

SENATE CS FOR CS FOR HOUSE BILL NO. 357(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/22/04

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

1 court shall take into account the

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

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

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

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

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

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

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

17 (n) Notwithstanding another provision of law, the court shall accept (1)
18 payments of restitution from a defendant at any time, and (2) prepayments of
19 restitution or payments in anticipation of an order of restitution. If the recipient has
20 elected to have the Department of Law collect the judgment of restitution under
21 AS 12.55.051(g), the court shall forward all payments of restitution to the Department
22 of Law within five days after the court's acceptance.

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

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

1 defendant can pay the fine or restitution through good faith efforts. The court may
2 reduce the fine [OR RESTITUTION] ordered, change the payment schedule, or
3 otherwise modify the order. **The court may not reduce an order of restitution but**
4 **may change the payment schedule.**

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

6 (f) Notwithstanding another provision of law, the court shall accept (1)
7 payments of restitution from a minor and the minor's parent at any time, and (2)
8 prepayments of restitution or payments in anticipation of an order of restitution. If the
9 recipient has elected to have the Department of Law collect the judgment of restitution
10 under AS 12.55.051(g), the court shall forward all payments of restitution to the
11 Department of Law within five days after the court's acceptance.

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

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