Courts in the United States impose high fines and fees and punish people harshly when they cannot pay. In response, advocates have proposed day fines, a system in which courts set fines based on people’s economic circumstances so that they may afford the fine. While day fines make theoretical sense, there has not been research about how they operate in practice and whether they do in fact result in less harm.

Based on over 50 interviews with judges and prosecutors from Germany’s day fines system, we provide an overview of how Germany’s system works and thoughts for U.S. courts considering day fines. We found that day fines may reduce some harms but that they may also distract from more necessary and fundamental changes.

That's because U.S. misdemeanor systems are unjust not simply because punishment isn’t right-sized, but also because the systems target low-income people and people of color for revenue-raising, and punish far too much. As in Germany—where day fines are used to punish high volumes of low-level misdemeanors that should not be criminalized at all—advocacy may be more effective if it aims to undo these structural issues, rather than to tailor punishments.

Read our Report at ccpp.law.harvard.edu/publications/day-fines.

How Day Fines Are Calculated in Germany

The total fine amount is the product of the number of units (set based on the nature of the offense) and the daily rate (the amount a person can afford to pay per unit given their financial circumstances).

Findings About the German System

- Germany shows that it is possible to have support among decision makers for tailored fines. German judges and prosecutors strongly believe that fines should be tailored to achieve greater equality and fairness.

- Germany’s example also proves that courts can assess ability to pay upfront in every case. Courts can accurately set fines based on people’s testimony.

- But fines in Germany are still too high. In part, this is because the daily rate standard is too harsh and does not account for people’s financial realities.

- Fines in Germany are also too high because of political and court culture. Decision makers overestimate what people can afford because they do not understand the lived experiences of people with lower incomes, and they are reluctant to set fines lower than prior levels because they believe the punishment will be insufficient.

Considerations for U.S. Jurisdictions

- The success of day fines in the U.S. in reducing disparities and harm for poor people will depend heavily on politics and court culture.

- Effective reform will require the political will to pass and implement clear daily rate standards that can meaningfully account for people’s cost of living. Otherwise, day fines may not change very much.

- More fundamentally, jurisdictions should assess whether day fines are the right reform. The problem in U.S. courts is often the size of the docket not the size of the fine. Because of racially disparate, revenue-motivated policing and because we choose to punish rather than alleviate underlying social problems such as poverty, the misdemeanor courts are too big.