

CS FOR SENATE BILL NO. 274(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/21/98

Referred: Rules

Sponsor(s): SENATORS WARD, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to fees for probation and parole; relating to eligibility for a
2 permanent fund dividend for persons convicted of and incarcerated for certain
3 offenses; and relating to notice requirements relating to appropriations from the
4 permanent fund dividend fund to the office of crime victims' rights."

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

6 * **Section 1.** AS 12.55.051(a) is amended to read:

7 (a) If the defendant defaults in the payment of a fine or any installment, **of a**
8 **probation fee or any installment**, or of restitution or any installment, the court may
9 order the defendant to show cause why the defendant should not be sentenced to
10 imprisonment for nonpayment and, if the payment was made a condition of the
11 defendant's probation, may revoke the probation of the defendant. In a contempt or
12 probation revocation proceeding brought as a result of failure to pay a fine, **fee**, or
13 restitution, it is an affirmative defense that the defendant was unable to pay despite
14 having made continuing good faith efforts to pay the fine, **fee**, or restitution. If the

1 court finds that the defendant was unable to pay despite having made continuing good
 2 faith efforts, the defendant may not be imprisoned solely because of the inability to
 3 pay. If the court does not find that the default was attributable to the defendant's
 4 inability to pay despite having made continuing good faith efforts to pay the fine, fee,
 5 or restitution, the court may order the defendant imprisoned until the order of the court
 6 is satisfied. A term of imprisonment imposed under this section may not exceed one
 7 day for each \$50 of the unpaid portion of the fine, fee, or restitution or one year,
 8 whichever is shorter. Credit shall be given toward satisfaction of the order of the court
 9 for every day a person is incarcerated for nonpayment of a fine, fee, or restitution.

10 * **Sec. 2.** AS 12.55.051(d) is amended to read:

11 (d) The state may enforce payment of a fine or fee and the restitution recipient
 12 may enforce payment of a restitution order against a defendant under AS 09.35 as if
 13 the order were a civil judgment enforceable by execution. This subsection does not
 14 limit the authority of the court to enforce fines or fees and orders of restitution to
 15 victims.

16 * **Sec. 3.** AS 12.55.100(a) is amended to read:

17 (a) While on probation and among the conditions of probation, the defendant
 18 may be required

19 (1) to pay a fine in one or several sums;

20 (2) to make restitution or reparation to aggrieved parties for actual
 21 damages or loss caused by the crime for which conviction was had;

22 (3) to provide for the support of any persons for whose support the
 23 defendant is legally responsible;

24 (4) to perform community work in accordance with AS 12.55.055;

25 (5) to participate in or comply with the treatment plan of an inpatient
 26 or outpatient rehabilitation program specified by either the court or the defendant's
 27 probation officer that is related to the defendant's offense or to the defendant's
 28 rehabilitation; [AND]

29 (6) to satisfy the screening, evaluation, referral, and program
 30 requirements of an agency authorized by the court to make referrals for rehabilitative
 31 treatment or to provide rehabilitative treatment; **and**

1 **(7) to pay a periodic probation fee as provided in AS 12.55.104.**

2 * **Sec. 4.** AS 12.55 is amended by adding a new section to read:

3 **Sec. 12.55.104. Probation fee.** (a) A court granting probation shall require
4 a periodic probation fee to be paid to the Department of Corrections as a condition of
5 probation. The fee amount shall be established by regulation by the Department of
6 Corrections but may not be less than \$3.30 a day.

7 (b) A probationer shall assign the probationer's permanent fund dividend to
8 make probation fee payments under this section. The Department of Corrections shall
9 provide an assignment form to the probationer. The Department of Corrections shall
10 attach the permanent fund dividend of a probationer who is in arrears on the probation
11 fee and who has failed or refused to execute the assignment. If the permanent fund
12 dividend exceeds the total of the probation fee payments owed by the probationer, the
13 Department of Corrections shall refund the difference to the probationer.

14 * **Sec. 5.** AS 33.16.150(a) is amended to read:

15 (a) As a condition of parole, a prisoner released on special medical,
16 discretionary, or mandatory parole

17 (1) shall obey all state, federal, or local laws or ordinances, and any
18 court orders applicable to the parolee;

19 (2) shall make diligent efforts to maintain steady employment or meet
20 family obligations;

21 (3) shall, if involved in education, counseling, training, or treatment,
22 continue in the program unless granted permission from the parole officer assigned to
23 the parolee to discontinue the program;

24 (4) shall report

25 (A) upon release to the parole officer assigned to the parolee;

26 (B) at other times, and in the manner, prescribed by the board
27 or the parole officer assigned to the parolee;

28 (5) shall reside at a stated place and not change that residence without
29 notifying, and receiving permission from, the parole officer assigned to the parolee;

30 (6) shall remain within stated geographic limits unless written
31 permission to depart from the stated limits is granted the parolee;

1 (7) may not use, possess, handle, purchase, give, distribute, or
 2 administer a controlled substance as defined in AS 11.71.900 or under federal law or
 3 a drug for which a prescription is required under state or federal law without a
 4 prescription from a licensed medical professional to the parolee;

5 (8) may not possess or control a firearm; in this paragraph, "firearm"
 6 has the meaning given in AS 11.81.900;

7 (9) may not enter into an agreement or other arrangement with a law
 8 enforcement agency or officer that will place the parolee in the position of violating
 9 a law or parole condition without the prior approval of the board;

10 (10) may not contact or correspond with anyone confined in a
 11 correctional facility of any type serving any term of imprisonment or a felon without
 12 the permission of the parole officer assigned to the [A] parolee;

13 (11) shall agree to waive extradition from any state or territory of the
 14 United States and to not contest efforts to return the parolee to the state;

15 **(12) shall pay a periodic parole fee as provided in AS 33.16.155.**

16 * **Sec. 6.** AS 33.16 is amended by adding a new section to read:

17 **Sec. 33.16.155. Parole fee.** (a) The board shall require a periodic parole fee
 18 to be paid to the department as a condition of special medical, discretionary, or
 19 mandatory parole. The fee amount shall be established by regulation by the
 20 department but may not be less than \$3.30 a day.

21 (b) A parolee shall assign the parolee's permanent fund dividend to make
 22 parole fee payments under this section. The department shall provide an assignment
 23 form to the parolee. The department shall attach the permanent fund dividend of a
 24 parolee who is in arrears on the parole fee and who has failed or refused to make the
 25 assignment. If the permanent fund dividend exceeds the total of the parole fee
 26 payments owed by a parolee, the department shall refund the difference to the parolee.

27 * **Sec. 7.** AS 33.16.220 is amended by adding a new subsection to read:

28 (j) The board shall revoke the parole of a parolee who defaults in the payment
 29 of the parole fee imposed under AS 33.16.155 or any installment unless the parolee
 30 shows by a preponderance of the evidence that the parolee was unable to pay despite
 31 having made continuing good faith efforts to pay the fee. If the board finds that the

1 parolee was unable to pay despite having made continuing good faith efforts, the
 2 parole may not be revoked solely because of the inability to pay. If the board does
 3 not find that the default was attributable to the parolee's inability to pay despite having
 4 made continuing good faith efforts to pay the fee, the board shall revoke the parole.

5 * **Sec. 8.** AS 43.23.005(d) is amended to read:

6 (d) Notwithstanding the provisions of (a) - (c) of this section, an individual is
 7 not eligible for a permanent fund dividend for a dividend year when

8 (1) during the calendar year immediately preceding that dividend year,
 9 the individual was sentenced as a result of conviction in this state of a felony;

10 (2) during all or part of **either of the two** calendar **years** [YEAR]
 11 immediately preceding that dividend year, the individual was incarcerated as a result
 12 of the conviction in this state of a

13 (A) felony; or

14 (B) misdemeanor if the individual has been convicted of two or
 15 more prior crimes as defined in AS 11.81.900.

16 * **Sec. 9.** AS 43.23.028(b) is amended to read:

17 (b) To the extent that amounts appropriated for a fiscal year do not exceed the
 18 total amount that would have been paid during the previous fiscal year to individuals
 19 who were ineligible to receive dividends under AS 43.23.005(d) if they had been
 20 eligible, the notice requirements of (a)(3) of this section do not apply to appropriations
 21 from the dividend fund to the

22 (1) crime victim compensation fund established under AS 18.67.162 for
 23 payments to crime victims;

24 (2) council on domestic violence and sexual assault established under
 25 AS 18.66.010 for grants for the operation of domestic violence and sexual assault
 26 programs; [OR]

27 (3) Department of Corrections for incarceration and probation
 28 programs; **or**

29 **(4) office of crime victims' rights.**

30 * **Sec. 10.** AS 43.23.065(b) is amended to read:

31 (b) An exemption is not available under this section for permanent fund

1 dividends taken to satisfy

2 (1) child support obligations required by court order or decision of the
3 child support enforcement agency under AS 25.27.140 - 25.27.220;

4 (2) court ordered restitution under AS 12.55.045 - 12.55.051, 12.55.100,
5 or AS 47.12.120(b)(4);

6 (3) claims on defaulted scholarship loans under AS 43.23.067;

7 (4) court ordered fines;

8 (5) writs of execution under AS 09.35 of a judgment that is entered

9 (A) against a minor in a civil action to recover damages and
10 court costs;

11 (B) under AS 34.50.020 against the parent, parents, or legal
12 guardian of an unemancipated minor;

13 (6) a debt, **other than for a fee under (8) of this subsection**, owed
14 by an eligible individual to an agency of the state, unless the debt is contested and an
15 appeal is pending, or the time limit for filing an appeal has not expired;

16 (7) a debt owed to a person for a program for the rehabilitation of
17 perpetrators of domestic violence required under AS 12.55.101, AS 18.66.100(c)(15),
18 AS 25.20.061(3), or AS 33.16.150(f)(2);

19 **(8) probation fee ordered by a court under AS 12.55.104 or a**
20 **parole fee required by the Board of Parole under AS 33.16.155.**

21 * **Sec. 11.** AS 44.28 is amended by adding a new section to read:

22 **Sec. 44.28.040. Contract for collection of probation and parole fees.** The
23 Department of Corrections shall contract with a collection agency or other person for
24 the administration and collection of probation fees imposed under AS 12.55.104 and
25 parole fees imposed under AS 33.16.155.

26 * **Sec. 12.** Section 9 of this Act takes effect only if a version of SB 219 passes the
27 Twentieth Alaska State Legislature and becomes law.