

**HOUSE
COMMITTEE REPORT**

(11)

Date referred: 3/21/86

FURTHER REFERRALS:

DATE: 4-3-86

The FINANCE Committee has considered HB 463

"An Act relating to criminal trials and restitution."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note(s) (2)

SIGNING DO PASS:

Albert G. Adams
[Signature]
[Signature]
[Signature]
Ronald L. Taylor
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

Albert G. Adams
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB463
 Title : "An Act relating to the authority to compromise certain misdemeanors and to the payment of restitution."
 Sponsor : Thompson, Jenkins, Uehling, et al
 Requestor : House Finance
 Date of Request : _____

FISCAL DETAIL

Agency Affected. Public Safety
 BRU : Council on Domestic Violence and Sexual Assault
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Barbara Miklos, Exec. Dir. *BKM*
 Division : CDVSA

Phone : 465-4356
 Date : 3/25/86

Approved by Commissioner : [Signature]
 Agency : Dept. of Public Safety

Date : 3/25/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. HB 463
 Title: "An Act relating to Criminal trials and restitution."
 Sponsor: Repr. Thompson
 Requestor: Repr. Thompson
 Date of Request: February 7, 1986

FISCAL DETAIL

Agency Affected: Department of Law
 BRU: Prosecution
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Prepared by: Richard I. Pegues Phone: 465-3672
 Division: Administrative Services Division Date: 2/12/86
 Approved by Commissioner: Richard I. Pegues (for) Date: 2/12/86
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 463

This bill expands the exceptions to the authority to compromise misdemeanors for which a victim has a civil action, under AS 12.45.120, to except certain family members and certain others having a past or present living relationship with a defendant. The bill also provides that a court may order restitution to a public or nonprofit organization that has provided counseling, medical or shelter services to the victim. Neither of these new provisions will have a fiscal impact on the Department of Law.

Introduced: 1/13/86
Referred: Judiciary and
Finance

1 IN THE HOUSE

BY THOMPSON

2

HOUSE BILL NO. 463

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to criminal trials and restitution."

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

8 * Section 1. AS 12.45.120 is amended to read:

9 Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH
10 VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a
11 charge of misdemeanor for which the person injured by the act consti-
12 tuting the crime has a remedy by a civil action, the crime may be
13 compromised except when it was committed

14 (1) by or upon a peace officer, judge, or magistrate while
15 in the execution of the duties of that office;

16 (2) riotously;

17 (3) with an intent to commit a felony;

18 (4) larcenously;

19 (5) by assault against

20 (A) a spouse or a former spouse of the defendant;

21 (B) a parent, grandparent, child, or grandchild of the
22 defendant;

23 (C) a member of the social unit comprised of those
24 living together in the same dwelling as the defendant; or

25 (D) a person who is not a spouse or former spouse of
26 the defendant but who previously lived in a spousal relationship
27 with the defendant.

28 * Sec. 2. AS 12.55.045(a) is amended to read:

29 (a) The court may order a defendant convicted of an offense to

1 make restitution as provided in this section, including restitution to
2 a public or private nonprofit organization that has provided counsel-
3 ing, medical, or shelter services to the victim or as otherwise au-
4 thorized by law. [IN DETERMINING THE AMOUNT AND METHOD OF PAYMENT OF
5 RESTITUTION, THE COURT SHALL TAKE INTO ACCOUNT THE FINANCIAL RESOURCES
6 OF THE DEFENDANT AND THE NATURE OF THE BURDEN ITS PAYMENT WILL IM-
7 POSE.]

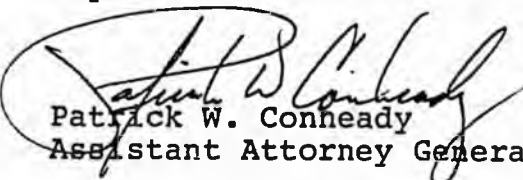
8 * Sec. 3. AS 12.55.051(a) is amended to read:

9 (a) If the defendant defaults in the payment of a fine or any
10 installment or of restitution or any installment, the court may order
11 the defendant to show cause why the defendant should not be sentenced
12 to imprisonment for nonpayment. If the defendant fails to establish
13 [COURT FINDS] by a preponderance of the evidence that the defendant
14 did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN
15 INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the
16 fine or restitution, the court may order the defendant imprisoned
17 until the order of the court is satisfied. A term of imprisonment
18 imposed under this section may not exceed one day for each \$50 of the
19 unpaid portion of the fine or restitution or one year, whichever is
20 shorter. Credit shall be given toward satisfaction of the order of
21 the court for every day a person is incarcerated for nonpayment of a
22 fine or restitution.

MEMORANDUM

State of Alaska

TO: LuAnn Cutler
Legislative Assistant to
Representative Al Adams

FROM: 
Patrick W. Conheady
Assistant Attorney General

DATE: April 2, 1986

FILE NO:

TELEPHONE NO: 465-3678

SUBJECT: CSHB 463 (Jud)

The House Judiciary committee substitute incorporates a method of drafting which could present problems in the future. In Section 1 of the bill, AS 12.45.120 is amended by deleting existing language in subsection 4 (larcenously) and inserting new language regarding domestic assaults. If the old subsection 4 - larcenously, is to be deleted, the subparagraph 4 designation should remain, and a new subparagraph 5, containing the additional language on domestic assaults should be added. This method will preclude any confusion in the future with prior court decisions that have cited AS 12.45.120, or with any statutory cross-reference which may exist to the current language in AS 12.45.120. This is the preferred method of drafting referred to in previous editions of the Legislative Drafting Manual.

Therefore, I would recommend to the committee that Section 1 of the bill read as follows:

* Section 1. AS 12.45.120 is amended to read:

Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed

(1) by or upon a peace officer, judge, or magistrate while in the execution of the duties of that office;

(2) riotously;

(3) with an intent to commit a felony;

(4) [LARCENOUSLY;]

(5) by assault against

(A) the spouse of the defendant, unless the court finds that a divorce is pending between the individuals and a restraining order against further assaultive behavior has been issued;

(B) a former spouse of the defendant;

(C) a parent, grandparent, child, or grandchild of the defendant;

(D) a member of the social unit comprised of those living together in the same dwelling as the defendant; or

LuAnn Cutler
Legislative Assistant to
Representative Al Adams

April 2, 1986
Page 2

(E) a person who is not a spouse or former spouse of the defendant but who previously lived in a spousal relationship with the defendant

If I can be of further assistance, do not hesitate to contact me.

PWC:ejf:76

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CS HB 463 (J.diciary)

March 25, 1986

Support

CSHB 463 - "An Act relating to the authority to compromise certain misdeameanors and to the payment of restitution."

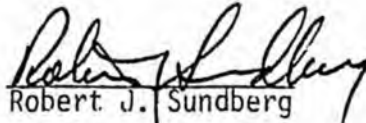
The Council on Domestic Violence and Sexual Assault supports CSHB 463. Following are comments about the bill.

Section I. Adds domestic violence to the list of exceptions to remedy by a civil compromise.

Many battered women do not have the money to obtain legal counsel to protect their rights under Alaska statute. They may be unknowingly led to believe that a civil compromise is the answer to "the problem" by a perpetrator's attorney. The victim believes that this is the appropriate course of action because a lawyer says so. Civil compromise gives the batterer the message that it is acceptable to use violence to solve problems with anger and frustration, because there are no long term consequences. Domestic violence cases should not be compromised in this manner.

Section II. Allows providing restitution to an organization that has provided counseling, medical or shelter services to a victim of an offense.

Since many agencies that provide services to victims have inadequate funding, additional financial support is needed. It is difficult to determine if this provision will engender much money for domestic violence programs because its use may not be appropriate in most cases. Domestic violence programs cannot reveal clients' identities without the express permission of the victim and guarantee for the victim's safety. However, there may be instances where this could be accomplished and the batterer should be held accountable to the victim and pay for harm done to her as well as services received.


Robert J. Sundberg

11 E 1

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB463 (JUD)
 Title : "An Act Relating to Criminal Trials and Restitution"
 Sponsor : Rep. David Thompson
 Requestor : House Judiciary
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Council on Domestic Violence and Sexual Assault
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Barbara Miklos, Exec. Dir. Phone : 465-4356
 Division : Council on DV and SA Date : 1/31/86
 Approved by Commissioner : [Signature] Date : 2/3/86
 Agency : Dept. of Public Safety

Distribution (by Agency preparing fiscal note) :

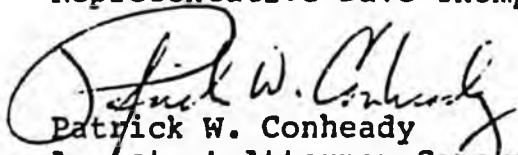
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

MEMORANDUM
10 Helen Fisher
Legislative Assistant to
Representative Dave Thompson

DATE: March 12, 1986

FILE NO:

TELEPHONE NO: 465-3678

FROM: 
Patrick W. Conheady
Assistant Attorney General
Chief, Pretrial Services

SUBJECT: Proposed CSHB 463
(Judiciary);
3/11/86 version

You have requested my analysis of the March 11 version of HB 463. In addition to the pertinent comments contained in my March 7 memorandum, I would like to add the following:

In Section 1 of the bill, new language has been added providing an exception to the prohibition on civilly compromising domestic assaults. That exception is contained in proposed AS 12.45.120(4)(A) and provides "unless the court finds that a divorce is pending between the individuals and a restraining order against further assaultive behavior has been issued." This department opposes this new provision as contrary to our stated position against compromising domestic assaults.

Such an exception will not facilitate divorce proceedings as the battering spouse will have motivation to assert the necessity of a civil compromise as a precondition to a less contentious divorce. Furthermore, fear of lapsing spousal privilege causing divorce proceedings to drag on with the pendency of a criminal assault prosecution are unfounded as the spousal privilege does not apply when one spouse is the victim of the other spouse's criminal act. See Rule 505(a)(2)(D)(i) of the Alaska Rules of Evidence.

Section 1 of the bill also contains the drafting error referred to in my initial memorandum.

Prior Section 2, facilitating payment of restitution to victim has been deleted from the bill.

Sections 2 and 3 of this version mirror section 3 and 4 of the version I prepared on March 7.

If I can be of further assistance, do not hesitate to contact me.

PWC:ejf:62

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 463

January 31, 1986

Support

HB 463 - "An Act relating to criminal trials and restitution."

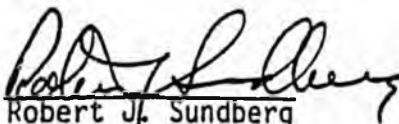
The Council on Domestic Violence and Sexual Assault supports HB 463. Following are comments about the bill.

Section I. Adds domestic violence to the list of exceptions to remedy by a civil compromise.

Many battered women do not have the money to obtain legal counsel to protect their rights under Alaska statute. They may be unknowingly led to believe that a civil compromise is the answer to "the problem" by a perpetrator's attorney. The victim believes that this is the appropriate course of action because a lawyer says so. Civil compromise gives the batterer the message that it is acceptable to use violence to solve problems with anger and frustration, because there are no long term consequences. Domestic violence cases should not be compromised in this manner.

Section II. Allows providing restitution to an organization that has ~~provided counseling, medical or shelter services to a victim of an offense.~~

Since many agencies that provide services to victims have inadequate funding, additional financial support is needed. It is difficult to determine if this provision will engender much money for domestic violence programs because its use may not be appropriate in most cases. Domestic violence programs cannot reveal clients' identities without the express permission of the victim and guarantee for the victim's safety. However, there may be instances where this could be accomplished and the batterer should be held accountable to the victim and pay for harm done to her as well as services received.


Robert J. Sundberg

March 28, 1986

Louann Cutler
Legislative Aide
Office of Representative Al Adams
Pouch "V"
Juneau, Alaska 99811

RE: House Bill 463

Dear Ms. Cutler:

I recently became aware of efforts on the part of certain special interest groups within our state aimed at the revision of AS 12.45.120. As you know, that statute permits judges, in the exercise of their discretion and after a full review of the facts as presented by all interested parties, to dismiss many misdemeanor actions. Dismissals are, of course, permissible only where a victim determines that he or she no longer wishes to pursue the action.

The proposed amendments to AS 12.45.120 are aimed at undercutting the authority of our judges to dismiss cases involving allegations of domestic violence, even though the persons directly involved in such matters are supportive of dismissal. Presumably, those pressing for revision of the law are concerned about the ongoing dynamics of families in which violence has occurred. In many instances, concerns with regard to continuing patterns of violence within the home are justified. The problem with the proposed revision is its failure to make allowances for situations where there is no evidence of a "cycle of violence" within a home.

I am an attorney in the Fairbanks area. During the time that I've spent in practice, I have handled several cases where dismissal pursuant to AS 12.45.120 has been sought. Admittedly, I advocated dismissal of these matters; but I have never been an advocate of a complete "hands off" approach toward incidents of domestic violence. None of the judges to whom such cases have been presented would find such a laissez faire approach even marginally convincing. Each of the judicial officers with whom I have dealt have taken great pains to insure that dismissals do not occur where there is evidence of an ongoing problem within a family unit.

In summary, there is a very real need for a case-by-case review of the need for continuing governmental intervention in domestic settings where incidents of violence have occurred. The existing law creates a vehicle through which such a review can be conducted. The proponents of the revision of AS 12.45.120 ignore the fact that governmental intervention can often be extremely disruptive of families. They seek a law which ignores the desires of those most directly involved, and assume their dogmatic approach is best in

The attorney (Public Defender) ~~was~~ who represented the defendant in the Nelles case.

each and every case which arises.

I am supportive of vesting continued discretion in our judiciary to determine how to proceed in individual cases. The family members involved in such cases have been almost uniformly happy with our trial court's application of the existing law. It is, as a result, my hope that the members of our legislature will not adopt the simplistic approach to family problems advocated by those who seek revision of AS 12.45.120.

Thank you for this opportunity to express my views on this matter.

Sincerely,

Geoffrey B. Wildridge
Geoffrey B. Wildridge

912 Barnette
FBX 99701
452-1601

Alaska Women's Commission

Testimony
Suzanne Lombardi

HB 463

The legislative committee of the Alaska Women's Commission met February 12, 1986 and expressed support of HB 463, an act relating to Criminal Trials and Restitution.

Section I

The Commission believes that domestic violence is a violent crime that should be handled as any other assault would be by the Judiciary system.

By adding domestic violence to the list of crimes that cannot be compromised by civil action, the Alaska State Legislature is continuing to send the message that this crime is clearly unacceptable.

Although, the compromise statute is not often used, a court opinion was handed down recently that reinforces the Commission's concern. In the Court of Appeals - State of Alaska vs. Nelles the court upheld the dismissal of charges and the defendant paid \$100 restitution to a victim who required four stitches in her mouth due to a blow with a fist. The court said "certainly the state has a valid concern: that domestic assaults go unpunished merely because the victims wish to withdraw their complaints in the hope that no further abuse will occur."...."an ammendment to create additional exceptions is clearly a matter of legislative rather than judicial concern."

Section II

This section allows restitution to be provided to an organization that has provided counseling, medical, or shelter services to the victim.

Many women have no insurance and suffer permanent physical as well as emotional handicaps because of lack of proper medical or counseling services. Furthermore, with the severe funding cutbacks, many shelters are in great need of additional support and this bill will assure that vital services are provided to the victim.

Section III

If the defendant fails to pay restitution he must prove his inability to comply was neither intentional nor in bad faith.

The Alaska Women's Commission believes this bill is another positive step in the direction of eradicating violence in Alaska.

not in
J.W.
C.S.

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 501 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women - Aid in Crisis (AWAIC);
Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG);
Cordova Women's Resource Center (CWRC); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC); MLN, Inc.;
Men's Support Network (MSN); Safe & Fear-Free Environment (SAFE);
Siklaks Against Family Violence (SAFV);
Southwestern Alaska Council for the
Prevention of Child Sexual Assault (SWACPSA);
South Peninsula Women's Services (SWPS);
Tundra Women's Coalition (TWC); Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WICCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

POSITION PAPER: HB 463

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit membership organization composed of twenty domestic violence and sexual assault programs throughout the state. The Network strongly supports HB 463 for the following reasons:

Section 1: As you are aware, on February 7, 1987, the Court of Appeals affirmed a decision made by Judge Crutchfield to dismiss a misdemeanor assault charge against Bruce Nelles pursuant to the misdemeanor civil compromise statute in the case STATE OF ALASKA vs. BRUCE NELLES. In this case, the Court of Appeals found that AS 12.45.120 and 12.45.130 expressly authorize the court to compromise misdemeanors and that the the court's power to dismiss is in no way conditioned upon the agreement of the prosecutor.

In the case of STATE vs. NELLES, Nelles struck his girlfriend, Mary Henry, on the mouth with his fist causing a cut which required four stitches. She stated that he had never assaulted her on any other occasion during their year together, there were no medical expenses, no loss of wages, and that she did not want civil compensation. Since the state had not suggested there was any ongoing danger to the victim, the Appeals Court found that Judge Crutchfield had not abused his discretion in dismissing the case.

The civil compromise statutes have been rarely used in the courts in domestic violence cases. Only within recent past have we seen these statutes employed for this purpose; and, until now, only in a few cases. The Network is very concerned that in light of this recent opinion, civil compromise in domestic violence cases will begin to be utilized more regularly. We strongly urge you to adopt this provision of the bill and create an additional exception to exempt domestic disputes from these statutes.

Our experience in this field tells us several things:

-With couples who are violent, there occurs what is most often referred to as a "continuum of violence. The violence starts with a minor offense and then becomes more frequent and more intense. A recent study in Minneapolis showed there was a substantial decrease in second time offenders when a mandatory arrest policy was adopted by that community. These results agree with the work

completed by the Dodbashes, two other highly regarded researchers in the field. They have found that the messages society gives the batterer about what is permissible behavior, in the form of sanctions, has a significant impact of their future behavior. For these reason, the Municipality of Anchorage has recently adopted a no drop policy for domestic violence cases. We must send a message to batterers and their victims that domestic violence is unacceptable in any form.

-Many domestic violence cases precipitate divorce and child custody cases. Typically, battered women are afraid of what will happen to them outside of the courtroom and are therefore reluctant to testify. The batterer is in the position of power within the relationship. The Network is very concerned that the pressure for the woman to agree to civilly compromise the case could in some cases be enormous. Victims of domestic violence are not in a position to negotiate an equitable civil compromise.

Section II: We very much support this section as it would clarify that restitution could be paid to programs that offer services to victims. The Network's programs are understaffed and underfunded, and additional sources of revenue are very much needed. We feel it is entirely appropriate that some of these costs be borne by the perpetrators of these crimes.

Section III: We feel that it should be the Court's responsibility to determine the amount of restitution that should be paid by the defendant, but not whether he is able to pay. If the defendant defaults and then proves that it was neither intentional or in bad faith then the Court can adjust the amount of restitution due. It is our hope that this change will increase the amount of restitution actually paid.

not
in
law
C.S.

**SUPERIOR COURTS
DOMESTIC RELATIONS CASES
COMPOSITION OF FILINGS
FY 84**

COURT	CASE TYPE					TOTAL
	DIVORCE	DISSOLUTION OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	953	1,701	1,114	1,086	220	5,074
Barrow	4	27	8	47	5	91
Bethel	11	28	29	68	---	136
Fairbanks	294	613	217	345	20	1,489
Juneau	117	181	56	119	17	490
Kenai	67	190	66	91	11	425
Ketchikan	76	113	75	63	5	332
Kodiak	43	71	37	41	4	196
Kotzebue	16	16	28	48	---	108
Nome	20	6	32	23	---	81
Palmer	71	172	86	98	15	442
Sitka	48	44	24	34	2	152
Wrangell/ Petersburg	26	32	11	13	4	86
TOTAL	1,746	3,194	1,783	2,076	303	9,102
% OF TOTAL	19%	35%	20%	23%	3%	100%

FISCAL YEAR JULY 1 - JUNE 30

BY JUDICIAL DISTRICT

First	267	370	166	229	28	1,060
Second	40	49	68	118	5	280
Third	1,134	2,134	1,303	1,316	250	6,137
Fourth	305	641	246	413	20	1,625

**SUPERIOR COURTS
DOMESTIC RELATIONS CASES
COMPOSITION OF FILINGS**

FY 82/83

COURT	CASE TYPE					TOTAL
	DIVORCE	DISSOLUTION OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	1,008	1,596	1,230	914	169	4,917
Barrow	11	18	10	24	3	65
Bethel	16	33	53	58	0	160
Fairbanks	303	543	270	211	6	1,333
Juneau	112	167	95	90	1	465
Kenai	85	149	59	56	5	354
Ketchikan	69	97	79	69	7	321
Kodiak	77	58	36	43	2	217
Kotzebue	14	13	28	25	2	82
Nome	17	17	39	18	2	93
Palmer	73	134	66	34	7	314
Sitka	58	28	33	17	9	145
Wrangell/ Petersburg	24	39	9	8	0	80
TOTAL	1,867	2,892	2,007	1,567	213	8,546
% OF TOTAL	22%	34%	23%	18%	3%	100%

FISCAL YEAR JULY 1 - JUNE 30

BY JUDICIAL DISTRICT INCLUDING SERVICE AREAS

First	263	331	216	184	17	1,011
Second	42	48	77	67	7	240
Third	1,243	1,937	1,391	1,047	183	5,802
Fourth	319	576	323	269	6	1,493

**SUPERIOR COURTS
DOMESTIC RELATIONS CASES
COMPOSITION OF FILINGS**

FY 81/82

COURT	CASE TYPE					TOTAL
	DIVORCE	DISS. OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	1,295	1,541	1,643	539	162	5,180
Barrow	25	14	13	27	11	90
Bethel	14	13	49	37	4	117
Fairbanks	325	486	266	170	48	1,295
Juneau	271	3	79	50	13	416
Kenai	171	33	75	53	9	341
Ketchikan	190	-	105	51	9	355
Kodiak	89	-	43	23	3	158
Kotzebue	22	-	31	31	3	87
Nome	29	3	33	7	9	81
Sitka	76	1	38	14	8	137
TOTAL	2,507	2,094	2,375	1,002	279	8,257
% OF TOTAL	30%	25%	29%	12%	.3%	100%

Fiscal Year July 1 - June 30

BY JUDICIAL DISTRICT INCLUDING SERVICE AREAS

First	537	4	222	115	30	908
Second	51	3	64	38	12	168
Third	1,555	1,574	1,761	615	174	5,679
Fourth	364	513	328	234	63	1,502

FEB 11 1986

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,)	
)	
Appellant,)	File No. A-995
)	
v.)	<u>O P I N I O N</u>
)	
BRUCE NELLES,)	
)	
Appellee.)	[No. 578 - February 7, 1986]

Appeal from the District Court of the State of Alaska, Fourth Judicial District, Fairbanks, H. E. Crutchfield, Judge.

Appearances: Jeffery O'Bryant, Assistant District Attorney, Harry L. Davis, District Attorney, Fairbanks, and Harold M. Brown, Attorney General, Juneau, for Appellant. Raymond Funk, Assistant Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

BRYNER, Chief Judge.

The state appeals from a district court dismissal of a misdemeanor assault charge against Bruce Nelles. Judge H.E. Crutchfield dismissed the charge pursuant to the misdemeanor civil compromise statute. We affirm.

BACKGROUND

While intoxicated, Nelles struck his girlfriend, Mary M. Henry, on the mouth with his fist. Henry's injury required four stitches. She filed a citizen arrest form seeking Nelles' arrest.

At a bail hearing before Judge Crutchfield, Nelles' attorney moved for dismissal. He submitted a statement titled "Compromise of Criminal Action," which was signed by Henry and stated:

Comes now the injured party in the above-entitled action, Mary Henry, and hereby acknowledges that he/she has received satisfaction for the injury to his/her person and further states that he/she does not wish to proceed with this action, since he/she has received satisfaction for injury to his/her person from the Defendant, Bruce Nelles.

The state opposed Nelles' motion for dismissal. The court allowed Nelles' counsel to examine Henry under oath. Henry testified that she and Nelles intended to marry, that he had never assaulted her on any other occasion during their one year together, that none of her clothes had been torn, that she had not incurred any medical expenses, that she was unemployed at the time of the assault, had lost no wages, and that she did not want any civil compensation from Nelles.

Judge Crutchfield further questioned Henry:

Court: (to witness) I don't know whether Mr. Wildridge, in taking this written statement from you, explained the provisions of Title 12.45.120-130, which I'm obviously looking at. And, I think the basis for this is to not prosecute some cases but by the same time the legislature recognizes that the court system and the police, and the prosecutor should not be some type of a buffer zone and have their time ta' up with boy-girl relations, okay?

Henry: I understand.

Court: And, there's some provisions for costs and I've never been clear about who the costs should be assessed against, whether it's the defendant or the witness who brings the charges, and, then -- you are aware, of course, that there's a possibility that if I grant it, that I may, based upon the court's time and everybody's time, I may have to assess some costs -- before it would be dismissed? Did you understand that?

Henry: (inaudible)

Court: Okay.

...

Court: You're not frightened of Mr. Nelles I take it then, you, he didn't try to talk you into doing this or threatening you in any way?

Henry: No.

Judge Crutchfield initially denied Nelles' motion to dismiss. After Nelles moved for reconsideration, however, Judge Crutchfield ordered the case dismissed "pursuant to the civil compromise provisions" and "upon payment of \$100 costs." The state has appealed the order of dismissal.

DISCUSSION

"In theory there should be no compromises of criminal cases." Miller, The Compromise of Criminal Cases, 1 So. Cal. L. Rev. 1 (1927). And in practice, "the civil and criminal law operate independently of one another so that resolution of a victim's civil rights and remedies has no effect upon criminal prosecution." People v. Moulton, 182 Cal. Rptr. 761, 766 (Cal. App. Dep't. Super. Ct. 1982). "An exception to this principle exists, however, where a statute specifically authorizes a compromise of the criminal, as well as the civil, liability arising out of certain conduct." Annot., 42 A.L.R.3d 315, 318, § 2[a]. Many states, including Alaska, have adopted such statutes, allowing judicially-sanctioned compromises and dismissals of criminal charges.¹

¹. AS 12.45.120-.140; Ariz. Rev. Stat. Ann. § 13-3981 (1978); Cal. Penal Code § 1377-79 (West 1982); Idaho Code Ann. § 19-3401-3403

(footnote continued)

It appears that Alaska's civil compromise statutes derived from the same source as most other similar statutes, a 1813 New York statute that read:

That in all cases where a person shall, on the complaint of another, be bound by recognisance to appear, or shall, for want of surety, be committed, or shall be indicted for an assault and battery, or other misdemeanor, to the injury and damage of the party complaining, and not charged to have been done riotously or with intent to commit a felony, or not being an infamous crime, and for which there shall also be a remedy by civil action, if the party complaining shall appear before the magistrate who may have taken the recognisance, or made the commitment, or before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the magistrate in his discretion to discharge the recognisance, &c. or for the court also in their discretion, to order a nolle prosequi to be entered on the indictment.²

(footnote 1 continued)

(1979); Mass. Gen. Laws Ann. ch. 276, § 55 (West 1972); Nev. Rev. Stat. § 178.564-568 (1983); Okla. Stat. Ann. tit. 22, § 1291-94 (West 1958); Or. Rev. Stat. § 135.703-709 (1983); Pa. Stat. Ann. tit. 19, 26 (Purdon 1964); Utah Code Ann. §§ 77-50-1 to -3 (1978).

². In large part, the laws of Alaska are derived from those of Oregon. F. Brown, The Sources of the Alaska and Oregon Codes, Part I, 2 U.C.L.A.-Alaska L. Rev. 15, 16 (1972). The Alaska civil compromise statutes appear to first have been adopted in 1900 and to have been derived from the Oregon Civil Compromise Statutes. See Ann. Alaska Codes, Pt. II, ch. 28, §§ 253-256 (Carter 1900) (the Alaska statute refers to the Oregon law, presumably as its source). See infra. n.3. The Alaska statutes also had virtually identical wording to the Oregon statutes. Compare Ann. Alaska Codes, Pt. II, ch. 28, §§ 253-256 (Carter 1900) with Gen. Laws of Or., Code of Crim. Proc., ch. XXX, §§ 315-318 (Deady 1845-1864); renumbered, Ann. Laws of Or., Crim. Code. tit. I, ch. XXX, §§ 1519-1522 (Hill 1892); renumbered, Or. Laws, tit. XVIII, ch. XV, §§ 1696-1699 (Lord 1910).

The laws of Oregon, and therefore Alaska, are derived in large part from those of New York. Although, "[t]he major borrowing took place in Oregon in 1853-1854 . . . Oregon's celebrated Judge Matthew P. Deady and others reworked the Oregon law in 1862-1864, using as their major sources the 1854 codes and the draft codes prepared for New York by a commission by David Dudley Field. The Field Commission had also relied heavily on the older New York statutes" F. Brown, The

(footnote continued)

1 N.Y.R.L. § 19 (1813), quoted in People v. Moulton, 182 Cal. Rptr. 761, 765 (Cal. App. Dep't. Super. Ct. 1982). The purpose of the statute was to encourage the amicable resolution of disputes that were primarily private in nature:

The policy underlying compromise statutes was explained by the New York Commissioners on Practice and Pleading in 1849 as follows:

There are many cases, which are technically public offenses, but which are in reality rather of a private than a public nature, and where the public interests are better promoted by checking than by encouraging criminal prosecutions. Of this class are libels, and simple assaults and batteries; or those which according to [the civil compromise statute], are not committed by or upon an officer of justice, while in the execution of the duties of his office, or riotously, or with an intent to commit a felony. With these exceptions, cases of this nature have by the policy of our statutes, always been considered fit subjects of compromise . . . ; a policy which has been carried by the courts, still further than the terms of the statute.

People v. Moulton, 182 Cal. Rptr. at 766 (citations omitted).

Alaska's civil compromise statutes are contained in AS 12.45.120-12.45.140, which state:

Sec. 12.45.120. Authority to compromise misdemeanors for which victim has civil action. When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed

(1) by or upon a peace officer, judge or magistrate while in the execution of the duties of that office;

(footnote 2 continued)

Sources of the Alaska and Oregon Codes, Part II, 2 U.C.L.A. - Alaska L. Rev. 87 (1973).

- (2) riotously;
- (3) with an intent to commit a felony;
- (4) larcenously.

Sec. 12.45.130. Acknowledgment of satisfaction by injured party. If the party injured appears before the court in which the defendant is bound to appear, at any time before trial, and acknowledges in writing that satisfaction has been received for the injury, the court may, on payment of the costs incurred, order the prosecution dismissed and the defendant discharged. The order is a bar to another prosecution for the same crime.

Sec. 12.45.140. Compromise or stay upon compromise by other means prohibited. A crime may not be compromised or the prosecution or punishment upon a compromise dismissed or stayed except as provided by law.³

³. The statutes, as originally adopted in 1900, read:

Sec. 253. What crimes may be compromised. That when a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised, as provided in the next section, except when it was committed--

First. By or upon an officer of justice while in the execution of the duties of his office;

Second. Riotously; or

Third. With an intent to commit a felony; or

Fourth. Larcenously.

Laws. Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1519.

Sec. 254. Compromise by permission of the court; order thereon. That if the party injured appear before the court at which the defendant is bound to appear, at any time before trial on an indictment for the crime, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs and expenses incurred, order all further proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom; but the order and the reasons therefor must be entered on the journal.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s.

(footnote continued)

In this case, the state initially contends that these statutes violate the separation of powers doctrine. The state relies upon State v. Carlson, 555 P.2d 269, 271-72 (Alaska 1976), and Public Defender Agency v. Superior Court, 534 P.2d 947, 951-52 (Alaska 1975). It argues that the district court's order of dismissal amounts to "a usurpation of the executive power residing in the state district attorney's office to bring charges and determine their disposition." We find this argument to be without merit.

In State v. Carlson, the defendant was indicted for murder, but the trial court, against the state's opposition, agreed to accept a guilty

(footnote 3 continued)

1520; Saxon v. Hill, 6 Oreg., 383.

Sec. 255. Order a bar to another prosecution. That the order authorized by the last section, when made and entered, is a bar to another prosecution for the same crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1521.

Sec. 256. No crime can be compromised, except. That no crime can be compromised, nor can any proceeding for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1522.

The statutes appear unchanged from the original version in Comp. L. Ann., tit. XV, ch. 28, §§ 2362-2365 (1913); Comp. L. Ann., §§ 5431-5434 (1933), and Comp. L. Ann., tit. 66, ch. 18, §§ 66-18-1 to 66-18-4 (1948). In 1962, a number of minor amendments were made to the language of the statutes. See SLA, ch. 34, § 6.13 (1962). Additionally, the first exception in Sec. 253 was expanded from the original "an officer of justice" to "a peace officer or magistrate," in 1962, SLA, ch. 34, § 6.13 (1962), and expanded to "a peace officer, judge or magistrate," in 1971. SLA, ch. 8, § 15 (1971). Also, Sec. 255 was consolidated with Sec. 254 in 1962. SLA, ch. 34, § 6.13 (1962).

plea to the lesser offense of manslaughter. No statute or rule permitted the trial court to accept such a plea. The supreme court reversed, finding that the trial court's decision would "usurp the executive function of choosing which charge to initiate. . . ." 555 P.2d at 272. In Public Defender Agency v. Superior Court, the trial court ordered the state to prosecute a civil action for child support. The supreme court similarly concluded that the separation of powers doctrine had been violated, holding that "the Attorney General cannot be controlled in either his decision of whether to proceed, or in his disposition of the proceeding." 534 P.2d at 950.

In the present case, there was no judicial interference with the prosecution's initial decision to charge Nelles. Judge Crutchfield did subsequently exercise his discretion to dismiss the case. Yet this dismissal was expressly authorized by the legislature. AS 12.45.120, 12.45.130. There is no suggestion in the civil compromise statutes that the court's power to dismiss is conditioned upon the agreement of the prosecutor. In fact, the contrary appears to be the case. See Annot., 42 A.L.R.3d 315, 319 (a common condition precedent under compromise statutes is the consent of either the court or the prosecutor). See also Hoines v. Barney's Club, Inc., 170 Cal Rptr. 42, 47 (Cal. 1980) (in explaining the civil compromise statute, the court stated that the prosecutor has no role in a dismissal of civil compromise). The state has cited no case purporting to hold that prosecutorial consent to a civil compromise is necessary as a matter of constitutional law, and we are aware of none. Because the court's authority to compromise misdemeanors has been expressly conferred by the legislature, we find the present case readily distinguishable from State v. Carlson and Public Defender Agency

v. Superior Court, and we conclude that there is no separation of powers violation made out here.

The state's next argument is that crimes arising from domestic disputes should not be amenable to civil compromise. Certainly, the state has a valid concern: that domestic assaults not go unpunished merely because the victims wish to withdraw their complaints in the hope that no further abuse will occur. However, the state cites no support for the argument that public policy mandates a judicially created exception to the civil compromise statute. The statute, in its current form, does not exempt domestic disputes. Amendment to create additional exceptions is clearly a matter of legislative, rather than judicial, concern.⁴

Moreover, we note that, under the Alaska civil compromise statute, the decision whether to dismiss or prosecute is vested in the sound discretion of the trial court, and no right to dismissal is conferred upon the accused. In cases of domestic violence that appear to involve a continuing danger of injury to the victim, it could well be an abuse of discretion for the trial court to order dismissal. In the present case, however, the state has not suggested any ongoing danger to the victim, and the record contains nothing to indicate that Judge Crutchfield abused his discretion in this regard.

⁴. We note that California has amended the civil compromise statute to create an exception barring civil compromise when the injury arises from a second willful and knowing violation of a restraining order imposed to prevent domestic violence. Cal. Penal Code § 1377 (West 1982) (statute amended 1979). It should also be noted that any willful infliction of physical injury resulting in a "traumatic" condition upon a cohabitant of the opposite sex is a felony under California law. Cal. Penal Code § 273.5 (West 1970) (adopted 1977).

The state further argues that the civil compromise statute engenders conflict with the Alaska Code of Professional Responsibility, Disciplinary Rule 7-105(A), which states that "[a] lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter." See, e.g., MacDonald v. Musick, 425 F.2d 373 (9th Cir. 1970) (prosecutorial misconduct where charge of resisting arrest was introduced as "bludgeon" behind the attempt to defeat a possible civil action by the arrestee for false arrest). This rule is plainly inapplicable here. Dismissal of a case upon civil compromise simply does not imply that the case was prosecuted "solely to obtain an advantage in a civil matter."⁵

Judge Crutchfield's dismissal of the case is AFFIRMED.

⁵. The state has also argued that Alaska's civil compromise statute is unconstitutionally vague. We find this argument to be frivolous.

Offered: 3/21/86
Referred: Finance

Original sponsors: Thompson, Jenkins,
Uehling, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 463 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the authority to compromise
7 certain misdemeanors and to the payment of restitu-
8 tion."

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

10 * Section 1. AS 12.45.120 is amended to read:

11 Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH
12 VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a
13 charge of misdemeanor for which the person injured by the act consti-
14 tuting the crime has a remedy by a civil action, the crime may be
15 compromised except when it was committed

16 (1) by or upon a peace officer, judge, or magistrate while
17 in the execution of the duties of that office;

18 (2) riotously;

19 (3) with an intent to commit a felony;

20 (4) by assault against

21 (A) the spouse of the defendant, unless the court
22 finds that a divorce is pending between the individuals and a
23 restraining order against further assaultive behavior has been
24 issued;

25 (B) a former spouse of the defendant;

26 (C) a parent, grandparent, child, or grandchild of the
27 defendant;

28 (D) a member of the social unit comprised of those
29 living together in the same dwelling as the defendant; or

1 (E) a person who is not a spouse or former spouse of
2 the defendant but who previously lived in a spousal relationship
3 with the defendant [LARCENOUSLY].

4 * Sec. 2. AS 12.55.045(a) is amended to read:

5 (a) The court may order a defendant convicted of an offense to
6 make restitution as provided in this section, including restitution to
7 a public or private nonprofit organization that has provided counsel-
8 ing, medical, or shelter services to the victim or as otherwise au-
9 thorized by law. In determining the amount and method of payment of
10 restitution, the court shall take into account the financial resources
11 of the defendant and the nature of the burden its payment will impose.

Introduced: 1/13/86
Referred: Judiciary and
Finance

1 IN THE HOUSE

BY THOMPSON

2

HOUSE BILL NO. 463

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to criminal trials and restitution."

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

8 * Section 1. AS 12.45.120 is amended to read:

9 Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH
10 VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a
11 charge of misdemeanor for which the person injured by the act consti-
12 tuting the crime has a remedy by a civil action, the crime may be
13 compromised except when it was committed

14 (1) by or upon a peace officer, judge, or magistrate while
15 in the execution of the duties of that office;

16 (2) riotously;

17 (3) with an intent to commit a felony;

18 (4) larcenously;

19 (5) by assault against

20 (A) a spouse or a former spouse of the defendant;

21 (B) a parent, grandparent, child, or grandchild of the
22 defendant;

23 (C) a member of the social unit comprised of those
24 living together in the same dwelling as the defendant; or

25 (D) a person who is not a spouse or former spouse of
26 the defendant but who previously lived in a spousal relationship
27 with the defendant.

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1 make restitution as provided in this section, including restitution to
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3 ing, medical, or shelter services to the victim or as otherwise au-
4 thorized by law. [IN DETERMINING THE AMOUNT AND METHOD OF PAYMENT OF
5 RESTITUTION, THE COURT SHALL TAKE INTO ACCOUNT THE FINANCIAL RESOURCES
6 OF THE DEFENDANT AND THE NATURE OF THE BURDEN ITS PAYMENT WILL IM-
7 POSE.]

8 * Sec. 3. AS 12.55.051(a) is amended to read:

9 (a) If the defendant defaults in the payment of a fine or any
10 installment or of restitution or any installment, the court may order
11 the defendant to show cause why the defendant should not be sentenced
12 to imprisonment for nonpayment. If the defendant fails to establish
13 [COURT FINDS] by a preponderance of the evidence that the defendant
14 did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN
15 INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the
16 fine or restitution, the court may order the defendant imprisoned
17 until the order of the court is satisfied. A term of imprisonment
18 imposed under this section may not exceed one day for each \$50 of the
19 unpaid portion of the fine or restitution or one year, whichever is
20 shorter. Credit shall be given toward satisfaction of the order of
21 the court for every day a person is incarcerated for nonpayment of a
22 fine or restitution.