

HB

119

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

RETURNED TO FINANCE FROM RULES

DATE: 4/12/94

FURTHER:

DATE TURNED INTO OFFICE: 4-19-94

The Finance Committee considered CS FOR HOUSE BILL NO. 119(JUD) am

Authorizing a sentencing court to impose a sentence of a day fine; directing the Alaska Supreme Court to develop and implement a day fine plan and report to the legislature on the use of day fines; amending Alaska Rule of Criminal Procedure 32; efd.

and recommends:

- replace with 5 CS CS HB 119 (FINANCE)
- or adopt previous _____ CS _____
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
Courts	1/6/94		80.1
IDLAW	1/22/93	0	
DDA(PDA)	2/2/94	0	
DIA(OPA)	2/2/94	0	
DPS	2/2/94	0	
DOC	2/2/94	0	

Appropriation No Fiscal Note

DO PASS:

Tom Kelly
Steve King
[Signature]
Don May

OTHER RECOMMENDATIONS:

1. [Signature]
 Co-Chair: Signature/Recommendation

2. [Signature]
 Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 119 (JIM)am

Revision Date: 2/1/94 Dept. Affected: Corrections
 Title: An Act regarding Day Fines BRU: Statewide Operations
 Component: All Institutions
 Sponsor: Representative Foster
 Requestor: Senate Finance COMPONENT SERIAL NO. 704-726

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004-GF						
1005 U/P Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY94) cost: \$ 0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The bill would not increase the Department's expenses. Depending upon the frequency with which the courts use this alternative for misdemeanants (our fastest-growing incarcerated population), future prison/jail expansion will be delayed and future operating expenses for more \$113/day beds will be avoided.

Prepared by: Diane Schenker, Special Assistant Phone: 786-2147/465-4643
 Division: Office of the Commissioner Date: 2/2/94
 Approved by Commissioner: J. Frank Prewitt, Jr. Date: 2/1/94
 Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL I : CSHB 119(JUD) am

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act authorizing a sentencing court to
impose a sentence on a defendant convicted BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Rep. Foster
 Requestor: S. RULES COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

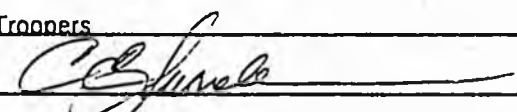
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 94) impact: \$ 0.00 _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 2/2/94
 Approved by Commissioner:  Date: 2/2/94
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 119 (Jud) am

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act authorizing a sentencing court to impose BRJ: Office of Public Advocacy
a sentence of a day fine on a defendant convicted..." Component: Office of Public Advocacy
 Sponsor: Rep. Foster
 Requestor: (S) Rules COMPONENT SERIAL NO. 43

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Nancy Bear Userra
 Agency: Administration

Date: 2/2/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 119 (Jud) am

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act authorizing a sentencing court to impose BRU: Public Defender Agency
a sentence of a day fine on a defendant convicted..." Component: Public Defender Agency
 Sponsor: Rep. Foster
 Requestor: (S) Rules COMPONENT SERIAL NO. 1631

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Salemi, Public Defender Phone: 264-4400
 Division: Public Defender Agency Date: _____
 Approved by Commissioner: Nancy Bear Usara Date: 2/2/94
 Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 119 (TUD) am

Revision Date: December 22, 1993
Title: "...authorizing a sentencing court to impose a sentence of a day fine instead of imprisonment..."
Sponsor: Representative Ulmer
Requestor: Governor's Office

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: December 22, 1993
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law Date: December 22, 1993

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 119 (JUD) am

ANALYSIS CONTINUATION:

This bill would amend the sentencing provisions in the state's Code of Criminal Procedure, AS 12.55, to establish a system of day fines as an intermediate punishment alternative to short-term incarceration and probation supervision. Under the bill, defendants convicted of non-violent misdemeanors, except violating a domestic violence restraining order, could be sentenced to fines based upon the severity of the offense, a defendant's criminal history, and a defendant's daily income, as adjusted for a defendant's ability to pay the fine. The bill does not repeal existing misdemeanor sentencing provisions, but rather it provides an alternative to those provisions.

Section 5 of the bill would provide that a sentence imposing a day fine shall be considered a civil judgment for the day fine. And the section further provides that the Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the department uses the civil process of the court to enforce or collect a day fine, the department would be awarded costs and attorney fees.

The Department of Law's collections unit currently collects unpaid criminal fines and was recently assigned the responsibility for collecting unpaid legal fees for state-provided criminal defense. The costs for these collections has averaged about one-third of the amount collected. However, the cost ratio for collection is expected to diminish as collections increase, and as collections procedures become more efficient, including establishment of electronic interfaces between the courts and the Department of Law, and between the Department of Law and the Department of Revenue.

At this point we are unable to determine if the bill will have an impact for our department. It is not known whether day fine sentencing provisions will result in a change in the number of unpaid fines that we currently handle, nor is it clear whether the amount in arrears will change. The court must undertake a comprehensive effort to develop and implement a day fine program. Consequently, a fiscal impact, if any, will not be known until sometime after the new sentencing provisions have been in effect. It does appear that day fine sentences would help reduce the growing cost of incarceration and supervised probation.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB 119 (JUD)AM

Revision Date: 01/21/94 Dept. Affected: Alaska Court System
 Title: An Act authorizing a sentencing court BRU: Trial Courts
to impose a sentence of a day fine... Components: _____
 Sponsor: Ulmer
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	52.5	52.5	52.5	52.5	52.5	52.5
TRAVEL	24.8					
CONTRACTUAL						
SUPPLIES						
EQUIPMENT	2.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	80.1	52.5	52.5	52.5	52.5	52.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

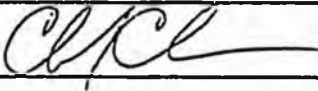
1002 Federal Receipts						
1003 GF Match						
1004 GF	80.1	52.5	52.5	52.5	52.5	52.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	80.1	52.5	52.5	52.5	52.5	52.5


POSITIONS

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY	1.0					

Estimate of current year (FY 94) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)
See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Agency: Alaska Court System Date: 01/21/94

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 01/21/94
 Agency: Alaska Court System

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Alaska Court System
Fiscal Analysis
CSHB 119 (JUDIAM)

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<u>Personal Services</u>			
Law Clerk I, 13D, Anchorage, NFP, 6 months <i>Provide legal research for day fine rule-making committee. One-time cost.</i>	15,912	1,575	17,487
Court Clerk II, 10A, Anchorage, PFT, 12 months <i>Assist judges statewide with income verification: review income tax returns and financial statements and perform credit checks. All judicial inquiries will be processed in Anchorage.</i>	24,012	10,998	35,010
Total personal services			<u>52,497</u>
<u>Travel</u> <i>(one-time cost)</i>			24,825
<i>Committee, appointed by Supreme Court, to develop rule on day fines. Committee will be comprised of two trial judges from each judicial district and two appellate judges. Committee will meet five times with meetings lasting approximately 3 days.</i>			
<u>Equipment</u> <i>(one-time cost for permanent position)</i>			2,800
<i>Desk, chair, computer and facsimile machine</i>			
			<u>\$80,122</u>

Note: The court system is not able to accurately estimate potential revenues from this legislation at this time.

4-19-94
SL
Adopted

WORK DRAFT

WORK DRAFT

WORK DRAFT

8-LS0496R
Luckhaupt
4/18/94

SENATE CS FOR CS FOR HOUSE BILL NO. 119 *Fyn*
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES FOSTER, B.Davis, Davies, Brown, Larson, Mulder

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing a sentencing court to impose a sentence of a day fine
2 instead of a sentence of imprisonment on a defendant convicted of a
3 misdemeanor; directing the Alaska Supreme Court to develop and implement a
4 day fine plan; requiring the Alaska Court System to report to the legislature on
5 the use of day fines; amending Alaska Rule of Criminal Procedure 32; and
6 providing for an effective date."

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

8 * Section 1. AS 12.55.015(a) is amended to read:

9 (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

1 (B) a day fine when authorized by law and as provided in
2 AS 12.55.036. if the court does not impose a term of periodic or continuous
3 imprisonment or place the defendant on probation:

4 (2) order the defendant to be placed on probation under conditions
5 specified by the court that may include provision for active supervision;

6 (3) impose a definite term of periodic imprisonment;

7 (4) impose a definite term of continuous imprisonment;

8 (5) order the defendant to make restitution under AS 12.55.045;

9 (6) order the defendant to carry out a continuous or periodic program
10 of community work under AS 12.55.055;

11 (7) suspend execution of all or a portion of the sentence imposed under
12 AS 12.55.080;

13 (8) suspend imposition of sentence under AS 12.55.085;

14 (9) order the forfeiture to the commissioner of public safety of a deadly
15 weapon that was in the actual possession of or used by the defendant during the
16 commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

17 (10) order the defendant, while incarcerated, to participate in or comply
18 with the treatment plan of a rehabilitation program that is related to the defendant's
19 offense or to the defendant's rehabilitation [,] if the program is made available to the
20 defendant by the Department of Corrections.

21 * Sec. 2. AS 12.55.035(a) is amended to read:

22 (a) Except as provided in AS 12.55.036. upon [UPON] conviction of an
23 offense, a defendant may be sentenced to pay a fine as authorized in this section or as
24 otherwise authorized by law.

25 * Sec. 3. AS 12.55.035(b) is amended to read:

26 (b) Except as provided in AS 12.55.036. upon [UPON] conviction of an
27 offense, a defendant who is not an organization may be sentenced to pay, unless
28 otherwise specified in the provision of law defining the offense, a fine of no more than

29 (1) \$75,000 for murder in the first or second degree, attempted murder
30 in the first degree, sexual assault in the first degree, sexual abuse of a minor in the
31 first degree, kidnapping, or misconduct involving a controlled substance in the first

1 degree;

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

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

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

5 (5) \$300 for a violation.

6 * Sec. 4. AS 12.55.035(c) is amended to read:

7 (c) Except as provided in AS 12.55.036. upon [UPON] conviction of an
8 offense, a defendant that is an organization may be sentenced to pay a fine not
9 exceeding the greater of

10 (1) an amount that is

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

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

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

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

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

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

22 * Sec. 5. AS 12.55 is amended by adding a new section to read:

23 Sec. 12.55.036. DAY FINES. (a) Upon conviction of a misdemeanor, other
24 than a violation of AS 11.41 and 11.56.740, a defendant may be sentenced to pay a
25 day fine as authorized by this section. If a day fine is imposed under this section, the
26 defendant may not be sentenced to pay a fine under AS 12.55.035, serve a term of
27 imprisonment, or be placed on probation.

28 (b) The Alaska Supreme Court shall adopt a day fine plan that includes

29 (1) an assessment of the gravity of all misdemeanor offenses, which
30 assessment must include the existence of prior offenses, and the assignment of
31 presumptive penalties to them in day fine units within the following ranges:

1 (A) for class A and unclassified misdemeanors, not to exceed
2 365-day fine units;

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

4 (2) a schedule of the presumptive day fine penalties;

5 (3) procedures for a court to increase or decrease the presumptive day
6 fine penalties if the court finds the existence of an aggravating factor under
7 AS 12.55.155(c) or a mitigating factor under AS 12.55.155(d);

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

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

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

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

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

26 (c) The amount of a day fine shall be the product of the net daily income of
27 the defendant, adjusted for the number of dependents actually supported by the
28 defendant, times the day fine penalty. When imposing a sentence of a day fine, the
29 court shall

30 (1) state on the record the

31 (A) presumptive day fine penalty for the offense, and whether

1 the court is adjusting the presumptive day fine penalty for the existence of
2 aggravating or mitigating factors;

3 (B) net daily income of the income of the defendant, adjusted
4 for the number of dependents actually supported by the defendant; and

5 (C) amount of the day fine;

6 (2) make written findings of the facts considered in

7 (A) finding the existence of aggravating or mitigating factors
8 and in assigning a value to those factors; and

9 (B) determining the defendant's gross and daily net incomes.

10 (d) When imposing a sentence of a day fine, the court may permit the payment
11 of the day fine in specified installments or within a certain period of time, provided
12 the entire day fine is paid within 180 days of imposition.

13 (e) A sentence imposing a day fine shall be considered a civil judgment for
14 the day fine. The Department of Law shall enforce the judgment and may utilize any
15 procedure available for the enforcement of civil judgments. If the Department of Law
16 uses the civil process of the court to enforce or collect a day fine, the department shall
17 be awarded costs and attorney fees.

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

21 (1) a comparison of the number of defendants receiving a day fine as
22 a sentence with the number of other defendants, eligible to receive a day fine, who
23 receive another sentence;

24 (2) a comparison of the recidivism rates between defendants receiving
25 a day fine with other defendants,

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

27 (B) not eligible for a day fine, who receive another sentence;

28 (3) the potential savings to the state from the number of defendants,
29 who are eligible to receive a sentence of imprisonment, and who receive a day fine,
30 assuming those defendants would have been sentenced to a term of imprisonment;

31 (4) the amount of day fines collected, the success rate of collections,

1 and the number of cases requiring civil process to collect the day fine; and

2 (5) recommendations concerning expansion or restriction of the use of
3 day fines, including proposals for legislation.

4 (g) Money collected under this section shall be deposited into the general fund
5 and separately accounted for under AS 37.05.142. The annual estimated balance in
6 the account maintained under AS 37.05.142 for day fines collected under this section
7 may be appropriated by the legislature as follows: (1) 25 percent of the annual
8 estimated balance for grants and claims paid by the Council on Domestic Violence and
9 Sexual Assault; (2) 25 percent of the annual estimated balance for grants and claims
10 paid by the Violent Crimes Compensation Board; and (3) the balance for any lawful
11 purpose. Nothing in this subsection creates a dedicated fund.

12 * Sec. 6. CHANGE OF CRIMINAL RULE. AS 12.55.036, added by sec. 5 of this Act, has
13 the effect of modifying the sentencing provisions of Alaska Rules of Criminal Procedure 32,
14 by establishing procedures for imposition of sentences of day fines.

15 * Sec. 7. AS 12.55.036(f), as enacted by sec. 5 of this Act, is repealed February 2, 2004.

16 * Sec. 8. This Act takes effect July 1, 1994.

HOUSE LETTER OF INTENT

LETTER OF INTENT
CSHB 119 (JUD)

BY: REPRESENTATIVE FRAN ULMER
REPRESENTATIVE BRIAN PORTER

It is the intent of the Legislature that a defendant may not be sentenced to pay a day fine if the offense jeopardized the personal safety of the victim.

ADOPTED: 4/21/93

SPONSOR STATEMENT
HB 119
DAY FINES

I am excited about HB 119 which will authorize the use of day fines as sanctions for certain misdemeanor offenses. I think that it is time that we developed new and innovative ways of dealing with crime and criminals.

In recent years, with the skyrocketing costs of prisons and jails, overcrowded courts and staggering probation and parole caseloads, more and more jurisdictions in the United States have begun to examine and implement effective alternatives - including day fines..

Day fines have been used effectively in the Scandinavian countries, Germany, England and other European countries for a number of years. They are the primary alternative to imprisonment in England, West Germany and Sweden. In West Germany, since 1969, prison sentences under six months are allowed only when incarceration is considered indispensable. The incidence of incarceration for sentences of less than six months has dropped from 110,000 per year to about 10,000 per year. And, there has been no increase in the rate of fine default.

In the U.S. we use primarily a tariff type system of fines. Set amounts are established for each offense, they are used in conjunction with other sanctions and not as an alternative to costly prison or probation.

HB 119 establishes the day fine as a stand alone sanction for misdemeanors, other than those which are categorized as crimes against a person. In a two step process, the sentencing judge will determine the amount of a fine based on the seriousness of the offense and the offender's ability to pay. In that manner, the economic burden - the punitive effect of the fine - will be equalized across the range of offenders' incomes. The punishment will fit the crime.

The Alaska Department of Corrections reports severe overcrowding. Many misdemeanants are scheduled for their short jail sentences far into the future. Almost 50% of the sentenced misdemeanants serve less than 10 days. Common offenses which could be handled by day fines under HB 119 include: disorderly conduct, fish and game violations, theft in the 4th degree, criminal mischief, shoplifting and bad checks.

Experience in other systems demonstrates that day fines are appropriate in most

instances where short incarceration is now used. Experience also indicates that a greater percentage of fines are actually paid under the day fine system than under the traditional tariff type.

So major advantages to such a system include:

- The punishment fits the crime.
- A higher percentage of fines are actually collected.
- Less serious offenders are kept out of expensive prisons and programs.

I hope you will join me and the Alaska Court System in support of this bill.

Back-up



National Institute of Justice

Research in Brief

September 1987

Fines as Criminal Sanctions

Sally T. Hillsman, Barry Mahoney, George F. Cole, and Bernard Auchter

The fine is one of the oldest forms of punishment, its history predating Hammurabi. In 1973 the Task Force on Corrections of the National Advisory Commission on Criminal Justice Standards and Goals found that "properly employed, the fine is less drastic,

far less costly to the public, and perhaps more effective than imprisonment or community service."

Until very recently, this recommendation has gone largely unheeded because too little was known of what

constitutes proper administration of fines. Today, however, with record jail and prison populations and probation caseloads steadily rising, the fine is gaining renewed attention—especially since Western Europe increasingly uses fines even in nontrivial cases.

From the Director

The current options available in sentencing to criminal court judges, either incarceration or release of a convicted felon on probation, leave some caught between Scylla and Charybdis. While States are expanding prison capacity and improving conditions, the majority still operate under court order to relieve crowding conditions and must release prisoners into the community on probation.

This dilemma has created an urgent need to develop an effective range of constitutionally appropriate sanctions which reduce repeated victimization and serve as an effective penalty for those who have been convicted of illegal conduct.

A broad spectrum of sentencing choices was the subject of a National Institute of Justice *Research in Brief* published in January 1985. In it, Pierre S. du Pont IV, then Governor of Delaware, described the tremendous pressure exerted on State resources by corrections policy. As Governor, he developed a "more flexible and effective sentencing structure" for his State, which incarcerates more people per capita than all but two other States.

One of the features of that plan was its use of fines as a basic criminal penalty. In the past fines have been perceived as a more lenient sanction due to failure on the part of authorities to emphasize their collection and because of inequities built into the fine system itself.

The introduction of the "day-fine" concept brought a fair schedule to the assignment of fines. Under the "day-fine" system the number of days reflects the severity of the crime and the seriousness of the offender's prior record; the dollar amount is determined by factoring that number of days with the offender's economic resources, which include income from salary and other assets.

If two offenders with similar prior records (and no particular threat to community safety) were convicted of crimes of equal gravity, they might each be assessed a "5-day fine." If one earned only minimum wage, however, he or she would be fined \$135. If the other earned 10 times as much, the fine would be \$1,350. If both failed to pay the fine, each defaulter would serve the same number of days—5—in jail.

Using a system such as this, courts in Europe have made the fine a serious penalty, one that can be severe enough to constitute real punishment and thus carry a deterrent and rehabilitative message.

One advantage of the fine is that it actually brings money into the justice system, in contrast with the cost of incarceration—which sometimes drains tax resources up to \$35,000 a convicted person per year. In fact, those paying fines are literally paying a debt to society, rather than contributing to existing burdens on State resources. Fines can be combined with other penalties to

meet the specific objective of justice applicable to each offender.

A fine can be combined with restitution, community service, weekend incarceration, assessment of court costs — and with a sentence whose suspension will be revoked if the offender fails to meet all other requirements, including payment of the fine.

This *Research in Brief* summarizes three key research projects on fines as criminal penalties and the applicability of the day-fine system to American courts. The National Institute of Justice is currently funding an experiment in applying a day-fine system to the criminal courts of Staten Island, New York.

Careful use by judges of the option to fine may prove to be a valuable method of truly making the punishment fit the crime. This concept needs to be carefully evaluated to assess whether the reality reflects the intention of equitable punishment under the law before the use of fines is adopted as criminal justice policy.

Criminal justice is too important a field to suffer unintended consequences. Knowledge about practices, to find out what works, is what criminal justice research is all about.

James K. Stewart
Director
National Institute of Justice

In the United States, fines are more widely used than many recognize: Well over a billion dollars in fines are collected in criminal courts each year. This form of punishment is used in some form by virtually all American courts, ranging from its rare use as the sole sanction for a felony in general jurisdiction courts to its regular use either alone or combined with other, often noncustodial sanctions in courts of limited jurisdiction.

How can fines be used more effectively in criminal cases? In the studies summarized in this *Research in Brief*, researchers describe and analyze court experience with imposition and enforcement of fines, concluding that judges and prosecutors need to consider more innovative uses of fines, particularly when offenders pose no serious threat to community safety.

An effective fine program requires that judges have adequate information about offenders' economic circumstances and use it in setting fine amounts. It also requires improved collection methods. The result can relieve pressure on probation services and jails while promoting confidence that sentences are fair and punishment is certain.

Pros and cons

Proponents of the wider use of fines argue that—

- It can be an effective punishment and deterrent for crimes of varying levels of severity. It can deprive offenders of their ill-gotten gains and, for some, contribute to rehabilitation.
- It can combine with other noncustodial sanctions to meet multiple sentencing goals.
- It can be adjusted to a level appropriate to an offender's individual circumstances and the seriousness of the offense.

Points of view or opinions expressed in this publication are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The Assistant Attorney General, Office of Justice Programs, provides staff support to coordinate the activities of the following program Offices and Bureaus: National Institute of Justice, Bureau of Justice Statistics, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.

Table 1

Frequency of fine utilization for cases other than parking and routine traffic matters, by type of court

Type of court	Usually cases	Most cases	About half	Seldom	Never	Total
Limited jurisdiction	19	38	10	7	0	74
General jurisdiction (felony, misdemeanor, ordinance violation)	1	15	7	5	0	28
General jurisdiction (felony only)	0	5	4	13	2	24
Total	20	58	21	25	2	126

Source: Hillsman, Siegel, and Mahoney, telephone survey.

- It is relatively inexpensive to administer, usually relying on existing agencies and procedures.
- It is financially self-sustaining; unlike incarceration and probation, fines produce revenue.

However, critics argue that—

- Because fines cannot achieve the sentencing goal of incapacitation, they are inappropriate for offenders who pose a risk to the community.
- Even when incapacitation is not the goal, fines tend to be low, thus limiting their degree of punishment.
- Fines are easier for more affluent offenders to pay than for poorer offenders.
- If a fine is high enough to avoid those problems, it is difficult to collect and adds to the administrative burdens of the court.
- It is impossible to fine indigent offenders because the fine cannot be collected and may result in imprisonment for default.

These conflicting views reflect different perceptions of how fines actually work and their potential utility. Recent research on the use of fines, here and abroad, provides a base for improving policy and practice in this area.

Current uses of fines

A survey of 126 different types of courts around the country shows fines being used extensively (see Table 1), including use for a broad range of criminal offenses some of which are not trivial (see Table 2).

Judges in courts of limited jurisdiction report they impose fines, either alone (36 percent) or in combination with another penalty, in an average of 86 percent of their sentences. General jurisdiction judges report imposing fines about half as often (42 percent); fines as a sole penalty in less than 10 percent on average.

Fines are most often imposed on first offenders with known ability to pay. A third or more judges overall report imposing a fine in more than half the cases in which an adult first offender is sentenced for offenses such as these:

- Sale of an ounce of cocaine.
- Fraud in a land deal.
- Embezzlement of \$10,000.
- Assault with minor injury.
- Auto theft of \$5,000 value.
- Harassment.
- Bad check.

However, fines are not now being used in American courts as an alternative to incarceration or probation. If fines are used at all in cases at risk of imprisonment or community supervi-

sion, they tend to be add-ons to other sanctions. Few judges seem to use the fine alone if the offender has a prior record and the offense is moderately serious.

This contrasts sharply with practices in some Western European criminal courts where the fine is often a sole penalty and is widely used for repeat offenders.

As a policy matter, fines are viewed as an alternative to short-term imprisonment. In West Germany, when new legislation encouraged judges to avoid sentences to imprisonment of 6 months or less, such sentences dropped from 113,000 a year (20 percent of the total) to under 11,000 (1.3 percent) without any increase in longer term imprisonment.

Instead, fine-alone sentences increased from 63 percent of the total to more than 80 percent.

Amounts of fines

Most State penal codes set maximum amounts of fines for particular classes of offenses. Within that maximum, judges have wide discretion in setting the amounts of fines. Maximums tend to be low, although legislatures in many States are increasing them in anticipation that judges will need higher amounts to fine better-off offenders.

Fines actually imposed by judges tend to be well below statutory limits, partially reflecting the frequent judicial practice of imposing other monetary penalties as part of the sentence. These include restitution, victim compensation, court costs, directed contributions to governmental or private social agencies, probation supervision fees, and payment for alcohol or drug treatment.

At least 31 States authorize imposition of court costs; 11 States authorize surcharges on fines; 7 States permit "penalty assessments" on offenders. One Texas judge explained why he used fines infrequently: "After paying \$56 court costs, \$10 fee to the Crime Victim Compensation Fund, \$200 public defender fee, and \$100 to \$500 in probation supervision fee, the defendant will be sufficiently punished."

"Tariff systems," however, appear to account more than other factors both for the low amounts imposed as fines in the United States and the limited use of fines as sanctions.

Tariff systems are informal understandings that fixed fine amounts will be imposed on all defendants convicted of a particular offense. These amounts are generally based on what can be paid by the poorest offenders. But the retributive trend in sentencing tends to focus judges' attention on the severity of a crime.

Lacking models of other ways to set fine amounts and also often lacking adequate financial information on defendants, judges apparently limit

Table 2

Types of offenses for which fines are commonly imposed, by type of court

	Limited juris. N = 74	Gen. juris. (felony, misd., and ordinance) N = 28	Gen. juris. (felony only) N = 24	Total N = 126
Driving while intoxicated, DUI	54	22	2	78
Reckless driving	30	9	0	39
Violation of fish and game laws and other regulatory ordinances	24	3	0	27
Disturbing the peace breach of the peace disorderly conduct	32	8	1*	41
Loitering soliciting prostitution	15	4	0	19
Drinking in public public drunken- ness carrying an open container	14	5	0	19
Criminal trespass	10	2	1	13
Vandalism/criminal mischief/ malicious mischief property damage	9	3	3	15
Drug-related offenses (including sale and possession)	23	10	11	44
Weapons (illegal possession, carrying concealed, etc.)	6	2	1	9
Shoplifting	17	3	0	20
Bad checks	14	2	0	16
Other theft	19	9	8	36
Forgery/embezzlement	2	3	2	7
Fraud	1	4	1	6
Assault	29	14	5	48
Burglary breaking and entering	2	6	6	14
Robbery	0	1	3	4

* Superior Court, Cobb County—1 percent of caseload includes misdemeanors

Source: Hillsman, Siegel, and Manney, telephone survey

1. Robert W. Gillespie, "Fines as an alternative to incarceration: The German experience," *Federal Probation* 44,4 (December 1980): 20-26.

their use of the fine because tariff systems restrict their ability to reflect the seriousness of a crime.

Information for sentencing

Judges were asked to indicate how often they were provided information on an offender's background and economic status and how useful they found this information.

In all courts, judges were more likely to have information about criminal records and the instant offense than about the offender's family and economic status. In fact, although courts of limited jurisdiction are more likely to assess fines, general jurisdiction judges have more economic information (Table 3).

In both kinds of courts, judges said the criminal record and circumstance of the offense are the most helpful information in determining the sentence and that the assets and income of the offender are the *least useful* information.

In view of the tariff system, this opinion is less anomalous than it might seem. If the variation in amounts of fines is limited and is related primarily to the seriousness of offenses, judges would have relatively little use at sentencing for information on offenders' economic status.

This in turn may explain the lack of consideration judges give to fines as sole sanctions for repeat offenders convicted of nontrivial crimes. If we are to explore policies emphasizing fines as a primary sanction and as an alternative to incarceration and probation, we must help judges routinely obtain information on offenders' economic circumstances and to increase the weight such information is given.

Obtaining financial information is relatively simple. Many European courts have been accomplishing these tasks smoothly for years, often in order to use a system of fine-setting known as "day fines."

Under day-fine systems, the number of fine units (or severity of punishment) is determined by the seriousness of the offense but *without regard to the offender's means*. The monetary value of each unit is then set explicitly

Table 3

Judges' information on offenders' economic status, by jurisdiction

	General (%)	Limited (%)
Employment	88	64
Income	74	41
Assets	57	25

Source: Cole, Mahoney, Thornton, and Hanson, mail survey

in relation to what the offender can afford.

In Europe, this second stage relies primarily on self-reported information. These courts, which use fines extensively and in high amounts, find that reliance on defendants to provide information on their economic status is not a barrier to the wider imposition of fines.

Judges' attitudes on fines

Judges across this country acknowledge many of the supposed advantages of fines as sentences. Furthermore, they disagree with many of the arguments against them. However, there seems to be little relationship between judges' attitudes toward fines and their use of them.

Judges tend to agree that fines are relatively easy to administer, that they help prevent crowding in correctional facilities, that they can be adjusted to fit the severity of the offense and the offender's income, and that fines help reimburse the costs of maintaining the criminal justice system.

The majority of judges also *disagree* that statutes prevented them from imposing high fines, that decisions of the U.S. Supreme Court prevented their fining poor people, and that fines have no rehabilitative effect.

The survey revealed, however, that two views about fines commonly held among judges are a major impediment to the wider use of fines: That fines allow more affluent offenders to "buy their way out," and that poor offenders cannot pay fines.

Over half the judges agreed that "fines ordinarily have little impact on the affluent offender"—61 percent in courts of general jurisdiction and 53 percent in limited jurisdiction. While 61 percent of general jurisdiction judges agreed that "there is no effective way to enforce fines against poor people," half the limited jurisdiction judges—who do most of the fining in American courts—disagreed.

Upper-court judges are charged with sentencing offenders who are convicted of the more serious range of offenses. They would tend to hold the traditional assumption that high fine amounts are required to reflect offense severity and to regard it as unreasonable to assess such amounts on the poor. Equity considerations would also suggest to these judges that they cannot sentence more affluent offenders to significantly higher fine amounts.

While these same issues arise in the lower courts, they are probably less of an impediment because of the more limited range of seriousness of offenses dealt with in these jurisdictions. The low fine amounts in these courts reflect less serious offenses; they are viewed as collectable from poorer offenders and, as tariffs, may be applied to the more affluent as well.

The survey revealed, finally, that judges' attitudes about fines, whether positive or negative, are not held very intensely. Until very recently, there has been little systematic examination of fine use and administration and virtually no attention to the potential advantages, disadvantages, or operational implications of expanded use of fines.

Collection and enforcement

Among criminal sanctions, monetary penalties are typically the only ones implemented primarily by the court. For most other sanctions, the sentencing judge relies on another agency of government, usually in the executive branch, to see that the sentence is carried out.

The effectiveness of fine administration has important implications for the fine as a penal sanction and for the court as an institution. A fine is a court order. If it is not paid, the integrity and credibility of the court is called into question.

If fines *are* collected and enforcement regarded seriously, on the other hand, the resulting punishment may have rehabilitative value and deterrent consequences. If fines are known to be collected, judges and prosecutors may be more likely to see them as a useful alternative to incarceration or probation.

Finally, the payment of fines may be seen by the community as an important means of rendering deserved punishment while reimbursing the public treasury.

Many judges perceive problems in fine collection and enforcement procedures, but they are generally unaware what practices are effective. Research in the United States and in England emphasizes, for example, that aspects of the sentencing process itself are associated with the subsequent effectiveness of fine collection. These include setting the amount at a level the offender is able to pay, making only limited use of installment payment plans, and allowing relatively short periods of time for payment. However, such practices are not commonly followed by American courts.

Effective enforcement

What can be done if the offender fails to pay a fine? Research in England and West Germany indicates that simple procedures, such as prompt notification to an offender that payments are in arrears, have positive results. Full payment occurs in many cases without further, more coercive and costly action.

In American courts, however, routine notification letters are not common. Instead courts tend to move immediately to issuance of an arrest warrant for the offender who has not paid. Sixty-eight percent of upper court judges and 85 percent of lower court judges said this was their procedure.

Reliance on warrants raises several important policy issues, including relationships within the justice system. Although enforcement of a warrant is important to the court, evidence abounds that serving a warrant for nonpayment of a fine has low priority for law enforcement agencies. And American courts generally give little professional administrative attention to enforcing fines.

A major reason for this is that many professional court administrators dislike taking the role of bill collector when the administrative costs may be greater than the amount of the fine. As a result, courts rarely designate one person or position as having ultimate responsibility for overseeing the outcome of a sentence to a fine and for seeing to it that the process is properly carried out.

Thus, no one is responsible or accountable if enforcement breaks down. There are few incentives to make fining a success, but rather incentives to pass the enforcement task on to someone else—to the police via an arrest warrant, for example.

Judges tend to view the actions of offenders as the major fine-collection problem rather than inadequacies in the court's administrative mechanisms. Sentencing judges tend not to be familiar with the administrative tasks involved in enforcing fines except when defendants in default are brought before their bench.

However, research both in England and in the United States indicates that sound administrative procedures must be set for fines to be collected routinely. It should be possible to do this without overly burdensome costs or undesirable levels of coercion.

Assuming fines are set properly in the first place with respect to the offense and to the offender's means, the court must make plain at sentencing that it views the fine as a serious obligation for which it unequivocally expects payment. Otherwise, specific coercive means will be employed.

The offender's payments must be closely monitored by people who take the collection responsibility seriously and who are held accountable for it. When an offender does not meet the terms set by the court, enforcement actions would be immediate and personal, with a steady progression of responses creating mounting pressure and increased threats of greater coercion.

Careful tracking of payments, swift notification by letter and telephone that payments are due, and credible threats of greater coercion (including the seizure of property) are effective. Research suggests that most nonpay-

ment cases result from improperly set fines, administrative ineptitude, and failure to credibly threaten at the proper time.

Fines and fairness

Many persons convicted of criminal offenses are poor. To what extent is it feasible to impose a fine and enforce it as a punishment for criminal behavior by such persons?

Being poor does not necessarily mean being entirely without financial resources. There are varying degrees of poverty, somewhat obscured by uniform application of the label "indigent."

Some poor people have income for comforts as well as necessities. Others have few comforts, but manage on small budgets. Still others are destitute, people who have no home and receive no social services. At the low end of the poverty spectrum—where we find a group of offenders who are in extreme need—fines are probably inappropriate, unless the offense is trivial and a nominal fine can be suspended.

Fines are meaningful elsewhere along the spectrum, however, even for persons with income well below the poverty line—including welfare recipients, the working poor, the temporarily or seasonally unemployed.

A fine imposed on a member of these groups may require substantial economy—and it should do so if it is to be truly a punishment. But paying a fine need not require grave hardship if it is tailored not only to the offense but also to the offender's resources.

At the other end of the spectrum are those offenders who are not by any conventional definition poor. Significant amounts of fines may be required to ensure an appropriate sanction in these cases, even if the offense is not major.

Many judges recognize these realities and tend to focus on a defendant's ability to pay a particular fine rather than whether he or she is too poor to be fined at all. Indeed, poor people *are* being fined both in this country and in Europe, although both practices and views vary considerably.

Most judges surveyed indicated that they would be less likely to impose a fine if the defendant was unemployed

or on public assistance—but 38 percent of the limited jurisdiction court judges said that this would make no difference in their sentencing decision. Another 6 percent said it would increase the likelihood they would impose a fine.

In order to develop an effective fine policy, we must think of offenders as ranging along a spectrum of economic circumstances as well as along a spectrum of offense severity and culpability. Only thus can prosecutors and judges think of fines not as a penalty for less serious crimes or an addition to other penalties, but as an integral part of their sentencing repertoire.

Table 4 shows how judges tend to think now. However, there would seem to be some potential for reducing the use of incarceration in cases such as this in which the criminal behavior carries a low risk of danger yet the offense seems to require punishment and not merely an admonition.

Experiences of courts in several Western European countries provide tested sentencing methods—particularly the use of the day fine—that could enable American judges to tailor fine amounts more precisely to variations in both severity of offenses and means of offenders.

The day fine

The day-fine system is a Scandinavian sentencing practice that has been adapted for use in West Germany. It enables sentencing judges to impose monetary punishments commensurate with the seriousness of the offenses and the culpability of the offender, while at the same time taking account of offenders' differing economic circumstances.

The basic notion is that the punishment should be proportionate to the severity of the offense but equal across individuals with differing financial resources.

Consider two offenders with similar criminal histories convicted of similar offenses but with different incomes and assets. Both would be "fined" the same number of units of punishment; however, the one who is more affluent would be fined a total dollar amount that is greater than the poorer offender is fined.

In the event of default, however, the sanctions imposed (e.g., jail time) would be the same for both because they would be based on the number of units of punishment, not the dollar amount.

Could European day-fine systems be adapted to American courts? About four out of five judges agreed that one of the advantages to fines is that they can be adjusted to fit the income of offenders as well as the severity of offenses. We can observe individual judges around the country attempting

to do just this by modifying tariff systems to approximate the more formal day-fine systems of Europe.

U.S. judges cannot always accomplish this in a systematic fashion, partly because of the lack of routine information on offenders' means. But many judges (and prosecutors) around the country appear to be open to the idea: over half the judges felt a day fine could work in their own courts, and many said they were willing to try it.

The day-fine concept is attracting increased attention among American

Table 4

Judges' choice of sanctions in hypothetical larceny case, by type of court

The hypothetical case: A 24-year-old male defendant is charged with larceny and criminal possession of stolen property. He is alleged to have removed a \$40 pair of slacks from a department store, concealing them in a box that had a forged store receipt and leaving without paying. He was arrested outside the store. The defendant pleaded guilty to the criminal possession charge and the larceny charge was dropped.

Custody status: On \$1,000 bail.

Family status: Single with no dependents.

Employment status: Janitor earning \$160 per week.

Offender record: 1979 Bad check Convicted—restitution.

1980 Bad check Dismissed.

1981 Larceny Convicted—6 months probation.

1982 Larceny Convicted—1 year probation.

The instruction: On the basis of this information we would like your estimate of the sanction you would likely impose.

Sanction	General juris. N = 631 judges		Limited juris. N = 478 judges	
	%	N	%	N
Jail/prison only	40	252	27	130
Jail/prison plus fine	15	92	27	130
Jail/prison plus fine plus other	18	112	23	111
Jail/prison plus sanctions other than fine	17	109	11	54
Fine only	2	15	4	20
Fine plus sanctions other than jail	5	34	6	28
Other sanctions, alone or in combination, not including jail, prison, or fine	3	17	1	5
Total	100	631	100	478

Source: Cole, Mahoney, Thornton, and Hanson, mail survey

criminal justice planners and practitioners as they struggle with the problems of crowding in jails and prisons and as they become more dissatisfied with present sentencing alternatives.

A first effort to test the concept scientifically in American courts is underway in Staten Island, New York, with support from the National Institute of Justice, where a day-fine experiment is being planned by the Vera Institute of Justice in collaboration with the Richmond County District Attorney and the Richmond County Criminal Court.

Recommendations for judges

- Fines and other monetary sanctions are punishments and should be imposed high enough to reflect the seriousness of the offense and the prior record of the offender. At the same time, the amount must be within the offender's ability to pay.
- In setting the fine, accurate information on the offender's economic status should be sought and the total of all monetary sanctions taken into account.
- The defendant should be informed that prompt payment is expected, be told where to pay it, and advised of the consequences of nonpayment. The time allowed for payment should be relatively short, although unusual circumstances may suggest some flexibility.

Incentives should be used to encourage prompt payment. They may include reductions for early payment, penalties for lateness, and imposition of a suspended sentence to jail or community service.

- Judges should use data on sentencing practices to periodically reexamine the ways they use fines, both alone and combined with other sentences.

Recommendations for court administrators and clerks

- Courts should ascertain what offender-related information is regularly provided to sentencing judges. Where there are gaps such as lack of information on offender income and assets, procedures should be devised to ensure that such information is consistently provided. For example, a probation department, pretrial services agency,

or defense counsel could provide the information on a simple one-page form.

- Judges should be regularly given data on the types of sanctions imposed on offenders convicted of specific types of crimes.
- Using individual case records, fines-management information systems should be developed, containing six basic types of data: sentence imposed, inventory information, input-output information, effectiveness in collecting fines, processing times and procedures, and identification of problem cases. Courts should improve collection methods, and sentencing judges should be aware of the methods used.
- Administrative responsibility for enforcing monetary sanctions should be clearly fixed, with a senior member of administrative staff held accountable for the court's performance.
- Goals for effective fine administration (e.g., percentage of cases in which fines are fully collected within 30 or 60 days) should be set, and the court's enforced performance monitored against these goals.
- Procedures should be established to identify defaulters promptly and institute action against them.
- Courts should make direct contact with offenders who fail to pay within the time period set. Prompt, noncoercive reminder letters and phone calls should be tried before a warrant issues. Judges should be fully aware of the procedures and their effectiveness.

Recommendations for legislation

- Where statutory ceilings on fine amounts are low, these should be raised.
- Judges should be required to take account of offenders' economic circumstances in imposing fines and other monetary sanctions.
- Statutory restrictions on the use of the fine as a sole sanction for specific offenses should be removed.
- Statutes that provide for flat "dollars-to-days" equivalencies when fine balances are unpaid should be revised

to ensure that offenders convicted of similar offenses and with similar prior records should serve essentially similar jail terms in the event of default.

- Courts should undergo a periodic outside audit at least every 2 years to ensure that records are adequately maintained and that appropriate procedures are followed in enforcing fines and handling the money paid.
- State court administrators should be explicitly authorized to establish basic minimum standards or requirements for recordkeeping and statistical reporting.

About the authors

Bernard Aughter is a research project monitor on the staff of the National Institute of Justice. George Cole is a professor of political science at the University of Connecticut. Sally Hillsman is Director of Research at the Vera Institute of Justice, and Barry Mahoney is Director of Research at the Institute for Court Management of the National Center for State Courts.

This *Brief* was drawn from three Institute-funded projects whose reports are available from the National Institute of Justice/NCJRS (National Criminal Justice Reference Service). For information, telephone 800-851-3420. From Maryland or the Metropolitan Washington, D.C., area, call 301-251-5500. The reports are:

Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction. By Sally T. Hillsman, Joyce L. Sichel, and Barry Mahoney; a joint project of the Vera Institute of Justice and the Institute for Court Management. Full report, 341 pp., NCJ 094812. Executive summary, 84 pp., NCJ 096334.

Enforcement of Fines as Criminal Sanctions: The English Experience and Its Relevance to American Practices. By Silvia S.G. Casale and Sally T. Hillsman, Vera Institute of Justice. Full report, 383 pp., NCJ 106271. Executive summary, 54 pp., NCJ 104329.

Practices and Attitudes of Trial Court Judges Regarding Fines as a Criminal Sanction. By George F. Cole, Barry Mahoney, Marlene Thornton, and Roger A. Hanson; a joint project of the University of Connecticut and the Institute for Court Management. Executive summary, 71 pp., NCJ 106270.

FISCAL NOTE

.o. 1

Bill Version: HB 119
(H) Publish Date: 3/12/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Alaska Court System
Title: An Act authorizing a sentencing court BRU: Trial Courts
to impose a sentence of a day fine... Components: _____
Sponsor: Ulmer _____
Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	52.5	35.0	35.0	35.0	35.0	35.0
TRAVEL	24.8					
CONTRACTUAL						
SUPPLIES						
EQUIPMENT	2.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	80.1	35.0	35.0	35.0	35.0	35.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	80.1	35.0	35.0	35.0	35.0	35.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL	80.1	35.0	35.0	35.0	35.0	35.0

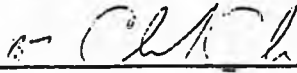
POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY	1.0					

Estimate of current year (FY 93) impact: None

ANALYSIS: (Attach a separate page if necessary)
See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
Division: Alaska Court System Date: 03/10/93

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 03/10/93
Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<u>Personal Services</u>			
Law Clerk I, 13D, Anchorage, NPP, 6 months <i>Provide legal research for day fine rule-making committee. One-time cost.</i>	15,912	1,575	17,487
Court Clerk II, 10A, Anchorage, PFT, 12 months <i>Assist judges statewide with income verification: review income tax returns and financial statements and perform credit checks. All judicial inquiries will be processed in Anchorage.</i>	24,012	10,998	35,010
Total personal services			<u>52,497</u>
<u>Travel</u> (one-time cost)			24,825
<i>Committee, appointed by Supreme Court, to develop rule on day fines. Committee will be comprised of two trial judges from each judicial district and two appellate judges. Committee will meet five times with meetings lasting approximately 3 days.</i>			
<u>Equipment</u> (one-time cost for permanent position)			2,800
<i>Desk, chair, computer and facsimile machine</i>			
			<u>\$80,122</u>

Note: The court system is not able to accurately estimate potential revenues from this legislation at this time.

FISCAL NOTE

No. 2
 Bill Version: HB 119
 (H) Publish Date: 3/12/93

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Revision Date: March 8, 1993
 Title: "...authorizing a sentencing court to impose a sentence of a day fine instead of imprisonment..."
 Sponsor: Representative Ulmer
 Requestor: Representative Ulmer

Department Affected: Department of Law
 BRU: Legal Services
 Component: Operations
 COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
 Please see attached analysis.
Richard I. Peoues

Prepared by: Richard I. Peoues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: March 8, 1993
 Date: March 8, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 119

X10.2

P.2/2

ANALYSIS (Continued):

This bill would amend the sentencing provisions in the state's Code of Criminal Procedure, AS 12.55, to establish a system of day fines as an intermediate punishment alternative to short-term incarceration and probation supervision. Under the bill, defendants convicted of non-violent misdemeanors could be sentenced to fines based upon the severity of the offense, a defendant's criminal history, and a defendant's daily income, as adjusted for a defendant's ability to pay the fine. The bill does not repeal existing misdemeanor sentencing provisions, but rather it provides an alternative to those provisions.

Section 5 of the bill would provide that a sentence imposing a day fine shall be considered a civil judgment for the day fine. And the section further provides that the Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the department uses the civil process of the court to enforce or collect a day fine, the department would be awarded costs and attorney fees.

The Department of Law's collections unit currently collects unpaid criminal fines and was recently assigned the responsibility for collecting unpaid legal fees for state-provided criminal defense. The costs for these collections has averaged about one-third of the amount collected. However, the cost ratio for collection is expected to diminish as collections increase, and as collections procedures become more efficient, including establishment of electronic interfaces between the courts and the Department of Law, and between the Department of Law and the Department of Revenue.

At this point we are unable to determine if the bill will have an impact for our department. It is not known whether day fine sentencing provisions will result in a change in the number of unpaid fines that we currently handle, nor is it clear whether the amount in arrears will change. The court must undertake a comprehensive effort to develop and implement a day fine program. Consequently, a fiscal impact, if any, will not be known until sometime after the new sentencing provisions have been in effect. It does appear that day fine sentences would help reduce the growing cost of incarceration and supervised probation.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 3
Version CSHR 119 (TID)
(H) Publish Date: 4/8/93

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act authorizing a sentencing court to BRU: Alaska State Troopers
impose a sentence of a day fine Component: Detachments
 Sponsor: Representative Ulmer
 Requestor: House Judiciary COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

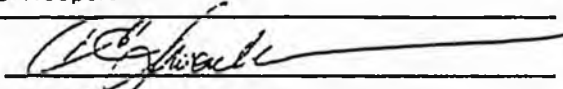
POSITIONS:

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

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 4/02/93
 Approved by Commissioner:  Date: 4/02/93
 Agency: Richard I. Burton, Dept. of Public Safety

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FISCAL NOTE

N 14
 Bill Version: CSHB 119 (JUD)
 (H) Publish Date: 4/9/93

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act authorizing a sentencing court to impose a
sentence of a day fine on a defendant convicted of a
misdemeanor...." BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: Representatives Ulmer, Davis, Davies, Brown
 Requestor: (H) Sta COMPONENT SERIAL NO. 43

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: _____

Approved by Commissioner: Nancy Bear Usery Date: 3/8/93
 Agency: Department of Administration

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FISCAL NOTE

Version: CSHB 119 (JUD)
 (H) Publish Date: 4/9/93

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act authorizing a sentencing court to impose a sentence of a day fine on a defendant convicted of a misdemeanor . . ."
 Sponsor: Representatives Ulmer, Davis, Davies, Brown
 Requestor: (H) STA

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: _____

Approved by Commissioner: Nancy Bear Usera
 Agency: Administration

Date: 3/8/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 119 (fud) am

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act authorizing a sentencing court to impose a BRU: Public Defender Agency
sentence of a day fine on a defendant convicted of a Component: Public Defender Agency
misdemeanor"
 Sponsor: Representative Ulmer
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 1631

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

*This FN
replaces #5*

Prepared By: John Salemi, Public Defender Phone: _____
 Division: Public Defender Agency Date: _____

Approved by Commissioner: Nancy Bear Usura *NBU* Date: 4/23/93
 Agency: Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 119 (Jud) am

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act authorizing a sentencing court to impose a sentence of a day fine on a defendant convicted of a misdemeanor" BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: Representative Ulmer
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 43

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

This FN
replaces #4

Prepared By: Brant McGee, Public Advocate Phone: _____
 Division: Office of Public Advocacy Date: _____

Approved by Commissioner: Nancy Bear Usery Date: 4/23/93
 Agency: Department of Administration

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DAY FINES

**Alaska Court System
Office of the Administrative Director**

MEMORANDUM

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE: February 2, 1993

FROM: Cathryn Jansson 
Legal Administrative Asst.

SUBJ: Day Fines

Alaska, like many states, is struggling with prison overcrowding. During the last five years, the daily number of prisoners has fluctuated just above and below prison capacity.¹ Other jurisdictions, in an effort to relieve overcrowding, are considering alternative punishments for non-violent crimes; one of these alternatives is day fines. This memorandum discusses the history and use of day fines as an intermediate criminal sanction² and the feasibility of implementation in Alaska.

I. Definition.

Day fines (also called structured fines, means-based fines or unit fines) are an intermediate sanction which allows the court to fine

¹ Alaska Sentencing Commission, 1991 Annual Report to the Governor and the Alaska Legislature 1 (1991).

² An intermediate sanction is a sanction which is more stringent than traditional probation but less stringent (and usually less expensive) than imprisonment. Intermediate sanctions include house arrest, electronic monitoring, "shock" incarceration, community residential centers and work release centers.

an offender based on the gravity of the offense and the offender's ability to pay. Typically, under a day fine system each offense is assigned a number of "fine units" based on the severity of the offense compared to other crimes. When a defendant is convicted, the judge determines the number of fine units which have been assigned to the offense and the defendant's available daily income. The judge then multiplies these two figures to determine the fine amount. (The term "day fine" is used because the fine is linked to the defendant's daily income.)

II. Fines as an Alternative to Short-Term Incarceration

Proponents of fines make the following arguments in support of fines versus other criminal sanctions:

(1) Unlike incarceration and probation, fines generate revenues to reimburse costs of the justice system. Well over a billion dollars in fines are collected in criminal courts each year.

(2) Fines are inexpensive to administer compared to other to intermediate sanctions such as supervised probation and halfway houses.

(3) Fines are already used in some form by virtually all American courts. Therefore, the mechanisms to impose and collect fines are already in place.³

Moreover, studies show that fines -- if set high enough -- have a punitive impact on offenders and value as a deterrent.⁴

³ Sally Hillsman, Barry Mahoney, George F. Cole, & Bernard Auchter, Fines as Criminal Sanctions, Nat'l Inst. of Just. Research in Brief 2 (Sept. 1987) [hereinafter Hillsman, Mahoney, Cole, & Auchter].

⁴ Sally Hillsman, Fines and Day Fines, in 12 Crime and Justice: A Review of Research, 49, 50 (Michael Tonry and Norval Morris eds., 1990) [hereinafter Hillsman].

Fines are already used as a sanction for a broad range of offenses; however, they are usually used in conjunction with probation or short-term incarceration and are rarely used as an alternative to these penalties.⁵

Researchers offer several explanations for the low use of fines as a sole penalty. According to a 1984-85 survey of judges, most judges set fines well below the statutory limit. Researchers believe that this is because most judges use the "tariff" or "fixed fine" system to determine fine amounts. Under this system, approximately the same fine amount is imposed on all defendants who are convicted of a particular offense. The "tariff" or "going rate" for an offense is generally based on what the poorest offenders can afford to pay. Thus, fine amounts "tend to cluster near the bottom of the statutorily permissible range. This limits the range of offenses for which judges consider the fine an appropriate sole penalty."⁶

In the 1984-85 survey, judges also expressed concern about the fairness of fines. Under a tariff system, defendants with higher incomes have an obvious advantage -- a \$500 fine has a greater punitive impact on a defendant who earns \$1500 per month than on a defendant who earns \$4000 per month. Sixty-one percent of the judges who responded to the survey agreed with the statement that

⁵ Hillsman, Mahoney, Cole, & Auchter, supra note 3, at 2.

⁶ Hillsman, supra note 4, at 63.

finer allow affluent offenders to "buy" their way out.⁷ Sixty percent also agreed that fines are not an effective sanction for indigent defendants because there is a significant risk that the fine will be uncollectible.⁸

Proponents of fines believe that day fines address many of the concerns that are raised about traditional fines. Because day fines are set in proportion to the seriousness of the offense and adjusted to a defendant's income, they result in an equivalent level of hardship for defendants convicted of the same offense.⁹ In addition, under a day fines system, fines can be set high enough to effectively penalize affluent defendants and low enough to reflect what poorer defendants can realistically afford to pay.¹⁰

III. Use of Day Fines in Other Jurisdictions

A. Europe

The day fine system is an innovation of Western Europe. Day fines were implemented in Europe to reduce prison overcrowding by providing an alternative to short-term imprisonment.¹¹ The first day fine system was implemented in Finland in 1921, followed by

⁷ Hillsman, Mahoney, Cole, & Auchter, supra note 3, at 4.

⁸ Id.

⁹ Hillsman, supra note 4, at 51.

¹⁰ Id.

¹¹ Id. at 75.

Sweden in 1931, Denmark in 1939, West Germany and Austria in 1975.¹² In both West Germany and Sweden, day fines have been successful in reducing the number of short-term prison sentences. In 1968, West Germany imposed 113,273 prison sentences for six months or less; following the implementation of day fines in 1975, the number of prison sentences for six months or less dropped to 23,664. By 1979, the number was further reduced to 10,609.¹³

In both West Germany and Sweden, a fine is used as the sole penalty for most criminal offenses, including many serious offenses. In 1984, 75 percent of all non-traffic criminal offenses in West Germany were disposed of by a fine as the sole penalty; fines were used in one third of all sexual offenses and in 73 percent of all crimes of violence against the person.¹⁴ In 1988, Sweden imposed day fines for 83 percent of all criminal offenses, including 40 percent of all offenses against persons.¹⁵

B. United States

Day fines are currently being used in eight locations in the United States: Phoenix, Arizona; Bridgeport, Connecticut; Des Moines,

¹² Sally Hillsman & Judith Greene, Tailoring Criminal Fines to the Financial Means of the Offender, 72 *Judicature* 38, 44 (1988).

¹³ Gary M. Friedman, Comment, The West German Day-Fine System: A Possibility for the United States?, 50 *U.Chi.L.Rev.* 281, 291 (1983).

¹⁴ Hillsman, supra note 4, at 61.

¹⁵ Id.

Iowa; and four county courts in Oregon.¹⁶ Chicago, Houston and Philadelphia are in the active planning stage. Staten Island, New York imposed day fines for twenty-three months during 1988-90, but discontinued the program because of budget cuts. Milwaukee, Wisconsin used a day fine system for 12 weeks during 1989, but discontinued the project because it resulted in lower fine revenues for the court.

The programs in Staten Island, Phoenix, and Milwaukee are discussed in more detail below. The programs in Connecticut, Iowa, and Oregon have only recently gotten underway.

1. Staten Island

Richmond County Criminal Court, a trial court of limited jurisdiction, was the first court in the United States to implement a day fines program.¹⁷ Day fines were used for misdemeanors and violations for a period of 23 months during 1988 to 1990.¹⁸ Between September 1988 and August 1990, day fines were imposed in

¹⁶ Each of these jurisdictions is part of a pilot project funded by a Bureau of Justice Assistance federal grant.

¹⁷ Douglas C. McDonald, Judith Greene & Charles Worzella, Day Fines in American Courts: The Staten Island and Milwaukee Experiments, Issues and Practices in Criminal Justice, Nat'l Inst. Just. 13 (Apr. 1992) [hereinafter McDonald, Greene, & Worzella].

¹⁸ A list of violations and misdemeanors to which the program applied appears in Appendix A.

two-thirds of all disposed cases.¹⁹ The average day fine amount was \$440.83, twice the average pre-pilot fine amount, which was \$205.66.²⁰

As part of its day fines project, Staten Island also experimented with a new collections strategy. Responsibility for collection of day fines was centralized in a "day fines officer." This person was given authority to work out an individualized payment plan with each defendant. Defendants were generally allowed only a short period to pay the fine, i.e., usually no more than three months, and payment dates were scheduled to correspond to the defendant's income receipt patterns. A computer program originally designed for small business applications was adapted inexpensively to track payment. A defendant's non-payment prompted the computer to generate an immediate reminder and warning letter. If non-payment was due to a change in the defendant's financial circumstances, the day fines officer could modify the defendant's payment plan within certain parameters.²¹

To measure the success rate of the new collection practices, the court divided day fine cases into two groups. One group, labeled

¹⁹ Laura Winterfield & Sally Hillsman, An Experiment to Introduce Means-Based Fining into an American Criminal Court: The Staten Island Day-Fines Project, Nat'l Inst. Just. 4 (Draft: Apr. 30, 1992) [hereinafter Winterfield & Hillsman].

²⁰ Id. at 5.

²¹ McDonald, Greene, & Worzella, supra note 17, at 34.

"experimental," was subject to the new collection strategy. The other group, labeled "control," was subject to the court's existing collection practices. Researchers found 85 percent of the day fine experimental group paid in full, compared to 71 percent of the control cases and 76 percent of the pre-pilot fine cases. Six percent of the day fine experimental group resulted in no payment at all, compared to 26 percent of day fine control group and 22 percent of pre-pilot cases.²²

Overall, the court found that "despite significantly higher average fine amounts and longer collection periods e.g. installment payments, day fines were collected in full at high rates - rates as high as the collection rates for the smaller fixed fines."²³ The total revenues generated by fines increased by 14 percent during the day fines project. Researchers estimate that total fine revenues from day fines would have been approximately 50 percent higher if day fines had not been constrained by statutory fine caps.²⁴

The Staten Island program was discontinued because of budget cuts.²⁵

²² Winterfield & Hillsman, supra note 19, at 6.

²³ Id. at 7.

²⁴ Id. at 5.

²⁵ Per a 9/22/92 phone conversation with Arnold Berliner, Assistant District Attorney; Staten Island, New York.

2. Phoenix

In April 1991 the Superior Court of Maricopa County in Phoenix, Arizona initiated a day fine demonstration project, known as "F.A.R.E. Probation" (Financial Assessments Related to Employability). The program was the first in the United States to apply day fines to both misdemeanor and low level felony cases.²⁶

In a phone conversation with Marilyn Windust, Day Fine Project Manager, Adult Probation Department, she stated that overall the program has been very successful. The court evaluates defendants prior to sentencing and targets defendants who have low treatment and supervision needs, are employable or have a source of income, and do not owe restitution exceeding the day fine. Prior to implementation of the program, these defendants would probably have been placed on full supervision probation or sentenced to a short-term jail sentence.

Between April 1991 and July 1992, 247 defendants were sentenced to FARE probation. One hundred nine defendants successfully completed the program. Only two defendants have committed subsequent offenses. The lowest fine assessment under the program was \$60. The highest assessment was \$12,325. The court collected a total of \$120,889 and its collection rate was 98.2 percent. Forty-one

²⁶ A list of the misdemeanors and felonies to which the program applies appears in Appendix B. Felonies include low level assault, burglary, child abuse, attempted child molestation, robbery, theft, attempted kidnapping, fraudulent schemes, escape, arson, sexual abuse, and many drug offenses.

percent of victims received full restitution and restitution was paid at a faster rate. Of the total number of offenses in which day fines were imposed, 58 percent were theft related offenses, 28.3 percent were drug related offenses, 2 percent were white collar offenses, and 11.7 percent were miscellaneous offenses.²⁷

Even though initial funding for the program under a Bureau of Justice grant has ended, the court system has elected to continue the program and fund it through the Maricopa County budget.

3. Milwaukee

In 1989, the Milwaukee Municipal Court initiated a 12 week experiment to test the feasibility of substituting day fines for fixed fines for violations of municipal ordinances.²⁸ The experiment concentrated on first time offenders charged with offenses which are also crimes under state penal law. These offenses include: carrying a concealed weapon, disorderly conduct, theft from a retail store, vandalism, loitering, prowling, and low level assault and battery. Between October 1989 to January 1990, 192 violators received day fines.²⁹ The average day fine imposed was \$72 compared to an average of \$112 for fixed fine cases.³⁰

²⁷ The FARE probation program statistics were provided by Marilyn Windust, Day Fine Project Manager.

²⁸ A list of violations to which the program applied appears as Appendix C.

²⁹ McDonald, Greene, & Worzella, supra note 17, at 70.

³⁰ Id. at 72.

Collection rates basically stayed the same. The court found that the percentage of defendants failing to pay their fines differed little between day fines and conventional fines (59 percent versus 61 percent, respectively). However, defendants given day fines were more likely to pay in full (37 percent versus 25 percent). Differences in likelihood to pay were even more pronounced among the poorest violators. Of those persons having monthly incomes less than \$197, 33 percent of those given day fines paid in full, compared to 14 percent of those who received conventional fines.³¹ Overall, the court found that the system imposed lower fines which led to reduced revenues to the county treasury. Since the Milwaukee court could not afford to subsidize the program, the program was discontinued.³²

The Milwaukee experiment demonstrated that a day fines program can be operated in a fast-paced setting such as a municipal court. The collection rate data from Milwaukee and Staten Island indicates, however, that day fines are not inherently more collectible than traditional fines. In Milwaukee, the collection rates for day fines and traditional fines were approximately the same. In Staten Island, the collection rate for day fines in the control group (i.e., day fines which were not subject to the new collection

³¹ Id.

³² Per a 8/28/92 phone conversation with Judith Greene, Director of Court Programs, Vera Institute of Justice; New York, New York.

practices) was approximately the same as the collection rate for traditional fines.

IV. Day Fines as an Alternative Sanction in Alaska

It is difficult to predict whether a day fines program would make a positive impact on Alaska's judicial system and corrections program. There is a shortage of data available on current sentencing patterns.

In 1992 the Sentencing Commission conducted a state-wide survey of felony sentences imposed between 1986 and 1991. The commission found that fines were imposed in only 4.4% percent of the cases. Fines ranged from \$250 to \$15,000 and were always combined with sentences of incarceration ranging from 18 months to 8 years.³³ The sampling indicates fines are not used as an alternative to incarceration in felony cases, but rather as an additional sanction.

No data is readily available on the number of misdemeanor cases in which fines are imposed as a sole penalty or in conjunction with other sanctions. However, according to information collected by

³³ The offenses included bootlegging, driving under the influence, assault, second degree rape, second degree sexual assault, and drug offenses. A copy of the Commission's data appears in Appendix D.

the Sentencing Commission, misdemeanants currently make up approximately ten percent of Alaska's prison population.³⁴

It should be noted that there is public support in Alaska for alternatives to incarceration. A recent public opinion report prepared by the Sentencing Commission found that the majority of those polled supported intermediate sanctions for non-violent felons and even for some violent felons. Overall, the surveyed group "believed that incarceration does not give the public its money's worth."³⁵ The group felt these offenders should be in programs which control criminal behavior, but which allow them to work, be self-supporting, and pay supervision costs and restitution.³⁶

V. Implementation Requirements for a Day Fines Program

The following section identifies the changes that would be required to implement a day fines program in Alaska. There are four subsections which discuss the following topics: (1) necessary statutory changes; (2) improvement of existing collection mechanisms; (3) adoption of benchmarks; and (4) evaluation of a defendant's financial resources.

³⁴ Alaska Sentencing Commission, 1991 Annual Report to the Governor and the Alaska Legislature app. 1-2 (1991).

³⁵ Alaska Sentencing Commission, Opinions on Sentencing in Alaska: Results of Five Focus Groups 10 (Aug. 20, 1992).

³⁶ Id.

A. Statutory Changes

At least one statutory change must be made in order to implement a day fines program and two additional changes may be desirable. These three statutory changes are discussed in more detail below.

1. Financial Resources of the Defendant

AS 12.55.035 governs the imposition of fines. Prior to 1992, this statute required the court to consider the financial resources of the defendant when setting a fine. The statute provided:

(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.

The court was also required to consider the financial resources of the defendant when determining restitution. See AS 12.55.045.³⁷

Both AS 12.55.035 and AS 12.55.045 were amended last session to eliminate the income evaluation requirement.³⁸ In adopting this

³⁷ Prior to being amended in 1992, AS 12.55.045 provided:

(a) . . . In determining the amount and method of payment of restitution, the court shall take into account the

. . .

(3) financial resources of the defendant and the nature of the burden its payment will impose on dependents of the defendant.

³⁸ The amendment to AS 12.55.035 is shown below:

(r) Upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this

change, the legislature specifically intended to prohibit the court from considering the defendant's financial circumstances when setting the amount of a fine or restitution:

Section 1. PURPOSE. It is the purpose of this Act to ensure full payment of fines imposed in criminal cases and to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible, by

(1) requiring courts to consider whether a defendant has the ability to pay fines and restitution at a hearing held after a defendant has failed to pay, rather than asking courts to predict at the time of sentencing whether a defendant will have the ability to pay a fine or restitution in the future;

. . . .

Ch. 71 sec. 1 SLA 1992 (emphasis added).

Consideration of the defendant's financial resources is a critical sentencing component in a day fines system. When imposing a day fine, the judge multiplies the number of fine units which have been assigned to the offense and the defendant's available daily income to determine the fine amount. Under the current version of AS 12.55.035, a judge is precluded from considering the defendant's financial resources at the time the fine amount is set. Thus, in order to implement a day fines system, either the deleted language

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.]

of the statute must be reinstated or a new provision must be added to AS 12.55 which specifically authorizes the imposition of day fines. The latter option is probably preferable because it would allow the court to impose either day fines or traditional "tariff" or "going rate" fines. Thus, the court system could initially implement day fines on a trial basis.³⁹

2. **Statutory caps on misdemeanors, violations, and infractions.**
AS 12.55.035 also sets maximum fine amounts for violations, misdemeanors and felonies. These statutory caps are shown below:

(b) Upon conviction of an offenses, 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

. . .

- (2) \$50,000 for 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.

Because day fines are based on an offender's daily income, a fine for a defendant with a high income level may exceed the statutory cap. If a day fine is calculated above the cap amount, the

³⁹ In Maricopa County, for example, day fines were implemented in four of the county's eight superior courts so that the two fine systems could be compared and evaluated. In a phone conversation with Marilyn Windust, Day Fine Project Manager, she stated that several private defense attorneys have suggested that the use of two fine systems raises equal protection problems. However, to date, this issue has not been litigated.

defendant would only be liable for the statutory amount, which diminishes the punitive impact of the fine.

Other jurisdictions have not necessarily eliminated their statutory fine limits when they initiated their day fine programs. Phoenix, Staten Island and Oregon elected to impose day fines within the statutory fine limits, at least initially. Phoenix and Oregon plan to evaluate the desirability of amending or repealing the statutory caps once they have determined the extent to which the caps prevent judges from imposing full day fines.

In Alaska, the present caps will limit the use of day fines, particularly for more serious offenses. A policy decision must be made whether to propose to the legislature a lifting of the existing caps or to operate the day fines program under existing statutory fine limits.

3. Statutory Felony Sentencing Structure

Alaska operates under a statutory felony sentencing structure which dictates minimum, maximum and presumptive prison terms for felony convictions.⁴⁰ There are no mandatory minimum or presumptive sentencing rules for first time Class B⁴¹ or C⁴² felony convictions,

⁴⁰ See AS 12.55.125.

⁴¹ Class B felonies include robbery not using a deadly weapon, theft over \$25,000, selling cocaine or marijuana to minors, burglary in a dwelling, arson with no risk of injury, bribery or perjury, second-degree assault, sexual penetration with a person aged 13, 14 or 15, and sexual contact with anyone under 13, or a

unless the conduct was knowingly directed at a peace officer, firefighter or an emergency responder, e.g., emergency medical technician, paramedic, ambulance attendant.⁴³ However, for second and subsequent Class B felony convictions, there is a presumptive prison term of 4 and 6 six years, respectively and 2 and 3 years for Class C felonies. An offender will ordinarily receive these prison terms unless certain aggravating or mitigating factors are applicable.

Thus, under the current sentencing structure, judges can impose day fines for misdemeanors and first time low level felony convictions, but day fines cannot be used for repeat low level felonies. A policy decision must be made as to whether the state of Alaska wishes to include these repeat offenders in a day fines program and, if so, propose a statutory amendment to the legislature.

B. Improvement of existing collection mechanisms

Judges -- and the public -- are unlikely to consider day fines as an alternative to incarceration without assurance that such fines can be collected. According to researchers at the National Center for State Courts, "[p]art of the hesitancy that judges have in

daughter or son under 18.

⁴² Class C felonies include negligent homicide, burglary not in a dwelling, second-degree assault, theft over \$500, check forgery, possessing heroin or cocaine, and bootlegging.

⁴³ See AS 12.55.125(d)(3) and AS 12.55.125(e)(3).

using the fine as a sole or primary sanction apparently stems from a sense that collecting the payment is difficult."⁴⁴

In Alaska, fines, restitution and forfeited bonds under \$250 are collected by the court system while fines over \$250 are collected by the Department of Law.⁴⁵ Court system collection practices are limited to a single "notice of delinquency" letter and if no payment is received, issuance of a bench warrant. The Department of Law issues one demand letter and if no payment is received, an execution is made on the defendant's permanent fund dividend.⁴⁶

No information is readily available on the total number of cases in which a fine is imposed.⁴⁷ Therefore, the overall payment rate for fines cannot be calculated. Since April 1989, the court system has forwarded a total of 5,720 fine cases to the Department of Law

⁴⁴ Barry Mahoney & Marlene Thornton, Means-Based Fining: Views of American Trial Court Judges, 13 Just. Sys. J. 51, 55 (1988).

⁴⁵ See ACS Administrative Bulletin No. 43 (eff. Jan. 8, 1991). The Anchorage Court Administration is looking into the possibility of transferring all unpaid fines (state-wide) to the Department of Law Collections Unit. The Collections Unit will assume this responsibility if necessary information can be electronically transferred between the courts, the Collections Unit, and the Department of Revenue. At present, manual transfer of paperwork between these entities and the Alaska State Troopers causes collections not to be cost-effective for any fine or bail forfeiture under \$250.

⁴⁶ In 1992, 1155 permanent fund dividend executions were processed from approximately 3,000 open collection accounts.

⁴⁷ This information could be gathered. According to Technical Operations, it would take approximately two days of a programmer's time.

for collection. Thirty-six percent of these cases have been paid in full. Another 6 percent have almost been paid in full, i.e., less than \$100 is still owing. The department has collected a total of \$1,560,885 in fine revenues. The court system collected a total of \$4,170,252 in fines, "mail-in bail," and bail forfeitures in FY92.

Prior to implementing a day fine system, current fine collection practices should be reviewed and possibly upgraded. The Staten Island day fine project demonstrated that, despite higher average fine amounts, day fines are not more difficult to collect than traditional fines.⁴⁸ Also, relatively simple collection techniques can significantly improve day fines collections.⁴⁹

C. Adoption of benchmarks.

Under a day fine system, the amount of the fine is determined by multiplying the defendant's average daily income by the "benchmark" for the offense. The benchmark is usually measured in "fine units" and reflects the jurisdiction's view as to the seriousness of the offense compared to other crimes. One of the first steps in implementing a day fine system is the adoption of a benchmark scale by assigning fine units to each criminal offense.

⁴⁸ Winterfield & Hillsman, supra note 19, at 7.

⁴⁹ See text accompanying note 21 supra.

Determining how many units to assign to each offense is similar to development of sentencing guidelines. The gravity of the offense is weighed against all other offenses and a determination made as to the appropriate level of punishment. The jurisdiction must also decide whether to adopt a fixed number of fine units for each offense or a range of fine units in order to allow some variation of the benchmark based on aggravating or mitigating factors. When Staten Island initiated its day fines project, a planning group determined the court's seventy most common misdemeanors and violations. The group then ranked these offenses by severity.⁵⁰ Using a scale of 120 day fine units, the planning group assigned fine units for each offense, e.g., prostitution = 5 units, harassment = 15 units, petit larceny = 5 to 60 units, sexual misconduct = 90 to 120 units. Where ranges were specified, judges were given guidance on how to establish the benchmark in a particular case. For example, a judge would determine the benchmark for a defendant convicted of petit larceny according to the value of property stolen.⁵¹

In Milwaukee, planners used the existing fine system to create the benchmark scale. Planners assigned each fine unit a value of twenty dollars and then determined the range of units for each offense by dividing the minimum and maximum fine for the offense

⁵⁰The offenses ranged from breach of public decorum to victimizing offenses generally charged as felonies but disposed of as misdemeanors. The offenses are listed in Appendix A.

⁵¹ McDonald, Greene, & Worzella, supra note 17, at 22.

by twenty dollars. Thus, an offense with a minimum fine of \$100 and a maximum fine of \$500 would be assigned a range of 5 to 25 fine units. Planners used the court's "deposit amount schedules" (comparable to Alaska's bail forfeiture schedules) to determine the median benchmark for each violation and infraction.⁵² A judge could adopt a benchmark higher or lower than the median (but still within the permitted range for the offense) based on aggravating or mitigating circumstances or prior criminal history.⁵³

The benchmark scales for Staten Island, Phoenix, and Milwaukee appear in Appendices A, B and C, respectively.

In 1991, the Alaska Sentencing Commission weighed the seriousness of 174 criminal offenses found in Title 11 and developed a ranking beginning with most serious (Murder I) to least serious (Unlawful Possession of Property valued under \$50)⁵⁴ Because ranking of offenses is the starting point of a day fine benchmark scale, the court system could choose to adopt this ranking for the day fines program. The court would still need to assign a fixed number or a range of fine units to each offense. Traffic offenses in Title 28, which includes DWI and DWLS offenses, and fish and game

⁵² A deposit amount schedule is similar to Alaska's bail forfeiture schedule in that a violator has the option of paying a "deposit" instead of appearing in court to contest the charge.

⁵³ McDonald, Greene, & Worzella, supra note 17, at 5.

⁵⁴ The purpose of the ranking was to determine if any offenses should be statutorily reclassified to reflect the seriousness of the crime, e.g., reclassify a misdemeanor offense to a felony.

offenses under Title 16 were not ranked. The Commission's ranking appears in Appendix E.

D. Evaluation of a defendant's financial resources

In addition to adopting a benchmark scale, the court system must decide how much of a defendant's income to assess. Staten Island, for example, chose to assess the defendant's daily net income, adjusted for family responsibilities and basic personal needs.⁵⁵ Daily net income was determined by dividing the defendant's pay check, welfare allotment or unemployment check by the number of days in the payment period. The figure was then adjusted based on the number of persons supported by the defendant's income. To reduce the harshness on low income defendants who do not have savings or access to credit, the valuation formula allowed an additional income adjustment for people living in poverty.⁵⁶ To assist the judge in determining the daily income assessment, planners devised a chart similar to a "tax table" showing average daily income on one axis and the number of persons supported by the defendant on the other axis. The chart appears in Appendix A.

Once the level of assessment is determined, the court system would need a procedure to obtain financial information from defendants. Courts in Alaska already collect detailed financial information

⁵⁵ Milwaukee and Phoenix used or are using a similar system.

⁵⁶ McDonald, Greene, & Worzella, supra note 17, at 27.

from defendants who request appointed counsel.⁵⁷ The same basic mechanism could probably be used to collect financial information from defendants who are subject to a day fine.⁵⁸

VI. Conclusion

Alaska faces the possibility of future budget shortfalls with the decline of oil-based revenues. As such, budget constraints may force proportionate cutbacks on prison and probation resources. Therefore, alternative intermediate criminal sanctions, such as day fines, may become a necessity. Other jurisdictions find day fines are effective as a sole penalty for misdemeanants and felons who have low treatment and supervision needs. By not imposing a short-term jail sentence on these offenders, prison space is made available for more violent, predatory offenders. As the Alaska Sentencing Commission has noted, "[e]very offender diverted into

⁵⁷ This information is also gathered as part of the presentence investigation. Such investigations are conducted in most felony cases but few misdemeanor cases.

⁵⁸ As part of its day fines project, Staten Island employed people to interview defendants about their financial resources. Planners also developed tables showing the median biweekly salary for various occupations, e.g., construction workers, food and beverage preparers, sales personnel. If a defendant refused to disclose financial information to court personnel, the judge would calculate the day fine based upon information in these tables. The general income guidelines appear in Appendix A. Judges in the Staten Island project were also authorized to adjust defendants' daily income figures to reflect illegal or "under the table" income.

a non-prison program is making a space available for a more serious offender and saving the need for new prison construction."⁵⁹

If you have any questions, please contact me at extension 646.

dayfine.memo3
/cj

⁵⁹ Alaska Sentencing Commission, 1991 Annual Report to the Governor and the Alaska Legislature 34 (1991).