

2011

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R. B. Ruback & Valerie Clark, *Economic Sanctions in Pennsylvania: Complex and Inconsistent*, 49 Duq. L. Rev. 751 (2011).

Available at: <https://dsc.duq.edu/dlr/vol49/iss4/6>

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Economic Sanctions in Pennsylvania: Complex and Inconsistent

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Economic sanctions are court-imposed obligations requiring offenders to pay money. Although until recently there have been few analyses of economic sanctions,¹ they are often part of crimi-

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1. See R. Barry Ruback & Mark H. Bergstrom, *Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications*, 33 CRIM. JUST. & BEHAV. 242 (2006).

nal sentences.² Indeed, in the past two decades, economic sanctions have become increasingly more common, being imposed on sixty-six percent of prisoners in 2004, up from twenty-five percent in 1991.³ Moreover, for three reasons these sanctions are likely to be used more frequently in the future.⁴ First, the costs of the criminal justice system have risen substantially; one dollar of every fifteen dollars in state general funds is spent on corrections⁵ and courts have cut staff and shortened hours.⁶ Offenders are now expected to pay at least part of the costs of criminal justice operations, including the cost of incarceration.⁷ Second, there are increasing pressures for intermediate sanctions that are more severe than mere probation, but less severe, less expensive, and more effective than imprisonment.⁸ To a great extent, this need for intermediate sanctions is driven by the fact that the number of incarcerated individuals is high, more than 1.6 million at year-end 2009.⁹ Despite this high number, imprisonment is now less likely than it used to be because of overcrowded conditions¹⁰ and more individuals, more than 4.2 million,¹¹ are now on probation. Third, concern for victims has increased the likelihood that restitution will be awarded.¹² Pennsylvania, for example, in 1995 eliminated

2. See Sally T. Hillsman, *Fines and Day Fines*, 12 CRIME AND JUSTICE: A REVIEW OF RESEARCH 49, 51 (1990). Typically, economic sanctions in the United States are additional penalties, rather than sole sanctions. *Id.* at 49.

3. Alexes Harris, Heather Evans, & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. OF SOC. 1753, 1769 (2010).

4. Ruback & Bergstrom, *supra* note 1, at 243.

5. Christine S. Scott-Hayward, *The Fiscal Crisis in Corrections: Rethinking Policies and Practices*, N.Y.: VERA INSTIT. OF JUST. 1, 3 (2009).

6. Editorial, *State Courts at the Tipping Point*, N.Y. TIMES, Nov. 24, 2009, at A30.

7. Fox Butterfield, F., *Many Local Officials Now Make Inmates Pay Their Own Way*, N.Y. TIMES, Aug. 13, 2004, at A1, A17. See also David E. Olson & Gerard F. Ramker, *Crime Does Not Pay, But Criminals May: Factors Influencing the Imposition and Collection of Probation Fees*, 22 JUST. SYS. J. 29, 30 (2001).

8. Michael Tonry, M., & Mary Lynch, *Intermediate Sanctions*, 20 CRIME AND JUSTICE: A REVIEW OF RESEARCH 99 (1996).

9. Heather C. West, William J. Sabol, W. J., & Sarah J. Greenman, BUREAU OF JUSTICE STATISTICS, *Bulletin: Prisoners in 2009*, NCJ 231675 (2010).

10. David J. Levin, Patrick A. Langan & Jodi M. Brown, BUREAU OF JUSTICE STATISTICS, *Bulletin: State Court Sentencing of Convicted Felons in 1996*, NCJ 175708 (2000).

11. Lauren E. Glaze, Thomas P. Bonczar & Fan Zhang, BUREAU OF JUSTICE STATISTICS, *Bulletin: Probation and Parole in the United States*, NCJ 231674 1, 2 (2009).

12. See *New Directions from the Field: Victims' Rights and Services for the 21st Century*, OFFICE FOR VICTIMS OF CRIME (1998). See also R. Barry Ruback, Gretchen R. Ruth & Jennifer N. Shaffer, *Assessing the Impact of Statutory Change: A Statewide Multilevel Analysis of Restitution Orders in Pennsylvania*, 51 CRIME & DELINQUENCY 318 (2005); R. Barry Ruback & Jennifer N. Shaffer, *The Role of Victim-Related Factors in Victim Restitution: A*

judicial discretion in decisions about whether to order restitution by making restitution mandatory.¹³

In this article we examine the current use of economic sanctions in Pennsylvania, and report comparisons by county, by current offense, and by the offender's prior record. Our analyses suggest that the fairness of economic sanctions in Pennsylvania is undermined by their complexity and by the inconsistency of their application. Our article consists of four parts. First, we describe the three primary types of economic sanctions. Second, we describe our method for analyzing the imposition of economic sanctions in Pennsylvania. Third, we present results from our analyses. Finally, we suggest that the complexity and inconsistency of application undermines the fairness of economic sanctions in Pennsylvania.

I. TYPES OF ECONOMIC SANCTIONS

Economic sanctions¹⁴ can be of three types:¹⁵ fines, costs and fees, and restitution. These three types of sanctions can be used to serve one or more purposes of sentencing, including punishment, deterrence, rehabilitation, and restoration of justice.

A. *Fines*

Fines are monetary penalties for crime. Nationally, they are imposed on thirty-three percent of convicted felons.¹⁶ Not only do fines punish offenders, but also they can provide funds to support criminal justice operations, either in general or for some targeted purpose, such as a Crime Victim Compensation Fund.¹⁷ Moreover, fines can be flexible, in that they can be tailored to the specific criminal's prior record and economic resources. Fines can be used as sole sanctions or in combination with other sanctions, from

Multi-Method Analysis of Restitution in Pennsylvania, 29 LAW & HUMAN BEHAVIOR 657 (2005).

13. 18 PA. CONS. STAT. ANN. § 1106 (West 2005).

14. These sanctions are sometimes referred to as monetary sanctions, financial obligations, and legal financial obligations. See Robert W. Tobin, NATIONAL CENTER FOR STATE COURTS, *Funding the State Courts: Issues and Approaches* (1996); AMERICAN CIVIL LIBERTIES UNION, *In For a Penny: The rise of America's New Debtors' Prisons*, (2010); Alicia Bannon, Mitali Nagrecha, & Rebekah Diller, BRENNAN CENTER FOR JUSTICE, *Criminal Justice Debt: A Barrier to Re-entry* (2010).

15. In this discussion, we exclude civil and criminal forfeiture of property.

16. Matthew R. Durose, BUREAU OF JUSTICE STATISTICS, *State Court Sentencing of Convicted Felons in 2004*, NCJ 217995, tbl. 1.9 (2007).

17. 18 Pa. C. S. §11.1101(b)(1).

treatment to incarceration. Fines can also be targeted to support specific purposes. For example, most fines in the federal system are deposited in the Crime Victims Fund, ninety-percent of which is sent to the states for victim compensation and assistance.¹⁸

In the United States, there is some resistance to fines because they cannot be enforced against the poor¹⁹ and have little impact on the wealthy.²⁰ Fines with absolute maximums can become ineffective if legislatures do not regularly update them to adjust for inflation.²¹ Fines that have a statutorily defined and predetermined amount are regressive and do not meet the goals of individualized justice. Thus, fines in the United States tend to be used primarily in courts of limited jurisdiction, particularly traffic courts.²² Fines are also used in lower courts for minor offenses, such as shoplifting, especially for first-time offenders who have enough money to pay the fine.²³ In the United States, fines are used in forty-two percent of courts of general jurisdiction and eighty-six percent of cases in courts of limited jurisdiction.²⁴

18. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-99-70, FEDERAL COURTS: DIFFERENCES EXIST IN ORDERING FINES AND RESTITUTION 1, 1 (1999).

19. See *Bearden v. Georgia*, 461 U.S. 660 (1983) (held that judges cannot impose incarceration as a penalty for nonpayment unless there is a hearing that determines that the defendant has the ability to pay, but willfully refuses to do so).

20. Hillsman, *supra* note 2, at 53-54. In contrast, in Europe, fines are the legally presumptive penalty, constituting, for example, eighty to ninety percent of all sentences in the Netherlands and Sweden. Tonry & Lynch, 1996. In Germany, eighty percent of convicted offenders are ordered to pay a fine. FEDERAL MINISTRY OF INTERIOR & FEDERAL MINISTRY OF JUSTICE, *First Periodical Report on Crime and Crime Control in Germany* 1, 33 (2001). Criminal fines are imposed in seventy-seven percent of cases in England and Wales. D. Moxon, M. Sutton, & C. Hedderman, *Unit Fines: Experiments in Four Courts* (1990). One type of fines commonly used in Europe is the day fine, which is based on the severity of the crime and the offender's ability to pay (typically, the offender's daily income). A second type of fine common in Europe is a method to divert the offender from criminal justice processing. If the defendant agrees to pay the fine (typically the amount that would have been imposed had the defendant been convicted), charges are conditionally dismissed. Hillsman, *supra* note 2, at 76.

21. See Robert W. Gillespie, *Criminal fines: Do they pay?*, 13 JUST. SYS. J. 365 (1988-89).

22. Sally T. Hillsman, Joyce L. Sichel & Barry Mahoney, *Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction*, NATIONAL INSTITUTE OF JUSTICE NCJ 096334 (1984).

23. Sally T. Hillsman, Barry Mahoney, George Cole, & Bernard Auchter, NATIONAL INSTITUTE OF JUSTICE, *Fines as Criminal Sanctions*, NCJ 107773 (1987).

24. David Weisburd, Tomer Einat, & Matt Kowalski, *The Miracle of the Cells: An Experimental Study of Interventions to Increase Payment of Court-Ordered Financial Obligations*, 7 CRIMINOLOGY & PUB. POL'Y 9, 12 (2008).

Within a jurisdiction, judges usually apply the "going rate" for fines.²⁵ Thus, all violators of a particular offense are obligated to pay the same or similar amounts. Because judges tend to use this going rate for fines, however, they neglect to adjust the seriousness of the penalty to the particular defendant. Furthermore, because this going rate is usually low (in order to accommodate the poorest offenders), fines often have little penalty value for wealthy offenders. Rather than make adjustments at initial sentencing, judges tend to make adjustments to fines at the back end, when they often excuse the remaining unpaid portion or simply let the probation period expire without enforcing the fine.

B. *Costs and Fees*

Costs and fees refer to court-imposed orders to reimburse the jurisdiction (local, county, state) for the administrative cost of operating the criminal justice system. Although the terms costs and fees are often used interchangeably, one way that the two have been differentiated is that costs describe blanket charges for program admission or participation, whereas a fee refers to a specific, individual charge for a service.²⁶ Thus, in Pennsylvania the cost for ARD/Fast Track covers the court-processing expenses associated with a court diversion program.²⁷ An example of a fee is a \$250 charge to pay for DNA analysis.²⁸

Supervision fees, which are the most common type of special condition of probation,²⁹ help defray the costs of preparing presentence reports and supervising probationers. In some states, probation departments are self-supported by these supervision fees.³⁰ Such fees are also a necessity in jurisdictions where correctional budgets do not cover the costs of supervision.³¹ Special services, such as electronic monitoring, require additional fees.

25. Sally T. Hillsman & Judith A. Greene, *The Use of Fines as an Intermediate Sanction*, in SMART SENTENCING: THE EMERGENCE OF INTERMEDIATE SANCTIONS 123, 127 (James M. Byrne, Arthur J. Lurigio, & Joan Petersilia eds., 1992).

26. Ruback & Bergstrom, *supra* note 1, at 253.

27. Ruback & Bergstrom, *supra* note 1, at 253-54.

28. Ruback & Bergstrom, *supra* note 1, at 253-54.

29. Bonczar, T. P., *Characteristics of Adults on Probation, 1995*, BUREAU OF JUSTICE STATISTICS: SPECIAL REPORT 1, 6 (1997).

30. Olson & Ramker, *supra* note 7, at 30.

31. Joan Petersilia, *Probation in the United States*, 22 CRIME AND JUSTICE: A REVIEW OF RESEARCH 149, 171-73 (Michael Tonry ed., 1997).

C. Restitution

Restitution refers to a payment by the offender to the victim for financial losses. All states have statutory restitution provisions,³² and some states, like Pennsylvania, have made it a mandatory condition.³³ In some states, restitution is justified by its rehabilitative effects on offenders, whereas in other states it is justified by its restorative effects on victims.³⁴ Restitution is aimed at doing justice by having the offender compensate a victim for damages caused by the crime.

Nationally, it is imposed on eighteen percent of convicted felons.³⁵ In general, it is handled either through Victim/Witness Assistance Programs and Victim-Offender Reconciliation Programs, which are victim-focused agencies, or through probation/parole supervision and court-based employment programs, which are offender-focused agencies. Restitution programs have generally been seen as unsuccessful for three reasons: (a) judges are reluctant to impose restitution on offenders who are assumed to be unable to pay it; (b) payment on restitution orders typically follows other financial obligations (e.g., costs and fines); and (c) there is often ambiguity about who is responsible for monitoring, collecting, disbursing, and enforcing restitution payments.³⁶ Moreover, there are differences among states in terms of whether indirect victims (e.g., insurance companies) and local governments are entitled to restitution.³⁷

A study of felony probation in thirty-two counties found that restitution to the victim was ordered in 29% of the cases and that the average restitution order imposed per probationer was \$3,369.³⁸ Research suggests that the collection rates of restitution

32. Peggy M. Tobolowsky, Mario T. Gaboury, Arrick L. Jackson, & Ashley G. Blackburn, *CRIME VICTIM RIGHTS AND REMEDIES* (2nd ed. 2010) at 157.

33. 18 Pa. C.S. §1106.

34. Andrew W. Klein, *ALTERNATIVE SENTENCING: INTERMEDIATE SANCTIONS AND PROBATION* 156 (2nd ed. 1997), at 156-7.

35. Durose, *supra* note 16, at tbl. 1.9.

36. OFFICE FOR VICTIMS OF CRIME, *supra* note 12.

37. Klein, *supra* note 34, at 170.

38. Mark A. Cunniff & Mary K. Shilton, *Variations on Felony Probation Persons Under Supervision in 32 Urban and Suburban Counties* (Mar. 1991) at 34, 36 available at <https://www.ncjrs.gov/pdffiles1/Digitization/131580NCJRS.pdf>

are low: forty-five percent in one national study,³⁹ and thirty-four percent in Cook County (Chicago).⁴⁰

D. *The Problem of Setting the Amount of Sanctions*

Because judges lack complete information about offenders' economic circumstances, including employment income (net of taxes), other sources of income (e.g., welfare, unemployment), residence expenses, and number of dependents,⁴¹ they often feel uncomfortable setting economic sanction amounts, especially when imposing multiple economic sanctions. Consistent with the idea that judges believe there is a total amount of economic sanctions that is fair, an increase in one type of economic sanction seems to lower the amounts of other types of economic sanctions. For example, in their analysis of probation fees in Illinois, Olson and Ramker found that probationers ordered to pay both fines and probation fees had lower average monthly fees than probationers ordered to pay only fees.⁴² Similarly, studies in Pennsylvania, using both state-level data⁴³ and county-level data⁴⁴ suggest that the imposition of restitution is negatively related to the imposition of fines. A further problem in the setting of economic sanctions is whether they are imposed consistently and fairly. Some research indicates that they are imposed differently with respect to location (rural versus urban areas),⁴⁵ type of crime,⁴⁶ and offender characteristics.⁴⁷ These studies, however, were conducted using relatively small sample sizes, only a few counties, or only one type of economic sanction. Because of these weaknesses, we conducted a more complete analysis of all economic sanctions in Pennsylvania.

39. Barbara E. Smith, Robert C. Davis, & Susan W. Hillenbrand, *Improving Enforcement of Court-Ordered Restitution*, A.B.A.1, 4 (1989).

40. Arthur Lurigio, COOK COUNTY ADULT PROBATION DEPARTMENT, *The Relationship Between Offender Characteristics and Fulfillment of Financial Restitution* (1984).

41. Hillsman & Greene, *supra* note 25.

42. Olson & Ramker, *supra* note 7.

43. Ruback, Ruth, & Shaffer, *supra* note 12.

44. See R. Barry Ruback, *The Imposition of Economic Sanctions in Philadelphia*, FED. PROBATION 21 (2004); R. Barry Ruback, Jennifer N. Shaffer, & Melissa A. Logue, *The Imposition and Effects of Restitution in Four Pennsylvania Counties: Effects of Size of County and Specialized Collections Units*, 50 CRIME & DELINQUENCY 168 (2004).

45. Olson & Ramker, *supra* note 7, at 31; Ruback, Ruth, & Shaffer, *supra* note 12, at 323.

46. Margaret A. Gordon & Daniel Glaser, *The Use and Effects of Financial Penalties in Municipal Courts*, 29 CRIMINOLOGY 651, 652-53 (1991).

47. Ruback & Shaffer, *supra* note 12, at 322.

II. METHOD FOR ANALYZING ECONOMIC SANCTIONS IN PENNSYLVANIA

Pennsylvania has one of the most complete data collection systems in the country, including a record of virtually all economic sanctions imposed in criminal courts of general jurisdiction. We used three sets of data to characterize the current use of economic sanctions in Pennsylvania: (a) data from the Pennsylvania Commission on Sentencing (PCS) on cases sentenced in the years 2006 and 2007; (b) data from the Administrative Office of Pennsylvania Courts (AOPC) on cases adjudicated in the years 2006 and 2007; and (c) contextual information at the county level derived primarily from the U.S. Bureau of the Census.⁴⁸ For individual sentences, we combined the case information from the PCS data with the detailed information on economic sanctions from the AOPC data.

A. PCS Data

Under Pennsylvania law, judges are required to submit a computerized Guideline Sentencing Form for most felony and misdemeanor convictions in the state.⁴⁹ This form contains information about the offender (race, gender, age), the offender's prior convictions, the conviction offenses (offense type, offense severity as measured by the Offense Gravity Scale of the Guidelines), the mode of disposition (guilty plea or trial), and the sentence imposed (incarceration in jail or in prison or not incarcerated, length of sentence). The PCS data for 2006 contained 134,119 sentences⁵⁰

48. U.S. Census Bureau, United States Census 2000 available at <http://www.census.gov/main/www/cen2000.html>

49. The Commission's enabling legislation authorizes the Commission to promulgate forms to document the applications of the sentencing guidelines and mandatory sentencing laws and to require the timely completion and electronic submission of such forms to the Commission, 42 Pa. C.S. §2153 (a) (14). Based on this authority, the sentencing guidelines include provisions that require completion and submission of the guideline form via Sentencing Guidelines Software Web application (204 Pa. Code §303.1(d), (e)). Additionally, 42 Pa. C. S. §9721(b), which relates to general standards, contains language requiring courts to consider the sentencing guidelines, to make part of the record and disclose in open court at the time of sentencing a statement of the reasons for the sentence imposed, and to report to the Commission the reasons for any deviation from the guidelines. For information about the Pennsylvania Commission on Sentencing generally, see the Commission website at <http://pcs.la.psu.edu/>

50. Pennsylvania Commission on Sentencing, *Sentencing in Pennsylvania, Annual Report 2006*, <http://pcs.la.psu.edu/publications/annual-reports/AnnualRpt2006.pdf#navpanes=0> at 47

and the data for 2007 contained 141,139 sentences,⁵¹ for a total of 275,258 sentences. Most of the information we used in our multivariate analyses came from the PCS data set. The important information is shown in Table 1.

Table 1. Variables from PCS Data Files used in the Statistical Analyses

Variable	Description	Coding	Mean (Std Dev)
Type of Offense	Type of offense committed by offender, dummy coded by person, property, drug, traffic, and public order offenses (other types of offense omitted)	1 = Person 1 = Property 1 = Drug 1 = Traffic 1 = Public Order	17% 31% 23% 17% 9%
Offense Severity	Measured by the offense gravity score, ranging from 0 to 14	Continuous	3.4 (2.38)
Prior Record	The offender's prior record score, dummy coded by low (1 to 3) and high (4 to 5) scores (no prior record omitted)	1 = Low Prior Record 1 = High Prior Record	29% 19%
Trial	Type of trial for the case, dummy coded by bench trial and jury trial, (no trial, guilty pleas omitted)	1 = Bench Trial 1 = Jury Trial	1% 2%
Disposition	Type of incarceration of offender was sentenced to, dummy coded by county jail and state prison (no incarceration omitted)	1 = County Jail 1 = State Prison	29% 15%

51. Pennsylvania Commission on Sentencing, *Sentencing in Pennsylvania, Annual Report 2007*,

<http://pcs.la.psu.edu/publications/annual-reports/AnnualRpt2007.pdf#navpanes=0> at 47.

Restitution	Whether restitution was imposed for this offense (no restitution omitted)	1 = Restitution Imp.	15%
Gender	Whether offender is male or female, dummy coded (females omitted)	1 = Male	80%
Race/Ethnicity	The race/ethnicity of the offender, dummy coded by Black and Hispanic (whites omitted)	1 = Black 1 = Hispanic	27% 6%
Age	The age of the offender, dummy coded by ages 18 and younger and 10 year increments	1 = Ages 18 & Younger 1 = Ages 18 to 25 1 = Ages 26 to 35 1 = Ages 36 to 45	1% 40% 27% 21%

B. AOPC Data

The AOPC data provide detailed information on economic sanctions. The AOPC data for the combined years of 2006 and 2007 totaled 1,584,264 offenses, of which there were 517,160 guilty pleas or guilty verdicts. There were a total of 677,453 sentences⁵² and 5,607,263 economic sanctions imposed. Of these 5.6 million economic sanctions, fifteen categories accounted for fifty-five percent of the total, as shown in Table 2.

52. The greater number of sentences than convictions is most likely due to the fact that it is possible to get multiple sentences for the same offense (e.g., probation and incarceration).

Table 2. Frequency and Dollar Amount of the 15 Most Common Economic Sanctions in Pennsylvania. Data from the Administrative Office of Pennsylvania's Courts, 2006-2007.

Type of Assessment	Frequency	Amount
Commonwealth Cost - HB627 (Act 167 of 1992)	309,174	\$3,138,544.86
State Court Cost (Act 204 of 1976)	307,187	\$3,018,248.46
County Court Costs (Act 204 of 1976)	305,912	\$8,706,070.56
Crime Victims Compensation (Act 96 of 1984)	295,922	\$10,489,131.38
Firearm Education and Training Fund (158 of 1994)	292,849	\$1,464,226.64
Victim Witness Services (Act 111 of 1998)	285,617	\$7,122,571.89
JCP	274,775	\$2,191,071.77
ATJ	270,988	\$36,129,865.56
Domestic Violence Compensation (Act 44 of 1988)	201,144	\$2,016,307.13
CAT/MCARE (Act 13 of 2002)	123,256	\$6,558,255.00
Emergency Medical Services (Act 45 of 1985)	112,053	\$1,125,770.00
Substance Abuse Education (Act 198 of 2002)	108,185	\$16,227,423.40
Crimes Code, etc.	81,891	\$59,532,586.53
Restitution	77,417	\$197,689,588.63
Title 75, DUI	59,149	\$55,964,040.51
		\$411,373,702.32

These 5.6 million economic sanctions were imposed from 2,629 different types of sanctions as coded by the AOPC. These included automation fees, commonwealth costs, and state fines, among many others. We reviewed the 2,629 different types of sanctions and recoded them into one of three categories: costs/fees, fines, and restitution. We further divided costs/fees and fines by whether they were assessed by the state or county. Of the 2,629 different sanctions, eighty-two were state costs/fees, fifty-eight were state fines, 2,371 were county costs/fees, seventy-nine were county fines, and thirty-five were restitution.

Condensing the sanctions into a small number of categories was a difficult process because the distinction between the different

types of economic sanctions can sometimes be ambiguous. We used the label "costs/fees" for economic sanctions that are used to reimburse the county or state for costs associated with judicial proceedings and corrections,⁵³ including fees for diversion programs, costs associated with parole and probation (e.g., supervision, electronic monitoring, drug tests), and law enforcement fees, and charges for judicial proceedings and diversionary programs (e.g., bench warrants, fingerprint cards). The 5.6 million economic sanctions were recoded into six categories, as shown in Table 3.

Table 3. Mean and Median Amounts of Economic Sanctions by State and County

Type (Number of Sanctions)	Mean	Median	Std. Dev
Costs/Fees Assessed (3,187,202)	\$575.86	\$300.00	\$1,139.08
Fines Assessed (2,328,896)	\$243.62	\$109.34	\$1,109.46
County Costs/Fees (745,908)	\$333.08	\$193.30	\$947.43
County Fines (367,058)	\$17.58	\$22.63	\$84.94
State Costs/Fees (2,441,294)	\$242.77	\$10.00	\$485.56
State Fines (1,961,838)	\$226.03	\$84.70	\$1,102.05
Total Assessments (Costs/Fees + Fines)	\$819.47	\$485.50	\$1,635.07

In the table, we present the average amounts of economic sanctions imposed by the type of economic sanction. In this table both the mean and median amounts imposed are listed, as well as the standard deviation (an indicator of the variation around the mean). In general, the mean amounts of economic sanctions imposed are higher than the median amounts imposed because, in a few outlying cases, very high amounts were imposed.

53. Ruback & Bergstrom, *supra* note 1, at 253.

C. Merging the AOPC and PCS Data

Combining the AOPC and PCS data sets was difficult for two reasons. First, the AOPC data included over 1.5 million offenses, whereas the PCS data included only 275,258 offenses. The AOPC data was collected when the charges were initially filed, whereas the PCS data was collected after the offenses had been adjudicated. As a result of charge reductions, adjustments, and case dismissals, there were many more offenses included in the AOPC data than in the PCS data, even after limiting the AOPC data to guilty pleas and guilty verdicts (i.e., excluding Accelerated Rehabilitative Disposition cases, which are a pretrial diversion program for first-time nonviolent offenders, dismissed cases, and other cases for which there was no guilty verdict).

The only identifier shared by both the AOPC and PCS data sets is the Offense Tracking Number (OTN), which is generated by the AOPC. The OTN uniquely identifies a set of offenses that took place within a transaction; therefore, several unique offenses may be grouped within a single OTN. We found that the best way to combine the two sets of data was to match them on the OTN, the title of the offense, and the section, although this method is still imperfect. Of the 275,258 offenses in the PCS data set, we were able to match 252,112 offenses (ninety two percent). Of the 265,048 unmatched cases from the AOPC data (517,160 minus 252,112), a little over 80,000 cases were summary offenses, which are not included in the PCS data set. Of the remaining offenses, seven counties accounted for seventy three and one-half percent, suggesting that these counties did not completely report data to the Sentencing Commission.

D. Census Data

For our contextual analysis, we collected several basic county-level characteristics and economic indicators, which came primarily from the 2000 United States Census.⁵⁴ We included the population of the county, the percentage of urban population within each county, the percentage of the population living below the poverty level, and the percentage of males fifteen to twenty four years of age within each county. These variables were included in order to test whether the size of the county, the degree of urbani-

54. U.S. Census Bureau, United States Census 2000 available at <http://www.census.gov/main/www/cen2000.html>

zation in a county, the economic climate of the county, and the number of individuals most prone to engaging in crime were related to how economic sanctions are imposed. As a measure of political conservatism, we included the percentage of county voters who voted for the Republican candidate in the 2002 gubernatorial election. Political conservatism turned out not to be a significant predictor, therefore, it is not discussed further.

In sum, offenses from the AOPC were merged with offenses from the PCS using Offense Tracking Number, Title of Offense, and Offense Section to match cases from the two datasets. A total of 252,112 cases were matched. Across all cases, the average amount of economic sanctions imposed was \$819, of which \$575 was for costs/fees and \$243 was for fines.

III. RESULTS OF ANALYSES

The results are presented in two parts. First, we present information about economic sanctions at the county level. These results suggest that there is variability between counties in the imposition of economic sanctions. Second, we present information about economic sanctions at the individual level. This section includes both descriptive information and inferential analyses and suggests there is variability between individuals.

A. *County-Level Analyses*

Our first goal was to understand the imposition of economic sanctions at the county level and whether the imposition of economic sanctions varied significantly between counties. These analyses focused on whether there was variation between counties in the number of economic sanctions imposed.

Table 4 presents the number of unique economic sanctions imposed by each county for the years 2006-2007. Also presented is the maximum number of sanctions imposed for each case. Thus, for example, across all of the cases in the sample, Adams County imposed ninety-nine different types of economic sanctions during the study period, and the largest number of economic sanctions that were imposed in Adams County for any one case was thirty-seven.

Table 4. Number of Economic Sanctions Imposed by County

County	Total Number of Unique Sanctions Imposed	Total Number of Sanctions Imposed Per Case
Adams	99	37
Allegheny	119	89
Armstrong	74	39
Beaver	101	26
Bedford	65	33
Berks	136	131
Blair	104	54
Bradford	68	33
Bucks	90	138
Butler	91	40
Cambria	92	26
Cameron	41	15
Carbon	74	36
Centre	86	62
Chester	90	34
Clarion	61	34
Clearfield	88	59
Clinton	68	26
Columbia	59	38
Crawford	81	25
Cumberland	96	53
Dauphin	99	27
Delaware	147	64
Elk	65	32
Erie	86	28
Fayette	97	33
Forest	63	25
Franklin	89	33
Fulton	57	20

Greene	83	23
Huntingdon	54	34
Indiana	73	23
Jefferson	65	43
Juniata	52	23
Lackawanna	64	30
Lancaster	129	53
Lawrence	55	27
Lebanon	91	41
Lehigh	112	22
Luzerne	91	46
Lycoming	88	35
McKean	69	16
Mercer	74	34
Mifflin	61	26
Monroe	68	41
Montgomery	100	48
Montour	55	28
Northampton	112	200
Northumberland	75	80
Perry	49	21
Philadelphia	82	22
Pike	66	31
Potter	68	41
Schuylkill	84	32
Snyder	74	37
Somerset	72	24
Sullivan	40	25
Susquehanna	54	23
Tioga	61	35
Union	63	25
Venango	93	100
Warren	101	37
Washington	82	24
Wayne	71	27
Westmoreland	136	40

Wyoming	62	21
York	98	116

Across the sixty-seven counties in Pennsylvania, the number of different economic sanctions imposed varied from forty to one hundred forty-seven (Mean = 81; Median = 75). Using various county characteristics that we obtained from the census (e.g., urban/rural differences, federal expenditures per capita, crime rate), we conducted several county-level analyses to try to explain the variation in the number of different types of economic sanctions that counties impose. Increased average annual wages, more Hispanic residents, more total residents, and more urban residents in a county were associated with more types of economic sanctions, whereas more African American residents were associated with fewer types of economic sanctions. The size of the population and the average annual wage had a very small positive relationship with the number of different types of economic sanctions used.

Most of the variation between counties in the number of different economic sanctions imposed came from sanctions unique to each county. For example, one county has a "Cost in Lieu of Community Service" penalty, and another county has its own "Drug Investigation" fee. Of the 2,629 different economic sanctions used in the state, 2,371 are county costs/fees and 79 are county fines. About forty-four percent of all economic sanctions imposed were county costs/fees and nearly seven percent were county fines. Across the sixty-seven counties in Pennsylvania, the percent of sanctions imposed that were county sanctions ranged from ten percent to seventy percent (Mean = 48%, Mode = 41%).

B. Individual-Level Analyses

In addition to understanding how the imposition of economic sanctions varied across counties, we were also interested in how the imposition of economic sanctions varied across individuals. Particularly, we were intrigued regarding two legally relevant variables, the type of offense the offender was convicted of and the offender's prior record. There were significant differences among offense types in the amount of economic sanctions imposed. Traffic offenses (mostly DUIs) received the highest average economic sanctions (\$1,349) and public order offenses receiving the lowest (\$624). In between were drug offenses (\$881), person offenses (\$701), property offenses (\$669), and other types of offenses (\$630).

We then computed the mean amount of economic sanctions by the Prior Record Score used by the Pennsylvania Commission on Sentencing. No prior record (coded as 0) means, for the most part, no prior felony convictions. Low prior record means a score of 1, 2, or 3 on the scale of the Pennsylvania Commission on Sentencing. High prior record indicates a score of 4 or 5. Those with no prior record had the highest average total economic sanctions (\$862), those with low prior records had the next highest (\$825), and those with the highest prior records had the lowest total economic sanctions (\$691).⁵⁵ These differences still appeared even after controlling for other individual-level factors, including whether or not the offender received a sentence involving incarceration.

C. *Multivariate Analyses*

Using offense, case, and offender characteristics to predict the imposition of the total amount of economic sanctions for a given offense, we found that the type of offense, the offense gravity score, prior record, and age were the strongest predictors. Higher economic sanctions were imposed for traffic offenses and more severe offenses. In terms of individual characteristics, lower economic sanctions were imposed for individuals with longer records and younger offenders.

We used interval regression to predict (a) the probability that an economic sanction was imposed and (b) how far above zero the sanction was for the six categories mentioned above (the analyses allowed for robust standard errors to take into account groupings by county). The results of this analysis are presented in Table 5. Type of offense (e.g., traffic, drug, person and property offenses) had the largest and most consistent effect on almost all of the outcomes. Traffic and drug cases increased the amount of sanctions, while property and person offenses had a negative influence on the dollar amount of the sanction. Being sentenced to county jail or state prison had a positive significant effect on economic sanctions, with prison sentences having a larger effect than county jail, net of all other factors. Also notable, having a high prior record score (4-5) had a negative influence on the dollar amount of economic sanctions, compared to offenders with a low prior record (1-3) score and no prior record score. Controlling for type of offense, the seriousness of the offense (OGS) had a positive influence on

55. For similar findings, see Cunniff & Shilton, *supra* note 38 at 39.

the dollar amount of all of the economic sanctions. Finally, age had a relatively strong negative influence on economic sanctions, with younger offenders receiving smaller sanctions.

Table 5. Interval Regression Predicting Total Amount of Economic Sanctions

Variable	Coeff	Std Error	Coeff	Std Error	Coeff	Std Error
Type of Offense						
Person	-84.23	100.94	-390.05*	71.16	-430.26*	72.26
Property	-105.10	59.66	-231.94*	48.94	-411.50*	59.49
Drug	106.98	92.38	13.12	81.92	-10.51	82.06
Traffic	921.00*	96.11	694.90*	98.92	657.67*	96.02
Public Order	-152.87*	64.53	-195.22*	73.32	-197.43*	71.74
Case Characteristics						
Offense Severity			141.83*	21.42	138.30*	19.98
Low Prior Record			-26.44	25.73	-21.06	23.63
High Prior Record			-205.03*	79.03	-192.85*	72.84
County Jail			427.43*	151.28	397.59*	144.11
State Prison			-238.58	191.65	-274.41	177.36
Bench Trial			-416.87*	163.83	-398.39*	154.37
Jury Trial			-110.98	206.36	-86.30	202.99
Restitution Imposed					620.18*	109.92
Offender Characteristics						
Male			-30.39	21.32	-22.45	20.29
Black			-131.10	98.85	-101.81	93.41
Hispanic			70.23	131.03	88.71	126.51
Under Age 18			-765.48*	141.05	-764.31*	135.67
Ages 18 to 25			-193.70*	32.12	-205.48*	32.27
Ages 26 to 35			-92.77*	26.03	-101.26*	26.38
Ages 36 to 45			-43.82	24.63	-45.23	24.16
Constant	328.24*	90.83	137.16	102.71	126.6	101.14
Wald	163.21*		719.22*		789.81*	

n = 252,112

We also conducted multilevel analyses using the same measures with county characteristics (e.g., percentage urban, percentage black, percentage Hispanic, percentage male between the ages of eighteen and twenty-five, percentage in poverty, and the crime rate). The multilevel coefficients were similar to the interval regression coefficients, while the county level effects were negligible and did not have an impact on the other coefficients. That is, county characteristics are not significant predictors of the amount of economic sanctions imposed, once the characteristics of the case and the offender are taken into account.⁵⁶

IV. IMPLICATIONS OF THE FINDINGS

These results indicate that there are a large number of economic sanctions imposed in Pennsylvania (about 2.8 million per year) and that these sanctions are from more than 2,600 different categories. There is significant variation between counties both in the number of different types of economic sanctions imposed (and the resulting complexity of the system of economic sanctions) and in the average and median amounts of economic sanctions imposed per case. These differences between counties are due primarily to the population differences between counties and in the percentage of the population that lives in urban areas. In general, counties with larger populations and higher percentages of citizens in urban areas impose more economic sanctions and more different types of economic sanctions.

There are also significant differences between individuals based on prior criminal record, although the difference is not in the expected direction. That is, those who have the most serious criminal records are likely to have lower economic sanctions imposed. With regard to type of crime, DUI offenders have much higher economic sanctions imposed than drug, person, and property offenders.

A. *Reduced Number of Economic Sanctions*

The fact that there are more than 2,600 different economic sanctions in Pennsylvania is confusing not only to offenders, who do not know how much they owe, how much their monthly payments

56. More detailed information about the statistical analyses can be obtained from the first author.

should be, and where the money they pay goes,⁵⁷ but also to judges, prosecutors, and probation officers. Conversations with court employees suggest that no one in the court system understands all of the economic sanctions or the order in which they are supposed to be paid,⁵⁸ despite regulations established by the Supreme Court of Pennsylvania and promulgated by the Court Administrator of Pennsylvania entitled "The Allocation of Monies in the Uniform Disbursement Schedule."⁵⁹ If clarity is one goal of the legal system, then economic sanctions in Pennsylvania do not meet this standard.

Moreover, this variety of sanction is unfair to individuals in counties that have a larger number of economic sanctions, most of which are county costs/fees. Unfairness occurs because individuals in these counties have a greater chance of having these additional sanctions imposed, because judges must be responsive to the public and these county costs/fees are one way that the economic burden on citizens is shifted.

One possible solution to the problem of so many different types of economic sanctions is simply to reduce the number of county costs/fees.⁶⁰ The large number of possible county-level economic sanctions explains most of the variation between counties, and essentially the system as it presently stands awards counties that are more creative in creating new costs/fees. The argument against such costs/fees would be that criminal justice is an obligation of government that should be paid for by the government, not by criminal offenders. But as long as the imposed costs/fees are consistent across counties, one could claim that they are uniform and therefore fair.

57. R. Barry Ruback, Stacy N. Hoskins, Alison C. Cares, & Ben Feldmeyer, *Perception and Payment of Economic sanctions: A Survey of Offenders*, FED. PROBATION 26, 27 (2006).

58. R. Barry Ruback, Alison C. Cares, & Stacy N. Hoskins, *Evaluation of Best Practices in Restitution and Victim Compensation Orders and Payments*, REPORT TO THE PENNSYLVANIA COMMISSION ON SENTENCING (2006).

59. Title 42. Judiciary and Judicial Procedure, Part IV. Financial Matters, Chapter 35. Budget and Finance, Subchapter A. General Principles.

60. Recently, there have been calls for the abolition of these fees for three reasons: (1) they lack a clear penological rationale, (2) they raise questions of fairness because they make sentences too severe, they reflect class bias, they reflect disparity, and they have a large impact on families, and (3) they are not cost effective. Harris et al., *On Cash and Conviction: Money Sanctions as Misguided Policy*, CRIMINOLOGY & PUB. POL'Y (2011). Based on their analysis of fees in the fifteen states with the largest prison populations, Bannon, Nagrecha, and Diller, *supra* note 14, at 13, have called for lawmakers to consider the total debt burden on offenders before adding new fees or increasing fee amounts. They also have suggested that indigent offenders should not have to pay these fees.

However, costs/fees that are unique to a county raise a different question. How fair is it to an offender if the burden of paying for the costs of criminal justice is shifted to offenders only if the county is poor and therefore cannot afford to pay? Or, is it fair if the county has a large population of citizens who generally oppose government and is therefore more likely than citizens in other counties to favor user fees? Although one could argue that counties should be able to impose whatever fees they wish, it would be difficult to defend these sanctions in terms of fairness to offenders. That is, it would be difficult to argue that offenders who live in certain counties should have to pay higher costs/fees merely because of where they live, not because of their actual offense.

V. CONCLUSION

Part of what makes a system fair is attainment of a common understanding, both by those who administer it and those against whom it is imposed. The sheer number of different types of economic sanctions available across Pennsylvania, and even in any one county, makes it unlikely that defendants would understand what these sanctions are for, how much money they owe for each sanction, and how their payments are directed toward each of these different sanctions. Our findings that there are county-specific differences in the number of available economic sanctions and in the economic sanctions that are actually used, suggest there is inconsistency and unfairness. Moreover, our findings regarding the effects of the offender's prior record and age on the imposition of total economic sanctions suggests that changes, perhaps more structure through guidelines, would be helpful.