

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/19/00
Referred: Finance

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;

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

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

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

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

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

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

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

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

31 * **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 if the
3 restitution has been determined under a negotiated agreement for a sentence under
4 AS 12.55.011.

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

10 * **Sec. 5.** AS 12.55.155(d) is amended by adding a new paragraph to read:

11 (18) the defendant and the victim, or the defendant and the community
12 if there is no victim, have negotiated an agreement for a sentence under AS 12.55.011.