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STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB463
 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						
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)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Page 1 of 2
 Bill/Resolution No.: HB 463 #2
 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						
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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: Harold M. Brown, Attorney General
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

#2

Page 2 of 2

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.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 463 #1

January 31, 1986

Support

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

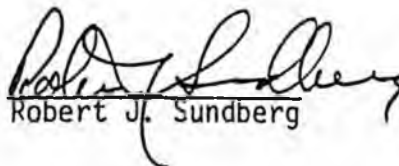
The Council on Domestic Violence and Sexual Assault supports HB 463. Following are comments about the bill.

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB463(Rules)
 Title: "An Act relating to the authority to compromise certain misdemeanors..."
 Sponsor: Thompson, Jenkins, Uehling
 Requestor: Senate Judiciary
 Date of Request: 4/24/86

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

Miklos

Prepared by: Barbara Miklos, Exec. Dir.
 Division: Council on Domestic Violence & S.A.

Phone: 465-4356
 Date: 4/22/86

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

Date: 4/22/86

Distribution (by Agency preparing fiscal note):

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

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 463

January 31, 1986

Support

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

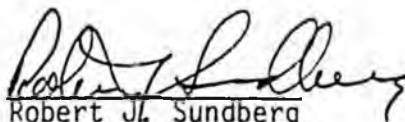
The Council on Domestic Violence and Sexual Assault supports HB 463. Following are comments about the bill.

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

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.

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CS HB 463 (Rules)

April 22, 1986

Support

CSHB 463 (Rules) - "An Act relating to the authority to compromise certain misdemeanors and to the payment of restitution."

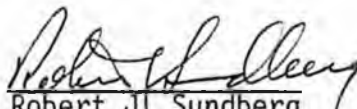
The Council on Domestic Violence and Sexual Assault supports CSHB 463 (Rules). Following are comments about the bill.

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.

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Robert J. Sundberg

Sectional Analysis

CSHB 463 (Rules) am

Prepared by: Patrick W. Conheady
Assistant Attorney General
Criminal Division
Alaska Department of Law

This legislation accomplishes four separate but related purposes. First, it precludes the use of the civil compromise statute, AS 12.45.120, to compromise, and thus have dismissed, domestic assaults. Second, it authorizes shelter organizations and other agencies which provide medical or counseling services to victims to collect restitution when their services are provided to the victim in a certain case. Third, when ordering restitution as a result of a criminal conviction, it creates a presumption in favor of the offender's ability to pay restitution. Fourth, in a post conviction proceeding brought to enforce restitution or fines, it shifts the burden of proving inability to pay from the state to the offender.

Discussion

Section 1. This section amends the civil compromise statute to preclude civil compromise in domestic assaults. Civil compromise is the process whereby the offender and the victim agree to settle the matter that gave rise to the criminal charges in a non-criminal manner.

This section has the effect of overturning the Court of Appeals decision in State v. Nelles. Op. No. 578 (Alaska App., Feb. 7, 1986). This case upheld the statutory right to civilly compromise domestic assaults.

The civil compromise concept originated in an 1813 New York Statute, which sought to encourage amicable resolution of disputes that were primarily private in nature. The policy underlying the civil compromise statutes was explained by the New York Commissioners on Practice and Pleading in 1849:

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.

Presumably, our society has advanced and matured since 1813. At that time certain of our citizens were considered property rather than persons. Women were not even accorded the right to vote. We have improved in those areas.

The traditional position, universal until this century is that what goes on within the home is exempt from public scrutiny or jurisdiction. If a husband beats his wife or if parents abuse their children, that is a private matter. Certainly this society has recognized within the past few years that domestic assaults are no longer a private matter. Domestic assaults

should not go unpunished merely because the victims wish to withdraw their complaints in the hope that no further abuse will occur.

As was stated in the U.S. Attorney General's Task Force on Family Violence in 1984:

The tragedy of family violence goes beyond the pain of any single episode. The research of the last decade has demonstrated the frightening degree to which family violence is cyclical in nature, with violence in one generation begetting violence in the next. Children in violent homes "learn" violence in much the same way they learn any other behavior. They observe that violence is a normal way for people to treat one another and a normal way to solve problems. The family violence that occurs today is a time bomb that will explode years later as abused children become abusers of their own children or other children, and as children who watch one parent hitting the other repeat the example in their own relationships or the community.

The costs of this violence and its transmission through the generations are intolerable, however they may be counted. The human costs in suffering are the most obvious and the most immediately tragic. But there are other incalculable costs as well for society as a whole. The family is the fundamental unit upon which society is built. When families are unable to function as the healthy, protective, nurturing institution that America has always depended upon, it should come as no surprise that community problems -- crime, drug and alcohol abuse, dropouts from education and from the workplace -- have been growing.

The ultimate task is to break the cycle and to prevent family violence from occurring.

Section 2. This section amends the existing restitution statute, AS 12.55.045(a) in two ways. First, it permits the court to order restitution to shelter organizations or other agencies which provide medical or counseling services to a victim. Restitution in these situations is limited to occurrences where service has been provided to the victim without cost. As the law is currently structured an organization such as a shelter who provides service to a victim is probably not an aggrieved party, and thus would not be eligible to receive restitution.

The second change in this section deletes existing statutory language which requires the sentencing court to make affirmative findings before restitution is ordered at sentencing. As explained by the Alaska Supreme Court in Karr v. State, 686 P.2d 1192 (Alaska 1984) "... the trial court may not set restitution unless it first determines ... earning capacity and determines that restitution award to be set will be within the defendant's ability to pay." (emphasis added) In sum, existing language requires a predictive judgment by the sentencing court on matters oftentimes particularly within the control of the offender. Absent this affirmative finding, restitution orders are presumptively invalid.

In the practical world of criminal proceedings, most restitution orders occur in misdemeanor cases, a good portion of which are resolved at the initial court appearance with guilty pleas. In this situation, the court does not have the benefit of an extensive presentence investigative report from which to make the predictive judgment, and the affirmative findings required by current statute as a precursor to valid restitution orders only increases the court's workload during criminal proceedings.

By repealing this language, orders of restitution become presumptively payable by offenders. In those situations when the offender is a true indigent, without any prospects or possibilities of paying restitution, the offender can raise the issue and demonstrate this inability to the sentencing court.

Section 3. The amendments to this section address the proceedings which occur when the offender fails to pay restitution or a fine. Under current law, the state has the burden to show first, that the offender didn't pay, and second, that the failure to pay was because of bad faith on the part of the offender (intentional refusal or failure to pay). As currently structured the state must prove information that is particularly within the control of the criminal, i.e. that the offender did have the ability to pay restitution, but simply refused or failed to do so for no legitimate reason.

Under the changes contained in Section 3 the state would still be required to prove that the offender didn't pay, but then the burden would shift to the criminal to show that there was a lawful excuse for not paying. With this amendment when restitution is not paid to a victim, the state does not have to engage in an extensive investigation into the offender's affairs in order to also prove the bad faith failure to pay. Rather, the offender who has a lawful excuse for not paying, needs to merely present evidence of that lawful excuse to the court. Then only those who fail to pay for bad faith reasons are penalized under the law; not the victim, nor the state.

PWC:ejf:01a



District Court

State of Alaska

FOURTH JUDICIAL DISTRICT
604 BARNETTE STREET, RM. 329
FAIRBANKS, ALASKA
99701

Chambers of
JANE F. KAUVAR, Judge

April 9, 1986

Louann Cutler
P.O. Box "V"
Juneau, Alaska 99811

Re: House Bill 463

Dear Ms. Cutler:

I am writing to oppose the passage of House Bill 463, as it limits the power of the judiciary to act. I believe that this is not in the best interest of the victims or defendants in domestic violence cases, despite certain special interest groups assertions to the contrary.

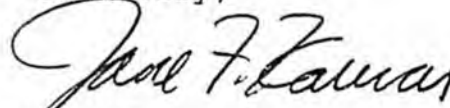
First, I do not believe that I have ever abused the power to allow a civil compromise, and in fact, have used it sparingly. In cases of repeated violence, I do not know of any time I have granted such a compromise. In other cases, I have insisted on meeting with the victim personally and tried to work out a compromise that involves more than just "dropping the charges." This often involves a waiting period while the defendant receives violence and or alcohol counselling.

I understand that the proponents of the Bill believe that they know what is best for the victim and defendant, and that their beliefs should override that of the judiciary. However, I do not agree that limiting the power of the judiciary in this case will accomplish the goal of ending domestic violence. I do feel strongly that this sets a dangerous precedent.

Page two

I have discussed this with Judge Crutchfield and Judge Zimmerman and they concur with my views. If you have any questions I would be glad to discuss it with you. I hope that you will consider soliciting views of the judiciary before passing this Bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eane F. Kauvar".

Eane F. Kauvar
District Court Judge

DISTRICT 27:
AKHIOK
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
CHINIAK
IVANOF BAY
KARLUK
KODIAK
LARSEN BAY
OLD HARBOR
OUZINKIE
PERRYVILLE
PORT LIONS
WOMENS BAY

Alaska State Legislature



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JUNEAU, ALASKA 99811
(907) 465-2487
(907) 465-2498

P.O. BOX 75
KODIAK, ALASKA 99615
(H) (907) 486-4899
(LIO) (907) 486-8116

Representative
Dave Thompson

M E M O R A N D U M

TO: Senator Pat Roday
Chairman
Senate Judiciary Committee

DATE: April 17, 1986

FROM: Representative Dave Thompson *DT* SUBJ: CSHB 463 (Rules)

Please hear CSHB 463 (Rules) in the Senate Judiciary Committee as soon as possible.

Thank you for your attention to this matter.

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CS HB 463 (Rules)

April 22, 1986

Support

CSHB 463 (Rules) - "An Act relating to the authority to compromise certain misdemeanors and to the payment of restitution."

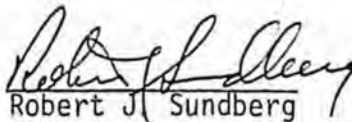
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Robert J. Sundberg

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : C5HB463(Rules)
 Title : "An Act relating to the authority to compromise certain misdemeanors..."
 Sponsor : Thompson, Jenkins, Uenling
 Requestor : Senate Judiciary
 Date of Request : 4/24/86

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

K. Miklos

Prepared by : Barbara Miklos, Exec. Dir.
 Division : Council on Domestic Violence & S.A.

Phone : 465-4356
 Date : 4/22/86

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

Date : 4/22/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
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