FINES IN SENTENCING

WORKING PAPER #8

Report on Visits to Selected
State and Local Courts

by

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I. GEORGIA: 3/22 - 3/27/81

A. Mechanics of the Visit

Two Vera staff members visited the Atlanta, Georgia area to study the use and enforcement of fine sentences in that part of the country. Appointments with many local officials had been made by telephone prior to the visit, with initial contacts provided through I.C.M. Georgia officials were receptive to the investigators and cordial in manner, both over the telephone and in person. Some were extremely helpful.

Site Visits were made to the following courts and offices:

Fulton County (Atlanta) State Court

Fulton County Superior Court

Fulton County Probation Department

Fulton County FACES (community service project)

City (traffic) Court of Atlanta

DeKalb County Probation Department (Decatur, Ga.)

Georgia Administrative Office of the Courts (A.O.C.)

Georgia Department of Offender Rehabilitation - Probation Division

Clayton County Superior Court (Jonesboro, Ga.)

Alcovy Circuit Superior Court (Monroe, Ga.)

B. The Sentencing Climate in Georgia

As Dr. Susette Talarico of the Univeristy of Georgia noted to us on this visit, all criminal sentencing takes place within

a very special context of environmental, political and criminal justice organizational factors.[1]

It was possible to gather many impressions about the sentencing climate through our site observations and interviews. First, Georgia has a strong tradition of local autonomy in criminal justice as well as other government functions. There is no standardization of sentencing--beyond the broad limits of the state's statutes. Local courts outside the Atlanta area are clearly under the control of their judges. Beyond occasional appellate review of cases, there appears to be little oversight of sentencing.

The Administrative Office of the Courts estimates that 80% of Georgia's courts are locally funded--by counties or smaller jurisdictions. Even the so-called State Courts,

1. Drs. Talarico and Myers are still in the process of analyzing data from a large-scale study of Georgia sentencing in felony cases.

which hear misdemeanors, are county-funded and responsive to county interests. There are many small rural courts that operate largely on fees, and some courts are said to take their fees from fine revenues. Researchers were able to observe an office of a Justice of the Peace in Monroe, Ga. whose fees were largely for issuance of arrest warrants in probation violation cases. Court costs are also routinely charged against defendants--and even against complainants if they wish to drop cases.

Georgia is a poor state, with a large indigent population. Black citizens are especially likely to be without resources, and to come before the courts disproportionately often as criminal defendants. Unless they face jail time, they are unlikely to be represented by counsel. This places most misdemeanor defendants in the position of having to negotiate on their own behalf with a prosecutor.

It was reiterated by respondents that Georgia is in the "bible belt" and that strong notions of stern morality prevail. Prosecutors always make sentence recommendations where a plea has been negotiated, and these are said to be closely followed by most judges. Prosecutions for minor offenses like bad check writing and shoplifting are taken very seriously. Very few felonies (under 5% according to several informants) are reduced to misdemeanors for disposition. Indeed, judges and probation officials outside Atlanta are accustomed to heavy sentences for offenses of

only moderate seriousness by New York standards--for example, an 8 year probation sentence for drunk driving and a 10 year prison sentence for forgery--with a minimum of 3 years to be served in prison. In fact, judges and administrators indicated that Georgia's prisons were suffering from extreme overcrowding, with use of prison space being the highest per capita of any state in the country. They attribute overcrowding largely to rural sentencing patterns, but statistics were not available on this issue.

Prison overcrowding has in turn led to some interest in sentencing alternatives. Restitution is commonly ordered by Georgia judges. Even misdemeanants are frequently required to make restitution--as in cases of writing bad checks. Georgia's Probation Division has recently opened several live-in restitution centers where offenders may be sent by judges to work off their restitution obligations at community jobs, while the Probation Division manages their earnings. The state Probation Division (under the correctional authority since Jimmy Carter was Governor) is also working on shock incarceration plans where short jail stays will be emphasized. There is said to be political interest in sentencing approaches that seem tough, yet do not overburden the prison system.

There is much ferment about Georgia probation services at present. While statistics are lacking, it appears that the vast majority of Georgia offenders who are not incarcerated are placed on probation--making the probation system enormous, expensive, and important. The state, major local jurisdictions, and the judiciary all want probation under their control. An Advisory Panel has recently been set up to lobby for judicial control; at present only Fulton and DeKalb counties operate Probation Departments separate from the state correctional system's Probation Division. Probation record-keeping systems are being computerized to aid case management and the collection of fines, restitution, and child support. Probation's collection of court-ordered child support, even in noncriminal cases, is evidence that collection duties are an accepted part of probation's role in Georgia. In addition, the Georgia legislature may soon authorize the collection of a $10 monthly fee for probation supervision in order to reduce tax-levy expenditures and to hire additional Probation Officers where caseloads reach 200 and more probationers.

C. Georgia's preference for fine/probation combination sentences

The Fines Project's interest in Georgia was sparked by Georgia statutory provisions which provide for the coupling of fines with probation sentences. It became clear from two survey calls made to Georgia by I.C.M. that practice follows the statutes in this regard. In fact, based on this personal

visit, the practice seems even more prevalent--with payment of a fine routinely stipulated in many courts as a condition of probation ("probated sentence" in Georgia parlance).

Fines do not appear to be given alone. When a judge determines that an offender is able to pay a fine immediately, the fine is likely to be levied along with a suspended jail or prison term. Then responsibility for collection of the fine or execution of the sentence is the province of the sheriff.

Most commonly, however, the fined offender has not come to court with money to pay the fine, or the fine has been set about the short-range funds of the offender, or the offender is indigent. In these cases--the vast majority of those involving fines--the offender will be placed on probation with the condition that the fine be paid in installments. An order of probation is drawn up and collection of the fine becomes the responsibility of the probation apparatus. Even Atlanta's traffic court has a probation staff attached to it.

In the largest counties, probation "supervision" in these cases is likely to consist only of receiving payments and issuing reminders or warnings concerning delinquent payment. In fact, Fulton and DeKalb counties have designated these probationers to be a "nonsupervision" caseload--estimated at 40% in both Fulton and DeKalb Counties. (In DeKalb County, the probationer knows that he is not being supervised; in Fulton County he is not informed.)

The fine/probation sentence is highly attractive to the judges interviewed because the payments are monitored and the threat and exercise of probation revocation are said to enforce fine payment. A probation official expressed the opinion that making fine payment a condition of probation was a way around "the Supreme Court's prohibition on fining indigents."[2]

D. Fining for punishment, profit deprivation, and revenue production

Interviews held with four Georgia judges and three prosecutors suggested that fine sentences served several distinct purposes: punishment, profit-deprivation, and revenue-production. The theme of fines for mild punishment or to inflict inconvenience emerged consistently, in such terms as: "a fine is a 'pure' punishment because no one wants to part with their money"; a fine is "some punishment--intermediate between not punishing and throwing in jail"; "a fine serves to inconvenience the defendant, and he deserves a little inconvenience." The fine seems intended, especially in felony cases, to enhance the "weight" of a probated sentence--to give it

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2. Actually there has been no U.S. Supreme Court decision this sweeping, although several decisions (Williams v. Illinois; Morris v. Schoonfield; Tate v. Short) have limited the circumstances under which indigents may be imprisoned for nonpayment of fines. Test cases from Georgia (Wood v. Georgia; Simpson v. Georgia) where indigents' probations were revoked for fine nonpayment have been decided on issues other than equal protection.

greater symbolic or actual punishment value. Nevertheless, it did not appear that judges used fines to replace jail terms, so that a fine's punishment value was clearly limited. One judge said that in the rare case when he wasn't sending a drug seller to prison, that he would impose probation and a heavy fine, but that he would prefer to impose a split sentence where probation and a fine were to be fulfilled after the prison sentence was completed.

Prosecutors stressed the use of fines against illegal commercial enterprises. In these cases, fines are set as high as the statutes permit with the specific intent of discouraging these kinds of activities in Georgia.[3] The Fulton County Solicitor (lower court prosecutor) feels that he has been sucessful in closing most of Atlanta's pornography businesses by asking judges to levy very high fines against them. He reports that

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3. A case recently decided by, the U.S. Supreme Court (Wood v. Georgia) involved fines in the thousands of dollars levied in conjunction with probation against three employees of a pornography business in Atlanta. The employees left the business and neither they nor the ex-employer paid their fines. The employer's attorney, who represented the defendants at probation revocation hearings, claimed that the defendants were indigent and that probation should not be revoked solely for default in fine payment by indigent probationers. The U.S. Supreme Court decided the case based upon the attorney's conflict of interest in representing both the employer and the employees, rather than upon the equal protection question.

almost $800,000 was collected in fines of this type over the last few years.

Concerning Superior Court prosecutions of bookmaking, a prosecutor called a high fine "an expensive license fee--[such business] should be legalized and taxed, but since it isn't, we prosecute and levy a heavy fine."[4] In fraud cases involving moneyed offenders, he noted, the defendants tend to be greedy and a high fine makes a perfect punishment--especially when coupled with the humiliation of a brief jail sentence. He also complained that gambling and pimp ring investigations were costly--employing wire taps and surveillance equipment--and that it was perfectly appropriate to make the defendants bear the cost of the investigation.

Most of those interviewed acknowledged the appropriateness of using fines to help defray the cost of operating probation services and other agencies of the criminal justice system. There is no legislative authority as yet for a probation supervision fee, but it is expected in the near future. One judge told us, "the offender is enjoying the privilege of being out of jail," and thus

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4. There is no form of gambling which is legal in Georgia.

should at least pay a fine. And a court administrator said, "if you're going to extend the courtesy of probation, it's right that they have to pay for it." A state probation District Director reported that payment of a fine "instanter" (meaning at once) is "required to get on probation rather than go to jail or onto a chain gang in some small circuits."[5] And local probation directors said: "I look at a fine as restitution back to the taxpayers of this county" and [offenders who are] "walking the street should feel some kind of punishment--the judge has given you an opportunity to get back out in your community."

An executive from Georgia's Administrative Office of the Courts noted that "revenue generating courts have more clout"--their clerks tend to receive the highest salaries. And the administrator of Atlanta's traffic court talked frankly about the revenue expectations that city authorities had for his court. Other court administrators also indicated that fine revenue was an important implicit factor in their negotiations with County Commissioners at budget appropriation time.[6] It was common to hear revenues compared with a court's budget and with the added expenses of processing so many fined offenders

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5. Georgia's appellate court upheld the lower court in a case involving a requirement that the defendant pay a fine precedent to probation (Hunter v. Dean), but the U.S. Supreme Court declined to review the case.

6. In Alabama there was a recent unsuccessful effort to make the courts pay for themselves.

through probation--estimated by the Project Director of the Atlanta community service program to be $75 per person. One judge said that he heard it costs $200-$300 per year to keep a person on probation in Fulton County, and a Clayton County judge cited a figure of $234 per year.

E. Fine Sentences: How many, for what, and how high?

Statistics were not readily available in Georgia about how many offenders are sentenced to pay fines. Even the study of Talarico and Myers will provide data only about fines among those sentenced to probation or prison. Anecdotal evidence suggests, however, that a very high proportion of all offenders are fined. A Fulton County Superior Court judge says that he almost

always imposes a fine in addition to any nonincarcerative sentence. According to a DeKalb County Probation Officer, "almost everyone" convicted of a misdemeanor there is placed on probation with a fine (and possible restitution) to pay. In Clayton County, a lower middle class white suburb of Atlanta, the probation department and the judge refer to a $250 fine as the "place that sentencing decisions start," and the Probation Division there reports that their Superior Court clients "always have fines to pay." (It is noteworthy that the $250 floor was set to cover the estimated cost of yearly probation supervision in that county.)

Fines are levied for all kinds of offenses. Driving under the influence of alcohol and petty theft were frequently mentioned as receiving probation/fine sentences. Illegal commercial activity such as gambling, pimping, and frauds were also prominent among offenses said to usually be punished with fines. Many felony offenders are sentenced to fine/probation or to split sentences with a fine to be paid after imprisonment. The large number of fine dollars collected from offenders on probation from Superior Courts supports the claim that fines are commonly imposed in these cases.[7]

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[7]Fulton County collected $475,000 in Superior Court fines in 1980; DeKalb County collected $271,244.

Fines amounts for commercial offenses can be very high, ranging to five thousand dollars per charge. A Georgia statute allowing "racketeering" to be prosecuted as a "misdemeanor of a high and aggravated nature" is the basis for these sentences.

Fines levied on individuals for misdemeanors are much lower (with a $1000 ceiling), but seem high by New York standards. A minimum $250 fine for any misdemeanor in Clayton County was already referred to. In DeKalb County, fines seen on a computer print out were typically in the $200 to $400 range. Judges, rather than prosecutors, set the fine amounts. A Fulton County lower court judge referred to $150 as a "low fine." Another judge--in the Fulton Superior Court--made the point that he had recently gone as low as a $50 fine, but this was clearly atypically low, and was levied on a truly indigent offender. A fine of $250 per year of probation is said to be the "going rate" there.[8] In DeKalb and Fulton Counties, with large indigent populations, these are steep fines even if they are to be paid out in a series of installments. In misdemeanor cases, full payment would have to be made within twelve months on probation--

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[8]Although Georgia statutes permit a fine up to $10,000 in a felony case, only large drug dealers and perpetrators of commercial offenses seem to be sentenced to fines above $5,000.

although in felony cases probation may be ordered to last as long as an offender could be incarcerated for that offense.

An offender's means does not appear to be a salient consideration in setting a fine amount. Rather, judges said that fines were indexed to the severity of offenses. There is a new federally supported community service project in Fulton County, FACES, to which some judges are beginning to sentence indigent misdemeanants and other offenders. The Program Director has prepared a chart for the convenience of sentencing judges giving suggested equivalents in days of community service for various fine amounts (eg, 40 hours equals $125 and 65 hours equals $200). However, only 41 offenders are being handled in this project at present.

It is clear that middle class misdemeanants typically receive substantial fines. One Atlanta judge noted that a "respectable fine"--perhaps in the thousands of dollars--is his choice for offenders who have money.

F. Enforcement of fine payments

Fine enforcement efforts are made through the probation apparatus in each area. Probation Officers set the payment terms and collect the money. They also send out form letters and make telephone calls to encourage payments. (In the rural areas, reminder visits may also be made.) The fine sentence is taken seriously by probation personnel.

The Director of the DeKalb Probation Department instructs his officers to "push for the money," but not to push someone up against a wall because it is neither rehabilitative nor likely to result in collection.

All probation representatives indicated that arrest warrants for probation violators were rarely issued solely for nonpayment of a fine and that where nonpayment was involved, the probationer was usually also failing to report on schedule. But as the Monroe, Ga. senior judge pointed out, the offenders don't know that they're unlikely to be revoked just for fine nonpayment. He also pointed out that conviction--even of a felony--is not a stigma for most of his defendants. "The only way we get their attention is to make them come in and pay." A DeKalb Probation Officer reported that revocation hearings on probationers for lower court fine nonpayment usually result in some family member paying up the fine to avoid the probationer being jailed. This "miracle of the cells" theme, also heard in New York, was echoed by a Fulton County lower court judge who made frequent use of suspended sentences with fines. The Judge indicated that offenders could almost always raise the fine money if execution of jailing was imminent.

In Fulton and DeKalb Counties, arrest warrants for probation violators are served by Probation Officers. In

other parts of the state, warrants are served by sheriffs at the request of probation personnel. While probation revocation solely for nonpayment of a fine may be rare, revocations of probation and execution of jail and prison sentences for the duration of the probation terms are fairly common--in fiscal year 1980 there were 2302 revocations in the 40 court circuits covered by the statewide probation system (excluding Fulton and DeKalb counties). Out of seven revocations of probation ordered in Monroe, Ga. on the day researchers were present, two involved nonpayment of a fine (but in each there was also a new arrest). A Fulton County judge remarked that probation officials are likely to keep better records of fine payments than of other probation conditions, and that nonpayment tends to provide good evidence at probation revocation hearings.

Sometimes the period of probation is suspended after a fine is paid, but not invariably. At least one judge interviewed on this visit was reluctant to suspend these probations "because it looks like a collection agency." She noted, however, that many judges feel differently.

It seems clear that the system is not without humanity. Those who report to their Probation Officers, but who cannot pay the full installment due, are given more time to pay or reduced installments to make. It was noted in the large counties, however, that probationers who cannot

make payments are sometimes afraid to report in. Probation staff say they sometimes bring cases back to the judge for remission of all or part of the fine when an offender's financial circumstances have been severely reduced, and that fines are occasionally "written off."

G., Extent of success in fine collection

Statistics are widely available on amounts of fines collected[9] but there are no comparable figures on amounts levied. The best estimate at present comes from Monroe, Ga., where during calendar year 1980 there was $161,000 ordered in new fines and $100,490 collected on old and new ones. A 62% collection rate seems credible for counties outside of the Atlanta area, especially because Monroe probation staff pointed out that they collected under 50% during a period of understaffing. Payments are said to be deflated because of poor economic conditions, but new computer recordkeeping established in counties like Clayton may actually have increased collection to as high as 70%.

In Fulton County (Atlanta) where there are the largest number of warrants issued for probation violation, the warrants are "mostly unserved at present," according

9. For example: DeKalb County Adult Probation Department which handles almost 7000 misdemeanor and felony cases per year, took in $815,315 in fines from these cases in 1980; Atlanta traffic court collected $3.5 million last year.

to the Director of Probation, and fine collection is likely to be lower there. Similarly, in DeKalb County (a major suburban county) phone calls and letters are the only efforts made to apprehend probation violators. The DeKalb Probation Department Director states that many violators are arrested for new offenses and that old warrants are then executed. If the violator is not picked up within four years, the case is closed--presumably the probationer has been rehabilitated or left Georgia.

Georgia judges and probation staff repeatedly expressed righteous indignation that New York did so little to serve arrest warrants for fine nonpayment or to enforce payment in any other way. One commented: "Why should you expect to collect fines if something [probation revocation] isn't hanging over their head?!" Yet there is no convincing evidence that the major Georgia counties, which face scarce resources like New York City, are able to do significantly better than New York in collecting their fines through the efforts of their Probation Departments and threats of probation revocation.

Smaller Georgia counties appeared to do much better in fines collection. Judges and probation officials in these counties clearly expect fines, as conditions of probation, to be taken seriously. They believe that the frequency with which probations are revoked (often involving evidence of fine nonpayment as well as other violations) lends

credibility to fine enforcement efforts. Probationers in small Georgia towns may pay their fines because they believe that the Probation Division will notice their lapses, that there will be probable and palpable negative consequences for nonpayment, and that these consequences outweigh the loss or inconvenience to be suffered in paying the fine. Nonpayment due to indigence may also be reduced in these towns through Probation Division efforts to find jobs for probationers who owe fines and restitution.

II. DELAWARE: 6/12/81

A. Mechanics of the Visit

Two Vera staff members visited Wilmington, Delaware as a follow-up to a telephone interview conducted from Colorado by I.C.M. The interview had alerted the Fines Project to Delaware's Work Referral Program, whereby offenders receive temporary job assignments to enable them to work off fines and costs which a Delaware court has ordered them to pay.

The site visit began with a supplementary interview with the telephone respondent, the Court Administrator of the Court of Common Pleas of the State of Delaware. Her court's Collection Officer was also interviewed, as well as one of the two judges sitting in that court. Interviews focused upon, but were not limited to, the effects of Work Referral on the imposition and collection of fines. In the afternoon, a visit was made to the administrative office of the Work Referral Program, and an interview was conducted with its Director. To conclude the day, a supervisor in Delaware's probation service was interviewed concerning his responsibility for collection of fines and costs for several Delaware courts.

In addition, written materials were provided to the researchers--such as statistical and descriptive

reports, and forms for offenders and employers.

B. The Climate for Fining in Delaware

In part because Delaware has no county jails and has statutes calling for mandatory jailing for a number of offenses, the state prison system has long been strained beyond capacity. In fact, Delaware has been under court order since 1977 to reduce overcrowding at the Delaware Correctional Center at Smyrna, so that no more than 600 inmates are housed there. Delaware is in the process of building a detention and classification center near Wilmington with 360 beds.[10] Meanwhile, Delaware judges are highly reluctant to send any offenders to Smyrna, lest they increase the prison population. The lower court judge interviewed remarked that he was particularly reluctant to send a petty offender there, even if the person had many prior offenses, because overcrowding has bred a climate of terrorism and corruption, with homosexual attacks common. Such considerations encourage

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10. Anita S. West, et al. Jail Overcrowding and Pretrial Detention: A Program Evaluation. University of Denver Research Institute, November 1980.

extensive use of fines and other nonincarcerative sentence options by Delaware judges. Prison authorities are said to actually release offenders who are sent to them on what they consider to be trivial charges. The Delaware legislature, in part as a response to this overcrowding, saw fit to actually prohibit jailing merely for nonpayment of fines or costs (DEL. CODE ANN. tit. 11, §4105).

In addition, Delaware's courts are highly oriented to fines. While several courts have been combined into a unified state court system with one lower court and one superior court, a number of city, municipal, and magistrates' courts (with lay justices) still exist. Most of these courts seem to hear misdemeanor cases as well as petty violations, so that many of Delaware's courts have fines as their exclusive sentence option for misdemeanors. And even the unified Delaware lower court, the Court of Common Pleas, is also highly oriented to fines because the average case is not serious by New York City standards, and because judges there also hear many traffic cases where fines are routine.

There is also apparent interest in Delaware in the collection of all these fines. The legislature appropriated monies for a special unit for Probation

and Parole fine collection, and the Court of Common Pleas was also able to obtain a funded position for a Collections Officer.

Unlike other court systems that have come to the researchers' attention, the Delaware Court of Common Pleas has explicitly vested great discretionary power over fines in this nonjudicial officer of the court. In other jurisdictions, such discretion may be informally taken or abdicated, but in Delaware the Collection Officer's discretion is exercised with the full support of the system. Any offender who has been sentenced to pay a fine but who cannot make immediate payment in full must see the Collection Officer, who will arrange a payment plan or refer the offender to the work program. This officer can later accept or reject an offender's excuses, extend time for payment, and bring a case back to a judge if the officer feels it is called for. He can also ask that a judge excuse or write off a fine, attach an offender's wages, or issue a capias for jailing.

Unlike Georgia, the revenue issue does not seem important in Delaware. When researchers probed for legislative interest in self-sufficient courts, the reaction was that this was not true in Delaware. In fact, the Delaware legislature has shown increasing concern for reimbursing victims of crime in the state,

passing a statute requiring a surcharge of ten percent to be added to every fine imposed. This surcharge is deposited into a Victims Compensation Fund (VCF) from which claims are paid out. When revenues into the fund were less than expected because of the paper credit toward the VCF originally given to work referral participants, the Delaware legislature decided that the VCF surcharge was always to be paid in cash, and could never be worked off. Collection is high because any monies received from offenders are first applied to this obligation.

Restitution orders, it is said, are also becoming more widely used by Delaware judges, and there is a bill presently before the Delaware legislature to allow offenders to work off restitution obligations, as well as fines and costs, through the Work Referral Program. (Presumably restitution would be paid out from the VCF.)

Also important to the sentencing climate in Delaware, as in many urban areas, is the existence of a large underclass who are disproportionately involved with the criminal justice system and who are unlikely to have steady employment. The existence of this population in Delaware was the impetus for starting work programs which would avoid incarceration of poor offenders for nonpayment of fines and costs, and be

rehabilitative, it was hoped, by introducing the unemployed to the world of work.

C. The Work Referral Concept and Implementation

The Work Referral idea was developed in 1965 from discussions about how to keep out of prison offenders who could not pay fines or court costs. The program was extablished under the Department of Corrections' Probation/Parole Division, through the interest of Paul Keye who was then Commissioner of Corrections. Statutory authority was created under the Delaware Code (tit. 11, §4105). The first agency to accept referrals was the State Highway Department, and the program and number of sites were subsequently expanded under LEAA funds. Referrals are presently made to governmental agencies (although not the city of Wilmington because of labor union objections) and to community non-profit organizations, including churches and parochial schools. Physical labor is most common, although clerical and professional work is sometimes involved.

There were 474 offenders who completed working off their fines and costs in the one year period between July 1978 and June 1979.[11] About three quarters

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11. Statistics from National Assessment of Adult Restitution Programs by Joe Hudson and Burt Galaway, University of Minnisota. School of Social Development, February 1980.

again of that number (341 offenders) were referred to the program but did not complete their work obligation, either because they paid their fine or costs in cash, were paying on the installment plan, were still working in the program, or had been returned to court for a hearing on their default. The most recent figures available are for the month of March 1981. During that month, 93 people completed the program, and 55 who were referred had their cases closed without completion. (Twenty-one of these 55 had paid or were in the process of paying their obligation in cash.) These statistics suggest that many offenders are making successful use of the work option, and that it has become an institution in Delaware. Statistics have been promised to the researchers on the proportion of fined offenders who are making use of this option, but they have not yet been received.

By this time, procedures and record-keeping have long been standardized, and the rate at which fines and costs are worked off has been raised from $2.00 per hour to the federal minimum wage (currently $3.35/ hour). No money changes hands in the program; only paper credits are given toward satisfaction of fine and cost obligations. The basic procedure is described

by the program[12] as follows:

> "The client is referred by the court with a court order to report to the Work Programs staff by a specified date. The Work Programs staff does a short intake on the client upon his arrival at the office. The purpose of this intake is to appraise [sic] the client of his responsibility to the court as well as to discuss the area of placement. It is the effort of the staff to place the client as close as possible to his home and also place him at a site that is meaningful and well supervised. Another purpose of the interview is to discern if the client is on probation and if the probation officer has been appraised [sic] of the client's being placed in the Work Programs. Our rationale for this is that if the client is on probation, then we have a dual check on the client's performance. In addition to the intake process, an agreement is signed by the client in regard to certain conditions of the Work Programs. Upon the client's leaving the office, he is given a copy of this agreement as well as a copy to take to the work site."

Practical problems with the operation of the project appear to arise mainly from the unevenness of supervisory interest and ability at the sites. The project depends upon the referral agencies' personnel to provide genuine and consistent work, and also to monitor and certify as to whether the offender is performing the work (and not off sleeping or drinking.) When agency personnel do not live up to these expectations, sometimes the agencies are dropped, but sometimes the work placements are continued and the experience does not

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12. Work Programs Report, Delaware Bureau of Adult Correction, March 1979.

gain the respect of the offender, the Probation Department, or the citizenry.

Those interviewed see multiple benefits from the program to the offender and to society: the offender is enabled to discharge a possibly burdensome obligation; (s)he gains work experience and in some cases a permanent job placement; society is satisfied that the offender has received "a definite form of positive punishment";[13] public and nonprofit agencies receive assistance they could not otherwise afford, and taxpayers are saved the expenses of incarcerating those who do not pay their fines.

While some outside Delaware have questioned whether an offender's participation in such a program can ever be truly voluntary, the Delaware system does appear to give offenders a genuine choice between paying out a fine on a lenient installment basis or working it off. Furthermore, officials have implemented the concept sensitively, so that undue pressure to work is probably never applied to offenders who are either physically unable to work, or have regular jobs, or who have burdensome family situations. In the Court of Common Pleas, work is offered to those who say that they would not be able to pay out their fines and costs in installments. Those who are employed but

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13. Work Programs Report, op cit.

have very low wages or many dependents or other obligations are not pressed to enter a work program since no evening or weekend work is available through the program. To some extent, psychological manipulation by that court's Collection Officer (such as threats about jail, shaming or cajoling), may induce participation in the program, but this is not a necessary feature of a model fine work-off program. And an offender who claims that he cannot pay a fine because (s)he has no job, would probably want to avail himself of a work option if his (or her) intentions were really so good.

At least one other similiar program has been in operation for a long while: The Fine Option Program in Saskatchewan, which assists indigent Indian offenders to pay their fines. The Canadian program was also set up to eliminate "prison for debt" and has been a popular alternative for fine satisfaction. As in Delaware, no money changes hands, and participation by offenders and agencies is voluntary.[14]

D. Fine Sentence Enforcement in Delaware

Delaware statutes say, "no person sentenced to pay a fine or costs upon conviction of a crime shall be

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14. Margery Heath. The Fine Option Program: An Alternative to Prison for Fine Defaulters. Federal Probation, 1978, 43, pp.22-27

ordered to be imprisoned in default of the payment of such fine or costs" (DEL. CODE ANN. tit. 11, §4105). The availability of installment payment options and work referral are supposed to virtually eliminate problems of fine nonpayment; yet, even among those referred to the work program, twenty-three offenders were returned to court for noncompliance in March 1981.[15] In the event that an offender does not comply with a court order to work off his or her fine or costs, Delaware statutes permit the court to impose a sentence for contempt of court--up to the maximum number of days allowed by statute for that offense. (DEL. CODE ANN. tit. 11, §4105.) In addition, "a court having probationary powers" may, according to this statute, treat offenders as though they were probationers who had violated their probation conditions, and may sentence them up to thirty days for probation violation. As the Work Referral Program has reported:

> "Should the client defect in his responsibility, he is returned to court for further consideration by the respective court. Offtimes [sic], the Work Programs staff is summoned to court to testify concerning the client's non-compliance with the court's wishes. Sometimes these clients are returned to the Programs and other times the court will take a different mode of action."

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15. Monthly Statistical Report for Work Programs, State of Delaware Bureau of Adult Correction, March 1981.

It is ironic that, even in a state which has prohibited jailing for default and has no room in its prison for fine defaulters, the ultimate fine enforcement recourse is to jailing. In fact, the Collection Officer for the Court of Common Pleas told the researchers how he held the possibility of ultimate imprisonment over his clients' heads, and that one of his favorite devices for encouraging payment was to allow an offender to spend time in the overcrowded detention pens in the basement of the courthouse. It was pointed out to researchers that the threat of contempt jailing was occasionally realized, but that this depended on which court was involved. Apparently the Wilmington Municipal Court regularly sends to jail those who do not fulfill their work referral commitment, wheras other Delaware courts do not do this. Even offenders who do not show up at their work sites are routinely given second and third chances to satisy fines and costs imposed by the Court of Common Pleas. Sad stories appear to be sympathetically received, at least in the Common Pleas collection office. A contempt calendar, including many fine defaulters, is prepared once a month. About two-thirds of those who have been calendared pay all or part of their fine before the court date, and then do not have to appear. The incidence of returns to court is small, but jailing for default on payment of fines appears

to be much smaller. The Common Pleas judge interviewed said that perhaps one or two highly recalcitrant offenders might be jailed for default in a year. Researchers asked the Collection Officer for the Court of Common Pleas whether the word had not gotten around on the street that the court made idle threats about jailing those who did not pay their fines. He did not believe this was so; perhaps the "one or two" jailings a year are sufficient, as they were in Georgia, to lend sufficient credibility to jail threats.

The fine collection rate which results from these efforts is unknown, because of a lack of statistics which combine monetary collections with work program figures. A new unit staffed with seven clerical workers was able to raise Probation and Parole's monetary collections from eight percent to twenty-five percent in a year's time, with an unknown proportion of the remaining money discharged through the work program. The Court of Common Pleas, with its own Collections Officer does better at monetary collections with fifty-two percent collected in recent months, but again it is not known how much of the remaining forty-eight percent of fines have been sucessfully worked off.

The Delaware statutes were modified in recent years to permit the wages of those who owe fines or costs to

be assigned (person agrees to have employer withhold wages) or attached (by court order). (DEL. CODE ANN. tit. 11, §4104) While this apparently works well for those offenders who are employed--especially traffic offenders--it is not suitable for the majority of nontraffic criminal offenders who live on the margins of society. Apparently the Court of Common Pleas prepares civil judgment papers for fines they have been unable to collect (or get worked off), but the state's attorney has never taken any action to serve them.

III. WISCONSIN

A. The Site Visit's Purposes and Mechanics

Telephone survey calls made by I.C.M. to court administrators in Wisconsin yielded some interesting information about innovations in the collection of fines in lower courts there. First, the City of Milwaukee's lower court has an extensively computerized system for fines collection; second, that court (as well as other courts and law enforcement agencies) accept credit cards for the payment of fines; and third, the Wisconsin legislature has recently passed a statute allowing a hold to be placed on auto registrations of those who owe fines in the state. A site visit was planned which would bring researchers to several of the courts and offices involved with these progressive fine collection operations, so that detailed information could be collected.

In the span of three days in Wisconsin, visits were made to three courts as well as to one municipal and one state office. The court visits were made to the Milwaukee Circuit Court, Milwaukee Municipal Court, and the Dane County (Madison) Circuit Court. All visits involved interviews and observations in the clerk's areas, interviews with judges and courtroom personnel and observations of arraignments, hearings, and plea-takings.

In addition, a meeting took place with several City Attorneys from Milwaukee who had been instrumental lobbyists in the passage of the new lesiglation on automobile registration holds. Representatives of the Wisconsin Department of Transportation in Madison, who handle the registration holds, were also interviewed. Major findings and implications are reviewed in the balance of the text.

B. The Milwaukee Municipal Court: Bringing the computer age to the collection of fines

In late 1975, the City Council passed legislation to establish the Milwaukee Municipal Court. With just a few months lead time, the court began operating on Jan. 1, 1976, handling moving traffic violations, contested parking violations, building and health code violations, and criminal ordinance violations (assault, theft, shoplifting, loitering, disorderly conduct, etc.). Case volume is now at approximately 78,000 cases per year--mostly what the court's dynamic woman administrator calls "piddly-crap cases". One of the objectives of removing the hearing of city ordinance violations from a county to a city court was to realize 100 percent, rather than 50 percent, of the fine revenue in these cases.

Interviews and observations at the court focused on the operation of the court's on-line computer system, which was designed to assist in case record-keeping and tracking. Of interest to our research effort is the system's capacity to process financial transactions as well as perform other case management functions.

A unique feature of the system is that court personnel enter case activity information into the system beginning right in the courtroom. All information pertaining to fines and costs imposed in a case is stored in

the computer at the time of disposition. By the time an offender goes to the cashier down the hall from the courtroom, a costing clerk has added any costs incurred. The cashier brings the offender's case to the screen to check the amount due and see if any money is on deposit which could be applied. When the cashier enters the amount received, the computer checks that this is the correct amount due. If an offender appears after the fine payment is overdue, the cashier will see on the screen that a warrant was ordered, and will send the offender to the courtroom. The terminal prints a receipt for the payer, which shows balance due.

There are nearly 40 city and state monetary accounts kept on the system. The computer allocates the money to the correct account and, if partial payment was made, it assigns the funds on a priority basis.

Court personnel feel that their system has allowed them to avoid becoming bogged down in a sea of paperwork, and that their efficiency at tracing those who owe fines to the court has also been improved. It seems to researchers that other courts also having numerous daily financial transactions could benefit greatly from this kind of automated record-keeping.

C. The use of credit cards for fines collection

State police officers in Wisconsin accept on-the-spot payment by credit card of scheduled traffic fines, and even carry the regular retail credit stamping machines in their

patrol cars. Fines owed to the city of Milwaukee for ordinance violations may also be paid by credit card at local police stations.

The Milwaukee Municipal Court also accepts Master Charge credit cards for bond and fine payments, taking between five and ten such payments weekly. They report that they have no real problems with this procedure, and had tried (unsuccessfully) to induce the Visa credit people to also participate. If the fine being paid to the court is over $50, the cashier calls Master Charge to verify the card. Any later collection problems are the responsibility of Master Charge; the court receives its money regardless of a debtor's default. Master Charge entered an agreement with the court, as a public service, to make all credit charges payable by the debtor rather than the court.

A similar agreement was reached with the Dane County Circuit Court, which also accepts credit card bond and fine payments. This court calls the credit company for verification, regardless of the fine amount, and finds the system very workable. It is likely that other Wisconsin courts also accept credit card payments.

As a Municipal Court judge noted, however, a credit card is beyond the reach of all but middle-class defendants appearing before a court, so its utility as a means of fine collection is limited. And courts which either

are not concerned with revenues or do not frankly acknowledge their concern, would undoubtedly find the use of credit cards too blatant in pecuniary interest.

D. "Terms" in Wisconsin: When is a fine not a fine?

An interesting and unexpected discovery about sentencing in Wisconsin is the practice of imposing "terms" in lieu of fines. Without any particular statutory authority, judges in the Milwaukee County Circuit Court allow defendants to pay the equivalent of fines without having been adjudicated guilty. A defendant who is young, a first offender, or otherwise synpathetic (for example, their family might suffer a raise in insurance rates after a conviction) is commonly told that their case will be held open and later dismissed if they pay "terms" equivalent to what they would have been fined upon conviction, and stay out of trouble or comply with any other court directives.

"Terms" are received as revenue by the county, rather than being sent to the state of Wisconsin, so this device appears to augment local revenue while it gives many offenders a humane second chance. Conceived less idealistically, defendants paying terms are paying for the courtesy extended them, as many offenders in Georgia were required to make "instanter" payments precedent to being placed on probation.

E. Enforcement of Fine Sentences through the Use of Driver's License Suspension Threats and Auto Registration Holds

In Wisconsin, as in many states, traffic offenses may be punished by suspension of the offender's driver's license.

At the Milwaukee Municipal Court, this sanction is routinely used as an alternative sentence to be executed in the event of nonpayment of a primary fine sentence for a traffic offense. However, only the customary alternative of days in jail is considered fitting and serious enough for criminal ordinance violations. The Senior Judge of that court told researchers that some people would actually prefer an alternative sentence of days in jail over a 90-day license suspension, so potent is the latter as a fine enforcement threat with certain offenders. However, Wisconsin respondents agreed that many people will continue to drive, even while their license is under suspension. The City of Milwaukee lobbied the state legislature to authorize "permanent" holds on the renewals of drivers' licenses of people owing fines in the courts. The state legislature refused to pass such a bill, but went along with the city's second choice--a hold on the automobile registration renewal of those owing fines to a participating Wisconsin court. Attorneys for Milwaukee reasoned that since registration must be renewed yearly and the renewal tag must be displayed prominently on a Wisconsin car's license plate, that those driving with improper registration would be likely to be apprehended and that this would put "teeth" into their fine sentences. To allow the necessary computer software to be developed, the City of Milwaukee gave the state $400,000, with the city

to receive a credit of $10 for each hold processed (up to the $400,000 spent). Since the system went into effect this July 1st, over 600 requests for a registration hold have been sent from Milwaukee to the state.

The State Department of Transportation in Madison reports that early experience with this procedure has been disappointing. During the month of July 1981, their statistics show that records on only 69 operable vehicles were located out of 651 requests, and that only 6 fines were payed as a result of the holds being placed. They hope that when an older case backlog has been exhausted that they will be able to find a greater number of still-operative vehicles. However, the D.O.T. is not fully behind the program, believing that the state is being forced to get involved in the city's problems, and that transportation and law enforcement should be the responsibilities of separate agencies. They definitely were not receptive to the idea of placing holds against auto registrations of those fined for nontraffic offenses. When this same question was put to attorneys for Milwaukee, they were cool to the notion and predicted that it was so arbitrary in nature, that it might be interpreted by appellate courts as a violation of due process.

In terms of procedural safeguards for defaulters against whom a registration hold is sought, a warrant and

commitment notice is supposed to have been served before the hold is executed.[16]

The legislation authorizing the hold also requires that the D.O.T. notify offenders at least 30 days prior to the expiration of their registrations. In practice the D.O.T. is sending two notices to the offender, one immediately upon granting the hold and the other at 30 days from expiration.

The City of Milwaukee expects litigation about the new program--perhaps on the grounds that municipalities cannot ask states to take such actions. The state has recently barred municipalities from arresting those who do not pay parking tickets, so the city is looking closely at whether their new enforcement device is going to be upheld.

Even if proven effective and lawful, the registration hold may not be a feasible fine enforcement model for nontraffic cases, especially in cities larger than Milwaukee where few of a court's defendants own cars. A hold on driver's license renewals may be more generally applicable because many who do not own cars nevertheless value their driver's license. However, as was already

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16. In Wisconsin the offender may be summarily incarcerated on the commitment warrant without being returned to court first. They are incredulous that busy New York City courts schedule "return-on-warrant" appearances even in those cases where an alternative sentence was pronounced at time of sentencing.

pointed out, driving without a license has poor visibility for policing purposes. It would be most meaningful to use these holds to enforce nontraffic criminal fines levied on white-collar offenders living in small cities and suburban areas, but these people probably pay their fines well in any case. It would also be important not to dilute the power of these enforcement strategies by granting special licenses or registrations for driving to and from work. Finally, one would want to be sure that the government was not fostering driving of uninsurable vehicles, thereby creating potentially more serious problems than noncollection of fines.

IV. ARIZONA: 8/17 - 8/21/81

A. Introduction

Visits were made during August 1981 to the two largest counties in Arizona (Maricopa and Pima). In both counties, discussions were held with judges, other court staff members, prosecutors, public defenders, probation officials, and law enforcement authorities for each of Arizona's three different trial courts: Superior, Justice, and Municipal Court.[17]

The site visits were organized around a common set of questions. They include the following:

(1) Who makes decisions about the use of fines? What factors affect decisions concerning the imposition of fines?

(2) How frequently are fines imposed? What is the average amount? Are they used separately or in conjunction with other penalties (e.g., probation)? Why are fines used?

(3) How are fines collected? Who establishes policies governing the methods of payment and the payment schedules? What sanctions are applied in cases of non-payment?

(4) What factors inhibit the effective use of fines? How can these problems be overcome? What are the prospects for fines as a criminal sanction?

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17. The courts are the Maricopa County Superior Court, Maricopa County Justice Courts, Phoenix Municipal Court, Pima County Superior Court, Pima County Consolidated Justice Court, and Tucson City Court. The Superior Courts are trial courts of general jurisdiction and hear cases of felony prosecution. The Justice Courts hear traffic, class 1, 2, and 3 misdemeanor cases, and preliminary hearings on felony matters. Judges for these courts are Justices of the Peace, elected on a precinct basis. Finally, Municipal Courts have jurisdiction over violations of city ordinances, misdemeanors and traffic offenses. Municipal judges are appointed by city councils. The population of Maricopa County in 1980 was 1,515,700 and in Pima County it was 536,700.

Considerable variation in the use of fines exists even within the small number of courts studied in the site visits. Practices vary by type of court (e.g., superior v. municipal) and by location (e.g., Phoenix v. Tucson). In addition, judges within a given court use fines differently. Yet, while recognizing the diversity in how fines are imposed and administered, certain patterns emerged from the interviews.

B. The Decision to Impose Fines

1. Key Participants

The decision whether to impose a fine is shaped significantly by the plea agreement negotiated by the prosecutor and the defendant. (For most offenses in the municipal and county courts, attorneys are not appointed. Few offenders, moreover, retain counsel. As a result, only in the superior court does the plea agreement reflect legal representation for the offender.) The prosecutor's role in determining whether a fine is imposed is most prominent in Phoenix Municipal Court. Here the individual prosecutors operate with a standard set of written procedures for the allocation of sanctions for specific offenses. As part of each prosecutor's policies and procedures manual, fines and other penalties are prescribed for different circumstances (e.g., prior record).

While the prosecutor has more exclusive control in Phoenix Municipal Court than the other five courts, the decision to impose a fine remains primarily in the prosecutor's domain. The role of other officials is secondary or reactive.

Generally, judges accept the signed plea agreements. Various explanations were offered for the court's acceptance. One view is that judges regard the agreement as a bargain between the prosecutor and the defendant which they should not analyze de novo. If the agreement is acceptable to these essential participants, the judge should not, as a matter of practice, exercise independent judgment and impose possibly a new sentence. Another contributory factor is the need to process cases expeditiously. Some judges claim that the large volume of cases means that they do not have the luxury of undoing the work of the prosecutor by making independent decisions about sentences, including fines. The prosecutor and the judges are also seen, by other officials, as wanting to spend the minimal amount of time possible to dispose of cases.[18]

Clearly, the prosecutor's decision is not completely an independent one. The views of other officials are taken into account, in order to gain acceptance of the plea agreement. Many officials view this situation, however, as disquieting.

Some prosecutors are uncomfortable with their roles, which go beyond plea bargaining to incorporate sentence bargaining (see footnote 5, supra), on two grounds. First, some believe that their degree of influence on sentencing is inappropriate.[19] They feel that the court needs to regain its lost authority. Second, some prosecutors seem to think that reliance on prosecutor controlled plea agreements inhibits discussion on sentencing, including the use of fines. That is, the court's acceptance of the agreements and the non-participation of most

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18. The time devoted to the actual sentencing of offenders varies by type of court, although the length of all observed proceedings was limited. In municipal court, when traffic offenders, including DUI cases, agree to a plea bargain, the arraignment hearing before some of the judges lasts less than one minute. Other judges in the same court were observed to spend three to five minutes. In the superior court, sentencing hearings lasted seven to ten minutes.

19. Another example of the prosecutors' influence is the ability, in one jurisdiction, to raise the amount of fines in their schedules without consulting with the court or other officials. While the prosecutors may be acute observers of the local legal culture on sentencing, this action also reflects their ability to shape the "going rate" of fines.

other officials, contributes to a lack of an ongoing dialogue about sentencing. For example, according to one prosecutor, the idea of imposing strictly a fine, at or near the maximum level, had not been talked about among the key participants. As a result, whereas the prosecutor thought maximum fines might make sense for certain offenses (e.g., fraud), he wondered what the public defender's office would think about such a suggestion. (Interestingly, the public defender's office had a similar position. They were not opposed; the issue had just not come up for discussion.)

Judges also have reservations about the prosecutor's role in the sentencing process, including the imposition of fines. At the muncipal court level where fines are used most frequently, two critical points are raised about the prosecutor's influence. One reaction is that the judges have abdicated their role and that they, not the prosecutor, are the proper sentencing authorities. A second comment is that they believe that offenders sometimes misperceive the size of fines that will be imposed if they do not enter a plea agreement with the prosecutor. (Offenders have the option of signing a plea agreement or pleading guilty directly to the court.) The judges claim that in certain instances, the offender has negotiated with the prosecutor on the assumption that he will receive a lower fine, but, in fact, probably received a higher one.

This second reaction raises, of course, the question of why the judge in this situation does not reject the plea agreement and impose a different fine. Based on our interviews, the judge will reject a plea agreement only if he believes very intensely that the negotiated fine is in an egregious error. Some judges did mention examples of where they overturned plea agreements, including raising fines in some instances and lowering them in others. However, these examples seem to be limited in number and generally occur only when the judges have strong feelings about the negotiated amounts.

The views of probation officials tend to reflect their exclusion from the prosecutor's plea agreements. In some of the courts, (e.g., Maricopa County Justice Court) there is no available probation service. While there is a probation service for Phoenix Municipal Court, the staff consists of four probation officers. Given the volume of the persons sentenced by the Court, there is virtually no way for the probation department to be a party to all of the plea agreements. In fact, the probation office provides presentence investigation reports only in those instances where the Court requests them, which are infrequent.

The probation department under the two superior courts, as well as the Pima County Justice Court, have considerable resources and are somewhat involved in the presentencing process. There is the general expectation that if the prosecutor is going to make probation part of the sentence, the probation office wants to be informed before the agreement is actually reached. This gives the probation officers an opportunity to react to the proposed sentence, including fines. Yet, their participation is not required and they spoke of no significant role in shaping the amount of the fines.

Finally, the law enforcement authorities expressed some concern because of their complete lack of involvement in the negotiations over sentences, including fines. Their concerns were twofold: First, they believe that the court changes the schedule on traffic offenses without consulting them. Second, they believe that the prosecutor has arrived at fine amounts somewhat arbitrarily.

The law enforcement personnel raised a common question about both situations. Does the fine amount established by the prosecutor and/or the court provide an effective deterrent or penalty? For example, is a $300 fine (which would be the highest generally levied in the municipal and justice courts and an average amount in super-

ior courts) meaningful to many offenders? As one police officer put it, "Isn't it possible that out on the street a fine of $300 is not a serious imposition? A frequent offender may say, 'Hey, I can make $300 easily in one night's work of burglaries.'" While the law enforcement authorities do not claim, like the judges, that they should be in an authoritative position to set fines, they feel that they deserve to be consulted.

Although the type of officials who make the decision whether to impose fines may vary across jurisdictions in different states, the Arizona site visits uncovered a situation where the decision rests in the hands of the prosecutor. These decisions, moreover, tend not to be shared, even in a consultative role.[20] While the degree of the prosecutor's control varies across the different courts, the only clear exception was the Tucson City Court. Here the prosecutors view the judges as setting the policy on fines and their opinions, moreover, are shared by other criminal justice officials.

2. Factors Affecting the Decision to Impose Fines

The decision to impose fines is affected by a variety of environmental factors surrounding the individual decision-makers, including the prosecutor. Some of these variables are tangible and operate as constants affecting fining practices in a definite and uniform manner. Other variables are more difficult to identify precisely because of their qualitative, subjective nature. The following is an illustrative list and brief description of those factors that arose during our discussions and observations.

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20. Interestingly, some probation departments are familiar with fining practices in other countries (e.g., Sweden) and have had imaginative ideas on how fines might be used. For example, one official said it might be worthwhile to use fines as an inducement instead of a sanction. One way would be to impose the maximum fine possible by statute and then offer to reduce it by a certain proportion if there is no recidivism or probation violation. This policy, the official suggested, might contribute more to socially desirable behavior than the normal imposition of a fine, which is not dependent on subsequent behavior by the offender.

Statutes. For the superior courts, state law is, perhaps, the most important factor determining the use of fines. The Arizona criminal code requires that the court seek restitition for the victim. All of the criminal justice officials, including judges, probation officers, and prosecutors, claim that this statute gives priority to the victim in the allocation of money extracted from the offender.

Because other financial penalties besides fines may be imposed on the offender, the use of fines needs to be seen in the context of the complete range of sanctions. While the sentencing practices undoubtedly vary from judge to judge and prosecutor to prosecutor, there is considerable agreement on the priority of sentencing alternatives. If the offender is not sentenced to state prison or county jail, he is likely to be placed on probation. As of July 27, 1981, the offender must pay a fee for the probation services. Additional penalties are likely to be imposed in the following order:

(1) Restitution to the victim.

(2) Reimbursement to the court to pay for court-appointed attorneys.

(3) Fines and the following required surcharges:
- 10% of the fine for law enforcement training;
- 2% of the fine for prosecutor training;
- 15% of the fine for cases involving driving under the influence or drug offenses.

The low priority given to fines is affected by statutory provision as well as a desire by the court to recoup some money for the services of appointed counsel. Moreover, the fact that financial penalties (e.g., restitution, reimbursement, and probation service charges) are levied would seem to work against the use of high fine amounts; the offender may be seen as already being required to pay a relatively significant amount. In addition, the fine surcharge increases the fine appreciably (i.e., 12 or 27%).

A second statutory provision is the required incarceration of offenders who either are found guilty of "dangerous" offenses or have prior criminal records. This statute, passed in 1978, has the effect, among its many consequences, of excluding fines in these cases. Judges took the position that most offenders while incarcerated could not earn the money to pay a fine. If any financial penalty was to be imposed, therefore, it would go to pay court costs.

General sentencing patterns, including the use of fines, is more difficult to determine in the justice and municipal courts. One reason is that while probation services are available in Pima County Justice Court, they are not in Maricopa County Justice Court.[21] As a result, in Maricopa County, fines are used more frequently as the exclusive penalty than they are in Pima County. Another reason is the decentralized nature of the Maricopa Justice Courts,[22] where each judge operates independently. Because of the limited amount of time available during the site visits, we simply could not interview a sufficient number of judges to gain a complete picture of how fines, and other penalties, are used. In addition,

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21. In Maricopa County Justice Courts, offenders may be given "summary probation" as a sentence. Summary probation simply requires that the individual be a "law abiding citizen". If arrested within one year's time, this sentence is revoked. The offender could then serve up to 180 days in jail.

22. There are eighteen justice courts within the county, each having jurisdiction over a geographical precinct. Each justice court is a separate entity with limited standardization of proceedings. General office procedings vary greatly from clerk to clerk--different forms used, different accounting procedures. there is even no standardization amont the courts' general proceedings--they all set their own calendars and handle cases differently (e.g., non-payment of a fine--some issue warrants first, others send out warning letters). Few administrative rules are made by the presiding judge of the Maricopa County Superior Court, who has certain administrative overview over the Justice courts, but technically has no authority. An attempt was made in 1978 to consolidate the six courts in Phoenix in an effort to improve efficiency in the three divisions--traffic, criminal and civil. Two of the courts have since dropped out and the four remaining are consolidated in the clerical aspect only. There are eighteen justices--one per court. All are lay judges except for four lawyers, three of whom are in Phoenix.

    In contrast, because of the consolidation in Pima County Justice Courts, which became effective January, 1977, there is consistency among the justices and procedures are uniform. The court has a master calendaring system, except for the branch court in Ajo. Four of the six judges are lawyers.

the lack of a centralized information system prevented the gathering of even aggregate information across all eighteen justice courts.

A somewhat similar problem arose in the analysis of the municipal courts. Here the state statutes governing probation, restitution, and fines which apply in felonies and class 1, 2, and 3 misdemeanors do not apply to the city ordinance violations under the municipal courts' jurisdiction. Moreover, while the probation departments in Phoenix and Tucson have approximately the same number of officers, the number of criminal cases is much greater in the former. As a result, probation is a less viable penalty in Phoenix than in Tucson.

Indigency. Unless probation officials submit a presentence investigation report, the court has very little systematic information on the offender's income, assets, savings, and liabilities. The presence of a public defender does not serve as an accurate substitute measure of indigency for two basic reasons. One reason is that counsel can be appointed by the justice and municipal court in selected offenses.[23] Consequently, it is hazardous to comment on the use of fines in cases involving indigency when there is no measure of the concept.

In the absence of an empirically-based measure, prosecutors and judges in municipal and justice courts use their own subjective sense of poverty. From the perspective of the judges, indigency leads to sentencing practices that can be called the "process is the punishment". If the offender is deemed to be poor, and has incurred the costs of posting bond, served in pretrial detention, or lost income because of absences from work, and so forth, the offender is viewed as having been punished sufficiently, and is believed to be unable to pay any additional penalty in

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23. If the judge determines that the defendant is indigent, counsel is appointed in all cases where conviction of the offence carries a mandatory jail sentence. In cases where incarceration is only a possibility, appointment of counsel is then up to the discretion of the judge. Whereas the County Public Defender's Office handles indigent defendants in the justice courts in the respective counties, both municipal courts contract out to private attorneys to represent defendants who are determined to be indigent.

the form of a fine. As as result, the lower courts tend either to suspend fines or to fine far below the maximum amount.

In the superior court, indigency is, perhaps, easier to gauge because a public defender may be assigned for all of the offenses under the cours jurisdiction. However, the criteria for assignment is not a precise measure of indigency.[24] If the offender can show that he would suffer an "economic hardship" by retaining counsel, a public defender is assigned. As one judge remarked, "The cost of having to pay a criminal defense lawyer $1,000-5,000 upfront is a hardship to many people, including those not in poverty." As a result, the presence of a public defender is not a universally accepted measure of indigency.

The most accurate information on which to determine whether an offender is indigent is derived from the probation department's presentence investigation report. However, this "objective" information has multiple consequences. It may serve to corroborate the prosecutor and public defender's impressions that the offender is indigent. As a result, if the agreement stipulates a fine on the assumption that the offender lacks resources, the presentence investigation report may verify this supposition.

On the other hand, the information may serve to challenge the offender's claim that any restitution, reimbursement, or fine will exceed his capacity to pay. In one observed sentencing hearing, the offender claimed that she could not pay $300 in reimbursement. As the judge noted from the presentence report, however, the offender had $47,000 in home equity. This amount was seen by the judge to be a sizable resource that the offender could use as collateral to obtain a loan to cover any amount of the reimbursement which she could not pay from her current income or savings.

Hence, the issue of indigency is one which generates conflicting opinions among

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24. The defendant answers a few financial questions in order to be considered for appointed counsel. Yet, the questions are limited and the information is not automatically verified. A copy of the form used is included as Exhibit 2 in Appendix B.

the criminal justice officials. Some officials believe that many defendants lack the resources to pay fines while others see fines as too lenient. While this dispute reflects different sentencing philosophies, part of it may be attributable to the lack of systematic data on the financial condition of defendants.

Availability of Sentencing Alternatives. In addition to incarceration and other financial penalties (i.e., restitution and reimbursement), there are several non-financial alternatives to fines. These options permit the court to impose sanctions that beyond the traditional trio of jail, probation, and fines. As a result, by broadening the scope of alternatives, they lessen the dependency on fines. In Arizona, the kinds of alternatives commonly available for the lower courts are as follows:

(1) Impaired Driver Program - for DUI first offenders only.
This program is elected by the defendant. The defendant pays a fee to go through the program. The charge is then reduced to a less serious one (e.g., speeding, lane switching). The defendant pleads guilty to this lesser charge and is fined for the lesser charge. The case is then dismissed. If the first offender does not elect this alternative and is convicted of DUI, he is then fined the maximum for this offense and sentenced to one day in jail.

(2) Traffic Safety Program - for offenders of minor traffic violations only.
This program is also elected by the offender. For a fee of $13, the offender may participate in a defensive driving course. Upon completion of the one-day course, the fine is then suspended and the case dismissed.

(3) Community Service Program
Eligibility for this program is determined by the judge at time of sentencing. This alternative can be ordered in lieu of a fine, probation, restitution and/or incarceration. The offender is assigned to a public or non-profit agency to work a given number of hours without pay to "work off" his sentence.

C. Fine Utilization

The extent to which fines are used is the immediate outcome of the decision whether to impose fines. While the degree of each official's role and influence in the decision-making process is difficult to measure precisely, the frequency

and magnitude of fines would seem more readily observable. In order to describe the fine usage in a given jurisdiction, one would need to know the following basic facts:

(1) The number and percentage of offenders fined;

(2) The number and proportion of cases for different offenses in which a fine is imposed; and,

(3) The average amount of fines for different offenses.

In Arizona, information is not available or readily accessible on any of these matters. The most closely-related statistic concerns the magnitude of fines. The total amount of fines collected each month is generally available through the clerk of court's office.

While the amount collected leaves open the question of how much is in default, this aggregate figure serves as an indicator of the general usage of fines. Moreover, this figure can be seen in some perspective by examining it in conjunction with the number of offenders and operating expenses of the court, the institution most commonly associated with the use of fines. Table I presents this information for each of the six courts observed in Arizona.

Measured in dollars collected, fine utilization varies by the nature of the court's jurisdiction. Whereas the fine amounts are equal to or exceed the lower court's operating expenses, they are used less at the superior court level. In absolute terms, the total amount of fines collected across all six courts indicates that fines are used to a considerable degree. Given that the amounts collected may be 20-40% less than the amounts imposed, the extent of fines becomes even greater.

Because restitution, reimbursement, fines and surcharges are all financial penalties used in superior court, it is appropriate to consider fines along with these related sanctions. As indicated in Table II, the total amount of all financial sanctions is three times greater than fines alone. Consequently, whereas fines amount to $748,746 the overall figure exceeds 2.3 million.

TABLE I

Amount of Fines Collected, Court Operating Expenses, and Caseload Levels in Selected Arizona Jurisdictions*

Court	1980 Annual Caseload**	Direct Expenditures (1979-1980)	Amount of Fines Collected 1980
Phoenix Municipal	Non-traffic Violations 28,803 Traffic Violations 336,066	$4,638,585	$ 564,300 (non-traffic) $4,769,988 (traffic)
Maricopa County Justice	Non-traffic Violations 4,349 Traffic Violations 99,687	$ 2,001,997	$2,240,905 (total)
Maricopa County Superior	8,363 Felonies	$20,881,260	$ 631,788
Tucson Municipal	Non-traffic Violations 21,562 Traffic Violations 87,502	$ 868,040	$ 400,000 (non-traffic) $1,040,000 (traffic)
Pima County Justice	Non-traffic Violations 2,324 Traffic Violations 48,471	$ 641,813	$ 569,051 (non-traffic) $ 930,963 (traffic)
Pima County Superior	3,171 Felonies	$10,414,428	$ 116,958

*Caseload and expenditure information obtained from the Arizona 1980 Caseload, Financial and Personnel Report and a revenue survey for fiscal year 1979/80 conducted by the Administrative Director of the Courts, Supreme Court of Arizona. Figures on amounts of fines collected were gathered from a variety of sources, such as court staff, projections based on court records for a given month.

**Does not include civil or juvenile caseloads

Table II

Estimated Amount of Alternative Financial Sanctions Collected in Maricopa and Pima County Superior Courts* 1980

	Maricopa County	Pima County	Total
Restitution	$ 807,787	$ 302,599	$1,110,386
Reimbursement for Court-appointed attorneys	258,452	N.A.	258,452
Fines	631,788	116,958	748,746
Surcharges	170,580	31,579	202,159
	$1,868,607	$ 451,136	$2,319,743

*Figures based on a variety of sources, such as court staff projections based on court records for a given month.

Attitudes Toward the Use of Fines. Upper bounds on the frequency and magnitude of fines are set by statutes. Fines may be imposed for certain offenses and not others. The maximum amount that can be levied is set by law.[25]

Yet, few fines reach the upper limits, and most tend to be less than half the

25. Arizona criminal codes allow for the following:
Felonies--not more than $150,000.
Class 1 Misdemeanor--not more than $1,000.
Class 2 Misdemeanor--not more than $750.
Class 3 Misdemeanor--not more than $500.
Petty offense--not more than $300.

maximum. Some of the factors that influence the utilization of fines stem from the pressure to obtain convictions in simple cases, in order to be able to adjudicate the more complex cases that require considerable time and resources. Yet, beyond the pressure to prosecute cases quickly, attitudes toward the use of fines as a criminal sanction play a role in shaping their frequency and magnitude. While views toward fines are variable, some general observations can be made. These include the following:

(a) The purpose of fines, in the minds of the individuals interviewed, is not entirely clear. Few of the officials articulated a specific set of objectives that fines are intended to achieve. Generally fines are not seen as an inexpensive alternative to incarceration. And, most did not say that fines serve as an effective deterrent.

Instead, fines seem to be viewed as an auxiliary punishment for most offenses. This attitude is expressed somewhat differently depending on the type of court. At the municipal court level, prosecutors and judges seem to believe that most offenders have incurred sufficient costs (bond, pretrial detention, lawyer's fee, etc.) prior to sentencing and lack resources to pay more than nominal fines. Hence, fines, while small, are intended to indicate to the offender that a law has been broken and that some punishment is warranted.

A similar attitude exists at the justice court level. Because the Maricopa County Justice Courts do not have probation services available to them, fines become more important. The lack of probation services has two consequences. One is that fines are seen as an alternative to jail. A second effect is that there is no agency providing the courts with ideas on non-financial alternatives to jail. The judges themselves would have to devise and arrange for the monitoring of the programs. In this context, fines may be used because it is among the few viable options to incarceration.

At the upper court level, fines are less important than a range of other financial and non-financial penalties. The decision-making process is structured in such a way as to place fines in a more minor role. Probation, restitution, and reimbursement will almost always be the chosen combination of sanctions with fines a secondary consideration.

(b) Even for offenses in which fines are used frequently and uniformly, the rationale for the amount remains unclear. Two frequent offenses, DUI and possession of marijuana, carry standard fine amounts, but not by statute or fine schedules.

As an illustration, the possession of marijuana,[26] a class 1 misdemeanor, generally results in a fine of $63.50 including the 27% surcharge, no jail, and no probation, in all six jurisdictions, with one exception. The Justice Courts, located in the cities of Phoenix and Tucson would tend to fine this amount. However, both prosecutors and judges said that in the unincorporated areas of the counties, the fine would tend to be higher. And, they believe that in the suburban and rural counties the amounts would tend to be even higher.

Despite this exception, a striking feature is the apparent lack of a well-understood rationale for this amount and its exclusive role as the imposed sanction. Most of the officials indicated that they seldom had discussions about fine amounts, even in instances such as possession of marijuana. Whatever may have been the original purpose behind the use of fines is no longer salient in the officials' minds. Instead they seem to have hit on an acceptable practice and use it, to a great extent, on the basis of habit.

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26. The offense carries a maximum rate of six months in jail and a $1,000 fine.

(c) There is a division of opinion whether the fines are too low. Probation officials, law enforcement authorities, and some prosecutors indicated for different reasons, that the size of most fines is inadequate.

Concerning probation officials, the point was raised that fines are imposed without taking the defendant's future economic circumstances into consideration. As a result, if an offender, who is unemployed at the time of sentencing, is given a fine consistent with his existing condition, this decision may overlook changes in his position. The fine may be a small penalty for the offender who gains future employment. The officials suggested that some offenders, who are fined $300, may later work in the Arizona mines and draw a higher salary than any of the probation officers. While this example may be unique, it underscores the fact that fines are imposed on a static basis without systematic attention to the offender's further circumstances.

From the perspective of law enforcement officials and others, the amount of fines does not take into account the time spent by all the participants in the sentencing process. While it was acknowledged that the total amount of fines was a large amount relative to the court's expenses, the time of all officials was not "covered" by fines. Of specific concern was the amount of money paid to law enforcement officers to appear in court.

For example, in Tucson, police officers are paid for three hours of overtime if they appear in court while off-duty. They receive this pay whether they spend ten minutes or three hours. As the police administrators see it, the amount of fines does not return to the criminal justice system money spent by the police officers, prosecutors, and probation officials. As a result, they wonder about the value of spending the criminal justice system's resources if smaller amounts are to be recovered by fines.

The Prosecutor's Office for the City of Tucson and other officials tended to see fines as being too low in City court. From their perspective, the court is dominated by judges, whose prior experience leads them to levy lenient fines. (Four of the seven judges worked previously in the Public Defender's office, one had worked for Legal Aid, and the two recent appointments were from the County Attorney's Office.) While other officials shared the prosecutor's viewpoint, there was no available information on which to assess sentencing practices. In fact, the two recent appointees indicated that they found that the philosophy of "the process is the punishment" applied out of necessity for most defendants appearing before them.

D. Collection and Enforcement

The administration of fines begins after the court has sentenced the offender. Basically, the administrative activities involve questions of how fines are collected and the enforcement of the agreed upon payment schedule. In all of the jurisdictions examined, these aspects are primarily in the hands of officials (e.g., clerks of court, probation officers, and law enforcement authorities) who are not involved in making decisions on the imposition of fines. Only when an offender fails to pay do the prosecutor and the judge become critical actors.

While the imposition of fines is undoubtedly a difficult decision given the limited time and information, the work required to carry out the intent of the sentence is also beset with serious problems. In fact, a common theme from our interviews is that the difficulties in administering fines raise serious questions about its efficacy as a criminal sanction. Moreover, these problems have implications for how the court is viewed; the management problems associated with fines, lead other officials to question the rationality of the court's decisions to impose fines.

The purpose of this section is to describe the collection and enforcement activities and their corresponding problems. It begins with a brief description of the methods of payment generally accepted. This is followed by more lengthy discussions of collection procedures and enforcement mechanisms.

Payment. In all of the jurisdictions examined, offenders pay their fines either immediately to the clerk of court or over a certain period of time. If the offehder pays on the day sentenced, the acceptable methods of payment include cash, certified checks, or money orders. The noticeable exception to this pattern is the use of credit cards by the Phoenix Municipal Court.

Credit cards have been used by the Court since August 1, 1977. Early statistics showed that approximately 1,000-3,000 individuals a year were paying their fines by credit cards, but the volume has since decreased to 300-400 annually. The system is set up through the First National Bank of Arizona, which charges the court $100 each month for the service. Credit card acceptance is not publicized and because of the low volume ($300-$400/month paid in fines by credit cards), both the court and other officials no longer see this method as being cost effective and prefer to discontinue it.

The issue of what form of payment is acceptable did not seem to be a salient issue for most officials. Only the question of personal checks generated some discussion during the interviews. In Phoenix Municipal Court, traffic offenders may pay by mail. However, offenders who appear at the clerk's office are not permitted to do so. While one official questioned the inequity of this situation, there is no apparent movement to change the policy.

On the other hand, some individuals in the superior courts clerks' offices are quite adamant against the acceptance of personal checks. Their argument is basically that if an individual is found guilty of breaking the law, then he is also likely to be unreliable in submitting a valid check. This reaction may re-

flect two different considerations. First, because the clerks' offices tend to view fines as "accounts receivable", they see personal checks as complicating an already loose system. Second, because the amounts of the fines are larger in superior court, the clerks may not want the risk of accepting checks drawn on accounts with insufficient funds.

Collection. In very few instances are the terms under which the offender pays the fine set by the court. Generally, the probation department establishes the schedule and corresponding amount of payment. However, because the offender makes payments to the clerk of court, the responsibility of ensuring that amounts paid, the balance owed, and the question of default, rest with the clerk.

There is one basic exception to this pattern. In Phoenix Municipal Court there is a Fines Collection Coordinator that deals with the offender in setting up payments. Before discussing how the fines are generally collected, this unique position seems appropriate to describe.

The office of the Fines Collection Coordinator was instituted in October of 1980 and includes the Fine Coordinator and three Account Clerks I. All offenders fined $50 or more are sent to this office where installment payment plans are set up. The staff reviews the application filled out by the offender, interviews the offender, determines the amounts to be paid at what intervals and monitors the payments. As the staff is small, they only deal with delinquent fines when they have the time, in which case they may attempt to contact a defaulter by telephone or send out a reminder letter.

The distinquishing aspect of the Fines Collection Coordinator is that this is the only official in the six courts studied to have the specific responsibility of monitoring and encouraging fine payments. Interestingly, the office is seen by other officials as rendering a "humane" service to the offender in contrast to the prosecutor and judge who are seen as treating cases formally and with a vocabulary

uncommon to most offenders. The current Coordinator reflects this orientation to the extent that she wants to deal with the offenders individually and accommodate their particular problems in order to obtain their compliance.

Apart from the question of how "humane" the Coordinator actually is, a striking fact is the lack of parallel officials in the other courts. To the extent that offenders need to be encouraged to pay their fines, this office serves an important function. In other jurisdictions, the monitoring of payment falls between the probation department and the clerk's office. While probation officers stress the importance of meeting payment schedules, (i.e., non-payment is a basis for revocation of probation), they don't keep records on payments. Record keeping is the responsibilty of the clerk's office, but these officials do not feel that it is their job to encourage payments. Consequently, when an offender fails to pay the fine, the clerk notifies the probation officer of the delinquency. The probation officer then informs the offender that he has no choice but to report this violation to the court.

Enforcement. As indicated above, the actual recordkeeping on the amount of money received in fines and the money outstanding is generally a responsibility of the clerk's office. Yet, there are two basic problems with this information. First, in the courts that record this information manually, non-payment is virtually ignored. In the four consolidated Maricopa County Justice Courts, for example, warrants are sent out three to six months after traffic fines are delinquent. And warrants, as a general practice, are not sent out for non-payment of fines imposed in misdemeanor offenses.[27]

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27. Because the Justice Courts are decentralized some individual judges use their personal staff to issue warrants in both traffic and misdemeanor offenses.

Second, in the courts that have automated record keeping systems, the data are viewed with suspicion. A major problem is the failure of the system to record payments accurately. As a result, offenders are told by their probation officers, "Keep your receipts!" The reason is that warrants will sometimes be issued in instances of where the fine has been paid.

The inaccuracy of the information has further implications. When police officers act on this information, they are confronted with a problem if the offender claims to have paid the fine, but does not have the receipt in possession. In most instances, the police do not arrest the offender (This procedure was adopted after the filing of false arrest suits.)

Beyond the inaccuracy of information on fine payments, the manner in which non-payment is handled is an important issue. If the court fails to punish offenders for non-payment, law enforcement authorities do not want to commit their scarce resources serving warrants. From the police and sheriff's perspective, the court and prosecutor do not understand the work required to serve a warrant. The job involves locating the offender, arresting and booking the individual, and appearing in court on the contempt of court charge. As the police view it, unless the court fines the offender for the non-payment, the criminal justice system has been forced to mobilize itself at considerable cost, but with no incoming revenue. On the other hand, the court may believe that failure to pay the initial fine is due in part to a lack of money. As a result, the judges see little purpose served by imposing another financial penalty.

Because of these sorts of problems associated with common enforcement practices, the Phoenix Municipal Court decided to use the City Treasurer's office for collection of non-payments before warrants are issued. Over two years ago, the Phoenix City Council conducted a study comparing the ability of a private collection agency to collect fines with that of the City Treasurer's office. The results indicated

the latter to be more effective. Because the collection section of the City Treasurer's office is integrated with the Fines Collection Coordinator, its role is described briefly.

When individuals fail to make their payments, they are each given a two week grace period before follow up measures are taken. Until recently the procedure following the grace period was for the Fine Coordinator to mail out an Order to Show Cause to these individuals and upon failure to respond, the accounts were then sent to the City Treasurer. With this method, the City Treasurer's office did not receive the account for ninety days following the default, which substantially decreased their chances of tracking down some individuals. Under the new procedure, delinquent accounts are sent directly to the City Treasurer's office following the grace period. If the City Treasurer's office is then unable to recover the fine, the account is sent back to the Fines Collection Coordinator and a Show Cause Order is mailed out to the defaulter. Presently, they are two months behind in mailing out Show Cause Orders. (The Fine Coordinator would like to have the City Treasurer's office mail out these orders but the court administrator indicated that this function is the responsibility of the court and within its jurisdiction only.) Upon failure to appear for a Show Cause Hearing, the judge will then issue a warrant for contempt of court.

The Collection Section of the City Treasurer's office has a staff of one supervisor and four collectors. Once an account is turned over to the City Treasurer's office, it usually takes ninety days to track down a defaulter. The head of the Collection Section believes that the new procedure of turning over delinquent accounts to his office prior to the issuance of Show Cause Orders is an important step, as the account is still fresh and there is less chance that the individual has moved. Last year the City Treasurer's office collected $130,000 in delinquent fines. The Fines Coordinator thinks this amount could triple with this new approach.

According to the City Treasurer's office, there are no priorities used in determining which defaulter they will go after - small amounts are just as important as large amounts. When an individual is located, he/she is asked to remit the balance owed. If unable to pay the full amount, time payments will be arranged by the City Treasurer's office. The office never refuses an amount offered. They would rather recover even a small amount than none. Approximately 80% of the defaulters pay the total amount of the balance owed upon their first visit to the City Treasurer's office.[28]

A parallel effort is made in selected Maricopa County Justice Courts and Maricopa County Superior Court. The county's Department of Revenue and Collections pursue delinquent accounts. However, the lack of sufficient information on the offenders, coupled with the fact that the department has only one person involved in this collection process, makes the Revenue and Collections' job somewhat difficult.

In absence of special efforts to collect fines before issuing warrants, which is the case in most courts, the enforcement of fines is a major problem because a sizable percentage of offenders fail to pay. The task of serving these warrants falls into the hands of the police for municipal court business and the sheriff's department for justice and superior court cases. From the perspective of the law enforcement agencies, their job will be successful to the extent that the following four conditions are met:

(1) they are provided with correct information on the default
(2) they are given sufficient information to locate the offenders
(3) they have adequate personnel to serve warrants, and
(4) they have some sense that when warrants are served, offenders will be punished.

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28. The Collection Section's Supervisor feels that the biggest contributing factor that led to the involvement of his office in fine collection was the press--"big stories on outstanding fines" and the city began looking at alternatives.

Virtually all of the law enforcement officials agreed that these conditions are only partially met. As a result, their efforts to serve warrants are limited and many defaulters are never contacted. It seems appropriate to describe these problems of enforcement from the police and sheriff's departments' perspectives and then to describe how they go about adapting to these circumstances.

Concerning the information on the non-payment, the law enforcement authorities believe many of the warrants either should not have been issued or should have been cancelled. As stated above, most courts do not have completely accurate information on fine payments. Hence, when offenders claim that they have paid the fines, they may not be arrested immediately. Instead, the law enforcement authority will try to determine the accuracy of the warrant information and then locate the offender again only if the warrant is found to be valid.

The information on the offender varies somewhat from court to court. In some situations, the offender's business address and telephone number are missing. Other courts do not provide the offender's home address and zip code. One immediate consequence of this lack of information is that it requires the law enforcement agencies to spend effort just trying to locate the offenders, either by mail or in-person.

Concerning the personnel allocated to warrant detail, there are few full- time personnel assigned to this task. For example, two police officers are assigned for warrants issued by the Phoenix Municipal Court and three sheriff's deputies are assigned for Maricopa County Justice and Superior Courts.[29] Because of limited personnel, the agencies tend to set priorities in serving warrants. The priorities tend to be as follows:

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29. For sheriff's offices that serve both justice and superior courts, priority is given to the latter. Whereas deputies actively try to locate offenders from superior court, they tend to serve warrants to those justice court offenders who have failed to pay fines, only when they are arrested on another charge or stopped in routine traffic matters.

(1) pursue offenders who are in default of large fine amounts
(2) pursue offenders in instances of multiple warrants
(3) pursue offenders charged with serious offenses, (e.g., DUI)
(4) pursue offenders within the county.

The lack of prosecution removes some of the motivation for the law enforcement authorities to serve warrants more comprehensively and with more resources. They believe that the costs to their agency in serving the warrants and later appearing in court far exceed the penalties imposed on the offenders. That is, the law enforcement authorities know approximately how much time and money it costs the agency to locate a defaulter, bring him down to the station, and have him booked. In addition, the officer may have to appear in court on the failure to pay charge.

Because fines are rarely imposed for failure to pay, the law enforcement authorities view the process as cost-ineffective. The lack of accurate information means that some of their time is spent wastefully. And they are wary both of false arrest suits and infringing on civil liberties.

E. Summary

Information gathered from the site visits provides brief case studies on the use of fines in selected metropolitan trial courts. We now have more firm answers to specific questions about how fines are imposed, collected, and enforced. Additionally, the interviews have served to uncover new and important policy problems. As a result, this concluding section attempts to organize the data into certain basic themes and to set forth a future policy research agenda.

One basic theme is that a considerable amount of money is collected from offenders for fines and related financial penalties, such as, restitution, reimbursement, and surcharges. In the six courts studied, fines reach approximately $10 million annually. The other sanctions add nearly $2 million.

Despite the large amount of money involved, the courts seem ill-equipped to record necessary information on payments, balances oustanding, and instances of default, in an accurate manner. In only one of the courts, Phoenix Municipal, is the staff able to enter information, make adjustments, and correct errors on an on-line basis computer terminal for individual offenders.

The second theme emerges from the inadequate information systems. Because information on fines is frequently incomplete and incorrect, probation officials and law enforcement officials are hampered in monitoring and enforcing payments, respectively. Consequently, the courts are seen as imposing fines without establishing the kind of administrative system necessary to ensure payments.

The third theme is that the use of fines has developed without any central coordination. As with many other activities in the criminal justice system, the fragmented nature of agencies and institutions inhibits group discussion and collective decision-making by local officials on the objectives and use of fines. In a real sense, a considerable amount of the structure and process in the use of fines is established by the state legislature which sets certain parameters for the superior and justice courts.

Given the scarcity of time and resources, it is understandable that local officials do not devote much time to analyzing how decisions by one agency or institution in one area of fines affect other agencies further along the criminal caseflow. Yet, the site visits point to critical problems in the effectiveness, efficiency, and equity of fines. Some of those issues are as follows:

- How can courts gain the necessary information to determine indigency accurately? Can the collection of this information beginning at the time of the arrest be subsequently vertified, and made available at the time of sentencing?

- If valid information can be gathered on the offender's economic circumstances, what is the impact of variation in the size of fines on recidivism? How are fine amounts related to the frequency of defaults?

- What are the essential requirements of an adequate record keeping system? What alternative systems are currently in place? How long does it take to implement them? What are the approximate costs?

These general questions call for a variety of pilot projects to increase knowledge about fines and to improve their use. Clearly, systematic efforts need to be made to design and test out alternative measures of indigency. The current lack of documentation prevents decision makers from knowing whether the offender has the ability to pay. In addition, experimental designs are needed to capture the true effects of fines on recidivism as well as administrative problems (e.g., default). Jurisdictions that are considering revising sentencing policies may be suitable test sites for such studies. Finally, technical assistance is called for to work with court administrators and clerks of court to improve record keeping systems. This work may range from providing short training programs to establishing demonstration projects.