

**HOUSE BILL NO. 133**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/19/01

Referred: Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to restitution for criminal and delinquency acts; authorizing the state  
2 to collect restitution on behalf of victims of crime and delinquent acts and the release of  
3 certain information related to that collection; relating to the forfeiture of certain cash  
4 and other security for payment of other restitution; relating to access by the Violent  
5 Crimes Compensation Board to certain records regarding delinquency acts to award  
6 compensation to victims; relating to immunity for damages related to certain collections  
7 of restitution; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an  
8 effective date."

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 \* Section 1. AS 09.35.010 is amended to read:

11                   Sec. 09.35.010. Judgments enforceable by execution. A writ of execution  
12                   may be issued in favor of

1                   **(1) a** [THE] party in whose favor a judgment is given that requires the  
2 payment of money or the delivery of real or personal property or either of them;

3                   **(2) the state on behalf of a victim of a crime or a delinquent act in**  
4 **whose favor a judgment of restitution is ordered** [MAY HAVE A WRIT OF  
5 EXECUTION ISSUED FOR ITS ENFORCEMENT].

6 \* **Sec. 2.** AS 09.38.030(f) is amended to read:

7                   (f) The state may execute on a judgment awarded to the state **or on a**  
8 **judgment of restitution on behalf of a victim of a crime or a delinquent act,** and  
9 an officer or agent of the state or a state employee, or a former officer, agent, or  
10 employee of the state may execute on a judgment to that person against a party to an  
11 action who is incarcerated for a criminal conviction by sending a notice of levy to the  
12 correctional facility in which the person is incarcerated. All money in an incarcerated  
13 person's account at a correctional facility is available for disbursement under a notice  
14 of levy under this subsection, in the following order of priority:

15                   (1) to support the dependents of the incarcerated person and to provide  
16 child support payments as required by AS 25.27;

17                   (2) to satisfy restitution or fines ordered by a [SENTENCING] court to  
18 be paid by the incarcerated person;

19                   (3) to pay a civil judgment entered against the incarcerated person as a  
20 result of that person's criminal conduct;

21                   (4) to reimburse the state for an award made for violent crimes  
22 compensation under AS 18.67 as a result of the incarcerated person's criminal  
23 conduct;

24                   (5) to satisfy other judgments entered against a prisoner in litigation  
25 against the state; in this paragraph, "litigation against the state" has the meaning given  
26 in AS 09.19.100.

27 \* **Sec. 3.** AS 09.38.065(a) is amended to read:

28                   (a) Notwithstanding other provisions of this chapter,

29                   (1) a creditor may make a levy against exempt property of any kind to  
30 enforce a claim for

31                   (A) child support;

1 (B) unpaid earnings of up to one month's compensation or the  
 2 full-time equivalent of one month's compensation for personal services of an  
 3 employee; or

4 (C) state or local taxes;

5 (2) a creditor may make a levy against exempt property to enforce a  
 6 claim for

7 (A) the purchase price of the property or a loan made for the  
 8 express purpose of enabling an individual to purchase the property and used  
 9 for that purpose;

10 (B) labor or materials furnished to make, repair, improve,  
 11 preserve, store, or transport the property; and

12 (C) a special assessment imposed to defray costs of a public  
 13 improvement benefiting the property; and

14 (3) a creditor may make a levy against exempt property of any kind to  
 15 enforce the claim of a [CRIME] victim, including a judgment of restitution on  
 16 behalf of a victim of a crime or a delinquent act, if the claim arises from  
 17 [CRIMINAL] conduct of the debtor that results in a [FELONY] conviction of a crime  
 18 or an adjudication of delinquency, except that the debtor is entitled to an exemption  
 19 in property

20 (A) not to exceed an aggregate value of \$3,000 chosen by the  
 21 debtor from the following categories of property:

22 (i) household goods and wearing apparel reasonably  
 23 necessary for one household;

24 (ii) books and musical instruments, if reasonably held  
 25 for the personal use of the debtor or a dependent of the debtor; and

26 (iii) family portraits and heirlooms of particular  
 27 sentimental value to the debtor; and

28 (B) not to exceed an aggregate value of \$2,800 of the debtor's  
 29 implements, professional books, and tools of the trade.

30 \* **Sec. 4.** AS 09.38.500 is amended by adding new paragraphs to read:

31 (16) "creditor" includes the state on behalf of a victim of a crime or a

1 delinquent act;

2 (17) "judgment of restitution"

3 (A) includes restitution ordered

4 (i) under AS 47.12.120 that is considered as a civil  
5 judgment enforceable by execution under AS 47.12.170; and

6 (ii) as part of a sentence under AS 12.55.025(f) that is  
7 considered as a judgment for money entered in a civil action;

8 (B) does not include a judgment for

9 (i) civil damages for torts under state law; or

10 (ii) restitution as a result of a violation of state law that  
11 is not a felony or misdemeanor;

12 (18) "victim" has the meaning given in AS 12.55.185;

13 (19) "victim of a crime or a delinquent act" means a victim of a crime  
14 or a delinquent act committed against state law; "victim of crime or delinquent act"  
15 does not include a victim of a violator of an ordinance of a political subdivision of the  
16 state.

17 \* **Sec. 5.** AS 12.30 is amended by adding a new section to read:

18 **Sec. 12.30.075. Forfeited cash and other securities.** Cash or other security  
19 posted as bail or as security under AS 12.30.020 for an appearance bond or a  
20 performance bond that has been forfeited by a court for a failure to appear or for  
21 violation of conditions of release shall be held by the court in trust for the benefit of  
22 the victim if, within 30 days after the forfeiture, the prosecuting authority gives notice  
23 that restitution may be requested as part of the sentence if the defendant is convicted.  
24 If the cash or other security is not returned to the defendant or other person under the  
25 provisions of this chapter or court rule, the court shall apply the cash or other security  
26 to an order that the defendant pay restitution to the victim under AS 12.55. If the cash  
27 or other security is applied to an order of restitution, a separate judgment in favor of  
28 the state in that amount forfeited and applied shall be entered and the defendant be  
29 ordered to pay that separate judgment. If the court enters no order or judgment of  
30 restitution, the cash or other security forfeited under this section shall be disposed of  
31 as otherwise provided by law or court rule.

1 \* **Sec. 6.** AS 12.55.045(c) is amended to read:

2 (c) If a defendant is sentenced to pay restitution, the court may grant  
3 permission for the payment to be made within a specified period of time or in  
4 specified installments. **If the defendant fails to make one or more payments**  
5 **required under this section, the victim or the state on the victim's behalf may**  
6 **enforce the total amount remaining under the order of restitution as provided in**  
7 **(l) of this section.**

8 \* **Sec. 7.** AS 12.55.045 is amended by adding new subsections to read:

9 (j) A defendant who is convicted of an offense for which restitution is ordered  
10 shall submit financial information as ordered by the court. The Alaska Court System  
11 shall prepare a form, in consultation with the Department of Law, for the submission  
12 of the information; the form shall include a warning that submission of incomplete or  
13 inaccurate information is punishable as unsworn falsification under AS 11.56.210.  
14 The defendant shall file the form with the court within 30 days after conviction of a  
15 felony and within five days after conviction of a misdemeanor. A copy of the  
16 completed form shall be provided to the prosecuting authority.

17 (k) The court, on its own motion or at the request of the prosecuting authority  
18 or probation officer, may order a defendant on probation who has been ordered to pay  
19 restitution to submit financial information to the court using the form specified in (j)  
20 of this section. The defendant shall file the completed form with the court within five  
21 days after the court's order. The defendant shall provide a copy of the completed form  
22 to the prosecuting authority and the person's probation officer, if any.

23 (l) An order by the court that the defendant pay restitution is a civil judgment  
24 for the amount of the restitution. The victim or the state on behalf of the victim may  
25 enforce the judgment through any procedure authorized by law for the enforcement of  
26 a civil judgment. If the victim or the state on the victim's behalf enforces or collects  
27 restitution through civil process, collection costs and full reasonable attorney's fees  
28 shall be awarded. This section does not limit the authority of the court to enforce  
29 orders of restitution.

30 (m) In this section, "conviction" means that the defendant has entered a plea of  
31 guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty

1 but mentally ill by a court or jury.

2 \* **Sec. 8.** AS 12.55.051(d) is amended to read:

3 (d) The state may enforce payment of a fine [AND THE RESTITUTION  
4 RECIPIENT MAY ENFORCE PAYMENT OF A RESTITUTION ORDER] against a  
5 defendant under AS 09.35 as if the order were a civil judgment enforceable by  
6 execution. This subsection does not limit the authority of the court to enforce fines  
7 [AND ORDERS OF RESTITUTION TO VICTIMS].

8 \* **Sec. 9.** AS 12.55.051 is amended by adding new subsections to read:

9 (e) The Department of Law is authorized to collect restitution ordered on  
10 behalf of a recipient unless

11 (1) the recipient elects as provided in (f) of this section to proceed  
12 without the assistance of the Department of Law; or

13 (2) the court orders restitution in a form other than a specific dollar  
14 amount.

15 (f) The court shall forward a copy of an order of restitution to the Department  
16 of Law when the judgment is entered. The Department of Law may not begin  
17 collection procedures until the recipient has been given notice and 30 days after  
18 receipt of notice to inform the Department of Law of the election to collect restitution  
19 without the assistance of the Department of Law. A recipient may inform the  
20 Department of Law at a later time of the election to collect without the assistance of  
21 the Department of Law; upon receipt of the information, the Department of Law may  
22 no longer proceed with collection efforts on behalf of the recipient. A recipient who  
23 has informed the Department of Law of an election under this subsection may not later  
24 request the services of the Department of Law to collect the restitution.

25 (g) When the court forwards a copy of an order of restitution to the  
26 Department of Law under (f) of this section, the court also shall provide the name,  
27 date of birth, social security number, and current address of the recipient of the  
28 restitution and the defendant to the extent that the court has that information in its  
29 possession. The information provided under this subsection is confidential and is not  
30 open to inspection as a public record under AS 40.25.110. The Department of Law or  
31 its agents may not disclose the information except as necessary to collect on the

1 restitution.

2 (h) If the Department of Law or its agents proceed to collect restitution on  
3 behalf of a recipient under (f) of this section, the Department of Law's or its agent's  
4 actions on behalf of the recipient do not create an attorney-client relationship between  
5 the Department of Law and the recipient. The Department of Law or its agents may  
6 not settle a judgment for restitution without the consent of the recipient of the  
7 restitution.

8 (i) An action for damages may not be brought against the state or any of its  
9 agents, officers, or employees based on an action or omission under this section.

10 (j) The Department of Law may enter into contracts on behalf of the state to  
11 carry out the collection procedures of this section. The Department of Law may adopt  
12 regulations necessary to carry out the collection procedures of this section.

13 \* **Sec. 10.** AS 23.20.110(l) is amended to read:

14 (l) The department may provide information obtained under this chapter to an  
15 agency of this state or to a person under contract with the state to

16 (1) verify the eligibility of an applicant for a public benefit or a  
17 publicly financed payment;

18 (2) assist the state in the collection of fines, penalties, **judgments of**  
19 **restitution on behalf of victims of crimes or delinquent acts**, or other payments  
20 ordered by a court or an administrative agency; or

21 (3) collect money owed to the fund under this chapter.

22 \* **Sec. 11.** AS 23.20.110 is amended by adding a new subsection to read:

23 (p) In this section, "judgment of restitution" has the meaning given in  
24 AS 09.38.500.

25 \* **Sec. 12.** AS 47.12.130 is amended by adding a new subsection to read:

26 (d) For purposes of restitution under AS 47.12.120(b), the court shall order the  
27 minor, and the minor's parent if applicable, to submit financial information, on a  
28 specified form, to the court, the Department of Law, and the Department of Health and  
29 Social Services. The Alaska Court System shall prepare the form in consultation with  
30 the Department of Law and the Department of Health and Social Services; the form  
31 shall include a warning that submission of incomplete or inaccurate information is

1 punishable as unsworn falsification under AS 11.56.210. The persons required to  
 2 submit information under this subsection shall comply within five days after the entry  
 3 of judgment under AS 47.12.130.

4 \* **Sec. 13.** AS 47.12.155(b) is amended to read:

5 (b) If a minor is found to be a delinquent under AS 47.12.120, the court may  
 6 order that the minor's parent or guardian

7 (1) personally participate in treatment reasonably available in the  
 8 parent's or guardian's location as specified in a plan set out in the court order;

9 (2) notify the department if the minor violates a term or condition of  
 10 the court order; and

11 (3) comply with any other conditions set out in the court order,  
 12 **including a condition in an order requiring a parent to pay restitution ordered on**  
 13 **behalf of a victim of a delinquent act.**

14 \* **Sec. 14.** AS 47.12.170 is amended to read:

15 **Sec. 47.12.170. Enforcement of restitution.** A person who is a recipient of a  
 16 restitution order involving a minor found delinquent under AS 47.12.120, **or the state**  
 17 **on behalf of the restitution recipient,** may enforce an order for restitution under  
 18 AS 47.12.120 against the minor and the minor's parent under AS 09.35 as if the order  
 19 were a civil judgment enforceable by execution. **If the recipient or the state on the**  
 20 **recipient's behalf enforces or collects restitution through civil process, collection**  
 21 **costs and full reasonable attorney's fees shall be awarded.** This section does not  
 22 limit the authority of the court to otherwise enforce orders of payment for restitution.  
 23 An order of restitution enforced under this section does not limit under other law the  
 24 civil liability of the minor or the minor's parent as a result of the delinquent conduct.

25 \* **Sec. 15.** AS 47.12.170 is amended by adding new subsections to read:

26 (b) The Department of Law is authorized to collect restitution on behalf of the  
 27 recipient unless

28 (1) the recipient elects as provided in (c) of this section to enforce the  
 29 order of restitution without the assistance of the Department of Law; or

30 (2) the order requires restitution to be made in a form other than  
 31 payment of a specific dollar amount.

1           (c) The court shall forward a copy of an order of restitution to the Department  
2 of Health and Social Services when the order is entered. Along with the copy of the  
3 order, the court shall provide the name, date of birth, social security number, and  
4 current address of the recipient of the restitution, the minor, and the minor's parent, to  
5 the extent that the court has that information in its possession. Upon receipt of the  
6 order and other information from the court, the Department of Health and Social  
7 Services shall send a notice to the recipient regarding the recipient's rights under this  
8 section, including the right to elect to enforce the order of restitution without the  
9 assistance of the Department of Law. When 30 days have passed since the recipient  
10 received the notice, or when the Department of Health and Social Services receives  
11 the recipient's response to the notice, whichever is earlier, that department shall send  
12 to the Department of Law a copy of the order of restitution; the name, date of birth,  
13 social security number, and current address of the recipient, the minor, and the minor's  
14 parent; the notice sent to the recipient under this subsection; and the recipient's  
15 response, if any. If a response from the recipient reaches the Department of Health  
16 and Social Services after that department has sent the order of restitution and other  
17 information to the Department of Law under this subsection, the Department of Health  
18 and Social Services shall immediately send the response to the Department of Law.  
19 The information provided to the Department of Law under this subsection is  
20 confidential and is not open to inspection as a public record under AS 40.25.110. The  
21 Department of Law or its agents may not disclose the information except as necessary  
22 to collect on the restitution.

23           (d) The Department of Law may not begin collection procedures on the order  
24 of restitution until the recipient has been given notice under (c) of this section and has  
25 had 30 days to elect to collect the restitution without the assistance of the Department  
26 of Law. A recipient may inform the Department of Law at a later time of the  
27 recipient's election to collect the restitution without the assistance of the Department  
28 of Law; upon receipt of that information, the Department of Law may no longer  
29 proceed with collection efforts on behalf of the recipient. A recipient who has elected  
30 under this section to collect restitution without the assistance of the Department of  
31 Law may not later request the services of that department to collect the restitution.

1 (e) If the Department of Law or its agents proceed to collect restitution on  
 2 behalf of a recipient under (c) of this section, the Department of Law's or its agent's  
 3 actions on behalf of the recipient do not create an attorney-client relationship between  
 4 the Department of Law and the recipient. The Department of Law or its agents may  
 5 not settle an order of restitution without the consent of the recipient of the restitution.

6 (f) An action for damages may not be brought against the state or any of its  
 7 agents, officers, or employees based on an action or omission under this section.

8 (g) The Department of Law may enter into contracts on behalf of the state to  
 9 carry out the collection procedures of this section. The Department of Law may adopt  
 10 regulations necessary to carry out the collection procedures of this section, including  
 11 the reimbursement of attorneys fees and costs in appropriate cases.

12 \* **Sec. 16.** AS 47.12.310(b) is amended to read:

13 (b) A state or municipal agency or employee

14 (1) shall disclose information regarding a case to a federal, state, or  
 15 municipal law enforcement agency for a specific investigation being conducted by that  
 16 agency; and

17 (2) shall disclose appropriate information regarding a case to

18 (A) a guardian ad litem appointed by the court;

19 (B) a person or an agency requested by the department or the  
 20 minor's legal custodian to provide consultation or services for a minor who is  
 21 subject to the jurisdiction of the court under this chapter as necessary to enable  
 22 the provision of the consultation or services;

23 (C) school officials as may be necessary to protect the safety of  
 24 the minor who is the subject of the case and the safety of school students and  
 25 staff or to enable the school to provide appropriate counseling and supportive  
 26 services to meet the needs of a minor about whom information is disclosed;

27 (D) a governmental agency as may be necessary to obtain that  
 28 agency's assistance for the department in its investigation or to obtain physical  
 29 custody of a minor;

30 (E) a law enforcement agency of this state or another  
 31 jurisdiction as may be necessary for the protection, rehabilitation, or

1 supervision of any minor or for actions by that agency to protect the public  
2 safety;

3 (F) a victim or to the victim's insurance company as may be  
4 necessary to inform the victim or the insurance company about the arrest of the  
5 minor, including the minor's name and the names of the minor's parents, copies  
6 of reports, or the disposition or resolution of a case involving a minor;

7 (G) the state medical examiner under AS 12.65 as may be  
8 necessary to perform the duties of the state medical examiner; [AND]

9 (H) foster parents or relatives with whom the child is placed by  
10 the department as may be necessary to enable the foster parents or relatives to  
11 provide appropriate care for the child who is the subject of the case, to protect  
12 the safety of the child who is the subject of the case, and to protect the safety  
13 and property of family members and visitors of the foster parents or relatives;

14 **(I) the Department of Law or its agents for use and**  
15 **subsequent release if necessary for collection of an order of restitution on**  
16 **behalf of the recipient; and**

17 **(J) the Violent Crimes Compensation Board established in**  
18 **AS 18.67.020 for use in awarding compensation under AS 18.67.080.**

19 \* **Sec. 17.** AS 09.38.065(d) is repealed.

20 \* **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to  
21 read:

22 INDIRECT COURT RULE AMENDMENT. (a) The provisions of AS 12.55.045(l),  
23 enacted by sec. 7 of this Act, and the provisions of AS 47.12.170, as amended by sec. 14 of  
24 this Act, have the effect of amending Rule 82, Rules of Civil Procedure, by authorizing full  
25 reasonable attorney's fees for certain collections of victim restitution.

26 (b) The provisions of AS 12.55.045(l), enacted by sec. 7 of this Act, and  
27 AS 47.12.170, as amended by sec. 14 of this Act, that authorize full reasonable attorney's fees  
28 take effect only if (a) of this section receives the two-thirds majority vote of each house  
29 required by art. IV, sec. 15, Constitution of the State of Alaska.

30 \* **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to  
31 read:

1           APPLICABILITY. This Act applies to the collection of judgments or orders of  
2   restitution entered in adjudications of delinquency of minors or in criminal cases before, on,  
3   or after the effective date of secs. 1 - 17 of this Act.

4       \* **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to  
5   read:

6           TRANSITION: REGULATIONS. Notwithstanding sec. 22 of this Act, the state  
7   agencies affected by this Act may immediately proceed to adopt regulations necessary to  
8   implement the changes made by this Act. The regulations take effect under AS 44.62  
9   (Administrative Procedure Act), but not before the effective date of the applicable statutory  
10   change.

11       \* **Sec. 21.** Section 20 of this Act takes effect immediately under AS 01.10.070(c).

12       \* **Sec. 22.** Except as provided in sec. 21 of this Act, this Act takes effect January 1, 2002.