for the

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* Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1971); Bearden v. Georgia, ___ U.S.___, 103 S.Ct. 2064 (1983).

non-payment and, if the default is not "willful," considering whether sanctions other than imprisonment will achieve the States's legitimate interests in punishment and deterrence. At the very least, a defendant in this situation must be given an opportunity to pay the fine over a period of time.*

If the underlying offense is one for which jail is an authorized punishment, as in Bearden, a trial judge has greater leeway to structure the sentence in ways that may encourage fine payment and facilitate enforcement. For example, the fine can be imposed in combination with a jail sentence which is either stated as an alternative or suspended on condition that the fine is paid. If the defendant has been given time to pay and has failed to do so, he can then be jailed. Here, the judge presumably makes a determination, at the time he imposes the original sentence, that imprisonment would be the most appropriate means of satisfying the State's interests in the event of nonpayment of the fine. The Bearden ruling suggests, however, that even when a jail alternative is stated at the time the fine is originally imposed, the trial court may have to reconsider the appropriateness of this alternative (as well as the reasons for the nonpayment) in an enforcement proceeding following default.

F. Enforcement Without Resort to Imprisonment

Typically in the United States, both in statute and in practice, imposition of a jail term for default tends to be a sentence alternative to the fine

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* It is not clear, from the cases, whether an indigent defendant can be jailed for default if he has tried but has been unable to pay the fine. The Tate decision explicitly left open the legality under the Constitution of imprisonment "as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means." (401 U.S. at 401). The Court in Tate left that determination to "await the presentation of a concrete case" (id.), and so far has not considered such a case.

rather than a method to compel payment which leaves the fine still outstanding and subject to civil collection upon the defendant's release. Most states stipulate an "exchange rate" of a number of dollars of a fine that will be excused for each day spent in jail for default. Even states that have no exchange rate usually limit, in some way, the number of jail days that may be imposed in lieu of a fine. In practice, our observations suggest that jail terms for default are sometimes also imposed to run concurrently with jail terms for new offenses, or they are imposed retrospectively so that time already served in detention on a new arrest satisfies the fine default alternative. However, many judges express serious concern about imposing any jail alternative even when there is no constitutional impediment, including when they are faced with a willful defaulter. What are judges' enforcement options when they believe the threat of imprisonment to be either inappropriate or ineffective?

We have examined a variety of non-jail enforcement strategies already in place in some American and European courts which deserve discussion. These include work programs, seizure of property, attachment of earnings, and suspension of automobile licenses and registrations. In briefly discussing examples of each of these, it is important to note that much more needs to be known about how they operate and what their levels of success and cost are before they can be considered for widespread implementation. However, one theme appears continually whenever we discussed these enforcement approaches with practitioners: as with incarceration, the threat of their imposition appears to have a substantial impact on the likelihood of fine payment.

(1) Work programs. Work programs of various types--most notably community service programs in which nonincarcerated offenders perform labor for public and nonprofit agencies--are currently growing in favor as a punishment

option. They may provide a sensible method of enforcing fines by providing offenders with a chance to work off their obligation if they cannot pay (or if they would prefer to work it off). While notions of equity may be offended by requiring poor offenders to perform labor while the wealthier pay a fine, community service clearly seems preferable (both for the offender and for the community) to jail as a sanction. A major obstacle to broader use of work programs as a sanction for nonpayment is their cost. Although community service is less expensive than jail, operation of a community service program nevertheless requires staff for supervision and administration.

(2) Distress. During the past several years, magistrates' courts in England have started to make considerable use of statutory authority to order the seizure and sale of real or personal property of offenders who have failed to pay fines. As in England, the statutes of the state of Maine term this process "distress," and empower the clerk to issue a "warrant of distress" authorizing a sheriff to proceed with such seizure and sale. Several other American states have similar statutes, but there appears to be little current use of this civil remedy in the United States. American court administrators who were asked about its potential as an option for fine enforcement generally felt that it would be too much trouble to recover small fines in this manner, and some claimed that the typical defendant had no property that could be seized.

Although courts in Western Europe face the same problem of poor offenders, their experience with distress in recent years has led to a sharp upsurge of interest in this method of enforcement. The approach used in these courts seldom involves the actual seizure and sale of goods. Rather, as with respect to the use of imprisonment as a sanction, it is used primarily as a threat to secure payment of the fine. In England, distress warrants are usually

executed by bailiffs who are private businessmen under contract to the court. They operate on the working assumption that "everyone has something he doesn't want to lose, even if no one else wants it," and often use the threat of distress seizure and sale to obtain eleventh hour payment of the fine. A visit from a bailiff provides a strong incentive for prompt payment of the unpaid balance plus any surcharges, a portion of which is taken by the bailiff as a fee. There are obvious risks that the bailiff will use heavy-handed techniques in attempting to collect the balance owed, but the English experience suggests that the dangers can be controlled through monitoring of the bailiff's activities.

(3) Garnishment of wages. Another civil enforcement mechanism, attachment of earnings, appears to be an option available in almost every court system, here and abroad. However, neither in the United States nor in Europe does it seem to be used regularly for the enforcement of fine sentences. Courts seem especially sensitive to the possibility that an offender will lose his job because his employer does not want to go to the trouble of withholding and forwarding earnings. There are also other practical concerns: garnishing wages can be frustrating to the court. When defendants have employment, their salaries tend to be low and they do not necessarily remain at the same jobs. At a state's maximum allowable percentage for garnishment (e.g., 10% in New York State), many weeks' salary may need to be attached to satisfy a substantial fine judgment. Even in the federal system, where the fines are most likely to be large enough to justify the effort, garnishment is used only occasionally.

(4) Driver's license and registration suspensions. Driver's licenses are often suspended pending the payment of fines, but only in motor vehicle cases, and usually only in cases of moving violations where the officer writing the

summons has seen and recorded information from the offender's driving license. In the case of parking offenses, only the automobile registration number is known from the license tag or plate, and in no state that we know of are license and registration files cross-referenced at present. This method of enforcement has apparently not been used (or seriously contemplated) for fines imposed for non-traffic offenses. Conceptually, however, it would seem to be very closely related to distress, with both involving deprivation (or the threat of deprivation) of a property interest.

G. Alternative Ways of Treating the Poor Offender

Overall, our data suggest that fine collection and enforcement may not be as insurmountable an obstacle to the use of fines as criminal sanctions as many have thought, although it is clear that much more needs to be known about the effectiveness of alternative approaches. Even the problem of the indigent defendant seems to be being dealt with effectively in some courts. One approach is to order but suspend a fine, the suspension to be conditional on a period of good behavior (i.e., no new convictions). In this way, no money need be produced unless the offender is re-convicted, in which case he may be sent to jail on the new offense.

Another approach is a "bind over to keep the peace." As used in England and elsewhere, a peace bond provides another way to avoid economic deprivation and enforcement problems in fining poor defendants. And, like the suspended fine concept, it may help to deter criminal behavior through the threat of financial penalty. The offender, or someone on his behalf, either provides a surety of a certain amount or posts a deposit with the court which may later be redeemed if the offender has "kept the peace" (for example, has not been re-arrested). Otherwise, the deposit is forfeited. In England, binding over

an individual to keep the peace is mainly confined to offenses against the public order (e.g., disorderly conduct, brawls in neighborhoods, etc.), but such use holds potential for broader application. Especially if a family member has provided a surety or posted bond for the offender (as might a parent of a defendant who was "indigent-because-young"), this device might strengthen informal social control over criminal conduct. Most significantly, if a bond is used, it would avoid the problem of enforcing a fine because the forfeiture would be automatic.

Finally, fines set at very low amounts (e.g., $5-$20), could themselves be levied on people with minimal resources who have committed misdemeanors usually fined in the $50 to $250 range. Particularly if imposed as part of a day-fine system, as in Sweden and West Germany, this idea is appealing because fines often seem to be used for their symbolic punishment value, so that defendants know they have not simply "walked" (i.e., gotten off with a discharge). It is possible that even a very small fine, due immediately or almost so, might engender more respect for the court than a discharge or a larger fine that is difficult to enforce.

It seems very clear that the extent and nature of the problems facing a court in fine enforcement are primarily generated in earlier stages of the sentencing process: in the appropriateness of the initial choice of a fine as the sanction;* in the courts' awareness in setting the fine of an offender's ability to pay a particular amount; in the judge's instructions to the defendant about the conditions of his payment and his obligation to meet them in a

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* An especially tricky issue in this area involves the imposition of fines upon poor offenders who may be tempted to commit further offenses in order to pay the fine. We know of no empirical data on the extent to which such behavior takes place, but it is a concern of some judges and other practitioners--especially in jurisdictions that have a high volume of theft-related or prostitution-related crimes.

timely fashion; and in the way the court monitors payments and signals the offender as to its intentions when they are not forthcoming. Whether the fined offender is affluent or poor, however, being diligent about keeping in contact with those who owe, notifying them that payments are due, and making them aware that the court recognizes when they are in arrears and is prepared to use more forceful means to obtain their compliance, may be the most successful methods of enforcing this sentence. Although the threats of incarceration, distress, community service, or other work requirements seem to be the most appropriate methods of backing up enforcement efforts, their actual imposition may be needed relatively infrequently, even with poor offenders, if enforcement agents routinely take appropriate (and relatively inexpensive) actions to make offenders aware that their obligations to the court are to be taken seriously.

Many courts here and abroad are successful at collecting fines, despite (in the case of the United States) some serious misperceptions as to the constitutional limitations on fine use and enforcement strategies with offenders who are poor. Thus, the extent to which enforcement issues, including imprisonment for default, are likely to become insurmountable problems should a jurisdiction attempt to improve or expand its use of fines as criminal sentences would appear to depend largely upon how it structures each stage in the entire fining process.

IV. Toward Better Use of the Fine as a Sanction

It is clear from our research that the fine is currently an important sentencing option in American criminal courts. Its potential advantages are

clear upon examination: it can be administered flexibly, taking account of both the gravity of the offense and the circumstances of the offender; the costs of administering it are low in relation to other sanctions (indeed, it is often a net revenue producer); it leaves the offender in the community; it inflicts a deprivation on the offender, and thus serves the "retribution" or punishment purpose of the criminal law; and if appropriately administered it may also serve as a deterrent.

The most commonly raised drawbacks to fines are those associated with their imposition on poor defendants. A host of interconnected issues arise in this connection, and it seems clear to us that efforts to enhance the efficacy of the fine as a sanction must take account of the critical linkages between the imposition of a fine and the methods used to collect and enforce it. The fine is one of the few sentences in which most (and sometimes all) parts of the sanctioning process fall within the control of the court itself. It is unlikely that fines can be more meaningful punishments unless courts not only set them realistically but also view them seriously, communicate to fined offenders that their obligations are to be taken seriously, and follow through with appropriate sanctions when necessary. This approach conceives of fining as a process that involves a number of activities, each of which is inextricably linked to all the others, and none of which can be overlooked in implementing policy.

In the first place, the choice of a fine sentence must be appropriate in light of the offense and the offender's prior record; punishment should be a primary objective. Information on the defendant's economic circumstances must be made available to the sentencer, and the amount of the fine should be set in relation to the gravity of the offense, the nature of the offender's prior record and the means of the offender. Thus, the level of punishment should be

appropriate to the crime but also realistic in the sense of being enforceable. At sentencing, the court must communicate to the defendant the seriousness with which it views his payment obligation, and the court must continue thereafter to signal its watchfulness over the defendant's payment progress. Finally, faced with an offender in default, the court must be prepared to act swiftly and, when necessary, to use coercive methods such as distraint of property or committal to custody.

This approach is discussed in some detail in Chapter VII of our main report, which sets forth 19 recommendations aimed at more effective use of the fine. Most of these recommendations deal with specific techniques for improving the processes of fine utilization, collection, and enforcement at the trial court level. They reflect our belief that, while it would be desirable to have more detailed empirical knowledge about ways to use fines effectively, it is not necessary to wait for the results of future research before beginning to address most of the problems involving fine use. On the basis of existing knowledge, it is possible for courts and other agencies to take practical steps now to improve the fine's use as a criminal sanction.

In addition to the recommendations for practical operational improvements, the report also presents several recommendations addressed primarily to legislators and other policymakers. Three of these recommendations are discussed here: development of effective fines management information systems in courts; enactment of legislation that will encourage courts to adopt a "day-fine" approach to imposing fines; and revision of laws governing the full range of monetary sanctions.

A. Developing Information Systems to Improve Fine Use

With few exceptions, American courts do a very poor job of collecting and using management information about fine use, collection, and enforcement. Although most courts keep adequate records of individual fine accounts, very few have developed systems for aggregating and analyzing the data in these records. As a result, they know very little about the number of fine sentences or the total amounts imposed, they cannot gauge the effectiveness of collection efforts, and they have no reliable way of identifying the type of cases that pose particular collection and enforcement problems or of learning what enforcement strategies work well.

If the fine is to be used effectively as a sanction, it is important to improve management information systems substantially. The basic building blocks of such a system already exist in every court, in the individual case records. From these case records it is possible--without great difficulty--to develop a fines management information system that contains six basic types of data:

a) Sentences imposed - data on the number and proportion of different sentences imposed by conviction charge, including combination sentences.

b) Inventory information - data on the total number of open fine accounts pending in the court at any time, and the age and amounts of these accounts.

c) Input/Output information - data on the number of cases in which fines have been imposed during a period and the amounts involved, and on the number of accounts closed and monies received during the same period.

d) Effectiveness in collecting fines - data on the number and proportion of cases in which fines have been fully collected within specific periods following imposition (e.g., 30 days, six months, one year); data on the total dollar amount of fines imposed that are collected.

e) Processing times and procedures - data on the length of time it takes to collect fines, on the number (and age) of cases in which particular types of enforcement procedures are used, and on the results of those procedures.

f) Identification of problem cases - lists of individual cases in which accounts have been pending without payment for more than a particular period of time, thus indicating that some type of action (e.g., reminder letter, telephone call, issuance and service of warrant) is needed.

Collection of these types of statistical data can be done easily in a manual system and should be even simpler in an automated system. Although data collected in this study indicate that many courts with automated systems are not any more effective than courts that use traditional manual systems, it seems clear that computers are potentially of great value in the sound administration of a court (or court system) that makes extensive use of the fine and other monetary penalties. A high volume of work is involved; much of it is routine and repetitive; numerous arithmetic calculations are needed and a high standard of accuracy is essential; case files must routinely be sorted by payment status and other characteristics; and management information reports and other statistical data are required on a regular basis. These are circumstances for which the computer is ideally suited.

With the tremendous advances that have taken place in computer technology in recent years, the purchase of a mini-computer or micro-computer is within the financial reach of many individual courts. But affording the computer is only part of the problem; the harder issues involve obtaining adequate programming for the full range of uses and needs, ensuring adequate data storage capacity, re-designing internal workflow procedures to utilize the computer, developing sound back-up systems for use during computer "down-time," and providing adequate training for the staff that will use the computer. Both the initial capital outlay and the on-going cost of operation of an automated system are likely to be higher than are initially anticipated unless very careful planning is done. Nevertheless, the savings produced by an effective

automated system can be substantial over a period of time, and the computer has the potential to enable a busy court to manage fine collection and enforcement much more efficiently than it can with a manual system."

B. Developing a Day-Fine Approach to Imposing Fine Sentences

A principal obstacle to acceptance of the fine as a meaningful punishment is the common operating assumption that criminal defendants are almost invariably poor people who cannot (or will not) pay a fine amount that would reflect the gravity of the offense. This assumption militates against the use of fines for non-trivial offenses. Moreover, when fines are used (usually for offenses within a relatively narrow range of seriousness), this assumption encourages the application of a "tariff" system in which fixed fine amounts are imposed on all defendants convicted of a particular offense. Although tariff systems are administratively simple, they can be very inequitable in impact and often result in fines that are not effective either as a punishment or as a deterrent.

The key to resolving this problem is to develop a non-tariff system in which fines can be imposed routinely so as to reflect the gravity of the offense and the means of the particular offender. Based upon West Germany's experience with the day-fine system (supra, pp. 16-17), we know that the Scandinavian concept of tailoring a fine in this way is possible in a large heterogeneous society. Whether American courts could function effectively using a day-fine system is an empirical question which cannot be answered merely by speculating about similarities and differences in the two societies and their offender populations. We recommend that systematic experimentation with a day-fine system be tried, and also note that embryonic day-fine systems already exist in some American courts. In these courts, judges attempt

to assess offenders' varying degrees of poverty, and to set fine amounts on a case by case basis in light of this information (supra, pp. 14-15). We need to know more about judges' experiences in doing this, and to experiment more systematically with ways of doing it routinely.

The introduction of a day-fine approach to determining the amount of a fine penalty should improve the fine's potential as a flexible and broadly applicable punishment. If successfully applied, it should encourage judges, prosecutors, criminal defendants, and the general public to regard the fine as a more meaningful sentence in relation to other options, as it is now regarded in parts of Europe. Effective broad-scale introduction of a day-fine system will require legislation, but it is possible to move incrementally toward such a system. Components of a legislative package designed to broaden use of the fine and reduce disparity in impact upon affluent and poor defendants would include the following:

- Establishment of relatively high maximum fine amounts.
- Enactment of a requirement that judges take account of offenders' means in imposing a fine.
- Provisions allowing judges, at their discretion, to use the fine as the sole sanction for a broad range of offenses.
- Elimination of statutes providing for flat "dollars-to-days" conversion of unpaid fine amounts into jail or work program time upon default.
- Establishment of a two-stage approach to setting fine amounts, in which the fine is initially calculated in terms of units of punishment reflecting the gravity of the offense and the offender's prior record; these units would then become the basis for conversion to jail or work program times in the event of non-payment.

The difficulties of introducing a day-fine system on a broad scale in the United States should not be underestimated, however. Three sets of questions seem of particular importance in gauging the chances for successful implementation.

First, will it be possible to obtain adequate information about the means of individual defendants, prior to sentencing? Clearly some American judges now find it possible to obtain such information. In West Germany, the courts have generally obtained adequate information from offenders themselves and from police reports which contain details of employment and other income. However, while obtaining the information should not pose insuperable difficulties in the United States, it may introduce additional paperwork into courts that already feel overburdened.

Second, assuming that the mechanical problems of obtaining the requisite information about offenders' means can be overcome, would the public accept implementation of such a fine system? If fine amounts take into account the means of the offender, it is inevitable that some striking disparities will occur. For example, an employed, middle-class offender may be fined a much larger amount, in terms of actual dollars, than a near-destitute offender convicted of the same (or even a more serious) offense. It would not be surprising if such results produced criticism from some segments of the media and the public.

Third, will it be possible to enforce the fines imposed under such a system? Because such fines, by definition, would be set at amounts which the fined offender reasonably could be expected to pay (albeit with difficulty, in some cases), default should be less likely; however, there would inevitably be some defaults. It will be necessary to develop sanctions for default, and this will have to be done in a more sophisticated fashion than in the past. Simply translating an unpaid fine balance into jail or community service at a set dollars-for-days "exchange rate" would not be sensible. This is partly because it might well result in disproportionately long periods in jail for defaulting affluent offenders. The answer would seem to lie in adoption of a

two-stage system similar to that used in administration of the Swedish and West German day-fine systems. The approach to establishing the monetary amount of the fine in those countries begins with setting the number of "units of punishment" that reflects the gravity of the offense and the offender's prior record. This number of units would be the same for offenders with similar prior records who committed similar offenses, regardless of the offender's means. Each unit could be translated into a set number of days in jail or in an unpaid work program in the event of default. Thus, the penalty for defaulting on a fine representing a given level of punishment would be the same, regardless of the final monetary value of that fine. That value is not calculated until the offender's means is assessed and an appropriate amount assigned to each fine unit. Under such an approach, the consequences of default would be similar for offenders of different means, and could be communicated to the offender at the time the sentence is imposed.

C. Re-examination and Revision of Laws Governing the Full Range of Monetary Penalties

In considering the possibility of expanding the use of fines as an alternative to jail, it is important to explore the relationship between the fine and the other types of monetary sanctions that are or may be imposed on an offender. These include restitution, court-ordered contributions to specific charities or nonprofit organizations, penalty assessments, court and prosecution costs, and community service. All of these sanctions have several features in common. First, all involve a court-ordered requirement that the defendant pay money or (in the case of community service and some forms of restitution) provide services on which a monetary value can be placed. Second, from the perspective of the defendant, there is little to distinguish one from

another. The defendant will have to either pay over money or provide services, and often will not know where the money goes or what individual or institution is the beneficiary of the services. Third, their purposes are similar: each sanction, whether or not it is a "sentence," is essentially punitive and may also be thought to have some deterrent value. Some of them (particularly community service and some forms of restitution) may also be intended to serve other sentencing purposes such as rehabilitation and vindication of the victim's interests, but punishment is clearly a central purpose of each of the six. Fourth, they have common problems of enforcement: the court must monitor the payments (or the performance of services) and must be prepared to impose a more serious sanction in the event of non-compliance.

For purposes of policy development--in particular the expansion of enforceable sentencing alternatives, including some that may be used in lieu of short-term incarceration--the fact that of all these sanctions face essentially the same problems of enforcement (and have available essentially the same strategies and techniques for enforcement) is particularly salient. Difficulties of enforcement are often seen as a drawback to wide use of fines, but it is clear that other types of monetary or quasi-monetary sanctions have the same drawbacks. If they are to be preferred to the fine, such a preference logically should be because the other sanctions have distinctive features that make them more attractive. Yet, it is not at all clear that the ways in which the other sanctions differ from a fine make them more appealing.

Restitution seems more attractive to some legislators and judges than does the fine, mainly because it takes account of the interest of the victim, a figure long neglected in the American criminal justice process. Additionally, it is thought to have some potential for rehabilitation, by making the offender aware of the injury he has inflicted and of his responsibility to help

restore the injured person. But restitution is severely limited in scope and is a relatively inflexible sanction. A restitution order can only be made when there is an identifiable victim for whom the consequences of the offense can be expressed relatively easily in dollar terms, and when there is a convicted offender capable of paying money and/or providing services to that victim. Only a small proportion of all crime victims are likely to be able to benefit from a sentencing policy that emphasizes restitution. And only a small proportion of offenders are likely to have the financial ability to provide meaningful levels of restitution.

The "contribution" approach, although it does not deal directly with injury to the victim, has the same flexibility as the fine in terms of the capacity to tailor its amount to the gravity of the offense and the means of the offender. Indeed, in situations where there is a low statutory fine ceiling and an affluent defendant, it may have even greater flexibility. But this approach is essentially extra-legal: it puts the judge (or, in some instances, a probation service) in the position of arbitrarily selecting a charity, a nonprofit organization, or some other worthy entity as the beneficiary of a windfall, without any statutory guidances or authorization whatsoever. Moreover, the approach may give the affluent defendant a unique benefit, in the form of tax advantages from a charitable donation, not enjoyed by his counterparts who are simply fined. When judges order such contributions or agree to them as part of a negotiated disposition, they in essence make nonlegislative appropriations of funds to recipients of their own choosing, rather than following the scheme for distribution of fine revenue that is provided by statute.

Costs and penalty assessments differ from the fine in that they tend to leave appreciably less room for taking account of the seriousness of the

offense or the means of the offender than does the traditional approach to fining. Costs are sometimes established mathematically, by adding the actual expenses of prosecution that can be charged to the defendant; other times a court will establish a fixed amount to be charged as costs of the prosecution. Penalty assessment statutes vary widely, but generally they tend to establish fixed amounts for broad categories of offenses (e.g., felony, misdemeanor) or to make the amount of the penalty a proportion of a fine sentence. The recipients are different: costs, when collected, go to the court and/or the prosecuting authority, while penalty assessments go into whatever funds are designated by statute. Both these sanctions have powerful political forces behind them. Costs, for example, can be an important (and largely invisible) component of the budgets of courts and prosecuting authorities. Penalty assessments are also viewed as significant revenue producing devices in some jurisdictions. To the extent that policymakers are interested in using fines more widely, they will have to take account of the existence and impact on the offender of both these sanctions. Imposition of costs and/or a penalty assessment can place a significant economic hardship on an offender before an effort is made to set the amount of a fine. The lack of flexibility in these sanctions, coupled with the strong pressures for imposing and enforcing them, will make it difficult to implement fine policies that take account of the means of the offender.

Of all the sanctions, community service is the one whose distinguishing features seem most attractive for purposes of developing a viable alternative to short-term jail. Like restitution, community service can incorporate goals of rehabilitation and reparation as well as punishment and deterrence. However, because it does not require a "matching-up" of offender and specific victim, it can have a much broader scope of application. Moreover, the amount

of community service ordered as part of a sentence need not coincide with the value of the loss or injury to the victim; the severity of the punishment can be increased to reflect the seriousness of the crime and the offender's prior record. The offender's economic situation is also less critical; although the issues in this area are complex, the severity of the impact of the community service order as a punishment is less likely to vary with the relative poverty or affluence of an offender.

Community service is markedly less expensive than jail, and preliminary research in New York City indicates that its administrative costs compare favorably with those of probation even when the sanction is focused on more difficult-to-manage repeat offenders (Vera, 1981: 30). However, it is undoubtedly more expensive and difficult to administer than the fine. This cost differential, particularly when viewed in light of the scarcity of resources and the evidence of so many jurisdictions using community service for offenders who are unlikely to be given jail sentences, suggests that a sensible approach to developing alternatives to jail requires thoughtful targetting of both monetary and quasi-monetary alternative sanctions. Thus, it makes sense to us to think of community service as a potentially useful alternative punishment in some types of cases in which the offense and offender characteristics combine to make short jail terms a likely outcome. Similarly, other types of cases are likely to be responsive to attempts to substitute fines for short jail terms. Neither effort could reasonably be expected to provoke radical shifts in dispositional patterns over a short time frame. However, careful development of both sanctions, with an emphasis on administrative firmness that might make them acceptable as enforceable punishments, could permit them to complement each other in the development of an overall approach to sentencing policy that treats jail--appropriately--as a scarce resource.

More than any of the other monetary sanctions, fines can vary with the means of the offender (as well as with the gravity of the offense and the seriousness of the offender's prior record), and they can be used when there is no specific victim to whom resitution can be paid. A monetary penalty's potential for being a meaningful punishment (and possibly a deterrent) appears enhanced by such flexibility. By directing fine revenues into crime victim compensation funds, the fine can also deal with societal concern about victims, including the victims of crimes that are never solved and victims whose injuries are too severe to be met by restitution payments from the offender. It seems clear, however, that fines are not likely to address concerns about rehabilitation. If it is indeed the case (and there is little evidence pro or con) that restitution payments are rehabilitative if they are carefully related to the victim's loss and clearly seen by the offender as his personal responsibility to the victim, then somthing is lost by using a fine when restitution is possible, even if the fine revenue goes to a victim compensation fund.

In sum, each of the strategies for imposing penalties on defendants by "hitting them in the pocketbook" has different strengths and weaknesses. On balance, we think there is much to be said for devoting more attention to the fine as a sanction than has been done in the past. Expanded use of the fine would require dealing with various operational problems, but one of the major problems--difficulty in enforcement--is one that is shared by all of the monetary and quasi-monetary sanctions. The other serious problem--the perceived inequity in impact (i.e., the rich pay easily, while the poor deplete their meagre resources or go to jail)--can be dealt with by taking greater advantage of the potential to use fines flexibly, by more closely relating them to both

the gravity of the offense and the specific means of individual offenders through a type of day-fine system.

If fines are to be used more widely and more effectively, it will be important to address the problems posed by the very common use of these sanctions. Some kind of graduated scheme for imposing costs and penalty assessments--utilizing the same type of information that takes account of offenders' means needed to set fines--is one possible approach. Another approach would be to merge all of these sanctions into a single one that would take the offender's means into account in setting the total amount to be paid, and to establish more carefully thought-through systems for allocating the revenue obtained from payment. At the present time, the statutes governing revenue distribution are a hodge-podge that reflect competing fiscal, political, and correctional interests. They differ markedly from state to state, and even within a single state may differ considerably from municipality to municipality depending on the extent to which municipal courts are independent of state control. Any attempt to change laws dealing with the imposition of fines and other monetary penalties and with the distribution of their revenue will have to take these legitimate but possibly conflicting political and revenue interests into account.

In view of the rapidly developing concern about crime victims, particular attention should be paid to the circumstances under which victims should receive funds resulting from the imposition of monetary penalties. It seems undesirable, for example, that a victim's interest in reparation for his loss or injury should be met only when the offender can be identified, is convicted, and has money or other economic resources with which to make restitution. It appears likely that fine revenues can be used to address societal concerns about crime victims (including the victims of unsolved crimes) in a more

equitable fashion than can be done through reliance on restitution alone. The recent trend toward enactment of penalty assessment statutes, with the revenue from the assessments earmarked for crime victim compensation funds, is a manifestation of legislative interest in this problem. Clearly, however, the enactment of such penalty assessment laws, in addition to all of the other monetary sanctions already in existence, is not a satisfactory answer. A fresh look is needed at the entire legal and practical framework for the imposition of monetary sanctions and the allocation of the proceeds, particularly with an eye to considering how fines, community service, and restitution might complement each other in an overall approach to punishment that attempts to (1) provide expanded sentencing options; (2) reduce reliance on short-term jail sentences; and (3) better meet the needs of crime victims.

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TABLE 1

FREQUENCY OF FINE UTILIZATION FOR CASES OTHER THAN PARKING AND ROUTINE TRAFFIC MATTERS, BY TYPE OF COURT

	Frequency of Use					
Type of Court	All or Virtually All Cases	Most Cases	About Half	Seldom	Never	Total
Limited Jurisdiction	19	38	10	7	0	74
General Jurisdiction Fel., Misd., and Ord. Viol.	1	15	7	5	0	28
General Jurisdiction Fel. Only	0	5	4	13	2	24
TOTAL	20	58	21	25	2	126

Source: Telephone survey.

Table 2

SENTENCES IN NEW YORK CITY CRIMINAL COURT ARREST CASES, BY COUNTY

Sentences	New York		Bronx		Kings		Queens		Richmond		City Wide	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Fine Only	188	20.4%	115	42.3%	108	25.5%	111	40.7%	23	42.6%	545	28.0%
Fine & Prob.	1	0.1	3	1.1	1	0.2	--	-0-	--	-0-	5	0.3
Fine & Cond. Disch.	4	0.4	3	1.1	14	3.3	25	9.2	5	9.3	51	2.6
(Subtotal--Fines)	(193)	(20.9)	(121)	(44.5)	(123)	(29.1)	(136)	(49.8)	(28)	(51.9)	(601)	(30.9)
Jail	143	15.5	34	12.5	87	20.6	52	19.0	19	35.2	335	17.2
Jail & Prob.	--	-0-	1	0.4	4	0.9	--	-0-	--	-0-	5	0.3
Intermittent Impris.	1	0.1	1	0.4	--	-0-	2	0.7	--	-0-	4	0.2
Probation	24	2.6	24	8.8	41	9.7	11	4.0	--	-0-	100	5.1
Time Served	347	37.6	17	6.3	13	3.1	9	3.3	--	-0-	386	19.8
Cond. Discharge	176	19.1	74	27.2	146	34.5	55	20.1	7	13.0	458	23.5
Uncond. Discharge	39	4.2	--	-0-	9	2.1	8	2.9	--	-0-	56	2.9
TOTAL	923	100.0%	272	100.1%	423	99.9%	273	99.9%	54	100.1%	1945	99.9%

Source: One-week sample of all sentenced cases, New York City courts.

TABLE 3

SENTENCES IN NEW YORK CITY CRIMINAL COURT, BY CONVICTION TYPE
CITYWIDE SAMPLE

CONVICTION CHARGE TYPE	FINE ONLY		FINE AND C.D., PROB.		JAIL		PROBATION		TIME SERVED		COND. DISCHARGE		UNCOND. DISCHARGE		TOTAL	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Gambling	55	65.5	-	-0-	16	19.0%	-	-0-	5	6.0	8	9.5	-	-0-	84	100.0%
Motor Vehicle	80	63.0	12	9.4	1	0.8	-	-0-	-	-0-	32	25.2	2	1.6	127	100.0%
Dis.Con., Loitering	179	35.4	21	4.2	19	3.8	-	-0-	60	11.9	197	30.0	29	5.7	505	100.0%
Drugs	50	34.0	8	5.4	20	13.6	8	5.4	20	13.6	35	23.8	6	4.1	147	99.9%
Prostitution-related	64	19.9	-	-0-	17	5.3	-	-0-	235	73.3	5	1.6	-	-0-	321	100.0%
Assault	10	19.2	4	7.7	15	28.8	10	19.2	3	5.8	10	19.2	-	-0-	52	99.9%
Theft-related	61	15.1	2	0.5	177	43.9	46	11.4	25	6.2	88	21.8	4	1.0	403	99.9%
Trespass	22	12.9	2	1.2	47	27.6	14	8.2	22	12.9	52	30.6	11	6.5	170	99.9%
Other	24	17.9	7	5.2	31	23.1	22	16.4	16	11.9	30	22.4	4	3.0	134	99.9%
TOTAL	545	28.0	56	2.9	343	17.7	100	5.1	386	19.9	457	23.5	56	2.9	1943*	100.0%

* Two cases were missing charge type.
Source: One-week sample of all sentenced cases, New York City Criminal Court.

Table 4

TYPES OF OFFENSES FOR WHICH FINES ARE COMMONLY USED, BY TYPE OF COURT

Type of Offense	Frequency: Ltd. Juris. (N=74)	Gen. Jurisdiction Fel., Misd., & Ord. Violation (N=28)	Gen. Jur. Fel. Only (N=24)	Total (N=126)
Driving While Intoxicated/DUI	54	22	2	78
Reckless Driving	30	9	0	39
Violation of Fish & Game Laws and Other Regulatory Ordinances	24	3	0	27
Disturbing the Peace/Breach of the Peace/Disorderly Conduct	32	8	1*	41
Loitering/Soliciting Prostitution	15	4	0	19
Drinking in Public/Public Drunkenness/Carrying an Open Container	14	5	0	19
Criminal Trespass	10	2	1	13
Vandalism/Criminal Mischief/ Malicious Mischief/Property Damage	9	3	3	15
Drug-Related Offenses (including sale and possession)	23	10	11	44
Weapons (illegal possession, carrying concealed weapon, etc.	6	2	1	9
Shoplifting	17	3	0	20
Bad Checks	14	2	0	16
Other Theft	19	9	8	36
Forgery/Embezzlement	2	3	2	7
Fraud	1	4	1	6
Assault	29	14	5	48
Burglary/Breaking and Entering	2	6	6	14
Robbery	0	1	3	4

* Superior Court, Cobb County - 1% of caseload includes misdemeanors.
Source: Telephone Survey.

TABLE 5

MODAL FINE AMOUNTS IMPOSED IN NEW YORK CITY CRIMINAL COURT,*
BY CONVICTION CHARGE TYPE, AND BY COUNTY

Conviction Charge type	New York	Bronx	Kings	Queens	Richmond	Citywide
Gambling	$50	$500	$100	b	a	$100
Motor Vehicle	25	25	50	50	100	50
Dis. Con., Loitering	50	25	50	100	100	50
Drugs	50	150to250	150to500	500	b	50
Prostitution-related	150	25	50	b	b	25
Assault	50to100	100	a	a	b	100
Theft-related	100	50	25&100	10	a	100
Trespass	a	25&100	50	a	a	100
Other	50	50&100	a	a	b	100
All cases	$50	$25	$50	$100	$100	$50

Source: One-week sample of all sentenced cases, New York City Criminal Courts
"Modal fine amounts "mean the dollar category that was the most frequent sentence.

* In the New York City Supreme Court Sample, there were four fine sentences (1.8% of the sample): $500, $500, $500 and $5000, each with 5 years probation.

a There were too few cases to identify typical amount.
b There were no fines for these charges.

TABLE 6

Number of Persons Sentenced to Short Prison Terms and Persons Fined

	1968	1969	1970	1971	1972
Total convicted:	572,629	530,947	553,692	571,423	591,719
Prison Terms of Less Than 6 Months, Without Suspension	113,273	64,073	23,664	22,207	20,045
% of total	20%	12%	4%	4%	3%
Prison Term of Less Than 6 Months, With Suspension	70,220	68,088	32,180	32,875	35,964
% of total	12%	13%	6%	6%	6%
A Fine Sentence	361,074	371,918	464,818	476,785	494,399
% of total	63%	70%	84%	83%	84%

	1973	1974	1975	1976
	601,419	599,368	567,605	592,514
	17,747	18,033	11,350	10,704
	3%	3%	2%	1.8%
	37,482	41,427	35,802	36,349
	6%	7%	6%	6%
	504,266	494,268	472,577	492,561
	84%	82%	83%	83%

Source: Drucksache 7/1089, Deutscher Bundestag 7. Wahlperiode 17/10/73 and Federal Ministry of Justice.

(Reproduced from Robert W. Gillespie, "Fines as an Alternative to Incarceration: The German Experience", Federal Probation, Vol. 44, [December 1980], p. 21)

TABLE 7

FINE AMOUNT IMPOSED AND COLLECTED WITHIN ONE YEAR
IN NEW YORK CITY CRIMINAL COURT, BY COUNTY
(N = 601)

	New York	Bronx	Kings	Queens	Richmond
Aggregate Amount Imposed	$17,721	$12,005	$12,850	$16,670	$4,100
Aggregate Amount Collected	10,396	9,560	9,901	13,835	3,350
Collection Rate	58.7%	79.6%	77.1%	83.0%	81.7%

Source: One-week sample of all sentenced cases, New York city courts.

TABLE 8

FINE COLLECTION IN NEW YORK CITY CRIMINAL COURT: PAYMENT STATUS ONE YEAR AFTER SENTENCING, BY COUNTY

Payment Status	New York		Bronx		Kings		Queens		Richmond		Citywide	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Paid in Full	114	59.1	73	60.3	85	69.1	104	76.5	21	75.0	400	66.6
(on date of sentence)	(29)	(15.0)	(18)	(14.9)	(19)	(15.4)	(46)	(33.8)	(4)	(14.3)	(116)	(19.3)
(after date of sentence)	(85)	(44.0)	(55)	(45.5)	(66)	(53.7)	(58)	(42.6)	(17)	(60.7)	(284)	(47.3)
(without warrant issued)	(48)	(24.9)	(34)	(28.1)	(37)	(30.1)	(32)	(23.5)	(11)	(39.3)	(165)a	(27.5)
(with warrant issued)	(37)	(19.2)	(21)	(17.4)	(29)	(23.6)	(26)	(19.1)	(6)	(21.4)	(119)	(19.8)
Resentenced to nonfine sentence	b		b		b		b		b		17	2.8
Jail Alternative Imposed	33	17.1	14	11.6	12	9.8	8	5.9	3	10.7	70	11.6
(without issuance of warrant)	(4)	(2.1)	(-)	(-)	(2)	(1.6)	(1)	(0.7)	(-)	(-)	(7)	(1.2)
(with issuance of warrant)	(29)	(15.0)	(14)	(11.6)	(10)	(8.1)	(7)	(5.1)	(3)	(10.7)	(63)	(10.5)
Partial payment made; still paying (warrant issued)	1	0.5	-	-	1	0.8	2	1.5	-	-	4	0.7
Warrant Outstanding	38	19.7	31	25.6	21	17.1	17	12.5	3	10.7	110	18.3
TOTAL:	193c		121c		123c		136c		28c		601	100.0

Source: One week sample all sentenced cases, New York City courts.

a Includes three cases that are not reflected in the county figures.
b County breakdowns not available.
c Totals including cases for which county breakdowns by payment status not available.

TABLE 9

COMPARISON OF LIMITED JURISDICTION COURTS WITH HIGH AND LOW ESTIMATED COLLECTION RATES

Reported Characteristics of Courts	Estimated Low Collection Rate Courts (N=12)	Estimated High Collection Rate Courts (N=24)
1) Installment System		
a) Percent Who Use	50%	21%
b) Percent Who See Problems with Installments	90%	79%
2) Time Allowed to Pay		
a) Average Time	64 days	22 days
b) Median Time	21 days	21 days
3) Percent Who See Indigency as Frequent Reason for Non-Collection	50%	17%
4) Percent Who See "Nothing Will Happen" as Reason for Non-Collection	40%	4%
5) Action Taken on Default		
a) Percent Who Commonly Jail	50%	75%
b) Percent Who Commonly Extend	60%	50%
6) Type of Record System		
a) Percent Manual	50%	58%
b) Percent Automated	-0-	13%
c) Percent Mixed	50%	29%
7) Extent of Fine Use: Half or More	90%	88%

* U.S. GOVERNMENT PRINTING OFFICE : 1985 O - 461-539 (23757)