

HB

170

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE

SPONSOR STATEMENT

House Bill 170

"An Act repealing the authority for day fines."

House Bill 170 repeals the authority established for day fines. The legislation establishing day fines for certain misdemeanor offenses, House Bill 119, was passed into law in 1994 and became effective July 1, 1994.

One of the provisions in the legislation was for the Court System to adopt a day fine plan. As required by the bill, the Supreme Court created a committee to establish a fine schedule based on the guidelines of House Bill 119. The committee found several problems in adopting a day fine plan and requested the legislature to introduce a bill to solve those problems. Senate Bill 167 was introduced in 1995 but did not get out of the Senate. Without the changes requested by the Supreme Court, the court did not implement the provisions of House Bill 119.

According to the Court System, "some of the technical issues identified by the committee included concerns over which misdemeanors were included and excluded, significant time delays associated with judges making written findings, problems in determining defendant income, conflicts with ordering substance abuse treatment and concerns over the levels of fines imposed and the time allowed to pay them."

The committee also expressed concerns that the bill would not accomplish what the sponsor had intended. The sponsor statement stated the intent of the legislation was to improve fine collection and reduce the number of misdemeanor offenders who were sentenced to jail. The committee believed that because the misdemeanors that were excluded from the day fine provisions and because of the technical problems identified by the committee, the sponsor's goals would not be met.

Since these statutes are not in use and will not be used by the courts, I propose that we repeal the statutes that impose a day fine plan rather than keeping these statutes in the books.

Sec. 12.55.015. Authorized sentences; forfeiture.

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

(A) fine when authorized by law and as provided in AS 12.55.035; or

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

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

(3) impose a definite term of periodic imprisonment, but only if an employment obligation of the defendant preexisted sentencing and the defendant receives a composite sentence of not more than two years to serve;

(4) impose a definite term of continuous imprisonment;

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

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

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

(8) suspend imposition of sentence under AS 12.55.085;

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

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

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of the present offense and the defendant's prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty. When forfeiting property under this subsection, a court may award to a municipal law enforcement agency that participated in the arrest or conviction of the defendant, the seizure of property, or the identification of property for seizure, (1) the property if the property is worth \$5,000 or less and is not money or some other thing that is divisible, or (2) up to 75 percent of the property or the value of the property if the property is worth more than \$5,000 or is money or some other thing that is divisible. In determining the percentage a municipal law enforcement agency may receive under this subsection, the court shall consider the municipal law enforcement agency's total involvement in the case relative to the involvement of the state.

(d) [Repealed, Sec. 1 ch 188 SLA 1990].

(e) If the defendant is ordered to serve a definite term of imprisonment, the court may recommend that the defendant serve all or part of the term

(1) in a correctional restitution center;

(2) by electronic monitoring.

(f) Notwithstanding (a) of this section, the court shall order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of a crime involving domestic violence.

(g) Unless a defendant is ineligible for a deduction under AS 33.20, when a defendant is sentenced to a term of imprisonment of two years or more, the sentence consists of two parts: (1) a minimum term of imprisonment that is equal to not less than two-thirds of the total term of imprisonment; and (2) a maximum term of supervised release on mandatory parole that is equal to not more than one-third of the total term of imprisonment; the amount of time that the inmate actually serves in imprisonment and on supervised release is subject to the provisions of AS 33.20.010 - 33.20.060.

(h) In addition to penalties authorized by this section, the court shall order a person convicted of an offense requiring the state to collect a blood sample, oral sample, or both, for the deoxyribonucleic acid identification registration system under AS 44.41.035 to submit to the collection of

(1) the sample or samples when requested by a health care professional acting on behalf of the state to provide the sample or samples; or

(2) an oral sample when requested by a juvenile or adult correctional, probation, or parole officer, or a peace officer.

(i) In this section "deadly weapon" has the meaning given in AS 11.81.900.

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036, 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.

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

(1) \$500,000 for murder in the first or second degree, attempted murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, promoting prostitution in the first degree under AS 11.66.110(a)(2), or misconduct involving a controlled substance in the first degree;

(2) \$250,000 for a class A felony;

(3) \$100,000 for a class B felony;

(4) \$50,000 for a class C felony;

(5) \$10,000 for a class A misdemeanor;

(6) \$2,000 for a class B misdemeanor;

(7) \$500 for a violation.

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

(1) an amount that is

(A) \$1,000,000 for a felony offense or for a misdemeanor offense that results in death;

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

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

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

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

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

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

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

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

(2) measures taken by the organization to prevent a recurrence of the offense;

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

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

(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense.

Sec. 12.55.036. Day fines.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) state on the record the

(A) presumptive day fine penalty for the offense, and whether the court is adjusting the presumptive day fine penalty for the existence of aggravating or mitigating factors;

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

(C) amount of the day fine;

(2) make written findings of the facts considered in

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

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

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

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

(f) [Repealed, Sec. 7 ch 79 SLA 1994].

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

History -

(Sec. 5 ch 79 SLA 1994; am Sec. 6 ch 21 SLA 1995)

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

22 offense, a defendant may be sentenced to pay a fine as authorized in
this section or as
23 otherwise authorized by law.

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

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

28 (1) \$75,000 for murder in the first or second degree,
attempted murder
29 in the first degree, sexual assault in the first degree, sexual
abuse of a minor in the
30 first degree, kidnapping, or misconduct involving a controlled
substance in the first
31 degree;

01 (2) \$50,000 for a class A, B, or C felony;

02 (3) \$5,000 for a class A misdemeanor;

03 (4) \$1,000 for a class B misdemeanor;

04 (5) \$300 for a violation.

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

06 (c) Except as provided in AS 12.55.036, upon [UPON]
conviction of an

07 offense, a defendant that is an organization may be sentenced to pay
a fine not

08 exceeding the greater of

09 (1) an amount that is

10 (A) \$500,000 for a felony offense or for a
misdemeanor offense

11 that results in death;

12 (B) \$200,000 for a class A misdemeanor

offense that does not

13 result in death;

14 (C) \$25,000 for a class B misdemeanor offense
that does not

15 result in death;

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

17 (2) two times the pecuniary gain realized by the
defendant as a result

18 of the offense; or

19 (3) two times the pecuniary damage or loss caused by
the defendant to

20 another, or to the property of another, as a result of the offense.

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

22 Sec. 12.55.036. DAY FINES. (a) Upon conviction of a
misdemeanor, other

23 than a violation of AS 11.41 and 11.56.740, a defendant may be
sentenced to pay a

24 day fine as authorized by this section. If a day fine is imposed
under this section, the

25 defendant may not be sentenced to pay a fine under AS 12.55.035,
serve a term of

26 imprisonment, or be placed on probation.

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

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

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

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



Alaska Court System

State of Alaska

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April 26, 1995

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

Dear Senator Taylor:

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

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

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

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I. **Technical Problems With Day Fines Law.**

A. **Classification of Misdemeanors.**

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

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

B. **Written Findings.**

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

C. **Felony Aggravators and Mitigators.**

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

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

D. Set Aside of Convictions.

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

E. Net Income Versus Gross Income.

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

F. Additional Time to Pay.

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

G. Access to Employment Information.

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

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

H. Treatment.

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

I. Biennial Reports.

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

II. Fundamental Problems with Day Fines Law.

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

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

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

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

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

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

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

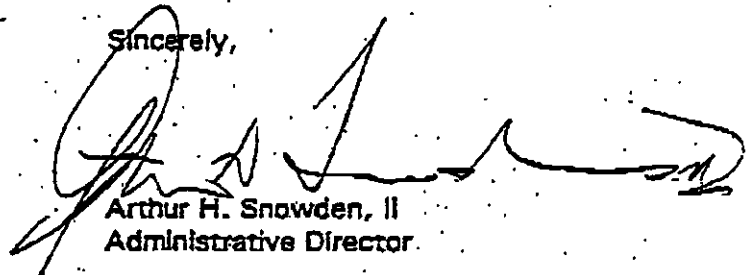
The Honorable Robin Taylor
April 26, 1995
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committee was ultimately unwilling to impose another layer of complexity in this area until the underlying statutory and regulatory problems are resolved. Instead, the committee recommended that the legislature appoint a special legislative committee or an interagency group to assess and restructure fish and game penalty provisions and definitions of offenses.

III. Conclusion.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur H. Snowden, II", is written over a printed name and title. The signature is fluid and cursive, with a long horizontal stroke at the end.

Arthur H. Snowden, II
Administrative Director

SENATE BILL NO. 167

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 4/25/95

Referred: JUD. FIN

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

14 (1) an assessment of the gravity of common [ALL] misdemeanor

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

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

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

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

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

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

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

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

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

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

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

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

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

3 [(1)] state on the record the

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

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

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

10 (2) MAKE WRITTEN FINDINGS OF THE FACTS CONSIDERED.

11 IN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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New Text Underlined (DELETED TEXT BRACKETED)

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

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

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

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REPRESENTATIVE MIKE CHENAULT

SPEAKER OF THE HOUSE

MEMORANDUM

TO: Senator Hollis French, Chair
Senate Judiciary Committee

FROM: Representative Mike Chenault 
Speaker of the House

DATE: April 9, 2009

RE: Request for Hearing-House Bill 170

Please consider this request to schedule House Bill 170: Repeal of Day Fines, before your committee at your earliest possible convenience.

Back up for the bill is attached.

Thank you for your consideration of my request.