

SENATE CS FOR HOUSE BILL NO. 90 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/19/91
Referred: Finance

Sponsor(s): REPRESENTATIVE ULMER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to fines and restitution in criminal cases."

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

3 * Section 1. PURPOSE. It is the purpose of this Act to ensure full payment of fines imposed in
4 criminal cases and to make full restitution available to all persons who have been injured as a result of
5 criminal behavior, to the greatest extent possible, by

6 (1) requiring courts to consider whether a defendant has the ability to pay fines and
7 restitution at a hearing held after a defendant has failed to pay, rather than asking courts to predict at
8 the time of sentencing whether a defendant will have the ability to pay fines and restitution in the future;

9 (2) requiring a defendant who has failed to pay a fine or restitution to come forward with
10 evidence justifying why the fine or restitution was not paid;

11 (3) allowing courts to order that restitution be made to all persons who have suffered a
12 loss as a result of a defendant's conduct; and

13 (4) allowing courts to order restitution for expenses that will be incurred after the date
14 of sentencing.

1 * Sec. 2. AS 12.55.035(a) is amended to read:

2 (a) Upon conviction of an offense, a defendant may be sentenced to pay a fine as
3 authorized in this section or as otherwise authorized by law. [IN DETERMINING THE
4 AMOUNT AND METHOD OF PAYMENT OF A FINE, THE COURT SHALL TAKE INTO
5 ACCOUNT THE FINANCIAL RESOURCES OF THE DEFENDANT AND THE NATURE OF
6 THE BURDEN ITS PAYMENT WILL IMPOSE. NO DEFENDANT MAY BE IMPRISONED
7 SOLELY BECAUSE OF INABILITY TO PAY A FINE.]

8 * Sec. 3. AS 12.55.045(a) is amended to read:

9 (a) The court may order a defendant convicted of an offense to make restitution as
10 provided in this section, including restitution to the victim or other person injured by the
11 offense, to a public, private, or private nonprofit organization that has provided or is or will be
12 providing counseling, medical, or shelter services to the victim or other person injured by the
13 offense, or as otherwise authorized by law. [A DEFENDANT IS PRESUMED TO HAVE THE
14 ABILITY TO PAY RESTITUTION UNLESS THE DEFENDANT ESTABLISHES THE
15 INABILITY TO PAY BY A PREPONDERANCE OF THE EVIDENCE.] In determining the
16 amount and method of payment of restitution, the court shall take into account the

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

19 (2) financial burden placed on the victim and those who provide services to the
20 victim and other persons injured by the offense as a result of the criminal conduct of the
21 defendant [; AND

22 (3) FINANCIAL RESOURCES OF THE DEFENDANT AND THE NATURE OF
23 THE BURDEN ITS PAYMENT WILL IMPOSE ON DEPENDENTS OF THE DEFENDANT].

24 * Sec. 4. AS 12.55.045 is amended by adding new subsections to read:

25 (e) If a court proposes to order a defendant to pay restitution under this section of less
26 than \$5,000, and the defendant's sentence does not include a period of unsuspended incarceration
27 exceeding 90 days, the court may take into account at the time of sentencing the defendant's
28 present and future ability to pay the restitution proposed. The court shall presume that the
29 defendant has the ability to pay the amount proposed unless the defendant at the sentencing
30 hearing establishes by a preponderance of the evidence the inability to pay the amount proposed.

31 (f) Except as provided by (e) of this section, the court may not, in ordering the amount

1 of restitution, consider the defendant's ability to pay restitution.

2 * Sec. 5. AS 12.55.051(a) is amended to read:

3 (a) If the defendant defaults in the payment of a fine or any installment or of restitution
4 or any installment, the court may order the defendant to show cause why the defendant should
5 not be sentenced to imprisonment for nonpayment and, if the payment was made a condition
6 of the defendant's probation, may revoke the probation of the defendant. In a contempt
7 or probation revocation proceeding brought as a result of failure to pay a fine or
8 restitution, it is an affirmative defense that the defendant was unable to pay despite having
9 made continuing good faith efforts [IF THE STATE PRESENTS EVIDENCE OF THE
10 DEFENDANT'S FAILURE TO PAY RESTITUTION, THE COURT MAY PRESUME THAT
11 THE DEFENDANT HAS INTENTIONALLY REFUSED TO PAY THE FINE OR
12 RESTITUTION OR HAS NOT MADE A GOOD FAITH EFFORT TO PAY THE FINE OR
13 RESTITUTION UNLESS THE DEFENDANT PRESENTS SOME EVIDENCE THAT THE
14 DEFENDANT'S FAILURE TO PAY THE FINE OR RESTITUTION WAS NOT
15 INTENTIONAL OR THAT THE DEFENDANT HAS MADE A GOOD FAITH EFFORT] to
16 pay the fine or restitution. If the court finds that the defendant was unable to pay despite
17 having made continuing good faith efforts, the defendant may not be imprisoned solely
18 because of the inability to pay. If the court does not find [FINDS BY A PREPONDERANCE
19 OF THE EVIDENCE] that the default was attributable to the defendant's inability to pay
20 despite having made continuing good faith efforts [AN INTENTIONAL REFUSAL OR
21 FAILURE TO MAKE A GOOD FAITH EFFORT] to pay the fine or restitution, the court may
22 order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment
23 imposed under this section may not exceed one day for each \$50 of the unpaid portion of the fine
24 or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the
25 order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

26 * Sec. 6. AS 12.55.051(c) is repealed and reenacted to read:

27 (c) A defendant who has been sentenced to pay a fine or restitution may request a
28 hearing regarding the defendant's ability to pay the fine or restitution at any time that the
29 defendant is required to pay all or a portion of the fine or restitution. The court may deny the
30 request if it has previously considered the defendant's ability to pay and the defendant's request
31 does not allege changed circumstances. If at a hearing under this subsection, the defendant

1 proves by a preponderance of the evidence that the defendant will be unable through good faith
2 efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the
3 order so that the defendant can pay the fine or restitution through good faith efforts. The court
4 may reduce the fine or restitution ordered, change the payment schedule, or otherwise modify the
5 order.