

9-LS1069A

## SENATE BILL NO. 167

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 4/25/95

Referred: JUD. FIN

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to day fines in certain criminal cases and release of employment  
2 information for use in the collection of criminal judgments."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 12.55.036(a) is amended to read:

5 (a) Upon conviction of a misdemeanor, other than a violation of AS 11.41 and  
6 AS 11.56.740, a defendant may be sentenced to pay a day fine as authorized by this  
7 section. If a day fine is imposed under this section, the defendant may not be  
8 sentenced to pay a fine under AS 12.55.035, serve a term of imprisonment, or be  
9 placed on probation. However, the court may order a defendant to participate in  
10 or comply with a screening, evaluation, or treatment program related to the  
11 defendant's offense.

12 \* Sec. 2. AS 12.55.036(b) is amended to read:

13 (b) The Alaska Supreme Court shall adopt a day fine plan that includes  
14 (1) an assessment of the gravity of common [ALL] misdemeanor

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New Text Underlined [DELETED TEXT BRACKETED]

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1 offenses [, WHICH ASSESSMENT MUST INCLUDE THE EXISTENCE OF PRIOR  
2 OFFENSES.] and the assignment of presumptive penalties to them in day fine units  
3 within the following ranges:

4 (A) for class A and unclassified misdemeanors, not to exceed  
5 365-day fine units;

6 (B) for class B misdemeanors, not to exceed 90-day fine units;

7 (2) a schedule of the presumptive day fine penalties:

8 (3) procedures for a court to increase or decrease the presumptive day  
9 fine penalties if the court finds the existence of an aggravating factor [UNDER  
10 AS 12.55.155(c)] or a mitigating factor [UNDER AS 12.55.155(d)];

11 (4) a table for the conversion of a defendant's actual, potential, or  
12 estimated net [GROSS] income after taxes, less one-third for a defendant above the  
13 federal poverty guideline as determined by the United States Department of Health and  
14 Human Services, and less one-half for a defendant below the federal poverty guideline  
15 into net daily income amounts; the table must include adjustments for the number of  
16 dependents actually supported by the defendant;

17 (5) procedures for a court to gather information about the defendant's  
18 occupation, actual, estimated, and potential income, number of dependents, and other  
19 facts necessary or relevant to sentencing a person to a day fine; a court may order the  
20 production of the financial or other records of a person it determines to be relevant to  
21 a determination under this section; the procedures must include a requirement that the  
22 facts shall be received

23 (A) under oath so that the defendant is subject to prosecution  
24 under AS 11.56.200; or

25 (B) in a writing or recording that bears notice that false  
26 statements made in it are punishable under AS 11.56.210; and

27 (6) other information the court determines to be necessary for  
28 implementing the day fine plan.

29 \* Sec. 3. AS 12.55.036(c) is amended to read:

30 (c) The amount of a day fine shall be the product of the net daily income of  
31 the defendant, adjusted for the number of dependents actually supported by the

1 defendant, times the day fine penalty. When imposing a sentence of a day fine, the  
2 court shall

3 [(1)] state on the record the

4 (1) [(A)] presumptive day fine penalty for the offense, and whether the  
5 court is adjusting the presumptive day fine penalty for the existence of aggravating or  
6 mitigating factors;

7 (2) [(B)] net daily income of the income of the defendant, adjusted for  
8 the number of dependents actually supported by the defendant; and

9 (3) [(C)] amount of the day fine [;

10 (2) MAKE WRITTEN FINDINGS OF THE FACTS CONSIDERED

11 IN

12 (A) FINDING THE EXISTENCE OF AGGRAVATING OR  
13 MITIGATING FACTORS AND IN ASSIGNING A VALUE TO THOSE  
14 FACTORS; AND

15 (B) DETERMINING THE DEFENDANT'S GROSS AND  
16 DAILY NET INCOMES].

17 \* Sec. 4. AS 12.55.036(d) is amended to read:

18 (d) When imposing a sentence of a day fine, the court may permit the payment  
19 of the day fine in specified installments or within a certain period of time, provided  
20 the entire day fine is paid within one year [180 DAYS] of imposition.

21 \* Sec. 5. AS 12.55.036(f) is amended to read:

22 (f) The Alaska Court System shall evaluate and report every two years to the  
23 legislature not later than February 1 on the use of day fines and their effectiveness.  
24 The report must include

25 (1) a comparison of the number of defendants receiving a day fine as  
26 a sentence with the number of other defendants, eligible to receive a day fine, who  
27 receive another sentence;

28 (2) to the extent that recidivism information is available, a  
29 comparison of the recidivism rates between defendants receiving a day fine with other  
30 defendants,

31 (A) eligible for a day fine, who receive another sentence; and

- 1 (B) not eligible for a day fine, who receive another sentence;  
2 (3) the potential savings to the state from the number of defendants  
3 who are eligible to receive a sentence of imprisonment, and who receive a day fine,  
4 assuming those defendants would have been sentenced to a term of imprisonment;  
5 (4) the amount of day fines collected, the success rate of collections,  
6 and the number of cases requiring civil process to collect the day fine; and  
7 (5) recommendations concerning expansion or restriction of the use of  
8 day fines, including proposals for legislation.

9 \* Sec. 6. AS 12.55.036 is amended by adding a new subsection to read:

- 10 (h) When there are mitigating circumstances, when the ends of justice will be  
11 served, and when the good conduct and reform of the defendant warrant it, the court  
12 may upon payment of the entire day fine within the time specified by the court set  
13 aside the conviction and issue to the defendant a certificate to that effect.

14 \* Sec. 7. AS 23.20.110(a) is amended to read:

- 15 (a) Except as provided in (h), [AND] (i), and (l) of this section, the  
16 department shall hold information obtained from an employing unit or individual in  
17 the course of administering this chapter and determinations as to the benefit rights of  
18 an individual confidential and may not disclose them or open them to public inspection  
19 in a manner that [WHICH] reveals the identity of the individual or employing unit.  
20 A claimant or the legal representative of the claimant is entitled to information from  
21 the records of the department to the extent necessary for the proper presentation of the  
22 claim in a proceeding under this chapter. Subject to restrictions that [WHICH] the  
23 department prescribes by regulation, the information may be made available to an  
24 agency of this state or another state or federal agency charged with the administration  
25 of an unemployment compensation law or the maintenance of a system of public  
26 employment offices, or, for the purposes of the Federal Unemployment Tax Act, to the  
27 Internal Revenue Service of the United States, or, for tax purposes, to the Department  
28 of Revenue. Information obtained in connection with the administration of the  
29 employment service may be made available to persons or agencies for purposes  
30 appropriate to the operation of a public employment service.

31 \* Sec. 8. AS 23.20.110(f) is amended to read:

1 (j) Notwithstanding (h), [OR] (i), or (l) of this section, the department may not  
2 release information to an administrator under (h) of this section, [OR] on an employer's  
3 hiring practices under (i) of this section, or to the Department of Law as provided  
4 under (l) of this section if the United States Secretary of Labor rules that release of  
5 the information would be grounds to find that the state is in substantial noncompliance  
6 with 42 U.S.C. 503(a).

7 \* Sec. 9. AS 23.20.110 is amended by adding a new subsection to read:

8 (l) The department shall make information obtained from an employing unit  
9 or an individual available on request to the Department of Law to assist the  
10 Department of Law in the collection of criminal judgments.

00 SENATE CS FOR CS FOR HOUSE BILL NO. 119(FIN)  
01 "An Act authorizing a sentencing court to impose a sentence of a day  
fine  
02 instead of a sentence of imprisonment on a defendant convicted of a  
03 misdemeanor; directing the Alaska Supreme Court to develop and  
implement a  
04 day fine plan; requiring the Alaska Court System to report to the  
legislature on  
05 the use of day fines; amending Alaska Rule of Criminal Procedure 32;  
and  
06 providing for an effective date."  
07 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
08 \* Section 1. AS 12.55.015(a) is amended to read:  
09 (a) Except as limited by AS 12.55.125 - 12.55.175, the  
court, in imposing  
10 sentence on a defendant convicted of an offense, may singly or in  
combination  
11 (1) impose a  
12 (A) fine when authorized by law and as  
provided in  
13 AS 12.55.035; or  
14 (B) a day fine when authorized by law and as  
provided in  
01 AS 12.55.036, if the court does not impose a term of periodic or  
continuous  
02 imprisonment or place the defendant on probation;  
03 (2) order the defendant to be placed on probation under  
conditions  
04 specified by the court that may include provision for active  
supervision;  
05 (3) impose a definite term of periodic imprisonment;  
06 (4) impose a definite term of continuous imprisonment;  
07 (5) order the defendant to make restitution under AS  
12.55.045;  
08 (6) order the defendant to carry out a continuous or  
periodic program  
09 of community work under AS 12.55.055;  
10 (7) suspend execution of all or a portion of the  
sentence imposed under  
11 AS 12.55.080;  
12 (8) suspend imposition of sentence under AS 12.55.085;  
13 (9) order the forfeiture to the commissioner of public  
safety of a deadly  
14 weapon that was in the actual possession of or used by the defendant  
during the  
15 commission of an offense described in AS 11.41, AS 11.46, AS 11.56,  
or AS 11.61;  
16 (10) order the defendant, while incarcerated, to  
participate in or comply  
17 with the treatment plan of a rehabilitation program that is related  
to the defendant's  
18 offense or to the defendant's rehabilitation [,] if the program is  
made available to the  
19 defendant by the Department of Corrections.  
20 \* Sec. 2. AS 12.55.035(a) is amended to read:  
21 (a) Except as provided in AS 12.55.036, upon [UPON]  
conviction of an

22 offense, a defendant may be sentenced to pay a fine as authorized in  
this section or as  
23 otherwise authorized by law.  
24 \* Sec. 3. AS 12.55.035(b) is amended to read:  
25 (b) Except as provided in AS 12.55.036, upon [UPON]  
conviction of an  
26 offense, a defendant who is not an organization may be sentenced to  
pay, unless  
27 otherwise specified in the provision of law defining the offense, a  
fine of no more than  
28 (1) \$75,000 for murder in the first or second degree,  
attempted murder  
29 in the first degree, sexual assault in the first degree, sexual  
abuse of a minor in the  
30 first degree, kidnapping, or misconduct involving a controlled  
substance in the first  
31 degree;  
01 (2) \$50,000 for a class A, B, or C felony;  
02 (3) \$5,000 for a class A misdemeanor;  
03 (4) \$1,000 for a class B misdemeanor;  
04 (5) \$300 for a violation.  
05 \* Sec. 4. AS 12.55.035(c) is amended to read:  
06 (c) Except as provided in AS 12.55.036, upon [UPON]  
conviction of an  
07 offense, a defendant that is an organization may be sentenced to pay  
a fine not  
08 exceeding the greater of  
09 (1) an amount that is  
10 (A) \$500,000 for a felony offense or for a  
misdemeanor offense  
11 that results in death;  
12 (B) \$200,000 for a class A misdemeanor  
offense that does not  
13 result in death;  
14 (C) \$25,000 for a class B misdemeanor offense  
that does not  
15 result in death;  
16 (D) \$10,000 for a violation;  
17 (2) two times the pecuniary gain realized by the  
defendant as a result  
18 of the offense; or  
19 (3) two times the pecuniary damage or loss caused by  
the defendant to  
20 another, or to the property of another, as a result of the offense.  
21 \* Sec. 5. AS 12.55 is amended by adding a new section to read:  
22 Sec. 12.55.036. DAY FINES. (a) Upon conviction of a  
misdemeanor, other  
23 than a violation of AS 11.41 and 11.56.740, a defendant may be  
sentenced to pay a  
24 day fine as authorized by this section. If a day fine is imposed  
under this section, the  
25 defendant may not be sentenced to pay a fine under AS 12.55.035,  
serve a term of  
26 imprisonment, or be placed on probation.  
27 (b) The Alaska Supreme Court shall adopt a day fine plan  
that includes

28 (1) an assessment of the gravity of all misdemeanor  
offenses, which  
29 assessment must include the existence of prior offenses, and the  
assignment of  
30 presumptive penalties to them in day fine units within the following  
ranges:  
31 (A) for class A and unclassified  
misdemeanors, not to exceed  
01 365-day fine units;  
02 (B) for class B misdemeanors, not to exceed  
90-day fine units;  
03 (2) a schedule of the presumptive day fine penalties;  
04 (3) procedures for a court to increase or decrease the  
presumptive day  
05 fine penalties if the court finds the existence of an aggravating  
factor under  
06 AS 12.55.155(c) or a mitigating factor under AS 12.55.155(d);  
07 (4) a table for the conversion of a defendant's actual,  
potential, or  
08 estimated gross income, less one-third for a defendant above the  
federal poverty  
09 guideline as determined by the United States Department of Health  
and Human  
10 Services, and less one-half for a defendant below the federal  
poverty guideline into net  
11 daily income amounts; the table must include adjustments for the  
number of  
12 dependents actually supported by the defendant;  
13 (5) procedures for a court to gather information about  
the defendant's  
14 occupation, actual, estimated, and potential income, number of  
dependents, and other  
15 facts necessary or relevant to sentencing a person to a day fine; a  
court may order the  
16 production of the financial or other records of a person it  
determines to be relevant to  
17 a determination under this section; the procedures must include a  
requirement that the  
18 facts shall be received  
19 (A) under oath so that the defendant is  
subject to prosecution  
20 under AS 11.56.200; or  
21 (B) in a writing or recording that bears  
notice that false  
22 statements made in it are punishable under AS 11.56.210; and  
23 (6) other information the court determines to be  
necessary for  
24 implementing the day fine plan.  
25 (c) The amount of a day fine shall be the product of the  
net daily income of  
26 the defendant, adjusted for the number of dependents actually  
supported by the  
27 defendant, times the day fine penalty. When imposing a sentence of  
a day fine, the  
28 court shall  
29 (1) state on the record the



30 (A) presumptive day fine penalty for the  
offense, and whether  
31 the court is adjusting the presumptive day fine penalty for the  
existence of  
01 aggravating or mitigating factors;  
02 (B) net daily income of the income of the  
defendant, adjusted  
03 for the number of dependents actually supported by the defendant;  
and  
04 (C) amount of the day fine;  
05 (2) make written findings of the facts considered in  
06 (A) finding the existence of aggravating or  
mitigating factors  
07 and in assigning a value to those factors; and  
08 (B) determining the defendant's gross and  
daily net incomes.  
09 (d) When imposing a sentence of a day fine, the court  
may permit the payment  
10 of the day fine in specified installments or within a certain period  
of time, provided  
11 the entire day fine is paid within 180 days of imposition.  
12 (e) A sentence imposing a day fine shall be considered a  
civil judgment for  
13 the day fine. The Department of Law shall enforce the judgment and  
may utilize any  
14 procedure available for the enforcement of civil judgments. If the  
Department of Law  
15 uses the civil process of the court to enforce or collect a day  
fine, the department shall  
16 be awarded costs and attorney fees.  
17 (f) The Alaska Court System shall evaluate and report  
every two years to the  
18 legislature not later than February 1 on the use of day fines and  
their effectiveness.  
19 The report must include  
20 (1) a comparison of the number of defendants receiving  
a day fine as  
21 a sentence with the number of other defendants, eligible to receive  
a day fine, who  
22 receive another sentence;  
23 (2) a comparison of the recidivism rates between  
defendants receiving  
24 a day fine with other defendants,  
25 (A) eligible for a day fine, who receive  
another sentence; and  
26 (B) not eligible for a day fine, who receive  
another sentence;  
27 (3) the potential savings to the state from the number  
of defendants,  
28 who are eligible to receive a sentence of imprisonment, and who  
receive a day fine,  
29 assuming those defendants would have been sentenced to a term of  
imprisonment;  
30 (4) the amount of day fines collected, the success rate  
of collections,  
31 and the number of cases requiring civil process to collect the day  
fine; and

01                   (5) recommendations concerning expansion or restriction  
02 of the use of  
03 day fines, including proposals for legislation.  
04                   (g) Money collected under this section shall be  
05 deposited into the general fund  
06 and separately accounted for under AS 37.05.142. The annual  
07 estimated balance in  
08 the account maintained under AS 37.05.142 for day fines collected  
09 under this section  
10 may be appropriated by the legislature as follows: (1) 25 percent  
11 of the annual  
12 estimated balance for grants and claims paid by the Council on  
13 Domestic Violence and  
14 Sexual Assault; (2) 25 percent of the annual estimated balance for  
15 grants and claims  
16 paid by the Violent Crimes Compensation Board; and (3) the balance  
17 for any lawful  
18 purpose. Nothing in this subsection creates a dedicated fund.  
19 \* Sec. 6. CHANGE OF CRIMINAL RULE. AS 12.55.036, added by sec. 5  
20 of this Act, has  
21 the effect of modifying the sentencing provisions of Alaska Rules of  
22 Criminal Procedure 32,  
23 by establishing procedures for imposition of sentences of day fines.  
24 \* Sec. 7. AS 12.55.036(f), as enacted by sec. 5 of this Act, is  
25 repealed February 2, 2004.  
26 \* Sec. 8. This Act takes effect July 1, 1994.