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Report on Model Codes Relating  
to Fines in Criminal Cases

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## I. Introduction

A number of professional lawyers' organizations, as well as special interest groups, have prepared and published criminal codes to serve as models for legislators who are drafting or revising criminal laws and statutes. These model codes have indeed influenced lawmakers, as demonstrated by the number of states that have adopted into their statutes the actual language of provisions in the model codes. Two especially influential codes have been the American Law Institute (A.L.I.) Model Penal Code and the American Bar Association (A.B.A.) Standards on Criminal Justice. The latter is frequently cited in judicial opinions concerning statutes, and so receives particular attention during the writing of new legislation.

Model criminal codes which contain sentencing provisions were reviewed in connection with research on fine penalties in criminal law. Codes reviewed include the Model Penal Code already mentioned (1962), the A.B.A. Standards Relating to Sentencing Alternatives and Procedures (1978), the Uniform Law Commissioners (U.L.C.) Model Sentencing and Corrections Act (1979), the National Council on Crime and Delinquency (N.C.C.D.) Model Sentencing Act (1977), and the state of Michigan's Second Revised Criminal Code (1979) which, while it has

not yet been adopted by the Michigan legislature, has served as a model to other U.S. state lawmakers for the last two years.<sup>1</sup> The groups preparing these model sentencing provisions have varied in their points of view and their degree of advocacy for their views: N.C.C.D. clearly has an anti-incarceration bias and sense of mission; the U.L.C. apparently based their drafting effort on the premise that rehabilitation as a sentencing goal had been proven a failure<sup>2</sup>; unknown political forces may likewise have shaped model code drafting by the A.B.A., A.L.I., and the state of Michigan, but it seems likely that efforts in these cases were primarily bent toward standardization of a moderately lenient approach to sentencing.

## II. Which Offenders Should be Fined?

The earliest code, that of the A.L.I., imposes certain proscriptions on fining, leaving choice of a fine and its amount to the discretion of the court. For example, judges are not to impose fines unless public protection is assured, since fines leave offenders at large (§7.02(1)). Fines are not to be used in addition

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<sup>1</sup> For example, New Hampshire's recently revised fine ceilings were taken from Michigan's proposed code.

<sup>2</sup> Uniform Law Commissioners' Model Sentencing and Corrections Act, National Institute of Law Enforcement and Criminal Justice, August 1979, Prefatory Notes, p.2.

to imprisonment or probation unless the defendant has derived monetary gain from his offense or unless deterrence or correction of the offender will be especially served by the additional fine penalty (§7.02(2) ). The court is further to avoid fining those who would be prevented from making restitution if they had to pay a fine (§7.02(3) ), and to avoid fining those who would be unlikely to be able to pay a fine (§7.02(3) ).

Several of these caveats about fine imposition are repeated in the later codes, and all are shown in Table 1. Fine sentences are not to be used where they may compromise public safety, says the N.C.C.D. (§1). The A.B.A. would require judges to believe that deterrence or correction could be accomplished through a fine before such a sentence was imposed (§3.7(c) ). The A.B.A. would also restrict fines for felony offenses to those cases where the defendant has gained money or property through the commission of the crime (§2.7(a) ). And the A.B.A., as well as the U.L.C. and the Michigan code drafters, would have judges avoid fine sentences where a fine would prevent the offender from paying restitution to his victim (A.B.A. §2.7(c); U.L.C. §3-401; Michigan §1515). (Restitution is put forth by each of the codes as a desirable sentencing option or adjunct.) And the U.L.C. repeats the caution against fining someone who will be unable to pay (§3-401) and adds that the

Table 1

Model Code Guidelines for  
the Imposition of Fine Sentences

Public protection must be assured	(A.L.I.; N.C.C.D.)
Fine sentences inappropriate for violent crimes	(Michigan)
Fine sentences preferred for (or limited to) crimes involving monetary gain	(A.L.I.; A.B.A.)
Individual deterrence or correction should be likely to be accomplished	(A.L.I.; A.B.A.)
Offender should not be prevented from making restitution	(A.L.I.; A.B.A.; U.L.C.; Michigan)
Fine sentences only for those who are likely to be able to pay	(A.L.I.; U.L.C.)
Fine sentences only for offenders whose dependents will not suffer hardship	(U.L.C.)

court should consider any likely adverse effect on the offender's dependents before imposing a fine (§3-401).

There are some differences among the codes in the extent to which they recommend fines for felony sentences. While the N.C.C.D. comments, "In most jurisdictions this disposition [fine] is used too sparingly, especially for felonies",<sup>3</sup> none of the other codes encourage fines for felonies, except for crimes of gain. And the new Michigan code would restrict fine-alone sentences to non-violent felonies, misdemeanors and infractions (§1215,1220,1225).

### III. Fine Amounts, Method of Payment, and Revenues

Three of the codes attempt to establish guidelines for judges in setting fine amounts. The N.C.C.D. code mentions a ceiling of \$5,000 for offenses for which no other amount has been set (§9) and Michigan sets \$10,000 as the maximum fine for a felony, except that an offender's gain from the commission of a crime may be doubled to establish a higher fine ceiling for that case (§1501,1505). The A.B.A. also suggests that fine amounts may be appropriately set in relation to crime gains or to sales, profits or net annual income in

antitrust or other business cases (§2.7(f) ). The A.B.A. standards also leave open the possibility of a special (higher) schedule of fines for offenses committed by corporations (§2.7(g) ).

The A.L.I. code established a precedent in allowing the amount of a fine to be tailored to an offender's means. Their Model Penal Code stated: "In determining the amount and method of payment, the court should take into account the financial resources of the defendant and the nature of the burden that its payment will impose" (§7.02(4) ), and the A.B.A. adopted almost identical wording in its Standards (§2.7(c)(i) ).

All of the codes prepared since the U.S. Supreme Court<sup>4</sup> limited the jailing of indigent offenders who could not pay their fines have taken the Court's lead and incorporated provisions for installment and deferred fine payment plans (A.B.A. §2.7(b); U.L.C. §3-401(b); N.C.C.D. §9; Michigan §1530) in the interests of equal protection for indigents, and presumably also in the interests of more successful fine collection. However, the A.B.A. instructs those who would pay heed that, "Revenue production is not a legitimate basis for imposing a fine" (§2.7(c) ). Only one code addresses

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<sup>4</sup> Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1971); Morris v. Schoonfield, 399 U.S. 508 (1970) (per curiam).

the question of suitable use for the revenue which fines generate. The U.L.C. suggests that in lieu of paying fines to the state, offenders could be required to pay a like amount into a trust fund which would be available to pay victims' claims before the monies reverted to the state (§3-402). This is similar to the concept of restitution, but more fine-like.

IV. Enforcement of Fine Payment and the Issue of Indigency

Means by which fines payment might further be fostered or compelled are detailed in all of the later model codes. Table 2 shows which codes authorize each of several fine enforcement strategies.

Table 2

Enforcement Methods Provided  
by Model Codes

Sentence to pay fine as condition of probation	(Michigan; N.C.C.D.)
Collection of fine through civil processes	(A.B.A.; U.L.C.)
Committment to jail for willful default in fine payment	(A.B.A.; U.L.C.)
Imposition of jail term for contempt of court when default deemed willful	(Michigan)



Two codes provide that fine payment may be made a condition of probation so that the threat and exercise of probation revocation can be invoked in the event of nonpayment (N.C.C.D. §9; Michigan §1230); and two others provide for collection of fines through civil remedies (A.B.A. §6.5(c); U.L.C. §3-404(f) ). While jailing for default or contempt is mentioned by three of the codes, they clearly specify that only those who are willfully in default are to be jailed (A.B.A. §6.5(b); U.L.C. §3-404; Michigan §1535). The A.B.A. cautions that, "It is unsound for the length of a jail sentence to be inflexibly tied, by practice or by statutory formula to a specified dollar equation" (§6.5(b) ), and also prohibits the enforcement device of setting an alternative jail sentence to be suspended at the time of sentencing but imposed if nonpayment occurs (§2.7(e) ). The U.L.C. also incorporates the latter prohibition (§3-401(d) ). And both the A.B.A. and Michigan see fit to set an absolute limit of twelve months on the length of term an offender may be jailed for nonpayment (A.B.A. §2.4; Michigan §1535); Michigan further cautions, in keeping with Williams v. Illinois, that no one should serve longer for default than he would have served for the substantive offense (§1535). Those who default but are found to be unable to pay their fine are to be treated differently, according to the A.B.A. (§6.5(a) ), the U.L.C. (§3-403), and Michigan (§1535). This different treatment can

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include extending the time for payment, decreasing the size of the fine or amount of each installment payment, and excusing all or part of the fine which is owed.

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