

HB

357

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB357-LAW-Collections-
 Bill Version: HB 357
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to restitution...." RDU Civil
 Component Collections and Support
 Sponsor Representatives Samuels, Stolze, McGuire, Dahlstrom
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	****	****	****	****	****	****

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 12.55 by replacing the word "may" with "shall" in the ordering of a defendant to make restitution.

 At this time we are unable to determine whether passage of this legislation will result in significant new restitution orders transferred to the Department of Law. Our fiscal note at this time is indeterminate pending further information from the Court System.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division Administrative Services Date/Time 1/23/04 4:33 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/23/2004
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB357
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to restitution BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Representative Samuels
 Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill will likely have a fiscal impact on the operations of the Agency, but it is impossible to determine with any accuracy what that impact will be. Requiring restitution in every case with a victim will result in more restitution hearings. Determinations on the amount of mandatory restitution will have to be made at these hearings. More hearings require more work of Agency attorneys, but it is not possible to predict how many cases this new legislation will affect. In addition the requirement that restitution be ordered in a case without consideration of the defendant's inability to pay will result in more petitions to revoke probation being filed and litigated for the failure to pay the ordered restitution, which will also affect the operations of the Agency, since it will increase its assigned caseload of probation revocations. An indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time 1/23/04 10:40 a.m.
 Approved by: Mike Miller, Commissioner Date _____
 Agency Administration

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: February 9, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1384I, HB 357, incorporating the one attached amendment. Although the bill passed out of committee originally on 1/30, the committee chose to bring it back and make this one change (deleting section 6). However, after a lengthy discussion and despite your legal memo, the committee chose to leave the language "when presented with evidence" in the bill at this time. The bill was passed out of committee once again today.

If you have any questions, please call me at 4990. Thank you!

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Amendment #2 - PASSED
CS HB 357
By Rep Samuels

Page 3, line 2

Delete all of Section 6

Amendment #1 - WITHDRAWN
CS HB 357
By Rep Samuels

Page 1, line 4

Delete "when presented with evidence,"

Page 1, line 10

Delete "when presented with evidence,"

LEGAL SERVICES

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


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 2, 2004

SUBJECT: CSHB 357(JUD) (Work Order No. 23-LS1384\I)

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: Gerald P. Luckhaupt 
Legislative Counsel

Enclosed is the CS(JUD) you requested. I have two comments.

1. Sec. 1, page 1, lines 4 and 10. The committee added the words "when presented with evidence" in two places. Apparently, the committee is limiting a criminal court from ordering restitution except when evidence is presented. I do not understand the reason for the amendment, as a criminal court (or even a civil court for that matter) cannot deprive a person of property arbitrarily or without evidence to support the judgment.¹ It seems beyond question to me that a court cannot enter a restitution order without evidence to support the order and I therefore do not see the need for the amendment. Beyond this concern, the amendment is troubling because the legislature requires a court to order restitution in AS 12.55.045(e) and allows the awarding of restitution under AS 12.55.045(d). In each of these provisions there is no mention of "when presented with evidence." Because of the differences in these restitution statutes, the courts may choose to interpret these provisions differently. It is possible that a court could interpret AS 12.55.045(a) to require a restitution order to be supported by a different level, quantity, or type of evidence than restitution orders under AS 12.55.045(d) or (e).

2. Sec. 6, pages 3, line 31 through page 4, line 2. This amendment provides that a delinquency court may consider a minor's earning capacity beyond the period of time when the juvenile court normally loses jurisdiction of the minor.² Apparently, there is a concern that some juvenile courts are not awarding restitution because the court believes the juvenile will not be able to repay the award by the time the minor turns 19; hence the

¹ I guess if a person voluntarily agrees to the entry of judgment against them the court could act. Even in a default judgment context a plaintiff still has to provide proof to support their entitlement to the relief they are requesting.

² This usually occurs when the minor turns 19, if not before. AS 47.12.120. But see AS 47.12.120(a)(3)(B).

Representative Lesil McGuire

February 2, 2004

Page 2

amendment. While I find no support in the statutes for a court to take that position³, my concern is that a court will use this new provision to limit an award of restitution because the court believes that a minor will have limited earning capacity in the future. While the intention may be to expand or otherwise allow awards of restitution, it appears to me that this language can actually be used to limit awards.

GPL:mdr

04-028.mdr

Enclosure

³ Nowhere does AS 47.12.120 limit, or even imply that, restitution to amounts that can be repaid by the time the minor turns 19.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Gerry Luckhaupt, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: January 3, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1384\H, CSHB 357 (JUD), incorporating the attached two amendments (A. # 2 & 3). The bill was passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

CS4/B 357 (JUD)

Conceptual A#2 - PASSED

P.1, L.4 &

P.1, L.9

After "shall"

Insert "when presented with evidence,"

Offered by Rep. Samuels

Conceptual amendment CS HB 357 (Jud) #3 -PASSED

Sec. 47.12.120 Judgments and orders

(4) order the minor and minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2) or (3) of this subsection; under this paragraph, (A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication;...

New section:

The court may take into consideration the delinquent minor's ability to pay past age 19, or the age in which the court retains jurisdiction over the minor, when determining the amount of the order of restitution.

CS#B 357 (jud)

A#1 by Samuels - withdrawn

P. 2, L. 31

After "restitution"

Insert " unless requested by the victim... "

23-LS1384H
Luckhaupt
1/29/04

CS FOR HOUSE BILL NO. 357(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES SAMUELS, STOLTZE, MCGUIRE AND DAHLSTROM

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to restitution; and providing for an effective date."**

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

3 *** Section 1.** AS 12.55.045(a) is amended to read:

4 (a) The court shall, unless the victim or other person expressly declines
5 restitution, [MAY] order a defendant convicted of an offense to make restitution as
6 provided in this section, including restitution to the victim or other person injured by
7 the offense, to a public, private, or private nonprofit organization that has provided or
8 is or will be providing counseling, medical, or shelter services to the victim or other
9 person injured by the offense, or as otherwise authorized by law. The court shall,
10 unless the victim expressly declines restitution, [MAY] also order a defendant
11 convicted of an offense to compensate a victim that is a nonprofit organization for the
12 value of labor or goods provided by volunteers if the labor or goods were necessary to
13 alleviate or mitigate the effects of the defendant's crime. In determining the amount
14 and method of payment of restitution or compensation, the court shall take into
15 account the

1 (1) public policy that favors requiring criminals to compensate for
2 damages and injury to their victims; and

3 (2) financial burden placed on the victim and those who provide
4 services to the victim and other persons injured by the offense as a result of the
5 criminal conduct of the defendant.

6 * Sec. 2. AS 12.55.045(d) is amended to read:

7 (d) In any case, including a case in which the defendant is convicted of a
8 violation of AS 11.46.120 - 11.46.150 and the property is commercial fishing gear as
9 defined in AS 16.43.990, the court shall consider the victim's loss, and the [MAY]
10 order of restitution [THAT] may include compensation for loss of income.

11 * Sec. 3. AS 12.55.045(g) is amended to read:

12 (g) The [EXCEPT AS PROVIDED BY (f) OF THIS SECTION, THE] court
13 may not, in ordering the amount of restitution, consider the defendant's ability to pay
14 restitution.

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

16 (n) Notwithstanding another provision of law, the court shall accept
17 (1) payments of restitution from a defendant at any time; and
18 (2) prepayments of restitution or payments in anticipation of an order
19 of restitution.

20 * Sec. 5. AS 12.55.051(c) is amended to read:

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

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may change the payment schedule.

* **Sec. 6.** AS 47.12.160 is amended by adding a new subsection to read:

(f) Notwithstanding another provision of law, the court shall accept

(1) payments of restitution from a minor and the minor's parent at any time; and

(2) prepayments of restitution or payments in anticipation of an order of restitution.

* **Sec. 7.** AS 12.55.045(e) and 12.55.045(f) are repealed.

* **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

23-LS1384D
Luckhaupt
1/20/04

CS FOR HOUSE BILL NO. 357()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES SAMUELS, STOLTZE, MCGUIRE, AND DAHLSTROM

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to restitution; and providing for an effective date."**

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

3 *** Section 1.** AS 12.55.045(a) is amended to read:

4 (a) The court shall [MAY] order a defendant convicted of an offense to make
5 restitution as provided in this section, including restitution to the victim or other
6 person injured by the offense, to a public, private, or private nonprofit organization
7 that has provided or is or will be providing counseling, medical, or shelter services to
8 the victim or other person injured by the offense, or as otherwise authorized by law.
9 The court shall [MAY] also order a defendant convicted of an offense to compensate a
10 victim that is a nonprofit organization for the value of labor or goods provided by
11 volunteers if the labor or goods were necessary to alleviate or mitigate the effects of
12 the defendant's crime. In determining the amount and method of payment of
13 restitution or compensation, the court shall take into account the

14 (1) public policy that favors requiring criminals to compensate for
15 damages and injury to their victims; and

1 (2) financial burden placed on the victim and those who provide
2 services to the victim and other persons injured by the offense as a result of the
3 criminal conduct of the defendant.

4 * Sec. 2. AS 12.55.045(d) is amended to read:

5 (d) In any case, including a case in which the defendant is convicted of a
6 violation of AS 11.46.120 - 11.46.150 and the property is commercial fishing gear as
7 defined in AS 16.43.990, the court shall consider the victim's loss, and the [MAY]
8 order of restitution [THAT] may include compensation for loss of income.

9 * Sec. 3. AS 12.55.045(g) is amended to read:

10 (g) The [EXCEPT AS PROVIDED BY (f) OF THIS SECTION, THE] court
11 may not, in ordering the amount of restitution, consider the defendant's ability to pay
12 restitution.

13 * Sec. 4. AS 12.55.051(c) is amended to read:

14 (c) A defendant who has been sentenced to pay a fine [OR RESTITUTION]
15 may request a hearing regarding the defendant's ability to pay the fine [OR
16 RESTITUTION] at any time that the defendant is required to pay all or a portion of
17 the fine [OR RESTITUTION]. The court may deny the request if it has previously
18 considered the defendant's ability to pay and the defendant's request does not allege
19 changed circumstances. If at a hearing under this subsection, the defendant proves by a
20 preponderance of the evidence that the defendant will be unable through good faith
21 efforts to satisfy the order requiring payment of the fine [OR RESTITUTION], the
22 court shall modify the order so that the defendant can pay the fine [OR
23 RESTITUTION] through good faith efforts. The court may reduce the fine [OR
24 RESTITUTION] ordered, change the payment schedule, or otherwise modify the
25 order.

26 * Sec. 5. AS 47.12.160 is amended by adding a new subsection to read:

27 (f) Notwithstanding another provision of this section, the court retains
28 jurisdiction over any case in which an award of restitution under AS 47.12.120 has not
29 been satisfied.

30 * Sec. 6. AS 12.55.045(e) and 12.55.045(f) are repealed.

31 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).



Representative Nancy Dahlstrom
Representative Lesil McGuire

Representative Ralph Samuels
Representative Bill Stoltze

HB 357

Sponsor Statement

“An Act relating to restitution; and providing for an effective date”

HB 357, if passed, would require judges to order restitution from criminals in *all* cases where a victim has suffered a financial loss.

When financial losses of victims are ignored, or given less priority than the rights of criminals, we cause them to be victimized again. HB 357 would require judges to order restitution in *every* case where a victim has suffered a financial loss. Under present law, a judge may, but is not required, to do so. This change will also ensure that offenders are ordered to make realistic restitution payments to help make the victim whole within a reasonable time. The act of ordering restitution serves as an acknowledgment by the criminal justice system that the victim sustained harm. Prompt and full payment of restitution can help rectify that harm.

HB 357 also clarifies that a minor who has been ordered to pay restitution be required to do so beyond his or her 19th birthday. For example, if a 16 year old has been ordered to pay restitution, the order survives past the legal age and the defendant shall be responsible for the fine until is paid in full.

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

MEMORANDUM

January 25, 2004

TO: REPRESENTATIVE RALPH SAMUELS
REPRESENTATIVE LESIL MC GUIRE

(VIA FAX (907) 465-3810

(VIA FAX (907) 465-6592

FROM: CAROL COMEAU *Carol Comeau*
SUPERINTENDENT

SUBJECT: SUPPORT FOR HB 357

I want to express strong support for the amendments to House Bill 357, related to restitution for vandalism and other crimes where the victim has suffered financial harm. These are critical amendments, and your strong language is much appreciated.

It is essential to the Anchorage School District, the community, and our employees that juveniles who commit crimes be held fully responsible and accountable for all of the damage they incur, rather than only for what they can pay for before they turn age 19. We feel strongly this is the juvenile and/or criminal's responsibility, not his parent's or legal guardian's financial responsibility. We liken this financial responsibility to that of a juvenile who signs a commitment to repay a student loan well past age 19; we see that it is just as important for a criminal to repay his/her full restitution.

Please do not hesitate to contact us if you would like us to testify and/or present additional information. We appreciate your leadership in this important priority issue.

cc School Board members
Dick Traini, Assembly Chair
Mayor Mark Begich
Lt. Gardner Cobb, APD, School Resource Officer Program
Audie Holloway, Deputy Chief of Police
Mike Klawitter, Director, Risk Management
Mark Mew, Director, Security and Emergency Preparedness
Larry Petersen, Director, Maintenance
George Vakalis, Asst. Supt. For Support Services
Larry Wiget, Executive Director, Public Affairs