

HB

90

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

#### MEMORANDUM

February 4, 1991

To: Representative Dave Donley, Chair  
House Judiciary Committee

From: Representative Fran Ulmer

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

HB90 deals with fines and restitution ordered by the court in criminal cases. The amendments are somewhat technical, but will improve efficiency and will benefit the victims of 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 at a hearing held after the defendant has failed to pay, rather than at the time of sentencing. This will make the court's ability to pay inquiry more meaningful than it is now. 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 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.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947



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# 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  
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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.

*Susan*

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.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 1, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-13-91

The JUDICIARY 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: [ ] the same title  
 be replaced with \_\_\_\_\_ [ ] 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) \_\_\_\_\_

2 each  zero fiscal note public safety, law

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
<i>David Donley</i>				
<i>Kevin Pad Parnell</i>				
<i>[Signature]</i>				
<i>[Signature]</i>				

*David Donley*  
Chairman's Signature

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 90

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. 

		8	9
		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).

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 90

This bill amends AS 12.55 to clarify existing laws regarding the imposition of fines and restitution in criminal cases to ensure the full payment of fines and to make full restitution available to all persons who have been injured as a result of criminal behavior.

In so doing, the bill requires courts to consider whether a defendant has the ability to pay fines and restitution at hearing held after a defendant has failed to pay, rather than asking courts to predict at the time of sentencing whether a defendant will have the ability to pay in the future. It also requires a defendant who has failed to pay to come forward with evidence justifying why the fine or restitution was not paid. It allows courts to order that restitution be made to all persons who have suffered a loss as a result of a defendant's conduct. And it allows courts to order restitution for expenses that will be incurred after the date of sentencing.

As a consequence of these changes, it is likely that more fines and restitution orders will be imposed, and at higher amounts. These are sentencing provisions and they will not have a fiscal impact of the Department of Law's prosecution activities. These changes will, however, have a positive impact on the department's Legal Services activities, which include the collection of unpaid criminal and civil fines that are owed to the state. Although we cannot predict the amount of additional funds that will be collected, there will certainly be an increase. Furthermore, the penalty provisions provided in the bill will also provide a needed incentive to defendants to pay overdue fines to the state, as well as an incentive to pay restitution to victims and others who have suffered a loss as a result of a defendant's criminal behavior.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 90

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. 

	7	9	9
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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						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	-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).