

**HB**

**170**

# Alaska State Legislature

State Capitol, Room 208  
Juneau, Alaska 99801-1182  
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## REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE

### MEMORANDUM

TO: Senator Linda Menard, Chair  
Senate State Affairs Committee

FROM: Representative Mike Chenault   
Speaker of the House

DATE: April 3, 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.

# 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.

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: HB170-DOC-OC-3-24-09

Bill Version: \_\_\_\_\_

( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB170-DOC-OC-3-24-09

Dept. Affected: DOC

Title "An Act Repealing the Authority for Day Fines"

RDU Administration & Support

Component Office of the Commissioner

Sponsor Speaker Chenault

Requester Governor

Component Number 694

**Expenditures/Revenues**

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>							
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**FUND SOURCE**

(Thousands of Dollars)

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Interagency Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: 0.0

**POSITIONS**

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Passage of this legislation should not have a significant impact on the Department of Corrections.

Prepared by: Leslie Houston, Director  
 Division Administrative Services Division

Approved by: Dwayne Peeples, Deputy Commissioner  
Office of the Commissioner

Phone 465-3339  
 Date/Time 3/24/2009 1520

Date 3/24/2009

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB170-ACS-3-24-09  
 () Publish Date: \_\_\_\_\_

Identifier (file name): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Repeal Authority for Day Fines RDU Alaska Court System  
 Component Trial Courts  
 Sponsor Representative Chenault  
 Requester \_\_\_\_\_ Component Number \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
-------------------------------	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

House Bill 170 repeals the statutory provisions related to day fines and the court's authority to impose them. Because of problems with the original bill that authorized day fines, they have never been imposed. Because of this, passage of HB 170 will not have a fiscal impact on the court system.

Prepared by: Doug Wooliver, Administrative Attorney  
 Division: Alaska Court System  
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director  
Alaska Court System

Phone 463-4750  
 Date/Time 3/24/09 @ 11:20 am  
 Date 3/24/2009

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 170  
 () Publish Date: \_\_\_\_\_

Identifier (file name): HB170-LAW-CRIM-04-09-09  
 Title An Act repealing the authority for day fines

Dept. Affected: LAW  
 RDU CRIMINAL  
 Component CRIMINAL JUSTICE LITIGATION

Sponsor STATE AFFAIRS  
 Requester REPRESENTATIVE CHENAULT

Component Number 2202

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

This bill eliminates the authority for day fines. It is believed that passage of this bill would have no fiscal impact to the department.

Prepared by: Dave Blaisdell, Director  
 Division Administrative Services  
 Approved by: Wayne Anthony Ross  
Attorney General Designee

Phone 465-3673  
 Date/Time 4/9/09 12:00 AM  
 Date 4/9/2009

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.

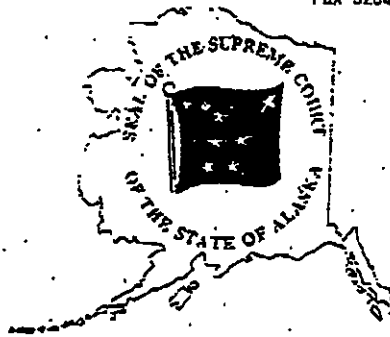
(e) A sentence imposing a day fine shall be considered a civil judgment for the day fine. The Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the Department of Law uses the civil process of the court to enforce or collect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



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 264-0847  
FAX (907) 276-3808

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.

The Honorable Robin Taylor  
April 26, 1995  
Page 2

**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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Page 3

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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Page 4

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

The Honorable Robin Taylor  
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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

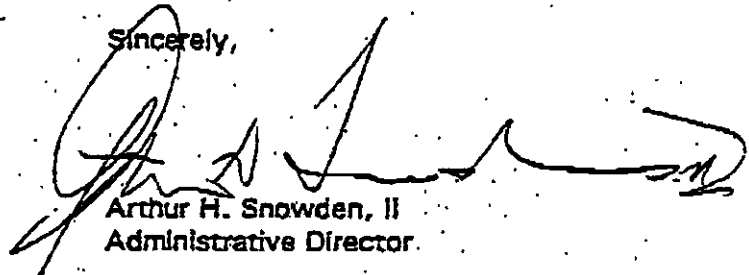
The Honorable Robin Taylor  
April 26, 1995  
Page 6

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 horizontal line. The signature is fluid and cursive, with a large initial "A" and "S".

Arthur H. Snowden, II  
Administrative Director.

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.

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 65(JUD)

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: An Act relating to licenses, certificates, and permits administered and fees charged... BRU: Medial Assitance  
 Sponsor: House Rules, at Governor's request Component: Medicaid Non Facility  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 0229

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
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
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL

REVENUE FUND SOURCE

**FUNDING:** (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						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$0.0

**ANALYSIS:** (Attach a separate page if necessary)

The sections of the original bill that referenced Medicaid support for subsidized adoptions have been removed by the House Rules-Committee substitute. The subsidized adoption provisions are now addressed in HB 178.  
(Jud)

Prepared by: Dave W. Williams  
 Division: Medical Assistance

Phone: 907-465-3355  
 Date: 4/16/93

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health and Social Services

Date: 4-19-93

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Bill No. HB 119

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						
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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 *CS* Phone: 264-8228  
 Division: Alaska Court System Date: 03/10/93

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

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

Alaska Court System  
Fiscal Analysis  
HB 119

	<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>

Travel (one-time cost) 24,825

*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.*

Equipment (one-time cost for permanent position) 2,800

*Desk, chair, computer and facsimile machine*

\$80,122

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

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. GSHB 119 (Jud)

Revision Date: 4/9/93 Dept. Affected: Corrections  
 Title: "An Act authorizing a sentencing  
court to impose a sentence of a day fine..." BRJ: Institutions  
 Sponsor: Representative Ulmer Component: Institutions  
 Requestor: House Judiciary COMPONENT/SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>						
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<b>REVENUE FUND SOURCE:</b>						
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	-0-	-0-	-0-	-0-	-0-	-0-
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

**ANALYSIS:** (Attach a separate page if necessary)

The Judiciary Committee Substitute removes the Department's responsibility to prepare an annual report and, therefore, results in a zero fiscal note.

Prepared by: Dana LaTour, Special Assistant Phone: 465-3376  
 Division: Office of the Commissioner Date: 4-8-93  
 Approved by Commissioner: Lloyd G. Rupp, Commissioner Date: 4-8-93  
 Agency: Department of Corrections

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 119

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 Limer, Davis, Davies, Brown  
 Requestor: (H) SJA

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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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 Usara  
 Agency: Administration

Date: 3/8/93

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## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 119

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act authorizing a sentencing court to impose a BRU: Office of Public Advocacy  
sentence of a daily fine on a defendant convicted of a Component: Office of Public Advocacy  
misdemeanor...."  
 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/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.)

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

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

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 119

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:						
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FUNDING:	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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. Pegues*

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services Division

Phone: 465-3672  
 Date: March 8, 1993

Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law

Date: March 8, 1993

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 119

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**

**BILL NO:** HB 119

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An act authorizing a sentencing court to impose a sentence of a day fine." BRJ: Alaska State Troopers  
 Sponsor: Representative Ulmer Component: Detachments  
 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>REVENUE FUND SOURCE:</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUNDING: (Thousands of Dollars)**

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

**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 T. Burton, Dept. of Public Safety

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# MEMORANDUM

Alaska Court System

**TO:** Arthur H. Snowden, II  
Administrative Director

**DATE:** February 2, 1993

**FROM:** Carolyn 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.<sup>1</sup> 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 sanction<sup>2</sup> 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

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

<sup>2</sup> 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.<sup>3</sup>

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

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<sup>3</sup> 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].

<sup>4</sup> 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.<sup>5</sup>

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."<sup>6</sup>

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

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<sup>5</sup> Hillsman, Mahoney, Cole, & Auchter, *supra* note 3, at 2.

<sup>6</sup> Hillsman, *supra* note 4, at 63.

finer allow affluent offenders to "buy" their way out.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

### 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.<sup>11</sup> The first day fine system was implemented in Finland in 1921, followed by

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<sup>7</sup> Hillsman, Mahoney, Cole, & Auchter, supra note 3, at 4.

<sup>8</sup> Id.

<sup>9</sup> Hillsman, supra note 4, at 51.

<sup>10</sup> Id.

<sup>11</sup> Id. at 75.

Sweden in 1931, Denmark in 1939, West Germany and Austria in 1975.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> In 1988, Sweden imposed day fines for 83 percent of all criminal offenses, including 40 percent of all offenses against persons.<sup>15</sup>

#### B. United States

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

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

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

<sup>14</sup> Hillsman, supra note 4, at 61.

<sup>15</sup> Id.

Iowa; and four county courts in Oregon.<sup>16</sup> Chicago, Houston and Philadelphia are in the active planning stage. Staten Island, New York imposed day fines for twenty-three months during 1983-90, 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.<sup>17</sup> Day fines were used for misdemeanors and violations for a period of 23 months during 1988 to 1990.<sup>18</sup> Between September 1988 and August 1990, day fines were imposed in

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

<sup>17</sup> 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].

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

two-thirds of all disposed cases.<sup>19</sup> The average day fine amount was \$440.83, twice the average pre-pilot fine amount, which was \$205.66.<sup>20</sup>

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.<sup>21</sup>

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

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<sup>19</sup> 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].

<sup>20</sup> Id. at 5.

<sup>21</sup> 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.<sup>22</sup>

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."<sup>23</sup> 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.<sup>24</sup>

The Staten Island program was discontinued because of budget cuts.<sup>25</sup>

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<sup>22</sup> Winterfield & Hillsman, *supra* note 19, at 6.

<sup>23</sup> Id. at 7.

<sup>24</sup> Id. at 5.

<sup>25</sup> 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.<sup>26</sup>

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

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<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup> The average day fine imposed was \$72 compared to an average of \$112 for fixed fine cases.<sup>30</sup>

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

<sup>28</sup> A list of violations to which the program applied appears as Appendix C.

<sup>29</sup> McDonald, Greene, & Worzella, *supra* note 17, at 70.

<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

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

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<sup>31</sup> Id.

<sup>32</sup> 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.<sup>33</sup> 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

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<sup>33</sup> 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.<sup>34</sup>

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."<sup>35</sup> 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.<sup>36</sup>

#### 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.

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

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

<sup>36</sup> 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.<sup>37</sup>

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

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<sup>37</sup> 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.

<sup>38</sup> The amendment to AS 12.55.035 is shown below:

(a) 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

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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.<sup>39</sup>

**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

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<sup>39</sup> 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.<sup>40</sup> There are no mandatory minimum or presumptive sentencing rules for first time Class B<sup>41</sup> or C<sup>42</sup> felony convictions,

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<sup>40</sup> See AS 12.55.125.

<sup>41</sup> 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.<sup>43</sup> 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

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daughter or son under 18.

<sup>42</sup> 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.

<sup>43</sup> 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.<sup>44</sup>

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.<sup>45</sup> 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.<sup>46</sup> No information is readily available on the total number of cases in which a fine is imposed.<sup>47</sup> 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

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

<sup>45</sup> 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.

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

<sup>47</sup> 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.<sup>48</sup> Also, relatively simple collection techniques can significantly improve day fines collections.<sup>49</sup>

### 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.

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<sup>48</sup> Winterfield & Hillsman, supra note 19, at 7.

<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup>

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

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<sup>50</sup>The 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.

<sup>51</sup> 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.<sup>52</sup> 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.<sup>53</sup>

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)<sup>54</sup> 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

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<sup>52</sup> 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.

<sup>53</sup> McDonald, Greene, & Worzella, *supra* note 17, at 5.

<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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

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<sup>55</sup> Milwaukee and Phoenix used or are using a similar system.

<sup>56</sup> McDonald, Greene, & Worzella, *supra* note 17, at 27.

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

#### 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

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

<sup>58</sup> 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.

## 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 (j) 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:

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.

# SENATE COMMITTEE REPORT

DATE: 4/3/09

FURTHER: Judiciary

DATE TURNED IN TO OFFICE: 4/9/09

State Affairs Committee considered HOUSE BILL NO. 170

## HB 170 REPEAL AUTHORITY FOR DAY FINES

"An Act repealing the authority for day fines."

and recommends:

- be replaced with  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

**SENATE BILL:**  
 Same Title  
 New Title

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**HOUSE BILL:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_


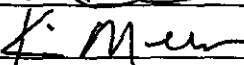
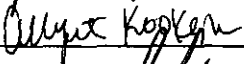

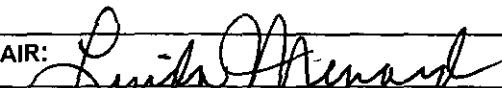
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet	Zero	FN#
DOC	3/24/09			✓	1
ACS	3/24/09			✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French	X			
	Meyer	X			
	Kokesh	X			
	PASKVAN	X			
CHAIR: 	MENARD	X			