

Fine by Me: A Judicial Primer on the Law and Social Science Relating to the Imposition of Fines in Criminal Cases

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Fines are the most common form of punishment utilized for violations of criminal laws. Ironically, despite the frequency of their use and their application throughout history, the underpinnings of fines are rarely independently examined outside the context of other legal issues. This presentation provides judges and criminal law practitioners with an overview of information relating to fines utilizing an interdisciplinary approach while emphasizing federal and Texas law.

By the end of the session, participants will be able to:

1. Distinguish “fines” from similar legal constructs involving the payment of monies;
2. Describe what social science tells criminal justice practitioners about the efficacy of fine; and
3. Identify constitutional, statutory, and case law constraints relating to the imposition of fines.

I. Similar but not the Same

A. “Fines” are not “Court Courts” or “Fees”

Weir v. State, 278 S.W.3d 364 (Tex. Crim. App. 2009) - The legislative requirement that only convicted defendants pay court costs does not by itself indicate that these costs were intended by the Legislature to be punitive and part of the sentence. Unlike a punitive "fine" imposed as part of a convicted defendant's sentence, a "cost" does not punish a defendant, but instead is a collateral consequence of the defendant's conviction that is compensatory in nature.

B. “Fines” are different than “Restitution”

Cabla v. State, 6 S.W.3d 543 (Tex. Crim. App. 1999) - Restitution is intended to adequately compensate the victim of the offense in the course of punishing the criminal offender. These compensations include property damage or medical expenses sustained by the victim as a direct result of the offense. As punishment, restitution attempts to redress the wrongs for which a defendant has been charged and convicted in court. Restitution orders are focused on the victims of the offenses for which a defendant has been convicted. The focus of a restitution order is limited to the individuals alleged and proven to be the victims of the charged offense. The amount of a restitution order is limited to only the losses or expenses that the victim or victims proved they suffered as a result of the offense for which the defendant was convicted.

II. Social Science and Fines

Conclusions:

1. Faster “adaptation” occurs when fines are utilized in the criminal justice system.
2. Incarceration results in stigmatization that reduces criminal defendant’s long term income earning potential.
3. Tailored fines are more effective than announced remedies
4. America favors *regressive* criminal fines. Some European countries have shifted to *progressive* fines.

5. Judges are affected by a host of psychological and environmental factors that influence fine-setting practices.

III. Law

A. Constitutional Law

U.S. Constitution

8th Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

14th Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Texas Constitution

Art. I. Sec. 13. EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL PUNISHMENT; REMEDY BY DUE COURSE OF LAW.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

B. Statutory Law

Texas Code of Criminal Procedure

Art. 1.04. DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Art. 1.09. CRUELTY FORBIDDEN. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

Art. 4.14. JURISDICTION OF MUNICIPAL COURT.

(a) A municipal court, including a municipal court of record, shall have exclusive original jurisdiction within the territorial limits of the municipality in all criminal cases that:

(1) arise under the ordinances of the municipality; and

(2) are punishable by a fine not to exceed:

(A) \$ 2,000 in all cases arising under municipal ordinances that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or

(B) \$ 500 in all other cases arising under a municipal ordinance.

(b) The municipal court shall have concurrent jurisdiction with the justice court of a precinct in which the municipality is located in all criminal cases arising under state law that:

- (1) arise within the territorial limits of the municipality and are punishable by fine only, as defined in Subsection (c) of this article; or
 - (2) arise under Chapter 106, Alcoholic Beverage Code, and do not include confinement as an authorized sanction.
- (c) In this article, an offense which is punishable by "fine only" is defined as an offense that is punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment.
- (d) The fact that a conviction in a municipal court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court.
- (e) The municipal court has jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which the court has jurisdiction.
- (f) A municipality with a population of 1.9 million or more and another municipality contiguous to that municipality may enter into an agreement providing concurrent jurisdiction for the municipal courts of either jurisdiction for all criminal cases arising from offenses under state law that are:
- (1) committed on the boundary of those municipalities or within 200 yards of that boundary; and
 - (2) punishable by fine only.
- (g) A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:
- (1) all cases in which either municipality has jurisdiction under Subsection (a); and
 - (2) cases that arise under Section 821.022, Health and Safety Code, or Section 25.094, Education Code.

Texas Penal Code

Sec. 12.03. Classification of Misdemeanors

- (a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:
- (1) Class A misdemeanors;
 - (2) Class B misdemeanors;
 - (3) Class C misdemeanors.
- (b) An offense designated a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.
- (c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

Sec. 12.23. Class C Misdemeanor

An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$ 500.

Note: Businesses challenging a city ordinance banning smoking were entitled to a preliminary injunction on the ordinance's enforcement provision regarding fines, because Section 6.02(f), Penal Code provides that a municipal ordinance may not dispense with the requirement of a culpable mental state if the offense is punishable by a fine exceeding \$ 500. *Roark & Hardee LP v. City of Austin*, 522 F.3d 533 (5th Cir. Tex. 2008)

Sec. 12.41. Classification of Offenses Outside This Code.

For purposes of this subchapter, any conviction not obtained from a prosecution under this code shall be classified as follows:

- (1) "felony of the third degree" if imprisonment in the Texas Department of Criminal Justice or another penitentiary is affixed to the offense as a possible punishment;
- (2) "Class B misdemeanor" if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment;
- (3) "Class C misdemeanor" if the offense is punishable by fine only.

Sec. 12.51. Authorized Punishments for Corporations and Associations

(a) If a corporation or association is adjudged guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

(b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

- (1) \$ 20,000 if the offense is a felony of any category;
 - (2) \$ 10,000 if the offense is a Class A or Class B misdemeanor;
 - (3) \$ 2,000 if the offense is a Class C misdemeanor; or
 - (4) \$ 50,000 if, as a result of an offense classified as a felony or Class A misdemeanor, an individual suffers serious bodily injury or death.
- (c) In lieu of the fines authorized by Subsections (a), (b)(1), (b)(2), and (b)(4), if a court finds that the corporation or association gained money or property or caused personal injury or death, property damage, or other loss through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation or association to be lost or damaged, whichever is greater.
- (d) In addition to any sentence that may be imposed by this section, a corporation or association that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court deems appropriate.

(e) On conviction of a corporation or association, the court shall notify the attorney general of that fact.

C. Other Case Law on Fines

The United States Supreme Court:

1. ***Hudson v. Parker*, 156 U.S. 277 (1895)** - The Supreme Court of the United States held that it had no jurisdiction to revise sentence of an inferior court even where the excessiveness of the fines imposed was obvious on the face of the record.
2. ***Williams v. Illinois*, 399 U.S. 235 (1970)** - Requiring indigent defendants to “work off” fines and court costs at the end of the period of incarceration violates the 14th Amendment Equal Protection Clause.
3. ***Tate v. Short*, 401 U.S. 395 (1971)** - “Pay or Lay” of fines owed by indigent defendant convicted in a Texas municipal court violated Equal Protection of the 14th Amendment.
4. ***Mayer v. City of Chicago*, 404 U.S. 189 (1971)** - Indigent defendant accused of fine-only disorderly conduct entitled to free transcript or comparable alternative. Limiting fee transcript to felonies was an unreasoned distinction prohibited by the 14th Amendment. The fact that the offenses were fine-only didn’t lessen the invidious discrimination against an indigent defendant.
5. ***San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973)** - The Supreme Court of the United States refused to hold that fines must be structured to avoid disproportionate burdens. Judges often consider defendant’s ability to pay. It’s a matter of sound judicial discretion, not the constitution.
6. ***Bearden v. Georgia*, 461 U.S. 660 (1983)** - Probation may not be revoked because of nonpayment of fines or restitution. (Extension of Tate’s alternative means) (14th Amendment Fundamental Fairness)
7. ***Blanton v. North Las Vegas*, 489 U.S. 538 (1989)** - Defendant facing less than six months of incarceration in addition to 90-day driver’s license suspension
8. \$1000 fine and 48 hours of community service not enough to trigger 6th Amendment right to jury trial even where state law allowed jury trial for some “serious” petty offenses.
9. ***Browning-Ferris Industries v. Kelco Disposal*, 492 U.S. 257 (1989)** - At the time of the 8th Amendment’s adoption, the word “fine” was understood to mean a payment to a sovereign as punishment for some offense. It has no application in civil jury awards of punitive damages in cases between private parties.
10. ***Alexander v. United States*, 509 U.S. 544 (1993)** - Asset forfeitures can trigger 8th Amendment prohibition of excessive fines.
11. ***Austin v. United States*, 509 U.S. 602 (1993)** - Asset seizure must be proportional to avoid an 8th Amendment violation.
12. ***United States v. Bajakajian*, 524 U.S. 334 (1998)** - The amount of forfeiture must bear some relationship to the gravity of the offense it was designed to punish. Excessive fines clause triggered where the amount was grossly disproportionate to the gravity of the defendant’s offense. Focus not just limited to comparison of fine to offense. Appellate courts also consider: (1) facts of case; (2) character of defendant; and (3) harm caused by offense.
13. ***Southern Union v. United States*, 132 S.Ct. 2344 (2012)** - When a defendant invokes the right to jury trial, the 6th Amendment guarantees that any fact that increases a defendant’s maximum fine must be found by jury.

The Supreme Court of Texas and Texas Court of Criminal Appeals:

1. ***Texas C. R. Co. v. Hannay-Frerichs & Co.*, 104 Tex. 603, 610 (Tex. 1912)** - “Prescribing fines and other punishments which may be imposed upon violators of the law is a matter peculiarly within the power and discretion of the Legislature, and courts have no right to control or restrain that discretion except in extraordinary cases where it becomes so manifestly violative of the constitutional inhibition as to shock the sense of mankind.”
2. ***Azeez v. State*, 248 S.W.3d 182 (Tex. Crim. App. 2008)** - Defendant was wrongly convicted of the offense of Failure to Appeal (Section 38.10, Penal Code) and fined \$ 400 under Section 12.23, Penal Code in accordance with the terms of release on a speeding citation because due process required that defendant be prosecuted for a narrower Transportation Code offense of Violate Promise to Appear (Section 543.009, Transportation Code). A defendant has a due process right to be prosecuted under a “special” statute that is *in pari materia* with a broader statute when these statutes irreconcilably conflict.
3. ***State v. Crook*, 248 S.W.3d 172 (Tex. Crim. App. 2008)** - Nothing in the legislative history of Section 3.03(a) of the Penal Code indicates that the Legislature intended for the concurrent sentences provision of Section 3.03(a) to apply to anything but the entire sentence, including fines. This would be consistent with the language that the legislature used in Sec. 3.03(a) that the sentences shall run concurrently.