

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date _____

REQUEST

Bill/Resolution No: CSSB 169 (Jud)
 Title: An Act limiting the exemption of permanent fund dividends from orders for the collection of debt
 Sponsor: Senate Judiciary Committee
 Requestor: Senate Finance Committee

FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: General Government
 BRU, Program of Subprogram(s) Affected: Enforcement and PFD - Enforcement
 Date of Request: March 28, 1985

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-0-	-0-	-0-	-0-	-0-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<u>TOTAL</u>	-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Please see attached analysis.

Prepared By: Thomas C. Williams
 Division: Enforcement

Phone: 465-2366
 Date: March 28, 1985

Approved by Commissioner: [Signature]
 Agency: Revenue

Date: 3/29/85

Distribution (by Agency preparing fiscal note):

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

ALASKA DEPARTMENT OF REVENUE
ANALYSIS OF CSSB 169 (Jud)
March 28, 1985

The Judiciary Committee substitute gives child support obligations preference over attachments resulting from court ordered restitution and gives court ordered restitution preference over other state debts irrespective of when the attachments were served. By allowing this preference for court ordered restitution, collection of other delinquent state debts such as delinquent taxes, may be diminished. However the expected impact is minimal.

This legislation does not establish a preference of state attachment over non-state attachments. The general provision of the UCC (first in time, first in right) still applies when determining priority between state and non-state attachments.

Offered: 3/27/85
Referred: Finance

Original sponsor: Ziegler by request

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 169 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act limiting the exemption of permanent fund
7 dividends from orders for the collection of debt."

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

9 * Section 1. AS 43.23.065 is amended to read:

10 Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. Fifty
11 percent of the annual permanent fund dividend payable to an individual
12 is exempt from levy, execution, garnishment, attachment, or any other
13 remedy for the collection of debt. This exemption applies to an
14 eligible individual's permanent fund dividend both before and after
15 payment is made to the individual. An exemption is not available
16 under this section for permanent fund dividends taken to satisfy (1)
17 child support obligations required by court order or decision of the
18 child support enforcement agency under AS 47.23.140 - 47.23.220; (2) a
19 debt owed by an eligible individual to an agency of the state, unless
20 the debt is contested and an appeal is pending, or the time limit for
21 filing an appeal has not expired; or (3) court ordered restitution
22 under AS 12.55.045 - 12.55.051 or 12.55.100. A child support obliga-
23 tion under (1) of this section has priority over a debt owed to an
24 agency of the state or court ordered restitution, and a permanent fund
25 dividend may not be taken to satisfy a debt under (2) of this section
26 until any portion of the dividend necessary to satisfy a child support
27 obligation and court ordered restitution has been taken.

NOTES TO DECISIONS

Applied in *Wright v. State*, Ct. App. Op. No. 133 (File No. 5739), 651 P.2d 846 (1982).

Cited in *Manderson v. State*, Ct. App. Op. No. 195 (File No. 6894), 655 P.2d 1320 (1983).

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 12.55.045. Restitution. (a) The court may order a defendant convicted of an offense to make restitution as provided in this section or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the financial resources of the defendant and the nature of the burden its payment will impose.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. (§ 12 ch 166 SLA 1978; am § 38 ch 102 SLA 1980)

Cross references. — For restitution as condition of probation, see AS 12.55.100.

Effect of amendments. — The 1980 amendment deleted the former first sentence of subsection (b), which read: "Before the court may sentence a defendant to a program of restitution, the victim must be given notice that restitution may be ordered."

Editor's note. — Section 23, ch. 166, SLA 1978 provides, in subsection (b): "Except as provided in (c) of this section, sec. 12 of this Act governs the punishment for any offense committed on or after the effective date of this Act." Subsection (c) relates to the applicability of AS 12.55.125 through 12.55.185.

Section 23 of ch. 166, in subsection (f), provides: "Sections 1 — 12 of this Act do not apply to or govern the construction of and punishment for any offense committed before the effective date of this Act or the construction or application of any defense to a prosecution for the offense. An offense shall be construed and punished according to the law existing at the time of the commission of the offense in the same manner as if this act had not become law."

Legislative history reports. — For report on ch 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, (May 29, 1980) or 1980 House Journal Supplement, No. 79, (May 29, 1980).

NOTES TO DECISIONS

When inquiry under subsection (a) deferred. — Where defendant was sentenced to a substantial period of imprisonment in addition to being ordered to pay restitution, judge properly decided to determine total amount of loss caused to victim by defendant's conduct at time of trial but to defer inquiry required by subsection (a) of this section until she was released. *Brezenoff v. State*, Ct. App. Op. No. 226 (File No. 7117), 658 P.2d 1359 (1983).

Improper assignment of assets. — Trial court erred in ordering assignment to victim of all defendant's assets as restitution without first inventorying and valuing them. *Brezenoff v. State*, Ct. App. Op. No. 226 (File No. 7117), 658 P.2d 1359 (1983).

Award based on actual loss to victim. — Where a defendant is charged with a lesser offense but the evidence establishes that he committed a greater offense, a restitutionary award based on the

actual loss even though minimum property the lesser offense. Op. No. 133 (1982).

Amount. The trial court awarded \$500,000 in reimbursement for the first and impossible; large amount predicting a restitution award to pay. *Karr v. State*, Ct. App. Op. No. 701 (1982). Enforcement of 12.55.051. — specific measure

Sec. 12.55.045. Restitution. (a) than one year imprisonment

Sec. 12.55.045. Restitution. (a) defendant's condition of restitution. (b) show cause for the sentence. (c) evidence that the failure to make restitution may be satisfied. (d) not exceed the amount of restitution toward satisfaction of the defendant's incarceration.

(b) When a person authorized to make restitution shall be required to make restitution conditionally refused under (a) of this section.

(c) Pursuant to this section, a defendant sentenced to pay restitution may be found in violation of this section, subject to the provisions of AS 12.55.045 (1978).

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actual loss to the victim is appropriate, even though the loss exceeds the maximum property-value figure which defines the lesser offense. Fee v. State, Ct. App. Op. No. 187 (File No. 6951), 656 P.2d 1202 (1982).

Amount of restitution held proper. — The trial court did not err in ordering \$300,000 restitution upon conviction of embezzlement by an employee and theft in the first degree even though it would be impossible for the defendant to pay such a large amount, due to the difficulty in predicting at that point what amount of restitution was reasonable for defendant to pay. Karr v. State, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).

Enforcement of restitution under AS 12.55.051. — AS 12.55.051(a) prescribes specific method for dealing with

enforcement of court orders requiring payment of fines or restitution, regardless of whether such orders are directly imposed as part of original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under AS 12.55.100; thus it was error to revoke appellant's probation in spite of finding that her failure to pay restitution, a condition of her probation, was willful. Lominac v. Municipality of Anchorage, Ct. App. Op. No. 220 (File No. 5969), 658 P.2d 792 (1983).

Quoted in Whittlesey v. State, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980).

Stated in Dorris v. State, Ct. App. Op. No. 192 (File No. 5947), 656 P.2d 578 (1982).

Sec. 12.55.050. Increased punishment for persons convicted of more than one felony. [Repealed, § 21 ch 166 SLA 1978. For sentences of imprisonment for felonies, see AS 12.55.125.]

Sec. 12.55.051. Enforcement of fines and restitution. (a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment. If the court finds by a preponderance of the evidence that the default was attributable to an intentional refusal or failure to make a good faith effort to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each \$50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

(b) When a fine or restitution is imposed on an organization, the person authorized to make disbursements from the assets of the organization shall pay the fine or restitution from those assets. A person required to pay a fine or restitution under this subsection who intentionally refuses or fails to make a good faith effort to pay is punishable under (a) of this section.

(c) Pursuant to a petition filed by a defendant who has been sentenced to pay a fine or restitution or an installment, the court, upon a finding of inability to pay, may order modification of the fine or restitution, subject to conditions the court finds appropriate. (§ 12 ch 166 SLA 1978)

NOTES TO DECISIONS

For cases construing former statute directing imprisonment on judgment for payment of fine, see *Williams v. Illinois*, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970); *Hood v. Smedley* Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

Revocation of probation for willful failure to pay restitution was error. — Subsection (a) of this section prescribes specific method for dealing with enforcement of court orders requiring payment of fines or restitution, regardless

of whether such orders are directly imposed as part of original sentence, under AS 12.55.015, or indirectly imposed as a condition of probation, under AS 12.55.100; thus it was error to revoke appellant's probation in spite of finding that her failure to pay restitution, a condition of her probation, was willful. *Lominac v. Municipality of Anchorage*, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Cited in *Karr v. State*, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).

Sec. 12.55.055. Community work. (a) The court may order a defendant convicted of an offense to perform community work as a condition of probation, a suspended sentence or suspended imposition of sentence, or in addition to any fine or restitution ordered. If the defendant is sentenced to imprisonment, the court may recommend to the Department of Corrections that the defendant perform community work.

(b) Community work includes work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public lands, forests, parks, roads, highways, facilities, or education. Community work may not confer a private benefit on a person except as may be incidental to the public benefit.

(c) The court may offer a defendant convicted of an offense the option of performing community work in lieu of a fine or a portion of a fine if the court finds the defendant is unable to pay the fine. The value of community work in lieu of a fine is \$3.00 per hour.

(d) The court may offer a defendant convicted of an offense the option of performing community work in lieu of a sentence of imprisonment. Substitution of community work shall be at a rate of eight hours for each day of imprisonment. A court may not offer substitution of community work for any mandatory minimum period of imprisonment or for any period of a presumptive term of imprisonment.

(e) Medical benefits for an individual injured while performing community work at the direction of the state shall be assumed by the state to the extent not covered by collateral sources. When the state pays medical benefits under this subsection, a claim for medical expenses by the injured individual against a third party is subrogated to the state. AS 12 ch 166 SLA 1978; am E.O. No. 55, § 8 (1984); am §§ 1, 2 ch 104 SLA 1984

Effect of amendments. — The first 1984 amendment substituted "Corrections for Health and Social Services" in the second sentence in subsection (a).

The second 1984 amendment added sub-

sections (b)-(e) and, in subsection (a), inserted "probation" in the first sentence and deleted "also" preceding "sentenced" in the second sentence.

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C Shea v. State, Ct. App. Op. No. 379 (File
No. 7257), P.2d (1984).

Sec. 12.55.100. Conditions of probation. (a) While on probation and among the conditions of probation, the defendant may be required

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

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

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

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

(b) The defendant's liability for a fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation. (§ 8.10 ch 34 SLA 1962; am § 13 ch 166 SLA 1978; am § 3 ch 104 SLA 1984)

Effect of amendments. — The 1984 and added "in accordance with AS amendment, in subsection (a), substituted 12.55.055" at the end of paragraph (4). "the defendant" for "he" in paragraph (3).

NOTES TO DECISIONS

Parallel 18 U.S.C. § 3651. — Alaska's probation statutes, this section, AS 12.55.080, and AS 12.55.090 closely parallel the federal statute, 18 U.S.C. § 3651, which empowers federal district courts to grant probation. Brown v. State, Sup. Ct. Op. No. 1367 (File No. 2890), 559 P.2d 107 (1977).

The Alaska probation statutes, AS 12.55.080, 12.55.090 and this section, use much of the same language as 18 U.S.C. § 3651 (1976), and were apparently derived from the federal law. Gonzales v. State, Sup. Ct. Op. No. 2010 (File No. 4271), 608 P.2d 32 (1980).

Construction of section. — This section must be construed in accordance with the principle of statutory construction *expressio unius est exclusio alterius*, specifically that in a statutory scheme the exclusion of absent remedies is to be inferred from the inclusion of specified remedies. Sprague v. State, Sup. Ct. Op. No. 1788 (File No. 3521), 590 P.2d 410 (1979).

"Fine" does not refer exclusively to punishment. — The term "fine," as employed in subsection (a)(1) of this section, cannot be read as having exclusive reference to punishment as that term is used in AS 12.55.090(a). Brown v. State, Sup. Ct. Op. No. 1367 (File No. 2890), 559 P.2d 107 (1977).

Sentencing court may impose a fine as a condition of probation upon a defendant's conviction of a crime which is not directly punishable by a fine. Brown v. State, Sup. Ct. Op. No. 1367 (File No. 2890), 559 P.2d 107 (1977).

Given the specific authorization emanating from subsection (a)(1) of this section which permits the trial court to impose a fine as a condition of probation, together with the need for flexibility on the part of the sentencing court in fashioning appropriate conditions of probation, where probation is warranted, a rational harmonization and construction of AS 12.55.090(a) and subsection (a)(1) of this section leads to the conclusion that a sentencing court is empowered to make payment of a fine a condition of probation even in the circumstance where the crime is only punishable by imprisonment, or by imprisonment or fine. Brown v. State, Sup. Ct. Op. No. 1367 (File No. 2890), 559 P.2d 107 (1977).

The distinction is inherent in Alaska's statutes that the power to impose a fine as a condition of probation and the power to impose a fine as punishment in addition to probation are separate powers, controlled respectively by subsection (a)(1) of this section and AS 12.55.090(a). Brown v. State, Sup. Ct. Op. No. 1367 (File No. 2890), 559 P.2d 107 (1977).

Punitive damages payable to the victim simply are not authorized by this section. *Sprague v. State*, Sup. Ct. Op. No. 1788 (File No. J521), 590 P.2d 410 (1979).

This section, construed under the principal of *expressio unius est exclusio alterius*, precludes the award of punitive damages to the victim of a burglary. *Hagberg v. State*, Sup. Ct. Op. No. 2013 (File No. 4340), 606 P.2d 385 (1980).

Restitution for concealing stolen property. — Court was not authorized to require restitution for items beyond those as to which defendants were actually convicted for concealing under AS 11.46.190. *Nelson v. State*, Sup. Ct. Op. No. 2350 (File Nos. 4773, 4774), 628 P.2d 884 (1981).

Restitution imposed for separate dismissed charge. — It is permissible in sentencing a defendant on one charge to impose restitution for a separate dismissed charge if there are specific findings that (1) the amount of loss suffered by an identifiable aggrieved party is certain; (2) the defendant admits, and there is no factual question as to whether, the defendant caused or was responsible for the aggrieved party's loss; and (3) the defendant consents, freely and voluntarily, to make full restitution. *Kimbrell v. State*, Ct. App. Op. No. 270 (File No. 7591), 666 P.2d 454 (1983).

Fact that burglary victim had received insurance payment did not mean that victim thus suffered no "loss" justifying restitution order under paragraph (a)(2) of this section, since collateral source rule prevents defendant from benefiting from victim's insurance. *Dorris v. State*, Ct. App. Op. No. 192 (File No. 5947), 656 P.2d 578 (1982).

Payment of interest. — Since the purpose of the restitution statute is to make the victim whole, trial court did not err in requiring defendant to pay interest in a reasonable amount of the amount awarded. *Dorris v. State*, Ct. App. Op. No. 192 (File No. 5947), 656 P.2d 578 (1982).

Restitution based on actual loss to victim. — Where a defendant is charged with a lesser offense but the evidence establishes that he committed a greater offense, a restitutionary award based on the actual loss to the victim is appropriate, even though the loss exceeds the maximum property-value figure which defines the lesser offense. *Fee v. State*, Ct. App. Op. No. 187 (File No. 6951), 656 P.2d 1202 (1982).

Restitution for jewelry taken. — A condition of probation imposed in connection with defendant's conviction for petty larceny, requiring her to pay \$200.00 restitution to the owners of jewelry that she took, was not improper. *Hagberg v. State*, Sup. Ct. Op. No. 2013 (File No. 4340), 606 P.2d 385 (1980).

Money wrongfully obtained from the state by defendant in the course of drug transactions represented "actual damages or loss" to the state and restitution was allowed. *Gonzales v. State*, Sup. Ct. Op. No. 2040 (File No. 4271), 608 P.2d 32 (1980).

Aggrieved party. — Since it was uncontested that recipient of restitution was driver of car with which defendant collided, defendant's conviction of the manslaughter of recipient's passenger necessarily encompassed, both as a matter of fact and of law, the injuries directly caused to recipient and to his party, and recipient was therefore an aggrieved party under paragraph (a)(2) of this section. *Pena v. State*, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Enforcement of court orders requiring payment of fines or restitution. — AS 12.55.051(a) prescribes specific method for dealing with enforcement of court orders requiring payment of fines or restitution, regardless of whether such orders are directly imposed as part of original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under this section; thus it was error to revoke appellant's probation in spite of finding that her failure to pay restitution, a condition of her probation, was willful. *Lommac v. Municipality of Anchorage*, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Restriction from a certain area as a condition of probation was held reasonable. See *Oyoghok v. Municipality of Anchorage*, Ct. App. Op. No. 76 (File No. 5465), 641 P.2d 1267 (1982).

Authority to impose term of imprisonment as condition of probation prior to enactment of AS 12.55.086. — See *Boyne v. State*, Sup. Ct. Op. No. 1766 (File No. 3678), 586 P.2d 1250 (1978).

Imposition of jail time as condition of probation. — Imposition of jail time as a special condition of probation is not authorized under Alaska statutes governing probation generally. Alaska law does, however, permit the imposition of jail time as a special condition of probation when the imposition of sentence is suspended under AS 12.55.085, as pro-

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3155), 626 P.2d 1066 (1980).

Applied in Schwing v. State, Ct. App.
Op. No. 44 (File No. 5695), 633 P.2d 311
(1981).

Quoted in Hood v. Smedley, Sup. Ct.

Collateral references. — Probation
conditioned on restitution in connection
with application for, or receipt of, public
relief, 92 ALR2d 458.

Propriety of conditioning probation or
suspended sentence on defendant's
refraining from political activity, protest
or the like, 45 ALR3d 1022.

Ability to pay as necessary condition in
conditioning probation or suspended sen-
tence upon reparation or restitution, 73
ALR3d 1240.

Propriety of condition of probation
which requires defendant convicted of
crime of violence to make reparation to
injured victim, 79 ALR3d 976.

**Sec. 12.55.110. Notice and grounds for revocation of suspen-
sion.** When sentence has been suspended, it shall not be revoked except
for good cause shown. In all proceedings for the revocation of a sus-
pended sentence, the defendant is entitled to reasonable notice and the
right to be represented by counsel. (§ 8.11 ch 34 SLA 1962)

NOTES TO DECISIONS

Constitutionality. — This section
would be repugnant to the equal protection
clause of both the federal and Alaska
constitutions if it were construed as
embodying an intended dichotomy be-
tween indigent probationers and those
who could afford counsel. Alex v. State,
Sup. Ct. Op. No. 689 (File No. 1224), 484
P.2d 677 (1971).

**Section applies to probation revo-
cations.** — In light of the provisions of AS
12.55.080, it is apparent that this section
is applicable to probation revocations.
Hoffman v. State, Sup. Ct. Op. No. 297
(File No. 562), 404 P.2d 644 (1965).

This section governs revocation of pro-
bation proceedings. Martin v. State, Sup.
Ct. Op. No. 983 (File No. 1785), 517 P.2d
1389 (1974).

The supreme court has explicitly applied
the "good cause" requirement of this sec-
tion to probation revocations. Alexander v.

Op. No. 800 (File No. 1406), 498 P.2d 120
(1972); Thibodeau v. State, Sup. Ct. Op.
No. 2182 (File No. 4325), 617 P.2d 759
(1980).

Cited in Leuch v. State, Sup. Ct. Op. No.
2419 (File No. 5255), 633 P.2d 1036 (1981).

Propriety of condition of probation upon
defendant's posting of bond guaranteeing
compliance with terms of probation, 79
ALR3d 1068.

Validity of requirement that, as a condi-
tion of probation, defendant submit to
warrantless searches, 79 ALR3d 1083.

Propriety of conditioning probation on
defendant's remaining childless or having
no additional children during proba-
tionary period, 94 ALR3d 1218.

Propriety of conditioning probation on
defendant's not associating with partic-
ular person, 99 ALR3d 967.

State, Sup. Ct. Op. No. 1622 (File No.
3505), 573 P.2d 591 (1978).

And it grants an indigent proba-
tioner the right to court-appointed
counsel in a probation revocation pro-
ceeding. Reeves v. State, Sup. Ct. Op. No.
329 (File No. 683), 411 P.2d 212 (1966).

An indigent has a right to be rep-
resented by counsel at a probation revo-
cation proceeding. Alex v. State, Sup. Ct.
Op. No. 689 (File No. 1224), 484 P.2d 677
(1971).

The supreme court refuses to sanction
discrimination between indigents and
others in the application of the rights to
counsel granted by this section. Alex v.
State, Sup. Ct. Op. No. 689 (File No. 1224),
484 P.2d 677 (1971).

A probation revocation is not tech-
nically a criminal appeal. Alex v. State,
Sup. Ct. Op. No. 689 (File No. 1224), 484
P.2d 677 (1971).

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January 21, 1985

The Honorable Robert H. Ziegler, Sr.
State Senate
Pouch Y
Juneau, Alaska 99811

Re: Exemption from Execution of Permanent
Fund Dividends of Criminals

Dear Bob:

It is my understanding (in part from discussions with personnel in the Ketchikan District Attorney's office) that convicted Alaska felons continue to receive permanent fund dividends (with which I have no particular quarrel.) However, when the convicted leave the victims without compensation or so much as a "I'm sorry," state permanent fund checks should go to the victim.

Although I use the example and name a specific case, I would appreciate it if you would not make public the name of the felon to protect the innocent children. I represent the father of two small children who were raped [REDACTED]. No amount of compensation from [REDACTED], or the State, could compensate for the damage he has done to my client's five and nine year old as well as several other children. If Mr. [REDACTED] were not a ne'er-do-well (in every respect) my client, on behalf of his children, would have Mr. [REDACTED] wealth. Under the present circumstances all that the small children will receive is special counselling and the good hopes that the harm to them is not so great as to cause them unending nightmares.

Therefore, I suggest that the fifty (50%) percent exemption at AS 43.23.065 "from levy, execution, garnishment, attachment or any other remedy to the collection of debts" from Alaska permanent fund checks be set aside as to the victims of serious crime. The check should be distributed to the victims.

My thoughts came in the context of several discussions with my client who does the best he can as a sole parent with a limited income for raising two small children. Retribution by incarceration of Mr. [REDACTED] has done nothing to solve the family's monumental problems - including monetary - with which my client must cope and do his best to solve.

No matter the amount of judgment, on execution, [REDACTED] keeps half of the permanent fund.

[REDACTED]
[REDACTED]

Offered: 3/27/85
Referred: Finance

Original sponsor: Ziegler by request

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 169 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act limiting the exemption of permanent fund
7 dividends from orders for the collection of debt."

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

9 * Section 1. AS 43.23.065 is amended to read:

10 Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. Fifty
11 percent of the annual permanent fund dividend payable to an individual
12 is exempt from levy, execution, garnishment, attachment, or any other
13 remedy for the collection of debt. This exemption applies to an
14 eligible individual's permanent fund dividend both before and after
15 payment is made to the individual. An exemption is not available
16 under this section for permanent fund dividends taken to satisfy (1)
17 child support obligations required by court order or decision of the
18 child support enforcement agency under AS 47.23.140 - 47.23.220; (2) a
19 debt owed by an eligible individual to an agency of the state, unless
20 the debt is contested and an appeal is pending, or the time limit for
21 filing an appeal has not expired; or (3) court ordered restitution
22 under AS 12.55.045 - 12.55.051 or 12.55.100. A child support obliga-
23 tion under (1) of this section has priority over a debt owed to an
24 agency of the state or court ordered restitution, and a permanent fund
25 dividend may not be taken to satisfy a debt under (2) of this section
26 until any portion of the dividend necessary to satisfy a child support
27 obligation and court ordered restitution has been taken.

Introduced: 2/21/85
Referred: Judiciary
and Finance

1 IN THE SENATE

BY ZIEGLER BY REQUEST

2

SENATE BILL NO. 169

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

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27 taken.