



Alaska Court System

State of Alaska

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April 26, 1995

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
State Capitol - Room 30
Juneau, Alaska 99811

Dear Senator Taylor:

The 1994 Alaska Legislature passed a law that authorizes courts to impose day fines for certain misdemeanor offenses. The legislation went into effect July 1, 1994.

The day fine law directs the Alaska Supreme Court to adopt a "day fine plan." In June 1994, Chief Justice Daniel A. Moore appointed a committee of six judges and five representatives of other agencies to develop this plan. The committee met once a month from September through December and presented a plan to the supreme court on December 22.

In the course of developing the day fines plan, certain problems became apparent. Some of these problems could be rectified by simple amendments to the original day fines legislation. However, other problems are more fundamental. SB 167 addresses the more technical difficulties. This legislation does not address the fundamental problems, which are discussed in Part II below.

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I. Technical Problems With Day Fines Law.

A. Classification of Misdemeanors.

AS 12.55.036(b)(1) requires the supreme court to adopt a day fines plan that includes "an assessment of the gravity of all misdemeanor offenses, which assessment must include the existence of prior offenses" It would take months to compile a comprehensive list of all the misdemeanor offenses in the Alaska Statutes and such a list would include many relatively obscure offenses that are never charged. The Day Fines Committee only ranked offenses that were charged ten or more times since January 1, 1990 and offenses for which a fine or imprisonment was imposed in FY 94. The committee also could not think of a simple way to make the ranking of offenses reflect the existence of prior offenses. Instead, the committee decided to treat prior offenses as an aggravating factor.

The committee has recommended that AS 12.55.036(b)(1) be amended to require that the day fines plan include an assessment of common misdemeanor offenses and to delete the requirement that the assessment reflect the existence of prior offenses. This proposal is contained in section 2 of SB 167.

B. Written Findings.

AS 12.55.036(c)(2) requires that the judge make written findings of the facts considered in determining the existence of aggravating and mitigating factors and in determining the defendant's income. Given the volume of misdemeanor sentencings in some court locations, it is not feasible for judges to make written findings in these cases. Therefore, the Day Fines Committee has recommended that the legislature eliminate AS 12.55.036(c)(2). This proposal is contained in section 3 of SB 167.

C. Felony Aggravators and Mitigators.

AS 12.55.036(b)(3) authorizes the court to increase or decrease the presumptive day fine penalty for an offense if the court finds the existence of an aggravating factor under AS 12.55.155(c) or a mitigating factor under AS 12.55.155(d). AS 12.55.155 lists the aggravating and mitigating factors that apply in felony cases. Because of the volume of misdemeanor cases, it is not feasible for judges to review the lists of felony aggravators and mitigators each time a defendant is sentenced. In addition, some of these factors are not applicable to the offenses for which a day fine may be imposed. In the proposed day fine plan, the Day Fines Committee recommended that a shorter, more general list be adopted that would be easier for judges to use. The committee

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recommended that AS 12.55.036(b)(3) be amended to eliminate the references to AS 12.55.155. This proposal is contained in section 2 of SB 167.

D. Set Aside of Convictions.

Many first and second misdemeanor offenders currently receive SISs and suspended sentences which are significantly less severe than the sentences they would receive under the proposed day fines plan. In order to increase the attractiveness of day fines in such cases, the Day Fines Committee recommended that courts be allowed to set aside convictions in appropriate cases upon payment of a day fine. Another benefit of this change in the law is that the possibility of eliminating the conviction from the defendant's record might increase the likelihood of payment. This proposal is contained in section 6 of SB 167.

E. Net Income Versus Gross Income.

AS 12.55.036(b)(4) requires the court to use the defendant's gross income to calculate the defendant's net daily income for purposes of day fines. However, unless they are carrying their pay stubs, people generally know only the amount of their take home pay. The Day Fines Committee recommended that AS 12.55.036(b)(4) be revised so that the method of calculating net daily income is based on a defendant's net income after taxes instead of gross income. This proposal is contained in section 2 of SB 167.

F. Additional Time to Pay.

AS 12.55.036(d) states that the court may permit day fines to be paid in installments over time, provided the entire fine is paid within 180 days. The Day Fines Committee recommends that the legislature amend AS 12.55.036(d) to allow courts to give defendants up to one year to pay. The committee believes that additional time is needed to allow for seasonal variations in income. In addition, the projected fine amounts are high enough that some defendants will not have enough discretionary income to pay their fine in full within a six-month period. This proposal is contained in section 4 of SB 167.

G. Access to Employment Information.

The Day Fines Committee recommended that the legislature amend AS 23.20.110 to authorize the Department of Labor to give the Department of Law Collections Unit access to confidential employment information (to the extent permitted by federal

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law). The purpose of this change is to improve collections by making it easier for the Department of Law to locate a defendant's places of employment. This proposal is contained in sections 7, 8, and 9 of SB 167.

H. Treatment.

The Day Fines Committee is concerned that day fines may not be used in cases involving alcohol or drugs because a day fine cannot be combined with an order for treatment. AS 12.55.015 lists the sentences judges can impose as direct court orders. This statute only authorizes the court to order treatment for defendants who are incarcerated. Therefore, the only way a judge can order treatment outside of prison is if a specific statute authorizes it (which very few do) or as a condition of probation. Since day fines cannot be combined with probation, judges will be unlikely to impose day fines when they believe treatment is necessary. The Day Fines Committee has recommended that the day fines law be amended to allow the court to enter a direct court order requiring a defendant who receives a day fine to participate in a treatment program related to the defendant's offense. This proposal is contained in section 1 of SB 167.

I. Biennial Reports.

AS 12.55.036(f) requires the court system to evaluate the use and effectiveness of day fines and report every two years to the legislature. This section specifies what the report must contain. The Day Fines Committee does not believe that certain information listed in this section can be collected given the current state of the various justice agencies' information systems. The committee has recommended that the Alaska Supreme Court invite the Alaska Judicial Council to work with the court system to develop appropriate evaluation criteria (given available information systems) and to design the information collection procedures necessary to make the reports to the legislature. To accommodate this, SB 167 amends AS 12.55.036(f) to reflect the fact that it is not yet possible to provide information on recidivism. This proposal is contained in section 5.

II. Fundamental Problems with Day Fines Law.

Now I would like to discuss the more fundamental problems that are not addressed in the attached bill.

The first problem relates to the legislature's intent in passing the law. In her March 10, 1993 memorandum transmitting the bill, Representative Fran Ulmer stated that the

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Intent of the legislation was to decrease the number of misdemeanor offenders who are sent to jail and to increase fine collection rates. The day fines legislation as enacted will not achieve either of these objectives.

In the course of its work, the Day Fines Committee determined that the day fines law excludes most of the misdemeanors for which people are currently sentenced to jail. Therefore, the law will not result in a meaningful decrease in the jail population as the legislature intended.

Increased fine collection is also unlikely. Under the new law, a day fine is only one of several sentencing options available to a judge. A judge will not select this option unless the judge believes the fine will be collected. In reviewing the State's collection practices, the Day Fines Committee discovered that current fine collection rates are low. The day fines program will not be widely used - or increase fine revenues - unless the Department of Law receives additional collection tools and resources. (The Department of Law's Collections Unit is funded solely through program receipts.) An example of a new tool would be to make payment of fines a condition for state licenses. The Day Fines Committee recommended that the legislature consider prohibiting the issuance or renewal of state licenses and permits to persons who have unpaid fines and other obligations to the state.

A second fundamental concern pertains to the fine amounts that result from the day fines formula. In order to avoid separation of powers questions, the legislature specified in the statute the unit scale and general formula for computing day fines. This scale would have resulted in inappropriately high fine amounts for the misdemeanors that the legislature included in the day fines program. Even though the Day Fines Committee reduced the scale as much as they thought possible - from a maximum of 365 units to a maximum of 45 units - the formula still results in very high fine amounts for all but the poorest offenders. The supreme court is reluctant to proceed without further legislative review of the fines that would result under the formula prescribed in the law.

A third fundamental concern pertains to one of the largest categories of misdemeanors - fish and game offenses. After much deliberation, the Day Fines Committee excluded these offenses from its day fines plan. Unlike criminal law, which has a relatively clear statutory framework as a result of the classification system that went into effect in 1980, fish and game has no clear sentencing structure. Title 5 includes numerous penalty provisions and it is not always obvious which ones apply to particular offenses. In addition, because offense definitions overlap, the same conduct can be charged under different statutes and regulations, with different consequences. The

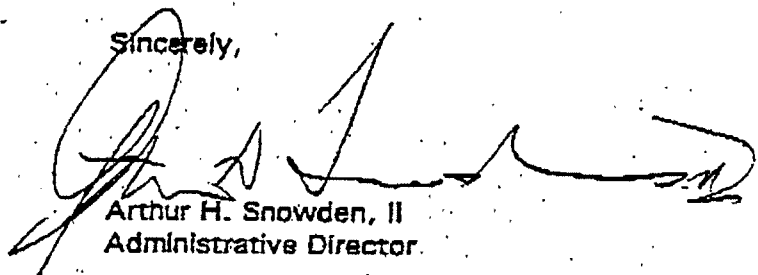
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committee was ultimately unwilling to impose another layer of complexity in this area until the underlying statutory and regulatory problems are resolved. Instead, the committee recommended that the legislature appoint a special legislative committee or an interagency group to assess and restructure fish and game penalty provisions and definitions of offenses.

III. Conclusion.

The attached bill addresses the problems described in Part I above. It does not address the Day Fines Committee's - and the supreme court's - more fundamental concerns discussed in Part II. Both the court and the committee question whether it is wise to proceed without addressing these concerns. It will require a significant commitment of resources in order to implement the day fines program. Without significant changes, the law is unlikely to result in the savings or the revenues that the legislature originally expected.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arthur H. Snowden, II", is written over the typed name and title.

Arthur H. Snowden, II
Administrative Director