

SENATE CS FOR CS FOR HOUSE BILL NO. 372(JUD) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 4/24/00

Offered: 4/19/00

Sponsor(s): REPRESENTATIVES DYSON, Berkowitz, Davies, Ogan, Kemplen, Murkowski, Smalley, James, Therriault, Croft, Cissna, Rokeberg

SENATORS Halford, Leman, Taylor, Ward

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal sentencing and restitution."

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

3 * Section 1. AS 12.55.005 is amended to read:

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

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

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

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

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

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

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

(7) the restoration of the victim and the community.

* **Sec. 2.** AS 12.55 is amended by adding a new section to read:

Sec. 12.55.011. Victim and community involvement in sentencing. A court, when considering the sentence to be imposed under this chapter for an offense other than a violation of AS 11.41, AS 11.46.400, or a crime involving domestic violence, may permit the victim and the offender to submit a sentence for the court's review based upon a negotiated agreement between the victim and the offender, or between the offender and the community if there is no victim. The court may, with the consent of the victim and the offender, impose the sentence that has been determined by the negotiated agreement between the offender and the victim, or between the offender and the community if there is no victim, if that sentence otherwise complies with this chapter and accomplishes the goals of restoration of the victim and the community and rehabilitation of the offender. Before accepting a negotiated agreement, the court shall determine that the victim has not been intimidated or coerced in reaching the agreement. In this section, "community" has the meaning determined by the court.

* **Sec. 3.** AS 12.55.045(f) is amended to read:

(f) If a court proposes to order a defendant to pay restitution under this section of **more** [LESS] than \$5,000, and the defendant's sentence **includes** [DOES NOT INCLUDE] a period of unsuspended incarceration exceeding 90 days, the court may take into account at the time of sentencing the defendant's present and future ability to pay the restitution proposed. The court shall presume that the defendant has the ability to pay the amount proposed unless the defendant at the sentencing hearing establishes by **clear and convincing** [A PREPONDERANCE OF THE] evidence the inability to pay the amount proposed.

* **Sec. 4.** AS 12.55.045 is amended by adding new subsections to read:

1 (h) In imposing restitution under this section, the court may require the
2 defendant to make restitution by means other than the payment of money.

3 (i) An order of restitution made under this section is a condition of the
4 defendant's sentence and, in cases in which the court suspends all or a portion of the
5 defendant's sentence, the order of restitution is a condition of the suspended sentence.
6 If the court suspends imposition of sentence under AS 12.55.085, the order of
7 restitution is a condition of the suspended imposition of sentence.