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The Staten Island Day-Fine Project

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Day fines, so called because the amount of the fine is tied to an offender's daily earnings, are common in some European and South American countries; not so in the United States, where fines have traditionally been based on the individual crime rather than on the individual offender's ability to pay.

But as American jurisprudence seeks alternatives in sentencing, day fines have been proposed as one promising area of experimentation. This *Research in Brief* describes the first day-fine experiment in American courts, a National Institute of Justice (NIJ) project planned and implemented between 1987 and 1989 in the Criminal Court of Richmond County (Staten Island), New York. This joint project of NIJ, the court, and the Vera Institute of Justice was also supported by the German Marshall Fund of the United States and New York City's Office of the Deputy Mayor for Public Safety.

An NIJ evaluation of this successful implementation demonstrated that:

- The day-fine concept could be implemented in a typical American limited-jurisdiction court.
- Day fines could substitute for fixed fines.
- Fine amounts were higher for affluent offenders under the day-fine system.
- Overall revenues increased.
- High rates of collection could be sustained (and possibly improved) despite the higher average day-fine amounts.

Evolution of day fines

Fines are an ancient and widely used penal measure, and non custodial sanctions are not new in American sentencing. What is new is an increased enthusiasm for the systematic incorporation of "intermediate sanctions" into sentencing systems, primarily in response to pressing justice and fiscal concerns. The financial implications of getting tough on crime have spurred interest in creating a graduated progression of intermediate penalties.

Until recently, the fine was not a prominent intermediate penalty in the United States because of deep skepticism among American criminal justice professionals. Skeptics doubted the ability of judges to set fines in amounts large enough to punish and deter while making the fines fair to offenders with vastly different economic circumstances. Doubters also questioned the courts' ability to enforce and collect such fines.

The skepticism is beginning to dissipate; however, as more American courts explore fining systems that systematically vary fine amounts in relation to the means of the offender as well as the severity of the offense—systems with which some European courts have long experience.

From the Director

Fines, as a method of criminal punishment, date to the beginnings of the criminal justice system, commonly being applied when the offense was not sufficiently serious to warrant incarceration and the offender presented no grave threat to the community. One problem, however, with fines as punishment lies in the difficulty in making the punishment fit the crime.

The National Institute of Justice (NIJ), the research and development arm of the U.S. Department of Justice, has studied the application of fines as an alternative means of punishment in appropriate situations and for appropriate offenders. Research has shown that determining what should be paid, what can be paid, and what will be paid is never easy.

The Institute has recently explored a method of imposing fines that is well established in several European countries and in South America. These penalties, called “day fines,” are employed following a logical method that first determines the severity of the offense, and then applies units of punishment based on the offender’s daily wages—hence, “day fines.”

This *Research in Brief* describes an evaluation of the first experiment in the United States in implementing a day-fines system, an NIJ pilot project on Staten Island, New York, which took place between 1988 and 1990. As this *Brief* shows, this sentencing alternative should prove valuable other jurisdictions as well.

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How Day Fines Work

The general concept is simple: determining the amount of punishment to be administered to an offender is - separated from a consideration of how much money that offender must pay. Judges determine how much punishment an offender deserves; this is then denominated in some unit other than money. These punishment units are translated into monetary terms based on how much money the offender makes per day.

Practically speaking, the day fine approach consists of a simple, two-step process. First, the court uses a “unit scale” or “benchmark” to sentence the offender to a certain number of day-fine units (for example, 15, 60, or 120 units) according to the gravity of the offense and without regard to income. To guide the court’s choices, benchmarks or unit

scales are typically developed by a planning group of judges, prosecuting attorneys, and defense counselors familiar with disposition patterns in a court.

The value of each unit is then set at a percentage of the offender's daily income, and the total fine amount is determined by simple multiplication.

The variable fine systems used in Europe are typically called "day fines" because some portion of an offender's daily income is used to calculate the fine amount. This differs greatly from the typical fixed flat- fine system used in American courts (see "How Day Fines Work," above). In setting fine amounts, American judges generally apply "going rates" or "tariffs" based upon understandings (usually informal) that the same or similar amounts are imposed on all defendants convicted of similar offenses,

Such tariff systems have limited the usefulness of the fine as an intermediate sanction in the United States because tariffs tend to be set to reflect the lowest common economic denominator of offenders coming before the court. This practice depresses fine amounts, diminishes the punitive weight of fines for better-off offenders, and constricts the range of offenses for which judges view a fine as an appropriate sole sanction.

Day fines, on the other hand, ensure the routine imposition of fines that are proportionally punitive—based on the seriousness of the offense—and equitable for offenders with differing means.

Implementation of the day-fine experiment

In evaluating the implementation of the day-fine system in Staten Island, NIJ researchers concluded that the program was successfully initiated. Judges were able to obtain the offender income information they needed to set the fine amount promptly without disrupting the rapid flow of cases. Once trained to use the day-fine workbook they had helped develop, judges found the mechanics of computing a day- fine sentence simple. No practical or ideological opposition to the principle was voiced by either prosecutors or defense attorneys.

The sole implementation problem encountered was one the planners had anticipated:

Statutory fine maximums in New York State are very low and have not increased since 1965. In a significant number of cases, the day-fine amounts calculated by judges for more affluent offenders convicted of more serious violations exceeded the statutory limit.

In these instances, the judge sentenced the defendant to the statutory maximum but recorded the day fine as calculated. This established a record for later use in the legislative process, where more wide spread use of day fines in New York State hinges on statutory changes to increase the existing fine limits.

Goals of the evaluation

The evaluation tested the impact of day fines on the court's sentencing patterns and sought to determine:

- Whether the theoretical complexity of the day fine or the burden of its two-stage procedure decreased the use of fines.

- Whether the use of fines shifted from one type of offense to another.
- Whether, on average, day-fine amounts were higher than the previous fixed fines and, if so, whether this had any negative effect on the existing high collection rate.
- Whether the day fine alone or in concert with new collection techniques had any impact on collection outcomes.

In addition, the research developed a model in an attempt to predict the sentences offenders would have received if there had not been a day-fine option. Analysis of this kind can provide a basis for gauging the extent to which introducing day fines displaces other types of sentences or replaces existing fixed fines.

Evaluation design

The design chosen for this evaluation was a before-and-after comparison of penal law felony and misdemeanor arrests disposed of in the Staten Island Criminal Court both before the introduction of day fines and during the day-fine project's pilot year. The sample from before the experiment consisted of all penal-law cases disposed of before the start of the day-fine pilot, from April 1, 1987, through March 31, 1988; there were 4,461 cases in this sample. The pilot-year sample consisted of all cases disposed of during the pilot year, from September 1, 1988, through August 31, 1989; there were 4,883 cases in this sample.

During the pilot year, researchers also tested the impact of new collection procedures introduced as part of the day-fine program. Part of the Staten Island pilot project was a new collection and supervision component that developed individualized collection schedules and stressed prompt notification of payments due and missed. This was in contrast to the conventional method of collection in which cases not fully paid at sentencing were continued on the court calendar, with subsequent hearings set infrequently and arrest warrants issued if offenders failed to appear.

To compare the effects of day fines *without* the new collection techniques, the fixed-fine system with *the* new collection techniques, and the new day fines *combination* with the new collection techniques, day-fine cases were randomly assigned to two groups after sentencing:

The "experimentals" were those day-fine cases processed according to the experimental collection procedures; the "controls" were day-fine cases handled using the collection process routinely administered by the court.

Comparisons of collections between the day-fine experimentals and the pre-day-fine cases measured the effect of introducing new day-fines along with new collection techniques. Comparisons between the "controls" and cases from the year prior to the experiment measured the independent effect of introducing day-fine sentences without the new collection procedures. Comparing collection outcomes for the "experimentals" with the "controls" measured the effect of the new collection procedures alone.

A variety of analyses were performed. Prior to any before-and-after comparisons being made, the 2 years' samples were compared with regard to arraignment charge; the two samples were found to be statistically equivalent given the mix of cases coming into the court.

Impact on sentencing

Day fines were successfully introduced into routine sentencing in the Staten Island court during the pilot year.

The mechanics of imposing a day fine consist of establishing the number of day- fine units based upon the offense and estimating the offender's net daily income and number of dependents to calculate the monetary value of each unit. This process was neither too complex nor too time- consuming to be applied routinely in a relatively fast-paced criminal court. Two- thirds of the fixed fines in penal law cases were replaced by day fines during the pilot year.

Those fixed fines assessed during the pilot year were imposed by non-Staten Island judges sitting temporarily as replacements for vacationing or sick colleagues; these judges had not been trained to use day fines and, therefore, used the traditional tariff system in setting fine amounts.

The introduction of day fines did not appreciably affect judges' sentencing decisions during the pilot year.

When prior conviction records and arraignment charges were controlled, overall sentencing patterns remained steady during the year in which day fines were applied. The only noticeable change in sentencing patterns was a small increase in jail sentences for some drug cases, a change that occurred during the height of the crack cocaine epidemic in New York City. Therefore, it appears safe to surmise that the introduction of day fines did not create this shift in sentencing.

After introduction of the day fine, average fines imposed for penal law offenses rose 25 percent.

Fines rose from \$205.66 before the experiment to \$257.85 during the year in which the day fines were introduced. However, if day fines had not been restrained by statutory maximum fine limitations, the average fine during the pilot period would have been \$440.83—more than twice the average fixed fine amount (\$205.66). Even if these uncapped day fines were combined with fixed fines imposed during the pilot year, the overall average fine amount would have risen 84 percent in the experimental year (table 1).

The total amount of the fines imposed by the court in penal law cases increased by 14 percent during the pilot year (from \$82,060 to \$93,856).

The impact of the day-fine system on total fine revenue would have been even more dramatic if day fines had not been constrained by statutory maximums. In the absence of the caps, the total amount of fines in the experimental year would have been almost 50 percent higher than the total amount actually ordered (rising from \$93,856 to \$137,660). This would have represented a 67-percent increase over the total fine amount ordered the year before the experiment (table 1). Using day fines could potentially raise revenues, provided that the higher rates did not inhibit collection of the fines.

As expected, there was more variation among individual fine amounts when they were calculated using the day-fine system.

The judges relied substantially less on traditional tariffs and calculated day fines with more gradations, many of which fell above the statutory fine maximums. Furthermore, as seen in table 1, during the pilot year the fines that fell between the tariff points were, for the most part, day fines.

Changes in collection rates and patterns

The Staten Island pilot study demonstrated that by taking into account an offender's ability to pay when the fine amount is set, the levied fine is collectible and proportionate to the severity of the offense.

Despite the substantial increase in average fine amounts, introduction of the day-fine system did not undermine the court's high collection rates.

Introducing day fines into the Staten Island court did not significantly alter collection rates, despite substantially higher average fines (table 2). In 85 percent of the day-fine experimental cases (those subject to the new collection strategy and the day fine) and in 71 percent of the day-fine control cases (those disposed of using the collection process routinely administered by the court), the offender eventually paid in full, compared to 76 percent of the fine cases from the year before the experiment. These differences are not statistically significant.

However, when a comparison is made of cases in which fined offenders paid nothing, it is apparent that the new collection procedures significantly improved collection outcomes: Only 6 percent of day-fine experimental cases resulted in no payment at all, compared to 22 percent of cases prior to the experiment and 26 percent of day-fine control cases. And when full payment was not made, some payment was much more likely in the day-fine experimental cases than in the cases from before the experiment or in the day-fine control cases.

These data suggest that the higher average fine amounts levied in the day-fine cases did not make collection more difficult for the court and that the new enforcement procedures independently improved collection rates.

While the introduction of day fines did not diminish the court's success in collecting fines, day fines did take longer to collect than fixed fines prior to the experiment.

Day fines, both with and without the new collection techniques, took longer to collect than the earlier tariff-only fines (table 2). This pattern was closely related to the higher average day-fine amounts. The mean number of days to full payment was significantly fewer for fines before the experiment (55 days) than for either the day-fine experimentals (114 days) or controls (1 day.) The longer collection period for day fines is not surprising in light of the substantially higher average fine amounts imposed.

Despite these higher fine amounts and longer periods before payment, the use of day fines, when coupled with the new collection techniques, did not increase the number of post sentence court appearances during the enforcement period. As intended, the new

collection techniques kept fined cases off the court calendar until the end of collection and enforcement activities. While fines before the experiment had required an average of 1.96 post sentence appearances, the day-fine experimentals required 1.76 such appearances. However, in day-fine cases in which the court's conventional collection procedures were used, the higher average fine amounts did require more court appearances (2.66). Thus, without the more individualized collection techniques used in the pilot program's experimental cases, day-fine offenders were brought back to court for nonpayment more frequently than either the fine cases before the experiment or the day-fine experimentals.

The day-line program significantly reduced the number of' arrest warrants issued for failure to appear at post- sentence hearings.

The court issued fewer arrest warrants for nonpaying day-fine experimentals who failed to appear for scheduled court hearings. The day-fine experimental cases averaged 0.26 warrants, in comparison to the cases sentenced before the experiment (0.55 warrants) and day-fine controls (0.83), as shown in table 2. These data suggest that when the old collection techniques were used in conjunction with day fines, which were higher on average than the fixed fines, the court did have to rely more heavily on warrants to collect fines.

Despite significantly higher average fine amounts and longer collection periods, day fines were collected at rates as high as those for the smaller fixed fines. For those offenders who did not pay in full, significantly more day-fined offenders paid something as opposed to nothing. Thus, jurisdictions that implement a day-fine system can expect to successfully collect the additional revenue associated with a day-fine system.

Further, the new collection techniques piloted in Staten Island could compensate for the decreased collection and enforcement some jurisdictions might expect from raising fine amounts. The individualized collection strategy had the following advantages over the court's routine collection procedures:

- More extended terms for payment of the larger day fines.
- Fewer costly court appearances.
- Fewer warrants for nonappearance at post sentence hearings.

Jurisdictions whose existing collection systems are similar to Staten Island's can expect collection rates to remain stable after introducing a day-fine system of similar design. However, if jurisdictions experience additional court appearances and warrants as a result of the average higher fines generated by the day-fine system, they might need to devote more resources to collection efforts. Thus, shifting to individualized collection systems when introducing day fines (a shift that ought to be financially feasible because day fines are likely to generate higher total fine revenues) would probably be the best approach for other American courts wishing to implement the day-fine concept.

The relationship between income and fine amount

Under the day-fine system, individual income plays a greater role in determining the fine amount, even when other factors are controlled.

As expected, various factors influence fine amounts. These factors include severity of the arraignment charge, the offender's income, and whether the penalty was a fixed fine or a day fine. Fine amounts increased for more severe charges, for higher individual income, and for day fines as compared to fixed fines.

Further, income has more effect on fine amount when the severity of the arraignment charge is controlled and the statutory maximums are set aside. But because the effect of income level can be seen in fixed-fine cases as well as in day-fine cases, it appears that implementing the day-fine pilot standardized and made explicit the decision making principles that were already in place. Under the day-fine system, this "calculus" was explicit and systematic, resulting in more uniform sentencing.

Low-income offenders were no better or worse at complying with day-fine sentences than with tariff-fine sentences.

Similarly, offenders sentenced to high or low day fines generally did as well paying the fines as those who received the lower fixed fines before the experiment. Although the average day-fine amounts were higher, they were no more likely to exceed any group of offenders' ability to pay and did not disproportionately increase the burdens on low income offenders. However, the numbers were too small for significant testing, and this finding needs to be confirmed through additional research.

Conclusion

Through the introduction of day fines, it is quite possible that judges have become more comfortable with the monetary penalties when the amounts can be adjusted to individual cases and circumstances.

With a means-based method for setting fines, fairer punishments were meted out without making the process of imposing fines too difficult or time-consuming for judges. Further, average fine amounts were higher under the day-fine system without undermining the court's collection rates.

The day-fine approach has the potential added benefit of raising total collected fine revenues. Using a two-step procedure to set fine amounts so that they systematically reflect the gravity of offenses and offenders' means eliminates most of the objections usually raised about monetary penal sanctions. The door may now be open to wider acceptance and use of monetary sanctions in the United States. Indeed, the results from Staten Island have encouraged adaptation of the day-fine concept in American jurisdictions outside New York.