

HB 90

SENATE FINANCE COMMITTEE REPORT

DATE: 4/19/91

FURTHER:

DATE TURNED INTO OFFICE: 5-6-91

The Finance Committee considered HOUSE BILL NO. 90

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

and recommended:

replace with _____ CS
 or adopt S CS HR 90 (Jud)
 attached amendment(s)
 _____ letter of intent adopted

same title
 new title
 technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) At. Courts 2/22/91
DPS 2/13/91
DOA 2/12/91

SIGNING DO PASS:

[Signature]
[Signature]

OTHER RECOMMENDATIONS:

Al Adams - No Rec
Dick Stutz - No Rec.
Rich Kelly (No Rec)

1. [Signature] 2. [Signature]
Co-Chairs: Signatures and Recommendations

FISCAL NOTE

No. 1
 Bill Version: HB 90
 (H) Publish Date: 2/19/91

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

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						
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

Changes in Sen. Sullivan
 have no fiscal impact. This
 fiscal note is appropriate.
4-16-91 CS
 date Comte Aide (initial)
Changes in

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

No. 2

Bill Version: HB 90

(H) Publish Date: 2/19/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to fines and restitution in criminal cases." BRU: Prosecution/Legal Services
 Component: Prosecution/Criminal Justice Litigation
 Sponsor: Representative Ulmer Legal Services/Operations
 Requestor: House Judiciary 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.

Changes in Sec. 29, HB 90, Act,
have no fiscal impact. This
fiscal note is appropriate.

April 19-91
date *R. Brink*
Compte Aide (initial)

Changes in ()

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

No. 3

Bill Version: HB 90

(H) Publish Date: 2/27/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

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: _____

have no fiscal impact. This fiscal note is appropriate.

ANALYSIS: (Attach a separate page if necessary.)

4-19-91 date DB Comte Aide(initial)

Prepared By: Representative Mike Navarre, Co-Chair Phone: 455-3706
Representative Eileen MacLean, Co-Chair Phone: 465-3722

Division: _____ Date: _____

Approved by Commissioner: _____

Agency: _____ Date: _____

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

COMMITTEE COPY

SENATE CS FOR HOUSE BILL NO. 90 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/19/91
Referred: Finance

Sponsor(s): REPRESENTATIVE ULMER

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, by6 (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; and13 (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 12.55.045 is amended by adding new subsections to read:

25 (e) If a court proposes to order a defendant to pay restitution under this section of less
26 than \$5,000, and the defendant's sentence does not include a period of unsuspended incarceration
27 exceeding 90 days, the court may take into account at the time of sentencing the defendant's
28 present and future ability to pay the restitution proposed. The court shall presume that the
29 defendant has the ability to pay the amount proposed unless the defendant at the sentencing
30 hearing establishes by a preponderance of the evidence the inability to pay the amount proposed.

31 (f) Except as provided by (e) of this section, the court may not, in ordering the amount

1 of restitution, consider the defendant's ability to pay restitution.

2 * Sec. 5. AS 12.55.051(a) is amended to read:

3 (a) If the defendant defaults in the payment of a fine or any installment or of restitution
4 or any installment, the court may order the defendant to show cause why the defendant should
5 not be sentenced to imprisonment for nonpayment and, if the payment was made a condition
6 of the defendant's probation, may revoke the probation of the defendant. In a contempt
7 or probation revocation proceeding brought as a result of failure to pay a fine or
8 restitution, it is an affirmative defense that the defendant was unable to pay despite having
9 made continuing good faith efforts [IF THE STATE PRESENTS EVIDENCE OF THE
10 DEFENDANT'S FAILURE TO PAY RESTITUTION, THE COURT MAY PRESUME THAT
11 THE DEFENDANT HAS INTENTIONALLY REFUSED TO PAY THE FINE OR
12 RESTITUTION OR HAS NOT MADE A GOOD FAITH EFFORT TO PAY THE FINE OR
13 RESTITUTION UNLESS THE DEFENDANT PRESENTS SOME EVIDENCE THAT THE
14 DEFENDANT'S FAILURE TO PAY THE FINE OR RESTITUTION WAS NOT
15 INTENTIONAL OR THAT THE DEFENDANT HAS MADE A GOOD FAITH EFFORT] to
16 pay the fine or restitution. If the court finds that the defendant was unable to pay despite
17 having made continuing good faith efforts, the defendant may not be imprisoned solely
18 because of the inability to pay. If the court does not find [FINDS BY A PREPONDERANCE
19 OF THE EVIDENCE] that the default was attributable to the defendant's inability to pay
20 despite ha ving made continuing good faith efforts [AN INTENTIONAL REFUSAL OR
21 FAILURE TO MAKE A GOOD FAITH EFFORT] to pay the fine or restitution, the court may
22 order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment
23 imposed under this section may not exceed one day for each \$50 of the unpaid portion of the fine
24 or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the
25 order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

26 * Sec. 6. AS 12.55.051(c) is repealed and reenacted to read:

27 (c) A defendant who has been sentenced to pay a fine or restitution may request a
28 hearing regarding the defendant's ability to pay the fine or restitution at any time that the
29 defendant is required to pay all or a portion of the fine or restitution. The court may deny the
30 request if it has previously considered the defendant's ability to pay and the defendant's request
31 does not allege changed circumstances. If at a hearing under this subsection, the defendant

1 proves by a preponderance of the evidence that the defendant will be unable through good faith
2 efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the
3 order so that the defendant can pay the fine or restitution through good faith efforts. The court
4 may reduce the fine or restitution ordered, change the payment schedule, or otherwise modify the
5 order.

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

POSTER

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