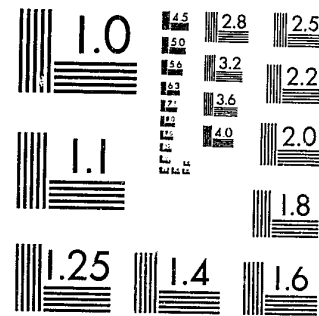


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National Institute of Justice
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GENERAL ASSEMBLY

of the

State of New Jersey



LEGISLATIVE OVERSIGHT COMMITTEE

COURT FINES ON THE INSTALLMENT PLAN:

THE DEFAULT PROBLEM

MF-1

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GENERAL ASSEMBLY

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Introduction

In the 1971 case of State v. DeBonis (58 NJ 182) the New Jersey Supreme Court ruled that the equal protection clause of the Fourteenth Amendment to the Federal Constitution prohibited the jailing of a convicted defendant merely because the defendant was indigent and could not pay in full the fine imposed as a penalty for the offense. The Court held that in these circumstances the defendant must be given the opportunity to pay the fine in installments.

The Court noted that the "authority to permit such [installment] payments has long been clear either as a condition of probation...or independent of probation." Now it was establishing as a requirement what had previously "rested in the [sentencing] court's discretion." As a general guideline, the Supreme Court offered "the following course to be appropriate:"

If a defendant is unable to pay a fine at once, he shall, upon a showing of that inability, be afforded an opportunity to pay the fine in reasonable installments consistent with the objective of achieving the punishment the fine is intended to inflict. The installment payments may be collected as an incident of probation, but if probation is not otherwise warranted, the payments shall be made directly to the clerk of the court. If a defendant fails

to meet the installments, he shall be recalled for reconsideration of his sentence. The court may reduce the fine, or suspend it, or modify the installment plan, or, if none of those alternatives is warranted, the court may impose a jail term to achieve the needed penological objective. If a jail sentence is thus substituted for the fine, the sentencing judge shall not be obliged to equate a day in jail with a statutorily stated dollar amount. On the contrary, such statutes must be deemed to prescribe only a minimum equivalency. The sentencing judge must impose a lesser jail term if it is adequate in the light of the total circumstances of the individual case.

The Current Problem

This decision has had its greatest impact on the operations of the State's 530 municipal courts, where the largest number of cases involving monetary penalties (motor vehicle and disorderly persons offenses) are heard. Such a substantial number of defendants have pleaded indigency and have been placed on installment payments by the municipal courts that the unpaid balance of installment fines throughout the State is now estimated to total \$5 to \$10 million. In one populous county alone, about \$750,000 in outstanding fines were owed to its municipal courts at the end of 1979.

While not all of this amount necessarily represents overdue payments, it is likely that a good portion will never be paid. Defendants often surreptitiously move out of the area or otherwise simply fail to keep up payments. Those courts which may wish to apply a carrot-and-stick

approach to collection find that the only "stick" they now have at their disposal is the one they are most reluctant to use, namely the threat of jail for those whose payments are in arrears.

There are two obvious and unfortunate consequences to this situation: 1) the interests of justice are not well served -- either for purposes of punishment or deterrence -- when the guilty can easily avoid the legal consequences of their offenses, and 2) the courts and local governments are deprived of substantial revenues which are their due, thereby increasing the tax burden of law-abiding citizens and threatening the range and effectiveness of governmental services.

The Oversight Committee has been in contact with members of the Judiciary and court administrators in an effort to promote new approaches to deal with this problem -- one which may grow worse in these troubled economic times. As a result of this review, the Committee can identify a variety of formal and informal measures which may, singly or in combination, assist the municipal courts in balancing the rights of the defendant with the penological aim of the law.

The Options

The Supreme Court recognized in DeBonis that it was walking a fine line between the State's desire "to inflict a therapeutic sting" on the offender and the unacceptable alternate of imprisoning a person who lacked the resources for an immediate payment of perhaps a \$100 fine. Yet the Court rightly warned that "to exonerate a defendant because he cannot pay the fine would...be tantamount to a grant of immunity from penal responsibility." Thus it set forth a scheme to give a defendant "an opportunity to pay the fine in reasonable installments consistent with the objective of achieving the punishment the fine is intended to inflict." If the defendant failed to adhere to the payment schedule, a court then had leeway to reduce the fine, suspend it, modify the installment plan or jail the defendant "to achieve the needed penological objective."

The import of the decision seems clear: the foremost consideration of the sentencing court is to impose a legal obligation on the defendant as a punishment for transgression of a law. An installment plan is designed not for the convenience of the defendant but to facilitate the court's administration of the punishment. Clearly, the court is not bound to act as a collection agency, nor to vitiate the "sting" of the penalty. If a defendant

responds to the court's reasonable leniency in a contumacious manner, the court should then take more forceful action against the defendant.

The proposals for a resolution of the problem of defaults on installment payment of fines fall into two categories: 1) the establishment of a "tougher" courtroom atmosphere to deter a defendant from making a frivolous claim of hardship and to promote a more forceful attempt by the judge to secure immediate payment, and 2) the development of statutory or administrative measures to place the defendant at greater risk for failure to maintain installment payments.

Judicial Guidelines

This Committee is convinced that many defendants offer rather casual and false claims of an inability to pay; they are by no means indigent and certainly could come forth with a full payment of the fine with no difficulty, other than perhaps a phone call home or to a friend. In fact, there is some suspicion that many who are prepared to pay when they arrive in court simply decide to ask for an installment fine when they see that other defendants are taking this route. In the words of one municipal court judge who reported to this Committee that matters had improved since he had begun to place stricter terms on the conditions for a delayed payment (including a requirement for a full payment within 30 days):

I cannot find any valid excuse for defendants coming into the court advising the court they have no money with which to pay the fines although they may have any time from one to three weeks in order to answer the summons, and should be prepared to pay the penalty if they are in fact guilty of the offense.

This Committee supports any efforts of the Judiciary to tighten the conditions under which a defendant is permitted to pay a fine in installments, and urges that guidelines or directives be developed to this end. As an example of one approach, we offer the following suggested procedures which have been developed for the use of municipal courts by the Superior Court in Middlesex County:

1. Follow generally the procedures required or recommended by the Administrative Office of the Courts.
2. Have defendants fill out the Affidavit of Income and Assets and await review by the judge. (Experience has indicated many defendants will arrange to obtain money for the fine on their own rather than wait and fill out forms. This also may deter other defendants from thinking that approval to pay the fine installments is an easy process).
3. Be very reluctant to permit smaller fines (under \$50) to be paid on this basis. Permit and encourage defendant to make a phone call.
4. When reviewing the Affidavit of Income and Assets, examine carefully. Ask for additional information (name of last employer, name of nearest relative, etc.) which may help in locating defendant in the event of default.
5. Basically, the spirit of the DeBonis decision was to grant a person some time for defendants to get money for the fine, but not to burden court personnel with long drawn out payment schedules. In other words, the basic intent

was to eliminate the practice of sending people to jail if they did not have the money for a fine at the immediate time.

6. If the defendant is permitted to pay the fine in installments, draw up the Order and give defendant a copy. A copy of the form to be used may be found in the Municipal Court Manual, Appendix item no. A-14, page 117. Specify in the Order the actual payment schedule.
7. Keep the payment schedule short, not drawn out over a long period of time. (A payment schedule of \$5 per week, for example, poses an undue clerical burden on court personnel, and can even prove to be an annoyance to the defendant. Also, the longer the payment schedule, the greater the chance payment will never be completed).
8. If the defendant fails to make a payment - and this can be impressed upon him at the time - have him appear in person to make payment and explain lateness. This too has been known to create a serious impression on others who may request installments.
9. Prompt action is essential. When there is default, get out notice immediately. Follow up with a warrant, if there is no response. Again, a short payment period precludes most default problems.
10. A good recordkeeping system is also essential in order to identify and permit rapid follow-up on defaults. It is recommended all records be reviewed at least monthly. While it is appreciated that in larger courts this is a time-consuming chore, courts have indicated it is well worth the effort.

Risks of Nonpayment

Even were municipal courts to give greater scrutiny to requests for installment payments, many defendants would undoubtedly still show a legitimate hardship. In particular, where a defendant was found guilty of several offenses arising from the same incident, the fine could easily reach \$1000 or more. Our research indicates that municipal courts would welcome a new tool with which to insure that the defendant would adhere to the payment schedule. It is recognized, of course, that nothing is likely to elicit payment from an offender who is determined to evade the court and leave town. For others who may have made some efforts to pay, however, the court may deem it too harsh or simply counterproductive to jail them for falling in arrears. And at present, jail is the only resort.

The proposal most often brought to this Committee's attention involves the threat to suspend a driver's license for failure to maintain payments. Whether this approach would be an appropriate remedy for non-motor vehicle offenses is open to question, but there is no doubt that it is a sensible recourse for the 40-50% of the caseload that involves violations of the motor vehicle laws.

The adoption of a rule to permit the courts to order a license revocation for failure to pay a fine appears to be well within the power of the Supreme Court. Such a rule would simply offer a parallel to the present Rule of Practice (7:6-3) which provides that if a defendant fails to appear in court in answer to a traffic summons for a non-parking offense, the court shall initiate action through the Division of Motor Vehicles to suspend the defendant's driver's license. It is the understanding of this Committee that in some cases a municipal court has actually treated a failure to pay as a failure to appear. While this specific action is not authorized by the current Rules of Practice, the Division of Motor Vehicles would be unaware of the court's motivation, and would follow through as if the defendant had failed to answer the summons.

The Administrative Office of the Courts and the Division of Motor Vehicles have discussed the possible adoption of this approach. The Division is quite properly concerned that the additional paperwork -- if unaccompanied by an increased appropriation -- might unduly burden its staff. The Administrative Office of the Courts is now attempting to determine the number of license suspensions that might arise from this rule.

This Committee surely is not anxious to foster increased paperwork out of proportion to the goal being sought. For this reason, we are intrigued with another proposal which may accomplish the same end in simple fashion.

In the City of Chicago, a police officer confiscates the driver's license of an offender at the time that a traffic summons is issued. The ticket serves as a temporary license. If the defendant does not appear in court, the license is sent to the Division of Motor Vehicles for suspension. This system virtually ensures that most defendants do appear in court.

A variant of this ingenious methodology would call for the defendant to surrender his or her license to the clerk of the court if the defendant were placed on installment payments. The judge would issue a temporary license -- just as is now done to allow a defendant to drive home in cases where a license is suspended -- valid only for the duration of the period of payment (or renewable at each payment if the judge requires a personal appearance). If the defendant failed to complete the payments as scheduled, proceedings to suspend the license would be initiated. If payments were made in full, the clerk would simply return the license to the defendant.

A procedure of this type may require legislative as well as administrative action. We recommend that the Judiciary as well as the appropriate legislative reference committee give early consideration to this suggestion.

One other proposal which has come to the attention of the Committee calls for an entry on the State Police criminal information system for any defendant in default who cannot be located. If the person were subsequently apprehended elsewhere in any other matter, the record would reflect that the offender is evading punishment for a previous offense. The benefits of this approach should be evaluated by the courts and law enforcement personnel.

Conclusion

The Assembly Legislative Oversight Committee is hopeful that a concentrated effort by the Judicial, Executive and Legislative branches of government can reduce the number of instances in which defendants avoid the full consequences of their unlawful acts. We need also keep in mind the financial impact to the courts and county and State treasuries when court costs and fines are uncollected. Other options for action in addition to those suggested here may become evident as this matter is given further attention. We offer our cooperation and support for new policies to resolve this problem.

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