

## Structuring Criminal Fines: Making an "Intermediate Penalty" More Useful and Equitable

Judith A. Greene\*

*Fueled by a decade of severe jail and prison overcrowding, a new surge of enthusiasm for nonincarcerative and "intermediate" penalties has emerged across the United States. Recent research on the imposition and administration of criminal fines in both America and Western Europe provides evidence the untapped potential of this penalty as a sentencing option which can provide flexibly structured sentences that are both proportionate and enforceable in a wide array of cases. To demonstrate this potential, planners at the Vera Institute of Justice, working in collaboration with officials of the criminal court in Staten Island, New York, designed and implemented an innovative adaptation of the European day-fine system, tailored to the needs of this busy, urban court.*

### Introduction

As public officials and criminal justice policy experts around the country struggle with the surging costs of our prison and jail population explosion, interest in credible and enforceable, but nonincarcerative, punishments has been renewed. During the past decade, while the use of imprisonment has doubled, alternative penalties once considered experimental — intensive probation, community service orders, house arrest (with and without electronic surveillance) — have become commonplace. More recently, news reports have highlighted a new "creativity" on the part of judges: crafting hand-tailored sentences to fit the specific circumstances of offenders and their offenses. A slumlord is sentenced to a term of confinement amid the squalor that his criminal flaunting of building codes has produced; an organized crime boss is banished from the city where he has practiced his racketeering; a welfare mother, in violation of probation for larceny, is sentenced to quit smoking instead of jailed.

The impulse which drives the development of alternative sanctions and "designer-sentences" is commendable. Judges know the flood of offenders they have sent to correctional institutions has overwhelmed existing capacity and that, as a result, conditions in many facilities have deteriorated. In-

---

\* Director of Court Programs, Vera Institute of Justice.

sofar as judges' reliance on incarceration results from a lack of suitable alternatives, the development of these new sentencing options seems appropriate. However, the track record of the alternatives movement in reducing levels of incarceration is not encouraging (Smith, 1983-84). The popularity of the more established alternative sentencing options seems related primarily to their use as a way of augmenting probation supervision, rather than as sanctions in their own right. Furthermore, the proliferation of highly individualized "designer sentences" may increase existing sentencing disparities, inviting public backlash if they are perceived to benefit a few affluent offenders, while less privileged criminals are jailed.

Public preference for retributive approaches to sentencing policy, coupled with concerns about fairness and humane treatment of offenders (and with a sober accounting of cost constraints limiting our capacity to rely on incarceration to deliver just punishment), compel the development of "intermediate" penalties — a range of broadly applicable, non-incarcerative sentences that can be scaled to provide appropriate levels of punishment across offenses of varying gravity. While reserving imprisonment for violent, predatory crimes requiring the most severe sanction, less severe options can provide a gradual progression of appropriate punishments for less serious crimes. If grounded in realistic appraisals of the impact of specific sanctions on offenders, such a penalty system can foster greater clarity concerning the goals sought by imposing different sanctions.

Widespread, systematic use of noncustodial penalties can be encouraged by emphasizing sanctions, such as fines and community service, that can be calibrated in direct proportion to the seriousness of the crimes, and that are relatively simple and inexpensive to administer and enforce. When measured against the long-standing requirements in American jurisprudence — that sentences be proportionate, clear of purpose, broadly applicable, widely available, and enforceable — the initial attractions of alternatives that are highly individualized (i.e., crafted case-by-case) appear fleeting. In contrast, a more encouraging picture is afforded in courts where judicial interest, responsiveness on the part of correctional officials and court administrators, bulging jails, and cost constraints on expansion are stimulating innovations with more systematic sentencing reforms. In Louisiana, Oregon, Tennessee, the District of Columbia, and elsewhere, overall sentencing schemes are being designed to encourage more consistency while keeping prison terms within existing capacity (Knapp, 1988). (One of the first such efforts occurred in Minnesota, through its Sentencing Guidelines Commission [1982]). However, most efforts to provide a comprehensive framework to structure sentencing discretion have not yet incorporated nonincarcerative

sanctions. Most state guideline schemes have concentrated on the "in/out" decision, offering little or no guidance on the use of sanctions for those not requiring imprisonment.<sup>1</sup> Many experts on sentencing reform are now calling attention to the need for more systematic approaches to noncustodial sanctions in formal or informal guidelines (Morris, 1987; Wasik and von Hirsch, 1988; Tonry, 1988).

As described below, criminal justice planners have been working with local courts in New York City to encourage more systematic and equitable use of noncustodial penalties. Though falling short of the comprehensive reforms embodied in state-level approaches, local efforts in courts around the country can serve to build sentencing frameworks "from the bottom up" to achieve more principled, consistent, and proportionate use of intermediate sanctions, as well as to reduce reliance on incarceration.

### **The Criminal Fine: An Underutilized Resource**

After seven years of work to develop a model for the effective imposition and enforcement of community service orders as a sentencing alternative to short jail terms for recidivist property offenders (McDonald, 1986), planners at the Vera Institute of Justice in New York City have turned to restructuring the use of a more traditional sanction — the criminal fine. A decade of work by Vera researchers, in collaboration with colleagues at the Institute for Court Management of the National Center for State Courts, informs this planning effort (Casale and Hillsman, 1986; Cole, Mahoney, Thornton, and Hanson, 1987; Hillsman, Sichel, and Mahoney, 1984). The research has documented a sharp contrast between the manner in which fines are used in American sentencing practice and their use in some Western European criminal justice systems. In the latter, fines are systematically imposed across a broad spectrum of criminal offenses as the primary noncustodial penalty, and are effectively administered after imposition.

Broad interest in the United States in this research on fines stems from American policymakers' growing attention to credible, enforceable alternatives to incarceration. The criminal fine has many characteristics which are well suited to its systematic application as an intermediate penalty. Its basic punitive aim is compatible with a desert-based rationale for sentencing. The fine is also viewed as having value as a deterrent, a perspective encouraged by empirical research in Europe (Albrecht and Johnson, 1980; Davies, 1970; McKlinton, 1963; Softley, 1977). It is also a compensatory sentence — the

---

1. The new Federal guidelines, for example, require some incarceration for most categories of offenders, and restrict the noncustodial alternatives primarily to the status of adjuncts to probation (U.S. Sentencing Commission, 1987).

offender literally pays his or her debt to society — thereby falling within penalty systems which stress offender accountability. Fines are a flexible sentencing device and, as will be demonstrated below, they can be scaled to cover a broad range of offense severity, while at the same time adjusted to account for differences in income levels among individuals convicted of comparable offenses. The fine is an available sanction, currently authorized in all American jurisdictions, large and small, urban and rural. Moreover, its expansion is practical: the fine is inexpensive to administer, requires relatively few supervisory personnel, and generates revenue, often over and above the costs of administration.

Examination of European courts provides further evidence of the untapped potential of the criminal fine (Casale, 1981; Greene, 1987). The court systems of Sweden, England, and West Germany impose fines as the sole penalty in 80 to 85 percent of all convictions. Fine-alone sentences are not restricted, as is common in American courts, to traffic offenders, first time criminal offenders, or those charged with the least serious crimes. In West Germany, for example, the fine is now used as the sole penalty for three-quarters of all offenders convicted of property crimes, and two-thirds of those convicted of assault (Gillespie, 1980).

Survey research indicates that, although patterns of fine use are highly variable from court to court, American judges generally impose fines well below statutory limits — despite increased legislative action to raise these limits as a means of expanding the fine's punitive range (Hillsman, Sichel, and Mahoney, 1984). The difficulty seems to center on the basic organizing principle American judges commonly use to assess the amount of a fine: the fixed-sum fining system in which approximately the same fine amount is imposed as a flat sum for all offenders convicted of the same or similar offense. This approach to setting fines has led courts to adopt informal tariff systems, or "going rates," for specific offenses. Given the modest economic circumstances of most offenders in state courts, these flat dollar rates tend to cluster at the bottom of the legislatively set ranges, further restricting fine use to the lesser categories of offenses. Thus, low dollar fine amounts restricted to the least serious crimes have become the norm in most courts (Hillsman, Sichel, and Mahoney, 1986; Hillsman and Greene, 1988).

The American tendency to use a fixed-sum fining system presents another difficulty for sentencing judges. Because such tariff systems are tacitly grounded in the notion that consistency in sentencing requires that all offenders convicted of a given crime will pay the same fine amount, they give an obvious advantage to offenders with higher incomes. When fines are set in equal sums for similar crimes, the disparate punitive impact of the fine

across differing income classes distorts both the principles of proportionality and equity.

At the same time, however, research suggests that some judges do attempt to make the rigid tariff system more flexible by tailoring fine amounts within tariff ranges more clearly to the means of individual offenders. This suggests, therefore, that if judges are provided with streamlined methods to set equitable fines more systematically, the impediments created by fixed tariff systems can be overcome, freeing the criminal fine to become a more central punishment option (Mahoney and Thornton, this issue).

### **The European Day-Fine System**

Contrasts between American and Western European courts suggest that if the basic approach to fining embodied in European sentencing practices — the day fine — can be translated for use in the American legal context, and tested in a typical court setting, the results could enhance the credibility of the criminal fine and broaden its usefulness in the United States (Hillsman and Greene, 1988).

First developed in Scandinavia in the 1920s and 1930s, and introduced into West Germany during the late 1960s and early 1970s, the day-fine system of setting variable rather than fixed fine amounts rests upon a simple two-step process that embraces both proportionality and equity. First, the court sentences the offender to a certain number of fine units according to the gravity of the offense, but without regard to his or her means. The value of each unit is then established as a share of the offender's daily income (hence the name "day fine"), and the total fine amount is determined by simple multiplication. The share of income used to value the day-fine units varies across the different countries that use this system, as do methods for accounting for capital wealth or family responsibilities, but the basic idea assures routine imposition of variable, but equitable, fine sentences, the punitive impact of which are in proportion to the crime. The day-fine approach has also ensured that courts can administer these monetary penalties without overburdening collection and enforcement efforts, and without resorting to high levels of imprisonment for default (Albrecht and Johnson, 1980).

### **Adaptation for American Practice**

To explore the viability of using the day-fine approach in an American court, a collaborative planning process was undertaken by planners of the Vera Institute of Justice, in conjunction with the Richmond County Criminal Court (Staten Island, New York) and the county's district attorney's of-

fice. The goal was to adapt Western European day-fine models to this American court to test how sentencers will use fines when freed from the constraints of a tariff system, and whether courts can administer them effectively and efficiently (Hillsman and Greene, 1987).

The selection of a trial court of limited jurisdiction reflected several considerations. Planners wanted a type of American court in which improvements in fining would be immediately relevant and thus of substantial practitioner interest. Traditionally, lower courts in the United States have been the primary users of fine sentences, used both alone and in combination with other penalties. These courts are followed by general jurisdiction trial courts which handle a wide variety of misdemeanor as well as felony cases; general jurisdiction courts handling only felonies are the one type of American criminal court that tends to use fines sparingly as sole sanctions (Hillsman, Sichel, and Mahoney, 1984).

Another consideration was an interest in exploring the impact of restructuring fines on the displacement of short sentences of incarceration. It seemed practical to test this innovation in a court which routinely handles the lower range of cases now receiving custodial sentences. Because short terms of imprisonment are used increasingly in lower courts, judges who deal primarily with felony cases may be reluctant to experiment with non-custodial sentences when cases of lower severity are being jailed by judges on the misdemeanor bench. Until sentencing practices in our lower courts effectively incorporate a credible schedule of criminal penalties which do not rely upon incarceration, it is unlikely that alternatives to incarceration will gain wide acceptance in the higher courts.

The Staten Island Criminal Court is a desirable site for such a pilot test. It already uses fines as a sole sanction in almost half its cases. It also disposes of cases displaying a broad range of offense seriousness. As a court of original jurisdiction, the criminal court arraigns and processes all cases, whether charged by the district attorney as felonies or misdemeanors, before they are either indicted and transferred to the court of general jurisdiction (the New York City Supreme Court), or disposed as misdemeanors in the criminal court. Because case screening is vigorous at the lower level, only cases with a high probability of felony conviction are indicted; therefore, Staten Island's criminal court disposes of many felony complaints. Of all cases charged as felonies in 1986, for example, almost three-quarters remained in the criminal court for final disposition (Hillsman and Greene, 1987).

Finally, the Staten Island court is relatively rich in sentencing options as compared with many lower courts. These include probation sentences, su-

pervised restitution and community service orders, imprisonment, conditional and unconditional discharges, as well as fines. Thus, day fines compete with a well developed range of traditional options, and do so in a context characterized by serious jail overcrowding.<sup>2</sup>

The Staten Island community served by the court also makes it a desirable site for experimenting with day fines. Although part of New York City, this county is similar to many middle-sized, suburban communities in the United States. It is distinguished by a sound economic base and a high degree of social stability; but it also has a significant crime problem and a sizable, if not dominant, resident population characterized by poverty and unemployment.

The goal of the initial planning process was to develop a workable design for introducing day fines into the Staten Island court and for studying its implementation. The planning involved close collaboration between Vera Institute of Justice planners and researchers and a court planning group composed of the bench, the bar, court administrators, and policy experts from across the United States and Western Europe.

The central components of the plan developed by the planning group involved (1) a system of sentencing benchmarks to guide the number of day-fine units set for specific offenses; (2) a method for collecting the necessary means information and for valuing the day-fine units imposed on a particular offender; (3) strategic improvements in the court's collection and enforcement system so that it can respond to the potentially higher fine amounts and broader range of fined offenders under a day-fine system; and (4) a microcomputer-based information system to record collection and enforcement activities and to provide statistical reports to the court (see Cummings, this issue). In the design and development of each component, court administrators were essential to the process of planning new systems within existing court procedures for administering fine sentences and for managing case records.

### Sentencing Standards: The Benchmark Scales

To guide the transition from a fixed-sum to a day-fine system, a set of scales or benchmarks was devised by the court workgroup to provide infor-

---

2. For some time, the New York City correctional system has been under court order to reduce overcrowding; in 1983, the federal court required the city to release some defendants from custody to ease the problem. Conditions have not improved much in recent years. However, because Staten Island is the smallest jurisdiction within the City of New York, it does not contribute a significant proportion of the cases which crowd the city's facilities. Thus, while overcrowding as well as substantive sentencing concerns encourage the court's focus on alternative sentences, the situation in Staten Island is not as pressing as it is in some other jurisdictions. This is also a favorable context for careful innovation and experimentation.

mal sentencing standards to judges for determining the number of day-fine units to be imposed. The basic architecture for the scales was a rank ordering of 71 penal law misdemeanors and violations frequently found as conviction as well as arraignment charges in the court. The range of charges encompassed lesser victimizing crimes (including those charged by prosecutors as felonies but disposed as misdemeanors); a broad spectrum of property offenses; minor street-level drug and contraband offenses; and a variety of offenses involving the obstruction of legal process and the breach of public decorum and community standards of behavior. These offenses were rank ordered by the workgroup by classifying the relative degree of seriousness represented by the specific criminal behaviors typically coming before this court under each penal law category, as deduced from discussions among the court officials and from analysis of actual sentencing patterns.

Assessment of the relative seriousness of these offenses — the harm done — was guided by the general analytic principles suggested by Andrew von Hirsch in his book on the jurisprudence of sentencing, *Past or Future Crimes* (1985), rather than solely by their formal classification in the New York State Penal Law. Von Hirsch sets forth a threefold hierarchy of victimizing crimes. At the highest level are crimes which damage or destroy the welfare interests of individuals, that is, those harming a person's life, health, or economic livelihood at the level of basic subsistence. Next are crimes which threaten a person's security interests by threatening or damaging physical wellbeing, or the enjoyment of a tolerable living environment. Crimes affecting accumulative interests are ranked next; these involve property beyond that necessary for preservation of basic subsistence or a tolerable living environment.

This conceptual framework was broadened to allow the court workgroup to develop standards for ranking the wide array of petty, nonvictimizing offenses that also come before the Staten Island court. Classification of these offenses began with those which, while not violating the interests of an identifiable "victim," nonetheless present a risk of resultant harm. Some common vice crimes (for example, trafficking in drugs and gambling activities) may result in quite serious harm even though, it may be argued, consumers of these goods and services have willingly assumed the risks involved. There are also vice crimes which involve no direct harm, but constitute conduct offensive to community sensibilities (for example, prostitution). The third category of nonvictimizing crime are those involving a breach of citizenship duties. The most serious is the corruption of public officials. Less serious are those which interfere with or undermine the proper

administration of justice or other governmental operations including, at the lowest end, such minor crimes as the false report of an incident.

To anchor these offenses in relation to each other, the planning group followed some general ranking principles:

- Among victimizing crimes, property and theft offenses generally should be weighed as less serious than those involving physical harm;
- Nonvictimizing crimes which present a clear potential for tangible harm should be considered only slightly less serious than property crimes, while those presenting no risk of harm should be ranked in the lowest ranges of severity; and
- "Breach of duty" crimes should range from medium to low severity, according to the degree of their interference with proper governmental operations.

These principles were then applied by distributing the 71 penal law offenses across and within a framework containing 6 severity levels, representing an upper and lower band for each of 3 offense groups of high, medium, and low severity (see Table 1 below). Offenses involving substantial physical harm were ranked in the highest levels. The lowest levels were devoted primarily to harmless nonvictimizing and public decorum offenses. Property offenses and the more serious drug and gambling offenses were distributed primarily in the middle bands. In some instances where the scope of a particular offense, as defined in the penal law, spanned widely dissimilar conduct, or a broad range of harms in terms of actual criminal behavior, the offense was broken down into subcategories.

To illustrate, assaults were distinguished by the gravity of the injury — substantial or minor — and then further categorized according to the type of victim involved. The most serious type of assault (e.g., where the victim is especially vulnerable and the injury is substantial) was anchored at severity level one, while the least serious (e.g., a trivial injury resulting from an altercation between acquaintances) was assigned to level five. Similarly, drug possession cases were distinguished as to the type of drug: possession of street drugs was assigned to severity level three, while criminal possession of pharmaceutical drugs was ranked at level four.

This overall ranking provided an agreed-upon framework for calibrating an appropriate number or range of day-fine units for each specific offense. Using the West German day-fine scale as a model, the workgroup assumed that a scale of 360 day-fine units could offer sufficient flexibility for the full range of finable offense charges appearing in the New York State codes (from infractions through felonies). The workgroup then agreed to limit the range for violations through misdemeanors to 5 to 120 units. Setting a floor

**Table 1.**  
**Classification of Penal Law Offenses into Day-Fine Benchmark**  
**Severity Levels (Partial List)\***

Level	Severity**	Classification	Offense	Day-Fine Units
I (95-120 units)	AM	Harm to Persons	Sexual Misconduct	90-120
	AM	Harm to Persons	Assault 3	20-95
II (65-90 units)	AM	Harm to Persons	Endangering Child Welfare	20-90
	AM	Obstr'n Justice	Criminal Contempt 2	75
	AM	Harm to Persons	Reckless Endangerment 2	65
	AM	Property	Att. Grand Larceny 4	20-65
III (45-60 units)	AM	Weapons	Poss'n of Weapon 4	35-60
	AM	Property	Petit Larceny	5-60
	AM	Property	Poss'n of Stolen Prop	5-60
	AM	Property	Unauthorized Use Vehicle 3	5-60
	AM	Drugs	Sale of Marijuana 4	50
	AM	Misconduct	Promotion of Gambling 2	50
	AM	Drugs	Poss'n Contr'l'd Substance 7	35-50
	BM	Harm to Persons	Att. Assault 3	10-45
IV (30-40 units)	AM	Theft	Forgery 3	40
	AM	Drugs	Poss'n of Marijuana 4	35
	BM	Property	Att. Criminal Trespass 2	30
	BM	Sex Crime	Public Lewdness	30
	BM	Property	Att. Petit Larceny	5-30
	BM	Property	Att. Poss'n Stolen Property 5	5-30
V (15-25 units)	AM	Sex Crime	Loitering/Prostitution	25
	AM	Obstr'n Justice	Resisting Arrest	25
	BM	Drugs	Att. Sale Marijuana 4	25
	BM	Weapons	Att. Poss'n Weapon 4	5-25
	BM	Harm to Persons	Att. Reckless Endangrmt 2	20
	BM	Property	Criminal Trespass 3	20
	VIO	Misconduct	Harassment	15
VI (5-10 units)	AM	Property	Auto Stripping 2	10
	BM	Drugs	Poss'n of Marijuana 5	5
	BM	Sex Crime	Prostitution	5
	BM	Theft	Issuing Bad Checks	5
	BM	Misconduct	Loitering 1	5
	VIO	Property	Trespass	5
	VIO	Misconduct	Disorderly Conduct	5

\*Source: Hillsman and Greene, 1987:43-49.

\*\*AM: A Misdemeanor; BM: B Misdemeanor; VIO: Violation

at 5 units was thought to ensure offenses at the lowest end of the scale were not trivialized. Setting the ceiling at 120 day fines was thought to reflect adequately the less serious nature of the cases disposed in the Criminal Court, and to reserve the upper two-thirds of the scale for use for felony offenses if the system is extended to the Richmond County Supreme Court.

The resulting range of 115 day-fine units was then distributed across the six severity levels for misdemeanors and violations. (Table 1 contains selected examples of the offenses included and their day-fine unit ranges.)

**Table 2.**  
**Selected Property and Theft Offenses**  
**Staten Island Criminal Court Day-Fine Benchmark Scales**

Type of Offense	Number of Day-Fine Units		
	Discount Number	Benchmark Number	Premium Number
POSSESSION OF BURGLARY TOOLS	42	50	58
PETIT LARCENY			
Range of 5-60 Day-Fine Units			
\$1000 or more	51	60	69
\$700-999	42	50	58
\$500-699	34	40	46
\$300-499	25	30	35
\$150-299	17	20	23
\$50-149	8	10	12
\$1-49	4	5	6
ATTEMPTED PETIT LARCENY			
Range of 5-30 Day-Fine Units			
\$1000 or more	25	30	35
\$600-999	17	20	23
\$350-599	13	15	17
\$150-349	10	12	
\$1-149	4	5	6
ATTEMPTED GRAND LARCENY			
Range of 20-65 Day-Fine Units			
A. Purse Snatch	55	65	75
Regardless of amount of value			
B. Extortion	55	65	75
Regardless of amount of value			
C. Value Exceeding \$1000	51	60	69
D. Stolen Credit Card	51	60	69
E. Stolen Motor Vehicle:			
Range of 20-60 Day-Fine Units			
(Car value scaled as for			
petit larceny)			
UNAUTHORIZED USE OF A VEHICLE 3			
Range of 5-60 Day-Fine Units			
(Car value scaled as for petit larceny)			
AUTO STRIPPING 2	8	10	12

Relatively broad ranges were assigned to the more severe levels; progressively narrower ranges were assigned as severity decreased because offenses at the low end of the scale reflect minor criminal behavior at a relatively uniform level of severity, while the upper levels contain a wider range of offense severity.

Using the structure illustrated in Table 1, the final set of day-fine scales was crafted for all offenses. One further refinement was added to the full scales. Circumstances other than harm (which was the primary consideration in determining the rank order of each offense) may be important to

judges in assessing the severity of a specific crime and thus in determining the appropriate number of day-fine units to be imposed in an individual case. For example, although an offender's prior criminal record is likely to have been weighed by the judge in determining the type of sentence to be imposed (jail, probation, fine, etc.), an absence of prior convictions might warrant a discount from the normal day-fine number, while a criminal record of exceptional length might trigger a move to a higher number. To account for such factors, a separate "discount" day-fine scale incorporated a reduction of 15 percent from the assigned number of day-fine units. A "premium" scale, incorporating an added 15 percent, was also provided to allow sentences to reflect aggravating factors. These discount and premium scales appear to the left and right of the normal day-fine number or benchmark (see Table 2).

To illustrate, the day-fine scales for property and theft cases are presented in Table 2. Simple offenses (such as possession of burglary tools) have been assigned a presumptive day-fine unit value (e.g., 50) located in the center of each row, while the numbers to the right and left (e.g. 58 and 42) represent the 15 percent premium and discount, respectively. Offenses involving theft or damage that can be expressed in terms of specific dollar amounts were assigned a range of day-fine unit values. For example, the petit larceny range begins at a floor of 5 day-fine units for theft of \$1 to \$49 and moves up through five intermediate steps to a top day-fine unit level of 60 for theft of \$1000, the statutory maximum for this offense. (For the full scales, see Hillsman and Greene, 1987.)

### Setting a Value for Each Day-Fine Unit

To set the value of each day-fine unit for individual offenders in relation to financial circumstances, the court planning group decided that any offender with a steady income stream could be fined. The valuation method devised was based on a proportionate share of the offender's net daily income. While the process does not reflect differences in assets or debts, it does take into account an offender's family responsibilities, using a method derived from practices commonly used by American courts to set child support payments by noncustodial parents.<sup>3</sup>

The planning group decided that an additional "flat-rate" discount was needed to calibrate the punitive impact of the day fines to the other sentencing options available to the court, and to current fine amounts. The day-

---

3. The offender's net daily income (whether from wages, welfare, or other sources such as unemployment insurance) is reduced by a factor of 15 percent for self-support, 15 percent each for the support of two dependents, 10 percent each for the support of two more dependents, and 5 percent each for any additional dependents over these four.

fine system in Staten Island was intended to serve in an intermediate position; that is, day-fine amounts should be substantial enough, relative to an offender's means, to be viewed as more punitive than a conditional discharge or routine probation supervision, though not so stiff on a routine basis as to approach the severity of typical jail sentences. At the same time, the planning group felt that the day-fine amounts for the most trivial violations committed by offenders with the lowest incomes should remain, as fixed fines are now, at very modest dollar amounts.

By testing an array of discount rates, one was chosen that seemed to the court workgroup to achieve both of these goals. A flat reduction rate of one-third results, for example, in a day-fine amount of \$30 for a woman supporting three children on welfare who is sentenced to a five-unit day-fine for disorderly conduct. Further up the severity and income scales, an offender convicted of theft of property worth \$400 would, given a modest gross annual income of \$13,000, result in a total day-fine amount of \$450. However, because any flat-rate system falls more harshly on low-income offenders than on those who have more assets or access to credit, the planning group created a two-tiered discount rate to further reduce the hardship of a day fine for the poorest offenders: Offenders above the official federal poverty income guidelines receive a one-third rate of discount on their day-fine unit value, whereas the discount for those living in poverty is one-half.

Applying this valuation system to the range of offenses scaled in the Staten Island benchmark system, total day-fine amounts range from a low of \$25 (for the welfare mother convicted of the lowest five-unit offense) to a typical high-range amount of nearly \$4000 (for a single, self-supporting offender in the \$35,000 gross annual income range convicted of the most serious offense on the benchmark scale).

To streamline the process of actually sentencing offenders to day fines, all the steps were condensed into a value table for use by judges and other court officials. The table resembles a simple tax table — with net daily incomes arrayed down the left side, and the number of dependents supported by an offender arrayed across the top. The cells of the table present the day-fine unit value for each combination of income and number of dependents, adjusted for both dependents and the two-tiered flat discount. All a court official does to calculate a day-fine sentence in a given case is to (1) divide an offender's weekly take-home pay by seven (or fifteen for a bi-weekly amount); (2) locate the unit value on the value table for the number of dependents supported; and (3) multiply that value by the number of day-fine units to which the offender has been sentenced.

**Conclusion**

This structural framework is now being used in the Staten Island court. Information about the offender's income is being provided efficiently by the court's pretrial services agency and by simple inquiries at the bench, and day fines are routinely being imposed in lieu of the traditional fixed fine. Over the course of a one-year trial period, ending in late 1989, Vera Institute of Justice planners and researchers will document the use of the day fine and study the outcome of the enhanced collection and enforcement activities. We anticipate day fines will prove to be a viable and flexible device for helping to restructure this major sentencing option — the criminal fine — in the context of a larger effort to develop a systematic, credible, and fair system of intermediate penalties.

Consolidated references begin on page 90.