

HB

106

HOUSE COMMITTEE REPORT

(111)

Date referred: 3/4/87

FURTHER REFERRALS:

DATE: 3/17/87

The Finance Committee has considered HB 106

"An Act relating to the payment of criminal fines and restitution."

RECOMMENDS:

- replace with CS HB 106 (Fin) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

ADAMS Albert B. Adams

POUR Hot / J. Kourchak

GOLL Peter Goll

BOYER Mark Boyer

ZIEGER Thomas Zieger

FRANK Frank

BRANT ey Brant

DAVIS Mike Davis

ARSON Ronald Arson

SIGNING OTHER RECOMMENDATIONS:

WALLIS F. Roy Wallis no rec

Albert B. Adams
Chairman's signature

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CSHB 106 (FIN)
Publish Date: _____

Revision Date: _____
Title: An Act relating to restitution

Agency Affected: Public Safety
BRU: _____

Sponsor: Davidson
Requestor: House Finance Committee

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

APA

Prepared by: Al Adams, Chair Phone: 465-3706
Division: House Finance Committee Date: 3/17/87

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):

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

Original sponsors: Davidson, Brown,
Goll, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 106 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the payment of criminal fines and
7 restitution."

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

9 * Section 1. AS 12.55.045(a) is repealed and reenacted to read:

10 (a) The court may order a defendant convicted of an offense to
11 make restitution as provided in this section, including restitution to
12 the victim, to a public, private, or private nonprofit organization
13 that has provided counseling, medical, or shelter services to the
14 victim, or as otherwise authorized by law. A defendant is presumed to
15 have the ability to pay restitution unless the defendant establishes
16 the inability to pay by a preponderance of the evidence. In
17 determining the amount and method of payment of restitution, the court
18 shall take into account the

19 (1) public policy that favors requiring criminals to com-
20 pensate for their actions;

21 (2) financial burden placed on the victim and others as a
22 result of the criminal conduct of the defendant; and

23 (3) financial resources of the defendant and the nature of
24 the burden its payment will impose.

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

26 (d) In any case, including a case in which the defendant is
27 convicted of a violation of AS 11.46.120 - 11.46.150 and [IN WHICH]
28 the property is commercial fishing gear as defined in AS 16.43.990,
29 the court [SHALL CONSIDER THE VICTIM'S NEED FOR, AND] may order [,]

1 restitution that may include compensation for loss of income.

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

3 (a) If the defendant defaults in the payment of a fine or any
4 installment or of restitution or any installment, the court may order
5 the defendant to show cause why the defendant should not be sentenced
6 to imprisonment for nonpayment. If the defendant fails to establish
7 [COURT FINDS] by a preponderance of the evidence that the defendant
8 did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN
9 INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the
10 fine or restitution, the court may order the defendant imprisoned
11 until the order of the court is satisfied. A term of imprisonment
12 imposed under this section may not exceed one day for each \$50 of the
13 unpaid portion of the fine or restitution or one year, whichever is
14 shorter. The state may enforce payment of a fine and the restitution
15 recipient may enforce payment of a restitution order against a defen-
16 dant under AS 09.35 as if the order were a civil judgment enforceable
17 by execution. Credit shall be given toward satisfaction of the order
18 of the court for every day a person is incarcerated for nonpayment of
19 a fine [OR RESTITUTION].
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Kay Brown

Alaska State Legislature House of Representatives

M E M O R A N D U M

TO: Rep. Adams, Chairman
House Finance Committee

DATE: March 17, 1987

FROM: Rep. Kay Brown

RE: CSHB 106
Subcommittee Report

The Subcommittee is pleased to recommend for passage the attached draft of CSHB 106 (Finance). This draft incorporates four amendments to CSHB 106 (Judiciary). Each amendment has been approved by the prime sponsor.

1. Page 1, line 12:

This amendment makes it clear that a judge could order restitution directly to the victim of a crime and to an organization which provided the victim with counseling, medical, or shelter services. The former version may have been construed to encourage or allow restitution only to the victim or for certain types of damages.

2. Page 1, line 12:

This amendment added the word "private" to make it clear that a private organization could get restitution to the same extent as a public or private nonprofit organization.

3. Page 1, Line 27:

The words "in which" were deleted to improve the clarity of the sentence; no substantive change resulted; the amendment still recognizes the right to be awarded restitution for lost income when fishing gear is stolen.

4. Page 1, Line 29:

The subcommittee deleted language requiring the judge to consider the victim's need before ordering restitution. Under the subcommittee's amendment all victims, regardless of financial condition, could be awarded restitution.

The subcommittee is not recommending an amendment which would require the defendant to establish his need for a public defender. Although the subcommittee recognizes the probable merit of this idea, it appears it would not be appropriate in this bill because it would change the focus of the bill from restitution. Such an amendment is not supported by the prime sponsor. Additionally, the subcommittee feels this subject would benefit from the information gained in hearings before other committees.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 5, 1987

SUBJECT: Criminal fines and restitution
CSHB 106(Jud)

TO: Representative Cliff Davidson

FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of CSHB 106(Judiciary):

Section 1 - Allows the court to order a convicted defendant to make restitution and establishes a presumption of ability to pay. Establishes criteria for the court to apply in determining the amount and method of restitution.

Section 2 - Requires the court to consider the victim's need for restitution.

Section 3 - Requires the defendant to establish by a preponderance of the evidence that refusal or failure to pay restitution was not intentional, or the court may imprison the defendant. Allows the state enforce payment of a fine and the recipient of the restitution to enforce payment of the restitution, by execution under AS 90.35. Removes credit for time in prison for failure to pay restitution.

MFF:mkr
m9/096



STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON

District 27

Box 746, Kodiak, Alaska 99615

March 6, 1987

To: Representative Al Adams, Chairman
House Finance Committee

From: Representative Cliff Davidson

Re: CS FOR HOUSE BILL NO. 106 (Judiciary)

In the last few minutes of the Judiciary hearing on HB 106, three words were inserted into the bill which narrowed my intent of the bill. In lines 11 and 12 of the first page, the words "to the victim" were inserted. While I agreed with the committee that the object of the bill was to make the victim as whole as possible, I had additional reasons for the bill.

In testimony we heard that costs billed to the victim for care in the shelter programs ranged from \$3.50 to \$10 per day, while the actual cost might be \$80 to \$100 per day. For a five day stay in a shelter, a restitution of \$17.50, while the actual cost was \$400, doesn't seem to me to send the right kind of message. I would like to have the judge be able to look at these actual costs in ordering the restitution. Protection against unrealistic or oppressive restitution is guaranteed in the three provisions of Section 1.

Paying the restitution to the victim would make the victim vulnerable to continued violence. The message should be that the defendant is answerable to society through the court for their violence. I equate restitution with a sentence of responsibility for the violence by the court to the defendant.

Also in testimony, it was explained that studies show the incidence of violence is lowered when the perpetrator is arrested and brought to trial. I think a sentence of counseling and restitution would be preferable to expensive incarceration.

Thank you for allowing my explanation.



STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON

District 27

Box 746, Kodiak, Alaska 99615

February 23, 1987

To: John Sund, Chairman
House Judiciary Committee

From: Cliff Davidson

Re: Re-write of HB 106

Upon reading the enclosed letter from Public Defender Dana Fabe, I would like to request that the suggested changes be made. My two main inclusions in the bill were to allow the judge to ask for restitution to care-giving institutions, and that the defendant be required to establish inability to pay restitution rather than requiring the prosecution to establish ability of the defendant to pay.

I appreciate the assistance in the suggested re-write.

Thank you.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

PUBLIC DEFENDER AGENCY

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 279-7541

February 19, 1987

John Hartle
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

RE: HOUSE BILL NO. 106

Dear John:

A copy of our position paper on HB 106 is currently being routed through the Commissioner's office. Since you have requested an immediate response to this legislation, this letter contains the concerns I expressed over the phone to you.

HB 106 does three things:

1. It changes the burden of proof at sentencing to require a defendant to prove that he or she does not have the ability to pay full restitution. Currently the prosecution must prove that the defendant does have the ability to pay.
2. It shifts the burden to the defendant of proving that he or she did not intentionally refuse or fail to pay the fine; and
3. It requires the judge to mandatorily impose an entire suspended jail sentence on the defendant if there is any default in the fine or restitution payment.

This third provision of the bill is extremely problematical. It mandates that the court incarcerate a defendant who fails to make a single installment of his fine, a result which is contrary to Alaska Supreme Court law which requires the court to find that reincarceration is necessary once a probation violation has been found. A defendant could be incarcerated for years if he were to miss one fine payment unless he had the financial resources to pay the total amount of the fine or restitution.

This provision violates equal protection standards and penalizes an indigent defendant. Two identically situated defendants would be treated differently under this provision based only on their financial status. Take the following example. Defendant A has \$3,000 of restitution to pay. He has a low-paying job and is thus ordered to pay \$100 a month. He has five years of suspended time hanging over his head. If he misses one of his \$100 installments he would be revoked and would face a mandatory term of five years in jail. The judge could not

modify or lessen that term under this bill. Furthermore, he would remain in jail for that five years if he didn't have the funds to pay the \$3,000 total.

Defendant B, who is wealthy, has also intentionally failed to make his restitution payment. His probation would also be revoked but he would be able to pay the full \$3,000 amount, thus enabling him to buy his way out of jail. This disparate treatment of two persons based on their economic standing violates equal protection standards and comes close to debtor's prison in that a person's incarceration will depend totally on his ability to pay the total fine (not simply the missed installment).

This provision penalizes those on probation and rewards repeat offenders who are subject to presumptive time. This bill states that a person who does not have probationary time hanging over his head will be required to serve one day of jail for every \$50 of the fine or restitution which has not been paid. On the other hand, a probationer who has three years of suspended time over his head will spend the entire period of suspended time if the total amount of the fine cannot be paid.

Take the following example: Two defendants who have committed identical property offenses and each has a \$1000 restitution requirement for property damage to the home which was burglarized. Offender A is a first offender who has no prior record and the court gives him three years with all three suspended on the condition that he pay restitution. Offender B is a second time offender and is given the four-year presumptive term. He cannot receive any additional suspended probationary time on top of that four-year term under the current presumptive sentencing scheme.

Each of the offenders is found to have intentionally missed a restitution payment. Offender A, the first time offender, will be required to serve three years in jail unless he can come up with the \$1000. Offender B, the repeat burglar, will be able to work off his fine in 20 days (20 x \$50 = \$1000). This type of anomaly will penalize first offenders who are more likely to receive probation and will reward repeat offenders who receive presumptive time.

This provision removes discretion from the judges. Current Alaska Supreme Court case law requires each judge to go through a two-prong analysis when determining whether to revoke probation. First, the judge must decide whether a condition of probation has been violated. If it has, the judge must then decide whether reincarceration is necessary, for what period of time that reincarceration should extend, and whether further restrictions or modifications of probation might solve the problem which caused the violation.

Thus, if a defendant is found to have been using cocaine, the judge can incarcerate him for a lengthy period of time, incarcerate him for a short period of time and then require drug rehabilitation, or can send him directly into a residential drug rehabilitation program as a new condition of probation. The judge's decision will depend greatly upon

the nature of the underlying offense, whether the violation of probation was an isolated incident or a repeated course of conduct, whether the offender's attitude requires jail time to get his attention, and whether the nature of the violation of probation indicates that reincarceration is necessary to protect the public.

Under this law, failure to make one installment of a fine or restitution will often result in a much more severe form of punishment than many other more serious types of probation violations. The trial judge who has heard the facts of the case, has had experience with the offender, and can hear the recommendations of the probation officer is in the best position to determine whether reincarceration is necessary. Often, a defendant will have a good payment record on restitution and an outside pressure or stress will cause one or more missed payments. Bringing that offender back before the judge for a stiff lecture or a small jolt of jail time as a reminder of the alternative may be as effective in motivating full payment of restitution.

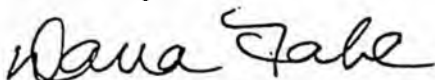
In summary, this section of the bill deprives the trial court of discretion, penalizes first offenders and indigent defendants and will result in unnecessary incarceration of defendants who are otherwise on the road to rehabilitation.

Also problematical is the second section of the bill which shifts the burden of proof of a probation violation from the prosecution, which normally has the burden to prove that a defendant has violated a condition, to the defendant to prove that he did not violate it. This bill requires a defendant to establish by a preponderance of the evidence that he did not intentionally fail to pay his fine or restitution. This reversal of the burden of proof differs from that of all other probation violations where the prosecution is required to prove the defendant's violation.

Finally, the Public Defender Agency agrees that requiring a defendant to establish his inability to pay restitution rather than requiring the prosecution to establish his ability to pay, makes good sense. The defendant will usually have better access to the types of records necessary to establish an inability to pay and the prosecution may often be groping in the dark to try to establish an ability to pay.

The official position paper on this bill will be available to you shortly. I hope this is of some assistance. I will see you on Thursday, February 26th.

Sincerely,



Dana Fabe
Public Defender

DF:sh

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Administration
 Title: "An Act relating to the payment of criminal fines and restitution" BRU: Public Defender Agency
 Sponsor: Representative Davidson Components: Third Judicial District
 Requestor: House Rules

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dana Fabe, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: January 19, 1988

Approved by Commissioner: John Andrews Date: 1/21/88
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

RECEIVED
 JAN 21 1988

HB 106

POSITION PAPER

CS HB 106

The Alaska Public Defender Agency and the Office of Public Advocacy are totally reactive agencies which provide representation to indigent persons when appointed by the court. These agencies do not make policy nor do they initiate litigation. Only proposed legislation with fiscal or program ramifications for these agencies can be said to have a direct agency impact. Thus, the Public Defender Agency and Office of Public Advocacy submit position papers for legislation which will affect these agencies fiscally or programatically or will require these agencies to litigate constitutional issues raised by the legislation.

Fiscal impact: X None See attached fiscal note _____

Program impact: _____ None See analysis below X

Constitutional impact: _____ None See analysis below X

This bill makes three major changes in the restitution scheme:

1. It changes the burden of proof at sentencing to require a defendant to prove that he or she does not have the ability to pay full restitution. Currently the prosecution must prove that the defendant does have the ability to pay.

The Public Defender Agency agrees that requiring a defendant to establish his inability to pay restitution rather than requiring the prosecution to establish his ability to pay, makes good sense. The defendant will usually have better access to the types of records necessary to establish an inability to pay and the prosecution may often be groping in the dark to try to establish an ability to pay.

2. It shifts the burden to the defendant of proving that he or she did not intentionally refuse or fail to pay the fine.

Section 3 of the bill, which shifts the burden of proof of a probation violation from the prosecution to the defendant, is problematical. The prosecution normally has the burden to prove that a defendant has violated a condition of probation. This provision of the bill will require the defendant to prove that he did not violate his probation. The bill requires a defendant to establish by a preponderance of the evidence that he did not intentionally fail to pay his fine or restitution. This reversal of the burden of proof departs drastically from the requirement in all other probation violations that the prosecution must prove the defendant's violation. Since imposition of jail time may result, this situation differs from the one discussed above.

3. It streamlines enforcement and collection of a fine or restitution.

The section streamlining collection and enforcement of fines and restitution will help victims collect restitution without being required to relitigate the issue in civil court.

Dana Fabe *DF*

Dana Fabe, Public Defender
Public Defender Agency

1/20/88

Date

Brant McGee *BM*

Brant McGee, Director
Office of Public Advocacy

1/20/88

Date

John Andrews

Commissioner John Andrews
Department of Administration

1/21/88

Date

R10 3/17/87
rec'd 4/7/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CS HB 106 (Finance) am
Publish Date: _____

Revision Date: _____
Title: An Act relating to the payment of criminal fines and restitution
Sponsor: Davidson, Brown, Goll, et al.
Requestor: Senate Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Section 1 may provide additional funding for domestic violence and sexual assault programs by permitting restitution to these programs from defendants convicted of an offense.

JWR
3/31/87

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
Division: Council on Domestic Violence and Sexual Assault Date: 3-31-87

Approved by Commissioner: [Signature] Date: 4/2/87
Agency: Department of Public Safety

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

RECEIVED
APR 07 1987

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CS HB 106 (JUN)
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: "An Act relating to the payment of criminal fines and restitution."
Sponsor: Rep. Davidson, Brown, Goll, et al
Requestor: House Judiciary

Agency Affected: Dept. of Corrections
BRU: Operations
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

It is felt that this bill will have some effect on inmate population though not much. The size of the impact will depend on the courts.

Prepared by: Susie Riley, Program Budget Analyst Phone: 465-3376
Division: Administrative Services Date: 2/18/87
Approved by ^{Acting} Commissioner: William W. Ladwig Date: 2/18/87
Agency: Department of Corrections

Distribution (by preparer):

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

No. 5

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Number: CSHB 106 (Jud)
Publish Date: HOUSE 3/4/87

Revision Date: _____
Title: "An Act relating to the pay-
ment of criminal fines..."
Sponsor: Davidson, Et. Al.
Requestor: House Judiciary

Agency Affected: Administration
BRU: Office of Public Advocacy
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
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		0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: 2/22/87

Approved by Commissioner: Dr. Garrey Peske
Agency: Department of Administration

Date: 2/26/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CSHB 106 (Jud)
Publish Date: HOUSE 3/4/87

Revision Date: _____

Agency Affected: Department of Administration

Title: "An Act relating to the payment of criminal fines and restitution."

RRJ: Public Defender Agency

Sponsor: Davidson, et al.

Components: _____

Requestor: House Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-				

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME		-0-				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Zero fiscal impact.

Prepared by: Dana Fabe, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: February 20, 1987

Approved by Commissioner: [Signature]
Agency: Dept. Administration

Date: 2/26/87

- Distribution (by preparer):
- Legislative Finance -
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

No. 3

REQUEST: _____

Bill Version: CSHB 106(Jud)
Publish Date: HOUSE 3/4/87

Revision Date: _____
Title: An Act relating to the payment of criminal fines and restitution
Sponsor: Davidson, Brown, Goll, etc.
Requestor: House Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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)

JNR
2/17/87

Prepared by: Barbara Miklos, Executive Director
Division: Council on Domestic Violence & Sexual Assault

Phone: 465-4356
Date: 2-17-87

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 2/17/87

Distribution (by preparer):

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

Bill Version: CSHB 106(Jud)
Publish Date: HOUSE 3/4/87

REQUEST:

Revision Date: Agency Affected: Alaska Court System
Title: An act relating to the payment BRU: Trial Courts
of criminal fines and restitution
Sponsor: Davidson, Brown, Goll, ... Components:
Requestor: House Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)						
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL
REVENUE

FUNDING: (Thousands of Dollars)						
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 2-18-87

Approved by: *Stephanie Cole*
Stephanie J. Cole, Deputy Director
Agency: Alaska Court System

Date: 2-18-87

- Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

715 (1985); *Oswald v. State*, Ct. App. Op. No. 594 (File Nos. A-387, A-427), 716 P.2d 276 (1986).

Quoted in *Jennings v. State*, Ct. App. Op. No. 588 (File No. A-1189), 713 P.2d 1222 (1986).

II. COMPUTATION OF TERM.

Determination of credit for time served. — The appropriate time to resolve credit for time served is at the sentencing hearing and the trial court should expressly identify those periods of time for which credit is to be allowed. *Ackermann v. State*, Ct. App. Op. No. 600 (File No. A-931), 716 P.2d 5 (1986).

Credit for time spent on probation. — A person in third-party custody who has the freedom to move about the community, limited only by his custodian's accompaniment, and one who is confined to a fishing boat while it is at sea is not entitled to credit for time spent on probation. *Ackermann v. State*, Ct. App. Op. No. 600 (File No. A-931), 716 P.2d 5 (1986).

III. CONSECUTIVE SENTENCES.

Preference for consecutive sentences. — Subsections (e) and (g) express a preference for consecutive sentences which a trial court has discretion to reject in appropriate circumstances. *State v. Andrews*, Ct. App. Op. No. 510 (File Nos.

A-468, A-492, A-552), 707 P.2d 800 (1985).

Crimes committed after imprisonment on former offense. — Under subsection (e) trial judges are required to impose consecutive sentences on individuals convicted for crimes which are committed after they had been imprisoned on a former offense. *Sanders v. State*, Ct. App. Op. No. 619 (File No. A-1291), 718 P.2d 167 (1986), following *Jennings v. State*, Ct. App. Op. No. 588, 713 P.2d 1222 (1986).

Upon revocation of probation, etc.

Where a defendant's probation on a conviction for burglary in the first degree, AS 11.46.300, was revoked because of his conviction of bank robbery in federal district court, a sentence of four years with two years suspended, consecutive to his federal robbery sentence, was not excessive. *Dodd v. State*, Ct. App. Op. No. 398 (File No. A-271), 686 P.2d 737 (1984).

IV. CONCURRENT SENTENCES.

Trial courts have discretion under this section to impose concurrent sentences. *Drumbarger v. State*, Ct. App. Op. No. 601 (File No. A-770), 716 P.2d 6 (1986).

Correction of judgment unlawfully imposing concurrent sentences. — See *Joseph v. State*, Ct. App. Op. No. 577 (File No. A-1166), 712 P.2d 804 (1986).

Sec. 12.55.045. Restitution. 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.

(d) In a case in which the defendant is convicted of a violation of AS 11.46.120 — 11.46.150 and in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's need for, and may order, restitution that may include compensation for loss of income. (§ 12 ch 166 SLA 1978; am § 38 ch 102 SLA 1980; am § 1 ch 73 SLA 1986)

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Cross references. — For requirement that court suspend commercial fishing privileges of certain defendants, see AS 16.05.710(b).

Effect of amendments. — The 1986 amendment added subsection (d).

NOTES TO DECISIONS

Editor's notes. — The note under the catchline "Enforcement of restitution under AS 12.55.051" in the main pamphlet should be disregarded. See the note below under the same catchline.

Purpose and amount of restitution. — Restitution should not only compensate the victim for the harm inflicted by the offender, but should further the rehabilitation of the offender; if restitution is ordered in an amount that is clearly impossible for the offender to pay, the offender's rehabilitation will be inhibited and not furthered. *Karr v. State*, Sup. Ct. Op. No. 2848 (File No. 7011), 686 P.2d 1192 (1984).

Policy considerations. — As to policy considerations militating against approach adopted by the Alaska Court of Appeals in *Brezanoff*, see *Karr v. State*, Sup. Ct. Op. No. 2848 (File No. 7011), 686 P.2d 1192 (1984).

Inquiry at initial sentencing. — Initial sentencing is the appropriate time at which an inquiry into an offender's ability to pay restitution must be performed. This inquiry should include an analysis of any assets the offender presently owns, his past earning capacity and potential in the future as a wage earner, based on his experience, training, and any other relevant

factors. *Karr v. State*, Sup. Ct. Op. No. 2848 (File No. 7011), 686 P.2d 1192 (1984).

Remand for determination of earning capacity. — Though a presentence report recommended restitution, it did not discuss the defendant's earning capacity or the kinds of jobs that she could reasonably be expected to perform in the future; it was therefore necessary that the case be remanded to the trial court for further findings. *Zimmerman v. State*, Ct. App. Op. No. 524 (File No. A-921), 706 P.2d 343 (1985).

Enforcement of restitution under AS 12.55.051. — AS 12.55.051(a) prescribes a specific method for dealing with enforcement of court orders requiring the payment of fines or restitution, regardless of whether such orders are directly imposed as part of the original sentence, under this section, or indirectly imposed as a condition of probation, under AS 12.55.100; AS 12.55.051 expressly provides that imprisonment for failure to pay court-ordered restitution is permissible only if the failure to pay was intentional or the result of bad faith. *Lominac v. Municipality of Anchorage*, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Sec. 12.55.051. Enforcement of fines and restitution.

NOTES TO DECISIONS

Editor's notes. — The note under the catchline "Revocation of probation for willful failure to pay restitution was error" in the main pamphlet should be disregarded.

Generally. — Subsection (a) of this section prescribes a specific method for dealing with enforcement of court orders requiring the payment of fines or restitution, regardless of whether such orders are directly imposed as part of the original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under AS 12.55.100; this section expressly provides that imprisonment for failure to

pay court-ordered restitution is permissible only if the failure to pay was intentional or the result of bad faith. *Lominac v. Municipality of Anchorage*, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Legislative mandate of AS 12.55.045(a) is not replaced. — Opportunity provided by this section for the court to later modify a restitution order does not replace the legislative mandate of AS 12.55.045(a). *Karr v. State*, Sup. Ct. Op. No. 2848 (File No. 7011), 686 P.2d 1192 (1984).

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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), 658 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. 5960), 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)

Introduced: 2/4/87
 Referred: Judiciary and
 Finance

BY DAVIDSON, BROWN, GOLL,
 LARSON, MENARD, TAYLOR,
 KOPONEN, GRUENBERG AND
 ZAWACKI

1 IN THE HOUSE

2

HOUSE BILL NO. 106

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the payment of criminal fines and
 7 restitution."

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

9 * Section 1. AS 12.55.045(a) is repealed and reenacted to read:

10 (a) The court may order a defendant convicted of an offense to
 11 make restitution as provided in this section, including restitution to
 12 a public or private nonprofit organization that has provided counsel-
 13 ing, medical, or shelter services to the victim, or as otherwise
 14 authorized by law. A defendant is presumed to have the ability to pay
 15 restitution unless the defendant establishes the inability to pay by a
 16 preponderance of the evidence. In determining the amount and method
 17 of payment of restitution, the court shall take into account the

18 (1) public policy that favors requiring criminals to com-
 19 pensate their victims;

20 (2) fact that a victim may encounter difficulty in obtain-
 21 ing an enforceable civil judgment;

22 (3) financial burden placed on the victim as a result of
 23 the criminal conduct of the defendant; and

24 (4) need of the victim and society for punitive compen-
 25 sation to be extracted from the defendant.

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

27 (a) If the defendant defaults in the payment of a fine or any
 28 installment or of restitution or any installment, the court may order
 29 the defendant to show cause why the defendant should not be sentenced

1 to imprisonment for nonpayment. If the defendant fails to establish
2 [COURT FINDS] by a preponderance of the evidence that the defendant
3 did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN
4 INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the
5 fine or restitution, the court may order the defendant imprisoned
6 until the order of the court is satisfied. If the defendant was not
7 given a suspended sentence of imprisonment conditioned upon paying a
8 fine or restitution, a [A] term of imprisonment imposed under this
9 section may not exceed one day for each \$50 of the unpaid portion of
10 the fine or restitution or one year, whichever is shorter. If the
11 defendant was given a suspended sentence of imprisonment conditioned
12 upon paying a fine or restitution, the defendant shall be incarcerated
13 for the duration of the sentence or until the fine or restitution is
14 totally paid, whichever is shorter. The state may enforce payment of
15 a fine and the restitution recipient may enforce payment of a re-
16 stitution order against a defendant under AS 09.35 as if the order
17 were a civil judgment enforceable by execution [CREDIT SHALL BE GIVEN
18 TOWARD SATISFACTION OF THE ORDER OF THE COURT FOR EVERY DAY A PERSON
19 IS INCARCERATED FOR NONPAYMENT OF A FINE OR RESTITUTION].