

SB

274

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 274 | _____

Revision Date (Note if correction) _____ Dept. Affected Corrections
 Title An Act relating to fees for probation and parole BRU Administration and Operations
 Component ALL
 Sponsor Senator Ward
 Requester Senate Judiciary Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	****	****	****	****	****	****

Estimate of any current year (FY98) cost: ****

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Please see attached.

Prepared by Bruce Richards Phone 465-3307
 Division Commissioner's Office Date 2/18/98
 Approved by Commissioner Margaret M. Pugh Date 2/18/98
 Agency Department of Corrections

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

The Dept. of Corrections is providing an indeterminate fiscal for SB 274 at this time. However, the Dept. will provide a revised fiscal note when we are able to get more definitive information that will help in determining the actual costs and revenues.

While it is clear that people who are unable to pay will not be penalized, it is unclear how many these individuals there will be. The Dept. believes that the it will be a significant number.

The probationers and parolees who can afford to pay but either refuse or don't keep current will be subject to penalty of incarceration. All probationers will be subject to a hearing before the court to show cause why the defendant should not be imprisoned for non-payment. If they are found in violation and no good cause is found, they can be imprisoned for one day for each \$50 owed in fees.

Parolees will be subject to a hearing before the Board of Parole for non-payment of fees. The parolee will have to show by a preponderance of the evidence that he/she was unable to pay despite having made a good faith efforts. If the parolee is found to be in default, the board is required to revoke parole. This could be a substantial amount of time and could result in significant costs.

It is difficult to determine how many probationers and parolees will fall under the circumstances mentioned above. The Dept. is currently in the process of trying to calculate these numbers in order to determine how much the incarceration costs will be and what revenues will be generated. While it is true that some of the money will be able to be attached through the PFD language contained in the bill, the Dept. will be eighth in line to attach the PFD and it is unclear how much, if any, will be left.

The Dept of Corrections hopes to provide the revised fiscal note by the beginning of next week.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 274

Revision Date: _____
Title: "An Act relating to fees for probation and parole"
Sponsor: Senator Ward
Requestor: (S) JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

CAPITAL EXPENDITURES	**	**	**	**	**	**
----------------------	----	----	----	----	----	----

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would require a court or the parole board to impose a fee on probationers and parolees. Payment of the fees could be a condition of probation or parole. There would undoubtedly be a fiscal impact on the Public Defender Agency (PDA) as a result of this bill. Probationers and parolees would have to pay a minimum of \$3.30 per day, or about \$100 per month. Probationers and parolees facing revocation for non-payment would have a right to court-appointed counsel. It is expected that a lot of probationers and parolees, especially those newly released from jail, would have difficulty making these payments. However, it is difficult to determine the fiscal impact without an estimate of the number of new probation or parole revocation cases anticipated.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Alison M. Elgee
Date: 2/17/98

DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 274

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

There may also be an additional impact resulting from litigation on this bill. In State v. Albert, 899 P.2d 103 (Alaska Supreme Ct. 1995), the court said that fees to recoup the cost of court-appointed attorneys were constitutional. One of the main factors that persuaded the court was that payment of attorneys' fees could not be a condition of probation. Thus, jail was not an enforcement mechanism for non-payment. It may be that probationers or parolees jailed for non-payment would challenge the bill based on the Albert case, and the Public Defender Agency would have the expense of representing them.

Another aspect of the bill that may cause difficulties is that it is not restricted to felony probation. Probation is routinely imposed in misdemeanor cases, but misdemeanor probation is unsupervised in the vast majority of cases. There are few, if any, costs associated with unsupervised misdemeanor probation. Therefore, a fee of about \$100 per month would be difficult to justify.



Alaska State Legislature

Senate

JERRY WARD

State Capital
Juneau, AK 99801-1182
Phone (907) 465-4940
Fax (907) 465-3766

716 W. 4th Ave., Ste. 450
Anchorage, AK 99501-2133
Phone (907) 258-8183
Fax (907) 258-0820

145 Main Street Loop
Kenai, AK 99611
Phone (907) 283-7996
Fax (907) 283-3075

Sponsor Statement SB 274

"An Act relating to inmates paying for Probation and Parole"

With correctional costs skyrocketing in recent years, the notion that offenders should contribute to their own supervision has gained widespread political and public support. By 1988 as many as 48 states collected some type of correctional fees. While the numbers of states, which charge fees, is on the increase the idea is not new. In 1846 Michigan enacted the first correctional fee law in the country. Unlike financial obligations imposed to inflict punishment (e.g., fines, restoration of victim's losses or other civil obligations), correctional fees are imposed to generate revenues for correctional programs.

SB 274 requires the Department of Corrections to charge inmates under their supervision on probation or parole. In FY 97, probation and parole costs the state \$8.53 million. This legislation calls for each inmate on probation or parole to pay three dollars and thirty cents (\$3.30) per day to defer the cost of their supervision. With over 4600 inmates on probation or parole this legislation could generate over \$5.5 million dollars.

SB 274 would also allow for the garnishment of permanent fund dividend checks as a method of collecting probation and parole fees. The \$3.30 per day fee is roughly \$100 per month or approximately 45 minutes of work per day at minimum wage to reimburse the state for criminal supervision. For those who are able to pay and chose not to, this legislation calls for the revocation of parole. Alaska's correctional professionals are not and should not be "Collectors". That is why this legislation calls for a third party collection of probation and parole fees.

Twenty-three other states now charge fees for probation and parole. One example is Texas which funds over half of its \$90.6 million dollars probation and parole program through fees.

The citizens of Alaska can not be asked to "foot the bill" for criminals while things like medical care for the elderly and education go underfunded. It is time that criminals literally pay their "debt to society."

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/4/98

FURTHER: Finance

Date of 5-Day Notice: 2-12-98
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2-19-98

Judiciary Committee considered

SENATE BILL NO. 274

"An Act relating to fees for probation and parole."

Fol

and recommends:

- be replaced with _____ CS FOR SB 274 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	<input checked="" type="checkbox"/>	<i>J. Green</i>	<input checked="" type="checkbox"/>		
<i>Deane</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>John L. Pyle</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>ADMIN. DIV. DEF. AGENCY</i>	<i>2/17/98</i>		<i>*FCS</i>

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: CSB 274 (JUD)
(S) Publish Date: 2-19-98

Revision Date: _____
Title: "An Act relating to fees for probation and parole"
Sponsor: Senator Ward
Requestor: (S) JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ()	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would require a court or the parole board to impose a fee on probationers and parolees. Payment of the fees could be a condition of probation or parole. There would undoubtedly be a fiscal impact on the Public Defender Agency (PDA) as a result of this bill. Probationers and parolees would have to pay a minimum of \$3.30 per day, or about \$100 per month. Probationers and parolees facing revocation for non-payment would have a right to court-appointed counsel. It is expected that a lot of probationers and parolees, especially those newly released from jail, would have difficulty making these payments. However, it is difficult to determine the fiscal impact without an estimate of the number of new probation or parole revocation cases anticipated.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 2/17/98

DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 274

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

There may also be an additional impact resulting from litigation on this bill. In State v. Albert, 899 P.2d 103 (Alaska Supreme Ct. 1995), the court said that fees to recoup the cost of court-appointed attorneys were constitutional. One of the main factors that persuaded the court was that payment of attorneys' fees could not be a condition of probation. Thus, jail was not an enforcement mechanism for non-payment. It may be that probationers or parolees jailed for non-payment would challenge the bill based on the Albert case, and the Public Defender Agency would have the expense of representing them.

Another aspect of the bill that may cause difficulties is that it is not restricted to felony probation. Probation is routinely imposed in misdemeanor cases, but misdemeanor probation is unsupervised in the vast majority of cases. There are few, if any, costs associated with unsupervised misdemeanor probation. Therefore, a fee of about \$100 per month would be difficult to justify.

CS FOR SENATE BILL NO. 274(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Original:
Referred:

Sponsor(s): SENATORS WARD, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to fees for probation and parole."

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

3 * Section 1. AS 12.55.051(a) is amended to read:

4 (a) If the defendant defaults in the payment of a fine or any installment, f a
5 probation fee or any installment, or of restitution or any installment, the court may
6 order the defendant to show cause why the defendant should not be sentenced to
7 imprisonment for nonpayment and, if the payment was made a condition of the
8 defendant's probation, may revoke the probation of the defendant. In a contempt or
9 probation revocation proceeding brought as a result of failure to pay a fine, fee, or
10 restitution, it is an affirmative defense that the defendant was unable to pay despite
11 having made continuing good faith efforts to pay the fine, fee, or restitution. If the
12 court finds that the defendant was unable to pay despite having made continuing good
13 faith efforts, the defendant may not be imprisoned solely because of the inability to
14 pay. If the court does not find that the default was attributable to the defendant's
15 inability to pay despite having made continuing good faith efforts to pay the fine, fee,

1 or restitution, the court may order the defendant imprisoned until the order of the court
 2 is satisfied. A term of imprisonment imposed under this section may not exceed one
 3 day for each \$50 of the unpaid portion of the fine, fee, or restitution or one year,
 4 whichever is shorter. Credit shall be given toward satisfaction of the order of the court
 5 for every day a person is incarcerated for nonpayment of a fine, fee, or restitution.

6 * Sec. 2. AS 12.55.051(d) is amended to read:

7 (d) The state may enforce payment of a fine or fee and the restitution recipient
 8 may enforce payment of a restitution order against a defendant under AS 09.35 as if
 9 the order were a civil judgment enforceable by execution. This subsection does not
 10 limit the authority of the court to enforce fines or fees and orders of restitution to
 11 victims.

12 * Sec. 3. AS 12.55.100(a) is amended to read:

13 (a) While on probation and among the conditions of probation, the defendant
 14 may be required

15 (1) to pay a fine in one or several sums;

16 (2) to make restitution or reparation to aggrieved parties for actual
 17 damages or loss caused by the crime for which conviction was had;

18 (3) to provide for the support of any persons for whose support the
 19 defendant is legally responsible;

20 (4) to perform community work in accordance with AS 12.55.055;

21 (5) to participate in or comply with the treatment plan of an inpatient
 22 or outpatient rehabilitation program specified by either the court or the defendant's
 23 probation officer that is related to the defendant's offense or to the defendant's
 24 rehabilitation; [AND]

25 (6) to satisfy the screening, evaluation, referral, and program
 26 requirements of an agency authorized by the court to make referrals for rehabilitative
 27 treatment or to provide rehabilitative treatment; and

28 (7) to pay a periodic probation fee as provided in AS 12.55.104.

29 * Sec. 4. AS 12.55 is amended by adding a new section to read:

30 **Sec. 12.55.104. Probation fee.** (a) A court granting probation shall require
 31 a periodic probation fee to be paid to the Department of Corrections as a condition of

1 probation. The fee amount shall be established by regulation by the Department of
2 Corrections but may not be less than \$3.30 a day.

3 (b) A probationer shall assign the probationer's permanent fund dividend to
4 make probation fee payments under this section. The Department of Corrections shall
5 provide an assignment form to the probationer. The Department of Corrections shall
6 attach the permanent fund dividend of a probationer who is in arrears on the probation
7 fee and who has failed or refused to execute the assignment. If the permanent fund
8 dividend exceeds the total of the probation fee payments owed by the probationer, the
9 Department of Corrections shall refund the difference to the probationer.

10 * Sec. 5. AS 33.16.150(a) is amended to read:

11 (a) As a condition of parole, a prisoner released on special medical,
12 discretionary, or mandatory parole

13 (1) shall obey all state, federal, or local laws or ordinances, and any
14 court orders applicable to the parolee;

15 (2) shall make diligent efforts to maintain steady employment or meet
16 family obligations;

17 (3) shall, if involved in education, counseling, training, or treatment,
18 continue in the program unless granted permission from the parole officer assigned to
19 the parolee to discontinue the program;

20 (4) shall report

21 (A) upon release to the parole officer assigned to the parolee;

22 (B) at other times, and in the manner, prescribed by the board
23 or the parole officer assigned to the parolee;

24 (5) shall reside at a stated place and not change that residence without
25 notifying, and receiving permission from, the parole officer assigned to the parolee;

26 (6) shall remain within stated geographic limits unless written
27 permission to depart from the stated limits is granted the parolee;

28 (7) may not use, possess, handle, purchase, give, distribute, or
29 administer a controlled substance as defined in AS 11.71.900 or under federal law or
30 a drug for which a prescription is required under state or federal law without a
31 prescription from a licensed medical professional to the parolee;

1 (8) may not possess or control a firearm; in this paragraph, "firearm"
2 has the meaning given in AS 11.81.900;

3 (9) may not enter into an agreement or other arrangement with a law
4 enforcement agency or officer that will place the parolee in the position of violating
5 a law or parole condition without the prior approval of the board;

6 (10) may not contact or correspond with anyone confined in a
7 correctional facility of any type serving any term of imprisonment or a felon without
8 the permission of the parole officer assigned to the [A] parolee;

9 (11) shall agree to waive extradition from any state or territory of the
10 United States and to not contest efforts to return the parolee to the state;

11 (12) shall pay a periodic parole fee as provided in AS 33.16.155.

12 * Sec. 6. AS 33.16 is amended by adding a new section to read:

13 **Sec. 33.16.155. Parole fee.** (a) The board shall require a periodic parole fee
14 to be paid to the department as a condition of special medical, discretionary, or
15 mandatory parole. The fee amount shall be established by regulation by the
16 department but may not be less than \$3.30 a day.

17 (b) A parolee shall assign the parolee's permanent fund dividend to make
18 parole fee payments under this section. The department shall provide an assignment
19 form to the parolee. The department shall attach the permanent fund dividend of a
20 parolee who is in arrears on the parole fee and who has failed or refused to make the
21 assignment. If the permanent fund dividend exceeds the total of the parole fee
22 payments owed by a parolee, the department shall refund the difference to the parolee.

23 * Sec. 7. AS 33.16.220 is amended by adding a new subsection to read:

24 (j) The board shall revoke the parole of a parolee who defaults in the payment
25 of the parole fee imposed under AS 33.16.155 or any installment unless the parolee
26 shows by a preponderance of the evidence that the parolee was unable to pay despite
27 having made continuing good faith efforts to pay the fee. If the board finds that the
28 parolee was unable to pay despite having made continuing good faith efforts, the
29 parole may not be revoked solely because of the inability to pay. If the board does
30 not find that the default was attributable to the parolee's inability to pay despite having
31 made continuing good faith efforts to pay the fee, the board shall revoke the parole.

1 * Sec. 8. AS 43.23.065(b) is amended to read:

2 (b) An exemption is not available under this section for permanent fund
3 dividends taken to satisfy

4 (1) child support obligations required by court order or decision of the
5 child support enforcement agency under AS 25.27.140 - 25.27.220;

6 (2) court ordered restitution under AS 12.55.045 - 12.55.051, 12.55.100,
7 or AS 47.12.120(b)(4);

8 (3) claims on defaulted scholarship loans under AS 43.23.067;

9 (4) court ordered fines;

10 (5) writs of execution under AS 09.35 of a judgment that is entered

11 (A) against a minor in a civil action to recover damages and
12 court costs;

13 (B) under AS 34.50.020 against the parent, parents, or legal
14 guardian of an unemancipated minor;

15 (6) a debt owed by an eligible individual to an agency of the state,
16 unless the debt is contested and an appeal is pending, or the time limit for filing an
17 appeal has not expired, except for probation fees under sec. (8) below;

18 (7) a debt owed to a person for a program for the rehabilitation of
19 perpetrators of domestic violence required under AS 12.55.101, AS 18.66.100(c)(15),
20 AS 25.20.061(3), or AS 33.16.150(f)(2);

21 (8) probation fee ordered by a court under AS 12.55.104 or a
22 parole fee required by the Board of Parole under AS 33.16.155.

23 * Sec. 9. AS 44.28 is amended by adding a new section to read:

24 Sec. 44.28.040. Contract for collection of probation and parole fees. The
25 Department of Corrections shall contract with a collection agency or other person for
26 the administration and collection of probation fees imposed under AS 12.55.104 and
27 parole fees imposed under AS 33.16.155.