

HB

90

**SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE**

BILL NUMBER: HB 90
 ABBREVIATED TITLE: Criminal Fines & Restitution

SPONSER: Ulmer ORIGINAL RECEIVED: March 4, 91
 WRITTEN REQUEST TO SCHEDULE REC'D: 3-11-91 FROM: Ulmer
 SPONSER'S STATEMENT REC'D: 3-11-91 FROM: Ulmer
 SECTIONAL ANALYSIS RQST'D: _____ FROM: _____
 SECTIONAL ANALYSIS RECEIVED: _____

FISCAL NOTE (ORIGINAL)

RQST'D OF: _____	REC'D FROM: <u>AST</u>	DATE: <u>With File -</u>
RQST'D OF: _____	REC'D FROM: <u>AG</u>	DATE: <u>"</u>
RQST'D OF: _____	REC'D FROM: <u>Courts</u>	DATE: <u>"</u>

FISCAL NOTE (C.S.)

RQST'D OF: _____	REC'D FROM: _____	DATE: _____
RQST'D OF: _____	REC'D FROM: _____	DATE: _____
RQST'D OF: _____	REC'D FROM: _____	DATE: _____

FIVE DAY NOTICE GIVEN: B. Ulmer NOTICE OF HEARINGS GIVEN: 4-11-91
 COMMITTEES OF REFERRAL: FIRST: Jud SECOND: Fin THIRD: _____

COMMITTEE ACTION

DATE:	
<u>3-19-91</u>	<u>Ulmer presents Bill. Amendment "exped" to in work session.</u>
_____	<u>Sent to LAA for draft 3-20-91</u>
<u>4-18-91</u>	<u>Committee met 0345 - of 4-17-91 with</u>
_____	<u>Lead Rep. Frank - Halperin - Corbin Roberts</u>
<u>4-19-91</u>	<u>Two</u>
_____	_____
_____	_____
_____	_____
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_____	_____
_____	_____
_____	_____
_____	_____

PERSONS TO BE NOTIFIED OF HEARING

- | | |
|-------------------------|-----------|
| 1. SPONSOR <u>Ulmer</u> | 6. _____ |
| 2. AGENCY _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

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						
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: Gavle A. Horetski Phone: 465-4322
Division: Commissioner's Office Date: 2/13/91
Approved by Commissioner: *Gavle 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

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

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. HB 90 (as amended)

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to fines and BRU: Trial Courts
restitution in criminal cases Components: _____
 Sponsor: Ulmer
 Requestor: Judiciary COMPONENT SERIAL NO.

000 000	000 768
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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						
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						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Robert G. Fisher, Manager, Fiscal Operations Phone: 264-8215
 Division: Alaska Court System Date: 03/11/91
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System Date: 03/11/91

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

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

March 8, 1991

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Representative Fran Ulmer

SUBJECT: HB 90, "An act relating to fines and restitution in criminal cases."

HB 90 deals with fines and restitution ordered in criminal cases. It will improve efficiency and result in an increase in the amount of fines that are actually collected by the state. In addition, the bill removes obstacles in awarding restitution to persons who are injured by a crime.

In brief, the bill does the following:

1. Requires 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. Requires 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 by the defendant.
3. Empowers the court to award restitution to persons other than the "victim," who suffered a loss as a result of the defendant's conduct.
4. Empowers the court to award restitution for a victim's future expenses, incurred after the date of sentencing.

HB 990 is supported by the Department of Law and the Council on Domestic Violence and Sexual Assault.

Please schedule HB 90 for hearing at the earliest possible date.

District 4B — Juneau

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



Recycled Paper

HB 90 -

Hedrick Comte - These Work Session -

2 Changes to original

A) P2 line 13-14 -

B) Sponsors Change -

New Sec 4 -

For smaller cases where start at the fair times.

Now Have CS Draft G of 4/17/91
Same as original except

a) Moves Rodey/Hoffard amendment to p2 line 31
Subf

b) Sponsors Change for Small cases.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 300
Mail Stop 3101

MEMORANDUM

March 21, 1991

SUBJECT: Fines/restitution bill (SCS HB 90 (Jud))

TO: Senator Rick Halford
Chair, Senate Judiciary Committee

FROM: John B. Gaguine *JBG*
Legislative Counsel

Enclosed is a draft of SCS HB 90 (Jud) containing the changes you requested. One of these changes, I believe, is somewhat confusing. As amended, AS 12.55.045(a) would state flatly that a defendant is presumed to have the present or future ability to pay restitution. However, AS 12.55.045(e), added by the bill, provides that a defendant is presumed to have the ability to pay unless the defendant at the sentencing hearing establishes an inability to pay. The two subsections seem inconsistent to me. I think that the bill worked better before the ability to pay language was added back into (a).

The whole approach of AS 12.55.045(e) is also puzzling to me. I am not sure why a court may consider the ability to pay when a small amount of restitution is ordered, but not when a large amount is ordered. It seems to me that the relevant fact is not the amount of restitution ordered, but when it is to be paid. If a defendant will be in jail for a long time, and hence not liable for restitution for a long time, it seems inappropriate to consider ability to pay at the time of sentencing, regardless of amount. Conversely, if the defendant is supposed to pay restitution at once or in the near future (usually because little or no jail time was imposed), it seems appropriate to consider ability to pay at the time of sentencing, regardless of the amount at issue.

If I may be of further assistance, please advise. With your permission, I would like to send a copy of this memorandum to Representative Ulmer's office.

JBG:gc
91-159.glc

Enclosure

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

March 11, 1991

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Representative Fran Ulmer

SUBJECT: HB 90, "An act relating to fines and restitution in criminal cases."

Please include the attached amendment in the packet for HB 90.

The amendment is added in response to a concern that the bill could result in an increase in the number of post-judgement hearings for minor cases. The amendment allows that if a judge proposes to order restitution of less than \$5,000, the judge may consider the defendant's ability to pay at the time of sentencing. Further, in such a case, it is presumed that the defendant can pay the amount ordered, unless the defendant establishes at the sentencing, by a preponderance of evidence, the inability to pay.

HB 90 has zero fiscal notes from the Department of Public Safety, the Court System and the Department of Law. In fact, the Department of Law indicates that more fines will be collected by the state and more restitution will be paid to victims.

Thank you again for prompt scheduling of this bill.

District 4B — Juneau

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



Recycled Paper

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 90

new Sec 4 —

Page 2, following line 23:

Insert a new bill section to read:

"* Sec. 4. AS 12.55.045 is amended by adding a new subsection to read:

(e) If a court proposes to order a defendant to pay restitution under this section of less than \$5,000, the court may take into account at the time of sentencing the defendant's present and future ability to pay the restitution proposed. A defendant is presumed to have the ability to pay the amount proposed unless the defendant at the sentencing hearing establishes by a preponderance of the evidence the inability to pay the amount proposed."

Renumber following bill sections accordingly.

Fran's concern - If they go to jail we should resolve this later.

If not going to jail - best to resolve now.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 90

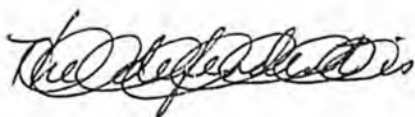
Page 2, following line 23:

Insert a new bill section to read:

"* Sec. 4. AS 12.55.045 is amended by adding a new subsection to read:

(e) If a court proposes to order a defendant to pay restitution under this section of less than \$5,000, the court may take into account at the time of sentencing the defendant's present and future ability to pay the restitution proposed. A defendant is presumed to have the ability to pay the amount proposed unless the defendant at the sentencing hearing establishes by a preponderance of the evidence the inability to pay the amount proposed."

Renumber following bill sections accordingly.



7-LS0349G
Gaguine
4/17/91

Sen. Halford

*deleted to the CS
moved on Ind Rec*

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:
Referred:

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, 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 12.55.045 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 having 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.

SENATE CS FOR HOUSE BILL NO. 96 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

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, 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 present or
14 future ability to pay restitution [UNLESS THE DEFENDANT ESTABLISHES THE INABILITY
15 TO PAY BY A PREPONDERANCE OF THE EVIDENCE]. In determining the amount and
16 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 a new subsection to read:

25 (e) If a court proposes to order a defendant to pay restitution under this section of less
26 than \$5,000, the court may take into account at the time of sentencing the defendant's present
27 and future ability to pay the restitution proposed. A defendant is presumed to have the ability
28 to pay the amount proposed unless the defendant at the sentencing hearing establishes by a
29 preponderance of the evidence the inability to pay the amount proposed.

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

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

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

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

- 1 may reduce the fine or restitution ordered, change the payment schedule, or otherwise modify the
- 2 order.

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.

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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.]

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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 *present*
14 *and future* 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 *Sec 5* (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 *Sec 6-* (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.

