

HB

484

HOUSE COMMITTEE REPORT

2/21/96
Rules

(7)
Date Referred to Committee: February 9, 1996

FURTHER REFERRALS:

Date of Committee Action: 2.19.96

The JUDICIARY Committee considered:

HB 484

HOUSE BILL NO. 484

ENFORCE RESTITUTION ORDER AGAINST MINOR

"An Act relating to enforcement of restitution orders entered against minors."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

[] fiscal note(s) _____ [] fiscal note(s) _____

(3) [X] zero fiscal note(s) Court, Law, HSS, [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Brian Porter</i>	Porter	✓			
<i>William Vezev</i>	Vezev	✓			
<i>Paul Finkelstein</i>	Finkelstein	✓			
<i>Betty Davis</i>	B. Davis	✓			
<i>Green</i>	Green	✓			
<i>Bunde</i>	Bunde	✓			
<i>Toohy</i>	Toohy	✓			
		(7)			

CHAIR'S SIGNATURE *Brian Porter*
Porter

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB484

Revision Date: _____
 Title: Enforcement of Restitution Orders
 Against Juveniles _____
 Sponsor: Representative Therriault
 Requestor: House (JUD)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: DFYS Central Office
 COMPONENT SERIAL NO. 259
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the Division of Family & Youth Services if this bill were to become law.

SA/16/96 Prepared by: L. Diane Worley, Director Phone: 465-3191
 Division: Family & Youth Services Date: 02/16/96
 Approved by Commissioner: Karen Perdue, Commissioner Date: 2/16/96
 Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 484

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to enforcement of restitution
orders entered against minors." BRU: Criminal Division, Civil Division
 Sponsor: Representative Therriault Component: General Legal Services
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2085, 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the Children's Proceedings statutes, AS 47.10.10 - 142, to provide that when restitution to a victim has been ordered as part of a juvenile delinquency adjudication, the victim recipient of the restitution may enforce payment of the restitution order in a civil proceeding. This is a matter between private parties and there will not be a fiscal impact for the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/16/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/16/96
 Agency: Department of Law

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Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT
P.O. Box 55320
North Pole, Alaska 99705
(907) 488-0862



Write in Inseal
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4757

House District 33

House Of Representatives

To: Representative Brian Porter
Chairman, House Judiciary Committee

From: Representative Gene Therrault *Gene Therrault*

Date: February 13, 1996

Re: Hearing Request for House Bill 484

I would like to request a hearing for House Bill 484, "An Act relating to enforcement of restitution orders entered against minors."

This legislation is intended to make it easier for victims of juvenile crimes to collect damages by allowing a judge to convert a criminal restitution order into a civil judgment.

As requested in your memorandum of January 16, 1995, attached to this request are:

1. Sponsor Statement
2. Sectional Analysis
3. Background material

In accordance with the January 22, 1996 memo from Legislative Director Pat Pourchot recommending that requests for fiscal notes come through the committee, I will leave that request up to your office. The Department of Law has been asked to put its position on the bill in writing. I will forward that to your office as soon as I receive it.

Probable supporters of the bill include the Fairbanks North Star Borough and the State Department of Law. I do not know of any opponents to the bill at this time.

I would like to request a teleconference site be scheduled at the Fairbanks Legislative Information Office.

I would appreciate consideration of this bill at the Committee's earliest convenience. Thank you.

Alaska State Legislature

REPRESENTATIVE
GENE THERRIALT

P.O. Box 55326
North Pole, Alaska 99705
(907) 488-0862

House District 33



White in Room
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House Of Representatives

House Bill 484 : "An Act relating to enforcement of restitution orders entered against minors."

Sponsor: Representative Gene Therriault

Sponsor Statement

This legislation would allow the courts to convert a restitution order in a juvenile criminal case into a civil judgment. The bill is in response to a recent Alaska Court of Appeals case, *R.I v. State*, which held that a Superior Court judge lacks statutory authority to treat a restitution order as if it were a civil judgment in a juvenile case. AS 12.55.051(d) grants the state such authority in adult cases.

A civil judgment is especially helpful when the offender fails or refuses to make restitution payments. A civil judgment would allow the victim in such cases to execute against the offender's assets, including his or her permanent fund dividend, in order to enforce the restitution order without going to civil court and obtaining a civil judgment for the damages. Currently, if a juvenile does not pay a restitution order by his or her 19th birthday, the court has no more jurisdiction over the juvenile and the restitution order is basically moot. A victim must go to civil court, prove again that the juvenile was liable for the damages and obtain a civil judgment against the juvenile offender. This seems like an unnecessary and costly burden for the victim, who has already been hurt once.

Sectional Analysis

House Bill 484, "An Act relating to enforcement of restitution orders against minors."

Section 1 Adds a new section modeled after adult criminal procedure AS 12.55.051(d) to give the court authority to convert a restitution order into a civil judgment. The last line clarifies that the statute does not preclude the court from taking advantage of any other remedies that may be available.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 484

Revision Date: _____
Title: Enforce Restitution Order Against Minor

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____

Sponsor: Rep. Therriault, Kelly
Requestor: House Judiciary

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source

(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						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

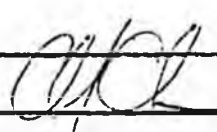
Estimate of any current year (FY 96) cost: None

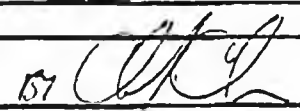
Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel 
Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director 
Agency: Alaska Court System

Phone: 264-8228
Date: 02/15/96
Date: 02/15/96

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LEGAL SERVICES

Porter

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

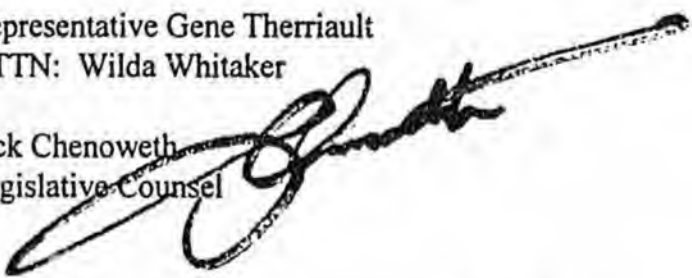
MEMORANDUM

February 19, 1996

SUBJECT: House Bill 484, addressing the enforcement of restitution orders entered against minors (Work Order No. 9-LS1553\C)

TO: Representative Gene Therriault
ATTN: Wilda Whitaker

FROM: Jack Chenoweth
Legislative Counsel



Under AS 47.10.080(b), applicable to minors as to whom the court has made a finding of delinquency, the court has the ability to enter one or more orders. Included in the list of permissible orders is the ability--indeed, in some instances, the obligation--under AS 47.10.080(b)(4) for the court to enter an order of "suitable restitution."

For minors adjudicated delinquent, as a general rule jurisdiction of the court over the minor ends when the minor reaches the age of 19, though in some cases and under some circumstances, that limitation may be extended by one year with the minor's (now an adult) consent.

You expressed a concern that restitution orders entered by a court against a minor adjudicated a delinquent might be treated like other court orders applicable to minors adjudicated delinquent, suggesting that the authority of the court to enforce or otherwise compel payment of restitution would expire when the court's jurisdiction over the minor terminated or, in any case, when the minor became 19 (or 20, if the court's jurisdiction were extended). You have introduced HB 484 to clarify that, when ordered under AS 47.10.080(b)(4), the person in whose favor the order of restitution is entered "may enforce payment of the restitution order against the minor under AS 09.35 as if the order were a civil judgment enforceable by execution."

Your question of Friday asks whether the authority of the person in whose favor the order of restitution has been entered under AS 47.10.080(b)(4) ends when the court loses jurisdiction of the minor under AS 47.10.080(b)--that is, whether the authority to enforce the restitution order would survive the termination of the court's jurisdiction over the minor.

*

Representative Gene Therriault

February 19, 1996

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Let me note at the outset that this is a matter the disposition of which is entirely a matter of statute. HB 484 proposes to treat restitution orders as the equivalent of "civil judgment[s] enforceable by execution." Execution on judgments is addressed in AS 09.35.

In the first instance, the answer to your question may turn on the context in which the court enters its restitution order. Under existing AS 47.10.080(b)(4), restitution may be ordered "in lieu of or in addition to" a court entered under one of the three preceding paragraphs authorizing commitment or placement of a juvenile adjudicated delinquent. If payment of restitution is ordered "in addition to" a commitment or placement order entered under AS 47.10.080(b)(1) - (3), then entry of that restitution order might be treated by a court simply as one element of the minor's rehabilitation. Once jurisdiction over the minor was lost, at the end of the period of the minor's commitment or placement, or at age 19, or, with the consent of the minor, at age 20, further proceedings asking a court to enforce the order would likely be challenged as beyond the authority of the juvenile court to consider and deal with.

On the other hand, if payment of restitution is ordered "in lieu of" a commitment or placement order entered under AS 47.10.080(b)(1) - (3), the restitution order would stand alone and should not be regarded as only an element of the plan for the minor's rehabilitation. Under that interpretation, HB 484 appears to be essential to maintain the authority to enforce a restitution order entered under AS 47.10.080(b)(4) against a minor found to be a delinquent minor in those instances in which would not terminate when the court's jurisdiction over the minor otherwise ended.

Under the second clause of AS 47.10.030(b)(4), the courts may not refuse to make a restitution order to benefit the victim of the act of the minor. That obligation to order the minor to make good certain losses, it seems to me, adds weight to the argument that court-ordered payment from a minor for a victim's loss stands independently of any other condition or obligation the court may impose in conjunction with implementing a plan for the minor's treatment or rehabilitation.

However the courts may ultimately treat rehabilitation orders, the recent decision of State Department of Revenue ex rel. Innan v. Dean, 902 P.2d 1321 (Alaska 1995), is helpful to determine whether the orders have ongoing vitality. In that decision, the Alaska Supreme Court distinguished between actions brought upon a judgment and the process of executing upon a judgment already obtained. As to the latter, the court determined that there is no definite time limit for commencing an execution, noting only that, both by statute (AS 09.35.020) and court rule (Civil Rule 65(d)), if execution on a judgment is delayed by more than five years, the person seeking enforcement must show good cause for the delay. The court is of a mind to treat execution of judgment as a remedy that, once obtained, exists independently of the action that gave rise to it. By implication, then, the authority to enforce by execution as a civil judgment a restitution order entered under AS 47.10.080(b)(4) against

Representative Gene Therriault

February 19, 1996

Page 3

a minor found to be a delinquent minor would have continuing vitality and would not terminate when the court's jurisdiction over the minor otherwise ended.

Consequently, unless the court determines that a restitution order is substantively treatable only as an element of a minor's rehabilitation, terminated when the court loses jurisdiction over the minor under one of the circumstances set out in the statute, then HB 484, applied in conjunction with the Inman decision, should achieve the result you seek in making certain that the minor's obligation to fulfill the restitution order would not terminate when the court's jurisdiction over the minor otherwise ended.

JBC:lmb:glc

96-051.lmb

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 484

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to enforcement of restitution orders entered against minors." BRU: Criminal Division, Civil Division
 Sponsor: Representative Therriault Component: General Legal Services
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2085, 2087

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the Children's Proceedings statutes, AS 47.10.10 - 142, to provide that when restitution to a victim has been ordered as part of a juvenile delinquency adjudication, the victim recipient of the restitution may enforce payment of the restitution order in a civil proceeding. This is a matter between private parties and there will not be a fiscal impact for the Department of Law.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 2/16/96
 Date: 2/16/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB484

Revision Date: _____
 Title: Enforcement of Restitution Orders
 Against Juveniles
 Sponsor: Representative Therriault
 Requestor: House (JUD)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: DFYS Central Office
 COMPONENT SERIAL NO. 259
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the Division of Family & Youth Services if this bill were to become law.

5/16/96 Prepared by: L. Diane Worley, Director Phone: 465-3191
 Division: Family & Youth Services Date: 02/16/96
 Approved by Commissioner: Karen Perdue, Commissioner Date: 2/16/96
 Agency: Department of Health & Social Services

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R.I., Appellant,
v.
STATE of Alaska, Appellee.

No. A-5130.
Court of Appeals of Alaska.
May 12, 1995.

After juvenile was adjudicated delinquent and ordered to make restitution, the Superior Court, Fourth Judicial District, Fairbanks, Mary E. Greene, J., later revoked probation and entered civil judgment in amount of unpaid restitution. Appeal was taken. The Court of Appeals, Mannheimer, J., held that even though delinquent minor could evade restitution order by waiting until he became "too old" for court to take action against him, court lacked authority to issue civil judgment ordering payment of restitution in connection with delinquency matter.

Reversed.

1. CRIMINAL LAW k1208.4(2)
110 ---
110XXVI Punishment of Crime
110k1208 Extent of Punishment in General
110k1208.4 Power to Impose Particular
Kinds of Punishment
110k1208.4(2) Restitution.

[See headnote text below]

1. INFANTS k224
211 ---
211VIII Dependent, Neglected, and
Delinquent Children
211VIII(E) Judgment; Disposition of Child
211k223 Delinquents and Law Violators
211k224 Fines and restitution orders.

Alaska App. 1995.

In both criminal cases and juvenile delinquency cases, superior court has authority to order that defendant pay restitution.

2. CRIMINAL LAW k982.5(2)
110 ----
110XXIII Judgment, Sentence, and Final
Commitment
110k982 Probation and Suspension of
Sentence
110k982.5 Conditions

110k982.5(2) Validity.

[See headnote text below]

2. CRIMINAL LAW k1208.4(2)
110 ---
110XXVI Punishment of Crime
110k1208 Extent of Punishment in General
110k1208.4 Power to Impose Particular
Kinds of Punishment
110k1208.4(2) Restitution.

Alaska App. 1995.

Sentencing court can order convicted defendant to pay restitution either as independent component of sentence or as condition of defendant's probation. *AS 12.55.045(a), 12.55.100(a)(2)*.

3. INFANTS k224
211 ---
211VIII Dependent, Neglected, and
Delinquent Children
211VIII(E) Judgment; Disposition of Child
211k223 Delinquents and Law Violators
211k224 Fines and restitution orders.

Alaska App. 1995.

In juvenile delinquency case, superior court can order restitution in lieu of or in addition to other authorized dispositions. *AS 47.10.080(b)(1-3)*.

4. CRIMINAL LAW k1208.4(2)
110 ---
110XXVI Punishment of Crime
110k1208 Extent of Punishment in General
110k1208.4 Power to Impose Particular
Kinds of Punishment
110k1208.4(2) Restitution.

[See headnote text below]

4. INFANTS k224
211 ----
211VIII Dependent, Neglected, and
Delinquent Children
211VIII(E) Judgment; Disposition of Child
211k223 Delinquents and Law Violators
211k224 Fines and restitution orders.

Alaska App. 1995.

Statutes allowing for imposition of restitution for criminal cases and juvenile delinquency cases do not

894 P.2d 683, R.I. v. State, (Alaska App. 1995)

authorize sentencing court to issue civil judgment in favor of crime victim for amount of damage or loss inflicted by either adult or juvenile defendant. *AS 47.10.010 et seq.*

5. INFANTS k224
211 ----
211VIII Dependent, Neglected, and
Delinquent Children
211VIII(E) Judgment; Disposition of Child
211k223 Delinquents and Law Violators
211k224 Fines and restitution orders.

Alaska App. 1995.

Superior Court lacks authority to enter civil judgment in juvenile case in favor of intended recipient of restitution. *AS 47.10.010 et seq.*

6. CRIMINAL LAW k977(1)
110 ----
110XXIII Judgment, Sentence, and Final
Commitment
110k977 Power and Duty of Court in
General
110k977(1) In general.

Alaska App. 1995.

Legislation, and not inherent judicial power is source of court's sentencing authority.

7. CRIMINAL LAW k982.5(1)
110 ----
110XXIII Judgment, Sentence, and Final
Commitment
110k982 Probation and Suspension of
Sentence
110k982.5 Conditions
110k982.5(1) In general.

Alaska App. 1995.

While court has wide discretion in setting conditions of defendant's probation, court must have legislative authorization before imposing conditions that fundamentally alter defendant's status as probationer.

8. INFANTS k223.1
211 ----
211VIII Dependent, Neglected, and
Delinquent Children
211VIII(E) Judgment; Disposition of Child

- 211k223 Delinquents and Law Violators
211k223.1 In general.

Alaska App. 1995.

In juvenile delinquency cases, superior court's authority to impose particular types of disposition in juvenile case is granted by and governed by legislation.

9. INFANTS k223.1
211 ----
211VIII Dependent, Neglected, and
Delinquent Children
211VIII(E) Judgment; Disposition of Child
211k223 Delinquents and Law Violators
211k223.1 In general.

Alaska App. 1995.

Superior court may not issue civil judgment in favor of crime victim as part of juvenile disposition, despite superior court's broad, inherent power to fashion dispositional orders in juvenile cases.

*684 J. John Franich, Asst. Public Advocate, Fairbanks, and Brant McGee, Public Advocate, Anchorage, for appellant.

D. Rebecca Snow, Asst. Atty. Gen., Fairbanks, and Bruce M. Botelho, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and MANNHEIMER, JJ.

OPINION

MANNHEIMER, Judge.

R.I. was adjudicated a juvenile delinquent under *AS 47.10.080(a)*. As one of the conditions of his probation, he was ordered to make restitution in the amount of \$3,018.83. Later, because of various violations of his probation (including failure to make restitution), the superior court revoked R.I.'s probation and institutionalized him. In addition, the court entered a civil judgement against R.I. (in favor of the victims of his crimes) for the amount of the unpaid restitution.

R.I. appeals this last aspect of the superior court's dispositional order. He contends that the superior court, by entering the civil judgement against him, in

894 P.2d 683, R.I. v. State, (Alaska App. 1995)

effect increased the severity of his sentence and thus violated the double jeopardy clauses of the federal and state constitutions. We asked the parties to brief a related issue: whether the superior court had the authority to convert the unpaid restitution into a civil judgement. After consideration of the supplemental briefing, we now hold that the superior court lacked authority to convert the restitution order into a civil judgement.

The superior court's decision to issue a civil judgement against R.I. was apparently prompted by the fact that the court's jurisdiction over R.I. was about to end. (FN1) The *685 court wished to ensure that R.I. eventually paid the restitution, even if payment did not occur until after R.I.'s release from juvenile supervision. However, in attempting to achieve this goal, the court acted beyond its legal powers.

[1][2][3] In both criminal cases and juvenile delinquency cases, the legislature has authorized the superior court to order a defendant to pay restitution. In criminal prosecutions, a sentencing court can order a convicted defendant to pay restitution either as an independent component of the defendant's sentence, see AS 12.55.045(a), or as a condition of the defendant's probation, see AS 12.55.100(a)(2). And in juvenile cases, AS 47.10.080(b)(4) authorizes the superior court to order restitution "in lieu of or in addition to" the dispositions authorized by AS 47.10.080(b)(1)-(b)(3).

[4][5] These statutes, however, do not authorize a sentencing court to issue a civil judgement in favor of a crime victim for the amount of damage or loss inflicted by an adult or juvenile defendant. (FN2) More specifically, no provision of AS 47.10 gives the superior court the authority to enter civil judgement in a juvenile case in favor of the intended recipient of restitution. This lack of statutory authority determines the outcome of R.I.'s appeal.

[6][7] In the realm of criminal law, the Alaska Supreme Court has repeatedly held that legislation, not inherent judicial power, is the source of a court's sentencing authority. The legislature sets the maximum, minimum, and presumptive terms of imprisonment for crimes. See Nell v. State, 642 P.2d 1361, 1368 (Alaska App.1982), (citing several Alaska cases "which have explicitly recognized the

authority of the legislature in the area of fixing criminal sentences"). The legislature decrees whether a defendant's sentence may be suspended in whole or in part. Pete v. State, 379 P.2d 625, 626 (Alaska 1963) (a court has no inherent power to suspend a sentence of imprisonment and place a defendant on probation; such authority must be granted by the legislature). The legislature determines what length of probation may be imposed. Gonzales v. State, 608 P.2d 23, 25-26 (Alaska 1980); Jackson v. State, 541 P.2d 23, 25 (Alaska 1975) (when a defendant's sentence of imprisonment is suspended and the defendant is placed on probation, the defendant's total period of probation may not exceed the 5-year period specified in AS 12.55.090(c)); Tiedeman v. State, 576 P.2d 114, 116 n. 11 (Alaska 1978) (because a different statute (AS 12.55.085(a)) governs probation when a defendant receives a suspended imposition of sentence (SIS), the 5-year limitation does not apply; rather, SIS probation is limited to the same number of years as the maximum sentence of imprisonment for the crime). And, while a court has wide discretion in setting the conditions of a defendant's probation, a court must have legislative authorization before imposing conditions that fundamentally alter a defendant's status as a "probationer" (that is, someone who is released from custody upon his or her promise to abide by certain conditions). Whittlesey v. State, 626 P.2d 1066, 1067 (Alaska 1980); Boyne v. State, 586 P.2d 1250, 1251 (Alaska 1978) (absent explicit legislative authorization, a court may not impose imprisonment as a condition of probation). See Brown v. State, 559 P.2d 107, 110 (Alaska 1977) (because AS 12.55.100(a)(1) authorizes a court to impose a fine as a condition of probation, a sentencing court can order a defendant to pay a fine as a condition of probation even when the underlying crime is punishable by imprisonment only).

[8] In juvenile cases, the supreme court has followed the same rule: the superior *686 court's authority to impose particular types of disposition in a juvenile case is granted by and governed by legislation. In re E.M.D., 490 P.2d 658 (Alaska 1971). In E.M.D., the superior court found a minor to be a "child in need of supervision" under former AS 47.10.290(7) (a status that is now termed "child in need of aid" under AS 47.10.010(a)(2)). Based on this finding, the superior court ordered E.M.D. to be

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institutionalized "in a correctional or detention facility ... until released therefrom upon a showing ... that the minor has completed a program of rehabilitation and has been amenable thereto". *E.M.D.*, 490 P.2d at 659.

The minor appealed, contending that the superior court had exceeded its authority when it ordered her to be institutionalized. *E.M.D.* argued that the legislature had authorized institutionalization only for delinquent minors, not for children in need of supervision. The supreme court agreed:

Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children.... Of controlling significance here is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court can enter.

Study of our children's laws leads to the conclusion that the legislature has authorized institutionalization only where the child is found to be a delinquent minor.... [T]he only instance under our children's laws authorizing institutionalization or incarceration is when the child has violated the laws of the state[.] Since the runaway child in the case at bar was found to be a child in need of supervision, not a delinquent minor, no legal basis existed for her incarceration.

E.M.D., 490 P.2d at 659-660.

Attempting to avoid this result, the State in *E.M.D.* argued that the superior court was not bound by the literal terms of AS 47.10. The State contended that, "in light of the legislature's broad policy declaration [that] protection of children is the paramount purpose [of the] laws pertaining to children's courts", the superior court should be deemed to enjoy broad power to fashion dispositions different from, or in addition to, the ones specifically listed in AS 47.10.080. *Id.* at 660. The supreme court rejected this argument:

[W]e recently held that the benevolent social theory supposedly underlying children's court [legislation] does not furnish justification for dispensing with constitutional safeguards [citing *R.L.R. v. State*, 487 P.2d 27, 30-31 (Alaska 1971)] (a child alleged to be a delinquent minor is

entitled to a trial by jury)]. [In] the case at bar, it is equally appropriate to note that notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings.

E.M.D., 490 P.2d at 660.

[9] Returning to the present case, no provision of AS 47.10 authorizes the superior court to issue a civil judgement in favor of a crime victim as part of a juvenile disposition. The State attempts to deal with this lack of statutory authority by asserting that, in children's cases, the superior court enjoys broad, inherent power to fashion dispositional orders. The State reasons that there was no need for the legislature to specify the superior court's power to convert a restitution order to a civil judgement in children's cases because the superior court has "broad dispositional discretion" to pursue any mode of enforcing its judgement.

This is essentially the same argument that the supreme court rejected in *E.M.D.*. The superior court does not have unfettered dispositional power in children's cases; rather, the court's authority arises from, and is limited by, statute. The legislation defining the superior court's authority in juvenile cases does not authorize the court to enter civil judgement in favor of a crime victim or convert a previously-entered restitution order into a civil judgement. Because no provision of AS 47.10 confers this power on the superior court, we hold that the superior court lacked the authority to convert the restitution portion of its dispositional order into a civil judgement against R.I..

The State contends that, if the superior court lacks the power to convert its restitution orders to civil judgements, then delinquent *687. minors might evade the court's orders "simply by waiting to get too old" for the court to take action against them. Nevertheless, as the State's brief in *E.M.D.* recognized, courts must not exceed their granted powers "even where ... the factual circumstances cry out for a disposition beyond the fingertips of the [sentencing] court". *E.M.D.*, 490 P.2d at 660-61 n. 10.

The contested portion of the superior court's

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judgement is REVERSED.

FN1. Under *AS 47.10.100(a)*, the superior court's jurisdiction over a juvenile ends when the juvenile reaches his or her nineteenth birthday (or, with the child's consent, his or her twentieth birthday). *State v. T.M.*, 860 P.2d 1286, 1288 (Alaska App.1993).

FN2. We note that, in criminal prosecutions, the legislature has authorized crime victims to pursue execution upon a restitution order as if it were a

civil judgement in their favor. *Alaska Statute 12.55.051(d)* provides:

The state may enforce payment of a fine and [a] restitution recipient may enforce payment of a restitution order against a defendant under AS 09.35 as if the order were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce fines and orders of restitution to victims.

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 16, 1996

The Hon. Gene Therriault
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: HB 484

Dear Representative Therriault:

You have requested an analysis of the referenced bill, entitled "An Act relating to enforcement of restitution orders entered against minors." The bill provides the statutory authority for courts to enforce an order under AS 47.10.080(b)(4) for a minor to pay restitution as a civil judgment enforceable by execution under AS 09.35. We believe that the bill corrects a "loophole" in existing law, and is necessary to fully protect the rights of innocent victims of crime.

The need for statutory authority arose from a recent decision by the Alaska Court of Appeals. In R.I. v. State, 894 P.2d 683 (Alaska App. 1995), the court found that since there is no specific statutory authority in AS 47.10 to enter civil judgments in juvenile cases in favor of the restitution recipient, the court could not do so. This bill supplies the required authority. It is similar to the statutory authority which allow a court to enforce an order for restitution in a criminal case in adult court as a civil judgment under AS 09.35. AS 12.55.051(d).

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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The Hon. Gene Therriault
Alaska State Legislature

February 16, 1996
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If you have any questions or need further information, please feel free to call me. We are happy to provide any assistance you need in seeking passage of this legislation.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Anne D. Carpeneti
Assistant Attorney General

ADC:jf