

THE DAY FINE SYSTEM:
A Tool For Improving the Use of Economic Sanctions
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Vera Institute of Justice

Page 2

The surging costs of the prison and jail population explosion in the United States have renewed interest in credible and enforceable non-incarcerative criminal penalties. Criminal sanctions considered to be innovative experiments a mere decade ago have become commonplace (community service orders, intensive supervision schemes, home detention, electronic monitoring); yet, during this same period of time, the use of imprisonment has doubled.

The cost constraints which place increasingly stringent limitations on our capacity to deliver justly-deserved punishment to criminal offenders through incarceration, when coupled with concerns about fairness and humane treatment of offenders, now compel more systematic sentencing reform efforts. While reserving imprisonment for the violent, predatory crimes which require the most severe sanction, a well-developed “intermediate sanction system” — a range of broadly applicable, noncustodial sentences that can be scaled to provide appropriate levels of punishment across offenses of varying gravity -- can provide an appropriate array of punishments for less serious crimes.

Many experts on sentencing reform are now calling for new approaches to structuring the use of noncustodial sanctions. In a variety of jurisdictions, criminal justice policy makers and planners have begun to consider models for building sentencing frameworks that can provide for principled and proportionate use of intermediate sanctions, as well as to reduce reliance on incarceration.

Restructuring the Criminal Fine for Broader Use: The Day Fine Concept.

Recent efforts undertaken by the Vera Institute are demonstrating effective use of a practical tool for tailoring the most traditional noncustodial penalty - the criminal fine -- to the sentencing needs of busy, urban courts. While admittedly less severe than incarceration, the fine sanction has very distinctive advantages. The fine has an unmistakably punitive impact on offenders so sanctioned. This penalty has also been found to have a deterrent effect, when compared to either probation or jail. The fine fits comfortably within penalty systems which stress offender accountability (when, fined, the offender quite literally is made to pay his or her debt to society). Moreover, fines can be flexibly scaled to cover a broad range of offense severity, while at the same time they can be calibrated to fit each individual offender’s ability to pay.

With support from a number of federal agencies, the Vera Institute of Justice in New York City has been involved in a variety of efforts to introduce the day fine concept to American sentencing practice. Two pilot experiments were first mounted to test the viability of this simple, easy-to-use technique to improve the imposition and administration of the fine, and — through yet broader application — a range of other monetary sanctions. These two efforts were built upon a decade of work by Vera researchers which had documented a sharp contrast between the way criminal fines are used in American sentencing practice and their use in some Western European criminal justice systems (where the criminal fine is the primary noncustodial penalty, systematically imposed across a broad range of common criminal offenses). This contrast is particularly puzzling, given the increasing demand in the United States for credible,

enforceable alternatives to incarceration and in light of the many advantages the fine offers as an intermediate penalty.

Vera Institute of Justice

Page 3

The Vera Institute's research findings suggest that the apparent underutilization of fines in American sentencing practices is primarily due to the rigidity of the basic organizing principle commonly used by American judges to assess the amount of a fine:

the fixed-sum fining system, whereby the fine is simply imposed as a flat dollar amount in each case. In practice, this approach tends to result in courts having informal tariff systems or "going rates" — for specific offenses; approximately the same dollar amount is imposed for offenders convicted of the same or similar offenses. Under the tariff system, the "going rates" traditionally associated with frequently-occurring conviction charges are typically set at "lowest common denominator" amounts clustering at the bottom of the legislated ranges, (\$50, \$75, \$1001 etc.) in deference to the low-income status of the bulk of offenders who come before the court at sentencing. The unintended result is that the fine is rendered ineffective as a sanction for all but the most petty crimes.

In seeking to craft a remedy for this problem, the Institute's planning staff have turned to the experience European courts have had with practical, variable-sum fining systems which, we believe, can provide a flexible model for broader utilization of the criminal fine in American sentencing. Working in close collaboration with the bench and bar in Staten Island, New York, and Phoenix, Arizona, Institute planners have designed, and implemented new frameworks for these courts' imposition and administration of monetary sanctions. The approach tested by these courts is an adaptation of the European day-fine system, a concept that permits judges to systematically adjust the fine amount both to the severity of the offender's crime and to his economic circumstances.

Initially developed in Scandinavia in the 1920s and 30s, (and introduced to West Germany during a broad-scale policy shift in the late 1960s and early 1970s when fines were substituted for short terms of incarceration) the day-fine concept has been generally adopted throughout Europe. The day-fine consists of a simple two-step process used in setting fine amounts that embraces the principles of proportionality and equity that are traditional in both European and American sentencing jurisprudence.

First, the court sentences the offender to a certain number of day-fine units (e.g., 15, 60, 120 units;) according to the gravity of the offense, but without regard to his or her means. Then the value of each unit is set at a share of the offender's daily income (hence the name "day fine"), and the total fine amount is determined by simple multiplication. The percentage share of income used in valuing the day-fine units varies across the different countries which use this system, as do methods for accounting for the offender's family responsibilities or capital wealth, but the basic idea assures routine imposition of equitable fine sentences, the punitive impact of which is in proportion to the crime, while the degree of punishment is thereby made equivalent across defendants of differing means.

The advantages of such a system go beyond the issue of increased fairness. A system which expressly tailors the amount of a fine to the offender's ability to pay can, by increasing the efficiency of collection and enforcement efforts, both enhance the credibility and broaden the utility of the fine as a criminal sanction. Moreover, results from a pilot test of the day fine concept in Staten Island show that the benefits to be won from such an undertaking will include an increase in the revenues derived from fines.

*The use of day fines has been spreading across Europe for the past two decades. Day fine systems are now in place in seven European countries, and efforts to establish the practice elsewhere are flourishing. 'Unit-fine' experiments have proved successful in four British Magistrate's Courts; authorization for nation-wide use was included in the Criminal Justice Act which was voted by Parliament in July of 1991.

Vera Institute of Justice

Page 4

The Staten Island Pilot Project

In 1988, after several years of research in Europe and in the U.S., we launched a pilot test of the day fine concept in the Richmond County (Staten Island) Criminal Court. Under a grant from the National Institute of Justice, the reform was introduced simply to replace the tradition "tariff" system of setting fines. Vera's principal objective was simply to discover if Criminal Court judges would be willing to use the day fine as the primary sanction for a broad range of penal law offenses, and to examine the effects of their doing so. We provided the Staten Island judges a fully-elaborated day fine plan, drawn up through working sessions with them, the District Attorney Office, and the local defense bar. We also put into place some new techniques for collection and enforcement of day fines, hoping to increase the court's confidence in the reliability and effectiveness of the fine as an intermediate sanction.

Results of the one-year pilot test proved very encouraging:

- Use of the fine as a sentence in penal law cases remained stable.
- There was an eighteen percent increase in the total dollar amount of fine revenue ordered during the initial pilot year, even though judges were constrained by statutory fine maxima which cause a fair number of day fines to be "capped" below the sum which results from their application of the day fine method. Absent these maxima, the increase in revenue ordered would have reached 79 percent.
- Dispersion of fine amounts away from the relatively few specific dollar values (\$50, \$100, \$250, etc.) at which they tended to cluster in past practice, indicates that judges used the new procedures as the planning workgroup intended — to fine offenders more fairly on the basis of their individual economic circumstances.

The Phoenix FARE Probation Model.

The successful test of day-fine sentences in Staten Island sparked considerable interest among practitioners and policy-makers elsewhere. With support from the State Justice Institute and the National Institute of Corrections, Vera launched a second pilot effort in 1991 to test the utility of the day fine concept in structuring a monetary penalty “package” for use as an intermediate sanction. In Phoenix, Arizona, judges of the Maricopa County Superior Court have begun to sentence criminal offenders to “FARE Probation” (as the sanction is termed) as an alternative to “straight” probation. The day fine concept is used to determine the total amount of an appropriate monetary sanction “package,” which might include a range of financial orders (e.g., a fine, a probation service fee, a victim compensation fund assessment, and restitution) as required by law in an individual case. Judges are imposing the penalty as an intermediate sanction in lieu of probation in cases where the offender is not in need of either a specific specialized service or structured supervision, and where the imposition and collection of an appropriately-scaled monetary penalty can serve as the sole sanction. Preliminary data show that during the first ten months of the pilot judges are using the new sanction in a fairly broad range of cases:

- The offenders sentenced to FARE Supervision had been arraigned on felony charges, and two-thirds were convicted of a felony charge: 47 percent were convicted of theft charges; 29 percent were convicted of drug charges; seven percent were for fraud or forgery charges. Only three percent were convicted of a charge involving violence or threat toward a person.
- percent were first offenders; 69 percent had no adult criminal record.
- percent were employed; 59 percent were self-supporting, while 33 percent had other income from family sources. Most reported fairly low incomes: only 16 percent had a net weekly income of more than \$250.
- The largest monetary penalty amount imposed under a FARE Probation order was \$12,325; the smallest was \$60. The average order was @1,039. Ten months into the pilot, 35 percent of those sentenced to FARE Probation had paid their obligation in full, and 47 percent were fully up-to-date in their installments — given a compliance rate of 82 percent.

The National Demonstration Phase

Once the viability of the day fine concept had been established through small pilots in these urban American court environments, the U.S. Department of Justice’s Bureau of Justice Assistance initiated a broader demonstration of the applicability of the structured day fine concept. Three states — Oregon, Iowa, and Connecticut — were chosen to introduce the day fine technique in selected local courts.

Vera Institute of Justice

Page 6

For the last year, Vera's Department of Court Programs staff have been assisting in creation of this national demonstration of the American day fine concept. Grounded in the knowledge gained in Staten Island and Phoenix the effort is geared toward a broader test of the application of this practical sentencing tool.

Oregon

In Oregon, sentencing practice is structured by a state-wide system of felony sentencing guidelines. The "Structured Fines Project" was established under the aegis of the Oregon Criminal Justice Council (which also serves as Oregon's guidelines commission). A subcommittee was designated by the Council to serve as a planning workgroup. Oregon has pursued a multi-jurisdictional approach — selecting four sites ranging from urban to rural (Coos, Josephine, Malheur, and Marion Counties) to implement demonstration projects. The Oregon demonstration effort is unique as it provides a test for the use of similar fine imposition standards in different settings, and allows for testing of different collection models.

Oregon's sentencing guidelines already incorporate a penalty unit approach to the structuring of certain non-imprisonment sanctions at the felony level, within an overall sentencing structure shaped by a "modified just deserts" philosophy. Each cell on the guidelines "grid" where offenders are eligible for community-based sanctions (i.e., where prison is not the presumptive sentence) contains a designated cap on the number of "custody" units which can be imposed. Through a schedule of exchange rates, a variety of non-imprisonment sanctions including jail and community service) can be utilized to tailor an appropriate probation sentence for a particular offender.

To graft a system of structured fines units into the existing guidelines, the subcommittee decided to take a step forward in structural development by creating, within the "custody unit" grid structure, a narrow range of units within each cell designated available for fine use. Further, they decided to designate a specific "presumptive" number of units as the center of each narrowed range, giving judges an opportunity to "mitigate" or "aggravate" to the limits of the ranges in a particular case.

Misdemeanor cases are not directly governed by the state-wide guidelines. Following the implementation of the felony sentencing guidelines, the Council had drafted and recommended model misdemeanor guidelines to the Legislature. The planners decided to use these draft guidelines to give a conceptual framework for integration of misdemeanor day fines into the felony penalty unit scale. The draft provides a ranking of misdemeanor offenses within four penalty unit ranges, with offenses involving assaultive or otherwise dangerous conduct (including drunk driving) placed in the highest category.

Vera Institute of Justice

Page 7

The new sanctioning system is available for use in two modes:

- As a “stand-alone” economic sanction in appropriate cases where supervised probation (and/or other sentence conditions) are not warranted; or
- As a punitive component of a probation “package.”

Where a judge combines a structured day fine with other sentence components, the number of fine units is to be reduced to reflect the punitive value of the total sanction package.

Within each of the sites, planning committees were established to develop a local implementation plan. In Marion County (a jurisdiction of more than 250,000 which includes the state capitol, Salem) an increasing volume of felony cases sentenced to the local jail as a condition of probation has strained both jail and probation resources to the extent that misdemeanor offenders are being pushed out of the jail and the courts with minimal, if any, community supervision. The local planning team determined that structured day fines would be piloted for misdemeanors only, with the goal of providing the court with a more appropriate economic sanction in these cases.

Shortly after its implementation, the Malheur County project was expanded to encompass the neighboring Harney County court. Structured day fines are being imposed in both felony and misdemeanor cases in these two small, rural counties.

The Oregon effort has flourished since the project’s inception. In Marion County 755 cases received a day fine sentence between July, 1992 and January, 1993. Fine amounts have more than doubled in that jurisdiction since the reform was introduced. Well over 300 day fines have been imposed in Malheur County since July 1992.

Des Moines

In Iowa, the state Criminal and Juvenile Justice Planning Division selected the 5th Judicial District to host the demonstration, and the Polk County Attorney’s Office in Des Moines undertook sponsorship of the project. Iowa has not adopted the guidelines approach to sentencing, so a unit penalty structure was devised by the planners to encompass a broad range of offenses (from class C felonies to low-level misdemeanors). The court’s planning group has set a goal of completely replacing tariff fines with structured day fines for class D felonies and misdemeanors.

The pilot site began operations in January, 1992. At the end of the first year of operations, 1330 offenders had been sentenced under the project, with fines imposed totaling \$471,123. New cases are being sentenced to the project at a rate of approximately 150 per month.

Vera Institute of Justice

Page 8

In May, 1992, the Iowa Legislature passed, and the Governor signed into law, legislation relating to the structured day fine demonstration project. In order to allow for a full test of the day fine concept, the legislation permitted the pilot site to suspend all statutorily mandated minimum fines, and allowed for the assessment of “user fees” for day fine cases. The legislation also authorized the distribution of a portion of the funds generated under the project to the pilot site to continue operations after the grant funds had been expended. This legislation is scheduled to expire on June 30, 1993. One of the goals of the program is to make the pilot site financially self-sustaining with funds generated by the program. To that end, new structured fines legislation has been proposed, but the fate of that legislation is unknown at this time.

CJJP staff report that a comparison of collection results for the fines which had been assessed at the pilot site during 1991 with collection outcomes for the day fines imposed during the first six months of the project’s operations shows that the demonstration project collection effort has been almost twice as successful both in terms of the percentage of cases paid in full, and the percentage of dollars collected.

Bridgeport

Under sponsorship of the Connecticut Judicial Department’s Office of Alternative Sanctions, the “GA-2” court in Bridgeport is hosting a demonstration project to replace tariff fines with day fines. GA-2 is a mixed-jurisdiction court handling all but the most serious felonies along with misdemeanor cases. A planning workgroup of both state-level and local court officials was established to design the Bridgeport day fine system. The committee decided to forgo development of a fully specific unit scale (where each offense is scaled with a presumptive number of units), substituting, instead, a “grid” system which established a designated cap on the number of units to be imposed in each offense class. They determined that cases should be referred by the court to a day fines officer who would carefully investigate each defendant’s economic circumstances before recommending that a day fine be imposed.

Prior to the demonstration project in the Bridgeport court, the fine sanction had been withheld from offenders who could not afford to pay their obligation in full at sentencing. Under the new system, installment payment plans are available to all offenders who need this service, thus allowing for broader application of the sanction.

The Bridgeport day fine program took its first client on May 19, 1992. OAS staff report that referrals increased at a steady rate, and by mid-April, 1993, the program had received 868 referrals from the bench and bar. Of these, 477 resulted in day fine sentences. 213 of these day fines were paid in full on the sentence date, and 264 received installment payment plans from the day fine office.

Vera Institute of Justice

Page 9

As the experiment progressed, it became apparent that the original unit “grid” schedule was too restrictive for some classes of offenses. Accordingly, the committee met to discuss expanding the unit ranges. Legislation was passed to facilitate this refinement. Work is has now been undertaken to expand the type of cases referred to the program, in terms of the offense categories, and the types of offenses within existing categories.

Conclusion

A National Institute of Justice evaluation of the Phoenix pilot and the Bureau of Justice Assistance demonstration projects has been undertaken by research staff at the RAND Corporation. When complete, this comprehensive study will provide a wealth of information regarding the impact of day fines: on the offender; on sentencing practices; and on the revenues derived from economic sanctions.

Using the limited data now available, conclusions regarding the overall costs and benefits of the reform would be speculative. But these demonstration efforts are providing very encouraging evidence that the day fine concept can serve as a useful and adaptable tool for enhancing the role of economic sanctions in sentencing practice. The day fine technique has now been successfully adapted to an array of highly diverse courts across the country without encountering any serious opposition or implementation difficulties. Judges have found that the mechanics of setting a day fine are simple, and that the necessary offender income information can be obtained without disrupting the rapid flow of cases through the court system. There is evidence that this variable-rate, means-based system results in fairer punishment of offenders. When coupled with simple, businesslike routines for collection, it has the potential to increase the revenues collected.

Although widely used in American sentencing practice, fines and other monetary penalties have been viewed with considerable skepticism by many court officials and criminal justice professionals. The traditional system of fixed-sum “tariff” fines has seriously hampered judges’ efforts to set fines in amounts which will adequately punish and deter criminal offenders whatever their financial circumstances. And many have doubted the ability of the courts to collect and enforce economic sanctions. Yet practitioners involved in the day fines demonstration projects report that as they have gained experience with the new system, they have gained increased confidence that economic sanctions can be effective and fair.

As the day fine demonstration projects were being initiated, an array of program planning tools were developed which can be obtained by contacting the technical assistance staff at the Vera Institute of Justice:

- A day fines **program planning guide** - a comprehensive implementation manual for any localities interested in the process of introducing the day fine as an intermediate sanction, based upon the experience gained to date.

Vera Institute of Justice

Page 10

- A **bibliography** of documents available from an archive located at the Vera Institute of materials on fines and day fines which includes research reports, legal and theoretical discussions, descriptions of fining systems, and reports on relevant technical and procedural matters.
- A **survey of literature** pertaining to fines and day fines which includes a survey of models for fine administration and the methods used in collection and enforcement.
- A **planning data collection instrument** designed to assist interested jurisdictions to “map” their current fining practices.
- A **program planning checklist** designed to guide implementation efforts,
- A **training workshop outline** with a companion set of overhead projection transparencies.