

HB

151

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/26/93

FURTHER:

DATE TURNED INTO OFFICE: 4-26-93

The Finance Committee considered CS FOR HOUSE BILL NO. 151(FIN)

"An Act relating to payment by indigent persons for services of representation and court costs; providing for stays of enforcement of a judgment during the pendency of an appeal of a conviction; allowing petitions for remission, reduction, or deferral of judgment; permitting a court to remit or reduce a judgment or to change the method of payment; and providing for an effective date."

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous _____ C.
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
#1631 D. of Admin	3-4-93	<input checked="" type="checkbox"/>	
#43 D. of Admin	3-22-93	<input checked="" type="checkbox"/>	
Dep. Law	3-8-93		\$500.0 Revenue
AK Court Sys	2-18-93	<input checked="" type="checkbox"/>	

Appropriation No Fiscal Note

DO PASS:

Tim Keels
George H. et al
Bert May

OTHER RECOMMENDATIONS:

Steve Rein no rec
J. Kutter no rec

1.
 Co-Chair: Signature/Recommendation

2.
 Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 4

Bill Version: CSHB 151 (FIN)

(H) Publish Date: 3/26/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to payment by indigent persons for legal services and related costs. . . ." BRU: Public Defender Agency
 Component: Public Defender Agency
 Sponsor: House Judiciary
 Requestor: House Finance COMPONENT SERIAL NO. 1631

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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 FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	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

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: John Salemi, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: _____

Approved by Commissioner: Nancy Bear Usura Date: 3/4/93
 Agency: Department of Administration

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FISCAL NOTE

NO. 3

Bill Version: CSHB 151 (FIN)

(H) Publish Date: 3/26/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to payment by indigent persons for legal services and related costs" BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: House Judiciary
 Requestor: House Finance COMPONENT SERIAL NO. 43
 Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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 FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	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

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Brant McGee Phone: 274-1684
 Division: Office of Public Advocacy Date: _____

Approved by Commissioner: Nancy Bear Usara Date: 3/22/93
 Agency: Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 2
Bill Version: CSHB 151 (FTN)
(H) Publish Date: 3/26/93

Revision Date: March 8, 1993
Title: "An Act relating to payment by indigent persons for legal services and related costs..."
Sponsor: House Judiciary Committee
Requestor: Governor's Office OMB

Department Affected: Department of Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
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REVENUE						
FUND SOURCE: 1004 GF	500.0	500.0	1,000.0	1,000.0	1,500.0	1,500.0

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL						

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: March 8, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Date: March 8, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 151 (FIN)
NO. 2

ANALYSIS CONTINUATION:

This bill amends AS 18.85.120(c), which allows entry of a judgment against a criminal defendant for costs of appointed counsel. The amendment deletes existing problematic language to allow easier collection of the judgments. The deleted language prohibits execution on the judgment for three years after release from incarceration (even, theoretically, for a different crime), unless good cause is shown to collect sooner. The courts in July began to issue judgments for court-appointed counsel under Criminal Rule 39. The Department of Law's collections unit is handling collection of the thousands of judgments which will be entered annually. However, our hands are tied in many cases due to the existing language in AS 18.85.120(c), forcing us to check with the Department of Corrections annually to determine when each of the defendants is released from incarceration in order to avoid running afoul of this prohibition. We believe this bill is very important to our ability to effectively and efficiently collect substantial sums for the state's general fund. Up to \$4.4 million in potential fees are currently uncollected annually. Although full collection is probably unrealistic at the outset, a significant continuing improvement in collections will result if this bill is approved, allowing the state to recover at least part of what it pays in criminal defense costs.

FISCAL NOTE

No. 1

Bill Version: HB 151

(H) Publish Date: 2/24/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to payment by indigent BRU: Trial Courts
person for legal services and related costs Components: _____
 Sponsor: House Judiciary
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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 FUND SOURCE:	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0


POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 02/18/93

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 02/18/93
 Agency: Alaska Court System

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

8-LS06180 ✓

Luckhaupt

4/6/93

*adopted
4-26-93
revised*

SENATE CS FOR CS FOR HOUSE BILL NO 151()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to payment by indigent persons for services of representation
2 and court costs; providing for stays of enforcement of a judgment during the
3 pendency of an appeal of a conviction; allowing petitions for remission, reduction,
4 or deferral of judgment; permitting a court to remit or reduce a judgment or
5 to change the method of payment; and providing for an effective date."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 * Section 1. AS 18.85.120(c) is amended to read:

8 (c) [UPON THE PERSON'S CONVICTION, THE] The court may enter a
9 judgment that a person for whom counsel is appointed pay for [THE NECESSARY]
10 services [AND FACILITIES] of representation and court costs. If a person is
11 convicted, enforcement of a judgment under this subsection may be stayed by the
12 trial court or the appellate court during the pendency of an appeal [AND COURT
13 COSTS, BUT EXECUTION OF THE JUDGMENT MAY NOT COMMENCE UNTIL

1 THREE YEARS AFTER RELEASE OF THE DEFENDANT FROM
2 INCARCERATION UNLESS FOR GOOD CAUSE SHOWN, THE COURT
3 CONSIDERS IT APPROPRIATE TO EXECUTE EARLIER]. Upon a showing of
4 financial hardship, the court (1) shall allow a person subject to a judgment entered
5 under this subsection to make payments under a payment schedule; (2) shall allow a
6 person subject to a judgment entered under this subsection to petition the court
7 at any time for remission, reduction, or deferral of the unpaid portion of the
8 judgment; and (3) may remit or reduce the balance owing on the judgment or
9 change the method of payment if the payment would impose manifest hardship
10 on the person or the person's immediate family. Payments made under this
11 subsection shall be paid into the state general fund.

12 * Sec. 2. REPORT TO THE LEGISLATURE. The Alaska Supreme Court shall report to
13 the legislature not later than February 1, 1996, on the imposition of judgments for payment
14 of services of representation and court costs provided by AS 18.85.120(c). At a minimum,
15 the report must contain information, compiled from the effective date of this Act, concerning
16 the number of cases in which judgments have been entered for the payment of services of
17 representation and court costs, the total amount of judgments for payment of services of
18 representation and court costs imposed, the amount collected, the number of cases in which
19 judgments have been remitted or reduced, and the number of cases where payment schedules
20 have been established.

21 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

Back-up

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
 AT _____

() STATE OF ALASKA)
 ())
 Plaintiff,)
 vs.)
 Defendant.)

CASE NO. _____ CR
 REQUEST FOR APPOINTED COUNSEL

I wish to have a lawyer and cannot afford to pay for one. I request that the court appoint a lawyer to represent me.

STATEMENT OF FINANCIAL RESPONSIBILITY

I understand that if the court decides I am able to pay for part of the costs of my defense (lawyer's services and other costs), the court may order me to pay for these items.

FINANCIAL STATEMENT

Name _____ Phone _____
 Address _____ Date of Birth _____
 Soc. Sec. No. _____
 Present employer _____
 (If not now employed, state last employer and date terminated.)

Employer _____
 Address _____ Phone _____

Member of Union yes no Which One? _____

I. DEPENDENTS	Name	Age	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

II. INCOME INFORMATION (after taxes, but before other deductions)	Yourself	Your Spouse
a. Current Monthly Income	_____	_____
b. Income during last 12 months:	_____	_____
Wages	_____	_____
Public Assistance	_____	_____
Unemployment	_____	_____
Other _____	_____	_____
(specify)	_____	_____
TOTAL YEARLY INCOME	_____	_____

III. FAMILY ASSETS - Present Value

Cash on hand or in bank _____
 Land, buildings, or trailers _____
 Motor vehicles _____
 Securities: stocks, bonds, notes _____
 Businesses _____
 Snow machines, boats, airplanes _____

 TOTAL ASSETS _____

IV. FAMILY DEBTS

Mortgages _____
 Loans _____
 IRS _____
 Child support arrearages _____
 Others (charge cards, bills, etc.) _____

 TOTAL DEBT _____

V. MONTHLY EXPENSES

Food _____
 Rent _____
 Utilities _____
 Car payments _____
 Furniture & TV payments _____
 Child support or alimony _____
 Mortgages _____
 Loans _____
 IRS back taxes _____
 Others (charge card, bills, etc.) _____

TOTAL EXPENSES: _____

GENERAL WAIVER

I authorize anyone, including my past employers, to release to the Alaska Court System all information concerning any income source I have had for a period of three years immediately preceding my first court appearance in which an appointed lawyer is representing me.

OATH

I declare, under oath, that I have read or have had read to me the state of Financial Responsibility on page one and the above General Waiver, and I understand them. I further declare, under oath, that the above Financial Statement is true.

I understand that this Financial Statement may be made available to the Attorney General after the conclusion of this case, and that if I give false information in this statement, the false information may be used to prosecute me for perjury under Alaska Statute 11.56.200.

_____ Date

_____ Defendant's Signature

Subscribed and sworn to or affirmed before me on _____, 19 _____,
 at _____, Alaska.

(SEAL)

 Clerk of Court, Notary Public or other person
 authorized to administer Oaths.
 My commission expires: _____

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

() STATE OF ALASKA.
()

Plaintiff,

vs.

Defendant.

CASE NO. _____ CR

JUDGMENT FOR COST OF
APPOINTED COUNSEL

DOB: _____

IT IS ORDERED that defendant pay to plaintiff \$_____ for the cost of appointed counsel. This judgment shall accrue interest at the annual rate of 10.5 % from the date of judgment until paid. Payment shall be made directly to the plaintiff at the address indicated at the bottom of this form and not to the court.

If defendant refused or failed to execute the assignment of defendant's Alaska Permanent Fund dividend as ordered by the court, the clerk of court or the clerk's designee is ordered to execute the assignment pursuant to Criminal Rule 39 and Civil Rule 70.

Defendant is ordered to apply for Alaska Permanent Fund dividends every year in which defendant is an Alaska resident eligible for a dividend until the judgment is paid in full. If defendant fails to apply, defendant may be held in contempt of court. Criminal Rule 39(c)(2)(D).

This judgment has the same force and effect as a judgment in a civil action.

- Enforcement may begin three years after defendant is released from incarceration.
- The court finds good cause not to delay enforcement of this judgment because the defendant is not being incarcerated or is being incarcerated for a period of time that should not affect defendant's ability to pay the judgment.
- _____
- This judgment may be enforced at any time because it is entered under Criminal Rule 39(e).

After this judgment is collected, the plaintiff shall file a satisfaction of judgment.

Effective Date
(at least 10 days after date of Notice)

Judge

Type or Print Judge's Name

I certify that on _____
a copy of this judgment was sent to:

Defendant

AC's Collections Unit, 1031 W 4th Ave, Suite 200, Anchorage, AK 99501. Phone: 269-5205

Collections Office, _____
(address) (city) (state) (ZIP) (phone)

Clerk: _____



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

April 19, 1993

303 K Street
Anchorage, AK 99501
(907) 264-8228

The Honorable Drue Pearce, Co-chair
The Honorable Steve Frank, Co-chair
Senate Finance Committee
P. O. Box V
Juneau, Alaska 99811

Dear Senator Pearce and Senator Frank:

I am writing to request that the Finance Committee schedule House Bill 151, relating to payments by indigent persons for legal services and related costs. This bill was introduced by the House Judiciary Committee at the request of the Alaska Supreme Court.

Under both the United States and Alaska Constitutions, a criminal defendant has the right to an attorney. If he cannot afford an attorney, the state must appoint one to represent him. In Alaska, defense services for indigents are generally provided by the Public Defender or the Office of Public Advocacy.

Until 1990, AS 18.85.120(c) authorized a court to order a defendant to pay for defense services, to the extent that the defendant could afford to pay. For a variety of reasons, this statute was ineffective in obtaining repayment of defense costs from indigent defendants. These reasons included the difficulty and expense of enforcing this type of repayment order, and the fact that the statute related to a defendant's current ability to pay, ignoring his future ability. This was very restrictive when compared to the system used in many other states, which allow a court to order repayment from a defendant's future earnings.

In 1990, at the request of the judicial branch, the legislature amended AS 18.85.120(c) to allow civil judgments to be entered against defendants who are represented by the public defender or OPA without considering the defendants' current ability to pay. If a defendant became solvent at a future date, the judgment could be enforced; if not, the judgment could not be enforced. This change ensured that indigent defendants would receive counsel, but that they would repay some of the costs of that representation if they were no longer indigent at some later date. However, one major problem with this revision was that it allowed a three-year moratorium on repayment to follow a defendant's release from incarceration.

The Honorable Drue Pearce
The Honorable Steve Frank
April 19, 1993
Page 2

CSHB 151 (FIN) proposes several changes to AS 18.85.120(c). First, it would eliminate the three-year moratorium on repayment that follows incarceration. This moratorium makes it substantially more difficult for the state to recover defense costs in a timely manner, it imposes a significant administrative burden on the Department of Law, and the policy behind it is questionable. There is no reason, for example, to grant a grace period to a person who is sentenced to 72 hours in jail for a DWI; that person does not need three years to get back on his feet. Even in the case of defendants incarcerated for longer terms, the three-year period is an arbitrary length of time. Many persons will have substantial income soon after leaving prison, and virtually all will receive permanent fund dividend checks during the three-year period. Additionally, many persons leave the state by the third year following their release from incarceration, and then there is no hope of ever recovering defense costs.

Second, CSHB 151 (FIN) codifies language currently contained in Criminal Rule 39. This language is intended to ensure that the repayment requirement is imposed in a fair manner. It includes a provision which allows a court to stay enforcement of a repayment judgment during the pendency of a defendant's appeal; a provision which allows a person subject to a repayment judgment to petition the court at any time to remit, reduce or defer the unpaid portion of the judgment upon a showing of financial hardship; and a provision which allows a court to remit or reduce the balance owing on the judgment or change the method of payment if the payment would impose manifest hardship on the person or the person's immediate family.

Like all judgment debtors, a person subject to a repayment order would have a certain amount of property and income automatically protected from seizure by the Alaska Exemptions Act (AS 09.38). This act ensures that low-income debtors are protected from the unreasonable demands of creditors. A defendant's income, including the permanent fund dividend, could also be protected under the "manifest hardship" procedure discussed above.

Thank you for your courtesy. Please let me know if I can provide any additional information.

Very truly yours,

C. S. Christensen III *blu*

C. S. Christensen III
Staff Counsel

SECTIONAL ANALYSIS

CSHB 151 (FIN)

"An Act relating to payment by indigent persons for services of representation and court costs; providing for stays of enforcement of a judgment during the pendency of an appeal of a conviction; allowing petitions for remission, reduction or deferral of judgment; permitting a court to remit or reduce a judgment or to change the method of payment; and providing for an effective date."

- Section 1.** Amends AS 18.85.120(c), relating to the repayment of the costs of representation by indigent defendants, by eliminating the three year moratorium on repayment which follows release from incarceration; authorizes repayment to be stayed during the pendency of a defendant's appeal; authorizes a defendant to make repayments under a repayment schedule upon a showing of financial hardship; authorizes a defendant to petition the court for remission, reduction or deferral of the unpaid portion of a repayment order upon a showing of financial hardship; and authorizes a court to remit or reduce the balance owing on a repayment order upon a showing of manifest hardship to the defendant or the defendant's family.
- Section 2.** Requires the Alaska Supreme Court to report to the legislature no later than February 1, 1996 on the imposition of judgments for payment of services of representation provided for by AS 18.85.120(c).
- Section 3.** Immediate effective date.