

HB

316

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

9/10 3/16

April 26, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to fines imposed in criminal cases against organizations.

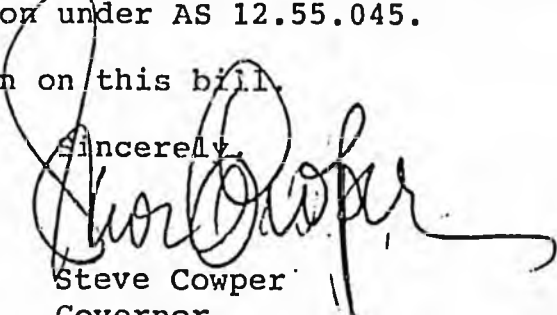
This bill is intended to increase the maximum fine that a court may impose against a corporate defendant convicted of violating a criminal law of the State of Alaska. The need for this legislation arises from our review of criminal statutes in light of the Prince William Sound oil spill.

Under current law, when a defendant that is an organization is convicted of a criminal offense, the court may impose a fine not exceeding the greater of \$100,000, or three times the pecuniary gain realized by a defendant as a result of an offense. In other words, in cases where a defendant has not realized pecuniary gain, the maximum possible fine is \$100,000. I believe that a fine of \$100,000 is insufficient to deter organizations from engaging in criminal activity that poses a significant risk of damage to persons or property, yet does not involve pecuniary gain.

This bill allows a court to assess a fine equal to two times the damage or loss caused by the defendant to another, or to the property of another, as a result of a criminal offense. Since it is unlikely, in most situations, that an organization could be sentenced to serve time in jail, the intent of the bill is to provide a significant financial penalty for organizations that violate the criminal laws of this state and in so doing cause damage to Alaskans. A fine imposed under this section would not limit a victim's ability to obtain restitution under AS 12.55.045.

I urge your favorable action on this bill.

Sincerely,


Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: January 11, 1990
 Title: "An Act relating to fines imposed in criminal cases against organizations."
 Sponsor: House Rules/Governor
 Requestor: House Judiciary

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 11, 1990
 Approved by Commissioner: Douglas B. Bailly, Attorney General Date: January 11, 1990
 Agency: Department of Law

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

HB 316
HOUSE 1/29/90For Bill/Resolution No. HB 316

This bill amends AS 12.55.035(c) by adding a new paragraph, which provides that upon a criminal conviction that includes a fine, a defendant that is an organization may be sentenced to pay a fine in an amount which is two times the damage or loss caused by the defendant to another or to the property of another as a result of the offense. This is a change in a sentencing provision, which occurs after a conviction, and it should not have a direct fiscal impact on the Department of Law.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

April 5, 1990

The Honorable Jan Faiks
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Re: HB 316 - Criminal Fines

Dear Senator Faiks:

When an organization is convicted of a crime, the only penalty that can be imposed is a fine. In cases where the defendant has not profited from the criminal act, the maximum penalty that can be imposed under state law is \$100,000. In contrast, federal law allows a fine of up to two times the amount of damage suffered as a result of the crime. Because the available state penalty is so small in comparison to the cost of prosecution, the state has turned over responsibility for the investigation and prosecution of major crimes committed in Alaska to the federal government.

Following the Exxon Valdez oil spill, Attorney General Baily realized that the practice of allowing the federal government to control the investigation and prosecution of major Alaskan criminal cases could have potentially serious consequences for the state and individual Alaskans. As a result, he requested that the Governor introduce HB 316 to bring state criminal penalties into conformity with the penalties available under federal law. Events of the past few months have shown that the Attorney General's prediction of adverse consequences was correct.

I am writing to request that you schedule HB316 for a hearing in Senate Judiciary at the earliest possible opportunity. If you have any questions about the bill, or if you would like additional information before scheduling a hearing on HB 316, I would be more than glad to meet with you in any time to discuss this important piece of legislation.

The Honorable Jan Faiks

April 5, 1990
Page 2

Thank you in advance for your cooperation.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 

Laurie H. Otto
Assistant Attorney General

LHO:me-193

Dodd v. State, 686 P.2d 737 (Alaska Ct. App. 1984).

Under subsection (e), a sentence which is imposed on a new offense must be consecutive to a sentence that is reimposed upon a revocation of probation. Betzner v. State, 768 P.2d 1150 (Alaska Ct. App. 1989).

Credit where consecutive sentences imposed. — When consecutive sentences are imposed for two or more offenses, periods of presentence incarceration may be credited only against the aggregate of all terms imposed. An offender who receives consecutive sentences is entitled to credit against only the first sentence imposed, while an offender sentenced to concurrent terms in effect receives credit against

each sentence. Endell v. Johnson, 738 P.2d 769 (Alaska Ct. App. 1987).

IV. CONCURRENT SENTENCES.

Trial courts have discretion under this section to impose concurrent sentences. Drumbarger v. State, 716 P.2d 6 (Alaska Ct. App. 1986).

When concurrent sentences may be imposed.

Concurrent sentences may be given if any of the six paragraphs of subsection (g) are met. State v. Andrews, 723 P.2d 85 (Alaska 1986).

Correction of judgment unlawfully imposing concurrent sentences. — See Joseph v. State, 712 P.2d 904 (Alaska Ct. App. 1986).

Sec. 12.55.035. Fines. (a) Upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law. In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden its payment will impose. No defendant may be imprisoned solely because of inability to pay a fine.

(b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) \$75,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) \$50,000 for a class A, B, or C felony;

(3) \$5,000 for a class A misdemeanor;

(4) \$1,000 for a class B misdemeanor;

(5) \$300 for a violation.

(c) Upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) \$100,000; or

(2) an amount which is three times the pecuniary gain realized by the defendant as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. (§ 12 ch 166 SLA 1978; am § 17 ch 45 SLA 1982; am § 26 ch 143 SLA 1982; am § 4 ch 59 SLA 1988; am § 18 ch 85 SLA 1988)

Section

86. Imprisonment as a condition of suspended imposition of sentence
 88. Modification of sentence
 90. Granting of probation
 100. Conditions of probation
 110. Notice and grounds for revocation of suspension
 120. Appeal of sentence
 125. Sentences of imprisonment for felonies

Section

135. Sentences of imprisonment for misdemeanors
 145. Prior convictions
 147. Fingerprints at time of sentencing
 155. Factors in aggravation and mitigation
 165. Extraordinary circumstances
 175. Three-judge sentencing panel
 185. Definitions

Cross references. — For applicability of ch. 166 SLA 1978 to offenses committed before or after January 1, 1980, see § 23, ch. 166, SLA 1978 in the Temporary and Special Acts.

Legislative history reports. — For report on ch. 166, SLA 1978 (HB 661), see 1978 Senate Journal Supplement No. 47 (June 12, 1978).

NOTES TO DECISIONS

Constitutionality of presumptive sentencing provisions. — The presumptive sentencing provisions, AS 12.55.125 — 12.55.175, do not conflict with Alas. Const., art. I, § 12 because the legislature has the authority to reasonably restrict judicial discretion in order to accomplish the goal of eliminating unjustified sentencing disparity. *Nell v. State*, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).

The presumptive sentencing provisions contained in AS 12.55.125 — 12.55.175 are not an unconstitutional violation of the separation of powers doctrine or of Alas.

Const., art. IV, § 1 as a legislative infringement on the power of the judiciary to sentence on the basis of the particular facts of the case and the nature of a particular offender because although the presumptive sentencing statutes do limit the discretion of a judge in imposing a sentence, they do not foreclose sentences of less than the presumptive sentence or the possibility of placing a person on probation. *Nell v. State*, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).

Applied in *Hornaday v. Rowland*, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

Collateral references. — 21 Am. Jur. 2d, Criminal Law, §§ 567 to 579, 588 to

631; 21A Am. Jur. 2d, Criminal Law, §§ 1051 to 1058.

Sec. 12.55.005. Declaration of purpose. The purpose of this chapter is to provide the means for determining the appropriate sentence to be imposed upon conviction of an offense. The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute as provided in this chapter. In imposing sentence, the court shall consider

(1) the seriousness of the defendant's present offense in relation to other offenses;

(2) the prior criminal history of the defendant and the likelihood of rehabilitation;

(3) the need to confine the defendant to prevent further harm to the public;

(4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order;

(5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct; and

(6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms.

(§ 12 ch 166 SLA 1978)

NOTES TO DECISIONS

Chaney criteria incorporated in section. — The criteria of *State v. Chaney*, Sup. Ct. Op. No. 653 (File No. 1249), 477 P.2d 441 (1970) have essentially been incorporated into the criminal code as this section. *Nell v. State*, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).

Legislative intent reflected. — The presumptive sentencing provisions contained in AS 12.55.125 and 12.55.155 reflect the legislature's intent to assure predictability and uniformity in sentencing by the use of fixed and relatively inflexible sentences, statutorily prescribed, for persons convicted of second or subsequent felony offenses. *Juneby v. State*, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

The comprehensive and highly regimented provisions of the presumptive sentencing statute were enacted to assure that sentencing would become a predictable process and that disparity in sentencing between similarly situated offenders would be eliminated. *Lacquement v. State*, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982).

Criteria enumerated in this section must be given primary significance in the sentencing of first offenders under the Alaska Revised Criminal Code. *Kimbrell v. State*, Ct. App. Op. No. 101 (File No. 5944), 647 P.2d 610 (1982).

Adjustment of presumptive sentence. — When applied to the adjustment of a presumptive sentence, the *State v. Chaney*, Sup. Ct. Op. 653 (File No. 1249), 477 P.2d 441 (1970), analysis, as stated in AS 12.55.005, should not be broadened into a consideration of all circumstances of the offense, as if the sentence were being imposed anew, without regard for the

presumptive term. Instead, consideration of the Chaney criteria should focus specifically on the aggravating and mitigating conduct in the particular case. The presumptive term should remain as the starting point of the analysis, and the Chaney criteria should be employed for the limited purpose of determining the extent to which the totality of the aggravating and mitigating factors will justify deviation from the presumptive term. *Juneby v. State*, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Nature of offense is relevant factor in sentencing. — Throughout the supreme court's review of sentences, the degree of physical or psychological violence involved in the offense has been an important factor. *Kelly v. State*, Sup. Ct. Op. No. 2268 (File Nos. 4097, 4529), 622 P.2d 432 (1981).

In attempting to eliminate consideration of the nature of the offense from its consideration of relevant factors at sentencing, the superior court was clearly mistaken and the sentences in the case had to be reversed. *Kelly v. State*, Sup. Ct. Op. No. 2268 (File Nos. 4097, 4529), 622 P.2d 432 (1981).

Tailoring the sentence to fit the crime committed in the specific case is a central tenet of the sentencing provisions contained in the Revised Alaska Criminal Code. *Maal v. State*, Ct. App. Op. No. 295 (File No. 7076), 670 P.2d 708 (1983).

Applied in *Hartley v. State*, Ct. App. Op. No. 153 (File No. 5737), 653 P.2d 1052 (1982); *Peetook v. State*, Ct. App. Op. No. 178 (File No. 6630), 655 P.2d 1308 (1982); *Weston v. State*, Ct. App. Op. No. 183 (File No. 5734), 656 P.2d 1186 (1982); *Tazruk v. State*, Ct. App. Op. No. 195 (File No. 6954),

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed item 3572 has been inserted in this subchapter analysis as the probable intent of Congress to amend such item to conform to the 1987 amendment of such section. See the 1987 amendments note to § 3572.

The bracketed word "remission" has been inserted in item 3573 of this analysis because such item does not conform to its section catchline.

Amendments:

1984. Act Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(2), 98 Stat. 1987, effective and applicable as provided by § 235 of such Act, which appears as 18 USCS § 3551 note, added this subchapter and analysis.

1987. Act Dec. 11, 1987, P. L. 100-185, § 8(b), 101 Stat. 1282, amended the analysis of this subchapter by substituting item 3573 for one which read: "3573. Modification or remission of fine".

CROSS REFERENCES

This subchapter is referred to in 18 USCS §§ 3551, 3563, 3613.

SUBCHAPTER C. FINES

§ 3571. Sentence of fine

(a) **In general.** A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) **Fines for individuals.** Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$250,000;
- (4) for a misdemeanor resulting in death, not more than \$250,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$100,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$5,000; or
- (7) for an infraction, not more than \$5,000.

(c) **Fines for organizations.** Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$500,000;
- (4) for a misdemeanor resulting in death, not more than \$500,000;

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(5) for a Class A misdemeanor that does not result in death, not more than \$200,000;

(6) for a Class B or C misdemeanor that does not result in death, not more than \$10,000; and

(7) for an infraction, not more than \$10,000.

(d) **Alternative fine based on gain or loss.** If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(e) **Special rule for lower fine specified in substantive provision.** If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

(Added Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(2), 98 Stat. 1995; Dec. 11, 1987, P. L. 100-185, § 6, 101 Stat. 1280.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 3571 (Act June 25, 1948, ch 645, § 1, 62 Stat. 839) was repealed by Act Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(1), 98 Stat. 1987, effective on the first day of the first calendar month beginning 36 months after enactment, as provided by § 235(a)(1) of such Act, as amended, which appears as 18 USCS § 3551 note, and applicable as provided by such § 235, which appears as 18 USCS § 3551 note. Such section provided for rule as to correction of clerical mistakes.

Effective date of section:

Act Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 235(a)(1), 98 Stat. 2031, as amended, which appears as 18 USCS § 3551 note, provides that this section is effective on the first day of the first calendar month beginning 36 months after enactment.

Amendments:

1987. Act Dec. 11, 1987 substituted this section for one which read:

"(a) In general. A defendant who has been found guilty of an offense may be sentenced to pay a fine.

"(b) Authorized fines. Except as otherwise provided in this chapter, the authorized fines are—

"(1) if the defendant is an individual—

"(A) for a felony, or for a misdemeanor resulting in the loss of human life, not more than \$250,000;

"(B) for any other misdemeanor, not more than \$25,000; and

"(C) for an infraction, not more than \$1,000; and

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 316 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fines imposed in criminal cases
7 against organizations."

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

9 * Section 1. AS 12.55.035(c) is repealed and reenacted to read:

10 (c) Upon conviction of an offense, a defendant that is an orga-
11 nization may be sentenced to pay a fine not exceeding the greater of

12 (1) an amount that is

13 (A) \$500,000 for a felony offense or for a misdemeanor
14 offense that results in death;

15 (B) \$200,000 for a class A misdemeanor offense that
16 does not result in death;

17 (C) \$25,000 for a class B misdemeanor offense that
18 does not result in death;

19 (D) \$10,000 for a violation;

20 (2) two times the pecuniary gain realized by the defendant
21 as a result of the offense; or

22 (3) two times the pecuniary damage or loss caused by the
23 defendant to another, or to the property of another, as a result of
24 the offense.

25 * Sec. 2. AS 12.55.035 is amended by adding a new subsection to read:

26 (e) In imposing a fine under (c) of this section, in addition to
27 any other relevant factors, the court shall consider

28 (1) measures taken by the organization to discipline an
29 officer, director, employee, or agent of the organization;

1 (2) measures taken by the organization to prevent a recur-
2 rence of the offense;

3 (3) the organization's obligation to make restitution to a
4 victim of the offense, and the extent to which imposition of a fine
5 will impair the ability of the organization to make restitution; and

6 (4) the extent to which the organization will pass on to
7 consumers the expense of the fine.
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Comparison

Maximum Criminal Penalties for Organizations			
Current State Law	Federal Law	HB 316 As Passed the House	Proposed Judiciary CS
1. \$100,000 (felony or misdemeanor)	1. \$500,000 (felony or misdemeanor resulting in death) \$200,000 (class A misdemeanor) \$10,000 (class B misdemeanor, violation)	1. \$100,000 (felony or misdemeanor)	1. \$500,000 (felony or misdemeanor resulting in death) \$200,000 (class A misdemeanor) \$25,000 (class B misdemeanor) \$10,000 (violation)
OR	OR	OR	OR
2. Three times pecuniary gain	2. Two times pecuniary gain	2. Three times pecuniary gain	2. Two times pecuniary gain
	OR	OR	OR
	3. Two times pecuniary loss	3. Two times loss (not pecuniary loss)	3. Two times pecuniary loss
	Sentencing Guidelines*		Sentencing Guidelines*

*In deciding the appropriate level of fine for a convicted organization, the court shall consider 1) any measures taken by the organization to discipline its officers or measures it has taken to prevent a reoccurrence of the offence; 2) shall consider organization's obligation to make restitution and extent to which fine will impair its ability to make restitution; and 3) extent organization can pass on to consumers the expense of the fine.