

HB

357

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 357(JUD)

Page 2, lines 16-19:

Delete all material and insert the following:

“(n) Notwithstanding another provision of law, the court shall accept (1) payments of restitution from a defendant at any time; and (2) prepayments of restitution or payments in anticipation of an order of restitution. If the recipient has elected to have the Department of Law collect the judgment of restitution under AS 12.55.051(g), the court shall forward all payments of restitution to the Department of Law within five days of the court’s acceptance.”

Page 3, lines 3 - 7:

Delete all material and insert the following:

“(f) Notwithstanding another provision of law, the court shall accept (1) payments of restitution from a defendant at any time; and (2) prepayments of restitution or payments in anticipation of an order of restitution. If the recipient has elected to have the Department of Law collect the judgment of restitution under AS 12.55.051(g), the court shall forward all payments of restitution to the Department of Law within five days of the court’s acceptance.”

REPRESENTATIVE RALPH SAMUELS

HOUSE DISTRICT 29

CS 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.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 357(JUD)
 (H) Publish Date: 2/12/04

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 357(JUD)
 (H) Publish Date: 2/12/04

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)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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

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The
Constitutions
of the
State of Alaska
and the United States



Lt. Governor Fran Ulmer • January 2001

from the offender, and the ration. [Amendment approved November 8, 1994 - Effective December 30, 1994]

pus. The privilege of the as shall not be suspended, s of rebellion or actual or the public safety requires

l Seizures. The right of ecur e in their persons, roperty, papers, and efonable searches and sei- lated. No warrants shall able cause, supported by ind particularly describ- sed, and the per- seized.

ate Action. No bill of ct o law shall be passed. obligation of contracts, ny irrevocable grant of immunities shall be shall work corruption of estate.

l by Jury. In civil cases ntroversy exceeds two the right of trial by a rved to the same ex- nmon law. The legis- sion for a verdict by irths of the jury and, l, may provide for a or more than twelve.

r P. ht. There shall r ot. This section urrest of absconding

§ 18. Eminent Domain. Private property shall not be taken or damaged for public use without just compensation.

§ 19. Right to Keep and Bear Arms. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State. [Amendment approved November 8, 1994 - Effective December 30, 1994]

§ 20. Quartering Soldiers. No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power.

§ 21. Construction. The enumeration of rights in this constitution shall not impair or deny others retained by the people.

§ 22. Right of Privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section. [Amendment approved August 22, 1972 - Effective October 14, 1972]

§ 23. Resident Preference. This constitution does not prohibit the State from granting preferences, on the basis of Alaska residence, to residents of the State over non-residents to the extent permitted by the Constitution of the United States. [Amendment approved November 8, 1988 - Effective January 4, 1989]

§ 24. Rights of Crime Victims. Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication. [Amendment approved November 8, 1994 - Effective December 30, 1994]

§ 25. Marriage. To be valid or recognized in this State, a marriage may exist only between one man and one woman. [Amendment approved November 3, 1998 - Effective January 3, 1999.]

Editor's Note. Article I, Section 25 consists of the first sentence of 1998 Legislative Resolve 71 (20th Legislature's HCS CSSJR 42 (RLS)). The second sentence of 1998 Legislative Resolve 71 did not appear on the ballot pursuant to an order of the Supreme Court of the State of Alaska in Bess v. Ulmer, 985 P.2d 979 (Alaska 1999) (Preliminary opinion and order dated September 22, 1998.)

(4) misdemeanor for which a sentence of incarceration may not be imposed, a violation or an infraction under state law, or a violation of a municipal ordinance imposing a penalty authorized by AS 29.25.070(a) if a sentence of incarceration may not be imposed for the ordinance violation, shall be assessed a surcharge of \$10 if the fine or bail forfeiture amount for the offense is \$30 or more.

(b) A court may not fail to impose the surcharge required under this section. The surcharge may not be waived, deferred, or suspended. A court may allow a defendant who is unable to pay the surcharge required to be imposed under this section to perform community work under AS 12.55.055(c) in lieu of the surcharge.

(c) The surcharge shall be paid within 10 days of imposition or such shorter period of time as ordered by the court. Failure to pay the surcharge is punishable as contempt of court. Proceedings to collect the surcharge may be instituted by the state, the municipality, or by the court on its own motion.

(d) Money collected under this section shall be deposited into the general fund and accounted for under AS 37.05.142. (§ 2 ch 119 SLA 1994; am § 4 ch 56 SLA 1998; am § 1 ch 24 SLA 2000)

Cross references. — For legislative findings and purpose in connection with the enactment of this section, see § 1, ch. 119, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1998 amendment, effective August 27, 1998, rewrote subsection (a).

The 2000 amendment, effective July 27, 2000, in

paragraph (a)(4) added "misdemeanor for which a sentence of incarceration may not be imposed, a" at the beginning, inserted "imposing a penalty authorized by AS 29.25.070(a)," and deleted "misdemeanor or" preceding "ordinance violation."

Effective dates. — Section 7, ch. 119, SLA 1994 makes this section effective January 1, 1996.

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 12.55.045. Restitution. (a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the

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

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

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If the defendant fails to make one or more payments required under this section, the victim or the state on the victim's behalf may enforce the total amount remaining under the order of restitution as provided in (1) of this section.

(d) In any case, including a case in which the defendant is convicted of a violation of AS 11.46.120 — 11.46.150 and the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's loss and may order restitution that may include compensation for loss of income.

(e) If a defendant is convicted of vehicle theft in the first degree in violation of AS 11.46.360 or vehicle theft in the second degree in violation of AS 11.46.365(a)(1), and the victim of the offense incurs damage or loss as a result of the offense, the court shall order the defendant to pay restitution.

(f) If a court proposes to order a defendant to pay restitution under this section of more than \$5,000, and the defendant's sentence includes a period of unsuspended incarceration exceeding 90 days, (the court may take into account at the time of sentencing the defendant's present and future ability to pay the restitution proposed.) The court shall presume that the defendant has the ability to pay the amount proposed unless the defendant at the sentencing hearing establishes by clear and convincing evidence the inability to pay the amount proposed.

(g) Except as provided by (f) of this section, the court may not, in ordering the amount of restitution, consider the defendant's ability to pay restitution.

(h) In imposing restitution under this section, the court may require the defendant to make restitution by means other than the payment of money.

(i) An order of restitution made under this section is a condition of the defendant's sentence and, in cases in which the court suspends all or a portion of the defendant's sentence, the order of restitution is a condition of the suspended sentence. If the court suspends imposition of sentence under AS 12.55.085, the order of restitution is a condition of the suspended imposition of sentence.

(j) A defendant who is convicted of an offense for which restitution may be ordered shall submit financial information as ordered by the court. The Alaska Court System shall prepare a form, in consultation with the Department of Law, for the submission of the information; the form must include a warning that submission of incomplete or inaccurate information is punishable as unsworn falsification under AS 11.56.210. A defendant who is convicted of (1) a felony shall submit the form to the probation office within 30 days after conviction, and the probation officer shall attach the form to the presentence report, or (2) a misdemeanor shall file the form with the defendant's response or opposition to the restitution amount. The defendant shall provide a copy of the completed form to the prosecuting authority.

(k) The court, on its own motion or at the request of the prosecuting authority or probation officer, may order a defendant on probation who has been ordered to pay restitution to submit financial information to the court using the form specified in (j) of this section. The defendant shall file the completed form with the court within five days after the court's order. The defendant shall provide a copy of the completed form to the prosecuting authority and the person's probation officer, if any.

(l) An order by the court that the defendant pay restitution is a civil judgment for the amount of the restitution. An order by the court that the defendant pay restitution when the court suspends imposition of sentence under AS 12.55.085 is a civil judgment for the amount of the restitution and remains enforceable and is not discharged when a conviction is set aside under AS 12.55.085. The victim or the state on behalf of the victim may enforce the judgment through any procedure authorized by law for the enforcement of a civil judgment. If the victim enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded. If the state on the victim's behalf enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded, up to a maximum of twice the amount of restitution owing at the time the civil process was initiated. This section does not limit the authority of the court to enforce orders of restitution.

(m) In this section, "conviction" means that the defendant has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty but mentally ill by a court or jury. (§ 12 ch 166 SLA 1978; am § 38 ch 102 SLA 1980; am § 1 ch 73 SLA 1986; am §§ 1, 2 ch 75 SLA 1988; am § 3 ch 53 SLA 1991; am §§ 3, 4 ch 71 SLA 1992; am § 4 ch 71 SLA 1996; am §§ 3, 4 ch 103 SLA 2000; am §§ 9, 10 ch 92 SLA 2001; am § 1 ch 23 SLA 2002)

Cross references. — For restitution as condition of probation, see AS 12.55.100; for requirement that court suspend commercial fishing privileges of certain

defendants, see AS 16.05.710(b); for legislative purpose of the 1992 amendments to this section, see § 1, ch. 71, SLA 1992 in the Temporary and Special Acts;

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