



BJA Bureau of Justice Assistance

How To Use Structured Fines (Day Fines) as an Intermediate Sanction

Monograph



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Foreword

As prisons continue to be overburdened with an ever-increasing number of inmates, States are searching for punishment options that are less costly than incarceration, yet limit the freedom of convicted criminals. Structured fines, or day fines, are a monetary sanction adjusted according to the seriousness of the offense and the financial status of the offender to guarantee that every sentence imposes a negative impact. Initiated and widely used with remarkable success in Western Europe, structured fines are just beginning to be used in the United States as an alternative intermediate sanction. The first structured fine project demonstration in the United States was designed and operated by the Vera Institute of Justice in Staten Island, New York, between 1987 and 1989. Soon after, several other U.S. jurisdictions implemented similar programs and discovered that their effectiveness required well thought-out policy formulation and program planning, as well as a strong collection system. Because structured fines are valued individually—unlike tariffs, which are set at a single, fixed amount for all defendants convicted of the same crime—they produce greater benefits for the criminal justice and the civic communities than other types of intermediate sanctions, particularly in regard to offender accountability, fairness, deterrence, and revenue generation.

This monograph presents guidelines for policymakers and criminal justice practitioners who are considering using structured fines as part of their overall sentencing system. Written by members of The Justice Management Institute and the Vera Institute of Justice and funded by the Bureau of Justice Assistance, this publication offers planning and operation instructions applicable to every jurisdiction, such as how to set goals and priorities, develop a unit scale that ranks offenses by severity, calculate fine amounts, and impose the structured fine sentence. Collection methods and techniques, critical to the overall success of a structured fine program, are also discussed.

Structured fines can become an integral part of every jurisdiction's sentencing system; however, evaluating the jurisdiction's current sentencing policy, organizational structure, and legal framework is key to creating a useful program. Also, gathering the support of a jurisdiction's criminal justice leaders and others who will help to operate the structured fine program should facilitate its implementation. Courts have a central role to play in both planning and operating a new fine program—for example, judges in helping to shape and impose sentencing policies, and court administrative personnel in collecting fines. Since structured fine programs are fairly new to our criminal justice system, substantial ongoing education and training will be required for all parties involved. By continually

monitoring and evaluating a program's effectiveness, program managers and policymakers will ensure that the structured fine program stays on course and make improvements as necessary.

Sentencing systems that include structured fines offer criminal justice practitioners an effective and efficient alternative sanction—an economic burden to the offender, not the taxpayer. It is our hope that this monograph will prompt more jurisdictions to consider the new concept of structured fines as a viable and valuable sentencing option.

Nancy E. Gist
Director

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Introduction

What Are Structured Fines and How Do They Work?

Structured fines, also called “day fines,” constitute a type of monetary sanction that can be used to sentence convicted criminal offenders. Initially developed in Europe, structured fines are based on a simple concept: punishment by a fine should be proportionate to the seriousness of the offense and should have roughly similar impact (in terms of economic sting) on persons with differing financial resources who are convicted of the same offense. Structured fines are set through a two-step process that determines the severity of the punishment separately from assessment of a specific dollar amount. First, on the basis of a scale that ranks offenses according to their gravity, the number of structured fine units for the crime is determined. Second, the dollar amount of the fine is figured by multiplying the number of fine units by a portion of a defendant’s net daily income (hence the term “day fine”), adjusted to account for dependents and special circumstances.

Structured fines thus are fundamentally different from the tariff fines widely used in American criminal courts. In courts that use tariff systems, fine amounts are typically set at a single fixed amount, or within a narrow range, for each specific offense. This fixed amount is imposed on all defendants convicted of a particular crime, without regard to the financial circumstances of individual offenders. When tariffs are set at low levels, the fines have little punitive or deterrent effect on more affluent offenders. When they are set at higher levels, collecting the fine amount from poor defendants is difficult or impossible, and, in many cases, these defendants are eventually given jail sentences.

Although many individual judges have attempted to temper prevailing tariff systems by considering offenders’ means in setting fine amounts, they have lacked the tools to do so in a systematic fashion. Structured fine systems, which have now been tried experimentally in more than half a dozen American jurisdictions, provide these tools. The structured fines concept and techniques have the potential to make the fine a much more valuable sentencing option for American criminal courts.

Potential Benefits of Structured Fines

Structured fines are a type of intermediate sanction—a sanction more severe than unsupervised probation, but not involving incarceration in jail or prison. The advantages of structured fines are discussed below.

Offender Accountability

Structured fines are unequivocally punitive, with the severity of the punishment (in terms of economic impact on the individual offender) varying with the gravity of the offense. The offender is, quite literally, made to pay his or her debt to society.

Deterrence

Structured fines provide an economic disincentive for criminal behavior. They enable courts to impose meaningful monetary consequences for conviction of a criminal offense.

Fairness

Judges and other criminal justice practitioners who have become familiar with structured fines are impressed by the essential equity of the concept. Although they may be simpler to use, tariff fines are inherently unfair because, all too often, the fine amounts are too low to be meaningful to affluent offenders but high enough to exceed the ability of some defendants to pay.

Effective and Efficient Use of Limited System Resources

Structured fines are relatively inexpensive to administer compared with most other types of intermediate sanctions—including intensive supervised probation, electronically monitored home confinement, day reporting centers, and residential or outpatient substance abuse treatment centers. Although staff and computer resources are required to establish payment plans, monitor compliance, and take followup action when necessary, the level of resources needed is far less than for virtually any other sanction. Additionally, the use of structured fines frees scarce (and more expensive) prison, jail, and probation supervision resources for use with offenders who pose more of a risk to public safety.

Revenue

There is evidence that structured fines can be more effective than tariff fines in generating revenue. As a source of net revenue, structured fines are undoubtedly far more effective than sanctions involving incarceration or supervision.

Credibility of the Court

In a well-designed structured fine system, the court has a good collections capability. Although payment may sometimes be difficult and require time, offenders pay in full in a very high proportion of cases. In the small proportion of cases where fines are not collected, the court imposes a backup sanction that is roughly equivalent to the structured fine in terms of punitive impact. When these conditions are present, the structured fine is a meaningful sanction, and the court's sentence has credibility with the offender and the community.

Structured Fines in Operation: Experience in Europe and the United States

The concept of day fines was first introduced in Sweden in the 1920's and quickly incorporated into the penal codes of other Scandinavian countries. The concept was adopted in West Germany in the early 1970's as part of sentencing reforms aimed at reducing the use of short-term incarceration. The policy of using structured fines in lieu of incarceration appears to have been remarkably successful in West Germany. Between 1968 and 1976, the number of prison sentences with terms shorter than 6 months dropped from more than 110,000 to approximately 10,000—a 90-percent decrease.

These Western European countries have made fines the sanction of choice in a high proportion of criminal cases, including many involving serious crimes. In Germany, for example, structured fines are used as the sole sanction for three-quarters of all offenders convicted of property crimes and two-thirds of offenders convicted of assaults.

In the United States, experimentation with structured fines began in Richmond County (Staten Island), New York, in 1988 with a demonstration designed and operated by the Vera Institute of Justice. The goal was to adapt Western European day fine models to the limited-jurisdiction court on Staten Island and to assess how the concept worked. An evaluation of the experiment, sponsored by the National Institute of Justice, showed very promising results:

- ❑ Judges used day fines for many offenses for which they formerly used tariff fines—including some property crimes, drug possession, and assault.
- ❑ The mechanics of using a two-step process to establish fine amounts (i.e., first establishing the number of day fine units based on the offense, then calculating the monetary value of the units based on information about the offender's net daily income and number of dependents) worked smoothly. All of the judges trained to use day fines did so consistently throughout the year-long experiment, without tying up their calendars.

- ❑ Average fine amounts imposed for penal law offenses rose by 25 percent, from \$206 before the experiment to \$258 during the year structured fines were used. The increase would have been much greater—to an average of \$441, or more than twice the previous average—had New York not established relatively low maximum fine amounts for many offenses.
- ❑ Collection rates in the court, which were already relatively high before the experiment, increased after structured fines were introduced. In 85 percent of the cases in which a day fine was imposed and an individualized collection strategy was used, offenders paid in full. Only 76 percent of fined offenders made full payment in the year before the experiment began.

Following the Staten Island experiment, several other U.S. jurisdictions undertook experimental structured fine projects. Appendix A contains brief descriptions of four of those projects: those in Maricopa County (Phoenix), Arizona, and the States of Connecticut, Iowa, and Oregon. Although the projects vary considerably in structure and operation, some important lessons can be drawn from them:

- ❑ Operationally, structured fines can work effectively. Information about a defendant's financial circumstances can be obtained; calculation of the amount of the structured fine is not difficult; the system is understandable to practitioners who are adequately trained; and the structured fines can be collected in a large number of cases if the system is structured properly and a sound collections system is in place.
- ❑ Collection has been a problem in some of the pilot jurisdictions. These problems underline the need for an effective collection system in any structured fine program.
- ❑ Practitioners who have used structured fines like the basic concept. Judges, prosecutors, and defense lawyers in the jurisdictions that have instituted pilot programs generally agree that structured fines are more fair than tariff fines.
- ❑ The potential effectiveness of structured fines as a sentencing option is significantly impaired by laws establishing mandatory fines, fees, penalty assessments, and other economic sanctions. When the minimum mandatory payment (fine floor) is high, it is difficult to develop a system in which fines can be collected from relatively poor offenders. At the other end of the monetary scale, a low maximum fine amount (fine ceiling) in some States makes it difficult to develop a system that results in meaningful economic impacts on relatively affluent offenders.

- ❑ To make structured fines work effectively, a great deal of up-front policy formulation and program planning is necessary. Time must be spent on education and training, both before implementation and on a continuing basis. Optimally, a structured fine program will be introduced as an integral part of a jurisdiction's overall development of a rational sentencing policy that includes a full range of intermediate sanctions.

Purpose of This Monograph

Although structured fines can serve as an appropriate sentencing option for some categories of offenses and offenders, it is clear from the experiments to date that much careful thought must be given to making day fines an option in specific jurisdictions. This monograph is intended as a practical guide for policymakers and criminal justice practitioners who want to develop and implement effective structured fine programs in their courts.

Planning a Structured Fine Program

The process of planning for the introduction of structured fines will be unique in each jurisdiction, depending on the jurisdiction's organizational structure, legal framework, traditions, personalities, and local legal culture. Despite these differences, however, every jurisdiction will have to address some of the same issues in the initial planning stages. The planning process should always involve a careful and comprehensive examination of sentencing policy and the potential role of structured fines as an option. Because of the complexity of the policy and of the legal and operational issues involved in developing a structured fine program, the planning process may be lengthy. If a good fine collection system is in place, however, the planning process can probably be completed in as few as 3 months. This section outlines the issues to be addressed during the planning process.

Who Should Be Involved in Planning?

An effective structured fine system or other sanction must have the support (or at least the acceptance) of a broad cross-section of the jurisdiction's criminal justice system leaders and others who have a stake in the operation of the overall system. At the county level, the following officials typically would be involved in planning a structured fine program:

- ☐ Chief or presiding judges of the general and limited-jurisdiction court.
- ☐ Prosecutor.
- ☐ Public defender.
- ☐ Representative of the private defense bar.
- ☐ Court administrator.
- ☐ Pretrial services agency director.
- ☐ Chief probation officer and/or director of the community corrections agency.
- ☐ Sheriff and/or jail administrator.
- ☐ Representatives of county government.

Optimally, these policymakers also will be integrally involved in the development of the entire range of intermediate sanctions and will be able to determine how structured fines will be used in conjunction with other sentencing options.

Judges, especially chief and presiding judges, have especially critical roles to play in the planning process, for two reasons. First, the courts play a central role in a structured fine program because judges impose the sentences and court administrative personnel are usually responsible for collections. Second, because of their status and neutral role, judges are in a unique position to exercise a leadership role in shaping policies and programs in the area of sentencing.

Although chief judges, agency heads, and other policymakers must be involved in shaping the general direction of a day fine program as well as in approving plans for implementation, detailed planning requires the input of trial court judges and staff from the court, the prosecutor's office, and other agencies involved in the criminal justice process. One of the first tasks of the policy group should be to identify individuals who are familiar with day-to-day operations, can help with the detailed planning, and can be part of the jurisdiction's planning group for the structured fine program.

Information Needed for Planning

The policymakers, judges, and staff members involved in detailed planning for structured fines need information about the sentencing patterns, collection operations, and effectiveness of the current system.

Sentencing Patterns

Policymakers and planners need to know how sentencing options and resources are being used. This baseline information is important in identifying the categories of offenses and offenders to be targeted for structured fines; in helping to calculate potential cost savings and other system impacts likely to result from introducing structured fines; and in monitoring and evaluating the program to determine what changes in sentencing patterns actually result from the introduction of structured fines. In the initial planning stages, this information can help answer the following questions:

- ☐ *By conviction charge(s) and offender characteristics, which categories of cases currently result in fine-only sentences or in sentences of probation that involves little or no supervision? In most jurisdictions, these are the obvious categories for inclusion in a structured fine program.*
- ☐ *Which categories of cases currently receive sentences of incarceration or probation but could instead receive a structured fine as an appropriate sentence? Some or all of these categories might be targeted for inclusion in the structured fine program.*
- ☐ *Which categories of cases currently receive sentences that include a fine as one component of a "combination" sentence, the principal component of which is incarceration, supervised probation, or another sanction? For these categories, if fines are to continue as part of the sentence,*

systems should be developed for setting the amount by incorporating structured fine principles that take into account the use of other sanctions.

- ❑ *For cases in which fines are imposed, (1) what are the fine amounts (by charge) and (2) within what time period must a fine be paid?* Current practices provide benchmarks for development of the new system.

Collection Operations and Effectiveness

Planning group members need to know not only how but also how well the collection of fines and other court-ordered monetary sanctions works in their jurisdictions. With this information, planners can (1) determine what operational changes (if any) need to be made to ensure that structured fines imposed by the court are collected promptly in a high percentage of cases, (2) estimate the likely impact of structured fines on jurisdictional revenue, and (3) establish a baseline against which to monitor and evaluate the effectiveness of collection efforts after structured fines are in place. Information on collections should help answer another set of key planning questions:

- ❑ *Of the cases in which fines are now imposed, what percentage of defendants pay in full and within what period of time?* If current collection rates are relatively high (for example, if 75 percent or more of fined defendants pay their fines in full within 6 months of the date of sentencing), then a basically sound collection system probably is in place. However, if collection rates are low, establishing effective collection policies and practices must become a top priority for planning and program implementation.
- ❑ *On an ongoing basis, how adequate is the information available for monitoring accounts receivable in individual cases and for monitoring the total caseload?* Few U.S. court systems have very good accounts-receivable information systems. Therefore, development of such systems should be an integral element of developing collection policies and procedures, and may need to be an early priority. Automation is especially appropriate and valuable in this area.

In addition to information on current sentencing patterns and collection effectiveness, planners should determine what information they will need to monitor program operations and evaluate program effectiveness. The question of the likely impact of a structured fine program on system operating expenses and revenue is especially difficult to answer before program implementation because so many unpredictable factors can affect both program elements. However, if basic data on current fine collection practices are available, impact can be projected using a range of assumptions about the variables that can affect costs and revenue. Knowing how the system works helps the policy group set realistic goals, and because the goals provide the yardstick by which the program is measured, they will determine the information to be collected for evaluation. Furthermore, the process of gathering information helps identify problems in the information

system that need to be corrected before a structured fine program is implemented and before monitoring and evaluation can proceed.

Setting Goals and Priorities for the Structured Fine Program

One of the main tasks of the planning group is to establish the goals of the structured fine program. There are several important reasons for having program goals, especially for an innovative program such as structured fines. First, goals express aspirations—the program’s expected results. Second, goals provide a common standard toward which practitioners can direct their efforts. Third, goals define success and provide a basis for measuring program effectiveness, thus answering the question: To what extent does the program meet or exceed the goals that have been established? Fourth (and perhaps most importantly), the process of setting goals requires policymakers to think through their reasons for instituting the program, and should lead them to consider the structural and procedural changes necessary for the program to succeed.

The first step that the group must take in establishing goals is to address and answer a fundamental question: What should be accomplished by introducing structured fines as a sentencing option? Goals for structured fine programs can logically include the achievement of both specific sanctioning purposes and particular normative values as well as system operation goals. The potential advantages of structured fines, as discussed in Chapter 1, serve as a starting point for shaping jurisdiction goals. For example, goals for structured fines might include the following:

- ❑ **Increased fairness.** Fine amounts set according to the seriousness of the offense and the financial circumstances of the offender should be more fair in terms of having roughly similar economic impact on persons convicted of the same offense.
- ❑ **Accountability.** As several commentators have noted, the fine is unequivocally punitive. It can be a meaningful punishment for a criminal offense if it is proportionate to the offense and the financial circumstances of the offender, and only if it is collected.
- ❑ **System credibility.** With a fair system for imposing fines plus an effective system for collecting them, fines should be paid in a large number of cases. The imposition of fines then becomes a meaningful sanction—one that has credibility as a sentencing option.
- ❑ **Effective and efficient use of system resources.** When fines are assessed fairly and are collected in most cases, a jurisdiction has an effective system. The system will achieve maximum effectiveness in the use of system resources if defendants who would otherwise have been incarcerated or placed on supervised probation instead are ordered to and actually pay fines.

- ❑ **Revenue.** Fines are an important source of revenue for many jurisdictions. It should be possible to design a structured fine system that will produce at least as much in fine revenue as the tariff fine system it replaces.

The goals that are set, such as those just discussed, should be measurable, and the jurisdiction should, through its information system, have the capacity to regularly assess the performance of the structured fine program. Along with goals, planners must establish priorities, or targets, for the use of structured fines. This process involves focusing on the types of offenses and categories of offenders that are prime candidates for structured fines. As with other sanctions, structured fines should not be used indiscriminately. The planning group needs to address at least the following issues with respect to priorities in the use of structured fines and other sanctions:

- ❑ In which cases—i.e., for which offenses and which offenders—will structured fines be an available option?
- ❑ In which cases will structured fines be the preferred or presumptive option? What sentencing purposes or goals would be achieved through the use of structured fines in these cases?
- ❑ In which cases, if any, will structured fines be available (or preferred) as an option to be used in combination with other sanctions? What would be accomplished by such combination sentences?
- ❑ In which cases, if any, will structured fines not be available as an option? Why would structured fines be inappropriate in such cases?
- ❑ Once structured fines are available as an option, should it be possible to impose any fine that is not a structured fine? Why—and under what circumstances—or why not?
- ❑ When an offender fails to pay a structured fine, what backup sanctions should be available?

Addressing Potential Legal Issues

Statutes, appellate court decisions, and State constitutional provisions affecting the use and collection of fines vary widely among States. In each jurisdiction, a legal framework exists that will affect planning for a structured fine project. The following paragraphs outline some of the legal issues that planners are likely to encounter and suggest ways to address them.

Mandatory Fines, Assessments, and Other Monetary Sanctions (Fine Floors)

In almost every U.S. jurisdiction, defendants convicted of criminal offenses have an array of monetary penalties assessed against them. These assess-

ments almost always include court costs, and they often include other mandatory sanctions called by a variety of names and often designed to produce revenue for specific purposes (for example, penalty assessment fees, crime victim compensation fees, indigent defense fees, and probation fees). Sometimes these monetary penalties have been established by the court; however, some fees are regulated by State statutes. This accumulation of mandatory monetary sanctions establishes a high floor of required payments even before a fine is imposed. The higher the floor of mandatory payments, the less flexibility a jurisdiction has in establishing a program of structured fines; almost any fine, when added onto a high floor, will exceed the ability of some defendants to pay.

U.S. jurisdictions using structured fines have sought to address the high fine-floor problem in two different ways. The first approach treats the entire package of economic sanctions—the fine amount, court costs, and all fees or assessments—as “the fine” for purposes of the structured fine program. This approach also avoids adding a fine amount to an already high floor in most cases involving very poor offenders. However, it still may result in a total amount that is uncollectible because the total sum of the fine—plus mandatory costs, fees, and assessments—simply is beyond the offender’s ability to pay. This approach has been adopted in Maricopa County (Phoenix), Arizona, and in two of the Oregon counties involved in that State’s demonstration project funded by the Bureau of Justice Assistance (BJA).

The second approach eliminates the other mandatory assessments and simply allocates a percentage of each structured fine to the funds that were to have received fixed amounts. This approach provides much more flexibility to planners in establishing a structured-fine unit scale and valuation system, and it incorporates the basic principles of structured fines into all of a jurisdiction’s economic sanctions (with the exception of restitution).

Fine Ceilings

It is clear that, in addition to low floors, relatively high fine ceilings are conducive to the development of a structured fine program. However, many States have legislatively established relatively low maximum fine amounts for different categories of offenses. In New York, the maximum fine for a Class A misdemeanor is \$1,000; for a Class B misdemeanor, it is only \$500.

These low ceilings pose a problem for the construction of a fine unit scale and valuation system that will have a meaningful economic impact on relatively affluent offenders. During the Staten Island Day Fine Project, researchers kept track of the number of cases in which the fine would have been higher than the allowable maximum. They found that if the ceilings had not been in place, the total amount of fines imposed would have increased by about 50 percent over the amount actually ordered.

Low fine ceilings are a problem that probably can be cured only by legislatively raising the maximum amounts. The Federal Government and a number of States have raised the allowable maximums in recent years.

Confidentiality of Financial Information

To set the amount of a structured fine, the court needs information about the defendant's financial situation. However, it is important that safeguards be put in place to ensure that the information is treated confidentially. A written policy or court rule may be necessary.

Availability of Backup Sanctions

No matter how well a structured fine program is designed and implemented, some convicted defendants will never pay the fine ordered by the court. The traditional backup sanction for nonpayment of a fine has been the use of jail as an alternative sentence or as a punishment for willful nonpayment that is deemed to constitute contempt of court. However, because jail space is a scarce resource in most jurisdictions, it is important to have statutory authority for other sanctions that can be used when an offender cannot, or will not, pay the fine. Chapter 6 presents a number of alternatives that can be used in the event of nonpayment.

Products of the Planning Process

From the information collected during the planning process, the planning group should be able to develop tangible products that will be needed to implement the program. These products include:

- ❑ A clear written statement of the goals to be addressed through the structured fine program.
- ❑ Detailed plans for setting structured fine amounts in individual cases (see Chapters 3 and 4), collecting the fines that are imposed (see Chapter 5), and taking action when offenders fail to pay (see Chapter 6).
- ❑ A plan for (1) educating the criminal justice community and the general public about why the program is being adopted and how it will work, and (2) training practitioners involved in the program in how to carry out their specific functions (see Chapter 7).
- ❑ A plan for monitoring ongoing operations and evaluating program effectiveness in light of the goals that have been established (see Chapter 8).
- ❑ An operations manual that contains the following:
 - The statement of program goals.
 - Procedures for obtaining information on a defendant's economic circumstances and making fine calculations.

- Collections procedures, including actions to be taken when an offender fails to pay.
- Copies of forms and instructions to be used in implementing the program.
- A description of the organizational structure and staff responsibilities in program implementation.

Developing a System To Set Fines at Appropriate Amounts Through a Structured Process

The central feature of a structured fine system—the feature that distinguishes it from traditional tariff systems and from systems that allow fines to be set at the discretion of the trial judge—is the structured nature of the process through which the fine amount is established in each case. There are two key components to this structure: a unit scale that ranks offenses by relative seriousness and severity, and a valuation system that enables practitioners to establish the dollar amount of each fine.

Developing a Unit Scale That Ranks Offenses by Severity

The unit scale is the foundation of the structured fine system. Therefore, establishing the unit scale is a key function of the planning group. The scale should reflect the planners' consensus on the relative seriousness of a large number of different offenses. In the U.S. jurisdictions that have experimented with structured fines, development of the unit scale typically has involved a four-step process.

Analyzing Sentencing Patterns

Planners should analyze a sample of all cases in which a conviction was obtained and a sentence was imposed during the preceding year. In a small court, it may be desirable to examine all of the cases. In a larger court, a random sample can be drawn, but it should be large enough to include the full range of offenses handled by the court. This sample should be analyzed to determine:

- ☐ The offenses handled by the court and, if possible, the actual behavior that led to the conviction.
- ☐ The relative frequency of specific offenses.
- ☐ The sanctions imposed for specific offenses.

This analysis should provide an overview of sentencing patterns in the jurisdiction and should help identify the categories of cases in which structured fines might be a sentencing option.

Ranking the Offenses by Severity

Once the full range of offenses is identified, the policy group should rank them in terms of relative gravity or seriousness. On Staten Island, this

ranking was performed by a core planning group that included three judges, the district attorney's criminal court bureau chief, and representatives of both the private defense bar and the public defender organization. Other demonstration sites used a similar collaborative process aimed at achieving a consensus among practitioners.

The ranking process inevitably will produce different opinions about the relative seriousness of different offenses or, more narrowly, of different criminal behaviors. These should be discussed in the policy group with a view toward reaching consensus with respect to both the relative gravity of specific offenses and the reasons for ranking a specific offense high or low in comparison with others.

Establishing Subcategories of Offenses Where Necessary

Most penal laws are drawn broadly, often encompassing a wide range of different types of conduct within a single offense category. In such cases, it makes sense to establish subcategories of an offense. The Staten Island planners, for example, established four different categories of the offense of assault in the third degree:

- ☐ Substantial injury caused in either stranger-to-stranger cases or cases in which the victim is known to the assailant and is weaker or more vulnerable.
- ☐ Minor injury caused in either stranger-to-stranger cases or cases in which the victim is known to the assailant or is weaker or more vulnerable.
- ☐ Substantial injury caused in altercations among acquaintances.
- ☐ Minor injury caused in altercations among acquaintances.

Establishing a Numerical Scale and Assigning Each Offense a Presumptive Number (or Range) of Units

Most experimental structured fine programs in the United States have used a unit scale modeled on the one used in the Staten Island experiment, which ranges from a low of 5 units to a high of 120 units for the most serious misdemeanor offense handled by the court. (The Maricopa County project, which targets felony offenders, uses a scale that ranges from 5 to 360, reflecting the greater severity of the offenses handled by that court.) There is no magic in the unit scale of 5 to 120; the important consideration is to establish a scale broad enough to cover the full range of offenses, from least serious to most serious, handled by the courts that will use structured fines.

The results of the process of ranking offenses by severity provide the start-

ing point for assigning a presumptive number of units for each offense. If the scale of 5 to 120 is used, then a presumptive number of 5 units would be assigned to the offense ranked as least serious, and 120 units would be assigned to the offense ranked as most serious; other offenses would be assigned units between those two extremes. The term “presumptive number” is used because the system should not be too rigid. There may be some circumstances in which the presumptive figure is modified for good cause. (For example, Staten Island uses a range; the presumptive number is the starting point for negotiation and possible upward or downward modification.)

Rather than assigning a specific number of units to each offense, planners might establish a range, thus allowing some room for judicial discretion with mitigating or aggravating circumstances in individual cases. For example, the presumptive number of units for the offense of resisting arrest in the Staten Island experiment was 25; the range was 21 to 29 units. Excerpted portions of the Staten Island unit scale, illustrating the range of units established for a number of common offenses, may be found in Appendix C.

Valuing the Structured Fine Units

Establishing monetary values for the structured fine units is as important as creating the scale. The procedures established for valuing the units will determine the amount of each fine and its economic impact on the offender.

In establishing unit values, two basic precepts regarding the use of structured fines should be followed:

- ❑ The decision to impose a fine as a sole or primary sanction is (or should be) a decision that incarceration or supervision is not necessary to achieve the purposes of sentencing the offender. Therefore, it is essential that the amount of the fine be within the ability of the offender to pay. It should involve a loss of discretionary income and in some cases—especially those involving relatively serious offenses—may involve some economic strain.
- ❑ Fine amounts imposed for the same offense should have roughly the same economic impact on offenders, whether they are poor or affluent.

The two European countries that have served as models for the U.S. structured fine projects take somewhat different approaches to valuation of the units. In Germany, where structured fines were introduced mainly as an alternative to short-term imprisonment, each day fine unit is valued at or near the offender’s net daily take-home pay. In Sweden, the valuation of a day fine unit is less onerous for the offender, being roughly one one-thousandth of the offender’s annual income (or about one-fourth of total daily income), with adjustments for dependents, taxes, and significant debts or assets. The

differences between these two models highlight the linkage between policy objectives and program design. The approach to valuation is the key link. The German model is probably more relevant for U.S. jurisdictions that want to use structured fines as an alternative to jail, whereas the Swedish model is more relevant if the main focus is simply on a more equitable way of using fines when jail would not usually be used.

The Staten Island experiment used elements of both the German and the Swedish systems to develop a valuation scheme appropriate to that jurisdiction. The Staten Island approach, variants of which have been adopted in most other U.S. jurisdictions experimenting with structured fines, establishes unit valuation by first ascertaining an offender's net daily income. This amount is the offender's income payment (after-tax wages, welfare allotment, unemployment compensation, etc.) divided by the number of days in a payment period. For example, for persons paid by the week, the weekly amount would be divided by seven.

Next, the net daily income figure is adjusted downward to account for subsistence needs and family responsibilities. On Staten Island, planners made two kinds of adjustments. Net income was adjusted downward to account for offender self-support and support of others: 15 percent for the offender's self-support, 15 percent for the needs of a dependent spouse, 15 percent for the first dependent child, 10 percent for the next two dependent children, and 5 percent for each additional dependent child. Then, because planners felt that the first set of adjustments would result in fines that were still too steep, they used another across-the-board discount: a flat reduction of one-third for offenders whose incomes fall above the Federal poverty line and one-half for offenders whose incomes fall below the poverty line.

Iowa planners took account of the same factors in a different and somewhat simpler fashion. They made no special discount for income below the poverty line but provided for several other adjustments or allowances: a housing allowance (40 percent of net daily income), an essentials allowance (20 percent of net daily income) and a quasi-essentials and dependent allowance (40 percent of net daily income after housing and essentials for a single person; additional allowances of 10 percent for the next four dependents and 5 percent for the sixth and seventh dependents).

It is important to emphasize that systems for valuing fine units are still being developed. More experimentation is desirable to establish valuation formulas that will result in fine amounts that can be broadly agreed upon as fair and collectible for offenders in different economic circumstances who are convicted of the same offense.

Valuation Tables

Once the unit scale and valuation formula have been developed, a valuation table should be created to help streamline determination of the amount of each structured fine. The valuation table is similar to an

Internal Revenue Service (IRS) tax table, with net daily income amounts (before adjustments) shown on the left vertical axis and the number of persons supported by the defendant shown across the top horizontal axis. (See Chapter 4 for a discussion on obtaining financial information about defendants.) Each column shows the dollar value of a single day fine unit after adjustments for support and other discounts. The dollar amount of a single structured fine unit for an individual defendant can quickly be determined by locating the defendant's net daily income in the left column and then moving horizontally across the table to the figure in the column for the number of dependents supported by the defendant. To determine the full amount of any structured fine, the value of a single day fine unit for the defendant is multiplied by the number of fine units imposed. Examples of two such valuation tables—one from Staten Island and the other from Polk County, Iowa—are shown in Appendix D. As these examples indicate, different jurisdictions have established different valuation systems.

Special Issues in Establishing Unit Values

Fining Low-Income Offenders

Court officials and planners who have been involved in developing structured fine programs have shared an assumption that any offender with a steady, legitimate income—however modest, and even if supplied by welfare payments, unemployment, or disability income—can be appropriately fined under a structured fine system.

This assumption is consistent with research findings indicating that many low-income offenders are routinely fined and that, in many jurisdictions, these fines are collected in a high percentage of cases. Although it does not make sense to fine totally destitute persons, it is reasonable to assume that most low-income offenders are capable of some financial payment, provided that their fines can be scaled appropriately to their resources (see the section titled “Valuing the Structured Fine Units,” above) and that careful attention is given to devising reasonable installment payment schedules when necessary (see Chapter 5).

Fining Offenders Who Have No Personal Income

There are several categories of offenders who have little or no income of their own and who depend on their families or others for their own support. These include:

- ☐ Homemakers dependent on their spouses.
- ☐ Students primarily dependent on their families.
- ☐ Disabled adults dependent on their families.
- ☐ Unemployed adults temporarily dependent on their families or others, but potentially self-supporting.

Planners who have considered how to fine offenders who fall into these categories have tried a variety of approaches. One approach is simply to base the fine amount on the income of the family or household to which the offender belongs. The fine would then be set at the same amount as if the offender were the head of the household, with the valuation table used to take account of all the dependents in the household. The difficulty with this approach is that the fine amount is set on the basis of the income of someone who had no involvement in the offense, effectively punishing the entire household.

A second approach, possibly applicable to students and to employable (but currently unemployed) adults, is to estimate the offender's potential income on the basis of his or her viability in the labor market. For an unskilled worker, this value could be figured on the basis of the statutory minimum wage or the typical take-home pay earned by those employed in low-paying, secondary labor market jobs (for example, fast-food workers, stock clerks, and porters). For a skilled worker, the value might be estimated on the basis of wages received for the last job held, assuming that a comparable job could be found. The conceptual difficulty with this approach is that in tight economic times a job may not be available, and an estimate would not be realistic.

A third approach looks at family or household income but is less onerous for members of the household who were not involved in the offense. Under this approach, the portion of the household income that goes to the support and discretionary income of the offender is estimated. That amount is then treated as the offender's income for purposes of calculating the amount of the structured fine.

A fourth approach, especially useful when unemployment rates are high and jobs are difficult to find, is to base the fine on the level of income available under a local general assistance welfare program. This was the approach taken by the structured fine experiment in Bridgeport, Connecticut, a community that has been hit especially hard by a protracted economic downturn.

Fining Offenders With Underground or Criminal Income

The underground economy—including “off-the-books” employment and other criminal activity—supports a significant portion of offenders who come before the criminal courts. For planning purposes, these offenders pose two problems. First, are they appropriate candidates for structured fine sentences? Second, if a structured fine is considered appropriate, how should the value of the fine units be determined?

In practice, fines have long been used when a defendant has no legitimate income. Typical examples include fines for offenders convicted of gambling charges, drug sale or possession, and prostitution. Sometimes these

finances are very stiff, and often they are imposed in combination with other sanctions. To impose structured fines in these situations, it may be most useful to assess an offender's lifestyle and thus estimate the offender's net daily income. This was the approach taken by the Staten Island planning group, which noted that judges routinely assess an offender's economic resources in setting bail amounts and determining whether to assign counsel to represent defendants. Experienced judges and court officials can draw some rough conclusions about an offender's income from observation of personal appearance and dress; criminal history; and questions about living situation, possessions (such as automobiles, televisions, and stereo equipment), and personal habits (such as smoking and recreation). The inability to verify an offender's income should not preclude courts from imposing a fine, but it will be important for the policy group to establish guidelines for when and how this can be done.

Taking Account of Offender Assets

Although most criminal offenders have little in capital assets, some do possess such assets. Moreover, some who have assets may have little or no regular income of their own. It seems desirable to take capital assets into account when developing a comprehensive structured fine program, but U.S. jurisdictions have not explored this area. The Swedes take personal and real property into account only if net capital assets are worth more than SKr200,000 (approximately \$33,500), and do so by adjusting the value of the day fine unit upward in relatively small increments for each SKr100,000 in net assets. If structured fines are to be used in felony cases (especially those involving white-collar crimes), it will be important to develop methods to account for an offender's accumulated cash and property as well as net income.

Setting "Exchange" Rates

The preceding sections of this chapter have dealt with establishing the amount of a structured fine when the fine is imposed as a sole sanction. However, if structured fines are to be an option for use as part of a combination sentence, the planning group will need to develop methods for systematically adjusting the fine amount to take account of the impact (on both earning capacity and personal liberty) of other sanctions such as jail, electronically monitored home confinement, or intensive supervised probation. Unless adjustments are made in the unit scale and/or valuation system, imposition of a structured fine in combination with other sanctions will obviously be more onerous for the offender than a structured fine alone.

It will also be important to assess the impact of a structured fine when an offender is truly unable to pay all or a portion of the structured fine amount. If the amount of the structured fine has been set fairly in the first

place, then it will be necessary to provide for an alternative sanction that is proportionate to the structured fine in terms of impact on financial circumstances and personal freedom.

The fact that structured fines are based on a unit scale that ranks offenses by gravity can provide a starting point for developing a system of “exchange” rates. For example, it should be possible to value a structured fine unit in terms of community service hours (perhaps varying by the nature of the community service) and to authorize imposition of that number of hours in the event of nonpayment. (See the section titled “Community-Based Sanctions” in Chapter 6.)

Reality Checks

Once a unit scale and valuation system have been developed, but before the system is put into place, the planning group should have the scheme reviewed and should solicit feedback on its basic soundness. In addition to the key system actors (judges, prosecutors, defense lawyers, court staff, probation officers, and law enforcement officials), it may be helpful to obtain reactions from community organizations, victims’ groups, experienced practitioners from other jurisdictions, and the public. One way to provide for a review is to develop a set of test scenarios describing specific types of offenses and offenders with differing incomes, occupations, and household situations. For each of the scenarios, the number of structured fine units that would be imposed and the resulting dollar amount of the fine would be shown for offenders in different economic circumstances.

Applying the Unit Scale and Valuation Table

Developing a sound unit scale and valuation system are crucial initial steps toward using structured fines. To actually impose a structured fine, however, someone in the court needs to obtain the necessary financial information from the defendant (or, if necessary, make sound estimates about potential income) and calculate the amount of the fine. Finally, the fine itself must be formally imposed in a fashion that facilitates collection.

Obtaining the Necessary Information About a Defendant's Financial Situation

In practice, it has not been difficult to obtain adequate information about an offender's financial circumstances, either in Europe or in the United States.

In Sweden, the structured fine system is bolstered by the court's legal access to the offender's tax records and its ability to check the financial information provided by offenders. However, this access is rarely used in Sweden, and structured fine units are routinely valued according to self-reports. In Germany, the courts do not have direct access to individual tax records, but some information about a defendant's occupation, employment status, and living situation is available to judges from police records that are part of the case file. Additionally, German judges routinely ask defendants about their income, marital status, and dependents at the beginning of each case. Upon conviction, the information is translated into a specific fine amount based on the offense and the offender's net daily income.

In the United States, as in Sweden and Germany, courts using structured fines have relied principally on defendant self-reports about their income and other aspects of their economic situation. Under Federal law, the IRS is not permitted to disclose income tax information to a court for purposes of sentencing, and both Federal and State privacy laws generally prohibit financial institutions from disclosing information without consent.

Given the reality that self-reported information is likely to be the primary financial information available for use in establishing a fine amount, jurisdictions face three practical questions:

- ☐ How and when can the information be obtained?
- ☐ How can the confidentiality of the information be protected?
- ☐ What can be done to maximize the likelihood that self-reports are reliable?

Staffing and Operational Issues

In U.S. courts, a considerable amount of information about defendants, including information about their financial circumstances, is routinely collected by a number of different agencies during case processing. Depending on the jurisdiction, such agents may include law enforcement officials, the prosecutor's office, a public defender agency, the defendant's lawyer, a pretrial services agency, the sheriff's department, the jail administrator, and the probation department or community corrections agency. If the automated information systems of these agencies are integrated into a single justice system network, it should be possible to retrieve most of the requisite information quickly and easily. If not, it still may be possible to obtain much of the essential data from the information system of a single agency. In New York City and Houston, for example, virtually all of the information needed for valuing fine units is routinely collected by a pretrial services agency before the defendant's first court appearance. In Oregon, information about a defendant's financial circumstances is included on a form used to determine eligibility for the public defender.

Even when a considerable amount of information is available from agency records, however, it is generally necessary to directly contact defendants before sentences are imposed so that information already collected can be updated and information that has not been recorded can be collected. On Staten Island, for example, the pretrial services agency would not have information on the financial situations of defendants who had been released on a desk appearance ticket (citation release) and were not held in custody.

When all of the requisite information is not available from agency records, a financial information interview (or a "means interview") must be conducted with the defendant, usually at the courthouse. An interview is especially important if a substantial amount of time has passed since the inception of the case. A means interview can be conducted at any of several points in the criminal justice process:

- ☐ Before a defendant's first court appearance.
- ☐ After the first appearance, but before entry of a plea.
- ☐ After a plea of guilty or a guilty verdict, but before imposition of a sentence.

After a guilty plea has been entered, courts generally have broad authority to inquire into an offender's financial circumstances. For example, New York's statute governing presentence investigations authorizes inquiry into "the defendant's social history, employment history, family situation, economic status, education, and personal habits." The permissible scope for such inquiry prior to a guilty plea or verdict is more problematic, however. The safest course might be to seek voluntary disclosure from defendants, notifying them about the uses to which the information may be put. If the information is not disclosed voluntarily prior to a plea or

verdict, it can be obtained thereafter pursuant to the authority of the court to obtain information relevant to imposition of a sentence.

Regardless of when the means interview is conducted, planners will want to ensure that such interviews are conducted in an efficient and cost-effective fashion. The following are some guidelines:

- ☐ Conduct means interviews only when the information is likely to be used for setting fines. (Note that this policy is consistent with the concept of targeting the use of structured fines for specific categories of offenses and offenders (see Chapter 2) and requires early identification of likely candidates for a structured fine sentence.)
- ☐ To the extent possible, tap information already obtained from the defendant by other agencies. Use the means interview as an opportunity to update or supplement it.
- ☐ Keep the information collection process simple and understandable; do not collect more information than is needed. A simple one-page form should be adequate. (For examples, see Appendix E.)
- ☐ If possible, inform defendants before the means interview that they will be expected to provide the necessary information.

Depending on case volume and how the structured fine program is organized, the means interview could be conducted by any of the following:

- ☐ A pretrial services officer.
- ☐ A courtroom deputy or other member of the clerk's office.
- ☐ A probation or community corrections officer.
- ☐ A member of the staff of a special structured fine project, if established.
- ☐ The judge, in a colloquy with the defendant at the time of sentence.

Sometimes more than one means interview is needed. For example, an initial interview might be conducted by the pretrial services officer; information obtained at that time could be updated by a probation officer or the judge.

In planning the project, provisions should be made for adequate staff to conduct the interviews. Typically, these interviews will be conducted shortly before the court opens for its morning and afternoon sessions. Once planners can reliably estimate the number of defendants likely to receive a structured fine sentence in the course of a month or a year, it is possible to estimate both the number of interviews that are likely to be conducted in connection with a single court session and the staff time needed to conduct the interviews.

Confidentiality Issues

Personal financial information is sensitive material. Even when a defendant can be required to produce or make available such information, it should be treated confidentially. If defendants are expected to produce such information voluntarily before conviction, then they must be assured that this information will be treated confidentially and used only for calculating the structured fine amount.

Verification

When a self-report is the principal source of information about a defendant's financial situation, some inaccuracies—whether deliberate or inadvertent—are inevitable. It may be possible to verify the income of a defendant who is employed (for example, by requiring the defendant to bring paycheck stubs), but there are many cases for which verification of reported income or lack of income is difficult. Attempting to verify income in all prospective structured fine cases would be a very expensive and time-consuming process, although it seems that it would have positive effects on collection rates. In Bridgeport, Connecticut, where the day fine officer attempted to verify the reported incomes of all defendants, the project reported that 88 percent of the defendants who received structured fines paid in full. However, the verification process required an additional court appearance, and the volume of day fine cases was relatively low in this jurisdiction (an average of 20–25 defendants per week). Jurisdictions planning to use structured fines in a large number of cases could plan to spot-check verification and to periodically check the accuracy of reported finances in specific cases.

Calculating Fine Amounts

The first step in setting a structured fine is to determine the number of fine units to be imposed. The second step is to multiply the number of fine units by the value established for each fine unit for a person with the defendant's net daily income. Mechanically, the second step can be broken into four parts, as follows:

- ❑ Ascertaining the defendant's net daily income. If the defendant is employed, this can be done easily by dividing the take-home (after tax) income for a period (for example, weekly, biweekly, or monthly) by the number of days in the period. If the defendant is not employed, a method of ascertaining or estimating income to be attributed to him or her must be used. (See the discussion in Chapter 3 in the section titled "Special Issues in Establishing Unit Values.")
- ❑ Locating the defendant's net daily income in the left column on the valuation table. (See the section titled "Valuation Tables" in Chapter 3.)

- ❑ Moving across the valuation table horizontally to the column for the number of dependents supported by the defendant. The figure at that place on the table is the value of one structured fine unit for that defendant.
- ❑ Multiplying the number of units to be imposed by the value of a single day fine unit. The product is the amount of the structured fine to be imposed.

In practice, calculation of the dollar amount of the structured fine is sometimes performed by the prosecutor and/or defense lawyer in advance of sentencing, especially if the sentence is one recommended as the result of a plea bargain. Alternatively, it can be performed by the judge or a courtroom clerk. If the judge or the clerk has a computer in the courtroom, it is possible to perform the calculations immediately.

Imposing the Structured Fine Sentence

The imposition of a sentence is the single most important formal event in a criminal case that results in conviction. When a structured fine is imposed, the announcement of the sentence—both the amount and the terms for payment—is also the first step in the collection process. The manner in which a defendant is informed of the sentence can have a significant effect on the defendant's perception of the sentence's meaning and on subsequent payment (or nonpayment) of the fine.

The first consideration in imposing sentences of structured fines is clarity. It is not uncommon for a fined defendant to be totally bewildered as to when, where, or how to pay the fine or what will happen in the event of nonpayment. Some or all of this confusion can be alleviated prior to sentencing, through dissemination of written descriptions of the structured fine process to defendants and their lawyers. What happens in the courtroom is still very important, however, and a judge's colloquy with the defendant at the time a structured fine sentence is imposed can help ensure a high collection rate. For example, a judge may ask how much the defendant is prepared to pay "immediately" or "today." If the defendant indicates difficulty in making immediate payment, the judge may follow up with further questions aimed at getting the defendant's agreement to a short period for payment of the balance. Such a dialog, which should include directions to the defendant concerning where to go to pay the fine, can serve several purposes:

- ❑ To emphasize that the court is serious about payment of the fine.
- ❑ To make the defendant an active participant in setting the time within which full payment is to be made.
- ❑ To provide an opportunity for clearing up any confusion in the defendant's mind about where and how to pay.

- ☐ To enable the judge to adjust the fine if special circumstances exist.
- ☐ To put the defendant on notice as to the consequences of nonpayment.

In a busy court, there simply may not be time for the judge to engage in an extended colloquy. In this situation, it is still important for the judge to be clear about the amount of the fine and the court's expectations concerning rapid and complete payment. However, the judge may direct the fined offender to the administrative office responsible for fine collection to work out a payment plan. The offender can be given a copy of the court's sentencing order and escorted directly from the courtroom to the fine collection office.