

THE PRACTICES AND ATTITUDES OF TRIAL COURT JUDGES
REGARDING FINES AS A CRIMINAL SANCTION

By

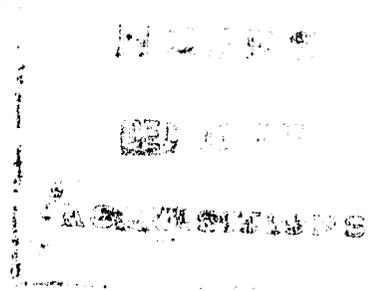
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EXECUTIVE SUMMARY

Prepared for the National Institute of Justice
U. S. Department of Justice

March 1987

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This report is based on a research project supported by Grant Number 84-IJ-CX-0012, awarded to the University of Connecticut by the National Institute of Justice, U.S. Department 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 the Institute for Court Management of the National Center for State Courts. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

ABSTRACT

This Executive Summary outlines the main findings from a questionnaire survey designed to elicit information on the practices and attitudes of state trial court judges with respect to the use of fines as a criminal sanction. Responses to the mail questionnaire were received from 1,261 judges, or approximately 10 percent of all full-time judges in the United States who handled felony or criminal misdemeanor cases in the two years preceding the survey.

The study is consistent with other recent research in finding that fines are used extensively as a criminal sanction. However, it is clear from the survey that fines are most commonly used in combination with other sanctions. At present, judges do not seem to regard the fine as a viable alternative to incarceration. Fines are rarely used as the sole sanction, even in limited jurisdiction courts, for offenses that are relatively serious or for offenders who have prior criminal records. In these types of cases, judges are most likely to impose a jail or prison term; when a fine is imposed, it is an add-on to the basic sentence of incarceration.

Fine amounts tend to be relatively low for most offenses, in both general and limited jurisdiction courts. However, other monetary sanctions (e.g., court costs, restitution, probation fees) are commonly imposed concurrently with a fine, thus making the total amount owed by the offender substantially greater than the amount of the fine. Responses to the survey indicate that judges often lack information that would enable them to impose monetary sanctions that are realistic and enforceable in light of the economic circumstances of the offender. This is particularly true in limited jurisdiction courts, where fines and other monetary sanctions are most frequently used, and raises concerns about the adequacy of the sentencing process in these situations.

At an abstract level, judges tend to be positively disposed toward the use of fines, but their attitudes are of low intensity and do not appear to be closely linked to their actual sentencing practices. Their generally favorable attitudes toward fines seem inconsistent with sentencing practices that involve use of fines mainly as an adjunct to sentences of incarceration or probation. However, the existence of these basically favorable attitudes suggests that if fine imposition can be shown to work effectively, it may be possible to use fines more broadly as a sentencing alternative.

The collection and enforcement of fines is seen as a problem by most judges. However, the judges seem to have little knowledge of fines administration procedures followed in their own courts. Many judges appear to be unaware of practices that could be used by courts to improve collection and enforcement, such as requiring payment within a short time period and reacting swiftly to nonpayment through direct contact by telephone and mail.

Judges are clearly concerned about whether and how to use the fine as a sanction for poor offenders, and there is considerable disagreement about the feasibility of imposing fines on such persons. Day-fine systems, which have been employed successfully in several European countries, received

surprisingly wide support from survey respondents. Based on a Scandinavian idea that has been adapted successfully in West Germany, the day-fine system enables fines to be set at amounts which simultaneously take account of both the gravity of the offense and the financial resources of the offender. Day-fines have the potential for dealing with the problem of the economic disparity of offenders and with the need of judges to be able to set fine amounts at levels that would have a punishment impact on offenders.

The Executive Summary presents a number of recommendations aimed at improving the effectiveness of fines as a criminal sanction. It also recommends that research be conducted to test the feasibility of the day-fine system, study behavior of fined offenders, and develop models of effective collection and enforcement systems.

ACKNOWLEDGMENTS

Conducting a national survey and reporting the results requires the assistance of countless individuals. It is appropriate to begin by acknowledging a great debt of gratitude to the more than 1300 judges who each spent considerable time completing a rather lengthy questionnaire. We hope that publication of this report will provide some partial compensation for their efforts.

In getting the survey underway, we received helpful support from Judge Robert C. Broomfield, then chairman of the National Conference of State Trial Judges, and Judge Ernest S. Hayeck, then chairman of the National Conference of Special Court Judges, both of whom wrote letters endorsing the study and asking members of the bench to complete the questionnaire. The National Judicial College, particularly Steve Davidek and Ron Rose, helped us develop the list of judges from which the sample was drawn. Staff members in state court administrators' offices in a number of states furnished updated listings of judges within their respective states. Donald Ferree, Institute for Social Inquiry, the University of Connecticut, provided technical advice on sampling problems and on questionnaire design.

Two colleagues who have conducted research and have written extensively on the subject of fines as criminal sanctions--Dr. Sally Hillsman, Director of Research at the Vera Institute of Justice, and Professor Robert Gillespie of the University of Illinois--gave valuable assistance to us at all stages of the project. Their suggestions contributed greatly to the design of the questionnaire, and they provided insightful comments and thoughtful editorial suggestions on successive drafts of both the main report and this Executive Summary.

We received very helpful comments on drafts of the report from Fred Heintzelman of the National Institute of Justice; David Tevelin, then Deputy General Counsel of the United States Sentencing Commission and now Director of the State Justice Institute; Chief Judge Clifton Flowers of the Denver, Colorado, District Court; Edward B. McConnell and Geoff Gallas of the National Center for State Courts; and Professor Floyd Feeney of the Law School at the University of California, Davis. At the National Institute of Justice, Bernard Auchter, the project monitor, encouraged our efforts and provided much helpful advice from the inception of the project through to its conclusion. An able support staff is indispensable to a project such as this, and we were fortunate to have the expert help of Ann Van Aman, who assisted in the coding of the data, and of Helen Huff, Eleanor Wilcox, Ephanie Blair, Valerie Jackson, Dawn Mayer, and Ruth Longwell in various stages of the project. Particular thanks goes to Valerie Jackson and Ruth Longwell of the ICM staff, who painstakingly typed successive drafts of the manuscript.

To all of these people we express our sincere thanks. The project could not have been completed without their help.

Storrs, Connecticut, and Denver, Colorado
March 1987

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TABLE OF CONTENTS

	Page
Abstract	iii
Acknowledgments	v
I. Introduction	1
II. Utilization of Fines as a Criminal Sanction	6
A. Frequency of Fine Use	6
B. Use of Fines Alone and in Combination with Other Sanctions	8
C. Fine Amounts	11
D. Availability and Use of Information in the Sentencing Process	13
III. Judges Attitudes Toward Fines	16
IV. Collection and Enforcement of Fines	20
A. The Judiciary and Fines Administration	20
B. The First Stage of Collection and Enforcement: Setting the Terms for Payment	22
C. Collection Procedures	24
D. Perceived Reasons for Non-Collection	26
V. Fines and Fairness	28
A. Poverty and Sentencing Options	28
B. The Day-Fine Concept: Origins and Current Usage	31
C. Could a Day-Fine System Work in American Courts	33
VI. Policy Implications of the Study	35
A. Recommendations for More Effective Use of the Fine as a Sanction	37
B. Directions for Future Research	41
Appendix (Tables)	43

THE PRACTICES AND ATTITUDES OF TRIAL COURT
JUDGES REGARDING FINES AS A CRIMINAL SANCTION

EXECUTIVE SUMMARY

I. Introduction

The fine--monetary payment by an offender as a sanction for violation of the criminal law--is one of the oldest means of promoting order with justice. The Greeks, Romans, and Germans are among the peoples who used fines as a basic means of punishment in ancient times. In England by the year 1200 a system of wergeld, or payment of money as compensation for a wrong, had been developed as a means of dealing with some types of offenses against individuals and society. In the centuries that followed, as crimes came to be viewed increasingly as offenses against society, fines became a primary sanction imposed on offenders in both civil and common law systems. However, in the United States, as rehabilitation became a primary concern during the late nineteenth century, sentencing theory and legislative policy developed an emphasis upon two primary non-monetary sanctions--incarceration and probation--for all but very minor criminal offenses.¹

During the past ten to fifteen years there have been major changes in sentencing laws and practices. There has been a shift away from rehabili-

1. Todd R. Clear and George F. Cole, American Corrections (Monterrey, CA: Brooks/Cole Publishing Co., 1986), ch. 3. For more on the history of the fine and other sanctions, see also George Rusche and Otto Kirchheimer, Punishment and Social Structure (New York: Russell & Russell, 1968); Antonio Beristain, "Penal and Administrative Fines in Relation to Prison Sentence," International Criminal Justice Review, No. 302 and No. 303 (1976), pp. 253-254.

tation as the primary goal of the criminal sanction toward a greater emphasis on incapacitation, deterrence, and deserved punishment. To implement these objectives many states have introduced sentencing guidelines and mandatory minimum prison terms, abolished indeterminate sentencing, and sharply limited discretionary release on parole. One result of these changes is that prison and jail populations have risen to record levels. At the same time, probation caseloads have greatly expanded. Even with increased use of a wide array of both old and new alternative sanctions (such as community service, suspended jail or prison sentences, conditional discharges and restitution, as well as fines), incarceration and probation remain the predominant sanctions used by American judges for most non-trivial offenses. Given the high costs of incarceration and probation, there is a clear need to make wider and more creative use of alternatives to these forms of the criminal sanction.

The fine, as one alternative, has begun to receive increased attention in recent years. Proponents of wide use of the fine as a criminal sanction argue that it has a number of positive features:

- o It can be adjusted to a level appropriate to the individual circumstances of the offender and to the seriousness of the offense.
- o It is community based and thus does not destroy the essential economic and social ties of the offender.
- o It is relatively inexpensive to administer, normally relying on existing governmental agencies and procedures already in place.
- o It can be financially self-sustaining and, unlike incarceration and probation, can produce revenue.
- o It can be an effective punishment and deterrent for offenders who have committed crimes of varying levels of severity. For some offenders it may also contribute to rehabilitation.

Despite these possible benefits, there are questions concerning the extent to which fines can be used as an alternative to incarceration and supervised probation. Critics of the fine argue that:

- o By definition, it cannot achieve the goal of incapacitation and is, therefore, an inappropriate sanction for offenders who pose a serious risk to community safety.
- o It is unjust because it is easy for the rich person to pay but not easy for the poor person who has committed the same offense.
- o Fines are difficult to collect and their use places additional burdens on the administration of trial courts.
- o It is not possible to fine indigents because fines cannot be collected from them.
- o Some offenders may commit additional crimes to pay their fines.

These conflicting views reflect differing perceptions both as to how fines actually work as a sanction at the present time and as to their potential utility in the future. This study has been aimed at developing knowledge about how American trial court judges actually use fines in sentencing convicted offenders and about their attitudes toward fines.

Other recent research--most notably an exploratory study of fine use conducted jointly by the Vera Institute of Justice and the Institute for Court Management²--has provided a general overview of U.S. law and practice with respect to fining.³ However, there has been no previous attempt to examine

2. Sally T. Hillsman, Joyce L. Sichel, and Barry Mahoney, Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction (Washington, D.C.: National Institute of Justice, 1984).

3. Studies of specific U.S. courts that focus on the use of fines as a sanction include Malcolm M. Feeley, The Process is the Punishment: Handling Cases in a Lower Criminal Court (New York: Russell Sage Foundation, 1979); John Paul Ryan, "Adjudication and Sentencing in a Misdemeanor Court: The Outcome is the Punishment," Law and Society Review, 15 (1980): 79; Anthony J. Ragona and John Paul Ryan, "Misdemeanor Courts and the Choice of Sanctions: A Comparative View," Justice System Journal 8 (Summer 1983): 199; Ida Zamist, "Report on New York City Empirical Research on Fines," Working Paper #7, Fines in Sentencing (New York: Vera Institute of Justice, 1982).

systematically the practices and attitudes of the central actor in the sentencing process: the trial judge.

To develop information about judges' sentencing practices and views toward fines, the University of Connecticut's Center for the Study of Public Policy (CSPP) and the Institute for Court Management of the National Center for State Courts (ICM), conducted a survey of a national sample of judges in general and limited jurisdiction courts. A questionnaire, mailed to 5,000 judges, asked them about the composition of their caseloads, their sentencing practices, enforcement and collection procedures in their courts, their attitudes toward the use of fines, and their views concerning the desirability and feasibility of a day-fine system. Responses to the questionnaire were received from 1,261 judges--718 from general jurisdiction courts and 543 from limited jurisdiction courts. Key findings from the survey include the following:

1. Although fines are used extensively in U.S. courts, they are most commonly used in combination with other sanctions. At present, judges do not regard the fine alone as a meaningful alternative to incarceration or probation. Rather than being used as an alternative, fines are more likely to be an add-on to the central punishment imposed, such as probation or a jail/prison term.
2. The choice of criminal sanctions is characterized by a striking lack of information about individual defendants that would enable judges to impose monetary sanctions that are realistic and enforceable in light of the economic circumstances of the offender.
3. At an abstract level, judges tend to be favorably disposed toward the use of fines as a criminal sanction, and to reject many of the presumed negative aspects. However, their attitudes toward fines are not crystallized and are not strongly linked to utilization patterns.
4. Most judges believe that their courts have problems in collecting and enforcing fines and other monetary sanctions. However, they appear to have little knowledge of the actual fines administration procedures followed in their courts and to be unaware of practices that could be used to improve the effectiveness of collection and enforcement.

5. Day-fine systems, designed to enable judges to impose fines that simultaneously take account the offender's ability to pay as well as the seriousness of the offense, received surprisingly wide support from judges. There appears to be some potential for developing day-fine systems in U.S. trial courts. Successful introduction of such systems will require mechanisms that (a) regularly provide basic information on offender economic circumstances--as well as prior record and current offense--at the time of sentencing; and (b) take account of the full range of monetary sanctions that may be used.

This study has been conducted as a joint project of the University of Connecticut's Center for the Study of Public Policy (CSPP) and the Institute for Court Management of the National Center for State Courts (ICM). The Executive Summary discusses the central findings from the analysis of the survey data and presents a set of policy recommendations based on this and other recent research. More detailed discussion of the findings and recommendations may be found in the separately published Final Report.⁴

4. George F. Cole, Barry Mahoney, Marlene Thornton, and Roger A. Hanson, The Practices and Attitudes of Trial Court Judges Regarding Fines as a Criminal Sanction (Williamsburg, VA: National Center for State Courts, 1987). The full report includes a copy of the survey questionnaire and a description of the sampling methodology, as well as more tables and more extensive discussion of the data.

II. Utilization of Fines as a Criminal Sanction

A. Frequency of Fine Use

Although the fine has received little attention from scholars and policy-makers through most of the twentieth century, recent studies have raised the possibility that judges in fact make rather wide use of fines as criminal sanctions. The present survey confirms this wide usage.

Judges were asked about the extent to which they used fines as a sanction in cases other than traffic offenses (including DWI/DUI offenses), ordinance violations or juvenile delinquency matters. The responses indicate that limited jurisdiction judges on the average impose either a fine alone or a fine in tandem with other sanctions in about 86 percent of their cases. In general jurisdiction courts a fine alone or in combination with other sanctions is imposed in almost 42 percent of the cases. However, as seen in Table I,* both averages drop sharply when we turn to the percentage of judges who impose a fine without other sanctions: the mean for limited jurisdiction courts is 36 percent; for general jurisdiction courts it is 8 percent.

The low rates of fine-alone usage and the extensive use of fines in combination with other sanctions is striking. These findings are major refinements of prior research. Of particular note, the relatively low rate of fine-alone use at both jurisdictional levels contrasts sharply with the European experience. There the fine is the sole punishment imposed on upward of three-quarters of all offenders, including many repeat offenders

*All of the tables referred to in this Executive Summary may be found in the Appendix.

convicted of assault and other non-trivial offenses.⁵ Although precise data on fine-alone usage in Europe are not readily available (and comparisons are further complicated by generic use of the term "fine" to include court costs and other economic sanctions such as victim compensation orders), it appears that fines alone are used much more widely in Europe than in the U.S. American judges seem willing to use fines as part of a sentencing "package" but reluctant to use them to the exclusion of other sanctions, especially in cases that are not trivial and do not involve first offenders.

Judges were asked to indicate how likely they are to impose a fine, either alone or in combination with another sanction, for twelve selected offenses of varying types and degrees of seriousness. Respondents were initially asked to indicate the likelihood that they would impose a fine if the hypothetical guilty defendant were an adult first-time offender employed at a wage of \$160 per week. As Table II indicates, frequency of fine use in these circumstances varies both by offense and by the type of court in which the responding judge serves. In burglary cases, for example, 27 percent of the general jurisdiction court judges would use a fine in half or more of the cases compared to 46 percent of the limited jurisdiction court judges. With respect to all offenses, judges in limited jurisdiction courts indicated a greater willingness to use a fine than did their counterparts in trial courts of general jurisdiction.

These responses indicate that many judges are prepared to use fines for a wide range of offenses, some of which are definitely not "trivial."

5. Silvia S. G. Casale and Sally T. Hillsman, The Enforcement of Fines as Criminal Sanctions: The English Experience and Its Relevance to American Practice (New York and London: Vera Institute of Justice, 1986), pp. 39-58; see also James A. Carter and George F. Cole, "The Use of Fines in England: Could the Idea Work Here?" Judicature 64 (October 1979): 154-161.

The responses do not indicate what additional sanctions might be used in combination with a fine or how a defendant's employment status and prior record might affect fine usage, but responses to other survey questions help shed light on these issues.

B. Use of Fines Alone and in Combination with Other Sanctions

The survey sought to develop a picture of utilization patterns through several questions. One asked respondents to indicate how frequently each of several types of sanctions was imposed concurrently with a fine. The question did not provide any further specification about types of offense or circumstances of the offense; it was intended simply to get a rough overall sense of fine use as part of sentencing packages.

As Table III shows, judges in general jurisdiction courts indicated that they are more likely to impose each of the other possible sanctions in combination with a fine more frequently than are lower court judges. Probation, court costs, and restitution are the sanctions most commonly used together with a fine in both types of courts. As might be expected, a jail or prison term is the sanction least likely to be imposed in combination with a fine. However, the frequency of this combination nevertheless seems high: 42 percent of the general and 30 percent of the limited jurisdiction judges indicated they would use the two together in half or more of their cases. A suspended jail or prison term is used in combination with a fine with much greater frequency in both types of courts.

The extent to which fines are used alone and in combination with other sanctions was illuminated further by responses to three hypothetical cases. These cases, each of which presented a fact situation that included information on the offender's prior record and economic circumstances, also provide

a basis for beginning to examine the impact of these factors on the choice of sanctions.

Case A involved the theft of a \$40 pair of slacks from a department store by a twenty-six-year old male. The defendant was described as a janitor earning \$160 per week who had a prior record that included one conviction on a bad check charge and two convictions for larceny, the most recent of which (two years earlier) had resulted in probation for one year. It is the kind of case that, depending on prosecutorial charging policy, could end up before either a general or a limited jurisdiction court judge.

A very high proportion of judges in both types of court indicated that they would impose a jail or prison term in this case, either as the only sanction or in combination with other types of sentences (Table IV). Only a very small percentage of judges in either type of court would impose a fine-alone sentence. However, 60 percent of the limited jurisdiction court judges indicated that they would impose a fine as part of the overall sentence package; only 40 percent of the general jurisdiction court judges said that they would do so.

There are two striking features about Table IV. First, it indicates a sharp drop-off in the proportion of judges prepared to use fines in cases involving recidivist offenders. (Compare the data in this table to the data in Table II indicating that 68 percent of general jurisdiction court judges and 91 percent of limited jurisdiction court judges would be likely to use a fine, either alone or in combination, for an adult first offender earning \$160 per week who was convicted of shoplifting.) Second, it reflects continued reliance--by judges in all types of courts--upon incarceration as the primary sanction for recidivist offenders convicted of property offenses such as theft. For this class of offenders, who make up a significant

portion of the criminal caseload in many courts, fines are clearly not thought of as an alternative to incarceration even though they may be used as a component of a sentencing package that includes a jail or prison term. The contrast with European practice in this respect is striking.⁶

Responses to two other hypothetical cases present some interesting comparisons to the sentencing patterns in the recidivist thief case. In Case B, the defendant was a middle-class professional charged with embezzling \$25,000 from his employer. He was described as a forty-eight-year old married man with two children aged sixteen and twenty, who was the accountant of the firm. His only prior conviction was for driving under the influence. As Table V shows, the proportion of judges using jail or prison was markedly lower than in the shoplifting case (49 percent of general jurisdiction judges, 53 percent of limited jurisdiction judges), and limited jurisdiction court judges were again more likely to use the fine in combination with other sanctions. General jurisdiction judges, on the other hand, were more likely to use probation and restitution as part of a combination sentence. The fine alone is chosen in only 1 percent of the cases by both groups.

A third hypothetical case, Case C, involved a twenty-four-year old male laborer earning \$200 per week who pled guilty to a charge of assault arising from an altercation with a neighbor over a parking space. He was described as having had three prior convictions, one for a bad check and two for driving under the influence. Again, judges from both general and limited jurisdiction courts show a high degree of consistency in their basic "in-out" decision, with 54 percent of the former and 53 percent of the latter

6. Research in England, for example, indicates that fines are used extensively as the primary sanction for offenders with prior records who are convicted of theft. See Casale and Hillsman, The Enforcement of Fines as a Criminal Sanction, pp. 39-51.

choosing incarceration as at least one element of the sanction. Fines, in combination with other sanctions, would be used frequently by judges in both types of courts (34 percent, general; 36 percent, limited), but only rarely as the sole sanction (Table VI).

Looking at the responses to the three hypothetical cases in light of data from other questions asking about frequency of fine use alone and in combination, several themes begin to emerge. First, it is clear that although fines are used very frequently, they are most commonly used in combination with other sanctions. Second, limited jurisdiction court judges are consistently more likely to include the fine as a part of the sentence than are general jurisdiction court judges in imposing sentences for the same offense. Third, the use of the fine as a sole sanction, which is more prevalent among limited than general jurisdiction court judges, seems most likely to occur in cases involving first offenders convicted of relatively minor offenses. When the offender has a prior record and the offense is even moderately serious, very few American judges, in either general or limited jurisdiction courts, are prepared to use the fine alone as a sentence. Fourth, rather than being used as a real alternative to incarceration (or even to probation) in such cases, it appears that fines are much more likely to be used as an "add-on" to other sanctions, including a jail or prison term.

C. Fine Amounts

Most state penal codes set maximum fine amounts for particular offenses or classes of offenses. Within these boundaries judges have wide discretion to set the amount of the fine, and they may also impose other monetary sanctions as part of an overall sentence. In addition to indicating the frequency with which they would be likely to impose a fine for certain offenses

(Table II, supra), judges were also asked to specify the amount of the fine they would impose. Again, the sanction was to be applied against a hypothetical adult, first-time offender, employed and earning \$160 a week. As shown in Table VII the mean and median amounts imposed for relatively serious offenses (e.g., drug sale, fraud, burglary, embezzlement) are higher in general jurisdiction than in limited jurisdiction courts. For the less serious offenses, however, the mean and median fine amounts are relatively low (\$75-150) in both types of courts. This is consistent with most of the prior research on this subject, although references to means and medians tend to mask the fact that in some courts fine amounts can run fairly high even for relatively minor offenses.

It is important to realize that the amount of the fine may be only part of the monetary penalty imposed on a defendant. Probation supervision fees, court costs, payment for alcohol or drug treatment programs, restitution, victim compensation, and "directed" contributions to governmental or private social agencies are now part of the sentencing menu. At least thirty-one states have legislation explicitly authorizing the imposition of court costs. Surcharges on fines are authorized in eleven states and "penalty assessments" may be levied on convicted offenders in seven states.⁷ The amounts of these additional monetary sanctions often add up to a considerable sum. One Texas judge, explaining why he did not use fines more extensively, commented, "After paying court costs (\$56), Crime Victim Compensation Fund fee (\$10), public defender fee (\$200 and up), probation supervision fee (\$100-500), the defendant will be sufficiently punished."

7. Hillsman, Sichel, and Mahoney, Fines in Sentencing, pp. 47-53. The plethora of monetary sanctions also creates a definitional problem. Particularly at the operational level, it may not always be clear whether or how a particular monetary sanction should be distinguished from a fine.

D. Availability and Use of Information in the Sentencing Process

Judges require information about offenders and their criminal records if they are going to carry out their sentencing responsibilities. In the survey, respondents were asked to indicate the availability of information about the background of the offender (including prior record), the offender's economic situation, and the circumstances of the offense. They were also asked to indicate the usefulness of different types of information in fashioning a sentence. Table VIII shows that judges in both general and limited jurisdiction courts are more likely to have information about the offender's criminal record and about the circumstances of the offense than they are about the offender's family status, income, employment, and assets.

General jurisdiction court judges are considerably more likely to have information about the offender and the circumstances of the offense available to them at the time of sentence than are limited jurisdiction court judges. Indeed, the extent to which limited jurisdiction court judges appear to lack such information in a significant portion of their cases raises serious questions about the sentencing process in these courts. For example, while 64 percent of the limited jurisdiction judges say that they have information about the offender's employment status in most or all cases, only 41 percent say that they have information on the offender's income, and only 25 percent have information on the offender's assets in most or all cases. In the absence of information on these factors, it is difficult to see how judges can effectively shape a viable economic sanction that could punish or deter yet still be within the capacity of the offender to meet.

How helpful are the different pieces of information about the offender and the offense that the judge may have available at the time of sentence? When specific types of information are available, how are they used? We

would expect that if judges are going to shape sentences to fit individual cases they would find information about the offense, criminal record, and the offender's economic and employment situation to be helpful in tailoring the sentence. In both limited and general jurisdiction courts, judges say it is the criminal record and the circumstances of the offense that are most frequently helpful in determining the sentence (Table IX). Knowledge of the assets and income of the offender is regarded as the least useful information. This seems somewhat anomalous in view of the frequency with which fines and other monetary sanctions are imposed, but it may help explain the low amounts imposed by many judges for relatively less serious offenses. Use of a tariff system--a set amount for specific minor offenses--is common in some jurisdictions and a judge using a tariff system will typically not inquire about an offender's economic situation. The unavailability of information on offenders' economic circumstances may also reflect the lack of consideration given to the fine as a primary sanction for repeat offenders convicted of non-trivial offenses.

The fact that information about the criminal record of the offender and the circumstances of the crime are the data most available and said to be most frequently useful emphasizes the importance of these factors determining criminal sentences. The judges' lesser knowledge about an offender's financial status and the general perception that this information, even when available, is of limited utility for sentencing, lends further credence to the belief that fines are not regarded as a primary sanction. If policies emphasizing fines as a real alternative to incarceration and probation are to be developed, it will be important to encourage judges to obtain offender-related information and to increase the weight given to such information in deciding upon the appropriateness and amount of a fine.

When information on the offender's prior record and economic circumstances is available and brought to the attention of the judge, it does appear to affect the likelihood the judges imposing a fine. A rough indication of the direction of sentencing decisions in light of changing circumstances can be seen in Table X, which reflects responses to a question asking judges to say how four variants on a basic case (i.e., the adult first offender earning \$160 per week) would affect the likelihood that they would impose a fine. The characteristics designated reflected the offender's criminal record, age, employment status, and level of income. As shown in Table X, judges in general jurisdiction courts said that they were less likely to impose a fine if the guilty person had two prior convictions, while limited jurisdiction judges said that they were more likely to impose a fine. A majority of judges in both types of courts would be less likely to impose a fine if the offender were unemployed or on public assistance, but this tendency was much more pronounced among general jurisdiction court judges.

By the same token, the affluence of a defendant was especially likely to influence general jurisdiction court judges to use a fine. Seventy-three percent of them, compared to 55 percent of the limited jurisdiction court judges, said that they would be more likely to impose a fine if the defendant owned a house and two cars and had an annual salary of \$35,000. Clearly, the availability of information on these factors can influence sentencing decisions. These data, together with responses to the hypothetical cases discussed previously, indicate that economic class is an important variable in sentencing practice. At least for certain kinds of offenses, it seems to be true that fines are more likely to be used in cases where the offender is at least moderately affluent.

Overall, the data on availability and use of information tend to reinforce findings from other parts of the study with respect to the role of fines as a sanction. They indicate that, except for minor offenses, judges do not view fines as a primary sanction, are reluctant to use them to the exclusion of other sanctions, often do not have or seek information that would enable them to use fines more creatively, and probably are doubtful that sentencing goals can be achieved solely through the use of a fine in cases that are not trivial and do not involve first offenders.

III. Judges Attitudes Toward Fines

The attitudes of judges have been shown to be an important influence on sentencing.⁸ Attitudes often undergird behavior. An understanding of the attitudes of judges toward fines should therefore be valuable in developing a picture of the current status of fines as a sanction and a sense of their potential as an alternative to incarceration and probation.

In this exploratory effort to develop knowledge about judicial attitudes toward the use of fines, respondents were asked the extent to which they agreed or disagreed with statements embodying eleven frequently cited advantages or disadvantages of fines. The research sought to ascertain both the direction and the degree of affect of responses to statements which deal with attitudes regarding (a) fines and the criminal sanction; (b) fines and the poor; and (c) fines and the judicial system.

At an abstract level, there appears to be considerable consensus among judges regarding many of the supposed advantages and disadvantages of fines.

8. See, e.g., John Hogarth, Sentencing as a Human Process (Toronto: University of Toronto Press, 1971).

Overall, limited jurisdiction court judges tend to take a more favorable view of fines than do general jurisdiction court judges, but among respondents in both types of courts there was a high degree of agreement with eight of the eleven attitudinal statements (Table XI). There was widespread agreement with four statements citing supposed advantages: fines are relatively easy to administer, using them helps prevent overcrowding in correctional facilities, they can be adjusted to fit the severity of the offense and the offender's income, and they help reimburse the cost of maintaining the criminal justice system. A majority also registered disagreement with three statements suggesting negative aspects of the fine, rejecting assertions that statutes prevent imposition of high fines, that U.S. Supreme Court decisions make it impossible to fine poor people, and that fines do not have rehabilitative capacity. A clear majority also agreed with the statements that "fines ordinarily have little impact on the affluent offender."

For two statements, there was a high percentage of judges who were not sure how they felt. A significant percentage of judges at both levels of court (41 percent, general; 35 percent, limited) were unsure as to their opinion on the statement "Many offenders will commit additional crimes to pay their fines." A second statement, "Expanding the use of fines would give the court the appearance of being overly concerned with producing revenue," registered a "not sure" by 27 percent of the judges at both levels. The responses to these statements indicate that a significant proportion of judges had little information as to the behavior of offenders or about the general public's attitudes toward greater use of fines. Alternatively, some judges may be cross-pressured, seeing both positive and negative dimensions of both of these issues.

The issue of fining poor people provoked the greatest amount of dis-

agreement among judges in the two levels of courts. A majority of the general jurisdiction judges (62 percent) agreed or agreed strongly with the statement "There is no effective way to enforce fines against poor people." A smaller proportion of the limited jurisdiction judges (42 percent) held this view; 50 percent disagreed. Overall, general jurisdiction judges are more likely to be dealing with offenders convicted of relatively serious offenses, and their sense of a need for relatively severe punishments may be a factor affecting their views on this issue. There is no consensus on this issue, but it may be significant for future policy development that a clear majority of the lower court judges--who are the most frequent users of fines--do not regard offender poverty as a bar to effective enforcement.

What are the connections among such factors as court structure, sentencing objectives, and attitudes as they relate to the propensity of trial court judges to use fines rather than incarceration? To what extent are there associations between judges' attitudes toward fines and the ways in which they use fines, incarceration, and other sanctions? As a start toward assessing possible linkages between usage (dependent variable) and attitudes toward fines (independent variable), respondents were classified as heavy, moderate, or light users of each of the three sanctions (fine alone, jail, or fine in combination). With type of jurisdiction controlled, these data were cross-tabulated with each of the statements citing the advantages and disadvantages of fines. The linkages between attitudes and usage turned out to be very weak.⁹ The analysis indicates that there is a small group of judges in both general and limited jurisdiction courts who hold very positive views toward fines and are also heavy users of them in their courts.

9. A standard correlation measure, Kendall's Tau C, was used to determine the strength of the associations between usage and attitudes. The correlations were consistently low, the strongest being -.21.

However, the more dominant pattern among the sample of trial court judges is one in which usage varies extensively and attitudes do not cluster in either direction or intensity.

Because the results indicate that the concepts of attitudes and usage are not highly associated, it must be assumed that there are additional factors that influence the levels of fine utilization by trial court judges. The relationship is obviously more complex than originally expected, with many judges expressing ambivalence and confusion about fines. It may be that some judges find the problem of imposing fines on the poor to be such a powerful factor that they have essentially dismissed the possibility of using fines, even though in the abstract they have positive attitudes toward fines. In some places judges may be reluctant to use fines because there are no organizational incentives in their court system to encourage imposition of these monetary punishments. Problems perceived to be associated with collection and enforcement may limit fine use in other localities. These are only a few of the possible factors that may intervene in what one would expect to be a strong relationship between judges' generally positive attitudes toward fines and their actual use of fines as a sanction.

In summary, judges' attitudes toward fines are complex, and seem to reflect some ambivalence and confusion about the role of fines as a sentencing option. Judges see both positive and negative features of fines but, perhaps more important, seem to hold attitudes of low intensity. It follows from this analysis that questions about the use of fines are not very central to the views that judges hold with regard to the different forms of the criminal sanction. If this is so, it lends further credence to the belief that in many situations judges use the fine as an "add-on" to probation or a term of incarceration. A fine is not the primary sanction or

even the basic building block around which other portions of the sentence are constructed.

The fact that attitudes about fines are not held intensely may reflect a widespread lack of attention to the issues raised by their use. If so, there may be opportunity to develop fine use as a more viable sentencing option in the future, through careful research, experimentation, training, and technical assistance. Until very recently there had been little writing about the subject and virtually no attention to the potential advantages, disadvantages, and operational implications of expanded use of fines. The generally favorable views about fines that judges seem to hold at an abstract level are clearly inconsistent with sentencing practices that involve use of fines mainly as "add-ons" to sentences that are basically either incarceration or probation. However, the existence of these generally favorable attitudes suggests that if systems of fine imposition can be shown to work--i.e., that fines really can serve as punishment by "hitting the offender in the pocketbook"--then it may be possible to utilize the fine more broadly as a genuine alternative. The effectiveness of fine collection and enforcement mechanisms obviously would be critical to such an undertaking, and we turn next to that subject.

IV. Collection and Enforcement of Fines

A. The Judiciary and Fines Administration

Among the forms of the criminal sanction, monetary sanctions are the only ones that are implemented mainly by the judiciary. For each of the other sanctions the sentencing judge knows that another agency of government, usually in the executive branch, has the responsibility for seeing that the sentence is carried out. Incarceration is the responsibility of

the sheriff or department of corrections; community service orders are generally executed by community correctional agencies; and probation, though formally tied to the judiciary in many states, operates outside ongoing courthouse scrutiny. Even such judicially imposed orders as deferred prosecution or suspended sentences are monitored by law enforcement and prosecution officials. Offenders under these sanctions return to face the judge (often not the one who imposed the sentence) only when charges of a violation are brought. By contrast, the collection of fines and other monetary sanctions (e.g., costs, restitution) is primarily a judicial responsibility and is administered mainly by the court clerk's office.

The effectiveness with which these responsibilities are carried out may have important implications for the fine as a sanction and for the court as an institution. A fine is a court order. If it is not paid, the integrity and credibility of the court are called into question. An uncollected fine has an impact on the offender, the judicial system, and the community. With payment not enforced, the offender may believe that he or she has successfully "beaten the system". Judges who observe that the fines they have imposed are not being collected may be less willing to use a monetary sanction in the future. The community may view the problem of collection and enforcement as an indication that the judiciary is inefficient and may call for tougher ways to deal with the crime problem.

Conversely, if fines are collected and enforcement is taken seriously, the punishment may have rehabilitative value for the offender and deterrent consequences for both the offender and other individuals who in the future may be tempted to commit wrongs. If fines are collected (and are known to be collected) in a high proportion of cases, members of the bench may be more likely to view them as a useful alternative to incarceration or proba-

tion. Finally, the payment of fines may be seen by the community as an important means of rendering deserved punishment while at the same time reimbursing public budgets for system expenses.

To help assess judges' perceptions of fine collection in their courts, the survey respondents were asked to indicate whether the collection of fines was a problem in their courts. Clearly, it is. Only 12 percent of the general jurisdiction court judges and 7 percent of the limited jurisdiction judges said that their courts had no problems with respect to the collection and enforcement of fines (Table XII). Forty-seven percent of the general jurisdiction judges and 62 percent of the limited jurisdiction judges said their courts had a moderate or major problem.

Other monetary sanctions such as court costs, probation fees, and restitution are also perceived to be difficult to collect. Approximately three-quarters of the judges in both general and limited jurisdiction courts said that collecting non-fine monetary penalties was a problem in their courts, with a near majority characterizing the problem as either moderate or major. These responses underline the linkage between enforcement of fines and enforcement of other types of judicial orders, including restitution. Not surprisingly, there is a high correlation in responses to the questions about perceived problems in fine collection and perceived problems in collecting and enforcing other financial penalties. Judges who regard fine collection and enforcement as a moderate or major problem are also likely to see serious problems in enforcing other monetary sanctions.

B. The First Stage of Collection and Enforcement: Setting the Terms for Payment

Although most judges perceive that there are problems in collecting and enforcing fines and other monetary sanctions, relatively few of them

appear to follow sentencing practices that have been shown to enhance the likelihood of collecting fines. For example, recent research in the U.S. and England has pointed to several aspects of the initial sentencing process that appear to be associated with effectiveness in collecting fines: setting the amount of the fine (and related monetary sanctions) at a level that is within the ability of the offender to pay, even though it might involve some hardship; making only limited use of installment payment plans; and allowing relatively short periods of time for payment.¹⁰ Evidence from the survey indicates that these practices are not commonly followed by American judges.

First, although fine amounts tend to be relatively low, fines are often combined with other monetary sanctions that significantly increase the amount of the total bill. Additionally, it is common for these amounts to be set with little or no information about the offender's economic circumstances. To the extent that this is done, it obviously reduces the likelihood that the amount will be within the ability of the offender to pay.

Second, installment payment arrangements seem to be widely and indiscriminately used. Judges rarely require the full amount of a fine to be paid on the day of sentence, and when they allow delayed payment it is very common to permit payment in installments rather than in one lump sum. Only 12 percent of the general jurisdiction court judges and 22 percent of those in limited jurisdiction courts usually require that the delayed payment be made in a lump sum (Table XIII).

10. See Hillsman, Sichel, and Mahoney, Fines in Sentencing, pp. 37-38, 204-10; Casale and Hillsman, The Enforcement of Fines as Criminal Sanctions, pp. 155-172, 248-257; David Moxon, Fines Use and Enforcement--The British Experience (Paper presented at the Annual Meeting of the American Society of Criminology, San Diego, California, November 1985), p. 5.

Third, it appears that judges frequently allow rather long periods of time for fine payment. The average number of days reported was 214 (median 120) by judges in the upper courts and 131 (median 90) in limited jurisdiction courts. Only 29 percent of the general jurisdiction judges and 40 percent of the limited jurisdiction judges generally required a fine to be paid within 60 days (Table XIV). Moreover, if the judges thought that a fine might be appropriate but believed the offender might have difficulty paying, their most likely course of action would be to give the offender additional time to pay--a response which research in England indicates is counter-productive. Two logical alternative actions, imposing a lower fine or requiring community service, would be taken much less frequently than extending the payment period (Table XV).

C. Collection Procedures

Once a fine has been imposed, what is done when the offender fails to pay it? Research in England and West Germany has indicated that prompt notification to an offender that fine payments are in arrears often has positive results, producing full payment in a significant proportion of cases without further action being required.¹¹ Although we have no data on the promptness and sequence of specific types of follow-up action taken in American courts, Table XVI shows the frequency with which judges believe their courts take specific types of actions. Notification letters appear to be commonly

11. See Casale and Hillsman, The Enforcement of Fines as Criminal Sanctions, pp. 153-172, 353; Paul Softley and David Moxon, Fine Enforcement: An Evaluation of the Practices of Individual Courts (London: Home Office Research and Planning Unit, 1982), p. 9; Silvia S. G. Casale, "Fines in Europe: A Study of the Use of Fines in Selected European Countries with Empirical Research on the Problems of Fine Enforcement," Working Paper #10, Fines in Sentencing (New York: Vera Institute of Justice, 1982), Part V.

used, but are far from universal. Fifty-six percent of the general jurisdiction judges and 65 percent of the limited jurisdiction court judges report that this technique is used in their courts. Telephone calls to the offender are used much less frequently (general, 19 percent; limited, 13 percent). What is perhaps the most interesting feature of this table is that a large number of judges failed to indicate whether their court used either of the two procedures. This would seem to reflect a separation of judicial sentencing practice and administrative follow-up in the court, as well as a lack of awareness, on the part of judges, as to what specific procedures are used to try to collect fines.

A high proportion of respondents reported that warrants were issued for the arrest of offenders who had not paid their fines. Sixty-eight percent of the upper court judges and 85 percent of the lower court judges said that this procedure was used in their courts. The issuance of bench warrants for nonpayment is a long-standing practice in most courts, and is clearly the procedure that judges are most familiar with--probably because they are directly involved in issuance of warrants but not in the other procedures. The widespread use of warrants raises two issues, the first of which has to do with system interrelationships. Although enforcement of a warrant for nonpayment should (at least theoretically) be important to the court, there is considerable evidence that service of such warrants is a low priority for the law enforcement agencies--usually police and sheriffs' departments--charged with this responsibility. A second issue, closely related to the first, has to do with administrative practices and responsibility for enforcement. Although practices in this area differ from court to court, it is common for courts to "write off" a fine within a short period after a warrant is issued. Issuance of a warrant (especially without prior attempts

at notification by letter or telephone call) may be used by some courts as a way of shifting responsibility for enforcement from the court to a police agency. Our survey does not provide a basis for gauging the frequency with which this happens, but the low rate of responses to questions about other means of enforcement suggests that it may occur fairly often.

Only a small percentage of courts turn delinquent accounts over to private or governmental agencies for collection. The infrequent use of this practice in the U.S. contrasts sharply with practices in England, where private collection agents (known as bailiffs) are increasingly used to enforce distress orders under which property may be seized and auctioned to cover the value of an unpaid fine.¹²

D. Perceived Reasons for Non-Collection

To help develop information about reasons for difficulty in collecting fines, the survey instrument included a question listing eight commonly suggested reasons for collection and enforcement difficulties. Respondents were asked to indicate the extent to which they felt each factor contributed to the problem. As Tables XVII and XVIII indicate, there was little variation between upper and lower court judges in their assessment of these factors, roughly categorized as either system-related or offender-related. The judges in both types of courts are much more prone to point to characteristics or actions of the offenders as causing the problem of collection than they are to target inadequacies of the court's mechanisms for fine administration. Still, however, 38 percent of the limited jurisdiction court judges and 40 percent of the general jurisdiction court judges believe that

12. Moxon, "Fines Use and Enforcement: The British Experience," p. 8; see also Casale and Hillsman, The Enforcement of Fines as a Criminal Sanction, p. 190.

their court's collection methods are inadequate. The system-related factor most commonly cited as causing collection problems (especially in lower courts) is the low priority given to warrants by law enforcement agencies.

Are perceptions of collection and enforcement problems related to either the level of fine usage or the attitudes of trial court judges toward fines? One might expect that judges who see major problems in the collection of fines would be less likely to use them and would have attitudes reflecting a negative position with regard to this monetary sanction. Alternatively, if collection and enforcement are not viewed as problems, one might expect judges to use fines more extensively and to have positive attitudes about their value as a form of punishment.

To understand these relationships better, we sought to determine the levels of association between the perception of collection and enforcement problems in the respondent's court and the respondent's reported use of the fine alone, fine in combination, and jail/prison alone, using standard statistical measures. In both general and limited jurisdiction courts no relationship of significance could be ascertained. When attitudes toward the use of fines were correlated with perception of collection and enforcement problems, there was a similar low degree of association using the same statistical measures.¹³

Why does it appear that perception of collection and enforcement problems is only minimally related to either the judges' use of fines or their attitudes toward fines as a criminal sanction? One possibility is simply

13. The use of Kendall's Tau C and the Gamma, which are complementary measures of association, yielded correlations that were persistently less than +.2 or -.2. The possible values of both measures range from +1.0 to -1.0, and observed values less than +.2 are regarded as extremely weak associations.

that fines--and policies and practices with respect to fine collection and enforcement as well as usage--are not very central to the difficult sentencing decisions of most U.S. trial court judges. Because they are so frequently used in combination with other sanctions, fines are essentially ancillary to the "more important" punishments of probation and incarceration. If fines are deemed relatively unimportant, judges' views on the desirability of fines may be only loosely connected to how they actually use fines and to their views toward collection and enforcement.

Because most judges are not involved in the day-to-day administrative tasks involved in collecting fines, it is perhaps not surprising that they are unfamiliar with the details of collection problems and with the procedures that are followed. If fines are to be used more widely and more effectively, however, it will be important to improve the communications between judges and administrators in this area. The data reported here, although far from conclusive, certainly reinforce the sense that one reason for the infrequent use of the fine as a primary alternative to incarceration and probation is the judges' lack of knowledge about (and confidence in) the processes of collection and enforcement. They are only marginally involved in these processes and receive little feedback on their effectiveness.

V. Fines and Fairness

A. Poverty and Sentencing Options

Most persons convicted of criminal offenses are poor. Numerous studies have described offender populations as consisting in large measure of persons who are unemployed or only marginally employed, with low educational achieve-

ment and few work skills. To what extent is it feasible to use fines as a sanction for criminal behavior by such persons?

In addressing this question, it is useful to remember that being poor does not necessarily mean being entirely without resources. There are varying degrees of poverty. At one end of the spectrum is a group of offenders who are in fact in "extreme poverty"--i.e., wholly or almost wholly without resources. Except perhaps for the most trivial offenses, a fine is probably not an appropriate sanction for these offenders.

But there are other points along the spectrum, and even persons with income below officially defined levels of poverty (e.g., welfare recipients, the working poor, the temporarily or seasonally unemployed) can conceivably be fined. Many such persons are, in fact, now being fined in many places. 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 his or her resources.¹⁴ And, although a large proportion of offenders are poor by any conventional definition, some are not. Systems utilizing monetary sanctions must take account of the fact that offenders have widely varying abilities to pay. If this is not done--if, for example, fines are levied on the basis of a set "tariff" without regard to defendant means--the impacts upon offenders convicted of similar offenses can be grossly inequitable. Some poor offenders will be fined more than they can possibly pay, while some relatively affluent defendants will be given fines that are meaningless as punishment and that have no possible deterrent or rehabilitative value.

14. There is strong evidence that in many jurisdictions a high percentage of offenders who are fined do pay their fines in full. See Zamist, Report on New York City Empirical Research on Fines; Hillsman, Sichel, and Mahoney, Fines in Sentencing, pp. 79-86; Casale and Hillsman, The Enforcement of Fines as Criminal Sanctions, pp. 56-57.

On the other hand, an approach that focuses solely on the offender's ability to pay also has both conceptual and practical difficulties. If poor offenders are given very low fines (and no other punishment), there is a risk that the public will perceive the sentences as unduly lenient. However, if the judge concludes that the offender is "too poor to pay a fine," the sanction may be jail instead of a fine, with a resulting public perception that rich offenders can purchase their freedom while poor ones go to jail. The difficulties are compounded by the fact that, as we have seen, judges in limited jurisdiction courts--where the fine is most likely to be used as a sanction--often have little information about the defendant's income, employment status, or assets at the time of sentence.

Despite the difficulties involved in fining poor people, it is clear from this survey and from the earlier Vera/ICM study that in fact poor people are being fined in many courts. But both practices and opinions about fining the poor vary considerably. For example, although most of the judges responding to the survey indicated that they would be less likely to impose a fine if the defendant was unemployed or on public assistance, 38 percent of the limited jurisdiction court judges said that this would make no difference for their sentence (Table X). Another 6 percent said it would increase the likelihood of a fine. And, as noted above, there is sharp disagreement over the assertion that "there is no effective way to enforce fines against poor people," with a majority of general jurisdiction court judges agreeing and a majority of limited jurisdiction court judges disagreeing.

For purposes of policy development in this area, it is important to think in terms of offenders ranging along a spectrum of economic circumstances. Although a significant percentage may cluster at the far low end, characterized by extreme poverty and other traits that make them poor risks

for fines, there are still a large number of offenders who have some resources and the ability to earn future income. As illustrated by the responses to our hypothetical larceny case involving an offender employed in a low-paying job, judges have a high propensity to use jail rather than the fine in cases involving theft, particularly when the offender has a prior record, even though employed. However, there would seem to be some potential for reducing the rate of incarceration in cases where the criminal behavior carries a low risk of danger (and thus does not really require incapacitation for purposes of public safety), yet the offense--or a history of similar offenses--seems to require some sort of punishment. Greater use of fines is one possibility.

As our discussion of attitudes toward fines indicates, judges' abstract views of the fine as a sanction tend to be favorable. Most believe that fines can be adjusted to fit the severity of the offense and the income of the offender, a large majority agrees that using fines instead of incarceration can help prevent jail and prison overcrowding, and roughly half believe that there are effective ways to enforce fines against poor people. But if American judges are to be persuaded to use fines instead of jail or probation for a broader range of nonviolent recidivist offenders who are poor yet have some resources, it will be necessary to show that a fine can be a significant punishment and can be enforced. One possible approach would be through experimentation with a day-fine system.

B. The Day-Fine Concept: Origins and Current Usage

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.¹⁵

In a day-fine system the amount of the fine is set in two stages. First, the number of "units of punishment" is set, taking account of the seriousness of the offense and information on the offender's prior record. Second, the monetary value of each unit of punishment is set in light of information about the offender's financial situation. To illustrate, 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 in payment of the fine, the sanction (e.g., jail time) for each would be the same, based upon the number of units of punishment that were set.

Because detailed and verifiable information on offenders' economic circumstances is readily available and accessible in Sweden, the somewhat complex Swedish model is not one that could be easily replicated in the United States. The West German system of criminal justice, however, is closer to that of the U.S. in the limited extent to which verifiable information about offender means is readily available. Day-fines were introduced into West Germany in 1975, utilizing an approach that establishes maximum and minimum day fine units for particular offense groups. Although there has been some criticism of the guidelines as being overly broad, fine use has been high, fine amounts have been increasing (especially in cases

15. See Hans Thornsted, "The Day Fine System in Sweden, Criminal Law Review (June 1974): 307-12; Silvia S. G. Casale, "Fines in Europe: A Study of the Use of Fines in Selected European Countries with Empirical Research on the Problem of Fine Enforcement," Working Paper #10, Fines in Sentencing (New York: Vera Institute of Justice, 1982); Hillsman, Sichel, and Mahoney, Fines in Sentencing, pp. 68-71, 282-92.

involving affluent offenders), and there has been a significant decrease in the utilization of short-term incarceration.¹⁶

From an operational standpoint, the principal obstacle to introducing a day-fine system in U.S. courts would seem to be the difficulty in obtaining reliable information about offenders' economic circumstances. In some jurisdictions detailed information of this sort is usually available, collected by the police, a pretrial release agency, the probation department, or a combination of these agencies, and is sometimes supplemented by a conscientious defense attorney. As we have seen, though, such information is often not presented to the sentencing judge in limited jurisdiction courts, which are the courts where the greatest potential exists for utilization of fines as an alternative to incarceration. Nevertheless, many American courts do obtain such information and use it, in a rough sort of way, to try 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 very like a day-fine system working in their courts. This is consistent with findings from the Vera/ICM study, which noted the existence of some "embryonic" day-fine systems in this country.¹⁷

C. Could a Day-Fine System Work in American Courts?

What are the possibilities for establishing a day-fine system on a broad scale in U.S. courts? At the outset, it is useful to recall that 78 percent

16. See Robert W. Gillespie, "Fines as an Alternative to Incarceration: The German Experience," Federal Probation 44 (December 1980), p. 21; Hans-Jorg Albrecht and Elmer H. Johnson, "Fines and Justice Administration: The Experience of the Federal Republic of Germany," International Journal of Comparative and Applied Criminal Justice 4 (Spring 1980), pp. 3, 6-7; Hillsman, Sichel, and Mahoney, Fines in Sentencing, pp. 288-292.

17. Hillsman, Sichel, and Mahoney, Fines in Sentencing, p. 182.

of the general jurisdiction court judges and 83 percent of the lower court judges agreed 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 XI). While it requires several steps to go from that attitude to implementation of a day-fine system, there is at least broad recognition of the flexibility inherent in using fines as a sanction. Respondents were asked whether, assuming statutes authorized such a system, they felt it could work in their courts. As Table XIX 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.

Using open-ended questions, respondents were asked to indicate what they believed would be the principal advantages and disadvantages of a day-fine system. The main advantage they perceived was what might be expected: a sense that the system would be fairer, more equitable. The perceived disadvantages fell into several broad categories. First, many respondents said that they thought the system would be difficult and expensive to administer. Second, there was concern about the impact of a day-fine system on the role of judges in the sentencing process--a fear that the system would operate in a rigid mechanical fashion, placing additional restrictions on their discretion. 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.

Overall, slightly more than a quarter of both the upper court and lower court judges said they would favor trying the day-fine system in their court (Table XX). Slightly more than a third indicated that they were opposed to such an experiment, and another third said they were not sure. Not surpris-

ingly, 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.

Overall, the concept of the day-fine received surprisingly strong support from the judges. While there are clearly a number of obstacles that would have to be overcome in establishing such a system in the U.S., there appear to be very real prospects for successfully introducing this innovation in American courts.¹⁸

VI. Policy Implications of the Study

In terms of broad policy development, this study has implications not only for the use of fines but for sentencing practices and procedures generally. In this context, three sets of findings are striking. First, it is clear that judges have a strong propensity to use jail or prison as a sanction in cases involving repeat offenders, even when the offense is not a violent one and there appears to be no significant risk to public safety. Neither fines nor other alternatives to incarceration are at present viewed by most judges as being adequate sanctions for these offenders. Both literature and practice with respect to sentencing in the U.S. has tended to focus on the in-out decision, with little attention to reasons for choosing

18. An experimental program, aimed at introducing day fines into the sentencing process in an urban county is now being planned for Richmond County (Staten Island), New York. The project is being undertaken by the Vera Institute of Justice, in cooperation with the judges, prosecutor, and other key policymakers in the jurisdiction, with the assistance of funding from the National Institute of Justice.

particular "out" decisions. To some extent, however, the in-out decision necessarily involves the availability of (and knowledge about) a range of possible non-incarcerative options. If the problems of prison and jail overcrowding are to be addressed effectively, judges need to become more aware of the aggregate impact of their sentencing decisions, and strategies must be devised to persuade them (and prosecutors) that punishment, non-incarcerative methods. We believe that the fine has a role to play in the development of such strategies, and that the day-fine concept is one that holds particular promise in this connection.

Second, we are struck by the data indicating that judges frequently lack information on offender economic circumstances at the time of sentence. If judges are to consider seriously the use of fines (and other economic sanctions, including restitution and payment for probation services) in sentencing, timely provision of accurate information is essential. The fact that in many courts monetary sanctions are obviously imposed in the absence of such information should be a matter of concern to persons interested in the fair and effective administration of justice.

Third, judges do not have clear and strongly held convictions regarding fine use. The inconsistency and complexity of these attitudes, and the low level of intensity with which they are held, indicate that this is an area in which judges' views can be affected through legislation, sentencing guidelines, and dissemination of research-based knowledge about fine practices that are effective in achieving sentencing objectives. As work proceeds on sentencing guidelines, and as further research on sentencing is undertaken, development of knowledge and information about effective fine use and enforcement should have a prominent place on the agenda.

A. Recommendations for More Effective Use of the Fine as a Sanction

The recommendations set forth in this section focus specifically on the use and collection of fines. They reflect our sense that fines can, potentially, be a viable alternative to incarceration in some cases, and can be employed much more effectively as a criminal sanction than they are at the present in most courts. The recommendations flow from the findings presented in this study and also build upon findings and recommendations from other research dealing with fines.¹⁹ Recommendations 1-5 focus on operational policies that require no legislative or structural changes. Recommendations 6 and 7 deal with legislation that we believe could improve the use and administration of fines.

Recommendation No. 1. Judges should use fines (and other monetary sanctions) primarily as punishment, imposing them at amounts that are commensurate with the seriousness of the offense and the offender's prior record yet are not beyond the ability of the offender to pay.

- o Courts should develop mechanisms for providing accurate information on offender economic circumstances to the judge prior to sentencing.
- o In setting fine amounts, the judge should take into account the total sum of all monetary sanctions imposed on the offender.
- o Judges should seek to make greater use of fines as an alternative to incarceration in circumstances where the primary sentencing objective is punishment and the offender poses no significant risk to community safety.
- o Although punishment is logically the primary purpose of a fine, there are undoubtedly situations where a fine may have value for purposes of deterrence, both with respect to the specific offender and with respect to others who might consider similar offenses.

19. Hillsman, Sichel, and Mahoney, Fines in Sentencing, pp. 203-236; also Casale and Hillsman, The Enforcement of Fines as Criminal Sanctions, pp. 235-253.

Recommendation No. 2. When judges impose fines and other monetary sanctions, they should set terms and conditions that maximize the likelihood that the amounts will be paid in full.

- o Except in unusual circumstances, the time allowed for payment should be relatively short. Installment payments should be used only when necessary.
- o The defendant should be informed that prompt payment is expected, be told where to pay it, and be informed of the consequences of non-payment.
- o Incentives (e.g., reductions for early payment, surcharges for late payment, imposition of suspended sentence to jail or community service in event of default) should be used to encourage prompt payment.

Recommendation No. 3. Court administrators should develop their capacity to monitor and analyze judges sentencing practices, and should use the information to help develop rational and consistent sentencing policies.

- o Courts should ascertain what types of offender-related information are regularly provided to judges at the time of sentencing. Where there are gaps in such information (e.g., lack of information on offender income and assets), procedures should be devised to ensure that information relevant to imposition of a fine and other monetary sanctions is provided on a consistent basis. For example, such information could be provided by a probation department, pretrial services agency, or defense counsel, using a simple one-page form.
- o Court administrators should regularly provide the judges in their court with data on the types of sanctions, including fine amounts, that are imposed alone and in combination on offenders convicted of specific types of offenses.
- o Judges should utilize data on sentencing practices to re-examine periodically the ways that they use the fine alone and in combination with other sanctions.

Recommendation No. 4. Courts should improve the methods they use to collect and enforce fines, and sentencing judges should be made aware of the

methods that are used.

- o Administrative responsibility for collection of fines and other monetary sanctions should be clearly fixed within each court. A senior member of every court's administrative staff should have supervisory responsibility for fine collection, and should be held accountable for the court's performance in this area.
- o Goals for effective fines administration (e.g., percentage of cases in which fine amounts are fully collected within thirty or sixty days) should be set, and the court's performance in relation to these goals should be monitored.
- o Procedures should be established for identifying defaulters promptly and initiating action by the court.
- o Courts should make direct contact with offenders who fail to pay their fines within the time period set by the court. Noncoercive measures such as reminder letters and phone calls should be taken promptly by the court and should be tried before a warrant is issued.
- o Judges should be made fully aware of the administrative procedures used by the court, the court's overall effectiveness in achieving its fine collection goals, and the effectiveness of specific collection and enforcement strategies.

Recommendation No. 5. Courts should develop information systems that regularly give administrators and judges an up-to-date overview of trends and problems with respect to fine utilization, collection, and enforcement. Using individual case records, either manual or automated, fines management information systems should be developed that contain six basic types of data:

- (a) Sentence imposed - data on the number and proportion of different sentences imposed by conviction charge, including combination sentences.
- (b) Inventory information - data on the total number of open fine accounts pending in the court at any time, and the age and amounts of these accounts.
- (c) Input/Output information - data on the number of cases in which fines have been imposed during a period and the amounts involved, and on the number of accounts closed and monies received during the same period.

- (d) Effectiveness in collecting fines - data on the number and proportion of cases in which fines have been fully collected within specific periods following imposition (e.g., 30 days, six months, one year); data on the total dollar amount of fines imposed that are collected.
- (e) Processing times and procedures - data on the length of time it takes to collect fines, on the number (and age) of cases in which particular types of enforcement procedures are used, and on the results of those procedures.
- (f) Identification of problem cases - lists of individual cases in which accounts have been pending without payment for more than a particular period of time, thus indicating that some type of action (e.g., reminder letter, telephone call, issuance and service of warrant) is needed.

Recommendation No. 6. States should enact legislation to encourage more extensive use of fines and to enable courts to utilize a day-fine approach to fining offenders.

- o Where statutory ceilings on fine amounts are low, these should be raised to allow imposition of large fines where appropriate.
- o Judges should be required to take account of offender's economic circumstances in imposing fines and other monetary sanctions.
- o Statutory restrictions on the use of the fine as a sole sanction for specific offenses should be removed.
- o Statutes that provide for flat "dollars-to-days" conversion rates, where fine balances are unpaid, should be revised to ensure that offenders convicted of similar offenses, and having similar prior records, serve essentially similar jail terms in the event that they default on fine payments.

Recommendation No. 7. States should enact legislation designed to encourage more effective fines administration.

- o Courts should be subject to a periodic outside audit (not less frequently than every two years) by an appropriate fiscal authority to ensure that records are adequately maintained and that appropriate procedures are being followed in collecting fines and handling the monies paid in.
- o State court administrators should be explicitly authorized to establish basic minimum standards or requirements for

record keeping and statistical reporting. Where appropriate, this should be done in conjunction with the comptroller's office or other fiscal authority.

B. Directions for Future Research

Until very recently, there has been a striking paucity of empirical research on fines. That situation has begun to change, however, and we now know considerably more than we did as recently as five or six years ago. Knowledge in this area should increase exponentially in the years ahead. This section focuses on four general areas that might usefully be examined by future researchers.

1. The day fine is a system that holds promise for increased use of the fine in the United States, as it has in Western Europe. Research in "pilot project" jurisdictions should be undertaken to test this concept.

2. Research should be undertaken on the behavior of fined offenders, focused on key questions of compliance: who pays, who does not, and why? In particular; to what extent do fined offenders pay their fines by engaging in further illegal behavior?

3. Studies should be made of types of collection and enforcement practices, focusing on the development of model systems. Particular attention should be paid to the following variables in different court settings:

- o Relationships between amount imposed, offenders' economic circumstances, and effectiveness in collection.
- o Court commitment to effective fine collection, as reflected in established goals and clear lines of responsibility.
- o Existence and utilization of information concerning effectiveness of collection practices.
- o Length of periods allowed for payment of fines.
- o Use of installment payment systems.
- o Methods used in the event of nonpayment, particularly including the use of "distress" proceedings as an alternative to the jailing of defaulters.

4. Further analysis should be made of the data collected in this study. The responses of over 1200 general and limited jurisdiction court judges to a questionnaire dealing with sentencing practices generally and fining in particular constitutes an extraordinarily valuable data base. This report is simply the first cut at analyzing the data, and has necessarily been limited by time and available resources. Future researchers should find much to mine in the data.

APPENDIX

Table I

Use of the Fine as a Sanction, by Type of Court

Sanction	<u>Proportion of Cases in Which Fine Imposed</u>					
	<u>General Jurisdiction</u>			<u>Limited Jurisdiction</u>		
	Mean (%)	Median (%)	N	Mean (%)	Median (%)	N
Fine alone ^a	8	1	676	36	25	447
Fine in combination ^b	34	20	675	50	50	459

a Question 5(a), "In approximately what percentage of your criminal cases do you impose a fine as the only sentence for a convicted offender?"

b Question 5(b), "In approximately what percentage do you impose a fine in combination with another sanction, such as court costs, jail, probation?"

NOTE: In responding to this and other questions concerning sentencing practices, respondents were directed to exclude traffic offenses (including DWI/DUI offenses), ordinance violations, and juvenile matters from consideration.

Table II

Proportion of Judges Who Would Likely Impose a Fine in at Least
Half the Cases Involving Selected First Offenses, by Type of Court

<u>Offense^a</u>	<u>General Jurisdiction</u>		<u>Limited Jurisdiction</u>	
	%	N ^b	%	N ^b
Drug sale (1 ounce cocaine)	53	594	64	121
Fraud (land deal)	41	508	53	98
Burglary (daytime, residence)	27	589	46	134
Embezzlement (\$10,000)	39	576	44	89
Assault (minor injury to victim)	58	610	89	501
Auto theft (\$5,000 value)	36	600	54	151
Harassment	63	441	92	405
Disorderly conduct	78	444	97	488
Bad check	51	587	85	461
Shoplifting (\$80 value)	69	486	91	476
Prostitution	64	375	83	276
Possession of marijuana (1 ounce)	70	573	92	433

Note: Question 10, "For each of the offenses below, assume that the individual is an adult, first-time offender, employed at a job which pays \$160 per week. In general, how likely are you to impose a fine, either alone or with another sanction and what would be the typical amount of the fine?"

^a Offenses are arranged in order of severity as ranked by the National Survey of Crime Severity.

^b N = number of judges who indicated that they handle the particular offense.

Table III

Proportion of Judges Who Would Impose Specified Additional Sanctions Concurrently with a Fine, by Type of Court

Sanction	Always or Almost Always %	In Most Cases %	In about Half the Cases %	In Few Cases %	Never or Almost Never %	N
<u>General Jurisdiction Judges</u>						
Probation	34	32	18	12	4	673
Court costs	65	13	4	8	11	654
Restitution	47	23	14	13	4	655
Suspended jail/prison term	19	23	18	23	17	624
Jail/prison term	13	12	17	39	19	647
Community service	6	10	21	45	18	645

<u>Limited Jurisdiction Court Judges</u>						
Probation	14	26	24	27	9	516
Court costs	56	12	5	10	17	518
Restitution	30	22	17	28	3	519
Suspended jail/prison term	13	23	25	28	11	512
Jail/prison term	5	7	18	59	12	507
Community service	2	5	24	49	20	506

Note: Question 8, "When a fine is imposed in your courtroom for a felony or misdemeanor, how frequently are any of the following also imposed concurrently with the fine?"

Table IV
Judges' Choice of Sanctions in Hypothetical
Larceny Case, by Type of Court

Sanction	General Jurisdiction Judges (N = 631)		Limited Jurisdiction Judges (N = 478)	
	%	N	%	N
Jail/prison only	40	252	27	130
Jail/prison plus fine	15	92	27	130
Jail/prison plus fine plus other	18	112	23	111
Jail/prison plus sanctions other than fine	17	109	11	54
Fine only	2	15	4	20
Fine plus sanctions other than jail	5	34	6	28
Other sanctions, alone or in combination, not including jail/prison or fine	<u>3</u>	<u>17</u>	<u>1</u>	<u>5</u>
Total	100	631	100	478

Note: The hypothetical case (Case A): The 26-year old male defendant is charged with larceny and criminal possession of stolen property. He is alleged to have removed a \$40 pair of slacks from a department store, concealing them in a box that had a forged store receipt and leaving without paying. He was arrested outside the store. The defendant pled guilty to the criminal possession charge and the larceny charge was dropped.

Custody status: On bail (\$1,000)
 Family status: Single with no dependents.
 Employment status: Janitor earning \$160 per week
 Offender's record: 1979 Bad check Convicted--restitution
 1980 Bad check Dismissed
 1981 Larceny Convicted--6 months probation
 1982 Larceny Convicted--1 year probation

The instruction: On the basis of this information we would like your estimate of the sanction you would likely impose.

Table V
Judges' Choice of Sanctions in Hypothetical
Embezzlement Case, by Type of Court

Sanction	General Jurisdiction Judges (N = 631)		Limited Jurisdiction Judges (N = 478)	
	%	N	%	N
Jail/prison only	6	38	3	10
Jail/prison plus fine	3	21	5	17
Jail/prison plus fine plus other sanctions	16	100	27	92
Jail/prison plus other sanctions other than fine	24	153	18	63
Fine only	1	7	1	4
Fine plus sanctions other than jail	25	160	27	94
Other sanctions, alone or in combination, not including jail/prison or fine	<u>25</u>	<u>160</u>	<u>19</u>	<u>66</u>
Total	100	639	100	346

Note: The hypothetical case (Case B): The defendant, a 48-year old male, is charged with embezzling \$25,000 from a clothing manufacturing firm. Evidence developed by an outside auditor led to the arrest. The defendant pled guilty to the embezzlement.

Custody status: On bail (\$5,000)
 Family status: Married with two children ages 16 and 20.
 Employment status: Offender was the accountant at the firm, earning \$3,000 per month at the time of arrest.
 Offender's record: 1981 Driving under the influence
 Convicted-license suspended

The instruction: On the basis of this information we would like your estimate of the sanction you would likely impose.

Table VI
Judges' Choice of Sanctions in Hypothetical
Assault Case, by Type of Court

Sanction	General Jurisdiction Judges (N = 631)		Limited Jurisdiction Judges (N = 478)	
	%	N	%	N
Jail/prison only	5	28	3	16
Jail/prison plus fine	7	43	12	60
Jail/prison plus fine plus other	28	174	30	146
Jail/prison plus sanctions other than fine	14	84	7	32
Fine only	6	38	8	37
Fine plus sanctions other than jail	34	210	36	174
Other sanctions, alone or in combination, not including jail/prison or fine	<u>6</u>	<u>34</u>	<u>4</u>	<u>20</u>
Total	100	611	100	485

Note: The hypothetical case (Case C): The defendant, a 24-year old male, was arrested for assault after a heated argument with his neighbor over a parking space. The neighbor was punched in the face and about the body, receiving injuries that required emergency treatment at the hospital. The defendant pled guilty to the charge.

Custody status: On bail (\$2,000)
 Family status: Single with no dependents.
 Employment status: Laborer earning \$200 per week.
 Offender's record: 1978 Bad check
 Convicted-restitution
 1979 Driving under the influence
 Convicted-impaired drivers school
 1980 Driving under the influence
 Convicted-license suspended

The instruction: On the basis of this information we would like your estimate of the sanction that you would likely impose.

Table VII

Typical Fine Amounts Imposed on Adult, First-Time Offender
Earning \$160 per Week by Judges Handling Such Cases, by Type of Court

Offense ^a	General Jurisdiction		Limited Jurisdiction	
	Mean	Median	Mean	Median
Drug sale (1 ounce cocaine)	\$1,423	\$1,000	\$ 707	\$ 500
Fraud (land deal)	1,386	1,000	1,045	500
Burglary (daytime, residence)	688	500	637	300
Embezzlement (\$10,000)	1,483	1,000	1,424	750
Assault (minor injury to victim)	237	150	142	100
Auto theft (\$5,000 value)	564	500	422	300
Harassment	180	100	127	100
Disorderly conduct	103	100	83	75
Bad check	175	100	103	75
Shoplifting (\$80 value)	149	100	139	100
Prostitution	258	150	195	150
Possession of marijuana (1 ounce)	254	150	145	100

Note: Question 10, "For each of the offenses below, assume that the individual is an adult, first-time offender, employed at a job which pays \$160 per week. In general, what would be the typical amount of the fine?"

In most cases in general jurisdiction courts and in half of the cases in limited jurisdiction courts the modal amount imposed was the same or very close to the median fine amount imposed for the offense.

^a Offenses are arranged in order of severity as ranked by the National Survey of Crime Severity.

Table VIII

Frequency of Availability of Information to Judges Prior to
Sentencing, by Type of Court

Type of Information	Percentage of Judges Having Information Prior to Sentencing				
	Almost Always Have	Have in Most Cases	Have in About Half The Cases	In Few Cases	Almost Never Have
<u>General Jurisdiction Judges (N = 715)</u>					
Offender's criminal record	85	10	2	3	1
Offender's family status/ community ties	61	23	8	7	2
Offender's income	53	21	10	11	11
Offender's employment status	65	23	7	3	2
Offender's assets	38	19	11	20	13
Aggravating or mitigating circum- stances regarding the offense	68	21	6	4	1
<u>Limited Jurisdiction Judges (N = 535)</u>					
Offender's criminal record	47	26	12	13	3
Offender's family status	23	26	21	21	9
Offender's income	18	23	20	21	17
Offender's employment status	32	32	19	13	4
Offender's assets	10	15	17	29	29
Aggravating or mitigating circum- stances regarding the offense	37	36	17	8	2

Note: Question 6(a), "When determining the sentence, judges may have background information on the offender and/or the circumstances of the offense. In general, how frequently is the following information available to you prior to sentencing?"

Table IX

Extent to Which Judges Find Useful the Specific Types
of Information Available to Them Prior to Sentencing, by Type of Court

Type of Information	Percentage of Judges Finding Available Information Useful				
	Almost Always Useful	Useful in Most Cases	Useful in About Half the Cases	Useful in Few Cases	Almost Never Useful
<u>General Jurisdiction Judges (N = 706)</u>					
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 circum- stances regarding the offense	77	18	3	2	--
<u>Limited Jurisdiction Judges (N = 524)</u>					
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 circum- stances regarding the offense	64	25	6	4	1

Note: Question 6(c), "When you have this information, how often do you find it useful in shaping the sentence?"

Table X

Likelihood That Judge Would Impose a Fine
Given Varying Offender Characteristics, by Type of Court

Characteristic	General Jurisdiction Judges (N = 674)			Limited Jurisdiction Judges (N = 532)		
	More Likely to Impose a Fine %	Would Make No Difference in Imposing a Fine %	Less Likely to Impose a Fine %	More Likely to Impose a Fine %	Would Make No Difference in Imposing a Fine %	Less Likely to Impose a Fine %
Two prior convictions	28	28	44	52	17	31
18 years old	10	61	29	15	66	19
Unemployed or on public assistance	2	23	75	6	38	56
Owns house, two cars, and has \$35,000 annual salary	73	23	4	55	43	2

Note: Question 11, "Considering the types of offenses listed in the preceding question, to what extent would the following changes in the offender's circumstances affect your likelihood of imposing a fine?" The offenses are those listed in table 2-2. The characteristics of the offender in the preceding question were that the individual is an adult, first-time offender, employed at a job that pays \$160 per week.

Table XI

Judges' General Attitudes toward the Advantages and Disadvantages of Fines,
by Type of Court

Judges' Attitudes	Agree or Agree Strongly		Not Sure		Disagree or Dis. Strongly	
	Gen. %	Ltd. %	Gen. %	Ltd. %	Gen. %	Ltd. %
<u>Extent of agreement w/ alleged advantages</u>						
1. Fines are relatively inexpensive to administer	52	59	21	16	27	25
2. Using fines instead of incarceration helps prevent overcrowding in correctional facilities	68	79	12	9	21	11
3. Fines can be adjusted to fit the severity of the offense and the income of the offender	78	83	11	7	12	10
4. Fines help to reimburse the cost of maintaining the criminal justice system	62	73	15	11	23	17
<u>Extent of agreement w/ alleged disadvantages</u>						
5. Fines ordinarily have little impact on the affluent offender	61	53	12	15	27	32
6. There is no effective way to enforce fines against poor people	62	42	9	8	29	50
<u>Extent of disagreement w/ alleged disadvantages</u>						
7. Statutes do not permit me to impose high enough fines	12	14	6	6	81	81
8. U.S. Supreme Court decisions do not allow fines to be imposed on poor people	27	17	16	13	57	70
9. Fines, in contrast to probation, have no rehabilitative capacity	33	19	18	20	49	62
10. Expanding the use of fines more would give the court the appearance of being overly concerned with producing revenue	38	35	27	27	35	37
11. Many offenders will commit additional crimes to pay their fines	23	11	41	35	36	54

Note: Question 27, "To what extent do you agree or disagree with the following statements about the use of fines in your court?"

Table XII

Judges' Perceptions of the Extent to Which a Problem Exists in Collection and Enforcement of Fines in Their Courts, by Type of Court

Seriousness of Problem	General Jurisdiction Judges		Limited Jurisdiction Judges	
	%	N	%	N
No problem	12	79	7	36
Minor problem	26	179	28	147
Moderate problem	31	210	45	238
Major problem	16	112	17	90
Not sure	<u>16</u>	<u>107</u>	<u>4</u>	<u>22</u>
Total	100%	687	100%	533

Note: Question 23, "In your view, to what extent does a problem exist in the collection and enforcement of fines in your court?"

Table XIII

Judges' Practices with Respect to Allowing
 Alternate Methods of Payment of Fines When
 Immediate Payment Is Not Required, by Type of Court

Method of Payment	General Jurisdiction Judges		Limited Jurisdiction Judges	
	%	N	%	N
Generally installments	55	367	43	228
Generally lump sum	12	79	22	113
Sometimes installments, sometimes lump sum	24	163	29	151
Times and terms of payment not set by judge	<u>9</u>	<u>58</u>	<u>7</u>	<u>34</u>
Total	100%	667	100%	526

Note: Question 18, "When you do not require that a fine be paid immediately, do you generally allow for periodic installment payments or require that it be paid as a lump sum?"

Table XIV

Judges' Practices with Respect to Time
Generally Allowed for Full Payment of Fines, by Type of Court

Maximum Number of Days Generally Allowed	General Jurisdiction Judges		Limited Jurisdiction Judges	
	%	N	%	N
30 or fewer	15	71	23	104
31 - 60	14	65	17	75
62 - 90	19	89	24	106
92 - 180	26	122	23	104
181 - 365	18	87	11	47
Over one year	<u>9</u>	<u>43</u>	<u>3</u>	<u>12</u>
Total	100%	477	100%	448

Note: Question 19, "When you do not require that a fine be paid immediately, what is the maximum number of days that you generally allow for full payment of it?"

Table XV

Likelihood of Judge's Taking Selected Actions
When a Fine Is Appropriate but Judge Thinks Offender
Might Have Difficulty Paying, by Type of Court

Action	General Jurisdiction Judges (N = 674)			Limited Jurisdiction Judges (N = 532)		
	Always/ in Most Cases %	In About Half the Cases %	Never or in Few Cases %	Always/ In Most Cases %	In About Half the Cases %	Never or in Few Cases %
Suspend the fine	18	10	72	9	12	79
Impose a lower fine	37	17	46	27	13	61
Allow the offender a longer period in which to pay the fine	80	7	13	82	8	10
Impose a suspended jail or prison term in lieu of the fine	21	9	71	10	8	83
Impose community service in lieu of the fine	37	17	46	38	15	47

Note: Question 12, "If you decide that a fine might be appropriate in a case and you believe that the offender might have difficulty paying a fine, to what extent are you likely to take the following actions?"

Table XVI

Judges' Reports About Procedures Followed When an Offender
Fails to Pay a Fine

Procedure	Use of Procedure					
	Yes		No		No Answer	
	%	N	%	N	%	N
<u>General Jurisdiction (N=718)</u>						
Phone call to offender	19	134	34	242	48	342
Notification letter sent to offender	56	404	12	84	32	230
Warrant issued	68	490	6	44	26	184
Delinquent account turned over to private/govern- mental collection agency	4	26	43	311	53	381
Other (specify if possible)	20	145	1	8	79	565
<u>Limited Jurisdiction (N=543)</u>						
Phone call to Offender	13	71	48	258	39	214
Notification letter sent to offender	65	353	17	91	18	99
Warrant issued	85	463	4	20	11	60
Delinquent account turned over to private/govern- mental collection agency	4	24	49	266	47	253
Other (specify if possible)	15	79	1	8	84	456

Note: Question 22, "Which of the following procedures are followed when an offender fails to pay a fine that you have imposed?" Respondents were asked to circle a yes or no answer."

Table XVII

Judges' Perceptions About Reasons for Fines Collection Problems,
Limited Jurisdiction Courts

Reason	Agree Strongly (%)	Agree (%)	Not Sure (%)	Disagree (%)	Disagree Strongly (%)	N (%)
<u>SYSTEM RELATED</u>						
Court's collection methods are inadequate.	11	27	7	41	14	473
Too much time elapses between default of a fine payment and the Court's issuance of a warrant for nonpayment.	7	28	11	41	13	464
There is inadequate contact with or notification of offenders who fail to pay on time.	8	30	11	40	12	469
Law enforcement agencies give low priority to serving warrants for nonpayment of fines.	20	34	16	24	6	471
Nothing serious ever does happen to offenders who fail to pay their fines.	3	16	6	61	15	473
<u>OFFENDER RELATED</u>						
Many offenders think that nothing serious will happen to them if they fail to pay their fines.	20	55	13	10	2	479
Many offenders leave the area or are too difficult to locate.	12	54	14	19	1	477
Many offenders are poor and cannot afford to pay their fines.	13	51	15	18	3	469

Note: Question 24, "To what extent do you agree that the following reasons account for enforcement or collection difficulties in your court?"

Table XVIII

Judges' Perceptions About Reasons for Fines Collection Problems,
General Jurisdiction Courts

Reason	Agree Strongly (%)	Agree (%)	Not Sure (%)	Disagree (%)	Disagree Strongly (%)	N (%)
<u>SYSTEM RELATED</u>						
Court's collection methods are inadequate.	16	24	8	40	12	495
Too much time elapses between default of a fine payment and the court's issuance of a warrant for nonpayment.	8	31	14	39	8	487
There is inadequate contact with or notification of offenders who fail to pay on time.	8	30	15	40	6	493
Law enforcement agencies give low priority to serving warrants for nonpayment of fines.	13	27	17	37	6	487
Nothing serious ever does happen to offenders who fail to pay their fines.	7	21	7	51	15	496
<u>OFFENDER RELATED</u>						
Many offenders think that nothing serious will happen to them if they fail to pay their fines.	22	52	14	12	1	499
Many offenders leave the area or are too difficult to locate.	10	46	19	24	2	496
Many offenders are poor and cannot afford to pay their fines.	28	46	9	16	2	498

Note: Question 24, "To what extent do you agree that the following reasons account for enforcement or collection difficulties in your court?"

Table XIX

Judges' Views on Whether a Day-Fine System
Could Work in Their Court, by Type of 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

Note: Question 13 was, "Assuming that statutes authorize such a system, do you feel that it could work in your court?" In the survey instrument the question was introduced with the following description of the system:

Several Western European countries have adopted and widely use 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.

Table XX

Judges Attitudes toward Trying
Day-Fine System in Their Court, by Type of Court

Attitude	General Jurisdiction Judges		Limited Jurisdiction Judges	
	%	N	%	N
Favor	29	196	26	137
Oppose	37	247	38	195
Not sure	<u>34</u>	<u>226</u>	<u>36</u>	<u>187</u>
Total	100%	669	100%	519

Note: Question 16, "Would you favor or oppose trying such a system [i.e., a day-fine system, as described in Table XIX] in your court?" Respondents were asked to indicate one of three choices: favor, oppose, or not sure.