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Fines and Fine Administration

Sally T. Hillsman, Guest Editor

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

Collecting and Enforcing Criminal Fines:
A Review of Court Processes, Practices, and Problems
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Collecting and Enforcing Criminal Fines: A Review of Court Processes, Practices, and Problems*

Sally T. Hillsman**

Barry Mahoney***

As criminal fines and other monetary penalties become more important sentences in the United States, court administrators' success in monitoring, encouraging, and compelling their payment becomes a significant factor in the ability of courts to ensure the efficacy of financial sanctions, as well as the credibility of the court. Research in both American and Western European courts indicates that many court administrators are doing a better job collecting fines than the conventional wisdom suggests. However, performance can be improved substantially in most courts if administrators systematically apply collection and enforcement techniques and strategies that already exist and have been proven effective.

Introduction

Fines are an important sentencing tool in American criminal courts. They are one of the oldest, and one of the most widely used, ways of punishing and deterring people. In American trial courts of limited jurisdiction, fines are the predominate form of criminal sanction. In state general jurisdiction trial courts, they are used more frequently than is generally recognized, both alone and in combination with other noncustodial sentences (Cole, Mahoney, Thornton, and Hanson, 1988; Hillsman, Sichel, and Mahoney, 1984).

Regardless of the frequency of their imposition, the efficacy of fines as criminal penalties rests on the ability of courts to collect them, to do so expeditiously, and to compel payment if the offender fails to meet his or her

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obligation to the court. Imposing a fine can be problematic because enforcing this sentence requires an administrative process, typically within the responsibility of the court, that takes place while the offender is at liberty. If judges cannot assume the fine will be collected, and if the offender can assume he need not pay it, the attractiveness of this flexible and relatively inexpensive sentencing device is seriously eroded, along with the credibility and authority of the court that imposes the fine and the administrative structure that attempts to enforce it.

Despite the growing importance of criminal fines and other monetary penalties (Green, this issue), relatively little is known about the performance of American courts in collecting and enforcing them. Systematic information has not been readily available directly from federal, state, or local jurisdictions for several reasons. First, administrative responsibility for these activities tends to be fragmented, and courts often do a poor job of compiling and using the management information they do have. Although most courts keep adequate records of individual fine payments, very few have developed systems for aggregating and analyzing these data in order to monitor collection and enforcement performance and to support planning and policymaking.

The widespread failure of courts to develop a base of systematic knowledge about the collection and enforcement of criminal fines is particularly unfortunate at this time. Economic pressures are encouraging judges and other policymakers to search for enforceable alternatives to scarce prison cells. Judges and legislatures are also increasing the number and type of service fees, assessments, contributions, and cost reimbursements they impose in an attempt to shift some criminal justice system costs to sentenced offenders. Restitution is being used more frequently as part of criminal sentences, in an effort to better address the needs of crime victims. Although the ultimate beneficiary of a restitution order, court fee, or penalty assessment may be different from the recipient of a criminal fine, the practical problems of collection and enforcement are similar. Indeed, the administrative mechanics are often exactly the same. A court that does a poor job collecting and enforcing criminal fine penalties is unlikely to do a better job collecting restitution payments or court costs from the same types of defendants. A better understanding of successful fine collection techniques and enforcement strategies, therefore, will assist courts to improve their use and administration of all economic sanctions.¹

1. Similarly, the experiences of lower courts in collecting and enforcing fines imposed for traffic offenses is extremely relevant. While this article focuses primarily on what is known about fines imposed in nontraffic criminal cases, courts' efforts to collect high volume traffic

The discussion of fine collection and enforcement practices and procedures which follows draws upon policy research funded by the National Institute of Justice, and conducted by the Vera Institute of Justice and the Institute for Court Management of the National Center for State Courts (Casale and Hillsman, 1986; Hillsman, Sichel, and Mahoney, 1984; Mahoney, Hanson, and Thornton, 1982). These studies include a telephone survey of the chief clerk or court administrator of 126 municipal courts and state- or county-funded limited and general jurisdiction trial courts in 21 states; on-site visits to 38 county, municipal, city, and federal district courts; and original statistical studies of official case records in New York City's five misdemeanor and five felony courts, and in four English magistrates' courts (which are the equivalent of American limited jurisdiction courts). Together these studies provide substantial evidence that, despite some difficult problems, criminal fines are being collected successfully in many jurisdictions around the United States and abroad, and that workable strategies can be identified to improve current practices.

Courts Can and Do Collect Criminal Fines

Fines are big business for American courts. Courts annually collect a substantial amount of revenue from the imposition of criminal fines; the total revenue would be far greater if traffic fines and other monetary penalties were considered. Although our telephone survey reached court administrators and clerks in only a small fraction of the state and local trial courts in the United States, the amount collected by the 106 courts whose administrators had this information was over \$110 million in a single year. We estimate that municipal courts alone collected over \$700 million a year in fines in the early 1980s (Hillsman, Sichel, and Mahoney, 1984:75). While even a rough estimate of total fine revenues for all American courts at the local, state, and federal level is difficult to make, the figure is likely to be well over a billion dollars annually. Revenues are probably in excess of two billion if other monetary penalties are included. For example, in one Arizona county, the total amount of all financial sanctions collected by the superior court in 1986 was almost eight times greater than fines alone — more than \$400,000 in fines and over \$3.1 million for other monetary sanctions (Maricopa County Superior Court Adult Probation Department, 1986).

Measuring a court's collection performance is not easy. The most commonly used measure of how well a court collects the fines it imposes is the aggregate collection rate, that is, the amount collected expressed as a pro-

fines is useful to understanding what makes fine administration effective generally (see Tait and also Wick, this issue).

portion of the amount imposed. One problem with this measure, however, is that the two component figures often do not pertain to the same fines. If, for example, a court uses the amount judges impose and the amount the court collects during the same fiscal year, the resulting "collection rate" is only approximate; many of the fines collected in a given year will have been imposed in previous years when judges' fining may have been more or less extensive. In addition, the collection of one very large fine outstanding from a previous year may greatly inflate the collection rate for the present year.

Even if an aggregate collection rate refers to the proportion of all fines imposed during a given fiscal year that are collected within a standard time period (such as one year), it still tells administrators little about the court's success in obtaining offenders' compliance with the court's fine orders: a high rate could reflect the collection of a few big fines, while many small ones remain uncollected. An individual collection rate is needed to measure compliance levels. The most typical measure is the proportion of all offenders fined during a given period who pay in full within a standard time period. Unfortunately, while most courts maintain records on payments in individual cases for accounting purposes, they seldom aggregate this information statistically. We found few courts that could provide their judges with individual collection rates.²

Fine collection rates are highly variable, but many courts are successful in obtaining payment. Our research indicates that, despite widespread perceptions that criminal fines are uncollectable, many jurisdictions around the country collect a substantial proportion of the fines imposed. High collection rates also exist in Western Europe, where fines are relied upon as the sentence of choice for most relatively serious criminal offenses as well as for minor ones, and where, by public policy, the fine is the major sentencing alternative to imprisonment (Albrecht, 1980; Casale, 1981; Gillespie, 1980, 1981).

Although many of the 126 American court administrators we interviewed were not certain of the proportion of criminal offenders who pay their fines in full, 85 percent made estimates. Four out of ten court administrators reported that half or more fined offenders pay in full on the day of sentence.

2. Policy relevant, but more complex calculations, could also be done if individual-based fine collection data were available for statistical analysis by court administrators. For example, a court could describe what proportion of the overall fined offender population paid what proportion of the fine imposed on them over a given time period. This would permit a court to compare collection rates for offenders sentenced to high or low fine amounts, for example, or to compare collection patterns over time. In addition, courts could examine whether an increase in typical fine sentences has any effect on the court's collection rate; that is, whether there are constant, diminishing, or increasing collection rates associated with specific increases in average fine amounts imposed.

For those offenders who request additional time to pay their fines, three out of ten court administrators reported that full amounts were collected within the time set by the court from over 80 percent, and another four out of ten reported collecting full amounts on schedule from between 50 and 80 percent of those who did not pay immediately. While almost half of these court administrators (48%) reported difficulty in achieving these results, the other half (52%) said it was not particularly difficult. Of course, this evidence comes from reports by court administrators themselves, and the inadequacy of most management information makes it difficult to compare their reports with hard facts. However, researchers have compiled some individual-level collection data in several courts. The results generally support the court administrators' views that jurisdictions frequently collect criminal fines successfully and, often, expeditiously.

In research on the five courts that comprise New York City's lower court system, for example, 75 percent of the criminal fine dollars imposed city wide were collected within one year. Furthermore, two-thirds of the criminal offenders who were fined paid in full, most within three months of sentence (Zamist, 1986). Although New York City may not be entirely representative, there is no reason to believe it is remarkable in ways that suggest *better* performance than other courts. Indeed, studies reveal courts that are more successful; the collection rate for fined misdemeanors in Peoria, Illinois, for example, is over 80 percent (Gillespie, 1982). Courts in Western Europe that serve large, heterogeneous communities have high collection rates, even though fines are used far more widely as a sole sanction for more serious cases than in the United States. Individual collection rates of over 90 percent have been found in West Germany (Albrecht and Johnson, 1980), and rates of between 70 and 80 percent are not uncommon in English magistrates' courts (Casale, 1981; Softley, 1977). Collection rates for repeat offenders sentenced in the magistrates' courts to fines in lieu of imprisonment are between 55 and 77 percent, although many of these offenders are unemployed and have few financial resources (Casale and Hillsman, 1986).

High collection rates reflect enforcement effort. Although the success of some courts in collection results from low fine amounts and/or the selection of stable offenders to receive fine sentences, most courts must still put pressure on many offenders to collect their fines. In New York City, for example, while 47 percent of all fined offenders pay in full without any enforcement activity on the court's part, mailed notifications and arrest warrants (often more than one) are required to elicit payment from the remaining 20 percent of the fined offenders who eventually pay. In the end, one-third of all

fined offenders default; 36 percent of these have a jail alternative imposed (12% of all those fined) and 9 percent are resentenced by the judge to an alternative, noncustodial sentence (3% of the total).³

In summary, while many types of courts which sentence a wide variety of offender populations to criminal fines collect them in a majority of cases, there is considerable variability in success levels. This finding suggests that differences in collection techniques and enforcement strategies are important factors in understanding variations in collection rates. We turn, therefore, to an examination of common collection and enforcement practices in American courts, drawing also upon the experiences of West European courts. In describing the techniques used and the policy issues these efforts raise, we seek to distill the lessons successful courts have learned about how to collect and enforce criminal fines and other monetary penalties.

The Process of Fine Collection and Enforcement

The fine payment process has several distinct parts. From the court's perspective, the postsentence process is composed of several quite different stages, although the terms "collection" and "enforcement" are typically used interchangeably. Some methods to promote fine payment are designed to encourage or assist the offender to make payments voluntarily (e.g., deferred payments, installments). Others are designed to be more persuasive (e.g., payment reminders, nonpayment warning letters, interest charges). Still others are clearly coercive (e.g., arrest warrants, judgment orders, property seizures, imprisonment for default). While all these methods are usually linked in an overall strategy for managing the fine postsentence, it is important to distinguish, at least conceptually, *collection* methods from *enforcement* methods.

Generally, methods of eliciting payment that are enabling or persuasive are part of the collection process. In contrast, methods of securing payment that are coercive should be viewed as enforcement activities. Although the use of these various methods reflects a continuum of activity rather than a dichotomy, some activities clearly lie on the collection side (reminder and warning letters), while others (property seizure, attachment of earnings, committal to jail) are undoubtedly coercive. Some activities, however, lie in a no-man's land between the techniques to persuade offenders to pay and

3. Similarly, among offenders in English magistrates' courts who are fined in lieu of imprisonment, 34 percent pay in full voluntarily; but another 30 percent pay in full only after some official action (or series of actions) is taken to elicit payment. Some of the rest are jailed as defaulters (9%); but most (26%) simply remain on the courts' active collection lists beyond 15 months postsentence, making sporadic payments in response to the courts' equally sporadic collection efforts (Casale and Hillsman, 1986:241).

those designed to force them to do so. These devices include arrest warrants that are mailed as warnings but not executed, and judgment orders against property that are filed but not accompanied by a seizure. Generally speaking, however, we consider these procedures as enforcement activities because a specific coercive device is threatened, even if it is not implemented.

How do courts collect and enforce the fines they impose? Imposition of a criminal fine or other financial penalty generally involves the court in the process of ensuring the sentence is carried out. Although some state laws give authority to personnel outside courts to collect fines under specific circumstances (e.g., police, non-court probation departments, corrections), in most jurisdictions the postsentence responsibility for fines rests with court personnel.

While courts typically are given the statutory duty to collect criminal fines, very little about how they are to accomplish this task is regulated by law, either in the federal system or in the states. Furthermore, most state courts' administrative rules on fine collection address only how fine moneys should be accounted for and how audits should be conducted. As a result, in developing their fine collection strategies, individual courts are usually on their own. Only slightly more guidance exists when courts move to enforce fine orders, after collection efforts have failed. Although individual courts differ in their choice of specific procedures to enforce fines, and particularly in the sequence in which those procedures are initiated, some state statutes provide legislative guidance as to preferred methods for fostering fine payments. Statutes may also limit the means courts can employ to compel payment.

Fine Collection Practices and Procedures

Despite the lack of formal rules governing fine collection, courts have a relatively limited choice of ways to encourage offenders to meet their financial obligations. Not surprisingly, the methods resemble those available to private agencies seeking to collect civil debts. They fall roughly into three categories: methods (1) to set reasonable terms of payment; (2) to monitor payments closely; and (3) to encourage prompt payment. What is remarkable about the collection activities of American courts is not the specific techniques they employ; it is the fact that so many courts make little or no systematic use of the several simple tools that are available.

Delayed payment and installment systems. One of the most important aspects of fine collection is setting reasonable terms for fine payment by the

use of deferred payments or installments.⁴ Although only 35 states explicitly authorize courts to use installments or otherwise extend the time for payment beyond the sentence date, it is likely that all courts use some type of informal installment plan.⁵

The movement of courts toward use of more flexible terms of payment was given considerable impetus by the 1971 decision of the U.S. Supreme Court in *Tate v. Short*. This decision held it unconstitutional for a state to imprison an indigent defendant for default when the original conviction had been for an offense punishable only by a fine. However, a key factor in the *Tate* decision was that the sentencing court had not given the defendant any opportunity to pay the fine. Noting that "the State is not powerless to enforce judgments against those financially unable to pay a fine," the Court observed that there were numerous alternatives to forthwith imprisonment and cited with approval a number of state statutes providing for installment payment plans (*Tate v. Short*, 1971:399).

In practice, therefore, courts are under an obligation to collect fines in ways that enable indigent defendants to pay, generally by giving them time to do so. Given the difficulties of determining who is legally indigent, however, many courts provide mechanisms for formal or informal installment schemes that include most fined offenders.⁶ Indeed, relatively few court administrators interviewed in our survey reported a high proportion of full

4. Deferred payment refers to a system in which the court officially postpones the date at which the full amount of the fine is due to give the offender time to obtain the money. Alternatively, in an installment system, the court typically specifies an amount (a proportion of the total fine) that is due on a regular basis (e.g., weekly, monthly) until the full fine is paid.

5. As part our research on the fining practices of American criminal courts, we reviewed all U.S. state statutes, including those of the District of Columbia, for legal provisions related to the criminal offenses for which fines are authorized as sentences, the amounts and collection procedures permitted, the responses to default that may be used, the provisions for the distribution of fine revenue, and other related issues. The information from this review is current through 1980 and, therefore, dated in some respects. (See Hillsman, Sichel, and Mahoney, 1984:237; Sichel, 1982a.)

6. As in other areas of criminal law -- for example, a defendant's right to counsel -- "indigency" has come to be an important legal (as well as practical and humanitarian) concern for sentencing judges, since Supreme Court cases of the early 1970s began to address equal protection issues involving fined offenders. However, although some in the legal community had hoped for a cogent, widely applicable standard for measuring "indigency" for the purposes of sentencing, no acceptable definition has yet evolved for formally determining who is unable to pay a fine or other financial penalty. There are thus no clear-cut guidelines for judges to identify those who qualify for the special treatment required by Supreme Court decisions when they are in default of a fine but are too poor to pay it. Legal guidance has been very scanty even at the state appellate level, usually emphasizing the discretion of the judge in determining indigency. Not atypical is the Arizona Supreme Court which, in *In Re Collins* (1972), defined indigency as "not necessarily wholly devoid of any means, just being incapable of paying the fine forthwith through force of circumstances." Discretion is presumably exercised by the judge in determining who is "incapable." (See Dawson, 1982; Hillsman, Sichel, and Mahoney, 1984:60ff.)

finer collected on the date of sentence.⁷ In those courts which do collect a substantial number of fines forthwith, it is likely that the amounts are relatively small, and that most defendants are told to show up for sentencing with enough money to pay the full fine. High collection rates are ensured because, in the words of one chief clerk, "the body does not leave unless the money is paid."

For most courts, practical as well as constitutional considerations necessitate installment plans to ensure fines are collected. But what standards should a court use to set payment terms that are reasonable? Many courts appear to lack general rules for setting the size and frequency of fine payments. While some have such standards, they are seldom grounded in empirical evidence about how long most fined offenders in the court take to pay fines of specific amounts or in careful assessments of individual circumstances. Instead, the standards tend to be rules of thumb that all or most fines ought to be paid within a given period of time, such as one year (Casale and Hillsman, 1986:82; Hillsman, Sichel, and Mahoney, 1984:90). Furthermore, these collection standards are often relaxed or abandoned in practice, with many offenders requesting (and receiving) additional time to pay. The result is a lack of consistency in the way offenders are treated.

Research in England and the United States suggests that a court's collection efforts are more likely to be successful (i.e., many fined offenders pay voluntarily within the time set by the court) if (1) small fines are collected within short fixed terms; and (2) larger fines are paid in installments that are set in relation to the offender's means, but with a relatively short period of time for full payment (see Casale and Hillsman, 1986:87, 117; Hillsman and Greene, 1987:103.)⁸ Research also suggests that for installment plans to elicit voluntary payment successfully, the total fine amounts set by the court must bear some relationship to offenders' financial circumstances, as well as to the severity of their offenses (Casale and Hillsman, 1986;

7. A third of the 126 courts indicated that they collect the full amount from fewer than a quarter of their offenders at sentencing, whereas 24 courts (19%) reportedly collect the full amount forthwith from over three-quarters of their fined offenders.

8. In court systems that have probation resources, the payment of a fine is sometimes made a condition of probation, and the terms of payment are set in relation to the period of probation. In these courts, it is not always clear if the main sentence is probation supervision or if it is the fine, with probation officers acting as collection agents. (In Atlanta, for example, even the traffic court has a probation staff attached to it.) In either case, both the total amount of the fine and its terms of payment may be related to the cost and length of the probation period. Interviews in Georgia suggest, for example, that many fines for misdemeanor offenses are set specifically in relation to the annual cost of probation supervision, with the probation officer's primary responsibility being to collect the fine. Even in these systems, however, collection problems arise and frequently lead to probation revocation and imprisonment (Sichel, 1982b:13).

Hillsman, Sichel, and Mahoney, 1984; Softley and Moxon, 1982). If the court does not match original fine amounts to offenders' means, poorer offenders will take a very long time to pay high fines (which, as research shows, increases the likelihood of default). Otherwise, the court will ultimately have to adjust the fine amount downward, which can lead to a lack of consistency in the way similarly situated offenders are treated. The close link between successful fine collection and setting fine amounts in relation to an offender's means is a central issue to which we will return.

Fine payment monitoring systems. In the words of one experienced U.S. Attorney, "the key to success in collecting money owed the Government rests in prompt accounting and necessary and repeated communication with the debtor" (Sichel, 1982c:13). While virtually all courts around the country have accounting systems to track how much each offender owes, courts differ in the extent to which these systems are also used as a collection device to monitor payments and to respond to delinquency. Research confirms that close monitoring permits swift response to a late payment, and that such promptness is strongly associated with a court's overall success collecting fines (Casale and Hillsman, 1986; Softley and Moxon, 1982). Nevertheless, many American courts do not use even simple monitoring systems; fewer still have developed individualized monitoring systems that maximize compliance (Hillsman, Sichel, and Mahoney, 1984).

New York City's routinized system for monitoring fine payments is not atypical of large urban jurisdictions. The cases of fined offenders sentenced to pay over time remain on the court calendar postsentence; however, clerks monitor fine payments only insofar as they record whether the offender appears, or fails to appear, in court as scheduled. If the offender fails to appear, an arrest warrant is issued by the judge. Whether the fined offender has appeared or not, however, the court's routine fine monitoring system reacts to nonpayment only by issuing a mailed notice for the delinquent offender to appear in court; no arrest is ever made.⁹

Despite the lack of more substantial enforcement efforts, there is evidence that even a simple notification process not only encourages payments but also increases revenues in excess of additional costs incurred by the sys-

9. In other routine monitoring systems which take fine cases off the active calendar after sentencing, the clerk's office tends to monitor payments via an accounting system that is similar to any commercial accounts payable system. Cases are returned to the calendar to initiate enforcement efforts if, after a given period of time, the fine is still outstanding. Such systems are often very cumbersome because inattention to such cases (postsentence fine cases are not typically a high priority for a court) leads to backlogs and to lengthy delays before nonpaying offenders are confronted with their failure to comply with the court's orders (Casale and Hillsman, 1986).

tem.¹⁰ In the English city and town magistrates' courts we studied, almost a third of the delinquent offenders who were sent a reminder letter paid in full (Casale, 1981). In one German jurisdiction, almost a half did so (Albrecht and Johnson, 1980). Similar results were found in New York City (Zamist, 1986). Nevertheless, our court survey and site visits suggest that many courts in the United States fail to use such obvious collection methods (Mahoney, Hanson, and Thornton, 1982).

More individualized systems of monitoring fine payments — those that keep close track of each case and include personal contacts with fined offenders — are less common than routine notification systems, despite evidence that they can significantly increase voluntary compliance. Even when a probation service is the collection agent, supervision of fine payments is often not highly individualized. In some Georgia counties, for example, fine-owing probationers are treated by the probation department as components of a "nonsupervision" caseload. Probation officers in these counties do little more than receive payments and issue reminders or warnings (Sichel, 1982b).

In a few courts, probation supervision of fine collections is more personalized, including home visits and counseling of fined offenders to help them improve their budgeting skills or resolve other problems that interfere with their making payments. We observed such activities in other Georgia counties as well as in the federal system. Some courts have developed similar individualized approaches without relying on probation. The Delaware Court of Common Pleas, for example, employs a special collection officer to encourage fine payments and has vested considerable discretionary authority in this position (Sichel, 1982b). In the Richmond County Criminal Court (Staten Island, New York), a private non-profit organization (the Victim Services Agency) uses a similar, individualized approach to collecting restitution payments (Hillsman and Greene, 1987:102). Finally, the fines offices of some English magistrates' courts have also developed personalized systems that are effective in collecting fines (see, for example, the description of East Court in Casale and Hillsman, 1986:152, 168; Morgan and Bowles, 1983).

Surety, cash bail, interest, and surcharges. While setting reasonable payment terms and monitoring payments closely are the main methods courts use to collect fines successfully, they can also use incentives to encourage prompt payment. Several types of incentives can be identified, but few

10. See, for example, management notes by Tait and Wick, both in this issue.

American or West European courts have put them into practice, so we are unsure of their effectiveness in court settings.

The statutes of ten states, for example, permit courts to accept a surety in lieu of immediate payment. Thus in Nebraska, the offender may enter into a recognizance along with one or more "good and sufficient freeholds" for the payment of the fine within five months,¹¹ and in Tennessee "one or more persons may become security for the fine and costs by oral undertaking before the justice of the peace."¹² The statutes of seven states also authorize a court to apply cash bail to satisfy a fine in criminal cases, and there are undoubtedly more states that allow this procedure in motor vehicle cases. If bail may be automatically applied, collection efforts may be reduced in some cases. And, indeed, there is evidence that routine forfeitures of cash bail set in minor criminal cases are regarded as the functional equivalent of a collected fine in at least some lower courts (Feeley, 1979).

Another method of encouraging prompt payment would be the imposition of an interest charge or collection fee when the offender fails to pay a fine within a specified period. Common in civil debt collection, interest or collection charges appear to be rarely used as incentives for timely payment of criminal fines. In our survey of state court administrators, we asked whether interest, special collection fees, or surcharges were imposed on fine amounts not paid immediately; only 3 of 126 courts (all municipal courts) answered affirmatively.

This situation may be changing, however. The Washington State Legislature, for example, recently passed a law permitting courts to pass along some collection costs to fined offenders (Wick, this issue), and in 1984, the U.S. Congress enacted legislation to allow federal courts to impose interest charges as a way to facilitate criminal fine collections. Finally, some states, including New York, have recently made provision for surcharges to be added to some monetary penalties (in this case, restitution) to cover collection costs. It is important to note, however, that the threat of additional monetary charges added to the fine can be an incentive to payment only if the original fine amount set by the court is payable (given the financial circumstances of the offender), if the terms of payment are reasonable, and if the offender's payment behavior is closely monitored.

Fine Enforcement Practices and Procedures

The term fine enforcement refers to the process by which courts use coercive means to ensure fines are paid, once the period originally fixed by the

11. Neb. Rev. Stat. 29-2409.

12. Tenn. Code Ann. 410-411.

court has passed without payment. The perception that enforcement problems are insurmountable has been a drawback to expanding the use of fines in American courts (Carter and Cole, 1979; Cole, Mahoney, Thornton, and Hanson, 1986).

The specific coercive procedures used by courts vary considerably, and are influenced by political, administrative, and legal factors. Overall enforcement strategies — the combination of measures a court regularly adopts and the sequence in which they apply these measures — also vary. Most empirical research on fine enforcement has examined the impact of specific coercive techniques rather than focused on the effectiveness of different enforcement strategies. But fine enforcement is a process, the outcome of which (both in terms of cost and degree of success) will depend upon how techniques of different complexity and cost are introduced.¹³

A variety of fine enforcement methods are permissible under state statutes. When the time allowed by the court for fine payment has passed and the full amount remains uncollected, the primary coercive measure available to most American courts is the arrest warrant. The arrest warrant, however, is a device to bring the offender back to court rather than a direct method to compel payment. Moreover, in most courts arrest warrants for failure to pay a fine are infrequently served in person by law enforcement agents, and actual arrests are rare. However, if delinquent offenders are notified that an arrest warrant has been issued, this threat tends to encourage payment even without forcibly returning the offender to court.¹⁴

A review of state statutes, as well as of court practices, suggests three categories of coercive methods used by courts with fined offenders to compel compliance: (a) imprisonment; (b) labor as a substitute for monetary payment; and (c) seizure of property, bank accounts, or wages. In discussing courts' use of these options, we begin with imprisonment for default because it is both the harshest and the most frequently used device; it is also the most problematic, given concerns about the poverty of many offenders.

13. The most obvious point is that if relatively simple and inexpensive fine collection techniques are implemented satisfactorily in a court, the more costly and more coercive enforcement techniques will need to be imposed on fewer offenders.

14. While virtually all courts will issue an arrest warrant, sooner or later, in the event of continued nonpayment, our survey of court administrators suggests that limited jurisdiction courts (which are the heaviest users of fines) seem somewhat more likely than general jurisdiction courts to move immediately to an arrest warrant without first making other efforts at collection, including notification. By contrast, in the English magistrates' courts, notifications or reminders are the most frequent first step taken to collect the fine. Our research on these lower courts suggests that courts using reminder letters were the most successful in collecting outstanding fines.

Imprisonment. All states provide some statutory mechanism by which imprisonment can be used as a fine enforcement device.¹⁵ Generally, an offender who has failed to make timely payment of a fine, and who either returns to court voluntarily or is arrested for nonpayment or on a new charge, will be brought before a judge who will inquire into the reasons for nonpayment and decide what is to be done. Practitioners across the United States and Europe report how effective the *threat* of immediate jailing is in getting such offenders to pay the full amount due. One American court clerk called this the "miracle of the cells," a visible phenomenon in many courtrooms when a judge threatens imprisonment, only to have a family member or friend of the offender dash forward, cash in hand. The effectiveness of this threat is, perhaps, the main reason practitioners are extremely hesitant to abandon imprisonment as the ultimate fine enforcement device.¹⁶

Although the credible threat of imprisonment has been the traditional force behind effective efforts to enforce fines, there is understandable controversy in America about whether imprisonment should be used at all, and if used, how it should be applied. Almost every offender brought before an American court for default is queried, however perfunctorily, about the reasons for his nonpayment. If he has money and the default seems willful, the choice is relatively easy: either the "miracle of the cells" takes place or the judge jails the offender. But if the offender (and family) is without funds, the "miracle" cannot take place and the options are more complicated. Our observations suggest that judges often deal with this problem by accepting an offender's plea of poverty and then either extending the time to pay (which only postpones confronting the problem) or reducing the outstanding amount. But these judicial responses are by no means universal. Over half of the court administrators in our survey reported that judges in their courts commonly jail defendants for default.

We have found that there is considerable misunderstanding among court personnel about the current state of American constitutional law as it pertains to the jailing of indigents for failure to pay a fine. Although at the pre-

15. States that provide for direct committal to jail for default in fine payment number 39; 11 states provide for the execution of a jail alternative to the fine which is contained in the original sentence (the "dollars or days" so common in American court history but frowned upon by the ABA's model criminal code [1978]); 22 provide for the offender to be held in jail until the fine is paid or otherwise satisfied; and 13 states permit a jail term to be imposed for contempt of court when fine default is deemed to be willful. In addition, over half the states (28) provide for a fine to be made a condition of probation, with fine default as a ground for probation revocation followed by imprisonment. (See Sichel, 1982a:32ff., for a discussion of different state statutory provisions for converting fine dollars to jail days.)

16. It is not only in fine enforcement that the threat (or actual use) of jail is considered essential. There is empirical evidence that when efforts to collect child support payments are backed by the threat of imprisonment, the results are positive (Chambers, 1979).

sent time, the restrictions imposed by federal and (most) state courts are actually quite limited, many people — including judges and lawmakers — believe the law bars imprisonment of any indigent who defaults. This misperception leads to mischief: either poor persons are not fined at all, being sentenced instead to jail for short periods, or the court's enforcement activities falter, and offenders ignore the fine sentence with impunity. Neither outcome is helpful to maintaining the credibility of the sentencing court.

In three major decisions spanning 1970 to 1983, the U. S. Supreme Court has addressed due process and equal protection questions arising from state court efforts to jail indigent offenders for fine nonpayment (*Williams v. Illinois*, 1970; *Tate v. Short*, 1971; *Bearden v. Georgia*, 1983). In all these decisions, the Court took pains to make clear that, as Justice White phrased it in a concurring opinion in *Bearden*, "poverty does not insulate those who break the law from punishment." Courts can fine indigents and impose sanctions for nonpayment. However, there are some important limitations on the range of sanctions that courts can impose for default, and there are also procedural requirements to be followed if imprisonment is used. For example, an indigent cannot be imprisoned for default on a fine that was imposed for an offense which does not carry imprisonment as an authorized sanction unless the court determines the default is willful. If the offender is judged unable to pay the fine, the court must consider whether a noncustodial sanction will achieve the State's legitimate interests in punishment and deterrence before it imposes a term of imprisonment for default. At a minimum, the Constitution requires an offender in this situation be given an opportunity to pay the fine over time.¹⁷

If (as in *Bearden*, 1983) the underlying offense is one for which jail is an authorized punishment, a judge has greater leeway to structure the sentence to facilitate enforcement (e.g., to combine the fine with a jail sentence that is suspended or is an alternative). If the defendant has been given time to pay and does not, he can then be jailed. The judge, in fact, has already made a determination that imprisonment would be the most appropriate means to satisfy the State's interests in the event of fine nonpayment. Nevertheless, the *Bearden* ruling strongly suggests that the trial court still

17. It is not clear from these cases whether an indigent defendant can be jailed for default if he has tried but has been unable to pay the fine. The *Tate* decision explicitly left open the legality of imprisonment "as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fine by those means" (401). The Court in *Tate* left that determination to "await the presentation of a concrete case" (401), and so far has not considered such a case. To us, the issues raised in *Tate* also suggest that sentencing courts should pay greater attention than is now common to methods of setting fine amounts that take account of the offender's means as well as his offense so that issues such as these arise infrequently.

should reconsider this issue in any enforcement proceeding that follows default by examining alternative measures to imprisonment before actual committal.

We turn now to other coercive but noncustodial methods of fine enforcement which are underutilized in American courts. Although imprisonment for fine default is permissible under many circumstances, its use is not desirable unless the default is willful and the defaulter recalcitrant.

Work programs. Work programs, currently in favor as sentencing options, may also be an appropriate method of enforcing fines by providing some offenders with an opportunity to work off an obligation they cannot pay. As of 1980, the statutes of twenty-one states provided for forced labor or public work to satisfy a fine, and three states provided for public employment to be made available for working off a fine.

Delaware, for example, has operated for many years a "work referral program" within its Bureau of Adult Corrections for fined offenders who cannot pay (Sichel, 1982b). In other courts in the United States, sentences to work programs are imposed apparently as a substitute for fines; this suggests such options could also be used as a response to fine default.¹⁸ In West Germany, as early as the late nineteenth century, proposals to reform the fining system included the idea of replacing imprisonment for default by a community work order. Currently, community service placements are used in West Germany for fine default, especially if the offender is on public assistance or is unemployed (Greene, 1987). In Britain, however, traditional community service programs have not been used in this manner, despite pressure to do so, primarily because of concerns that existing supervisory resources would be strained by an influx of fine defaulters working to pay off their fines (West, 1979).

Court orders to do unpaid work are often perceived by criminal justice professionals as an appropriate alternative punishment when the original sentencing decision was to deprive the offender of money and not his liberty. Even though work programs (especially supervised ones) can be a relatively expensive alternative if heavily used, jail is a scarce (and even more costly) resource in most jurisdictions.

18. In Peoria County, Illinois, for example, one-third of a sample of misdemeanants sentenced to court supervision were sentenced to public service employment, according to a 1982 study by Gillespie who suggests that "Fines and PSE sentences appear to be close substitutes in sentencing misdemeanors." He suggests that "the basis of the choice between the two sanctions appears to be made on the basis of economic status of the offender, i.e., their ability to pay a fine" (11). He also notes that such work options are enforceable: the compliance rate was 73 percent.

Civil procedures including property seizure. The image of civil mechanisms may suggest gentler enforcement, but the backbone of such remedies — distress warrants to seize and sell personal property — can result in substantial economic deprivation. Nine states provide explicitly for the execution of "distress" warrants (or similar writs) for sale of an offender's property to satisfy a fine.¹⁹ At present, there appears to be little use of this remedy in the United States. In recent years, however, this approach to fine enforcement has been increasingly and effectively experimented with in English magistrates' courts (Casale and Hillsman, 1986).

Although court officials in Western Europe face the problem of poor offenders, they are less inclined than their American counterparts to reject property seizure as an enforcement mechanism. They are not persuaded by the common argument that it is too much trouble to recover small fines in this manner or that typical offenders have no property which could be seized. This is because European experience reveals that goods are rarely actually seized and sold. As with all coercive devices, property seizure operates primarily as a threat. As a civil bailiff who collects fines for a provincial magistrates' court in England said, "Everyone has something he doesn't want to lose, even if no one else wants it." Such officers use the threat of distress — the "miracle of the bailiffs" — to elicit an "eleventh hour" full payment in 38 percent of their cases and a partial payment in another 10 percent (Casale, 1981).²⁰

The garnishment of wages, another civil enforcement mechanism, is an option available in almost every court system. However, it is rarely used either in the United States or in Western Europe because courts are sensitive to the possibility that an offender might lose his job because his employer does not want to be troubled by withholding and forwarding earnings. British courts, for example, have taken what is arguably an appropriate policy position: they limit this mechanism to offenders who are stably employed by large employers or by the state.

19. Seventeen states also provide for a fine judgment to be imposed as a lien on property which may then be executed. Thirty-five states provide for the state's attorney to collect fine moneys through other civil processes including garnishment.

20. The suspension of driver's licenses or car registrations as fine enforcement devices are often mentioned as potential fine enforcement procedures because they appear simple to impose and because, conceptually, they are similar to distress. We have not found a court, however, where either is used as a response to fine default in nontraffic cases. To our knowledge, license suspensions are used only in motor vehicle cases involving moving violations where the officer has seen the offender's driver's licence. Car registration suspension appear to be used primarily for parking offenses, because only the registration is known from the license plate. In no state have we found license and registration files to be crossreferenced, permitting their use interchangeably.

As with all coercive devices, civil procedures can be cumbersome and costly to use, but they can also be very effective as a threat. Furthermore, no coercive device needs to be executed often if a court's overall sentencing and collection processes are effectively structured to maximize voluntary compliance.

Characteristics of Courts that Appear Successful in Collecting and Enforcing Criminal Fines

Our examination of fine collection and enforcement makes it clear that such practices cannot be viewed in isolation from sentencing. Efforts to improve fining must take account of the critical links between the imposition of a specific fine amount and the methods used to collect and enforce it. Three sets of conditions characterize courts whose fine outcomes appear generally successful.

Fines must be set properly. Full and accurate information on offenders' financial circumstances must be made routinely available to judges so that fine amounts can be set in relation to offenders' means. Only then can the resulting level of punishment be made appropriate to the severity of the crime, meaningful to the offender, and enforceable and payable.²¹

In addition to setting the amount due at an appropriate level, guidelines should be followed for setting reasonable, consistent payment schedules for fined offenders who need time to pay. Generally, payment schedules should be short. The evidence from our study of English courts indicates that fine sentences characterized by smaller and more manageable amounts collected over shorter time periods are more likely to be collected. Our comparison of similar American courts supports this conclusion: courts reporting good success in collecting fines were more likely than less successful courts to control their use of installment plans (limiting them to cases in which payment over time was essential) and to keep the time period for full payment short.

Collection procedures should be clear, should encourage prompt payment, and should be adhered to. The evidence shows that "supervision" works in collecting fines. The court must continually signal its watchfulness over the

21. In addition to the empirical evidence in support of this finding from studies in American and British courts, our survey of American court administrators supports this perspective. Respondents in limited jurisdiction courts reporting high collection rates are less likely to see indigency as a reason for noncollection. Only 17 percent perceived indigency to be a frequent reason for nonpayment, compared to 50 percent of respondents from low fine collection courts. Furthermore, administrators from general jurisdiction courts perceived indigency to be more of a collection problem than did their counterparts from lower courts. Fine amounts are higher in general jurisdiction courts and while defendants may be poorer than those in lower courts, the greater the discrepancy between a defendant's income and the amount of the fine, the more likely that poverty will be a significant collection factors (Mahoney, Hanson, and Thornton, 1982; see also Cole, Mahoney, Thornton, and Hanson, 1988).

offender's payment progress through a monitoring system that reminds offenders when their payments are due and is quick to respond to nonpayment. The more individualized and personal the process, the better, but monitoring in most cases requires only relatively simple (and inexpensive) techniques. The court's reaction when a payment is overdue should be immediate and should specify exactly what the consequences of continued failure to pay will be.

Enforcement efforts to compel payment should be consistent and should be characterized by a steady progression of responses that reflect mounting pressure and increased threat of more coercive methods; however, they should also permit imposition of a nonfinancial but noncustodial alternative to the fine if nonwillful default appears likely. From the initial imposition of a fine penalty by the judge, the offender must have a clear understanding of the consequences of nonpayment. Our survey of American court administrators indicates that courts which report high collection rates also report relatively strict enforcement policies compared to courts with low collection rates. The administrators of high collection courts tend to feel that their judges are prepared to impose sanctions on defendants who fail to pay, and that the defendants know this. This finding further confirms other research results which indicate that credible threats of punitive sanctions elicit payments.

Courts which collect fines successfully without having to use their most coercive enforcement devices frequently are also those whose overall enforcement strategies employ many different enforcement techniques combined in ways that escalate the degree of coercive pressure applied. English courts that rely on few enforcement tools (e.g., by going directly to the threat of imprisonment) are less successful because failure to apply pressure gradually means that many potential defaulters are not weeded out before the ultimate enforcement tools are used (Casale and Hillsman, 1986:155).²²

Conclusion: Judicial Attitudes about Fines and Fine Collection

During our research on American courts' fining practices we interviewed many criminal justice professionals, particularly court administrators and judges. These interviews suggest that the widespread perception of serious fine collection and enforcement problems, regardless of their actual extent,

22. Lewis (1988) has carried out an econometric model of fine enforcement using theft cases in the English courts. He concludes that the model "suggests that fines are an economically useful sanction and that reducing or eliminating the use of imprisonment for fine default, reminder letters, or means inquiries is likely to increase the amount of theft and the net social cost of crime" (36).

negatively affects practitioners' views about the use of fines and other monetary penalties and their potential effectiveness as stand-alone sentences. A recent national survey of American judges found a majority of general jurisdiction court judges (62%) agreeing with the statement that "There is no effective way to enforce fines against poor people" (Cole, Mahoney, Thornton, and Hanson, 1988). It is significant, however, that a smaller proportion of the limited jurisdiction judges (42%) — who use fines far more extensively — held this view.

Our interviews suggest that judges are less knowledgeable than court administrators about the realities of fine collection and enforcement. This is not surprising. Judges typically see fined offenders postsentence only when they are delinquent. This situation is exacerbated by courts' general lack of adequate data on fine administration. Few court systems produce sufficient routine management information on their fine collection and enforcement activities for judges to have a good grasp of how the court's overall fining system is working. Until court administrators provide better systematic information about what they are doing in fine collection and enforcement, perceptions about both fines and other monetary penalties cannot be validated, and misperceptions cannot be corrected. Finally, fine administration in most courts cannot be improved until more attention is paid to experimenting with different methods of setting fine amounts at sentencing and with creative strategies for their collection and enforcement.²³

Consolidated references begin on page 90.

23. One step in this direction is a demonstration project underway in the Criminal Court of Richmond County (Staten Island), New York. Over the last 18 months, judges, court administrators, prosecutors, the defense bar, and criminal justice planners from the Vera Institute of Justice have been engaged in a collaborative process to improve the court's fine collection and enforcement practices, using the lessons learned from eight years of studying courts that are summarized in Hillsman and Greene (1987). The enhanced day-to-day collection and enforcement work are now being managed through a microcomputer-based MIS system developed specifically for this purpose; it also routinely generates status reports on the success of these activities (see Cummings, this issue).

A central feature of this project is the attempt to take seriously a theme which appears repeatedly in our review of courts' successes and failures in collecting fines: there is a strong link between the way in which the amount of the fine sentence is set and the likelihood of its being paid. Setting fine amounts in relation to the offender's means as well as the seriousness of the offense is an essential part of successful collection (Greene, this issue).