

THE VENTURA DAY FINE PILOT PROJECT

A Report on the Planning Process and the Decision to Terminate the Project, With Recommendations Concerning Future Development of Fines Policy

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THE VENTURA DAY FINE PILOT PROJECT

I. INTRODUCTION

A *day-fine* is a monetary sanction that can be used as a sentence in criminal cases. Initially developed in Europe, the day fine is based on a simple concept: that punishment by a fine should be proportionate to the seriousness of the offense and should have similar impact—in terms of economic "sting"—upon persons with differing financial resources. Thus, day fine amounts are typically set through a two-step process that determines the severity of the punishment separately from assessment of a specific dollar amount. First, the number of day-fine units for the offense for which the defendant has been convicted is determined, by reference to a scale that ranks offenses according to their gravity. Second, the amount of the fine is determined by multiplying the number of day fine units by a portion of the defendant's net daily income.

By contrast, fines in most American courts are typically set on a "tariff" basis—i.e., imposition of a single fixed amount (or an amount that is within a narrow range), based solely on the perceived seriousness of the offense. Under a tariff fine system, there is little or no variance in fine amount to take into account an offender's income level or assets. The result, according to critics of the tariff system, is that fines are all too frequently set at amounts that are too high for poor defendants to pay yet too low to be a meaningful punishment or deterrent for affluent offenders.

In 1991 the California Legislature enacted a statute authorizing the California Judicial Council to establish a pilot program in one county, to test the feasibility of using day fines as a sanction for misdemeanor offenses.¹ In enacting this law, the Legislature declared that:

¹ Chapter 909, Statutes of 1991 (S.B. 191)

[F]ine punishment should be proportionate to the severity of the offense but equally impact individuals with differing financial resources [T]he implementation of a pilot program in California which is designed to use a [day-fine system similar to those used in Sweden, West Germany, and, experimentally, in Staten Island, NY and Phoenix, AZ]] would serve as a test for a fairer method in California of dispensing criminal justice and as a program which could possibly help alleviate the presently overcrowded conditions of our county jails.²

For more than a year following enactment of the authorizing legislation, no court could be found that was willing to undertake the project. Then, in the spring of 1993, state-level judicial leaders asked the judges of the Ventura Municipal Court to consider becoming the pilot court. The judges agreed, contingent upon approval by the County's Board of Supervisors. On April 27, 1993 the Board of Supervisors voted to approve the project with one important proviso—assurance by the state that participation in the project would not result in a loss of revenue to the county.

Initial planning of the project began in June 1993, and involved a broad range of policymakers and practitioners involved in the administration of criminal justice in Ventura County. By mid-1994, basic plans for implementation of the project had been developed and the California legislature had amended the authorizing legislation to address a number of issues identified during the first year of the planning process. A target date of January 19, 1995, was set for initial implementation of the project.

During the fall of 1994, however, detailed planning for implementation came to a sudden halt and funding earmarked for assistance in implementation was placed on hold. Early in 1995, the pilot project was officially terminated.

² Ibid., Section 1

This report has three main purposes: (1) to describe the sixteen month Phase I planning process (June 1, 1993-September 30, 1994); (2) to examine the reasons why the project was terminated; and (3) to assess what has been learned from this experience and develop recommendations concerning future development of policy with respect to the use of fines as criminal sanctions. The report is organized in eight chapters, beginning with this Introduction. Then:

- Chapter 2 describes the authorizing legislation, looking both at the original 1991 legislation and at the 1994 amendments to it.
- Chapter 3 is an overview of criminal justice in Ventura County, and is intended to provide a sense of the context within which the planning process took place.
- Chapter 4 focuses on the planning work that was done, paying particular attention to the issues that arose and how they were handled in the course of developing a unit scale, a valuation formula, operational procedures for obtaining information about defendants' means, and mechanisms for collection and enforcement.
- Chapter 5 discusses the demise of the project, focusing particularly on the combination of factors that halted the implementation process in the Fall of 1994.
- Chapter 6 examines the attitudes and perspectives of Ventura practitioners toward the pilot project and, more generally, toward the concept of day fines and the role of fines in sentencing.
- Chapter 7 discusses what has been learned from the Ventura project, focusing particularly on problems and issues that will need to be addressed in future efforts to implement day fines or make other improvements in fine policy and practice.
- Chapter 8 sets forth recommendations concerning future development of fines policy.

II. THE CALIFORNIA LEGISLATION

A. Background: Experience with Day-Fines in Europe and the U.S.

The day-fine concept was first introduced in Sweden in the 1920s, as an attempt to reconcile the two potentially conflicting principles of consistency and equity in sentencing. The concept was quickly adopted in other Scandinavian countries. Subsequently, in the 1970s West Germany instituted day fines. Although the operational details have varied in each country, the basic two-stage approach is identical. First, the number of day-fine units to which an offender will be sentenced is determined, using a scale on which offenses are ranked according to their severity. Second, the monetary value of each unit is established, based upon the financial means of the offender.

The European day-fine systems appear to have worked well.³ In West Germany, day fines comprise 85 percent of all sentences in criminal non-traffic convictions, and have substantially displaced the use of short term jail sentences. In the U.S., the first day-fine experiment was launched in 1988 in the Richmond County (Staten Island) Criminal Court. The results in the Staten Island court (which is part of the Criminal Court of the City of New York) indicated day-fines could be successfully used in American criminal courts:

- Judges in Staten Island used the day fines for a wide range of offenses for which they had previously used tariff fines, including some property crimes, drug possession, and assault charges.

³ See, e.g., Silvia Casale, *Fines in Europe: A Study of the Use of Fines in Selected European Countries with Empirical Research on the Problems of Fine Enforcement* (New York: Vera Institute of Justice, 1981); Robert Gillespie, "Fines as an Alternative to Incarceration: The German Experience," *Federal Probation*, Vol. 44 (1980); Hans-Jorg Albrecht and Elmer Johnson, "Fines and Justice Administration: The Experience of the Federal Republic of Germany," *International Journal of Comparative and Applied Criminal Justice*, Vol. 4 (1980), pp. 3-14; Judith A. Greene, *Report to the German Marshall Fund of the United States on Day-Fine Study Tour and Richmond Criminal Court Day-Fine Planning Conference* (New York: Vera Institute of Justice, 1987).

- 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.
- The total dollar amount of fines imposed during the pilot year increased by 14 percent. Average fine amounts imposed for specific Penal Law offenses rose by 25 percent, from \$206 before the experiment to \$258 during the year-long experiment. The increase would have been much greater—to an average of \$441, or more than half the average pre-project fine—except for the fact that New York law established relatively low maximum fine amounts for many of the offenses.
- Collection rates in the court, which were already relatively high before the experiment, remained high after the day-fine experiment was introduced. In 85 percent of the cases where a day fine was imposed *and* an individualized collection strategy was used, the offender paid in full, compared to 76 percent full payment by the fined offenders in the year before the experiment.⁴

In Phoenix, Arizona, a second experiment with the day fine concept began in April 1991. The Phoenix experiment was designed as part of an intermediate sanctions "continuum", targeted for felony cases in which judges felt that (1) incarceration was unnecessary; (2) the defendant did not need either a specialized service or structured supervision; and (3) an appropriately scaled monetary sanction was appropriate. Initial results from the Phoenix experiment were very positive, with collection rates even higher than for the Staten Island experiment.

In addition to the Staten Island and Phoenix experiments, three other projects involving the use of day fines (or "structured fines" as the sanction is sometimes called) were getting underway in 1991 in courts in three states: Connecticut (Bridgeport); Iowa

⁴ Laura T. Winterfield and Sally T. Hillsman, *The Staten Island Day-Fines Project*, NIJ Research in Brief (Washington: National Institute of Justice, January 1993).

(Polk County [Des Moines]); and Oregon (Marion, Josephine, Coos, and Malheur Counties). The results of these projects, all supported in part by grants from the Bureau of Justice Assistance, U.S. Department of Justice would, however, not be known for several years.⁵

B. The Statute Authorizing the Pilot Program: Key Provisions

Senator McCorquodale, who first introduced the legislation authorizing a day-fine pilot project in California (S.B.191, 1991 Reg. Session) was familiar with the Swedish and West German experience with day-fines, and also knew about the experiments in Staten Island and Phoenix. The 1991 legislation, a copy of which is annexed as Appendix A to this report, drew heavily on these models in providing a framework for a pilot project in California. Section 2 of the legislation, in particular, provided very detailed directions for the operation of the pilot project. As the process of planning for the pilot project went forward in Ventura County during the 1993-94 period, planners identified a number of changes in Section 2 that they felt were necessary in order for the project to succeed. The changes were incorporated into amendments to the original legislation that were signed into law by the Governor in July 1994 (Appendices B and C).⁶

The authorizing legislation consists of five sections, each described briefly in the following paragraphs.

⁵ The three BJA-funded projects and the Phoenix experiment are all being evaluated by the RAND Corporation, under a grant from the National Institute of Justice. As of May 1995, the evaluation has not been completed but there are some preliminary findings. See the discussion at the start of Chapter VII, *infra*.

⁶ Chapter 280, Statutes of 1994 (A.B. 386). Appendix B reproduces the Chapter 280 as enacted. Appendix C combines the language of the original statute and the amendments contained in Chapter 280.

1. Legislative Findings and Declarations.

Section 1 of the legislation, which was not changed by the 1994 amendments, begins with a legislative finding that the day-fine system of imposing fines has been successful in Sweden and West Germany and, in the past year [1990], in Staten Island and Phoenix. Second, it states, also as a finding, an important policy concerning fines:

"fine punishment should be proportionate to the severity of the offense but equally impact individuals with differing financial resources."

Third, Section 1 makes a further finding and declaration that

"the implementation of a pilot program in California which is designed to use a similar day-fine system would serve as a test for a fairer method in California of dispensing criminal justice and as a program which possibly could help alleviate the presently overcrowded condition of our county jails."

These legislative findings and declarations appear to express a legislative preference for a system of fine use that is *fairer* than the generally prevailing system of tariff fines and other sanctions including jail. Importantly, the effects upon revenue are not mentioned at all in the legislative findings; the emphasis in this section is upon fairness and, secondarily, upon possible alleviation of jail overcrowding problems. As planning got underway, however, revenue considerations—and concern on the part of both county and state officials about a possible fall-off in revenue due to the use of day fines—became an important issue. These concerns are reflected in the 1994 amendments to Section 2 of the authorizing Legislation discussed below.

2. Framework for Project Operations.

Section 2 of the 1991 statute established very detailed directions for the operation of the pilot project. As planning for the pilot project moved forward during the 1993-94

period, a number of operational issues were identified, some of which led to a series of changes in this section of the statute. The main provisions of Section 2 are outlined below, with discussion in the text concerning the principal changes made by the 1994 amendments.

(a) Location, duration, and revenue loss protection. Subsection (a) of the original [1991] statute provided that the Judicial Council

"may establish in one county in which the board of supervisors by resolution agrees to the participation by the county, a two-year pilot program which shall implement a day-fine system commencing on July 1, 1992, and ending on July 1, 1994."

This seemingly simple one-sentence subsection included two provisions that markedly affected planning for the pilot program. First, in requiring agreement by the board of supervisors of the pilot county, the legislation clearly did not contemplate the type of *contingent* agreement concerning participation contained in the resolution approved by the Ventura County Board of Supervisors in April 1993. The legislation would have to be revised to address the revenue concerns of the county if the project were to remain in Ventura. Second, the time frame contemplated for project implementation was overly optimistic. As of the originally hoped-for starting date of July 1, 1992, no county had agreed to participate in the pilot, and it was not until almost a year later that Ventura gave the project a contingent approval. A formal planning process got underway almost immediately thereafter, but—especially since the planning process led to identification of legislative changes, computer system needs, and other operational problems that had to be addressed—it was not until the fall of 1994 that plans had been developed for actual implementation. A minimum of two years of operation would be necessary in order to evaluate the pilot project, but operations could not begin before January 1995. The 1994

amendments changed the duration of the pilot project to three years, commencing on July 1, 1993, and ending on July 1, 1996.

A second change in subsection (a) added new language concerning the effects of a possible fall-off in fine revenue resulting from implementation of the pilot project. This was a subject that had not been addressed at all in the 1991 statute, but it was a major concern of the Ventura County Board of Supervisors and the county's budget officials. The county wanted assurance that it would not suffer financially if implementation of the pilot resulted in decreased fine revenues, but state budget officials were unwilling to provide unqualified assurance on this issue. The result was a compromise on new statutory language that provided limited protection for revenue loss and also opened the door for either the county or the state to discontinue the project if it appeared that the project was having an adverse impact on its revenues. The provision added by the 1994 amendments concerning revenue read as follows:

"Any decrease in revenue attributable to the day-fine project shall not adversely impact the county's share of court-generated revenue. The court will closely monitor court-generated revenue and will notify the state immediately regarding any decrease of funds paid to the state attributable to the day-fine project. In the event that the county's share of revenue decreases during the term of the pilot project, the state promises to restore and shall restore county revenues in the amount of the shortfall, but not exceeding thirty-five thousand dollars (\$35,000), at the end of the year in which a shortfall occurs from any source the state deems appropriate. The state will not decrease any amount otherwise payable to a participant county under any other law or state-funded program due to the restoration of a shortfall under this section. Either the state or the county may discontinue the project if any decrease in funds has, in its judgment, a significant impact on its revenues."

(b) Scope of the pilot project. Subsection (b) of Section 2 of the 1991 legislation provided that if a person was convicted of a misdemeanor in the pilot county any fine imposed would be determined under this legislation. It stated that there would be no minimum fine; set \$10,000 as the maximum fine that could be imposed for any offense; and explicitly exempted infractions from the pilot program. Additionally, it mandated the use of a percentage formula for allocation of the fine to various funds and eliminated penalty assessments, but provided that the funds to which penalty assessments would otherwise be distributed should be included in the percentage formula "in proportion to that amount provided for under present law."

Subsection (b) was changed in several significant respects by the 1994 amendments, to read as follows:

"Notwithstanding any other provision of law, if a person is convicted of a misdemeanor or a misdemeanor charged as an infraction within the discretion of the district attorney pursuant to subdivision (D) of Section 17 and Section 19.8 of the Penal Code and the offense is included as part of the day-fine project in the pilot county, that person shall be fined pursuant to this section unless the court finds that unusual circumstances exist to justify avoidance of a fine. The court shall state on the record the circumstances that, in the interest of justice, necessitate an alternative disposition. Any minimum fine shall be calculated pursuant to subdivision (e), and the maximum fine shall not exceed ten thousand dollars (\$10,000) for each offense for which the defendant is convicted. Notwithstanding any other provision of law, the court may prohibit day-fine offenders from serving time in jail, performing community service, or any other alternative sentence in lieu of payment of the day fine. The court shall use a percentage formula for allocation of the fines to various funds, including those established by Sections 1463 and 1464 of the Penal Code. There shall not be any penalty assessments, but those funds to which penalty assessments are distributed shall be included in the percentage formula in proportion to that amount provided for under present law. This section shall not be applicable to infractions, except for the infractions described in this subdivision."

Six points, in particular, should be noted about subsection (b) in its current form:

(1) *Applicability to infractions.* As revised, Section 2(b) applies to convictions of misdemeanors *and* misdemeanors charged as infractions. The original [1991] legislation had applied only to misdemeanor convictions.

(2) *Scope limited to certain offenses.* Under the 1994 amendments, the statute applies only to offenses "included as part of the day-fine project in the pilot county." The original legislation had applied to all misdemeanor convictions.

(3) *Presumptive imposition of day-fines; escape option.* Under the 1994 amendments, any time a person is convicted of a misdemeanor or infraction included in the pilot project, "that person shall be fined pursuant to this section unless the court finds that unusual circumstances justify avoidance of a fine." If such a finding is made, the judge is to state the circumstances on the record.

(4) *Minimum Fine.* The 1994 amendments provide for a minimum fine to be calculated pursuant to Section 2(e). The original legislation had provided that there "shall be no minimum fine."

(5) *Discretion to prohibit serving jail time in lieu of fine payment.* The amended Subdivision (b) authorizes the court to prohibit offenders who are given day-fines from serving time in jail, performing community service, or any other alternative sentence. This provision was intended to emphasize the importance of payment of the day-fine and to end the practice of allowing defendants to opt for jail (at a credit of \$81 per day [\$123 per day with "good time"]) in lieu of jail.

(6) *Lowered floors and higher ceilings.* Three interrelated provisions—the maximum fine amount of \$10,000, the elimination of "penalty assessments", and the

direction that the court use a percentage formula for allocating fines to various funds (including those funds to which penalty assessments would be distributed)—were designed to remove some of the obstacles to equitable use of fines that have been identified by commentators, by removing the high "floors" created by penalty assessments and by establishing a relatively high ceiling for fines. All of these provisions were in the original legislation and were left unchanged by the 1994 amendments. However, the 1994 authorization of a minimum fine amount tends to undercut the impact of the elimination of the high floor.

(c) Establishment of the day-fine unit scale. Subsection (c) of Section 2 provides for a planning group in the pilot county, mandated to devise a set of scales of day-fine units for misdemeanors (and, under the 1994 amendments, misdemeanors charged as infractions) ranked according to their gravity. Members of the planning group were to include the following:

- The presiding judge of the superior court
- The presiding judge of the municipal court
- The other municipal judges, or if there are more than three municipal judges, then three municipal judges appointed by the presiding judge
- The district attorney
- The public defender
- A member of the Judicial Council

The statutory directions to the planning group with respect to construction of the scales were very specific, and were left unchanged by the 1994 amendments. They provide as follows:

"After ranking the crimes, each offense shall be assigned a presumptive number of day-fine units. Each offense shall also be assigned a mitigating and aggravating number of units. The number of units shall not exceed the maximum number of jail days permitted under the applicable code section for the offense. This planning group shall also determine a daily allowance for each dependent."

(d) *Juvenile cases exempted.* Subsection (d) provides explicitly that the day-fine pilot provisions do not apply to cases tried under the juvenile court law.

(e) *Imposition of a day-fine.* Subsection (e) of Section 2 sets forth, in detail, the way in which a day-fine is to be determined and calculated in the pilot court. As amended in 1994, it provides as follows:

"When assessing a day fine, the court shall locate the conviction charge by the code section on the scale prepared under subdivision (c). The court shall use the presumptive units unless the court determines there are aggravating or mitigating factors. If there are aggravating or mitigating factors, the court may use the aggravating or mitigating units. The net daily income of the offender is the reported family gross income divided by the period of time that income covers less one-third. For those offenders whose family gross income is equal to or lower than the federal minimum wage multiplied by 40 hours per week, a minimum fine shall be imposed. The net daily income figure or the minimum fine shall be reduced by the daily allowance for the number of dependents of the offender. The number of persons for whom an offender is financially responsible is the sum of the offender plus all other persons who derive support from his or her income. For an offender who is a dependent, the number includes the head of the household and each supported family member, including the offender.

The day fine for each offense for which there is a conviction is the product of the day-fine units times the net daily income adjusted for the number of dependents.

As amended in 1994, Subsection 2(e) of the legislation differs from the original [1991] statute in three important ways:

(1) It provides that the net daily income of the offender is *family* gross income, not simply the offender's own income. Thus, for example, the basis for a fine for a non-working offender could be determined on the basis of the income of the offender's spouse. The theory is that the fine amount should be calculated on the basis of family income to which the defendant has access.

(2) Consistent with the authorization of a minimum fine in Subsection (b), it provides for a minimum fine for offenders whose family gross income is equal to or below the federal minimum wage level. The dollar amount of the minimum fine and the basis for its calculation are not specified in the statute. For purposes of the day fine calculation, the planning committee decided that every defendant would be "presumed" to have a net daily income equal to the minimum wage multiplied by 40 hours per week, then divided by the number of days in the week (7) and adjusted downward, if necessary, to take account of dependents.

(3) It revises the definition of *dependent*. In calculating the amount of a day fine, allowance is made for the number of dependents of the offender, defined as persons who derive support (but not necessarily sole support) from the offender's income.

(f) Collection and enforcement of day-fines. Subsection (f) of Section 2 was left unchanged by the 1994 amendments. It provides that the fine order is to be deemed a money judgment and that the county agency in charge of collections is to enforce the judgment. It also provides explicit directions for handling installment payments and taking action in the event of nonpayment:

"If the agency determines that installment payments are necessary, the number of payments shall be as few as possible, and the total fine amount shall be collected in the shortest time possible. If the agency has to use the civil process of the court to collect the fine,

they shall be awarded costs and attorney's fees. The agency shall closely monitor the offender's performance, and take immediate action for nonpayment. Additionally, if the convicted person is on probation and the fine is a condition of probation, the court may revoke probation for willful nonpayment."

(g) Production of financial records; confidentiality of information. One of the potential problems in establishing the appropriate fine amount is difficulty in determining a defendant's actual income. Subsection (g) of the original legislation provided explicitly that "notwithstanding any other provision of law, the court may order the production of income tax records or other documents in order to determine net daily income." This provision was left standing by the 1994 amendments, but a new provision was added to address concerns that financial information provided by an offender in connection with computation of a day fine could be used for other purposes. The newly added confidentiality provision reads as follows:

"All financial information provided for the purpose of calculating net daily income shall be confidential and shall be used only to determine the amount of the day fine. Pursuant to subdivision (c) of Section 987 of the Penal Code, that information shall not be used for any other purpose, including, but not limited to, any criminal or civil proceeding, or as evidence in any other case."

3. Goals of the Pilot Program.

The original legislation identified three distinct goals that the pilot program should seek to accomplish:

- Demonstrate that a day fine program can be implemented in California.
- Determine what effects the change from a fixed fine to a day-fine system will have on current fining practices.

- Determine what penalties day fines displace.

As this section, in particular, makes clear, the legislation contemplated a researchable demonstration project—a test of the day fine system to determine its feasibility and its effects on fining practices and on the use of other sanctions. The section was not changed by the 1994 amendments.

4. Funding.

Section 4 of the 1991 legislation which was also left intact by the 1994 amendments, contemplates the use of outside funding to help support the demonstration project. It authorizes the Judicial Council to apply for non-state foundation funds to implement and evaluate the pilot program. Although such outside funds were sought (via grant applications made by the Judicial Council to the State Justice Institute and the California Office of Traffic Safety), none were awarded. The legislature did not appropriate any funds to help support planning and implementation of the pilot project. Therefore, the Administrative Office of the Courts furnished funding for some portions of the project out of its own limited operating budget.

5. Sunset.

Section 5 of the original legislation provided that it was to remain in effect only until January 1, 1995 and would be repealed as of that date unless statutorily extended. In order to implement the pilot project, an extension would be necessary. The 1994 amendments extended the effective period of the legislation to July 1, 1997 and provided for the Judicial Council to report to the Legislature on October 1, 1996 regarding its evaluation of the pilot project and its identification of factors for legislative consideration in determining whether to adopt a day fine system in other counties.

III. THE PILOT PROJECT SITE: AN OVERVIEW OF CRIMINAL JUSTICE AND FINING PRACTICES IN VENTURA COUNTY

Ventura County, with a population of 700,000, has long had a reputation as having an effective criminal justice system. It was one of the first counties in the nation to develop automated criminal justice information systems, and the kind of inter-institutional cooperation necessary to develop information systems has carried over into other areas. Importantly for purposes of this project, the administratively consolidated Ventura County Superior and Municipal Courts have also developed a reputation for effectiveness in the collection of court-ordered fines and fees.

The Ventura County Municipal Court, which would have been the primary focus of pilot project operations, consists of 12 judges and one commissioner shared with the Superior Court. In 1993, a total of 158,861 cases were filed in the court, including 27,343 misdemeanor cases. The court has two locations: the Hall of Justice in the city of Ventura, which is part of the main county government complex, and a branch location—the East County Courthouse—located in Simi Valley. The principal offices of the court, the district attorney and the public defender are located in the Hall of Justice, and the county jail is adjacent to it.

Criminal case processing in Ventura County typically begins with the arrest or citation of an individual, by one of the fifteen law enforcement agencies that operate in the county. If the defendant is arrested and held in jail, the initial appearance in court will ordinarily take place within 48 hours of the arrest. If the defendant is released on an "own recognizance" (OR) citation, the first appearance will ordinarily be scheduled for three to six weeks after the citation.

The District Attorney's Misdemeanor Unit is responsible for the prosecution of cases that involve a maximum sentence of no more than one year in county jail. The offenses most commonly prosecuted by this unit include driving under the influence, domestic violence, illegal drug consumption, assaults on police officers, resisting arrest, petty theft, and driver's license violations (e.g., driving without a license, driving while license is under suspension). The unit reviews all charges filed by law enforcement agencies in the county and accepts about 80 percent for prosecution. Sometimes, however, the unit will opt to prosecute charges as infractions (not punishable by jail terms) rather than as misdemeanors.

In the Ventura County Hall of Justice, there are three different courtrooms to which a defendant's case can be assigned for first appearance. Courtroom 10 handles arraignments for Vehicle Code violation cases where the defendant is not in custody; Courtroom 11 handles arraignments for defendants who are in custody and have been charged with a misdemeanor violation of either the Penal Code or the Vehicle Code; and Courtroom 13 handles arraignments of persons not in custody who are charged with violation of the Penal Code, either as misdemeanors or infractions. All of these courtrooms also deal with cases at other stages than arraignment (for example, probation violation in Courtroom 10; preliminary hearings in felony cases in Courtroom 13), but arraignments are a major part of the day-to-day business in each courtroom.

Judges of the Municipal Court rotate assignments to different courtrooms, usually spending six months at a time in an assignment to a particular courtroom. Judges in any of the three courtrooms that handle arraignments are naturally interested in having

efficient courtroom procedures, because of the large number of cases they must deal with each day.

At their first court appearance, defendants are formally advised by the court of the charges against them, of their right to be represented by an attorney, and—in cases where the maximum punishment exceeds six months—of their right to have an attorney appointed to represent them if they cannot afford to hire one. The public defender's office represents defendants charged with misdemeanors who cannot afford their own counsel, if requested.

As in most limited jurisdiction courts in the U.S., a high proportion of the misdemeanor and infraction cases in Ventura County are disposed of by guilty pleas. In 1993, for example, the court conducted only 121 jury trials and 179 court trials while disposing of over 24,700 misdemeanor cases.

The District Attorney's misdemeanor prosecutions policy has placed particularly high priority on driving under the influence (DUI) cases and domestic violence cases. Sentences in these cases almost invariably include both jail time and a fine.

Fines imposed in Ventura County have historically been set on a fixed sum or "tariff" basis, with the amount of the fine reflecting the seriousness of the offense. In DUI cases, which make up a significant portion of the court's caseload, the sentence for a first offense would typically include the following components:

- Suspended sentence of one year in jail.
- Formal probation for 36 months, with the following conditions:
 - Report to the Probation Department [as scheduled by that Department].
 - Obey all laws.
 - Not operate a motor vehicle with any alcohol in the body.
 - Submit to and complete any chemical tests ordered by Probation.

- Report to Alcohol Information School.
- Not drive unless properly licensed and insured.
- License restricted for 90 days (permitted to drive to and from work and in the scope of employment only).
- Serve 48 hours in the Ventura County Jail.
- Pay a total fine of \$1,429 (base fine of \$529.26 plus penalty assessments totaling \$899.74).
- Pay an Alcohol Education Program fee of \$35.
- Pay a Probation Supervision fee of \$226 (plus an additional monthly fee of \$34 for each month on formal probation).
- Pay a one-time "accounts receivable" administrative fee of \$35.

Under long-existing practices, defendants in Ventura County can choose to serve time in jail in lieu of paying their fines and the other monetary assessments. Often, they take this option. Under California law, defendants are to be given credit for jail time served against any fine at a rate of not less than \$30 per day. The credit allowed by the Ventura Municipal Court is \$81.00 per day for jail time served. For at least some of the defendants who cannot afford to pay the \$1,480 DUI fine—or who might be able to afford the fine but don't want to pay it—the \$81.00 per day jail credit rate serves as an incentive to serve jail time. For many, \$81 per day is more than they can earn at regular employment. In 1993, approximately 28 percent of convicted DUI offenders chose to serve time in jail rather than pay their fines—thus costing the county money in the form of added jail expense and producing no revenue through payment of the fines. At \$81 per day, it takes 18 days to satisfy a \$1,480 fine; with "good time" credit, actual jail time for a fine of that amount is usually 12 days (or an actual credit of about \$123 per day).

The day fine concept was first considered in Ventura County in 1991. During October of that year Ventura was one of twelve jurisdictions that attended a national symposium on intermediate sanctions, sponsored by the State Justice Institute. At the symposium, the seven-person team from Ventura—which included the district attorney, the public defender, a Municipal Court judge, the court administrator, the chief probation officer (Director of the Corrections Services Agency), and a commander in the Sheriff's Department—explored the day fine concept and decided to try to initiate a day-fine program in Ventura. At this time, the 1991 California legislation authorizing a day fine pilot project had just been enacted, and team members felt that Ventura could be the site of the pilot. However, when the proposal for a day-fine project was presented at a meeting of all of the judges of the Municipal Court, it was rejected. A majority of the judges felt, at that time, that a day fine project would not succeed in Ventura. There appears to have been no single reason for rejection of the proposal, but it is clear that the day fine concept was not viewed favorably by the judges.

More than a year after they had first considered and rejected the pilot project idea, the Municipal Court judges were again asked to take on the project. This time the request came from the Chief Justice of California, Malcolm Lucas, and State Court Administrator William Vickrey. It was the spring of 1993, and the judicial branch budget was under consideration by the Legislature. Senator McCorquodale, the sponsor of the 1991 legislation authorizing the day fine pilot project, was also the chair of the Senate Budget Committee and during the budgetary process he inquired about the progress being made on the day fine project. It was at this point that the state judicial leaders asked the Ventura court to be the pilot site.

The request was considered at a judges' meeting, and the judges agreed to have Ventura be the pilot site, subject to the statutorily required approval of the Board of Supervisors. When the proposal was presented to that Board, the issue of a possible loss of revenue was raised, since it seemed likely that day fine amounts could in many instances be much lower than the tariff fines that had been historically imposed. This issue was of particular concern to the Board of Supervisors, because another state statute—Section 1463.001 of the Penal Code—required the county to remit to the state at least as much in fine revenue as it had remitted in 1992-93. If fine revenue were to decrease as a result of the project, the county would bear the brunt of the loss. On April 27, 1993 the Board of Supervisors voted to approve the project, but with a stipulation that became very important as project planning unfolded during 1993—Ventura would participate only if it could be assured that the county would suffer no loss of revenue as a result of its participation.

IV. THE PLANNING PROCESS

A. The Planning Group

From the outset, planning for the day-fine pilot project was a broad-based process, involving representatives of a number of different agencies and institutions interested in (or potentially affected by) the operations of the project. The following is a list of organizations and individuals who participated in the planning committee meetings during 1993-94:

- Municipal Court Judges: Judges Bruce Clark (Presiding Judge, 1993), John R. Smiley (Presiding Judge, 1994), Herbert Curtis III, and Vincent O'Neill, Jr.
- Superior and Municipal Court Clerk's Office: Sheila Gonzalez (Executive Officer), Beth Vaughan Hodgson, Vince Ordonez, Jr., Linda Finn, Sean Morris, Margie Borjon-Miller, Phyllis Taylor, Joseph A. Gutierrez
- District Attorney's Office: Michael Bradbury (District Attorney), Nancy Ayers (Chief of Misdemeanor Unit)
- Public Defender's Office: Kenneth I. Clayman (Public Defender), Jean Farley
- Private Bar: George Eskin, David Callahan
- County Government: Kathy McCann
- California Judicial Council: Judge Richard Paez
- California Administrative Office of Courts: Shelley M. Stump
- Consultants: Judith A. Greene, Barry Mahoney, Susan Turner

At the first meeting of the planning committee, held on July 21, 1993, there was a broad ranging discussion of issues and questions concerning the operation and potential impact of the pilot project. The openness to questions and alternative perspectives that characterized the initial planning meeting continued through subsequent sessions. All of the questions were addressed in the course of developing plans for the pilot project,

generally with the understanding that the policies developed in answer to specific questions would be subject to reconsideration as experience was gained in actual operation of the project.

B. Obtaining Baseline Data

One of the early priorities for the planners was getting a clear picture of sentencing policy and practice (in particular, policy and practice with respect to the use and collection of fines) prior to the inception of the pilot program. Such baseline data would be important for two main reasons: (1) to help inform the planning process itself, by providing empirical data on existing patterns of fine use and collection, and on the use of other sentencing options in cases potentially eligible for day fines; and (2) after implementation of the pilot project had started, to provide a basis for "before-and-after" comparisons.

In Ventura, the process of developing baseline data encountered some problems in the court's computer system that everyone recognized would have to be addressed before project implementation could begin. For example, for evaluation purposes, it would obviously be important to know how implementation of the pilot project changed sentencing patterns in the court for cases eligible for day fines. However, the existing system was not programmed to provide information on sentencing patterns. It would also be important to know how the use of day-fines affected collection effectiveness—including the number of defendants who paid their fines in full (and how quickly), the number who served time in jail in lieu of fine payment, and the amount of fine revenue actually collected in day-fine eligible cases. However, information related to collections was stored on three different systems. These systems had been inherited by court

administration over the course of several years during the Municipal and Superior Court consolidation efforts. Case records in these computer systems are periodically purged from active computer files. While the information could have been retrieved, it could not have been obtained easily or in a format that would be usable for computer-based analysis.

Early identification of problems in obtaining information that would be crucial for both evaluation and on-going project monitoring and supervision was extremely important. Plans were made to obtain computer software that would enable easy case tracking and rapid retrieval of essential information, and it was expected that these systems would be in place by the time of the project's scheduled start-up in January 1995. As of the end of September 1994, however, work on development of baseline data on sentencing patterns and collections effectiveness was still in progress. Planners and senior administrative staff recognized that the baseline data collection effort needed to be substantially completed prior to project start-up, in order to provide a basis for before-and-after comparisons showing the ways in which implementation of the day fine program affected sentencing patterns, collections effectiveness, revenue, and jail usage.

C. Construction of the Unit Scale

One of the first tasks of the planning committee—mandated by Section 2(c) of the statute—was to develop a scale of day-fine units for offenses that would be eligible for day fines, ranked according to the gravity of the offense. Early in the planning process it was agreed that the initial focus should be on development of a scale limited to offenses for which the District Attorney would be willing to consider a day-fine as the sole or

main component of a sentence, even though this might require amendment to the authorizing legislation.

The unit scale ranking offenses eligible for day-fines was developed over the course of several months, with input from the planning committee members, from all of the judges, and from members of the staffs of the District Attorney's office and the Public Defender's office. It consisted of a list of 28 offenses ranked according to seriousness on a scale that ran from 5 units at the low end to 120 units for the most serious offense. Data collected by court staff indicated that in 1993, these 28 offenses accounted for approximately 16,000 cases in the Ventura County Municipal Court. On the scale developed by the planning group, each was assigned a presumptive number of units and also a "low" and "high" number of units, designed to give attorneys and a judge flexibility in taking account of mitigating and aggravating factors in determining the appropriate number of day-fine units to be assessed in an individual case. A copy of the unit scale is annexed as Appendix D to this report.

D. Valuation of Units

In a day fine program, once the number of day-fine units is determined for a particular case, the next step in determining the fine amount is to multiply the number of units by an amount that reflects a portion of the net daily income of the offender. In Ventura, several different approaches to establishing the value of a day fine unit were considered. The approach ultimately adopted was in some respects similar to that followed in the Staten Island Day-Fine project, but with three very significant changes.

First, instead of using the offender's net daily income as the basis for valuing the day fine unit, the planning group decided that the basis of the valuation should be *family*

income. This meant that the total amount of income that came into the household would be used as the starting point for valuing a fine unit. The rationale was that, particularly since a defendant could get credit for dependents, the fine should be set on the basis of family funds to which the offender had access⁷. However, this decision also had implications for revenue. It meant, for example, that if an offense was committed by an unemployed spouse or adult child living at home, the day fine amount could be calculated on the basis of the income of an employed spouse or other household members. As discussed above, this approach was subsequently incorporated into the authorizing legislation by the 1994 amendments.

Second, the planners decided that everyone—regardless of whether they or others in their household had any income—should be assessed at least a minimum fine amount. The provision authorizing a minimum fine was incorporated in the 1994 amendments to the day-fine legislation, though without explicit directions as to how this was to be done. The planning group's approach to setting a minimum fine was to adopt a "presumption" that every offender could have a net income based on working 40 hours per week at minimum wage. Beginning at that base, downward assumptions could be made for dependents, but the presumption meant that there would be a significant minimum fine amount in every case.

Third, the planning group decided to use a simpler income bracket structure than did the Staten Island experiment, and to provide no "extra discount" for the persons with incomes at or below the federal poverty line. A copy of the income bracket structure,

⁷ During discussions of this issue at meetings of the planning committee, it was suggested that family income should be used as a basis for valuing day-fine units only if the defendant claimed credit for dependents. However, the 1994 amendments to the authorizing legislation did not adopt this approach.

showing the net daily income that would be attributed to individuals in each bracket, is annexed as Appendix E. The table showing the dollar value of a day fine unit, adjusted to take account of the number of the defendant's dependents, is annexed as Appendix F.

In developing the valuation formula, the planners used several illustrative examples to show what the day-fine would be for individuals with differing financial circumstances charged with the same offense. Appendix G reproduces these examples.

E. Development of Plans for Obtaining Financial Information from Defendants

Obtaining reliable information about a defendant's income is a prerequisite to being able to impose a day-fine. Planners were concerned about how to obtain such information while (a) not creating a bottleneck in court case processing; and (b) ensuring that the information would remain confidential.

The approach agreed upon by the planning committee had two main components. First, for defendants in cases eligible for day-fines who were not in custody, a "courtesy notice" would be mailed in advance of the first scheduled court appearance. The notice would inform them that within 5 days of receipt they were to provide the court with current income information using a form on the back of the notice. The notice also stated that the income information would be treated confidentially. A copy of this notice is annexed in Appendix H.

For defendants who were in custody or who were sent the notice but did not respond, procedures were developed to seek the income information on the date of the defendant's first court appearance. A court clerk's staff member was to have been stationed in the courtroom, to distribute income information forms to defendants charged

with offenses punishable by day-fines. Cases in which the income information was collected in the courtroom would be placed on the "second call" of the courtroom calendar.

In order to guard against under-reporting of income, the project planned to do spot-check verification of reported income. Individuals who were found to have inaccurately reported their income would have fines reassessed or other sanctions imposed. Verification procedures were being developed by the collections unit staff at the time planning for the project was discontinued.

F. Formulation of General Policy Guidelines Regarding Imposition of Day-Fines

During the course of the planning work a number of questions arose with respect to specific situations that could be anticipated. The following guidelines were developed to deal with such situations:

1. Day-fines Not a Substitute for Jail.

For offenses for which jail was already being used as a sanction, there would be no change in policy. A jail term would continue to be one component of the sentence; a day fine would not replace jail as a sentence. The main change was that, in calculating the amount of any fine imposed as a part of a sentence, the two-step method of computing the amount of a day-fine would be used.

2. Day-fines only.

It was agreed that, for the duration of the pilot project, the only type of fines used for "day-fine eligible" misdemeanors (including misdemeanors charged as infractions) would be day-fines, to be imposed in accordance with the unit scale and valuation table shown

in Appendices D and F. This policy is reflected in Section 2(b) of the legislation as amended in 1994, which provides that if a person is convicted of an offense included in the day fine project "that person *shall be* fined pursuant to this section unless the court finds that unusual circumstances exist to justify avoidance of a fine".

3. Use of Day-Fines in Multiple Charge Cases.

In cases where a defendant is charged with two or more offenses, the usual practice in Ventura County has been to impose sentence only on the most serious conviction charge. A day-fine would have been imposed only if the top conviction charge were one of the offenses eligible for a day-fine.

4. Jail In-lieu-of-Fine Option for Defendants.

Under existing practice, it has been common for defendants to choose to serve jail time in lieu of paying a fine. When they do so, they receive credit against the fine amount at the rate of \$81 per day (or, more accurately, \$123 per day when "good time" credit is taken into account). The planning group felt that defendants should not be permitted to choose jail in lieu of fine payment. This policy was incorporated in Section 2(b) of the legislation by the 1994 amendments, which authorizes the court to prohibit day-fine offenders from serving time in jail or performing any other sentence in lieu of payment of the fine. (*Note:* This policy would not limit the amount of jail time that could be imposed as a part of the sentence *in addition to* the fine.)

5. Minimum Fines.

As noted above, the planning group felt that there should be a minimum fine for every day-fine eligible offense, and established a presumption that any offender had a net daily income based on working 40 hours per week at the minimum wage. Planning with

respect to minimum fine amounts had not been completed at the time the project was terminated, so it is not clear whether this would be a rebuttable presumption.

6. Relationship of Day-Fines to Other Monetary Assessments.

Under the terms of Section 2(b) of the legislation, a percentage formula was to be used to allocate day-fine amounts to various funds, including those that would otherwise receive revenue from penalty assessments. At the time this project was discontinued in November 1994, the court's fiscal computer system was being programmed to provide for distribution of day fine revenue to all of the funds that receive a portion of each fine.

These include the following:

- State
- County General Fund
- County Automation Fund
- State Victim Restitution Fund
- Alcohol Program
- Criminal Justice Building Fund
- Courthouse Construction Fund
- Emergency Medical Fund
- Automation Fund
- California ID Fund

Both the 1991 statute and the 1994 amendments are silent with respect to fees imposed in connection with a conviction. In Ventura, it has been common to impose probation supervision fees in cases where a defendant is placed on formal probation and to impose an administration ("accounts receivable") fee whenever a defendant is allowed to pay a fine in installments. The planning group left policies with respect to imposition of fees unchanged. They would have been assessed as flat amounts *in addition to* the day-fine amount, and—particularly if the defendant is placed on formal probation—could conceivably have added significantly to the total dollar amount that the defendant was required to pay.

7. Actions in the event a defendant fails or refuses to provide financial information.

The original 1991 legislation provided in Section 2(g) that, "notwithstanding any other provision of law, the court may order the production of income tax records or other income documents in order to determine net daily income." While the statute is silent with respect to what action the court could take in the event income information was not produced, planners assumed that the offender would be subject to the contempt power of the court.

There was, however, some concern within the planning group about possible constitutional impediments to court-ordered production of financial information, especially prior to an adjudication of guilt. These concerns were at least partially responsible for the 1994 amendments to subdivision (g), which provided that financial information provided for the purpose of calculating net daily income "shall be confidential and shall be used only to determine the amount of the day fine" and "shall not be used for any other purpose including, but not limited to, any criminal or civil proceeding, or as evidence in any other case." Despite the addition of the statutory language protecting the confidentiality of the information and limiting its use, it was expected that legal challenges to court-ordered production of financial information would be made once the project was underway.

8. Verification of financial information; consequences of providing false information.

The "courtesy notice" developed by court staff and approved by the planning group (Appendix H) included space for defendants to indicate their name, date of birth, social security number, driver's license number, total number of dependents, family

income (both before and after taxes) and "other income". It also included space for the defendant to sign and date the form immediately beneath a printed statement that

I declare under penalty of perjury that the foregoing is a complete and accurate statement of my income and that I have no other additional income whatsoever. You have my express permission to verify the information furnished.

Inclusion of the declaration that information would be provided under penalty of perjury was the subject of discussion at planning committee meetings, but as of September 1994 it was expected that the notice would be sent in this form and would be subject to investigation and verification by the court's collections staff.

All defendants charged with day-fine eligible offenses were to be notified about the investigation and verification protocols and about the possible penalty of perjury for providing false information, both via the "courtesy notice" and by courtroom staff assisting with completion of the financial information forms. At the time of imposition of sentence, the court could also ask the defendant whether the information provided was correct and advise the defendant that the information would be subject to investigation and verification. In cases where the court's collections staff found, through its verification process, that information provided by the defendant appeared to be materially false, the collections unit would notify the defendant and arrange for the court to place the defendant's case on the calendar for re-calculation of the fine and modification of the sentence.

9. Actions in the event of change in offender's financial status.

If a defendant experienced a change in financial status after imposition of sentence and establishment of an installment payment schedule, the defendant could notify the collections staff and request a modification. The collections staff would work

with the defendant to adjust the payment schedule and could, if appropriate, request the court to change the amount of the day fine.

G. Collections Policies and Practices

Practices with respect to fine collection would have remained basically unchanged from what they have been. Defendants who wished to pay their fines immediately would be able to do so. Defendants who could not pay the full amount immediately would be sent to the Collections Unit, to make arrangements with a member of that unit's staff for payment in installments.

H. Actions in Event of Non-Payment

In situations where a defendant failed to make a fine payment on a timely basis, the court's collections unit would follow the same procedures already established. Those procedures are as follows:

- A mail "reminder" notice is sent to the defendant after 31 days. If there is no response, a second notice is sent approximately two weeks after the first notice.
- If there is no response after 60 days, the case goes to a *collector* on the court's staff, who seeks to contact the defendant by mail and/or phone. The collector uses a variety of conventional collections techniques designed to persuade a defendant to pay.
- After 120 days, if there is no response, a warrant is issued for the defendant's arrest. Upon his arrest and appearance in court, the court inquires into the reasons for non-payment and may impose an alternative sanction.

As noted above, the planning group felt strongly that it was desirable to avoid the use of jail as an alternative to payment of the day fine. The first option would be to use tax intercepts and other means of obtaining money from the non-paying offender. As of September 1994, procedures for using these mechanisms, as well as policies and

procedures for the use of "back-up" sanctions such as community service and work release, were in the initial stages of formulation.

I. Automated Information Systems Improvement

As noted above, in the Ventura courts information related to misdemeanor and infraction charges and to fine and fee collection historically has been kept on three different computers, each using its own software system. In order for the project to have reliable information on day fine use and collections, both for internal monitoring purposes and for purposes of evaluation by the outside evaluator, it would be essential to have software that would enable the court to access the existing databases and produce information reports not contemplated when the existing systems were installed. During 1994, plans were made to purchase the necessary software.

A second type of automation improvement planned for the pilot project involved having the capability for doing rapid in-courtroom calculation of day fine amounts. Plans were being developed to use laptop computers and customized software to do the calculations using financial information provided by defendants.

Funding for both sets of automation improvement was to have been provided by the California Judicial Council out of the operating budget of the AOC, pursuant to a contract with the county. No legislative appropriation was made to offset the costs of the automation improvement. Under the terms of a grant from the AOC that was being prepared during the fall of 1994, the County would select and purchase the necessary software and hardware, and would subsequently be reimbursed (up to a maximum of \$59,803) by the Judicial Council following successful completion of the installation.

J. Evaluation Design

Dr. Susan Turner, a social scientist with experience in the evaluation of day-fines projects in other jurisdictions, had been engaged to conduct an evaluation of the project. Her evaluation design, a copy of which is in Appendix I, focused on the following questions:

- How did the range of sentences imposed change before and after the implementation of the day fine program?
- How did the imposition of fines change as a result of the day fine program? How did fine amounts change? Did all eligible offenders receive day fines?
- How did fine collection change after the imposition of day fines? How did revenues generated change as a result of the program? Which enforcement activities were required for effective day fine collection?
- How did day fines impact the use of jail sentences in the county? Did prior practices of offenders serving jail sentences in lieu of fines change? Was jail use reduced through the day fine program?
- Is there evidence that the imposition of day fines is associated with an increase (or decrease) in recidivism?

V. THE DECISION TO TERMINATE THE PROJECT

At the last formal meeting of the planning committee, held on September 30, 1994, a pilot project starting date of January 19, 1995 was agreed upon. While it was understood that the date might have to be pushed back again if the automated system improvements were not in place and operational by early January, participants at the meeting appeared confident that this schedule could be met. At the planning meeting, private defense attorney David Callahan indicated that he and some other members of the defense bar continued to believe that the project was subject to challenge on constitutional grounds, and indicated that defense lawyers would seek to test the constitutionality of the project. Several other participants at the meeting expressed the view that the project's constitutionality would be sustained if challenged, and some indicated that they would like to see a test case brought by Callahan or one of his colleagues.

The test case was never brought. By early November, the judges of the Municipal Court had voted to hold further planning for the project in abeyance while an opinion on the constitutionality of the project was sought from the County Counsel and, if necessary, from the California Attorney General.

Perhaps the principal moving force behind the judges' decision to suspend further work on implementation was opposition to it from a newly appointed judge, James Cloninger, who would have been presiding in one of the high volume arraignment courtrooms at the time the project was scheduled to begin implementation. Judge Cloninger, who had been appointed to the Municipal Court bench in March 1994, began a six-month assignment in Courtroom 10 on October 3, 1994. He had not participated in

any of the meetings of the planning committee, and the planning committee as a whole had not been aware of his views toward the day-fine concept or the Ventura pilot project. During the October-November 1994 period, he became an outspoken adversary of the project.

In an "on-the-record" interview conducted in April 1995, Judge Cloninger stated that he was adamantly opposed to the pilot project. He first learned about it during the late summer or early fall, when it was the subject of a report at one of the judges' meetings. Knowing that he would be the judge responsible for imposing some of the first day fines if the project went forward as scheduled, he looked into potential legal issues and identified what he regarded as several grounds on which the project was constitutionally defective. Judge Cloninger's views with respect to these issues may be briefly summarized as follows:

- ***"Micro-equal protection."*** The pilot project provides for a different penalty in Ventura than in any other county in the state, for the same offense. Maximum fines would be higher in Ventura than in other counties, and would in some instances be in excess of the statutory fine maximums applicable to the other counties.
- ***"Macro-equal protection."*** The pilot project, in imposing fine amounts on offenders with differing incomes, would involve discrimination based on wealth. It would conflict with U.S. Supreme Court case law holding that it violates the Equal Protection Clause of the Fourteenth Amendment to treat people differently, based solely on economic status, in the imposition of criminal penalties.
- ***Privacy.*** The requirements that defendants produce financial information for the purpose of enabling the court to determine net daily income and calculate the amount of a day fine would violate both the Fourth Amendment of the U.S. Constitution and the Right to Privacy provisions of the California Constitution.
- ***Separation of Powers.*** It is a breach of separation of powers principles, and an unlawful usurpation of legislative powers, for judges to participate in establishing the day fine unit scales as required by the legislation authorizing the day fines pilot project.

Judge Cloninger's opposition to the project was clearly a significant factor in the judges' decision to delay further planning for project implementation. Courtroom 10, where Judge Cloninger was assigned to preside from October 1994 to April 1995, was the courtroom that was expected to have the highest volume of cases eligible for day fines. In view of his publicly stated opposition to the project and his belief that the program was constitutionally defective, implementation of the pilot in that courtroom would have been highly problematic if not impossible.

But Judge Cloninger's opposition was probably not the only factor that influenced the judges' decision to freeze further planning work and request an opinion on the legality of the pilot. Interviews with Ventura practitioners involved in the planning process indicate that several other factors also contributed to this decision. They include the following:

A. Opposition from the private defense bar.

Although the Public Defender's office strongly favored the pilot project, this was an issue on which the defense bar was sharply split from the time planning for the project first began. Two members of the private defense bar—George Eskin and David Callahan—had been communicating their concerns to the planning committee ever since the committee's first meeting in July 1993. One aspect of their opposition was based on practical grounds of self-interest: They feared that some of their clients who were charged with offenses included in the pilot project—especially those charged with Driving Under the Influence—would, under the pilot project unit scale and valuation system, receive fines much higher than the prevailing tariff fine for the same offense. Another aspect of their opposition was on legal grounds similar to those cited by Judge

Cloninger: equal protection and right to privacy. Additionally, attorney David Callahan presented an argument that the requirement that defendants produce financial information violated the privilege against self-incrimination.

B. Possible impact on staff workloads and court calendars.

The collection of financial information and calculation of fine amounts owed would have required staff time and some judges were concerned that these activities might have slowed down the processing of cases in high volume courtrooms.

Additionally, it was thought that there was a possibility of a significant increase in requests for jury trials (and perhaps in actual jury trials) in cases involving defendants who would face heavy fines if they pleaded guilty to an offense included in the day fine project; this could lead to backlogs and delays.

C. Concerns about possible revenue loss.

The County's Board of Supervisors and Administrative Office made it clear that they were worried that the pilot project could result in a loss of fine revenues. Although judges and court staff members do not view themselves as "revenue producers," widespread concern about a possible loss of revenue to the County significantly inhibited the entire project.

D. Reservations about the project's fairness.

Some of the judges had reservations about the basic concept of day fines, as evidenced by their initial rejection of the pilot project in 1991. Although they agreed to be a pilot site when the Chief Justice asked, few of them were enthusiastic about the idea. When the plans were finally developed and the effects of the day fine scale and valuation system could be seen, it was apparent that the fines imposed on some offenders would be

much higher than the prevailing tariffs. Some of the judges questioned the fairness of a system in which the dollar amounts of fines could vary in order to have roughly equivalent impacts on offenders with differing means. For some, the sense of unfairness was heightened by the policy of basing the offender's net income on the amount of the *family's* income—a policy that could, for example, heavily impact two-income households or middle-income parents of an unemployed 19-year old convicted of an offense included in this project.

E. Lack of strong support within the judiciary.

Although the Ventura judges had agreed to be the site for the pilot project and some felt that it was a good idea, no judge on the court was really an ardent "champion" of the project. There was a similar lack of strong support from the judiciary at the state level. This was not a project on any judges in leadership positions were willing to take a strongly favorable stance.

For about three months, from early November 1994 until early February 1995, no action was taken to develop any further plans for project implementation. The judges' request for an opinion on the legality of the pilot project was conveyed verbally to the County Counsel, but as of early February no opinion had been prepared. At the state level, Judicial Council grant funds that had been earmarked for support of the automation system improvements were frozen.

On February 9, 1995, the Director of the Administrative Office of the Courts, William Vickrey, wrote a letter to Sheila Gonzalez, the Executive Officer of the Ventura County Superior and Municipal Courts, formally recommending that the project be terminated. Vickrey's letter cited three reasons why, in the best interests of Ventura

County Municipal Court, Ventura County, and the Judicial Council of California, the project should be terminated: (1) the reservations about the constitutionality of the project raised by some members of the bench; (2) the conditional nature of the County's approval of the project, which, when coupled with the very limited protection against loss of revenue (a \$35,000 lost revenue cap provided by the 1994 amendments to the authorizing legislators), could result in a very swift termination of the project once implemented; and (3) the fact that the legislature had not appropriated any funds to offset the significant costs of undertaking the project. A copy of Director Vickrey's letter is annexed as Appendix J.

With the concurrence of the bench of the Municipal Court of Ventura County, the project was formally terminated on February 16, 1995.

VI. VENTURA PRACTITIONERS' RETROSPECTIVE VIEWS ON THE PILOT PROJECT AND THE POTENTIAL VALUE OF DAY FINES AS A CRIMINAL SANCTION

In interviews conducted in April 1995, a number of Ventura practitioners who had been involved in the pilot project planning process and/or the decision to terminate the project were asked about their perspectives on the pilot and, more broadly, about their views on the value or usefulness of day fines as a criminal sanction. The interviewees included judges, prosecutors, defense lawyers (both in the Public Defender's office and in the private defense bar), and court staff members. This chapter seeks to summarize the main ideas and themes that emerged from these interviews.

A. Anticipated Operational Problems

Practitioners involved in planning for day-to-day operation of the pilot program identified a number of problems (or potential problems) that would have to be resolved in order for the project to work smoothly. These included the following:

1. Workload increase and staffing needs.

Making projections on the basis of the volume of cases involving offenses included within the day fines pilot project in previous years, planners estimated that there would be approximately 16,000 cases per year with defendants potentially eligible for day fines. In each one of these cases—an average of over 60 per day—the court staff would have to make sure that the defendant knew about the day fine and was asked to produce the requested information. If the information was produced, the staff would be responsible for reviewing the information, doing the calculations necessary to establish the value of day fine unit, and—when there was a guilty plea or verdict—establishing the

amount of the day fine. Additionally, some staff time would be needed for verification of information provided by defendants and, where no information was provided, for taking whatever administrative action was directed by the judge. If the defendants did not produce the information, staff members would have to conduct interviews and initiate steps that would lead to production of the information or other court action.

While some of the work could be done before a court session started (at least for defendants who returned the financial information requested on the "courtesy notice"), much of it would have to be done in or just outside the three courtrooms where initial appearances were scheduled. (Conceivably, the court's case assignment system could have been reorganized to channel all of the cases eligible for day fines into a single courtroom, but this would have been a major change in the court's overall approach to caseload management.) Staff work assignments would have to be re-configured, and resources would have to be found to pay for the additional duties required to implement the project. The workload of staff and judges would increase still further if, as some predicted, establishment of the day fine system resulted in a significant increase in the number of cases being set for trial and in the number of trials actually held.

2. Obtaining the financial information needed to calculate fine amounts.

Judges and court staff members anticipated that it would be difficult to obtain financial information from some defendants. They identified three main categories of defendants who, they felt, would pose potential problems in implementation of the project:

(a) Defendants who would refuse to provide financial information "on principle" or on specific legal grounds. Members of the private defense bar made it clear, during

the planning process, that they would advise some clients to refuse to provide information about their incomes, citing the constitutional grounds discussed above in Chapter V. It was expected that some other defendants (especially those who faced larger fines than they would receive under the traditional tariff system) might also refuse to provide the information.

(b) Defendants who would forget to provide the necessary information. It was expected that some defendants, regardless of income level (and even if they might receive lower fines under the day fine project than under a tariff system), would simply fail to provide the necessary financial information and supporting documentation, either in advance of their scheduled appearance or on the first appearance date. In these cases, it might be possible to obtain information through interviews at the courthouse prior to the start of the session, but it would be difficult to verify the information.

(c) Defendants who would misstate their family income. Some defendants in criminal cases have no easily verifiable income, but they—or other members of the family—receive income through the "underground economy", sometimes including illegal activities such as drug trafficking and prostitution. Judges and court staff members felt that it would be difficult to know when individuals were misstating their family income, and even harder to establish an accurate income amount on which to base a day fine.

While there was no way to estimate the number of defendants who would fall into these three categories, there was a sense that the numbers could be very substantial and that they would significantly affect court processes. Historically, a very high proportion of cases in the Ventura Municipal Court have reached disposition at the time of the

defendant's first appearance, usually with a plea of guilty and the imposition of sentence on that date. However, the day fine project was expected to result in a significant number of additional appearances. Any time a defendant in a day fine case refused or failed to provide the necessary financial information, the case would have to be re-scheduled.

3. Obtaining data needed for project monitoring and evaluation.

As noted in Chapter 4, the process of attempting to develop baseline data for planning purposes highlighted some significant problems in the court's computer system. The computer "system" was, in fact, three separate computer systems, and information needed for project monitoring and evaluation was stored on all three. Without new software that would enable integration of the three systems and production of management information reports not previously used by the court, it would not be possible to make the before-and-after comparisons contemplated by the evaluation design. Further, without these automation improvements it would not be possible to monitor day fine revenues and compare revenues under the pilot project with revenues during the last pre-project year as contemplated by Section 2(a) of the authorizing statute as amended in 1994.

As of October 1994, the automation problems had not yet been solved, although the Judicial Council had arranged for grant funding that would enable the court to purchase software designed to integrate the three different systems. Even with the new software in place and staff trained to use it, however, there would still be operational problems. For example, because of system capacity limitations, data on court cases would be purged periodically from active computer files. While the purged information is stored on tape and could be retrieved, this could not have been done easily—especially

for cases in which fines were imposed during the pre-project period. In all likelihood, the new "systems integration" software would have been helpful for monitoring on-going operations, but a considerable amount of additional computer programming would have been necessary in order to make the comparisons between court operations (especially collections) during the pre-project period with operations during the period following start-up of the pilot project. Alternatively, time-consuming manual collection of data from court records could have been done to provide a basis for these pre-post comparisons.

4 "Back-up" sanctions.

What should be done when a defendant fails to pay a fine? As discussed in Chapter IV, the standard practice in Ventura County, when defendants indicated that they could not pay a fine even on an installment plan basis, was to order them to serve time in jail. Indeed, it was common for defendants in some cases (especially those involving heavy fines) to "choose the jail option." They would be credited with \$81 per day against the amount of the fine. If, as was usually the case, they received credit for "good time", the effective credit would be \$123 per day. At that rate, the base fine and penalty assessments for a first offense conviction of Driving Under the Influence could be satisfied by serving 14 days in jail. For many defendants, it would take far longer to earn enough income to pay the full amount typically totaled about \$1500.

The planning group wanted to eliminate the use of jail in lieu of payment of the fine, and under the 1994 amendments judges were authorized to prohibit day-fine offenders from serving time in jail or from performing any other sentence in lieu of payment of the fine. At the last planning committee meeting, in September 1994, there

was some discussion of what would be done in the event of non-payment. It was agreed that project planners would explore the use of both civil mechanisms (e.g., tax intercepts, wage garnishments) and sentencing options such as community service. As of early November 1994, however, no policies with respect to the use of civil mechanisms or back-up sanctions had yet been formulated.

5. Monitoring fine revenue.

Section 2(a) of the authorizing legislation, as amended in 1994, required the court to "closely monitor court-generated revenue" and to "notify the state immediately regarding any decrease of funds paid to the state attributable to the day fine project."

This requirement would have been extremely difficult to meet for two reasons. First, as discussed above, the information necessary to make the comparisons between collection of day fines and collection of fines imposed prior to project implementation would not be readily available. Second, even if the information about collections could be obtained, it might still be difficult to ascertain whether a drop-off in revenue should be attributed to the day fine project. Two points are especially relevant in this connection:

- There are many possible reasons why fine revenue *might* decrease in cases subject to day fines, for reasons that have nothing to do with the day fines project. These include, for example, a decrease in arrests for certain day fine eligible offenses (as has been happening with respect to DUI cases) and a change in district attorney charging policy that would produce fewer day-fine eligible cases.
- Even if arrest and charging policies stayed constant, defendants would be given time to pay their fines in most cases. At a minimum, it would probably not be until several months after the project started that it would be possible to get reliable data on collections from defendants who had been sentenced to pay day-fines.

B. Attitudes Toward the Concept of Day Fines and Their Potential Value as Criminal Sanctions

The concept of day fines is one that, at least as a matter of initial impression, tends to evoke very divergent views among justice system practitioners in the U.S. For example, in a 1985 survey of judges throughout the United States, the respondents were split almost evenly on a question asking whether, if authorized by statute, a day fine system could work in their court: 52 percent thought it could work, while 48 percent thought it could not.⁸ The same survey showed a three-way split where judges were asked whether they would favor or oppose trying such a system in their court: among limited jurisdiction judges, 26 percent favored trying such an experiment, 38 percent opposed the idea, and 36 percent were not sure.⁹

In Ventura County, no poll of judges or other practitioners was ever taken, except for the votes of the Municipal Court judges on proposals to undertake a day fine project and, in November 1994, on whether to delay implementation and request opinions on the legality of the pilot project from the County Counsel and the California Attorney General.¹⁰ However, from statements made during the planning period and interviews conducted after the pilot project was terminated, it seems clear that the opinions of Ventura practitioners were sharply split on the merits of the day fine concept. In discussing advantages of the day fine concept, some Ventura practitioners stressed what they perceived to be the greater fairness of the concept. The following comments, made in interviews conducted in April 1995, are illustrative:

⁸ Barry Mahoney and Marlene Thornton, "Means-Based Fining: Views of American Trial Court Judges," 13 *Justice System Journal*, 51, 58 (1988).

⁹ *Ibid.*, pp. 59-60

¹⁰ See Chapters III and V, *supra*. There is no publicly available information about the judges' votes.

- "The day fine idea is very fair. It's a very just way of administering fines. The system is supposed to be about justice and fairness."
- "It's fairer than the current system. The fines used now are no deterrent at all to an affluent person, but they are way beyond the ability of some defendants to pay."
- "It's fair. And it will keep people out of jail who don't need to be there to protect public safety."
- "The advantage of day fines is fairness. You can impose a sanction that will have equivalent impact on rich and poor."
- "[Under the current system] for the low-income person it's a struggle to pay the fine. For the affluent person, it's a drop in the bucket. The day fine system was trying to produce a similar effect on each individual."
- "It's a fair system, and it would have put an end to the 'debtor's prison' system in this County. You shouldn't put people in jail for failure to pay a debt."

The Ventura practitioners who were opposed to the project or who had reservations about it also focused on the fairness issue, but did so at two levels. One level of criticisms addressed what some considered the unfairness of the basic concept, apart from the plans for the Ventura pilot project. Illustrative comments about the basic concept include the following:

- "I feel there is more justice with a flat amount."
- "Day fines are unequal and unfair. They discriminate against the well-to-do."
- "It's unfair. It penalizes people because of their income or economic status."

The second level of criticisms grounded in perceptions of fairness focused on the specific design of the Ventura project. Here the criticisms centered on the policy of using *family* income as the basis for calculating the value of day fine units, and also hit upon some other aspects of the pilot project design:

- "It isn't fair to consider household income. Why should I be penalized if my spouse commits an offense?"

- "The family income issue would have been difficult to enforce. We wouldn't have been able to get the information, and it would have led to lots of unfairness."
- "There was an anomaly. Because day fines weren't going to be used in traffic cases, you could get situations in which a low-income person could be fined less for a serious misdemeanor than for an infraction of the Vehicle and Traffic Code."
- "As the project was designed, it wasn't really an alternative to jail as it had originally been billed. Rather, it was just a different way of fining people who were going to get a fine in addition to jail, at least in DUI cases."
- The purpose of the project [as I see it] was to collect more revenue. It was going to be done by shifting fine burdens from the poor to the rich."
- "The valuation system was a problem. You have to look at obligations as well as income, and it's too simplistic to just adjust for dependents."
- "The \$10,000 top amount was outrageous."
- "Telling people that they have to bring information about their finances to arraignment is offensive. It might save an extra court appearance, but there are higher values than efficiency."
- "The project would have resulted in lots of fines of \$5,000 or more for middle-class and upper income people."

In addition to rejecting the idea that day fines are really a fairer way of imposing fines, critics also pointed to two other perceived sets of disadvantages. First, they expressed a concern that a day fine system would be overly mechanistic, infringing on the discretion of judges. Second, they felt that the operational problems discussed above were serious and would result in a system that would be difficult and expensive to administer, would lead to longer court calendars and longer case processing times, and would drain staff away from other essential functions.

Interestingly, there was one important point on which virtually all of the justice system practitioners agreed: that it is undesirable to have a system in which, because a

person is unable to pay a fine, he or she must serve time in jail. Proponents of the pilot program saw the day fine concept as a way to end this practice, by bringing fine amounts within the financial capability of low-income defendants. Critics of the pilot acknowledged the undesirability of the existing practice of having poor defendants serve jail time in lieu of paying a high fine, but they questioned whether the day fine approach was the right answer. Comments in this vein included the following:

- "We need to figure out how to deal with the poor offenders, but don't do it by penalizing the middle class."
- "If a person is too poor to pay a fine, there are lots of other sanctions that can be used, such as community service. They shouldn't have to go to jail."
- "We need to make the system fair for the person who can't pay. There should be alternatives other than jail."
- "There has to be some way to mitigate the effects of high fines on the poor, but the answer isn't to penalize upper income people."

A second key point on which there was broad agreement was that revenue considerations were playing far too prominent a role—both in current policy and practice and in the planning for the day fines pilot project. Several aspects of the pilot project—including the use of family income as the basis for calculating fine amounts, the policy of imposing a minimum fine amount based on an assumed income from working 40 hours per week at the minimum wage, and the high dollar amounts that could be imposed on offenders from affluent families—were criticized as being the product of a concern about generating revenue rather than establishing a sanction that would be a fair punishment and deterrent.

C. Views about the Court's Ability to Implement the Project

Although some judges and court staff members had personal reservations about the wisdom of the pilot project, there was a unanimous feeling among them that the court could have succeeded in implementing it operationally. The following comments reflect this sense that the concept could have been tested if the planning and implementation process had not be halted:

- "The project could have gone forward. We don't know what the outcome would have been, but we would have learned from it. The staff would have been able to make it work operationally."
- "The staff was terrific on this. They are intelligent and hard-working. The project certainly could have been implemented, though I don't think it would have succeeded."
- "I think it would have worked. Everytime we have done something new and different, we have made it work despite initial objections. We could have made this work and not lost revenue."
- "We knew that we would have to do a lot of training and a lot of selling in the community, because this was such a departure form established practice. We could have done it, but revenue might have decreased."

Although the court staff members were confident that they could resolve the operational problems and make the project work operationally, they anticipated that implementation would be difficult. When the project was terminated, some were disappointed that a challenge had not been fully met, but many felt a sense of relief because a major burden had been lifted.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. *What Has Been Learned From the Ventura Project*

The fact that the Ventura pilot project did *not* reach the implementation stage makes it an especially valuable case study. If the day fine concept is to be viable anywhere as a significant innovation in criminal sentencing, policymakers and practitioners who believe it has merit will have to be able to overcome the problems that undermined the Ventura project. And, wholly aside from the merits of the day fine concept, the Ventura experience can shed light on basic issues of sentencing policy and inter-branch program planning. There are six key areas in which much can be learned from what happened in Ventura.

1. **Identification and clarification of key day fine operational issues.**

The operational issues that worried many of the Ventura practitioners (see Chapter VI, *supra*) are ones that any jurisdiction contemplating a day fine program will have to address. They include the following:

(a) *Construction of a unit scale.* Interestingly, this was not a contentious issue within the Ventura planning committee. Development of the scale was done principally by representatives of the district attorney's office and the public defender's office, with review by the judges and other committee members. The practitioners involved in the process report that there was a remarkable degree of consensus concerning the relative seriousness of different offenses. It should be noted, however, that the committee did not make any attempt to develop a separate scale to cover the situation where the defendant is subject to *both* a jail term and a fine. The unit scale that was developed reflected the practitioners' consensus as to the relative seriousness of each offense, but did not address

the question of whether the fine amount should be reduced if the defendant was to be punished by incarceration or other sanctions *in addition to* the fine. For the future, attention will have to be paid to the interrelationship between fine-only and fine-in-combination sentences in developing unit scale.

(b) *Valuation of the structured fines units.* This was one of the operational areas that caused great concern on the part of some Ventura practitioners. Three aspects of the valuation scheme were targets of severe criticism:

- The decision to base the valuation on *family* income, which meant that in some instances the income of a spouse or parent who was not involved in the offense would be taken into account in establishing the fine amount, thus probably leading to fine amounts that would be widely regarded as unjustifiably high.
- The high fine ceilings which, particularly when family income was subject to inclusion in setting the fine amounts, meant that some middle- and upper-income defendants (or their spouse or children) would receive very high fines for some offenses.
- The "presumption" that any defendant was receiving income equal to what could be earned working 40 hours per week at the minimum wage. Although the minimum fines would have been lower than existing tariff fines in most instances, they still would almost surely have been beyond the ability of some defendants to pay. For the future, the valuation problem—which is closely linked to the question of what role revenue production should play in development policy—is an area that needs attention.

(c) *Obtaining the necessary financial information.* Many Ventura practitioners had a strongly negative reaction to the plans for eliciting personal and family financial information from defendants. The project was designed to have the defendants produce this information *before* conviction, either by returning a form on the back of the "courtesy notice" or by providing it to a court staff at the time of the first court appearance. The proposed procedures would undoubtedly have been attacked on Fourth and Fifth Amendment grounds.

In planning any future day fine project, this is an area that will have to be given close attention. Several sets of questions, identified during the Ventura planning process but never satisfactorily resolved for Ventura, are especially salient:

- How can information about the personal financial status of a person subject to a day fine be obtained without abridging individuals' rights? Is the situation different if (a) the defendant is informed before conviction about how the program functions and is advised that pre-conviction production of such information is entirely voluntary; and (b) production of such information is only *required* after there has been a guilty plea or verdict?
- Can production of information about the income of a household member other than the defendant be required? As a matter of policy, is it desirable to base fine amounts on the income of anyone other than the defendant? If so, when and how should this be done?
- How can information about a defendant's income (and, if appropriate, other aspects of the defendant's financial status) be verified quickly and easily? How frequently, and under what circumstances, should verification be attempted?
- What additional steps will be required to obtain the information? What increases in workload will these steps produce? What are the additional staffing needs as a result of the workload increase? Are there any possible savings in workload as a result of the introduction of day fines procedures?

(d) *Sanctions.* Plans for the use of sanctions in the event of non-payment of a day fine were only in the initial stages of development in Ventura at the time the project was terminated. The planning group wanted to avoid the use of jail as an alternative to payment, but no systematic way of imposing alternative punishments for non-payers had yet been devised. Any jurisdiction that seeks to use a day fine system will have to address this issue.

2. The need for a good fines management information system.

The process of planning the Ventura project brought to light some significant weaknesses in Ventura's fines management information system. Perhaps the most

striking example is the inability of the system to produce information showing, for all defendants fined during 1994, the number who had paid in full, the number who had made partial payments, and the total amounts collected by September 1995. Such information is needed in order to get a good picture of overall collections effectiveness, and would have been needed for the Ventura project in order to (a) evaluate the impact on collections of the new system; and (b) monitor revenue generation as required by the statute. The difficulty in obtaining the information in Ventura highlights the importance of ensuring that a good fines management system is in place—not only for purposes of monitoring and evaluating the performance of a day fine project (for which such a system is clearly essential) but also for getting a reliable picture of collection effectiveness generally in any court.

3. The need to address threshold legal issues.

The Ventura planning process brought to the surface a number of legal issues that planners of future day fine projects will have to address. In Ventura, the legal issues raised by the two members of the private defense who attended the planning committee meetings were considered by the committee, which found them not persuasive. Several of the points raised by Judge Cloninger had not, however, been considered by the committee.

To a significant extent, of course, the way such legal issues are resolved depends on the factual context in which they arise. In Ventura, the stress on obtaining financial information from defendants before there had been an adjudication of guilt made the Fourth and Fifth Amendment issues especially salient. The Equal Protection issues exist

regardless of the point in the process at which the financial information is sought, however, and can and should be addressed before operational planning begins.

In addition to possible constitutional constraints that can affect program design, other legal issues may also need attention in the early stages of planning. These include:

- Laws establishing (or restricting the use of) other sanctions that might be used in the event of non-payment of a fine or failure to provide financial information needed to calculate a fine amount.
- Laws concerning procedures to be followed in the event of non-payment of a fine.
- Laws concerning penalty assessments and other "add-ons" to a basic fine amount, that can affect the total amount of the financial obligation imposed on a fined offender.

4. The key roles of judicial leadership and commitment.

The Ventura pilot project was undertaken by the California Judicial Council and the Ventura court with legislative authorization, but without either a formal legislative mandate or appropriated funds. Although the authorizing legislation reads as permissive (the statute "authorizes" the Judicial Council to establish a pilot program), the reality is that the program was one in which the Chair of the Senate Budget Committee was keenly interested. The Judicial Council sought to proceed with the project despite the fact that no court in the state expressed a willingness to undertake it. Indeed, when a day fine project was initially proposed in 1991, the Ventura court declined to undertake it.

Although some Ventura practitioners strongly favored the concept, the project itself never had a strong "champion" among the judges. Most were willing to try the idea after being asked to do so, but it was not something about which they were enthusiastic or to which they were strongly committed.

In other areas of judicial systems operations such as court delay reduction, there is ample evidence that strong judicial leadership and commitment has been a key element of successful programs.¹¹ If future efforts to introduce the day fine concept or other improvements in fine policy and practice are to be undertaken, it will be important that they have the active support and commitment of judicial leaders at both the local and state levels.

5. The tension between sentencing objectives and revenue production.

The Ventura experience highlights a key dilemma that must be addressed if monetary sanctions are to be used effectively as sentencing options. To be effective as a sentencing option, monetary sanctions must be seen as fair and credible—capable of being used as appropriate punishments and perhaps as deterrents to future misconduct. However, considerations of fairness and proportionality tend, in practice, to be submerged by pressure to use these sanctions to produce revenue. The result, very often, is the establishment of a set of monetary sanctions (the basic fines plus other add-ons such as penalty assessments and fees) that is far too high for some defendants to pay. That was undoubtedly the case in Ventura. Prior to the project approximately 28% of the fined defendants in DUI cases chose to serve jail time rather than pay their fines, and an unknown percentage of the others failed to pay without serving jail time. The day fine project developed in Ventura would probably not have resolved the problem, however, mainly because pressures for revenue production led to a valuation scheme that would have produced many very high day fines. Some fines would still be beyond the

¹¹ See, e.g., Barry Mahoney et al *Changing Times in Trial Courts* (Williamsburg: National Center for State Courts, 1987); William K. Herritt, Barry Mahoney, and Geoff Gallas, *Courts That Succeed*

defendant's ability to pay and others would have been widely regarded as inappropriately high in relation to the offense.

6. The importance of key characteristics of the pilot site.

Any time a single jurisdiction is chosen as the locus for an experiment or pilot project, there is a risk that the analysis of the results may be significantly affected by unique characteristics of the jurisdiction. In assessing the potential viability of the day fine concept for purposes of future planning, it is important to be aware of several ways in which the situation in Ventura was different from the situation in other jurisdictions that have undertaken relatively successful day fine experiments.

First, and perhaps most important, the issue of revenue-generation from fines was a much more critical issue in Ventura than in any of the other jurisdictions. Revenue from Municipal Court fines was historically important to the County, and became even more important by the provisions of Penal Code Section 1463.001, which required the County to remit to the state at least as much in fine revenue as it had remitted in 1992-93. None of the other jurisdictions that experimented with day fines were under the same kind of pressure to meet a revenue "quota".

Second, and closely related to the first, none of the other day fine jurisdictions had well organized and effective collections systems prior to the start of their day fines projects, although the Staten Island Court had a moderately high collections rate of approximately 76 percent before it undertook the day-fines experiment. Every one of these projects (including the Staten Island project) included a "collections component" that involved paying substantially greater attention to fine collection efforts than had

(Williamsburg: National Center for State Courts, 1989).

been done before the projects began. Thus, although the results in terms of higher collection rates and increased total revenue have been positive in these jurisdictions, it is not clear whether the improvements can be attributed to the use of the day fine system for imposing fines, to the heightened emphasis on collections, or to some combination of both. In Ventura, by contrast, the court already had a well developed collections system that was generally regarded as the best in the state of California. Collection efforts could not have received much greater emphasis in the pilot program than they already had under existing practices.

Third, none of the day fine projects in other jurisdictions were handling anywhere near the volume of cases that the Ventura court would have been handling if the pilot project had gone forward. With an anticipated caseload of 16,000 cases per year (or over 60 cases per day), Ventura would have been handling a caseload much larger than all of the other projects combined—and would have been doing so without any increase in resources.

Fourth, implementation of the day fine projects in the other jurisdictions did not evoke the legal challenges that developed in Ventura. It is not clear why similar legal issues were not raised in the other jurisdictions, but there would seem to be at least three partial explanations: (1) the monetary stakes were higher in Ventura—the highest possible fines were many times higher than the prevailing tariff fines in Ventura, and considerably higher than any day fines ever imposed in the other jurisdictions; (2) the operational procedures designed to obtain financial information about defendants in Ventura were (or were perceived to be) more intrusive on individual privacy than those used in the other jurisdictions; and (3) the scope of the Ventura project was broader, in

terms of the total number of cases and the number of people (including middle- and upper-income people) who could be affected by the use of day fines.

VIII. Recommendations Concerning Future Development of Fines Policy

While Ventura practitioners had some disagreement about day fines—both with respect to the basic concept and with respect to the specific project that was developed—they were virtually unanimous on two important points that are central to any future efforts to improve the use of fines and other monetary sanctions:

- First, the existing system is not satisfactory. It is not good policy to have a system in which fines can easily be paid by some defendants while others—convicted of the same offense and with identical prior records—must serve time in jail because they don't have the financial ability to pay the fine.
- Second, sentencing policy should not be driven by revenue needs. The primary purpose of using fines and related monetary sanctions as sentences in criminal cases should be to impose fair and appropriate punishment upon the individual law-breaker. This purpose is defeated when pressures to generate revenue lead to fine amounts and related "add-ons" that, in total, produce sentences that are widely viewed as unfair. Such sentences have little credibility (because the fines and penalty assessments are often uncollectable), rarely function as fair and appropriate punishments, and result in unnecessary and inappropriate use of jail space.

The problems that exist with respect to current policy and practice concerning the use of fines are not ones that can be resolved by the courts alone or by the legislature alone. They involve all branches of government, at both the local and state level. In order to address them, it seems desirable to establish some type of inter-branch and inter-governmental study commission or task force to examine all aspects of policy concerning the use of fines and other monetary sanctions. Such a body could be created either by the Judicial Council or by the legislature, or by the two branches acting in concert. It should include Superior and Municipal Court judges (especially judges who are or have been presiding judges); court administrators and administrative staff members knowledgeable about collections practices and performance; legislators; representatives of county

commissions; representatives of law enforcement (police department and sheriff or jail administrator); state budget officials, and others who have stakes in or special knowledge about this policy area.

The following recommendations are ones that could be considered by such a study commission or task force. If such a body is not created, they could be considered independently by the judiciary and by the legislature. The recommendations are as follows:

RECOMMENDATION 1: Make a comprehensive examination of statutes, local practices, administrative rules, case law, and constitutional provisions affecting the use of fines and other monetary sanctions, with a view to (a) developing an accurate picture of current policies and practices; and (b) developing goals and policies with respect to future use of fines and other monetary sanctions. In undertaking the study, pay particular attention to ways in which pressures to generate revenue conflict with objectives sought to be achieved through the use of fines and other monetary sanctions.

In order to make meaningful improvements in existing policies and practices, it is essential to develop an understanding of the current situation. On a statewide basis, there is likely to be considerable variation in practice from one county to another, but there is likely to be at least one consistent theme: few if any courts or counties have an accurate picture of the extent to which fine amounts imposed are actually collected or of what happens in cases where they are not collected. Further, because laws with respect to fines and other monetary sanctions have been enacted largely on an ad hoc basis, independent of the general body of laws governing sentencing, there has never been any careful consideration of how fines and other monetary sanctions should "fit" with other laws governing punishment of criminal conduct.

At bottom, there are some fundamental questions: Should fines and other monetary sanctions be designed to achieve specific sentencing objectives? If so, what objectives and how can these sanctions be structured to achieve these objectives? If fines and related monetary sanctions are not intended to achieve sentencing objectives, or if the sentencing objectives are merely incidental to the generation of revenue, what should be the role of the court in imposing the sanctions and seeking to collect money owed?

There was a strong sense among Ventura practitioners that concerns about revenue generation had the effect of skewing sentencing practices in highly undesirable ways. While they recognize that it would be difficult to get revenue generation completely out of the sentencing process, there is a widely shared belief that—both under current practice and in the planning for the day fine pilot project—pressures to produce revenue lead to unfair results and tend to undermine the fair and effective administration of justice. The Ventura experience reinforces the need for a comprehensive examination of policy and practice in this area.

RECOMMENDATION 2: Develop an information base and fines management information system that will enable responsible officials to (a) closely monitor fine payments and initiate appropriate action in the event of non-payment in individual cases; (b) regularly obtain an accurate picture of collections effectiveness and of the number and nature of unpaid accounts; and (c) initiate revisions in policy and practice where necessary.

In Ventura, as in most courts in California and throughout the United States, the court's existing management information system cannot provide timely and reliable information on collection effectiveness and cannot provide information on some basic questions about the use of fines and other sentences. However, such information is essential for planning, for effective day-to-day operations, for monitoring system

performance and collections effectiveness, and for evaluating any innovation—such as the day fine pilot program—that is intended to improve system performance. Several types of information are needed on the operations of individual courts:

1. *Information on sentencing patterns.* Policymakers and planners need to know how fines, other monetary sanctions, and other sentencing options are currently being used. This baseline information is important for identifying categories of offenses and offenders for whom fines (or other options) might be appropriate as a sentence.

2. *Accounts receivable information.* Collection managers need to have information on the open accounts of persons who have been fined, both on an individual case basis and in the aggregate. Data should be available on the age of each account, the amount owed, the last action taken, and the date and nature of the next scheduled court event or action, as well as on the individuals' name, address, phone numbers, and other identifiers.

3. *Input/output and pending caseload information.* This type of information enables managers and policymakers to track trends in workloads and collections. The information system should regularly provide aggregate data on the number of cases in which fines have been imposed during a period and the amounts involved; on the number of fines cases closed (by reason for closure, including full payment and completion of an alternative sentence such as jail or community service) and monies received during the same period; and on the size, age and dollar amounts of "open" pending cases of fined defendants.

4. *Information on effectiveness in collecting fines and other monetary sanctions.* Collections effectiveness is a key performance indicator for any court that

uses fines as a sanction. Data should be available, on at least a monthly basis, to show the following by case category and for the totality of cases:

- number and percentage of cases in which fines and related monetary sanctions have been fully collected within specific periods following imposition of sentence (e.g., same day; within 7 days; within 14 days; within 30 days; within 180 days)
- number and percentage of cases in which (a) part payment has been made; and (b) no payment has been made—by age interval (e.g., 1-7; 8-14; 15-30 days) since date fine sentence was imposed
- total dollar amounts of fines that have been collected within specific time periods

5. *Information on fine collection case processing times and procedures.* For purposes of refining policies and procedures related to fine use and collection, it will be helpful to know what categories of cases and fine amounts result in prompt payment; which categories take a long time or never produce payment; and what variables appear to be correlated with rapid payment, slow payment, and non-payment. In addition to examining variables such as conviction charge, fine amount, and demographics, it will be useful to assess collection results in relation to use of specific collections techniques (e.g., time allowed for payment, policies concerning immediate partial payment, use of mail and/or phone reminders, and mail or phone notification of issuance of a warrant).

6. *Identification of problem cases.* Some fined defendants will pay slowly or not at all. Collections managers, judges, and policymakers need information identifying these offenders—for example, offenders whose payments are more than 30 days overdue—for two reasons: (1) to take action aimed at collecting the money owed or imposing alternative sentences on the individuals; and (2) for program planning purposes,

to see whether there are patterns of nonpayment that warrant revision in existing policies concerning fines and related monetary sanctions.

RECOMMENDATION 3: Develop a pilot program approach to experimentation with new methods of imposing and collecting fines and other monetary sanctions, with adequate funding to support the costs of implementing the innovations.

California has been a leader among the states in using pilot projects to test new approaches to addressing judicial system problems. In the case of the civil case delay reduction program initiated in 1988, the results were remarkably successful—much was learned about court operations and the use of delay reduction strategies and techniques, and court case processing times were dramatically reduced. That program, however, involved courts in nine different counties and allowed the participating courts a great deal of discretion in selecting strategies and techniques that could work in their jurisdictions.

By contrast, the 1991 legislation authorizing the day fine pilot project provided very detailed directions on how the project should be implemented, specifying the offenses that would be covered by the project, how the unit scale would be constructed, how units would be valued, and other aspects of project operations. Very little discretion was left to the judicial branch at either the state or local level and, with only a single pilot project site there was no capacity to develop alternative approaches and compare the relative merits of each. Further, although the pilot project would clearly involve new functions and increased workloads, no provision was made for additional resources to meet staffing and information system needs.

As consideration is given to future efforts to improve the use of fines and other monetary sanctions, the pilot project approach is one that has considerable merit.

However, it seems sensible to provide for much more broadly based development of the pilot projects. In particular:

- Authorizing legislation should be developed with the active involvement of the courts and other entities that could be affected by changes in fine policy and practice.
- Consideration should be given to authorizing legislation that would provide for a two stage process: (1) a planning period lasting 12-18 months, that would produce a design for one or more pilot projects, each to be undertaken in at least two identified counties of significantly differing population sizes; and (2) a 24-36 month implementation period, providing enough time for careful evaluation of the pilots.
- Adequate funding should be provided to support the planning, implementation, and evaluation of the projects.
- The pilot projects should be exempted from any statutes designed to produce a specified level of revenue, in order to enable design of pilot projects that will focus primarily on the effective use of fines as criminal sanctions.

RECOMMENDATION 4: Address threshold legal issues at an early stage of planning for improved fines use and collection.

The likelihood that there would be legal challenges to the Ventura pilot project was known from the outset of the planning process in mid-1993. No formal opinion on the constitutional and other legal issues was sought during the early stages of the planning process, however, at least in part because it seemed premature to request such an opinion before firm plans for project operations had been developed. Indeed, it seems clear that the development of fairly detailed plans for project operations did help to crystallize the legal issues. If the project had gone forward, there undoubtedly would have been one or more test cases challenging the constitutionality of specific aspects of project operations. One benefit of the experience in Ventura is that it has pinpointed a

number of grounds upon which this specific project design was likely to be challenged and has identified areas in which legal issues need to be addressed.

For the future, it seems desirable to develop a clear picture of the existing legal framework and potential constitutional constraints on program design at an early stage in the planning process. Pilot projects could then be designed in a fashion that would minimize the likelihood of a successful challenge on constitutional design. Additionally, if necessary, the legislation authorizing pilot projects could be tailored to help support their operation.

RECOMMENDATION 5: Provide for broad participation in developing pilot projects designed to test new approaches to fine use and collection.

The issue of participation in the planning process arises in at least two places: (1) in the shaping of broad policy concerning the use and collection of fines and related monetary penalties; and (2) in the design of specific pilot projects. In the case of the Ventura pilot project, the process was somewhat restricted at both levels. At the policy level, the legislation was enacted without any hearings having been held on the subject of day fines and without judicial system study of either the general area of fines and related sanctions or the specific topic of day fines. At the local level, most of the design work was done by members of the planning committee. Although the planning committee included many of the key policy-level officials, court staff members with direct operational responsibilities—for example, courtroom clerks and collections officers—became involved only after the basic design had been developed. Some agencies and individuals whose work and institution responsibilities could be directly affected by the

pilot project (e.g., law enforcement, jail administration, probation) were not involved at any stage.

At both levels—broad policy formulation and detailed design of a pilot project—it seems likely that a more broadly inclusive planning process would be likely to increase the chances of producing positive results. The use of fines and other monetary sanctions is deeply embedded in existing practice, and affects a great many institutions and interest groups at both the local and state levels. Almost any change can potentially affect some interests and thus generate opposition. A broadly inclusive process can elicit a full range of concerns and can provide the foundation needed to construct viable pilot projects.

RECOMMENDATION 6. Develop criteria for selection of sites for pilot projects, so as to maximize the likelihood that the pilots can be successful prototypes of improved fines use and collection.

In retrospect, the selection of Ventura County as the sole site for a pilot day fine project can be seen to be a good one in terms of identifying problems that must be addressed in designing a successful program. Drawing on this experience it is possible to identify several factors that can be used as criteria in selecting sites for future pilot projects aimed at improved fine use and collection. They include:

- *The jail situation.* To the extent that fines are intended to be independent "stand-alone" sentences, thus avoiding the unnecessary or inappropriate use of jail space, the situation in the local jail is a relevant factor. In Ventura, the easy availability of jail space (especially with the opening of a new jail) meant that there was little local pressure to use fines as a sole sanction or to develop alternatives to jail as a sanction for non-payment.
- *The availability of non-jail alternatives as back-up sanctions.* The decision to use a fine as a sentence instead of imposing a jail term is, among other things, a determination that incarceration of the fined offender is not necessary for reasons of public safety. It is still necessary to have meaningful "back-up

sanctions", but there are a number of possible options that can be employed without resorting immediately to confinement in jail in the event of non-payment. These include community service, day reporting centers, home confinement (electronically monitored if necessary), and halfway houses or work release centers. A future project site should have at least some of these sanctions in operation and be prepared to use them as back-up sanctions in the event of non-payment of a fine.

- *Fines management information availability.* The existence of a sound fines management information system should be regarded as an essential criterion for selection of a pilot site. In Ventura, the existing computer system was simply unable to produce the information needed to (a) establish a "baseline" on fine use and collection; or (b) monitor collections effectiveness in all cases in which day fines would be imposed during the pilot period. As improved fines management information systems are developed (see Recommendation 2), counties in which they are first installed should be regarded as potential pilot project sites.
- *Judicial leadership and commitment.* The Ventura experience underscores the need for strong judicial leadership and commitment in testing prototypes aimed at improving fine policy and practice. If judges (especially presiding or assistant presiding judges) are actively involved in the process of examining fines policies and developing models that can be tested in pilot projects, it greatly increases the likelihood that they will exercise leadership and help generate commitment to the prototypes they help develop.

RECOMMENDATION 7. Develop program design criteria that reflect concerns about fairness, simplicity, and credibility in the use and collection of fines.

Boiled down to their essence there were three basic criticisms of the Ventura pilot project as it was designed: it would be unfair to many defendants and their families; it was difficult to understand and cumbersome to administer; and it was doubtful that it would be able to function as intended. These criticisms point to three key criteria that can be used as guideposts in designing future programs aimed at improving fine use and collections.

- *Fairness.* It may be impossible to achieve universal agreement on what constitutes "fair" policies with respect to the use of fines and other monetary sanctions, but there can be little doubt that perceptions of fairness—both among practitioners and among members of the public—should be important

in shaping policy in this area. It is worth searching for design alternatives that fall somewhere between the existing tariff system and the Ventura design for a day fine pilot project.

- *Simplicity.* The more complicated a proposed change, the more difficult it is to achieve, if for no reason other than that more things can go wrong. The experience of other jurisdictions that have used day fines successfully suggests that the concept is not necessarily too complex to be operationally successful in a high volume court, but there can be little doubt that the complexity of the Ventura project was a factor contributing to its demise. It is essential that any new system be understandable to, and easily usable by, judges, court staff, prosecution and defense lawyers and staff, and defendants and their families.
- *Credibility.* The bottom line for any sentencing option is that it must be—and be seen to be—effective in achieving compliance. One of the principal drawbacks to the current tariff fine system is that it has little credibility in many jurisdictions—either because the fines are too low to be meaningful sentences or because they are too high for many defendants to pay. With careful thought and good information—and with revenue production eliminated or minimized as a dominant factor in the imposition of fines—it should be possible to develop systems for fine use and collection that have true credibility with judges and other practitioners, as well as with defendants and the community.

In retrospect, the experience of the Ventura day-fine pilot project can be seen to be extraordinarily valuable as a case study in innovation in the courts. The project should not in any sense be viewed as a failure; on the contrary, it was extraordinarily successful in identifying key issues related to day-fines and, more broadly, to the use of all types of monetary sanctions in criminal cases. The tensions between conflicting core objectives—revenue generation on one hand versus fair and appropriate sanctions on the other—are placed in bold relief by the Ventura experience. If fines and other monetary sanctions are to be used effectively in the future, ways will have to be found to reconcile these conflicting objectives

The recommendations outlined in this chapter are aimed at encouraging broad-based exploration of ways to use fines and other monetary sanctions more effectively.

This is a very difficult and complex area, one in which a great many groups are directly interested. Making constructive change will be difficult, but this is an area in which it is important to search for better policies and practices than currently exist. The basic purpose of the original 1991 authorizing legislation—to create a *fairer* method of dispensing criminal justice—is one that can command broad support, both from justice system professionals and from the public. Translating that broad objective into viable policy is the challenge that lies ahead.