

CSHB

106

SENATE COMMITTEE REPORT

FURTHER

4/22/88

DATE TURNED INTO OFFICE 5/6/88

Mr. President:

FINANCE Committee considered CSHB 106 (FIN) am
payment of criminal fines and restitution

and recommended

replace with S CS CSHB 106 (Fin) same title
 or adopt _____ CS _____ new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)
 new updated or previous
 zero \$FC fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures: Paul ...]

Rich Halford do pass
Chairman signature and recommendation

Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Payment of criminal fines
and restitution
Sponsor: _____
Requestor: Senate Finance Committee

Dept of Corrections
Agency Affected: Dept of Public Safety
BRU: _____
Components: _____

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						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Rick Halford*
Division: Senator Rick Halford Co-chairman
Senate Finance Committee

Phone: 465-3753

Date: May 6, 1988

Approved by Commissioner: _____ Date: _____

Agency: _____

Distribution (by preparer) :

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

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

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 106 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND 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 AS 12.55.045(a) is repealed and reenacted to read: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 determin-
17 ing the amount and method of payment of restitution, the court shall
18 take into account the

19 (1) public policy that favors requiring criminals to com-
20 pensate for damages and injury to their victims;

21 (2) financial burden placed on the victim and those who
22 provide services to the victim as a result of the criminal conduct of
23 the defendant; and

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

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

27 (d) In any case, including a case in which the defendant is
28 convicted of a violation of AS 11.46.120 - 11.46.150 and [IN WHICH]
29 the property is commercial fishing gear as defined in AS 16.43.990,

1 the court shall consider the victim's loss [NEED FOR,] and may order
2 [,] restitution that may include compensation for loss of income.

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

4 (a) If the defendant defaults in the payment of a fine or any
5 installment or of restitution or any installment, the court may order
6 the defendant to show cause why the defendant should not be sentenced
7 to imprisonment for nonpayment. If the state presents evidence of the
8 defendant's failure to pay restitution, the court may presume that the
9 defendant has intentionally refused to pay the fine or restitution or
10 has not made a good faith effort to pay the fine or restitution unless
11 the defendant presents some evidence that the defendant's failure to
12 pay the fine or restitution was not intentional or that the defendant
13 has made a good faith effort to pay the fine or restitution. If the
14 court finds by a preponderance of the evidence that the default was
15 attributable to an intentional refusal or failure to make a good faith
16 effort to pay the fine or restitution, the court may order the de-
17 fendant imprisoned until the order of the court is satisfied. A term
18 of imprisonment imposed under this section may not exceed one day for
19 each \$50 of the unpaid portion of the fine or restitution or one year,
20 whichever is shorter. Credit shall be given toward satisfaction of
21 the order of the court for every day a person is incarcerated for
22 nonpayment of a fine or restitution.

23 * Sec. 4. AS 12.55.051 is amended by adding a new subsection to read:

24 (d) The state may enforce payment of a fine and the restitution
25 recipient may enforce payment of a restitution order against a defen-
26 dant under AS 09.35 as if the order were a civil judgment enforceable
27 by execution. This subsection does not limit the authority of the
28 court to enforce fines and orders of restitution to victims.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CSHB 106(Fin)
Publish Date: HOUSE 3/18/87

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
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REVENUE	0	0	0	0	0	0
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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)

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

APA

Ch w/ Cheryl

do SFC

o

you all Depts

FISCAL NOTE

REQUEST:

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

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	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)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
 Division: Administrative Services

Phone: 465-3376
 Date: 1-15-88

Approved by Commissioner: Susan Humphrey-Barnett
 Agency: Department of Corrections

Date: 2-19-88

Distribution (by preparer):

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

*Corrections
House
Version*

**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.

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

Approved by Commissioner: *X* *hmm* *ks* Date: 4/21/87
Agency: Department of Public Safety

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

page ____ of ____

D. P. S.

*House
Version*

BILL NO: CSHB 106 (Finance) am .

DATE: March 31, 1987

TITLE: An Act relating to the payment of criminal fines and restitution

CONTACT: Barbara Miklos APR 7 1987
Executive Director
Council on Domestic Violence and Sexual Assault


DEPARTMENT OF PUBLIC SAFETY

CSHB 106 (Finance) am, Section 1 (a), permits payment of restitution by a defendant convicted of an offense to a public, private or private nonprofit organization that has provided counseling, medical or shelter services to the victim, as well as to the victim.

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 and sexual assault programs because its use may not be appropriate in most cases. Domestic violence and sexual assault 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 perpetrator should be held accountable to the victim and pay for harm done to her as well as services received.

Section 2 clarifies AS 12.55.045(d) to enable the court to provide restitution for loss of income to a victim of any crime. The legislation originally specified theft of commercial fishing gear.

The Council on Domestic Violence and Sexual Assault supports these two provisions. The Council is not commenting on Section 3 due to lack of expertise in that area.


William R. Nix
Acting Commissioner

RECEIVED

330

STATE OF ALASKA
1988 LEGISLATIVE SESSION

(c)
BILL VERSION: SCS CSHB 106 (Jud)
PUBLISH DATE: SENATE 4/22/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
Title: An Act relating to the payment of criminal fines & restitution BRU: Council on Domestic Violence and Sexual Assault
Sponsor: Davidson, Brown, Goll, et. al Components: _____
Requestor: Senate Judiciary

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	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
Division: Council on Domestic Violence & Sexual Assault Date: 1/25/88
Approved by Commissioner: Paul A. Hackett, Dep. Comm. Date: 1-22-88
Agency: Public Safety

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

update
4/22/88

SCS (Jud.)
Version

330
(b)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

SENATE CS FOR CS FIN
HB 106 (JUDICIARY)
BILL VERSION:
PUBLISH DATE: SENATE 4/22/88

FISCAL NOTE

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: Department of Corrections
BRU: Operations
Components: _____

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-	-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)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Division: Administrative Services

Phone: 465-3376
Date: 4-22-88

Approved by Commissioner: Susan Humphrey-Barnett
Agency: Department of Corrections

Date: 4-22-88

Distribution (by preparer):

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

FEB 2 1988

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the
pavment of criminal fines..."
Sponsor: Davidson, Brown, et al.
Requestor: Rules

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
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	0	0	0	0	0	0
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)

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

Phone: 274-1684
Date: 11/20/88

Approved by Commissioner: John Andrews
Agency: Department of Administration *J.A.*

Date: 1/21/88

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

*updated
4/21/88*

5-0378Z

Chenoweth
4/28/88

5/6/88

RV: *g JV*

Adopted

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

BY THE FINANCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 106 *(Finance)*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND 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 determin-
17 ing the amount and method of payment of restitution, the court shall
18 take into account the

19 (1) public policy that favors requiring criminals to com-
20 pensate for damages and injury to their victims;

21 (2) financial burden placed on the victim and those who
22 provide services to the victim as a result of the criminal conduct of
23 the defendant; and

24 (3) financial resources of the defendant and the nature of
25 the burden its payment will impose *on dependents of the defendant*

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

27 (d) In any case, including a case in which the defendant is
28 convicted of a violation of AS 11.46.120 - 11.46.150 and [IN WHICH]
29 the property is commercial fishing gear as defined in AS 16.43.990,

1 the court shall consider the victim's loss [NEED FOR,] and may order
2 [,] restitution that may include compensation for loss of income.

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

4 (a) If the defendant defaults in the payment of a fine or any
5 installment or of restitution or any installment, the court may order
6 the defendant to show cause why the defendant should not be sentenced
7 to imprisonment for nonpayment. If the state presents evidence of the
8 defendant's failure to pay restitution, the court may presume that the
9 defendant has intentionally refused to pay the fine or restitution or
10 has not made a good faith effort to pay the fine or restitution unless
11 the defendant presents some evidence that the defendant's failure to
12 pay the fine or restitution was not intentional or that the defendant
13 has made a good faith effort to pay the fine or restitution. If the
14 court finds by a preponderance of the evidence that the default was
15 attributable to an intentional refusal or failure to make a good faith
16 effort to pay the fine or restitution, the court may order the de-
17 fendant imprisoned until the order of the court is satisfied. A term
18 of imprisonment imposed under this section may not exceed one day for
19 each \$50 of the unpaid portion of the fine or restitution or one year,
20 whichever is shorter. [Credit shall be given toward satisfaction of
21 the order of the court for every day a person is incarcerated for
22 nonpayment of a fine or restitution.]

23 * Sec. 4. AS 12.55.051 is amended by adding a new subsection to read:

24 (d) The state may enforce payment of a fine and the restitution
25 recipient may enforce payment of a restitution order against a defen-
26 dant under AS 09.35 as if the order were a civil judgment enforceable
27 by execution.
28
29

5/6/88
Adopted

Amendment to SCS CS HB 106 (JUD)

By Hensley

Page 1, line 25

After "impose" , insert

"on dependents of the defendant"



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

M E M O R A N D U M

TO: Senator Halford, Co-chair
Senator Binkley, Co-chair
Senate Finance Committee

FROM: Representative Cliff Davidson

DATE: May 4, 1988

SUBJECT: Senate CS for CSHB106(FIN)

SCS CSHB106(FIN) relates to criminal fines and restitution, and has a zero fiscal note. In a time when violence is reaching a disturbing and unacceptable level in our society, I introduced this bill to help the victims of crime. The bill focuses on restitution, and tries to help victims actually receive this compensation for damage and injury suffered as a result of the criminal action.

Many times, victims must bear the cost of the medical treatment, counselling, and lost income that result from criminal activity. These are costs that the victim should not have to pay, but the criminal.

I urge the passage of SCS CSHB106(FIN).

Thank you.

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 \times \$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.

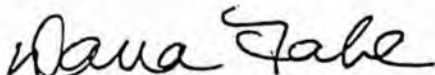
In summary, this section of the bill deprives the trial court of discretion, penalizes first offenders and indigent defendants and will result in unnecessary incarceration of defendants who are otherwise on the road to rehabilitation.

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

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

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 106 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND 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 determin-
17 ing the amount and method of payment of restitution, the court shall
18 take into account the

19 (1) public policy that favors requiring criminals to com-
20 pensate for damages and injury to their victims;

21 (2) financial burden placed on the victim and those who
22 provide services to the victim as a result of the criminal conduct of
23 the defendant; and

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

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

27 (d) In any case, including a case in which the defendant is
28 convicted of a violation of AS 11.46.120 - 11.46.150 and [IN WHICH]
29 the property is commercial fishing gear as defined in AS 16.43.990,

1 the court shall consider the victim's loss [NEED FOR,] and may order
2 [,] restitution that may include compensation for loss of income.

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

4 (a) If the defendant defaults in the payment of a fine or any
5 installment or of restitution or any installment, the court may order
6 the defendant to show cause why the defendant should not be sentenced
7 to imprisonment for nonpayment. If the state presents evidence of the
8 defendant's failure to pay restitution, the court may presume that the
9 defendant has intentionally refused to pay the fine or restitution or
10 has not made a good faith effort to pay the fine or restitution unless
11 the defendant presents some evidence that the defendant's failure to
12 pay the fine or restitution was not intentional or that the defendant
13 has made a good faith effort to pay the fine or restitution. If the
14 court finds by a preponderance of the evidence that the default was
15 attributable to an intentional refusal or failure to make a good faith
16 effort to pay the fine or restitution, the court may order the de-
17 fendant imprisoned until the order of the court is satisfied. A term
18 of imprisonment imposed under this section may not exceed one day for
19 each \$50 of the unpaid portion of the fine or restitution or one year,
20 whichever is shorter. The state may enforce payment of a fine and the
21 restitution recipient may enforce payment of a restitution order
22 against a defendant under AS 09.35 as if the order were a civil judg-
23 ment enforceable by execution. Credit shall be given toward satisfac-
24 tion of the order of the court for every day a person is incarcerated
25 for nonpayment of a fine or restitution.

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

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 106 (Finance) am
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 determin-
17 ing the amount and method of payment of restitution, the court shall
18 take into account the
19 (1) public policy that favors requiring criminals to com-
20 pensate for damages and injury to their victims;
21 (2) financial burden placed on the victim and those who
22 provide services to the victim as a result of the criminal conduct of
23 the defendant; and
24 (3) financial resources of the defendant and the nature of
25 the burden its payment will impose.
26 * Sec. 2. AS 12.55.045(d) is amended to read:
27 (d) In any case, including a case in which the defendant is
28 convicted of a violation of AS 11.46.120 - 11.46.150 and [IN WHICH]
29 the property is commercial fishing gear as defined in AS 16.43.990,

1 the court shall consider the victim's loss [NEED FOR,] and may order
2 [,] restitution that may include compensation for loss of income.

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

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

SENATE COMMITTEE REPORT

2/12/86
Sen Jud reg.
notice given

FURTHER:

FINANCE

3/26/87

DATE TURNED INTO OFFICE _____

Mr. President:

JUDICIARY

Committee considered _____

CSHB 106(Fin)am

payment of criminal fines and restitution.

and recommended:

replace with
 or adopt _____

§ CS FOR
CS FOR

CSHB 106 (Jud)

same title
 new title

(e)

attached amendment(s) and

Report it back as follows

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

103-0704

Committee attached or adopted fiscal note(s)

new

updated or

previous

zero

fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

1 Patrol Bailey

2 Frank No Rec
2 Joseph No Rec

Committee Backup Attached

Chairman signature and recommendation

Verdell
Judiciary Report