

SENATE BILL NO. 97

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATOR WARD

Introduced: 2/16/01

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fees for probation and parole."**

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

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

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

1 or restitution, the court may order the defendant imprisoned until the order of the court
 2 is satisfied. A term of imprisonment imposed under this section may not exceed one
 3 day for each \$50 of the unpaid portion of the fine, fee, or restitution or one year,
 4 whichever is shorter. Credit shall be given toward satisfaction of the order of the court
 5 for every day a person is incarcerated for nonpayment of a fine, fee, or restitution.

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

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

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

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

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

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

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

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

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

25 (6) to satisfy the screening, evaluation, referral, and program
 26 requirements of an agency authorized by the court to make referrals for rehabilitative
 27 treatment or to provide rehabilitative treatment; and

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

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

30 **Sec. 12.55.104. Probation fee.** (a) A court granting probation, as defined in
 31 AS 33.05.080, shall require a periodic probation fee to be paid to the Department of

1 Corrections as a condition of probation based on ability to pay. The fee amount shall
 2 be established by regulation by the Department of Corrections but may not be less
 3 than \$1.50 a day.

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

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

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

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

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

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

21 (4) shall report

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

23 (B) at other times, and in the manner, prescribed by the board

24 or the parole officer assigned to the parolee;

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

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

29 (7) may not use, possess, handle, purchase, give, distribute, or
 30 administer a controlled substance as defined in AS 11.71.900 or under federal law or a
 31 drug for which a prescription is required under state or federal law without a

1 prescription from a licensed medical professional to the parolee;

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

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

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

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

12 (12) shall provide a blood sample, an oral sample, or both, when
13 requested by a health care professional acting on behalf of the state to provide the
14 sample or samples, or an oral sample when requested by a juvenile or adult
15 correctional, probation, or parole officer, or a peace officer, if the prisoner is being
16 released after a conviction of an offense requiring the state to collect the sample or
17 samples for the deoxyribonucleic acid identification system under AS 44.41.035;

18 **(13) shall pay a periodic parole fee as provided in AS 33.16.155.**

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

20 **Sec. 33.16.155. Parole fee.** (a) The board shall require a periodic parole fee
21 to be paid to the department as a condition of special medical, discretionary, or
22 mandatory parole based on ability to pay. The fee amount shall be established by
23 regulation by the department but may not be less than \$1.50 a day.

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

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

31 (j) The board shall revoke the parole of a parolee who defaults in the payment

1 of the parole fee imposed under AS 33.16.155 or any installment unless the parolee
 2 shows by a preponderance of the evidence that the parolee was unable to pay despite
 3 having made continuing good faith efforts to pay the fee. If the board finds that the
 4 parolee was unable to pay despite having made continuing good faith efforts, the
 5 parole may not be revoked solely because of the inability to pay. If the board does not
 6 find that the default was attributable to the parolee's inability to pay despite having
 7 made continuing good faith efforts to pay the fee, the board shall revoke the parole.

8 * **Sec. 8.** AS 43.23.065(b) is amended to read:

9 (b) An exemption is not available under this section for permanent fund
 10 dividends taken to satisfy

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

13 (2) court ordered restitution under AS 12.55.045 - 12.55.051,
 14 12.55.100, or AS 47.12.120(b)(4);

15 (3) claims on defaulted education loans under AS 43.23.067;

16 (4) court ordered fines;

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

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

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

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

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

28 **(8) probation fee ordered by a court under AS 12.55.104 or**
 29 **AS 47.12.120 or a parole fee required by the Board of Parole under AS 33.16.155.**

30 * **Sec. 9.** AS 44.28 is amended by adding a new section to read:

31 **Sec. 44.28.040. Contract for collection of probation and parole fees.** The

1 Department of Corrections shall contract with a collection agency or other person for
 2 the administration and collection of probation fees imposed under AS 12.55.104 and
 3 parole fees imposed under AS 33.16.155.

4 * **Sec. 10.** AS 44.29 is amended by adding a new section to read:

5 **Sec. 44.29.026. Contract for collection of probation fees.** The Department
 6 of Health and Social Services shall contract with a collection agency or other person
 7 for the administration and collection of juvenile probation fees under AS 47.12.120.

8 * **Sec. 11.** AS 47.12.120 is amended by adding a new subsection to read:

9 (k) A court granting probation under this section shall require a periodic
 10 probation fee to be paid by the minor or the minor's parents to the department as a
 11 condition of probation based on ability to pay. The fee amount shall be established by
 12 regulation by the department but may not be less than \$1.50 a day. The minor and the
 13 minor's parents or guardian shall assign the minor's permanent fund dividend to make
 14 probation fee payments under this section. The department shall provide an
 15 assignment form to the minor and the minor's parents or guardian. The department
 16 shall attach the permanent fund dividend of a minor who is in arrears on the probation
 17 fee and who has failed or refused to execute the assignment. If the permanent fund
 18 dividend exceeds the total of the probation fee payments owed by the probationer, the
 19 department shall refund the difference to the minor or the minor's parents or guardian.

20 * **Sec. 12.** AS 47.12.170 is amended to read:

21 **Sec. 47.12.170. Enforcement of probation fee or restitution. The state**
 22 **may enforce payment of a probation fee, and the** [A PERSON WHO IS A]
 23 recipient of a restitution order involving a minor found delinquent under AS 47.12.120
 24 may enforce an order for restitution under AS 47.12.120 against the minor and the
 25 minor's parent under AS 09.35 as if the **fee or** order were a civil judgment enforceable
 26 by execution. This section does not limit the authority of the court to otherwise
 27 enforce orders of payment for **probation fees or for** restitution. An order of
 28 restitution enforced under this section does not limit under other law the civil liability
 29 of the minor or the minor's parent as a result of the delinquent conduct.

30 * **Sec. 13.** AS 47.12.170 is amended by adding a new subsection to read:

31 (b) If the minor defaults in the payment of a probation fee or any installment

1 of the probation fee, the court may order the minor and the minor's parents to show
2 cause why the minor's probation should not be revoked and why the parents should not
3 be held in contempt of court. In a contempt or probation revocation proceeding
4 brought as a result of failure to pay a probation fee, it is an affirmative defense that the
5 minor and the minor's parents were unable to pay despite having made continuing
6 good faith efforts to pay the fee. If the court finds that the minor and the minor's
7 parents were unable to pay despite having made continuing good faith efforts, the
8 minor may not be imprisoned and the parents may not be held in contempt solely
9 because of the inability to pay. If the court does not find that the default was
10 attributable to the minor's or parents' inability to pay despite having made continuing
11 good faith efforts to pay the fee, the court may order the minor's probation revoked
12 and the parents held in contempt until the order of the court is satisfied.