

HB 90

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 19, 1991

FURTHER REFERRALS:

Date of Committee Action: 2/25/91

The FINANCE Committee considered:

HB 90

HOUSE BILL NO. 90

FINES AND RESTITUTION IN CRIMINAL CASES

"An Act relating to fines and restitution in criminal cases."

RECOMMENDATIONS:

be replaced with _____ [the same title
 [a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

[] zero fiscal note Alaska Court System 2/25

[] zero fiscal note(s) DPS 2/19/91 | Law 2/19/91

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
Machear	<i>Eileen P. Machear</i>			
Navarre	<i>Mike Sproune</i>			
Burnes	<i>Danora Burnes</i>			
Boyer	<i>Walter Boyer</i>			
Sharp	<i>Bob Sharp</i>			
Jacko	<i>Greg Jacko</i>			
Wapner	<i>John E. Wapner</i>			
Ulmer	<i>John Ulmer</i>			

Navarre Eileen P. Machear
Mike Sproune
 Co-Chairman's Signature

HOUSE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ULMER

Introduced: 2/1/91

Referred: Judiciary, Finance

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to fines and restitution in criminal cases."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * Section 1. PURPOSE. It is the purpose of this Act to ensure full payment of fines imposed in
4 criminal cases and to make full restitution available to all persons who have been injured as a result of
5 criminal behavior, to the greatest extent possible, by

6 (1) requiring courts to consider whether a defendant has the ability to pay fines and
7 restitution at a hearing held after a defendant has failed to pay, rather than asking courts to predict at
8 the time of sentencing whether a defendant will have the ability to pay fines and restitution in the future;

9 (2) requiring a defendant who has failed to pay a fine or restitution to come forward with
10 evidence justifying why the fine or restitution was not paid;

11 (3) allowing courts to order that restitution be made to all persons who have suffered a
12 loss as a result of a defendant's conduct; and

13 (4) allowing courts to order restitution for expenses that will be incurred after the date
14 of sentencing.

1 * Sec. 2. AS 12.55.035(a) is amended to read:

2 (a) Upon conviction of an offense, a defendant may be sentenced to pay a fine as
3 authorized in this section or as otherwise authorized by law. [IN DETERMINING THE
4 AMOUNT AND METHOD OF PAYMENT OF A FINE, THE COURT SHALL TAKE INTO
5 ACCOUNT THE FINANCIAL RESOURCES OF THE DEFENDANT AND THE NATURE OF
6 THE BURDEN ITS PAYMENT WILL IMPOSE. NO DEFENDANT MAY BE IMPRISONED
7 SOLELY BECAUSE OF INABILITY TO PAY A FINE.]

8 * Sec. 3. AS 12.55.045(a) is amended to read:

9 (a) The court may order a defendant convicted of an offense to make restitution as
10 provided in this section, including restitution to the victim or other person injured by the
11 offense, to a public, private, or private nonprofit organization that has provided or is or will be
12 providing counseling, medical, or shelter services to the victim or other person injured by the
13 offense, or as otherwise authorized by law. [A DEFENDANT IS PRESUMED TO HAVE THE
14 ABILITY TO PAY RESTITUTION UNLESS THE DEFENDANT ESTABLISHES THE
15 INABILITY TO PAY BY A PREPONDERANCE OF THE EVIDENCE.] In determining the
16 amount and method of payment of restitution, the court shall take into account the

17 (1) public policy that favors requiring criminals to compensate for damages and
18 injury to their victims; and

19 (2) financial burden placed on the victim and those who provide services to the
20 victim and other persons injured by the offense as a result of the criminal conduct of the
21 defendant [; AND

22 (3) FINANCIAL RESOURCES OF THE DEFENDANT AND THE NATURE OF
23 THE BURDEN ITS PAYMENT WILL IMPOSE ON DEPENDENTS OF THE DEFENDANT].

24 * Sec. 4. AS 12.55.051(a) is amended to read:

25 (a) If the defendant defaults in the payment of a fine or any installment or of restitution
26 or any installment, the court may order the defendant to show cause why the defendant should
27 not be sentenced to imprisonment for nonpayment and, if the payment was made a condition
28 of the defendant's probation, may revoke the probation of the defendant. In a contempt
29 or probation revocation proceeding brought as a result of failure to pay a fine or
30 restitution, it is an affirmative defense that the defendant was unable to pay despite having
31 made continuing good faith efforts [. IF THE STATE PRESENTS EVIDENCE OF THE

1 DEFENDANT'S FAILURE TO PAY RESTITUTION, THE COURT MAY PRESUME THAT
2 THE DEFENDANT HAS INTENTIONALLY REFUSED TO PAY THE FINE OR
3 RESTITUTION OR HAS NOT MADE A GOOD FAITH EFFORT TO PAY THE FINE OR
4 RESTITUTION UNLESS THE DEFENDANT PRESENTS SOME EVIDENCE THAT THE
5 DEFENDANT'S FAILURE TO PAY THE FINE OR RESTITUTION WAS NOT
6 INTENTIONAL OR THAT THE DEFENDANT HAS MADE A GOOD FAITH EFFORT] to
7 pay the fine or restitution. If the court finds that the defendant was unable to pay despite
8 having made continuing good faith efforts, the defendant may not be imprisoned solely
9 because of the inability to pay. If the court does not find [FINDS BY A PREPONDERANCE
10 OF THE EVIDENCE] that the default was attributable to the defendant's inability to pay
11 despite having made continuing good faith efforts [AN INTENTIONAL REFUSAL OR
12 FAILURE TO MAKE A GOOD FAITH EFFORT] to pay the fine or restitution, the court may
13 order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment
14 imposed under this section may not exceed one day for each \$50 of the unpaid portion of the fine
15 or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the
16 order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

17 * Sec. 5. AS 12.55.051(c) is repealed and reenacted to read:

18 (c) A defendant who has been sentenced to pay a fine or restitution may request a
19 hearing regarding the defendant's ability to pay the fine or restitution at any time that the
20 defendant is required to pay all or a portion of the fine or restitution. The court may deny the
21 request if it has previously considered the defendant's ability to pay and the defendant's request
22 does not allege changed circumstances. If at a hearing under this subsection, the defendant
23 proves by a preponderance of the evidence that the defendant will be unable through good faith
24 efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the
25 order so that the defendant can pay the fine or restitution through good faith efforts. The court
26 may reduce the fine or restitution ordered, change the payment schedule, or otherwise modify the
27 order.

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Jill Version: HB 90
(H) Publish Date: 2/19/91

Revision Date: _____
Title: An act relating to fines and
restitution in criminal cases.
Sponsor: Rep. Ulmer
Requestor: House Judiciary

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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/PROG RCPT						
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

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Gayle A. Horetski Phone: 465-4322
Division: Commissioner's Office Date: 2/13/91
Approved by Commissioner: *Gayle A. Horetski* for Richard L. Burton
Agency: Department of Public Safety Date: 2/13/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 2
Bill Version: HB 90
(H) Publish Date: 2/19/91

Revision Date: _____ Department Affected: Department of Law
Title: "An Act relating to fines and restitution in criminal cases." BRU: Prosecution/Legal Services
Sponsor: Representative Ulmer Component: Prosecution/Criminal Justice Litigation
Requestor: House Judiciary Legal Services/Operations
COMPONENT SERIAL NO.

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9 3

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 12, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 12, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HR 90

Revision Date: _____ Department Affected: Alaska State Court System
Title: An Act relating to fines and restitution in criminal cases. BRU: _____
Component: _____

Sponsor: Representative Ulmer
Requestor: HOUSE FINANCE COMMITTEE COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Representative Mike Navarre, Co-Chair *[Signature]* 465-3706
Representative Eileen MacLean, Co-Chair *[Signature]* Phone: 465-3722
Division: _____ Date: _____

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

February 21, 1991

To: Representative *Mike* Navarre, Co-chair
Representative Eileen MacLean, Co-chair
House Finance Committee

From: Representative *Fran* Ulmer

Subject: HB90, relating to fines and restitution in criminal cases

HB 90 deals with fines and restitution ordered by the court in criminal cases. The bill will improve efficiency and will benefit the victims of crime. The Department of Law indicates that as a result of this bill, there will be an increase in the amount of fines that are actually collected by the state. The Council on Domestic Violence and Sexual Assault is supportive of the bill because it removes obstacles in awarding restitution to all persons who are injured by a crime.

The bill includes:

1. An amendment to statutes to require the court to consider whether a defendant has the ability to pay fines and restitution after the defendant has failed to pay, rather than at the time of sentencing. The court will no longer have to guess at what the defendant's financial situation might be in the future when the fine or restitution is due.
2. An amendment requiring the defendant who has failed to pay a fine or restitution to present evidence justifying why payment has not been made. The defendant's financial situation is best known to the defendant, and inability to pay is best addressed by the defendant.
3. An amendment to empower the court to award restitution to persons other than "the victim," who suffered a loss as a

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Recycled Paper

page 2

result of the defendant's conduct.

4. An amendment to empower the court to award restitution for a victim's future expenses, incurred after the date of sentencing.

HB 90 is supported by the Department of Law and the Council on Domestic Violence and Sexual Assault.

BILL NO: HB 90

DATE: February 21, 1991

TITLE: An Act relating to fines
and restitution in criminal cases

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

COUNCIL ON DOMESTIC VIOLENCE
AND SEXUAL ASSAULT

The Council on Domestic Violence and Sexual Assault supports HB 90 which ensures that all persons who have been injured as a result of criminal behavior will receive full restitution to the greatest extent possible.

This bill removes obstacles in awarding restitution for victims of crimes and enables the court to award restitution to other persons injured by an offense. Other family members are often traumatized when a crime is committed against someone in their family. For example, sexual assault of a spouse, son or daughter, or sibling has grave effects on other family members. Those persons often require counseling and support services or suffer financial losses from the crime. Payment for services required, as well as financial losses, should be made by the offender.

Andy Klämser
Andy Klämser, Chair
Council on Domestic Violence
and Sexual Assault

RESTITUTION

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE: February 13, 1991

FROM: Susan Miller
Special Projects

SUBJ: House Bill 90
on Fines and
Restitution

Comments from Judge Hunt

Section 3, lines 10-13 and line 20. In this section, the court is allowed to consider restitution to an "other person injured by the offense" and to organizations who provide services to such an "other person." To the extent that such other persons come forward (or are brought forward by probation officers doing presentence reports), it is expected that it will take additional hearing time to establish the nature and extent of their injury and its connection to the defendant's offense.

Lines 11 and 12 of this section also add the words "or is or will be providing" to the sentence about who may receive restitution. Thus, the new law will allow restitution not only to organizations that have provided services to the victim, but also to organizations that are currently providing services or will in the future provide services. The need to present evidence to establish the need for and the cost of such future services will likely require additional time at the sentencing hearings.

Comments from Judge Beckwith

Section 1. To the extent that the intent of this legislation as expressed in the "Purpose" section is accomplished, it appears that there will be more post-judgment hearings. Currently, defendants who cannot pay their fines sometimes ask the court (either at sentencing or later) to convert the fine to community work service. To the extent that the judges stop considering ability to pay at the time of sentencing, there will probably be an increase in the number of such requests and other requests to modify sentences.

Arthur H. Snowden, II
February 13, 1991
Page 2

It will probably still be necessary for judges to consider the defendant's ability to pay at the time of sentencing in order to frame an appropriate sentence. Although the apparent purposes of this legislation are laudable, defendants often do not have the resources to adequately compensate even the main victim.

Swan

Judge Justin Ripley called this a.m. to comment upon Uhlmer's bill, HB90. As far as I could follow him, he related the following:

Section 3(a) - In the second line "or other person injured" is vague. There will be additional litigation to define scope, more hearing time.

Section 4(a) - In the sixth line "it is an affirmative defense" shifts the burden to the defendant. The defense will argue this is an unfair shift. If it was the State's burden they might or might not pursue, but the defense will consider not to assert defense as malpractice. This will cause more hearing time.

Section 4(a), page 3 of bill, line numbered 9, the language that is being taken out is that the court finds by preponderance of the evidence. The change lowers the standard, which will require more argument, more hearing time to decide.

He went on to talk about that in felony cases there are people like the p.o. to check up on people and make sure they are paying their fines and restitution, but in misdemeanors there is no one to do that so the courts will have to, and that will cause a lot more hearings, especially in district court and magistrateland. He also said that it is his understanding that the AG will follow-up on fines, but they do not do restitution, so the courts will have to do restitution.