

CS FOR HOUSE BILL NO. 357(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/12/04

Referred: Finance

Sponsor(s): REPRESENTATIVES SAMUELS, STOLTZE, MCGUIRE AND DAHLSTROM, Croft, Masek, Lynn

SENATOR Dyson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to restitution; and providing for an effective date."**

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

3 * **Section 1.** AS 12.55.045(a) is amended to read:

4 (a) The court **shall, when presented with evidence, unless the victim or**
5 **other person expressly declines restitution,** [MAY] order a defendant convicted of
6 an offense to make restitution as provided in this section, including restitution to the
7 victim or other person injured by the offense, to a public, private, or private nonprofit
8 organization that has provided or is or will be providing counseling, medical, or
9 shelter services to the victim or other person injured by the offense, or as otherwise
10 authorized by law. The court **shall, when presented with evidence, unless the**
11 **victim expressly declines restitution,** [MAY] also order a defendant convicted of an
12 offense to compensate a victim that is a nonprofit organization for the value of labor or
13 goods provided by volunteers if the labor or goods were necessary to alleviate or
14 mitigate the effects of the defendant's crime. In determining the amount and method
15 of payment of restitution or compensation, the court shall take into account the

1 (1) public policy that favors requiring criminals to compensate for
2 damages and injury to their victims; and

3 (2) financial burden placed on the victim and those who provide
4 services to the victim and other persons injured by the offense as a result of the
5 criminal conduct of the defendant.

6 * **Sec. 2.** AS 12.55.045(d) is amended to read:

7 (d) In any case, including a case in which the defendant is convicted of a
8 violation of AS 11.46.120 - 11.46.150 and the property is commercial fishing gear as
9 defined in AS 16.43.990, the court shall consider the victim's loss, and **the** [MAY]
10 order **of** restitution [THAT] may include compensation for loss of income.

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

12 (g) **The** [EXCEPT AS PROVIDED BY (f) OF THIS SECTION, THE] court
13 may not, in ordering the amount of restitution, consider the defendant's ability to pay
14 restitution.

15 * **Sec. 4.** AS 12.55.045 is amended by adding a new subsection to read:

16 (n) Notwithstanding another provision of law, the court shall accept
17 (1) payments of restitution from a defendant at any time; and
18 (2) prepayments of restitution or payments in anticipation of an order
19 of restitution.

20 * **Sec. 5.** AS 12.55.051(c) is amended to read:

21 (c) A defendant who has been sentenced to pay a fine or restitution may
22 request a hearing regarding the defendant's ability to pay the fine or restitution at any
23 time that the defendant is required to pay all or a portion of the fine or restitution. The
24 court may deny the request if it has previously considered the defendant's ability to
25 pay and the defendant's request does not allege changed circumstances. If at a hearing
26 under this subsection, the defendant proves by a preponderance of the evidence that
27 the defendant will be unable through good faith efforts to satisfy the order requiring
28 payment of the fine or restitution, the court shall modify the order so that the
29 defendant can pay the fine or restitution through good faith efforts. The court may
30 reduce the fine [OR RESTITUTION] ordered, change the payment schedule, or
31 otherwise modify the order. **The court may not reduce an order of restitution but**

1 **may change the payment schedule.**

2 * **Sec. 6.** AS 47.12.160 is amended by adding a new subsection to read:

3 (f) Notwithstanding another provision of law, the court shall accept

4 (1) payments of restitution from a minor and the minor's parent at any
5 time; and

6 (2) prepayments of restitution or payments in anticipation of an order
7 of restitution.

8 * **Sec. 7.** AS 12.55.045(e) and 12.55.045(f) are repealed.

9 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).