

The Justice System Journal

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Fines and Fine Administration

Sally T. Hillsman, Guest Editor

The Growing Challenge of Fine Administration to Court Managers
Sally T. Hillsman

Collecting and Enforcing Criminal Fines:
A Review of Court Processes, Practices, and Problems
Hillsman and Barry Mahoney

Criminal Fines:
"Immediate Penalty" More Useful and Equitable
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Managing:
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Effective Notification Strategies
for Delinquent Traffic Fines
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Wings

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Means-Based Fining: Views of American Trial Court Judges

Barry Mahoney*

Marlene Thornton**

A survey of 1,261 judges from general and limited jurisdiction courts across the United States shows that fines are used extensively as sanctions for a broad range of offenses. Judges evidence some concern about the legal and administrative difficulties of using fines against poor defendants. When asked about a European-style day-fine system, designed to set fine amounts on the basis of both the severity of the offense and the financial means of the offender, survey respondents were divided, but most felt that such a system could work in their courts.

Introduction

During 1984-85, researchers at the University of Connecticut and the Institute for Court Management of the National Center for State Courts (ICM) conducted a national survey of trial judges' practices and attitudes toward fines as a criminal sanction.¹ The survey used a mail questionnaire that asked judges about the composition of their caseloads, their sentencing practices, fine enforcement and collection procedures in their courts, their attitudes toward the use of fines, and their views concerning the desirability and feasibility of a European-style day-fine system. Responses to the questionnaire were received from 1,261 judges — 718 from general jurisdiction courts and 543 from limited jurisdiction courts.²

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1. The survey was supported by Grant No. 84-JJ-CX-0012, awarded to the University of Connecticut by the National Institute of Justice under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. The research was conducted jointly by the University of Connecticut and ICM.

2. The questionnaire was sent to a sample of 5,000 judges who were randomly selected from a universe of 12,633 full-time judges in all 50 states and the District of Columbia. The list of judges from which the sample was drawn was generated from a variety of sources, primarily lists maintained by the National Judicial College and by state court administrators' offices. The list was intended to include only judges who were handling criminal cases or had done so in the two years preceding the survey. Of the 5,000 judges in the sample, 648 returned unanswered questionnaires. Most of these judges said that they did not meet the inclusion criteria since they no longer handled or had never handled criminal matters. The withdrawal

Results of the survey have been presented in separately published reports and articles (Cole, Mahoney, Thornton, and Hanson, 1987a, 1987b, 1988). In this article, we focus particularly on survey data regarding a key policy issue concerning fine use: to what extent, and how, can fines be used as meaningful sanctions for offenders who would otherwise either (a) be sentenced to jail or prison; or (b) receive fines that are so low as to be virtually meaningless as punishments or deterrents?

There can be little doubt that the sentencing practices of many judges are influenced, at least to some extent, by their knowledge (or lack thereof) about the economic situation of the offenders who appear before them. One result of a general sense that most criminal defendants are poor is the widespread use of "tariff" systems, under which fines are levied at a fixed amount (or within a narrow range) for specific offenses. The amounts are typically set at an amount near the bottom of the statutorily permissible range (Hillsman and Greene, 1988), and the resulting impact upon offenders convicted of similar offenses can be grossly inequitable. Even though the tariff amount may be relatively low, some poor offenders are fined more than they can possibly pay. At the same time, some relatively affluent defendants are given fines that are meaningless as punishment and that have no possible deterrent or rehabilitative value. Referring to the tariff system approach to fining, one general jurisdiction judge who participated in the survey observed that, "to a wealthy person a fine amount is only a slap on the wrist; to a poor person a fine can completely devastate him in today's economy."

Current Attitudes and Practices

The survey responses indicate that judges' attitudes toward fines are complex, reflecting a substantial degree of ambivalence and confusion about the role of fines as sentencing options. As the data in Table 1 show, there is clearly a consensus on several of the supposed advantages of fines. Majorities of judges in both general and limited jurisdiction courts agreed that fines are relatively easy to administer, that their use can help prevent jail and prison overcrowding, and that they can help reimburse the cost of maintaining the criminal justice system. Judicial attitudes concerning the use of fines for offenders in differing economic circumstances, however, were less consistent.

of this group left a net sample of 4,352, of whom 1,261 (29 percent of the net sample) returned completed questionnaires prior to the cut-off date. The 1,261 respondents constituted approximately 10 percent of all U.S. state trial court judges who handled felonies or criminal misdemeanors within two years prior to the survey.

Table 1.
Judges' Attitudes On the Advantages and Disadvantages of Fines*

Judges' Attitudes	Agree**		Not Sure		Disagree**	
	Gen. %	Ltd. %	Gen. %	Ltd. %	Gen. %	Ltd. %
<i>Alleged Advantages</i>						
Inexpensive to administer	52	59	21	16	27	25
Helps jail overcrowding	68	79	12	9	21	11
Helps reimburse costs of justice system	62	73	15	11	23	17
Can be adjusted to fit offense and offender	78	83	11	7	12	10
<i>Alleged Disadvantages</i>						
Little impact on affluent offenders	61	53	12	15	27	32
No effective enforcement against the poor	62	42	9	8	29	50
Statutes do not permit high enough fines	12	14	6	6	81	81
Supreme Court decisions forbid fines on the poor	27	17	16	13	57	70
Fines do not rehabilitate	33	19	18	20	49	62
Fines suggest too much concern with revenue	38	35	27	27	35	37
Offenders will commit crimes to pay fines	23	11	41	35	36	54

*The question was, "To what extent do you agree or disagree with the following statements about the use of fines in your court?"

**Includes "strongly" agree or disagree.

For example, large majorities of the respondents agreed that, at least potentially, the fine can be used as a sanction for both rich and poor offenders. Seventy-eight percent of the general jurisdiction judges and 83 percent of the limited jurisdiction judges agreed that one characteristic of fines is that they can be tailored to fit both the severity of the offense and the income of the offender. But at the same time, perhaps reflecting the current prevalence of tariff systems, a majority (61% general, 53% limited) agreed that fines ordinarily have little impact on the affluent offender. Several respondents noted that the problem of imposing effective fines on affluent offend-

ers is exacerbated by the fact that the laws of their states did not give them enough flexibility to set fine amounts at levels that could take account of the income of the persons appearing before them. However, this difficulty does not appear to be widespread, since more than 80 percent of the respondents disagreed with the statement that "Statutes do not permit me to impose high enough fines."

The greatest amount of disagreement was found with respect to the issue of fining poor people. While 62 percent of the general jurisdiction judges agreed with the statement that "There is no effective way to enforce fines against poor people," only 42 percent of the limited jurisdiction judges took this position; 50 percent disagreed. The wide variation of opinion among trial court judges with respect to the use of fines in cases involving poor offenders was reflected in comments of some of the respondents. One said, "It makes no sense to impose a fine which the defendant cannot pay and cannot be enforced." A judge in Florida saw it from a very different angle: "We should not be overly concerned with whether someone can afford a fine. They made the choice to violate the law and the punishment should fit the crime." A Philadelphia judge expressed the view that the fine could be used effectively for poor offenders: "The poor do own things — when you threaten to take away their driving license or vehicle registration for a moving violation, they pay the fine."

Table 2.
Likelihood That Judges Would Impose a Fine,
Given Varying Offender Characteristics*

Characteristic	Gen. Jurisdiction Judges (n = 674)			Ltd. Jurisdiction Judges (n = 532)		
	More Likely %	Makes No Difference %	Less Likely %	More Likely %	Makes No Difference %	Less Likely %
Unemployed or on public assistance	2	23	75	6	38	56
Owens house, two cars, and has \$35,000 annual salary	73	23	4	55	43	2

*The question was, "To what extent would the following changes in the offender's circumstances affect your likelihood of imposing a fine?" The characteristics of the offender were that the individual is an adult, first-time offender, employed at a job that pays \$160 per week.

It seems clear that an offender's economic situation can affect the type of sentence imposed. However, the impact appears to vary widely from judge

to judge. As Table 2 indicates, most judges say they are less likely to impose a fine if an offender is unemployed or on welfare than if he is earning a modest income (\$160 per week). By contrast, if the offender is clearly affluent — for example, a homeowner with two cars and a \$35,000 a year salary — judges (especially limited jurisdiction judges) will be much more likely to impose a fine. It is worth noting, however, that significant proportions of both general and limited jurisdiction judges say that the likelihood of imposing a fine would not be affected by these differences in offenders' means.³

The survey is consistent with other recent research in finding that fines are used extensively in American courts. The responses indicate that fines are used in about 86 percent of limited jurisdiction court sentences and in about 42 percent of general jurisdiction court sentences. Most of the time, they are used in combination with other sanctions. Use of the fine as the sole sanction — a common practice in many European courts (see Carter and Cole, 1979; Casale and Hillsman, 1986) — seems likely to occur in the U.S. mainly in cases involving first offenders convicted of relatively minor offenses. If the offender has a prior record (and particularly if the offense is even moderately serious), few American judges will use the fine alone as a sentence. Rather than being used as a real alternative to incarceration (or even to probation) in such cases, it appears that a fine is used mainly as an "add-on" to other sanctions.

Part of the hesitancy that judges have in using the fine as a sole or primary sanction apparently stems from a sense that collecting the payment is difficult. Only 12 percent of the general jurisdiction judges and 7 percent of the limited jurisdiction judges said that their court had no problem with respect to collection and enforcement of fines. About a quarter of the judges in each court characterized the problem as minor, but 47 percent of the general jurisdiction and 62 percent of the limited jurisdiction judges said their courts had a moderate or major problem in this area.

In the survey instrument, we listed eight commonly suggested reasons for fine collection and enforcement problems, and asked respondents to indicate the extent to which they agreed that each factor contributed to the problem. As Table 3 shows, general jurisdiction judges were much more

3. The question of whether to impose a fine is, of course, different from the issue of how large a fine to impose. The survey questionnaire did not directly address the question of how knowledge of an offender's economic circumstances may affect a judge's decision on the amount of the fine. However, there is substantial evidence from the survey to indicate that fine amounts tend to be relatively low (in the range of \$75 to \$150) for common offenses such as shoplifting, disorderly conduct, assault (with minor injuries to the victim), harassment, and issuance of a bad check. Higher fines seem to be reserved for more serious offenses in which there are indications that the defendant is more affluent (e.g., embezzlement, sale of cocaine).

prone to point to characteristics or actions of the offenders as causing the problem than they were to target inadequacies of the court's mechanisms for fine administration. Of particular note, 74 percent agreed that offenders' poverty was a reason for collection or enforcement difficulties. The responses of the limited jurisdiction judges followed a similar pattern, although a somewhat lower percentage (64%, compared to 74% of the general jurisdiction judges) agreed that offenders' inability to pay was a reason for collection problems.

Table 3.
Judges' Perceptions of Reasons for Fines Collection Problems*

Reason	Agree**		Not Sure		Disagree**	
	Gen. %	Ltd. %	Gen. %	Ltd. %	Gen. %	Ltd. %
<i>System-Related</i>						
Inadequate collection methods	40	38	8	7	52	55
Too much time between default and warrant	39	35	14	11	47	54
Inadequate contacts with offenders in default	38	38	15	11	46	52
Law enforcement agencies give low priority to fines warrants	39	44	17	16	43	30
Nothing serious happens to fine defaulters	28	19	7	6	66	76
<i>Offender-Related</i>						
Many offenders think nothing serious happens to fine defaulters	74	75	14	13	13	12
Many offenders are difficult to locate	56	66	19	14	26	20
Many offenders cannot afford to pay fines	74	64	9	15	18	21

*The question was, "In your view, to what extent does a problem exist in the collection and enforcement of fines in your court?"

**Includes "strongly" agree or disagree.

The pattern of responses outlined here — generally favorable views of fines in the abstract, but a considerable degree of skepticism about the efficacy of the fine as sole or primary sanction, especially in cases involving poor offenders — suggests a need to reexamine the ways in which courts now use fines. If judges are to use fines instead of jail or probation in large numbers of cases — a change in practice that could significantly alleviate problems of jail overcrowding and burgeoning probation caseloads — it will be necessary to show that a fine can, in fact, be a significant punishment and can be enforced. One possible way of accomplishing this is through a means-based fining system modeled on the day-fine systems now widely used in several Western European countries.

Day Fines in American Trial Courts

The day fine is a Scandinavian innovation that has been adapted in West Germany, and is now receiving serious consideration in Great Britain. It is designed to enable a sentencing judge to impose a punishment commensurate with the seriousness of the offense and the prior record of the offender, while at the same time taking account of the offender's economic circumstances (Casale, 1982; Greene, this issue; Hillsman and Greene, 1988; Hillsman, Sichel and Mahoney, 1983:68, 282; Thornsted, 1974:307).

We asked survey respondents several questions designed to elicit their views on the feasibility and desirability of trying a day-fine system in U.S. trial courts. The questions were preceded by the following description of the system:

Several Western European countries have adopted and widely used a "day-fine" system, which is designed to make the economic impact of a fine roughly equivalent for both rich and poor offenders and to encourage broader use of the fine. Under these systems, the amount of the fine is established in two stages. First, the number of units of punishment is set, taking account of the seriousness of the offense and (if available) information on the offender's prior record. Second, the monetary value of each unit of punishment is set, using a standard formula, in light of information about the offender's financial situation. (The methods for obtaining this information vary; they include having it supplied by the offender's lawyer, by a probation officer, and through direct questioning of the offender by the judge.) Thus, although two offenders may be sentenced to the same number of day-fine units for an offense, an affluent offender would be fined a larger amount than a poor offender convicted of the same offense who had a similar prior record. In the event of a default, the sanction (e.g., jail time) for each

would be the same, based upon the number of units of punishment that were set.

We first asked respondents whether, assuming statutes authorized such a system, they felt it could work in their courts. As Table 4 indicates, opinions were sharply split, with a slight majority believing that it could work. Interestingly, there is virtually no difference between the response patterns of judges in limited jurisdiction courts and those in general jurisdiction courts.

Table 4.
Judges' Views on Whether a Day-Fine System
Could Work in Their Court*

View	General Jurisdiction Judges		Limited Jurisdiction Judges		Total	
	%	n	%	n	%	n
Could work	52	328	52	253	52	581
Could not work	48	300	48	233	48	533
Total	100%	628	100%	486	100%	1114

*The question was, "Assuming that statutes authorize such a system, do you feel that it (a day-fine system) could work in your court?"

Using open-ended questions, we asked respondents to indicate what they believed would be the principal advantages and disadvantages of a day-fine system. The main advantage perceived was that the system would be fairer, or more equitable. The following responses are representative:

- "Fairer generally."
- "It would make punishment more equal."
- "It seems a rational way to make a proportionately similar impact on persons who did the same act, but have different means."
- "Equal justice."
- "Even handedness and perception as such."
- "Equality in impact of a sentence on defendants."
- "Disparity in ability to pay alleviated."

The perceived disadvantages fell into several broad categories. First, many respondents (including some who favor the day-fine system) see it as difficult and expensive to administer, probably requiring more staff to obtain financial information about defendants and process the necessary paperwork. Some typical comments include:

- "Too complex."
- "More paperwork. It would slow the system down."
- "Difficulty of obtaining accurate information about finances."

- "Time consuming."
- "Delay and cost of compiling the necessary information."

A second broad category of responses focused on the impact of a day-fine system on the role of the judges in the sentencing process. These judges were concerned that a day-fine system would operate in a rigid mechanical fashion, placing additional restrictions on their discretion in sentencing. Comments in this vein included the following:

- "Sentencing is not a mathematical science."
- "Surrender of judicial responsibility to a fixed price list."
- "Too mechanical."
- "Overly formalized system to accomplish what is presently in effect on a more flexible basis."

A third set of objections, expressed by a small percentage of the judges, centered on a different type of perceived unfairness — a sense that the poor would be getting an undeserved break. This view was sometimes framed in terms of how the respondents felt others would perceive such a system:

- "Many people, especially in motor vehicle cases, believe the fine should be the same for everyone."
- "More prosperous defendants will feel that they are being penalized for their wealth — reverse discrimination."
- "I am opposed to the basic premise in this concept of 'soaking the rich' for the same offense as others."
- "Un-American!"

Our concluding question asked whether the respondent would favor or oppose trying a day-fine system in his or her court. As Table 5 indicates, slightly more than a quarter of both the upper and lower court judges said they would favor trying such a system in their court. Slightly more than a third indicated that they were opposed to such an experiment and another third said they were not sure. Not surprisingly, there is a high correlation between judges' responses to the question about whether they thought a day-fine system could work in their court and their attitudes toward seeing such an experiment undertaken. Judges who believe that day fines could work in their court are more likely to be receptive to an experiment with a day-fine system.

The survey responses indicate that there are potential problems in establishing a day-fine system in the U.S., but that there are also some very real prospects for making such a system work effectively here. With 78 percent of the general jurisdiction judges and 83 percent of the lower court judges agreeing that one of the advantages of fines is that they can be adjusted to fit the severity of the offense and the income of the offender (Table

1), there is clearly broad recognition of the flexibility inherent in using fines as sanctions. While survey respondents were more sharply divided on questions about the feasibility and desirability of trying the system in their court, it is obvious that there is a large core of judges who are open to the idea of experimenting with a day-fine system.

Table 5.
Judges' Attitudes Toward Trying a Day-Fine System in Their Court

Attitude	General Jurisdiction Judges		Limited Jurisdiction Judges	
	%	n	%	n
Favor	29	196	26	137
Oppose	37	247	38	195
Not Sure	34	226	36	187
Total	100%	669	100%	519

*The question was, "Would you favor or oppose trying such a system in your court?"

From an operational standpoint, two main obstacles to introducing a day-fine system in U.S. courts seem to be (1) the difficulty in obtaining reliable information about offender economic circumstances; and (2) persuading decisionmakers to use such information. In some jurisdictions, detailed information about an offender's income, employment status, assets, and community ties is usually available from the police, a pretrial release agency, the probation department, or a combination of these agencies, sometimes supplemented by a conscientious defense attorney. As responses to our survey show, however, there are many courts — particularly limited jurisdiction courts in which the greatest potential exists for use of the fine as an alternative to incarceration — where such information is often not presented to the sentencing judges.⁴ Moreover, even when information on an offender's economic situation is available, it may not be used by a sentencing judge. As Table 6 shows, judges are much more likely to rely upon information about the circumstances of the crime and the offender's prior record than upon information about the offender's economic situation. If monetary sanctions are to be more widely used, judges will have to demand that such informa-

4. Only 41 percent of limited jurisdiction judges report having information about offender income in most cases, and only 25 percent say that they have information about the offender's assets in most cases. General jurisdiction courts, which usually have probation services attached to them, are more likely to have background information on the offender at the time of sentencing. Even in those courts, however, only 74 percent of the judges report having information on offender income and only 57 percent report having information on offender assets in most cases (Cole, Mahoney, Thornton, and Hanson, 1988:330).

tion be collected, and must then take it into account in shaping monetary sentences. Experimentation with day fines will place a premium on development of systems for obtaining and using information on income, assets, and employment status.

Table 6.
Extent to Which Judges Find Specific
Information Useful Prior to Sentencing*

Type of Information	Percentage of Judges Finding Available Information Useful				
	Almost Always	Most Cases	Half the Cases	Few Cases	Almost Never
<i>General Jurisdiction Judges</i> (n = 706)					
Offender's criminal record	90	10	—	—	—
Offender's family status/ community ties	40	31	18	10	2
Offender's income	28	17	21	26	9
Offender's employment status	38	29	22	9	2
Offender's assets	26	13	14	30	18
Aggravating or mitigating circumstances regarding the offense	77	18	3	2	—
<i>Limited Jurisdiction Judges</i> (n = 524)					
Offender's criminal record	75	19	3	3	—
Offender's family status	26	35	20	16	3
Offender's income	17	25	20	28	10
Offender's employment status	26	38	18	15	4
Offender's assets	13	15	19	33	21
Aggravating or mitigating circumstances regarding the offense	64	25	6	4	1

*The question was, "When you have this information, how often do you find it useful in shaping the sentence?"

It should be noted that, despite these obstacles, some American courts do obtain such information and use it, although in a relatively unstructured way, to tailor fine amounts to economic circumstances of offenders. A number of the judges in our survey, commenting on questions about a day-fine system, noted that they already had something similar to a day-fine system working in their courts. This suggestion is consistent with findings from the

Vera/ICM study, which noted the existence of some "embryonic" day-fine systems in this country (Hillsman, Sichel, and Mahoney, 1984:182).

Another barrier to instituting a day-fine system in the U.S. is the widespread (though by no means universal) perception that it is difficult, if not impossible, to collect even relatively low fines from offenders who are poor (Table 1, above; see also Smith, 1983-84). However, although most criminal defendants are poor, some (especially those involved in white collar crime and the drug trade) undoubtedly have money. And, among persons with income below officially defined levels of poverty, there are probably large numbers who could be fined rather than given a jail or prison sentence. They include welfare recipients, the working poor, the temporarily or seasonally unemployed, and persons who earn money "off the books" through a variety of activities. A fine may be a hardship on such a person (and thus, appropriately, a punishment), but that individual may have property or receive income that could be used to pay a fine tailored to the offense and to his or her resources.

In this connection it is important to note the existence of strong evidence that, at least in some jurisdictions, a high percentage of the poor and the unemployed do pay their fines. While we need to know much more about who pays — and under what circumstances — there are some examples of courts that do an effective job of collecting fines from offenders across a wide spectrum of economic circumstances (Casale and Hillsman, 1986; Tait, this issue; Wick, this issue; Zamist, 1981). Although care must be taken in using fines in cases involving offenders who are poor, the obstacles to their utilization are not insuperable.⁵

Conclusion

Most judges are sensitive to offenders' economic circumstances in deciding whether to impose fines and in setting terms for fine payment. Nevertheless, it is clear that the sentencing process often operates without accurate information on the financial capacities of offenders. And even when such information is available, judges vary in their practices with respect to determining what constitutes inadequate resources for purposes of imposing a monetary sanction in particular situations. Coherent policy in this area is

5. One of the most surprising findings from the survey relates to judges' understanding of U.S. Supreme Court rulings affecting the use of fines for poor offenders. Over a quarter of the general jurisdiction judges and 17 percent of the limited jurisdiction judges agreed that "U.S. Supreme Court decisions do not allow fines to be imposed on poor people." Yet although the Court's decisions do limit the circumstances under which indigents may be jailed for default, they do not totally prohibit such jailing and certainly do not prohibit the fining of poor offenders (*Williams v. Illinois*, 1970; *Tate v. Short*, 1971; *Bearden v. Georgia*, 1983; see also Hillsman and Mahoney, this issue).

nonexistent, opinions are divergent, and the entire process — which involves the imposition of sentences on large numbers of offenders — can be fairly characterized as murky.

One mechanism that has some potential for bringing rationality and consistency to this process is the day fine. Through implementation of a day-fine system it should be possible to make a more accurate and structured assessment of offenders' economic situations, and to tailor monetary sanctions to these circumstances as well as to the nature of the offense and the offender's prior record. The punishment associated with fines should thus become more realistic in terms of the impact upon offenders. Although some judges expressed reservations about the feasibility of such a system in their courts, a majority felt that it could work and many of them indicated a willingness to explore its application. Future research can build on this receptivity and develop experimental programs to test the day-fine concept in specific courts.

Consolidated references begin on page 90.