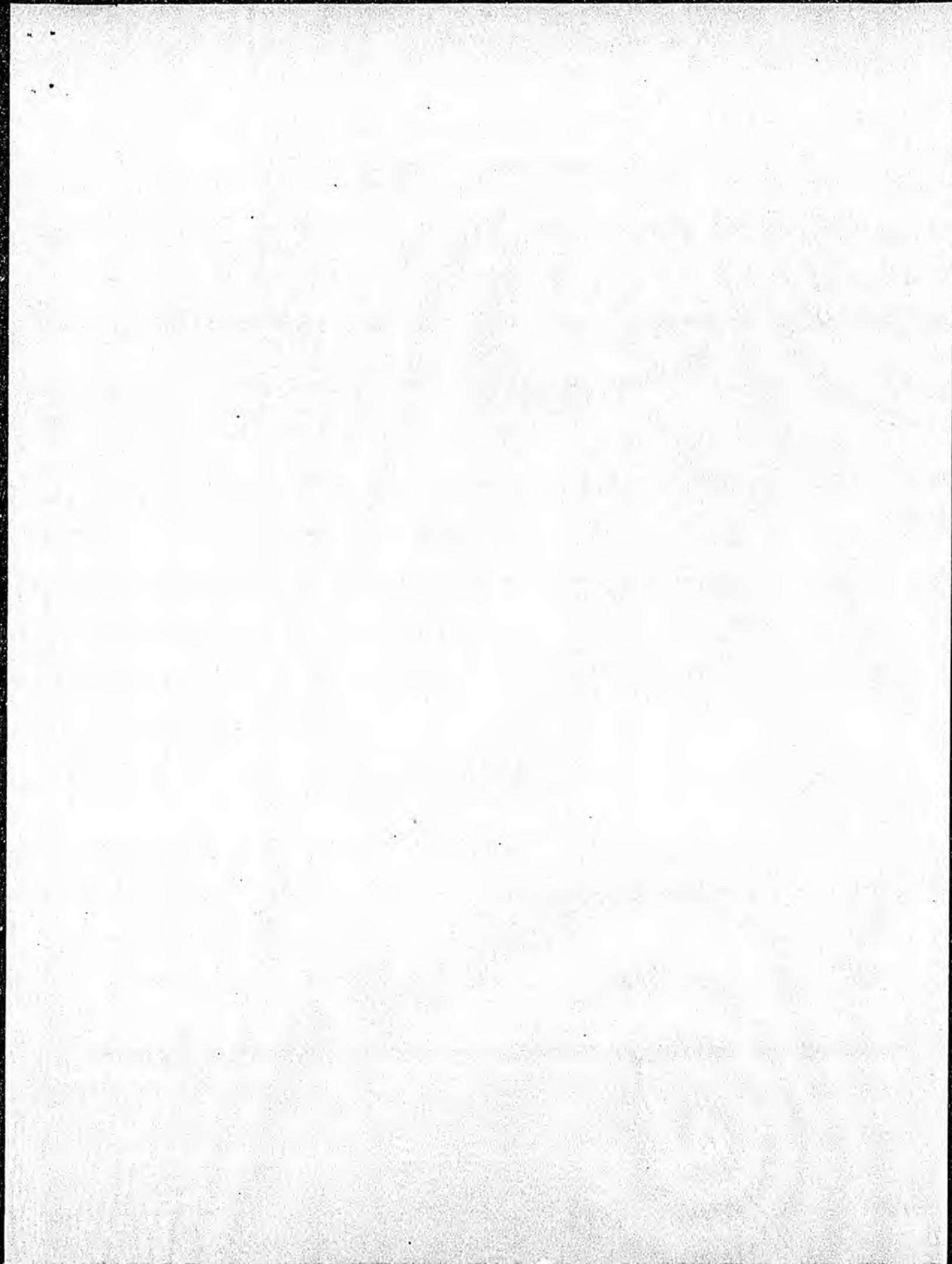


ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

HB 103-S cont. thru CSHB 106 259





Alaska Dental Society

3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4675

JAN 25 1988

January 22, 1988

Representative Johnny Ellis, Co-Chairman
House Health, Education and Social Services
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Ellis:

The Alaska Dental Society would like to strongly endorse House Bill 103, extending the authorization for the Board of Dental Examiners from June, 1988 to June, 1991. This legislation was introduced by Representatives Curt Menard and Max Gruenberg, Jr.

For the past few years, board members have been successful in accomplishing many positive changes in dentistry for the health and safety of the public - (for example: implementing a regional examination for dental licensure and establishing continuing education requirements for relicensure). Members have been steadfast in their efforts to carry out the "legislative intent" presented to them in 1986.

At this mid-point in constructive change, ending the board's service to the State of Alaska seems counter-productive and certainly unfair to the citizens of Alaska who ultimately benefit from the Board's perceptive direction.

Sincerely

William A. Guy D.D.S.
William A. Guy, President
Alaska Dental Society

ANNUAL REPORT FOR FISCAL YEAR 1987
BOARD OF DENTAL EXAMINERS

INDEX AND IDENTIFICATION

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BOARD OF DENTAL EXAMINERS

DR. ROBERT WARREN, CHAIRMAN	EXP. DATE 2/1/88
DR. PAUL BUXTON	EXP. DATE 2/1/87
DR. TOM WOLLER	EXP. DATE 2/1/90
CHRISTINE BAXTER, RDH	EXP. DATE 2/1/69
HUGH GELLERT	EXP. DATE 2/1/69
PATRICK GULLUFSEN	RESIGNED 3/1987
DR. JERRY ZEYLICKA	RESIGNED 4/1987

ANTHONY MARSHALL, DIRECTOR
DIVISION OF OCCUPATIONAL LICENSING
DEPARTMENT OF COMMERCE AND ECONOMIC
DEVELOPMENT
P.O. BOX D
JUNEAU, ALASKA 99811

DATE: AUGUST 1, 1987

SUBJECT: ANNUAL REPORT

DEAR MR. MARSHALL:

IN COMPLIANCE WITH AS 28.01, AND ON BEHALF OF THE BOARD OF
DENTAL EXAMINERS, I AM SUBMITTING THE ENCLOSED ANNUAL
REPORT CONCERNING THE BOARD'S ACTIVITIES AND ACCOMPLISHMENTS
FOR FISCAL YEAR 1987.

SHOULD THERE BE ANY QUESTIONS CONCERNING THIS REPORT, PLEASE
FEEL FREE TO CONTACT ME.

THANK YOU.

SINCERELY,

Christine A. Baltus RDH
for

ROBERT WARREN, D.D.S.
CHAIRMAN
ALASKA STATE BOARD OF
DENTAL EXAMINERS

ALASKA BOARD OF DENTAL EXAMINERS
ANNUAL REPORT FY87
AUGUST 1, 1987
NARRATIVE STATEMENT

MAJOR ISSUES- ADDRESSED LETTER OF INTENT FROM THE LEGISLATURE. COMMITTEE FORMED TO DEVELOP POLICIES IN REGARD TO IMPAIRED DENTAL PROFESSIONALS. ADOPTED REQUIREMENTS TO CONFORM TO THE FEE BILL. CONTINUED TO INVESTIGATE LICENSURE BY CREDENTIALS FOR DENTISTS AND DENTAL SPECIALISTS.

A. ADDRESSED LETTERS OF INTENT FROM THE LEGISLATURE:

1. ADOPTED REGULATIONS FOR THE REPEAL OF GOLD FOIL SUBJECT OF THE DENTAL EXAMINATION. 12 AAC 28.160 (1) (A). 12 AAC 28.170 (A) (1). .190 (B) (1). .200 (A) AND .240(A)
2. DRAFTED CONTINUING EDUCATION REGULATIONS WERE AMENDED AND PUT TO PUBLIC NOTICE.
 - (1). 12 AAC 28. 400 IS ADDED TO ESTABLISH THE REQUIRED NUMBER OF CONTINUING EDUCATION HOURS;
 - (2). 12 AAC 28.410 IS ADDED TO IDENTIFY APPROVED CONTINUING EDUCATION COURSES;
 - (3). 12 AAC 28.420 IS ADDED TO ESTABLISH REQUIREMENTS FOR REPORTING CONTINUING EDUCATION;
 - (4). 12 AAC 28.430 IS ADDED TO IDENTIFY EXEMPTIONS TO CONTINUING EDUCATION REQUIREMENTS.THE ABOVE REGULATIONS SERVE TO IMPLEMENT AS 08.32.071. AS 08. 36.070. AS 08.36.250.

3. REGIONAL EXAMINATION AFFILIATION-

DR. ROBERT WARREN AND CHRISTINE BAXTER R.D.H. ATTENDED THE SEPT.28-30. 1986 WESTERN REGIONAL BOARD AS OBSERVERS. IT WAS HELD IN LOMA LINDA, CALIF. AND ALL EXPENSES WERE COVERED BY THE WESTERN REGIONAL BOARD. JANUARY 15. 1987 IT WAS AGREED BY THE BOARD TO AFFILIATE WITH THE WESTERN REGIONAL BOARD. COMPLYING WITH THE LETTERS OF INTENT.

4. INVESTIGATION CONTINUED INTO THE LICENSURE BY CREDENTIALS FOR DENTISTS AND DENTAL SPECIALISTS.

- a. TESTIMONY WAS RECEIVED FROM VARIOUS GROUPS INCLUDING: ALASKA DENTAL SOCIETY. U.S. PUBLIC HEALTH SERVICES.

5. COMMITTEE FORMED TO DEVELOP POLICIES IN REGARD TO CHEMICALLY IMPAIRED DENTAL PROFESSIONALS.

THE HIDA (HELPING IMPAIRED DENTISTS ANONIMOUSLY) PROGRAM IS FUNCTIONING IN THE STATE AT THE PRESENT TIME. IT WAS ADVISED BY THE ATTORNEY GENERALS OFFICE THAT LEGAL ACTION WILL BE TAKEN ONLY IN THE EVENT OF FILLED COMPLAINTS AGAINST THE IMPAIRED PROFESSIONAL TO THE STATE INVESTIGATORS OFFICE AND WILL THEN BECOME A MATTER OF CONCERN TO THE BOARD. IT WAS TAKEN UNDER ADVICE THAT IT NOT BE FORMULATED UNDER THE DENTAL PRACTICE ACT.

- D. ADOPTED REQUIREMENTS TO CONFORM WITH THE FEE BILL SB78.
- D. REVISED ALL APPLICATIONS FORMS FOR THE DENTAL AND HYGIENE EXAMINATION.
- E. REVISED THE INFORMATION PACKET FOR THE CANDIDATES TAKING THE DENTAL HYGIENE EXAMINATION.
- F. ADDRESSED ISSUE REGARDING POSSIBLE INFRACTION BY UNLICENSED AUXILIARY PRACTICE AND CO-PAYMENT FORGIVENESS. A LETTER WAS DRAFTED AND SENT TO ALL LICENSED PROFESSIONALS RESIDING IN THE STATE CONCERNING THIS MATTER.
- G. REQUEST FOR AN ASSISTANT ATTORNEY GENERAL AT THE END OF EACH BOARD MEETING TO ANSWER QUESTIONS AND GIVE LEGAL ADVICE. BETTY RAMAGE, ASSISTANT ATTORNEY GENERAL, DEPART. OF LAW, HAS BEEN PRESENT AT THE LAST TWO BOARD MEETINGS AND HAS BEEN VERY INFORMATIVE AND HELPFULL.

G

- 4. NATIONAL MEETINGS: DR. ROBERT WARREN WILL ATTEND THE ANNUAL AMERICAN ASSOCIATION OF DENTAL EXAMINERS MEETING OCT. 8-9, 1987. TOPICS TO BE COVERED:
 - 1. NATIONAL EDUCATION PROGRAM
 - 2. SPECIALTY EXAMINATIONS
 - 3. LEGISLATIVE/LEGAL UPDATE
 - 4. TRUTH-IN-TESTING BILL
 - 5. IN-OFFICE AUDITS
 - 6. DENTAL ASSISTING CERTIFYING BOARD
- 1. IMPACT OF FUNDING: FUNDING CUTS WERE FELT IN FY86.
- 2. WITH THE RESIGNATION OF TWO BOARD MEMBERS AND THE ADDITION OF TWO BOARD MEMBERS BY THE LEGISLATIVE CHANGES BROUGHT FORTH BY HB228. CONSIDERATIONS WERE DISCUSSED AND MADE TO THE GOVERNOR'S OFFICE.
- 4. ANESTHESIA REGULATIONS FOR DENTAL HYGIENISTS: THE BOARD VOTED TO ACCEPT THE RESULTS OF THE WREB ANESTHESIA CLINICAL EXAM AS A REQUIREMENT FOR CERTIFICATION. THIS EXAM IS ADMINISTERED IN CONJUNCTION WITH THE WREB HYGIENE EXAM.
- 11. REGULATIONS WERE ADOPTED TO REPEAL THE EXISTING REGULATIONS GOVERNING THE PASS SCORE FOR THE DENTAL EXAM AND NEW REGULATIONS TO ALLOW FOR A 70% PASSING SCORE OR A PASS ON A PASS/FAIL EXAMINATION.
 - 12 AAC 28.105 REPEALED AND READOPTED
 - 12 AAC 28.260 REPEALED AND READOPTED
 - THE BOARD WILL ACCEPT THE JULY SCORES FROM WREB.
- Y. REGULATIONS ARE BEING DRAFTED TO ADDRESS THE ACCEPTABLE PASSING SCORE FOR THE WREB EXAM FOR HYGIENE CANDIDATES AT THIS TIME. THE BOARD WILL ACCEPT THE WREB EXAM FOR HYGIENE AT THE SEPTEMBER EXAM. (3)

FY 87 STATISTICAL INFORMATION
(Please Type)

Date: July 27, 1987

Method: Check the appropriate method in which licenses are issued (not including Examination), and cite the specific statutory authority.

<u>XX</u> <u>Credentials</u>	AS 08.32.030/08.36.234*
<u>Reciprocity</u>	AS 08._____
<u>Comity</u>	AS 08._____
<u>Endorsement</u> *Suspended by 12AAC 28.950	AS 08._____

New Licenses: List each category and the number of licenses issued within each category for the first time in FY 87.

CATEGORY:	NUMBER OF LICENSES:
(1) <u>Dentists</u>	<u>18</u>
(2) <u>Dental Hygienists</u>	<u>23</u>
(3) <u>Dental Specialists</u>	<u>2</u>
(4) <u>Local Anesthetic Permits-Hygienists</u>	<u>28</u>
(5) _____	_____
Total:	<u>71</u>

Number of **CURRENT** licensees: 911
 Number of **LAPSED** licensees: 469
 Number of **INACTIVE** licensees: 0

Expiration Date: If the expiration date is different for each category, indicate the category after each date.

Expire: 12/31/88 - Dentists & Dental Specialists
12/31/89 - Dental Hygienists & Local Anesthetic Permit Holders

Examination: List each examination separately indicating the licensure category (such as RN, LPN, Dentist, Dental Hygienist), the total number of examinees, number passed and failed.

Exam Statute Authority: AS 08.36.070(a)(1)

(1) Category:	Total Candidates	#Passed	#Failed
<u>Dental</u>	<u>20</u>	<u>15</u>	<u>5</u>
Date and City: <u>August 15-17, 1987 Anchorage, Alaska</u>			
(2) Category:	Total Candidates	#Passed	#Failed
<u>Dental Hygienists</u>	<u>4</u>	<u>4</u>	<u>0</u>
Date and City: <u>January 15-16, 1987 Anchorage, Alaska</u>			
(3) Category:	Total Candidates	#Passed	#Failed
<u>Dentists</u>	<u>5</u>	<u>2</u>	<u>3</u>
Date and City: <u>January 16-17, 1987 Anchorage, Alaska</u>			
(4) Category:	Total Candidates	#Passed	#Failed
<u>Dental Hygienists</u>	<u>16</u>	<u>14</u>	<u>2</u>
Date and City: <u>June 26-27, 1987 Anchorage, Alaska</u>			

Total Licensed by Exam: 36

Meetings: List Date(s) and Location(s)

1. August 16, 1986 - Anchorage, Alaska
2. November 13, 1986 - Conference Call
3. January 15, 1987 - Anchorage, Alaska
4. June 26, 1987 - Anchorage, Alaska

Teleconferences: List Date(s) and Site(s)

1. November 13, 1986 - Anchorage, Fairbanks, Soldotna, Juneau
- 2.
- 3.
- 4.

Regulation Hearings: List Date(s) and Site(s)

Investigations: (Attach Case Summary)

SUNSET AUDIT RECOMMENDATIONS

FINDINGS AND RECOMMENDATIONS OF THE 1984 SUNSET AUDIT

RECOMMENDATION NO. 1

THE BOARD OF DENTAL EXAMINERS SHOULD ADOPT REGULATIONS TO PROVIDE REQUIREMENTS FOR PROOF OF CONTINUED PROFESSIONAL COMPETENCE FOR DENTISTS, DENTAL HYGIENISTS, AND DENTAL SPECIALISTS. AS 08.36.070

REGULATIONS FOR CONTINUING EDUCATION HAVE BEEN DRAFTED BY THE BOARD OF DENTAL EXAMINERS OVER THE PAST YEAR AND A HALF. THEY HAVE GONE UP FOR PUBLIC NOTICE AND WILL BE ADOPTED INTO REGULATION AT THE OCT. BOARD MEETING.

RECOMMENDATION NO. 2

THE BOARD SHOULD PURSUE ADOPTING POLICIES ALLOWING FOR LICENSURE BY CREDENTIALS.

FROM THE BOARD'S STANDPOINT CREDENTIALLING IS VIEWED AS AN UNACCEPTABLE MEANS OF LICENSURE. VERIFICATION OF CREDENTIALS AND THE ABILITY TO DETERMINE MANUAL SKILLS WERE PRIMARY SHORT COMINGS OF THE CREDENTIALLING PROCESS. THE STATES THAT LICENSE BY CREDENTIALS ARE EASTERN OR MIDWEST STATES. NO WESTERN STATES LICENSE BY CREDENTIALS AT THIS TIME.

THE BOARD HAS RECENTLY JOINED THE WESTERN REGIONAL BOARD (WREB) WHICH TESTS 600-700 DENTAL AND HYGIENE CANDIDATES ANNUALLY. THOSE PASSING THE WREB EXAM WILL BE ELIGIBLE FOR LICENSURE IN THE STATE OF ALASKA. THIS ENSURING A PLENTIFUL SUPPLY OF QUALIFIED PRACTITIONERS. THE JOINING OF THE WESTERN REGIONAL EXAM HAS REDUCED THE BOARD'S BUDGET BY \$25,000 ANNUALLY. THIS AMOUNT WAS FORMERLY SPENT ON THE STATE TESTING. THE WREB PAYS ALL TRAVEL AND PER DIEM COSTS. THE COST TO THE STATE IS ZERO.

THE WREB EXAM IS GIVEN FOUR TIMES A YEAR AND EXAMINERS FROM ALASKA MUST ATTEND EACH EXAM. IN ADDITION THERE ARE TWO WREB BOARD MEETINGS ANNUALLY AND AN EXAMINATION REVIEW MEETING WHICH STATE MEMBERS MUST ATTEND. DAYS OUT OF PRACTICE FOR EACH EXAMINER WILL BE 16-19 DAYS PER YEAR.

LICENSURE BY CREDENTIALING IS NOT ACCEPTABLE FOR THE FOLLOWING REASONS:

- 1). NOT BEING ABLE TO DETERMINE THE ABILITY OF THE PRACTITIONER.
- 2). INADEQUATE VERIFICATION i.e. NO STANDARDIZED MEANS OF EXCHANGE OF INFORMATION BETWEEN STATES ON MATTERS OF PENDING LITIGATION IN MALPRACTICE OR CONVICTIONS.

- 3). COST TO THE STATE. ADDITIONAL BOARD TRAVEL. PER DIEM PLUS COSTS INCURRED IN ATTEMPTING TO VERIFY APPLICATIONS FOR CREDENTIALLING.
- 4). INCREASE IN VOLUNTARY BOARD MEMBERS TIME AWAY FROM THEIR PRACTICES AND FAMILY.
FOUR WREB EXAMINATIONS
ONE IN STATE HYGIENE EXAM
TWO WREB BOARD MEETINGS PER YEAR
TWO EXAMINATION REVIEW MEETINGS PER YEAR
THREE STATE OF ALASKA BOARD MEETINGS
TWO TELECONFERENCES PER YEAR
ANNUAL AADE MEETING
- 5). THE "TIME" OF THE CREDENTIALLING PROCESS HAS NOT YET COME TO THE WESTERN STATES. ALASKA WOULD BE THE ONLY WESTERN STATE TO HAVE CREDENTIALLING.
- 6). TESTIMONY BY SPECIALTY GROUPS AND STATE DENTAL SOCIETY GROUPS RESPECTFULLY RECOMMEND THAT THE STATE OF ALASKA NOT LICENSURE DENTISTS BY CREDENTIALS.

REVIEW OF PRIOR YEAR OBJECTIVES

- A. ADOPT FINAL CONTINUING EDUCATION REGULATIONS
FINAL WORDING WAS APPROVED AND WENT OUT TO PUBLIC NOTICE.
ISSUE IS TO ADDRESS AT THE OCT. 23, 1987 MEETING TO
DISCUSS PUBLIC OPINION RECEIVED AND TO ADOPT FINAL DRAFT.
- B. ADDRESS LETTER OF INTENT FROM LEGISLATURE.
TESTIMONY CONTINUES TO BE GATHERED CONCERNING LICENSURE
BY CREDENTIALS FOR DENTISTS AND SPECIALISTS.
PRESENTLY AFFILIATED WITH THE WESTERN REGIONAL BOARD
AND ACCEPTING THE EXAMINATION SCORES FOR WREB
- C. COMMITTEE HAS BEEN FORMED TO ADDRESS THE ISSUE OF CHEMICALLY
IMPAIRED PRACTITIONERS.
- D. DEVELOP A NEW CLINICAL PROCEDURE TO REPLACE THE GOLD FOIL;
NO LONGER PERTINENT.
- E. INVESTIGATE EXPANDED DUTIES FOR DENTAL HYGIENISTS AND
ASSISTANTS: ISSUE HAS NOT BEEN ADDRESSED IN FY87.
- F. PURSUE MANDATORY LEGAL REPRESENTATION AT ALL MEETINGS:
THE PAST BOARD MEETINGS HAVE HAD REPRESENTATION OF AN
ASSISTANT ATTORNEY GENERAL. CONTINUED REPRESENTATION
IS REQUESTED AND GREATLY APPRECIATED.
- G. ENCOURAGE THE DIVISION OF OCCUPATIONAL LICENSING TO DEVELOP
AND STREAMLINE ITS INVESTIGATIVE PROCEDURES TO INSURE MORE
TIMELY RESOLUTION OF CASES AND COMPLAINTS;
THIS ISSUE HAS BEEN SATISFACTORILY ADDRESSED BY THE DIVISION
OF OCCUPATIONAL LICENSING. IT IS ADVISED THAT THE REMAINING
OPEN CASES BE ADDRESSED AND CLEARED IN AN ORDERLY FASHION.
- H. ENSURE THAT ADEQUATE FUNDING BE APPROPRIATED FOR NECESSARY
MEETINGS AND EXAMS:
THE AFFILIATION WITH THE WESTERN REGIONAL BOARD GREATLY
REDUCES THE FINANCIAL BURDEN FOR EXAMINATION. THE WREB
EXPENDITURE IS COVERED BY WREB.

NEW GOALS AND OBJECTIVES

1. TO ESTABLISH AND MAINTAIN A GOOD WORKING RELATIONSHIP WITH THE WESTERN REGIONAL BOARD.
 - a.) IT WILL BE THE RESPONSIBILITY OF THE BOARD MEMBERS TO PARTICIPATE IN THE FOUR DENTAL EXAMINATIONS GIVEN BETWEEN MARCH AND SEPTEMBER. EACH EXAM WILL REQUIRE A MINIMUM OF FIVE DAYS PARTICIPATION.
 - b.) THE BOARD WILL BE RESPONSIBLE FOR A DENTAL HYGIENE EXAMINATION TO BE GIVEN IN THE SPRING OF EACH YEAR. ALL BOARD MEMBERS MAY BE INVOLVED IN THIS EXAMINATION. THE HYGIENE MEMBER OR A DENTAL MEMBER WILL ALSO BE INVOLVED IN THE SEPTEMBER EXAM. THIS IS A COMBINED DENTAL/HYGIENE EXAMINATION GIVEN IN LOMA LINDA UNIVERSITY, CALIF.
 - c.) A DENTAL MEMBER WILL ALSO REPRESENT ALASKA AT TWO YEARLY BOARD MEETING OF WREB. MEMBER TO BE DECIDED BY THE BOARD. A BOARD MEMBER WILL ALSO PARTICIPATE IN THE EXAMINATION WORKSHOP HELD EACH YEAR TO REVIEW THE EXAMINATION PROCESS. DENTAL AND HYGIENE.
2. FINALIZE ADOPTION OF THE CONTINUING EDUCATION REGULATIONS. THE FINAL DRAFT OF THE CONTINUING EDUCATION REGULATIONS HAVE BEEN COMPLETED BY THE REGULATION SPECIALIST AND HAVE BEEN PRESENTED FOR PUBLIC NOTICE. ADOPTION SHOULD BE AT THE OCT. BOARD MEETING.
3. FINALIZE POLICY IN REGARD TO CHEMICALLY IMPAIRED PRACTITIONERS.
4. CLARIFY AND DEFINE THE PRACTICE OF DENTAL HYGIENE AND THOSE PROCEDURES DELEGATED BY PRACTICING DENTISTS. THIS WILL ALSO INCLUDE CONTINUED INVESTIGATION INTO EXPANDED DUTIES FOR DENTAL HYGIENISTS AND ASSISTANTS.
5. GUIDE THE DEPARTMENT OF OCCUPATIONAL LICENSING IN STREAMLINING THE INVESTIGATIVE PROCESS.
6. DEVELOP WAYS THE BOARD CAN EXERCISE ITS DISCIPLINARY POWERS.
7. DEVELOP REGULATIONS INVOLVING IV SEDATION.
8. DEVELOP A COOPERATIVE RELATIONSHIP WITH THE ATTORNEY GENERAL'S OFFICE.

BUDGET RECOMMENDATIONS

PROPOSED BOARD MEETINGS FY88

OCT. 23. 1987 ANCHORAGE

JAN. . 1988 JUNEAU

APR. . 1988 ANCHORAGE
TO BE HELD IN CONJUNCTION WITH THE WREB
EXAM. DATE TO BE DETERMINED BY WREB.

REQUEST 2 TELECONFERENCES

REQUEST FUNDING TO THE ANNUAL AADE MEETING FOR 1988

1 DENTAL MEMBER

1 HYGIENE MEMBER

REQUEST FUNDING TO SEND CHAIRMAN TO THE 104 ANNUAL AADE
MEETING TO BE HELD OCT. 8-9. 1987.

BOARD RECOMMENDATIONS FOR
PROPOSED LEGISLATION

PROPOSED LEGISLATION HAS NOT BEEN ADDRESSED BY THE
BOARD OF DENTAL EXAMINERS.

BOARD RECOMMENDATIONS FOR
PROPOSED REGULATIONS

PROPOSED REGULATION:

REGULATION TO ADDRESS THE CERTIFICATION OF
LOCAL ANESTHESIA FOR HYGIENISTS

INTENTION: TO REQUIRE SUCCESSFUL PASSAGE OF THE
ANESTHESIA CLINICAL EXAMINATION
ADMINISTERED BY WESTERN REGIONAL BOARD.

12 AAC 28.320 CERTIFICATION REQUIRED

- (a) same
- (b) same
- (c) same
- (d) Certificate from the Western Regional Board
stating successful passage of the clinical
anesthesia examination is required for certi-
fication in the state of Alaska.

REGULATION CHANGE ADDRESSES THE PROBLEM MENTIONED BELOW;
IT HAS BEEN A CONCERN OF THE BOARD THAT AN APPLICANT
WHO HAS COMPLETED A COURSE IN LOCAL ANESTHESIA BUT HAS NOT
APPLIED FOR CERTIFICATION IN MORE THAN SIX MONTHS FROM
THE TIME OF COMPLETION HAS LOST VITAL SKILLS IN THE
ADMINISTRATION OF LOCAL ANESTHESIA. FOR THE SAFETY
OF THE PATIENT IT IS IN THEIR BEST INTEREST TO ACCEPT
THE RESULTS OF THE CLINICAL ANESTHESIA EXAM ADMINISTERED
BY THE WESTERN REGIONAL BOARD.

THE BOARD VOTED TO ACCEPT THE RESULTS OF THE CLINICAL
ANESTHESIA EXAM AT THE SEPT.1987 EXAM GIVEN AT LOMA LINDA
UNIVERSITY.

PROPOSED REGULATION:

REGULATION TO ADDRESS I.V.SEDATION FOR DENTISTS

INTENTION: TO STATE THE REQUIRED EDUCATION AND
CERTIFICATION TO ADMINISTER/MONITOR
I.V. SEDATION. 12 AAC 28.320

CONCERN FOR PATIENT SAFETY WAS BROUGHT TO THE BOARDS
ATTENTION BY A REPRESENTATIVE OF THE ORAL SURGEONS.
A COMMITTEE WAS FORMED TO REVIEW REGULATIONS FROM OTHER
STATES REGARDING I.V.SEDATION. PROPOSED WORDING WILL
WILL BE FORTH COMING.

AGD IMPACT

THE NEWSMAGAZINE OF THE ACADEMY OF GENERAL DENTISTRY

VOLUME 16 NUMBER 2

LICENSURE BY CREDENTIALS

Dentists face battles crossing state lines

By Silvia Foti

A dentist from New York decides he wants to practice in Hawaii, but finds that he first must pass the Hawaii dental exam. If a Hawaiian dentist, however, wants to move to New York, he has only to prove that he has a license to practice dentistry, has been practicing for five years, and has a clean record.

The New York policy is called licensure by credentials, which means that a dentist doesn't have to take another examination to prove he is competent. His experience and credentials are enough.

In some states, licensure by credentials is extended only to those dentists from states with a mutually cooperative licensure agreement. For example, Pennsylvania will accept Utah dentists based on their credentials only if Utah will accept Pennsylvania dentists on the same terms. This is called licensure by reciprocity, sometimes referred to as "blackmail reciprocity."

According to the American Dental Association (ADA), the District of Columbia, Connecticut, Illinois, Indiana, Iowa, Kansas, Maine,

Continued on page 10



My kind of town
Participants will be "Reaching New Heights" at this



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Congressional review

The first session of the 100th Congress will be

research... for its
assumption of su... many issues.
carbohydrates fac...
ment of plaque, der

For he's a jolly good Fellow

More than 60 percent of AGD members indicated that they intend to pursue the prestigious Fellowship Award.



Stalemates make for slow year in Congress

Deficit, taxes and AIDS will dominate next session

By Zev Remba

The first session of the 100th Congress probably will be remembered for the host of bills that didn't pass rather than for those that won approval.

It was a year when Congress, through negotiations with the White House, made the first real inroads into trimming the \$148 billion federal deficit.

It also was a year when Democrats, having won control of both the House and Senate, clashed with the White House and Congressional Republicans over issues including the federal budget, tax increases and AIDS policies. The result: legislative stalemates on many issues.

The second session of the 100th Congress, which opens Jan. 19, likely will see the passage of some important health care legislation—particularly in the areas of AIDS testing and anti-discrimination, mandated health benefits and the Federal Trade Commission.

New public laws

Federal data bank on malpractice. Although a 1986 law directed the Department of Health and Human Services (HHS) to develop a nationwide data bank on malpractice claims and disciplinary actions against health care providers, Congress failed to fund the data bank in time for its November 1987 startup. In the last days of December 1987, Congress finally came up with \$3.2 million to launch the project, but the new startup date—sometime in 1988—is anybody's guess.

Sanctions against unfit doctors.

Under the Medicare and Medicaid Patient Protection Act, signed by the President in August, HHS now can bar unscrupulous or unfit dentists, physicians, or other providers from taking part in Medicare, Medicaid, or other federal health programs. Health care providers convicted of fraud, patient abuse or neglect under one program may not take part in any federal health program for at least five years. The law allows HHS to

exclude doctors who provide unnecessary or substandard care.

New tax measures. A package of spending cuts and revenue-raisers, based on agreements forged between Congress and the White House in November 1987, wound its way through Congress in the last few days of the 1987 session. The new law raises \$9 billion in fiscal 1988 and \$14 billion in fiscal 1989 by tightening tax provisions for businesses and wealthy individuals. About one-fourth of the savings comes from cutting or capping Medicare payments to physicians and hospitals.

Among the new tax provisions:

- Professional corporations with taxable income below \$335,000 will pay the flat 34 percent corporate tax rate rather than use graduated tax rates.

- Employers no longer will be permitted to deduct new contributions to vacation reserves or to certain pension funds

- Owners of family businesses may no longer take FICA tax exemptions for children and spouses working for them.

Bills expected to pass

Two bills that could impact on dental practices are near passage, and will likely become law in 1988.

The House and Senate versions of a bill redefining the scope of the Federal Trade Commission (H.R. 2897) are before negotiators who will work out differences between the two chambers. The bills direct the FTC to study the causes of liability premium hikes for dentists, physicians, day care centers and other groups. If approved, the bills would allow Congress to veto FTC rulings within 90 days and limit the FTC's ability to interfere in state-regulated professions such as dentistry.

In October, the House approved the High Risk Occupational Disease Notification and Prevention Act (H.R. 162), which would require the federal government to notify workers of possible exposure to disease-causing chemicals. An amendment to

the bill by Rep. William Dannemeyer (R-Calif.) would require 3-4 million dental, medical and emergency care workers to be warned that they are at risk of contracting the virus that causes AIDS. The bill also would require employers of these "at-risk" workers to provide and pay for medical monitoring of the conditions of workers.

Sen. Jesse Helms (R-N.C.) has agreed to offer a similar amendment to the Senate version of the bill (S. 79), which won approval from a Senate Labor Committee in September and is ready for action on the Senate floor.

Bills to watch

Mandated health benefits. The Senate Labor Committee held extensive hearings on a proposal by Sen. Edward Kennedy (D-Mass.) to require employers to pay 80 percent of the cost of health benefits for their workers (S. 1265). Organized labor and the American Hospital Association say the bill would provide access to health care for about two-thirds of the nation's 37 million uninsured.

AIDS testing and confidentiality.

Democrats and liberal Republicans reached a stalemate with conservative members of Congress in 1987 over legislation (H.R. 3071) that would fund voluntary AIDS testing and counseling. The bill, drafted by Rep. Henry Waxman (D-Calif.), also would ensure confidentiality of test results and extend anti-discrimination protection to those carrying the AIDS virus.

Insurance reform. Interest of Congressional Democrats in insurance reporting legislation picked up in late 1987 when a House panel approved product liability legislation. Rep. Al Swift (D-Wash.) hopes to see his bill (H.R. 3643)—which would require insurers to report data on payouts, premiums and investment income for each line of insurance—attached to a product liability bill on the House floor.

P.L.
99-660

SENATE COMMITTEE REPORT

FURTHER

FINANCE

3/17/88

DATE TURNED INTO OFFICE _____

Mr. President:

LABOR AND COMMERCE Committee considered HOUSE BILL NO. 103

extending the termination date of the Board of Dental Examiners; efd

and recommended

replace with _____ CS _____) same title
 or adopt _____ CS _____) new title

attached amendment(s) and

Mozus
 do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous

zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

Tim Kelly - Do Pass

Chairman signature and recommendation

Committee Backup attached

HB 103: An Act extending the termination date of the Board of Dental Examiners; and providing for an effective date.

HB 103 proposes the continuation of the Board of Dental Examiners to June 30, 1991.

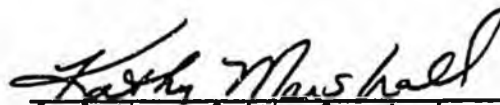
Currently, there are approximately 740 licensees composed of both dentists and dental hygienists. A number of these licensees also hold additional licenses to practice as dental specialists and dental hygienists authorized to administer local anesthetic agents.

In 1986, the board was extended to June 30, 1988 with letters of intent directing the board to complete its continued competency regulations, develop new procedures for credentialing, restructure the existing examinations, and to evaluate the possibility of joining a regional examination board.

To satisfy these directives, the board has completed and adopted its continued competency regulations, and, in place of restructuring the former State exam, on June 25, 1987, an agreement was signed with the Western Regional Examining Boards (WREB) to join and utilize the examinations offered by the regional boards

Licensure by credentials is a complex issue yet to be fully addressed by the board, identified in Recommendation No. 1 of the current performance audit report. Inaction of the board on this issue received the attention of the Office of the Governor; in response to board inaction, two vacancies on the board were filled with appointees more favorably disposed toward licensure by credentials. Currently, with a more balanced board member perspective on credentialing, it seems appropriate that the board be allowed to continue deliberations on this issue, especially when a thorough public examination of the potential problems surrounding credentialing has not taken place.

In summary, the board is necessary for protection of the public's health, safety and welfare, and is genuinely concerned that Alaskan consumers receive quality dental care services. Therefore, the department and the Division of Occupational Licensing strongly endorse continuation of the Board of Dental Examiners.



J. Anthony Smith, Commissioner
Department of Commerce and
Economic Development

2/24/88
Date

HB

106

HOUSE COMMITTEE REPORT

(111)

Date referred: 3/4/87

FURTHER REFERRALS:

DATE: 3/17/87

The Finance Committee has considered HB 106

"An Act relating to the payment of criminal fines and restitution."

RECOMMENDS:

- replace with CS HB 106 (Fin) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

ADAMS Albert B. Adams

POUR Hoti Kourche

GOLL Peter Goll

BOYER Mark Boyer

ZIEGER Thomas Zieger

FRANK Frank

BRANT ey Brant

DAVIS Mike Davis

ARSON Ronald Arson

SIGNING OTHER RECOMMENDATIONS:

WALLIS F. Roy Wallis no rec

Albert B. Adams
Chairman's signature

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CSHB 106 (FIN)
Publish Date: _____

Revision Date: _____
Title: An Act relating to restitution

Agency Affected: Public Safety
BRU: _____

Sponsor: Davidson
Requestor: House Finance Committee

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

APA

Prepared by: Al Adams, Chair Phone: 465-3706
Division: House Finance Committee Date: 3/17/87

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Original sponsors: Davidson, Brown,
Goll, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 106 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the payment of criminal fines and
7 restitution."

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

9 * Section 1. AS 12.55.045(a) is repealed and reenacted to read:

10 (a) The court may order a defendant convicted of an offense to
11 make restitution as provided in this section, including restitution to
12 the victim, to a public, private, or private nonprofit organization
13 that has provided counseling, medical, or shelter services to the
14 victim, or as otherwise authorized by law. A defendant is presumed to
15 have the ability to pay restitution unless the defendant establishes
16 the inability to pay by a preponderance of the evidence. In
17 determining the amount and method of payment of restitution, the court
18 shall take into account the

19 (1) public policy that favors requiring criminals to com-
20 pensate for their actions;

21 (2) financial burden placed on the victim and others as a
22 result of the criminal conduct of the defendant; and

23 (3) financial resources of the defendant and the nature of
24 the burden its payment will impose.

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

26 (d) In any case, including a case in which the defendant is
27 convicted of a violation of AS 11.46.120 - 11.46.150 and [IN WHICH]
28 the property is commercial fishing gear as defined in AS 16.43.990,
29 the court [SHALL CONSIDER THE VICTIM'S NEED FOR, AND] may order [,]

1 restitution that may include compensation for loss of income.

2 * Sec. 3. AS 12.55.051(a) is amended to read:

3 (a) If the defendant defaults in the payment of a fine or any
4 installment or of restitution or any installment, the court may order
5 the defendant to show cause why the defendant should not be sentenced
6 to imprisonment for nonpayment. If the defendant fails to establish
7 [COURT FINDS] by a preponderance of the evidence that the defendant
8 did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN
9 INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the
10 fine or restitution, the court may order the defendant imprisoned
11 until the order of the court is satisfied. A term of imprisonment
12 imposed under this section may not exceed one day for each \$50 of the
13 unpaid portion of the fine or restitution or one year, whichever is
14 shorter. The state may enforce payment of a fine and the restitution
15 recipient may enforce payment of a restitution order against a defen-
16 dant under AS 09.35 as if the order were a civil judgment enforceable
17 by execution. Credit shall be given toward satisfaction of the order
18 of the court for every day a person is incarcerated for nonpayment of
19 a fine [OR RESTITUTION].
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29

Kay Brown

Alaska State Legislature House of Representatives

MEMORANDUM

TO: Rep. Adams, Chairman
House Finance Committee

DATE: March 17, 1987

FROM: Rep. Kay Brown

RE: CSHB 106
Subcommittee Report

The Subcommittee is pleased to recommend for passage the attached draft of CSHB 106 (Finance). This draft incorporates four amendments to CSHB 106 (Judiciary). Each amendment has been approved by the prime sponsor.

1. Page 1, line 12:

This amendment makes it clear that a judge could order restitution directly to the victim of a crime and to an organization which provided the victim with counseling, medical, or shelter services. The former version may have been construed to encourage or allow restitution only to the victim or for certain types of damages.

2. Page 1, line 12:

This amendment added the word "private" to make it clear that a private organization could get restitution to the same extent as a public or private nonprofit organization.

3. Page 1, Line 27:

The words "in which" were deleted to improve the clarity of the sentence; no substantive change resulted; the amendment still recognizes the right to be awarded restitution for lost income when fishing gear is stolen.

4. Page 1, Line 29:

The subcommittee deleted language requiring the judge to consider the victim's need before ordering restitution. Under the subcommittee's amendment all victims, regardless of financial condition, could be awarded restitution.

The subcommittee is not recommending an amendment which would require the defendant to establish his need for a public defender. Although the subcommittee recognizes the probable merit of this idea, it appears it would not be appropriate in this bill because it would change the focus of the bill from restitution. Such an amendment is not supported by the prime sponsor. Additionally, the subcommittee feels this subject would benefit from the information gained in hearings before other committees.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 5, 1987

SUBJECT: Criminal fines and restitution
CSHB 106(Jud)

TO: Representative Cliff Davidson

FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of CSHB 106(Judiciary):

Section 1 - Allows the court to order a convicted defendant to make restitution and establishes a presumption of ability to pay. Establishes criteria for the court to apply in determining the amount and method of restitution.

Section 2 - Requires the court to consider the victim's need for restitution.

Section 3 - Requires the defendant to establish by a preponderance of the evidence that refusal or failure to pay restitution was not intentional, or the court may imprison the defendant. Allows the state enforce payment of a fine and the recipient of the restitution to enforce payment of the restitution, by execution under AS 90.35. Removes credit for time in prison for failure to pay restitution.

MFF:mkr
m9/096



STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON

District 27

Box 746, Kodiak, Alaska 99615

March 6, 1987

To: Representative Al Adams, Chairman
House Finance Committee

From: Representative Cliff Davidson

Re: CS FOR HOUSE BILL NO. 106 (Judiciary)

In the last few minutes of the Judiciary hearing on HB 106, three words were inserted into the bill which narrowed my intent of the bill. In lines 11 and 12 of the first page, the words "to the victim" were inserted. While I agreed with the committee that the object of the bill was to make the victim as whole as possible, I had additional reasons for the bill.

In testimony we heard that costs billed to the victim for care in the shelter programs ranged from \$3.50 to \$10 per day, while the actual cost might be \$80 to \$100 per day. For a five day stay in a shelter, a restitution of \$17.50, while the actual cost was \$400, doesn't seem to me to send the right kind of message. I would like to have the judge be able to look at these actual costs in ordering the restitution. Protection against unrealistic or oppressive restitution is guaranteed in the three provisions of Section 1.

Paying the restitution to the victim would make the victim vulnerable to continued violence. The message should be that the defendant is answerable to society through the court for their violence. I equate restitution with a sentence of responsibility for the violence by the court to the defendant.

Also in testimony, it was explained that studies show the incidence of violence is lowered when the perpetrator is arrested and brought to trial. I think a sentence of counseling and restitution would be preferable to expensive incarceration.

Thank you for allowing my explanation.



STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON

District 27

Box 746, Kodiak, Alaska 99615

February 23, 1987

To: John Sund, Chairman
House Judiciary Committee

From: Cliff Davidson

Re: Re-write of HB 106

Upon reading the enclosed letter from Public Defender Dana Fabe, I would like to request that the suggested changes be made. My two main inclusions in the bill were to allow the judge to ask for restitution to care-giving institutions, and that the defendant be required to establish inability to pay restitution rather than requiring the prosecution to establish ability of the defendant to pay.

I appreciate the assistance in the suggested re-write.

Thank you.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

PUBLIC DEFENDER AGENCY

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 279-7541

February 19, 1987

John Hartle
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

RE: HOUSE BILL NO. 106

Dear John:

A copy of our position paper on HB 106 is currently being routed through the Commissioner's office. Since you have requested an immediate response to this legislation, this letter contains the concerns I expressed over the phone to you.

HB 106 does three things:

1. It changes the burden of proof at sentencing to require a defendant to prove that he or she does not have the ability to pay full restitution. Currently the prosecution must prove that the defendant does have the ability to pay.
2. It shifts the burden to the defendant of proving that he or she did not intentionally refuse or fail to pay the fine; and
3. It requires the judge to mandatorily impose an entire suspended jail sentence on the defendant if there is any default in the fine or restitution payment.

This third provision of the bill is extremely problematical. It mandates that the court incarcerate a defendant who fails to make a single installment of his fine, a result which is contrary to Alaska Supreme Court law which requires the court to find that reincarceration is necessary once a probation violation has been found. A defendant could be incarcerated for years if he were to miss one fine payment unless he had the financial resources to pay the total amount of the fine or restitution.

This provision violates equal protection standards and penalizes an indigent defendant. Two identically situated defendants would be treated differently under this provision based only on their financial status. Take the following example. Defendant A has \$3,000 of restitution to pay. He has a low-paying job and is thus ordered to pay \$100 a month. He has five years of suspended time hanging over his head. If he misses one of his \$100 installments he would be revoked and would face a mandatory term of five years in jail. The judge could not

modify or lessen that term under this bill. Furthermore, he would remain in jail for that five years if he didn't have the funds to pay the \$3,000 total.

Defendant B, who is wealthy, has also intentionally failed to make his restitution payment. His probation would also be revoked but he would be able to pay the full \$3,000 amount, thus enabling him to buy his way out of jail. This disparate treatment of two persons based on their economic standing violates equal protection standards and comes close to debtor's prison in that a person's incarceration will depend totally on his ability to pay the total fine (not simply the missed installment).

This provision penalizes those on probation and rewards repeat offenders who are subject to presumptive time. This bill states that a person who does not have probationary time hanging over his head will be required to serve one day of jail for every \$50 of the fine or restitution which has not been paid. On the other hand, a probationer who has three years of suspended time over his head will spend the entire period of suspended time if the total amount of the fine cannot be paid.

Take the following example: Two defendants who have committed identical property offenses and each has a \$1000 restitution requirement for property damage to the home which was burglarized. Offender A is a first offender who has no prior record and the court gives him three years with all three suspended on the condition that he pay restitution. Offender B is a second time offender and is given the four-year presumptive term. He cannot receive any additional suspended probationary time on top of that four-year term under the current presumptive sentencing scheme.

Each of the offenders is found to have intentionally missed a restitution payment. Offender A, the first time offender, will be required to serve three years in jail unless he can come up with the \$1000. Offender B, the repeat burglar, will be able to work off his fine in 20 days (20 x \$50 = \$1000). This type of anomaly will penalize first offenders who are more likely to receive probation and will reward repeat offenders who receive presumptive time.

This provision removes discretion from the judges. Current Alaska Supreme Court case law requires each judge to go through a two-prong analysis when determining whether to revoke probation. First, the judge must decide whether a condition of probation has been violated. If it has, the judge must then decide whether reincarceration is necessary, for what period of time that reincarceration should extend, and whether further restrictions or modifications of probation might solve the problem which caused the violation.

Thus, if a defendant is found to have been using cocaine, the judge can incarcerate him for a lengthy period of time, incarcerate him for a short period of time and then require drug rehabilitation, or can send him directly into a residential drug rehabilitation program as a new condition of probation. The judge's decision will depend greatly upon

the nature of the underlying offense, whether the violation of probation was an isolated incident or a repeated course of conduct, whether the offender's attitude requires jail time to get his attention, and whether the nature of the violation of probation indicates that reincarceration is necessary to protect the public.

Under this law, failure to make one installment of a fine or restitution will often result in a much more severe form of punishment than many other more serious types of probation violations. The trial judge who has heard the facts of the case, has had experience with the offender, and can hear the recommendations of the probation officer is in the best position to determine whether reincarceration is necessary. Often, a defendant will have a good payment record on restitution and an outside pressure or stress will cause one or more missed payments. Bringing that offender back before the judge for a stiff lecture or a small jolt of jail time as a reminder of the alternative may be as effective in motivating full payment of restitution.

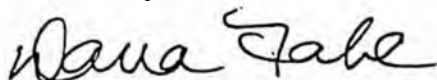
In summary, this section of the bill deprives the trial court of discretion, penalizes first offenders and indigent defendants and will result in unnecessary incarceration of defendants who are otherwise on the road to rehabilitation.

Also problematical is the second section of the bill which shifts the burden of proof of a probation violation from the prosecution, which normally has the burden to prove that a defendant has violated a condition, to the defendant to prove that he did not violate it. This bill requires a defendant to establish by a preponderance of the evidence that he did not intentionally fail to pay his fine or restitution. This reversal of the burden of proof differs from that of all other probation violations where the prosecution is required to prove the defendant's violation.

Finally, the Public Defender Agency agrees that requiring a defendant to establish his inability to pay restitution rather than requiring the prosecution to establish his ability to pay, makes good sense. The defendant will usually have better access to the types of records necessary to establish an inability to pay and the prosecution may often be groping in the dark to try to establish an ability to pay.

The official position paper on this bill will be available to you shortly. I hope this is of some assistance. I will see you on Thursday, February 26th.

Sincerely,



Dana Fabe
Public Defender

DF:sh

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Administration
 Title: "An Act relating to the payment of criminal fines and restitution" BRU: Public Defender Agency
 Sponsor: Representative Davidson Components: Third Judicial District
 Requestor: House Rules

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dana Fabe, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: January 19, 1988

Approved by Commissioner: John Andrews Date: 1/21/88
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

RECEIVED
 JAN 21 1988

HB 106

POSITION PAPER

CS HB 106

The Alaska Public Defender Agency and the Office of Public Advocacy are totally reactive agencies which provide representation to indigent persons when appointed by the court. These agencies do not make policy nor do they initiate litigation. Only proposed legislation with fiscal or program ramifications for these agencies can be said to have a direct agency impact. Thus, the Public Defender Agency and Office of Public Advocacy submit position papers for legislation which will affect these agencies fiscally or programatically or will require these agencies to litigate constitutional issues raised by the legislation.

Fiscal impact: X None See attached fiscal note _____

Program impact: _____ None See analysis below X

Constitutional impact: _____ None See analysis below X

This bill makes three major changes in the restitution scheme:

1. It changes the burden of proof at sentencing to require a defendant to prove that he or she does not have the ability to pay full restitution. Currently the prosecution must prove that the defendant does have the ability to pay.

The Public Defender Agency agrees that requiring a defendant to establish his inability to pay restitution rather than requiring the prosecution to establish his ability to pay, makes good sense. The defendant will usually have better access to the types of records necessary to establish an inability to pay and the prosecution may often be groping in the dark to try to establish an ability to pay.

2. It shifts the burden to the defendant of proving that he or she did not intentionally refuse or fail to pay the fine.

Section 3 of the bill, which shifts the burden of proof of a probation violation from the prosecution to the defendant, is problematical. The prosecution normally has the burden to prove that a defendant has violated a condition of probation. This provision of the bill will require the defendant to prove that he did not violate his probation. The bill requires a defendant to establish by a preponderance of the evidence that he did not intentionally fail to pay his fine or restitution. This reversal of the burden of proof departs drastically from the requirement in all other probation violations that the prosecution must prove the defendant's violation. Since imposition of jail time may result, this situation differs from the one discussed above.

3. It streamlines enforcement and collection of a fine or restitution.

The section streamlining collection and enforcement of fines and restitution will help victims collect restitution without being required to relitigate the issue in civil court.

Dana Fabe *DF*

Dana Fabe, Public Defender
Public Defender Agency

1/20/88

Date

Brant McGee *BM*

Brant McGee, Director
Office of Public Advocacy

1/20/88

Date

John Andrews

Commissioner John Andrews
Department of Administration

1/21/88

Date

R10 3/17/87
rec'd 4/7/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CS HB 106 (Finance) am
Publish Date: _____

Revision Date: _____
Title: An Act relating to the payment of criminal fines and restitution
Sponsor: Davidson, Brown, Goll, et al.
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic Violence & Sexual Assault
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Section 1 may provide additional funding for domestic violence and sexual assault programs by permitting restitution to these programs from defendants convicted of an offense.

JWR
3/31/87

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
Division: Council on Domestic Violence and Sexual Assault Date: 3-31-87

Approved by Commissioner: [Signature] Date: 4/2/87
Agency: Department of Public Safety

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

RECEIVED
APR 07 1987

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: CS HB 106 (JUN)
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: "An Act relating to the payment of criminal fines and restitution."
Sponsor: Rep. Davidson, Brown, Goll, et al
Requestor: House Judiciary

Agency Affected: Dept. of Corrections
BRU: Operations
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

It is felt that this bill will have some effect on inmate population though not much. The size of the impact will depend on the courts.

Prepared by: Susie Riley, Program Budget Analyst Phone: 465-3376
Division: Administrative Services Date: 2/18/87
Approved by ^{Acting} Commissioner: William W. Ladwig Date: 2/18/87
Agency: Department of Corrections

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

No. 5

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____
 Revision Date: _____
 Title: "An Act relating to the pay-
 ment of criminal fines..."
 Sponsor: Davidson, Et. Al.
 Requestor: House Judiciary

Bill Number: CSHB 106 (Jud)
 Publish Date: HOUSE 3/4/87

Agency Affected: Administration
 BRU: Office of Public Advocacy
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy
 Approved by Commissioner: Dr. Garrey Peske
 Agency: Department of Administration

Phone: 274-1684
 Date: 2/22/87
 Date: 2/26/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CSHB 106 (Jud)
Publish Date: HOUSE 3/4/87

Revision Date: _____

Agency Affected: Department of Administration

Title: "An Act relating to the payment of criminal fines and restitution."

RRJ: Public Defender Agency

Sponsor: Davidson, et al.

Components: _____

Requestor: House Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-				

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS						
OTHER						
TOTAL		-0-				

POSITIONS:

FULL-TIME		-0-				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Zero fiscal impact.

Prepared by: Dana Fabe, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: February 20, 1987

Approved by Commissioner: [Signature]
Agency: Dept. Administration

Date: 2/26/87

Distribution (by preparer):

- Legislative Finance -
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

No. 3

REQUEST: _____

Bill Version: CSHB 106(Jud)
Publish Date: HOUSE 3/4/87

Revision Date: _____
Title: An Act relating to the payment of criminal fines and restitution
Sponsor: Davidson, Brown, Goll, etc.
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

JNR
2/17/87
Prepared by: Barbara Miklos, Executive Director *BGM* Phone: 465-4356
Division: Council on Domestic Violence & Sexual Assault Date: 2-17-87
Approved by Commissioner: X *Wicks* Date: 2/17/87
Agency: Public Safety

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

Bill Version: CSHB 106(Jud)
Publish Date: HOUSE 3/4/87

REQUEST:

Revision Date: Agency Affected: Alaska Court System
Title: An act relating to the payment BRU: Trial Courts
of criminal fines and restitution
Sponsor: Davidson, Brown, Goll, ... Components:
Requestor: House Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL
REVENUE

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 2-18-87
Approved by: *Stephanie Cole* Stephanie J. Cole, Deputy Director Date: 2-18-87
Agency: Alaska Court System

- Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

715 (1985); *Oswald v. State*, Ct. App. Op. No. 594 (File Nos. A-387, A-427), 716 P.2d 276 (1986).

Quoted in *Jennings v. State*, Ct. App. Op. No. 588 (File No. A-1189), 713 P.2d 1222 (1986).

II. COMPUTATION OF TERM.

Determination of credit for time served. — The appropriate time to resolve credit for time served is at the sentencing hearing and the trial court should expressly identify those periods of time for which credit is to be allowed. *Ackermann v. State*, Ct. App. Op. No. 600 (File No. A-931), 716 P.2d 5 (1986).

Credit for time spent on probation. — A person in third-party custody who has the freedom to move about the community, limited only by his custodian's accompaniment, and one who is confined to a fishing boat while it is at sea is not entitled to credit for time spent on probation. *Ackermann v. State*, Ct. App. Op. No. 600 (File No. A-931), 716 P.2d 5 (1986).

III. CONSECUTIVE SENTENCES.

Preference for consecutive sentences. — Subsections (e) and (g) express a preference for consecutive sentences which a trial court has discretion to reject in appropriate circumstances. *State v. Andrews*, Ct. App. Op. No. 510 (File Nos.

A-468, A-492, A-552), 707 P.2d 800 (1985).

Crimes committed after imprisonment on former offense. — Under subsection (e) trial judges are required to impose consecutive sentences on individuals convicted for crimes which are committed after they had been imprisoned on a former offense. *Sanders v. State*, Ct. App. Op. No. 619 (File No. A-1291), 718 P.2d 167 (1986), following *Jennings v. State*, Ct. App. Op. No. 588, 713 P.2d 1222 (1986).

Upon revocation of probation, etc.

Where a defendant's probation on a conviction for burglary in the first degree, AS 11.46.300, was revoked because of his conviction of bank robbery in federal district court, a sentence of four years with two years suspended, consecutive to his federal robbery sentence, was not excessive. *Dodd v. State*, Ct. App. Op. No. 398 (File No. A-271), 686 P.2d 737 (1984).

IV. CONCURRENT SENTENCES.

Trial courts have discretion under this section to impose concurrent sentences. *Drumbarger v. State*, Ct. App. Op. No. 601 (File No. A-770), 716 P.2d 6 (1986).

Correction of judgment unlawfully imposing concurrent sentences. — See *Joseph v. State*, Ct. App. Op. No. 577 (File No. A-1166), 712 P.2d 804 (1986).

Sec. 12.55.045. Restitution. The court may order a defendant convicted of an offense to make restitution as provided in this section or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the financial resources of the defendant and the nature of the burden its payment will impose.

(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.

(d) In a case in which the defendant is convicted of a violation of AS 11.46.120 — 11.46.150 and in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's need for, and may order, restitution that may include compensation for loss of income. (§ 12 ch 166 SLA 1978; am § 38 ch 102 SLA 1980; am § 1 ch 73 SLA 1986)

707 P.2d 900

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State, Ct. App.
(291), 718 P.2d
nings v. State,
713 P.2d 1222

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No. 398 (File
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SENTENCES.

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Cross references. — For requirement that court suspend commercial fishing privileges of certain defendants, see AS 16.05.710(b).

Effect of amendments. — The 1986 amendment added subsection (d).

NOTES TO DECISIONS

Editor's notes. — The note under the catchline "Enforcement of restitution under AS 12.55.051" in the main pamphlet should be disregarded. See the note below under the same catchline.

Purpose and amount of restitution. — Restitution should not only compensate the victim for the harm inflicted by the offender, but should further the rehabilitation of the offender; if restitution is ordered in an amount that is clearly impossible for the offender to pay, the offender's rehabilitation will be inhibited and not furthered. *Karr v. State*, Sup. Ct. Op. No. 2848 (File No. 7011), 686 P.2d 1192 (1984).

Policy considerations. — As to policy considerations militating against approach adopted by the Alaska Court of Appeals in *Brezanoff*, see *Karr v. State*, Sup. Ct. Op. No. 2848 (File No. 7011), 686 P.2d 1192 (1984).

Inquiry at initial sentencing. — Initial sentencing is the appropriate time at which an inquiry into an offender's ability to pay restitution must be performed. This inquiry should include an analysis of any assets the offender presently owns, his past earning capacity and potential in the future as a wage earner, based on his experience, training, and any other relevant

factors. *Karr v. State*, Sup. Ct. Op. No. 2848 (File No. 7011), 686 P.2d 1192 (1984).

Remand for determination of earning capacity. — Though a presentence report recommended restitution, it did not discuss the defendant's earning capacity or the kinds of jobs that she could reasonably be expected to perform in the future; it was therefore necessary that the case be remanded to the trial court for further findings. *Zimmerman v. State*, Ct. App. Op. No. 524 (File No. A-921), 706 P.2d 343 (1985).

Enforcement of restitution under AS 12.55.051. — AS 12.55.051(a) prescribes a specific method for dealing with enforcement of court orders requiring the payment of fines or restitution, regardless of whether such orders are directly imposed as part of the original sentence, under this section, or indirectly imposed as a condition of probation, under AS 12.55.100; AS 12.55.051 expressly provides that imprisonment for failure to pay court-ordered restitution is permissible only if the failure to pay was intentional or the result of bad faith. *Lominac v. Municipality of Anchorage*, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Sec. 12.55.051. Enforcement of fines and restitution.

NOTES TO DECISIONS

Editor's notes. — The note under the catchline "Revocation of probation for willful failure to pay restitution was error" in the main pamphlet should be disregarded.

Generally. — Subsection (a) of this section prescribes a specific method for dealing with enforcement of court orders requiring the payment of fines or restitution, regardless of whether such orders are directly imposed as part of the original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under AS 12.55.100; this section expressly provides that imprisonment for failure to

pay court-ordered restitution is permissible only if the failure to pay was intentional or the result of bad faith. *Lominac v. Municipality of Anchorage*, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Legislative mandate of AS 12.55.045(a) is not replaced. — Opportunity provided by this section for the court to later modify a restitution order does not replace the legislative mandate of AS 12.55.045(a). *Karr v. State*, Sup. Ct. Op. No. 2848 (File No. 7011), 686 P.2d 1192 (1984).

State, Ct. App.
41, 655 P.2d 1320

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actual loss to the victim is appropriate, even though the loss exceeds the maximum property-value figure which defines the lesser offense. *Fee v. State, Ct. App. Op. No. 187 (File No. 6951), 658 P.2d 1202 (1982).*

Amount of restitution held proper. — The trial court did not err in ordering \$300,000 restitution upon conviction of embezzlement by an employee and theft in the first degree even though it would be impossible for the defendant to pay such a large amount, due to the difficulty in predicting at that point what amount of restitution was reasonable for defendant to pay. *Karr v. State, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).*

Enforcement of restitution under AS 12.55.051. — AS 12.55.051(a) prescribes specific method for dealing with

enforcement of court orders requiring payment of fines or restitution, regardless of whether such orders are directly imposed as part of original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under AS 12.55.100; thus it was error to revoke appellant's probation in spite of finding that her failure to pay restitution, a condition of her probation, was willful. *Lominac v. Municipality of Anchorage, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).*

Quoted in *Whittlesey v. State, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980).*

Stated in *Dorris v. State, Ct. App. Op. No. 192 (File No. 5947), 656 P.2d 578 (1982).*

Sec. 12.55.050. Increased punishment for persons convicted of more than one felony. [Repealed, § 21 ch 166 SLA 1978. For sentences of imprisonment for felonies, see AS 12.55.125.]

Sec. 12.55.051. Enforcement of fines and restitution. (a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment. If the court finds by a preponderance of the evidence that the default was attributable to an intentional refusal or failure to make a good faith effort to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each \$50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

(b) When a fine or restitution is imposed on an organization, the person authorized to make disbursements from the assets of the organization shall pay the fine or restitution from those assets. A person required to pay a fine or restitution under this subsection who intentionally refuses or fails to make a good faith effort to pay is punishable under (a) of this section.

(c) Pursuant to a petition filed by a defendant who has been sentenced to pay a fine or restitution or an installment, the court, upon a finding of inability to pay, may order modification of the fine or restitution, subject to conditions the court finds appropriate. (§ 12 ch 166 SLA 1978)

Introduced: 2/4/87
 Referred: Judiciary and
 Finance

BY DAVIDSON, BROWN, GOLL,
 LARSON, MENARD, TAYLOR,
 KOPONEN, GRUENBERG AND
 ZAWACKI

1 IN THE HOUSE

2

HOUSE BILL NO. 106

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the payment of criminal fines and
 7 restitution."

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

9 * Section 1. AS 12.55.045(a) is repealed and reenacted to read:

10 (a) The court may order a defendant convicted of an offense to
 11 make restitution as provided in this section, including restitution to
 12 a public or private nonprofit organization that has provided counsel-
 13 ing, medical, or shelter services to the victim, or as otherwise
 14 authorized by law. A defendant is presumed to have the ability to pay
 15 restitution unless the defendant establishes the inability to pay by a
 16 preponderance of the evidence. In determining the amount and method
 17 of payment of restitution, the court shall take into account the

18 (1) public policy that favors requiring criminals to com-
 19 pensate their victims;

20 (2) fact that a victim may encounter difficulty in obtain-
 21 ing an enforceable civil judgment;

22 (3) financial burden placed on the victim as a result of
 23 the criminal conduct of the defendant; and

24 (4) need of the victim and society for punitive compen-
 25 sation to be extracted from the defendant.

26 * Sec. 2. AS 12.55.051(a) is amended to read:

27 (a) If the defendant defaults in the payment of a fine or any
 28 installment or of restitution or any installment, the court may order
 29 the defendant to show cause why the defendant should not be sentenced

1 to imprisonment for nonpayment. If the defendant fails to establish
2 [COURT FINDS] by a preponderance of the evidence that the defendant
3 did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN
4 INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the
5 fine or restitution, the court may order the defendant imprisoned
6 until the order of the court is satisfied. If the defendant was not
7 given a suspended sentence of imprisonment conditioned upon paying a
8 fine or restitution, a [A] term of imprisonment imposed under this
9 section may not exceed one day for each \$50 of the unpaid portion of
10 the fine or restitution or one year, whichever is shorter. If the
11 defendant was given a suspended sentence of imprisonment conditioned
12 upon paying a fine or restitution, the defendant shall be incarcerated
13 for the duration of the sentence or until the fine or restitution is
14 totally paid, whichever is shorter. The state may enforce payment of
15 a fine and the restitution recipient may enforce payment of a re-
16 stitution order against a defendant under AS 09.35 as if the order
17 were a civil judgment enforceable by execution [CREDIT SHALL BE GIVEN
18 TOWARD SATISFACTION OF THE ORDER OF THE COURT FOR EVERY DAY A PERSON
19 IS INCARCERATED FOR NONPAYMENT OF A FINE OR RESTITUTION].

CSHB

106

SENATE COMMITTEE REPORT

FURTHER

4/22/88

DATE TURNED INTO OFFICE 5/6/88

Mr. President:

FINANCE Committee considered CSHB 106 (FIN) am
payment of criminal fines and restitution

and recommended

replace with S CS CSHB 106 (Fin) same title
 or adopt _____ CS _____ new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)
 new updated or previous
 zero \$FC fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures: Paul ...]

[Handwritten signature: Dick Halford]
Chairman signature and recommendation

Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Payment of criminal fines
and restitution
Sponsor: _____
Requestor: Senate Finance Committee

Dept of Corrections
Agency Affected: Dept of Public Safety
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Rick Halford*
Division: Senator Rick Halford Co-chairman
Senate Finance Committee

Phone: 465-3753
Date: May 6, 1988

Approved by Commissioner: _____
Agency: _____

Date: _____

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

Original sponsors: Davidson, Brown,
Goll, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 106 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the payment of criminal fines and
7 restitution."

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

9 * Section 1. AS 12.55.045(a) is repealed and reenacted to read:

10 (a) The court may order a defendant convicted of an offense to
11 make restitution as provided in this section, including restitution to
12 the victim, to a public, private, or private nonprofit organization
13 that has provided counseling, medical, or shelter services to the
14 victim, or as otherwise authorized by law. A defendant is presumed to
15 have the ability to pay restitution unless the defendant establishes
16 the inability to pay by a preponderance of the evidence. In determin-
17 ing the amount and method of payment of restitution, the court shall
18 take into account the

19 (1) public policy that favors requiring criminals to com-
20 pensate for damages and injury to their victims;

21 (2) financial burden placed on the victim and those who
22 provide services to the victim as a result of the criminal conduct of
23 the defendant; and

24 (3) financial resources of the defendant and the nature of
25 the burden its payment will impose on dependents of the defendant.

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

27 (d) In any case, including a case in which the defendant is
28 convicted of a violation of AS 11.46.120 - 11.46.150 and [IN WHICH]
29 the property is commercial fishing gear as defined in AS 16.43.990,

1 the court shall consider the victim's loss [NEED FOR,] and may order
2 [,] restitution that may include compensation for loss of income.

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

4 (a) If the defendant defaults in the payment of a fine or any
5 installment or of restitution or any installment, the court may order
6 the defendant to show cause why the defendant should not be sentenced
7 to imprisonment for nonpayment. If the state presents evidence of the
8 defendant's failure to pay restitution, the court may presume that the
9 defendant has intentionally refused to pay the fine or restitution or
10 has not made a good faith effort to pay the fine or restitution unless
11 the defendant presents some evidence that the defendant's failure to
12 pay the fine or restitution was not intentional or that the defendant
13 has made a good faith effort to pay the fine or restitution. If the
14 court finds by a preponderance of the evidence that the default was
15 attributable to an intentional refusal or failure to make a good faith
16 effort to pay the fine or restitution, the court may order the de-
17 fendant imprisoned until the order of the court is satisfied. A term
18 of imprisonment imposed under this section may not exceed one day for
19 each \$50 of the unpaid portion of the fine or restitution or one year,
20 whichever is shorter. Credit shall be given toward satisfaction of
21 the order of the court for every day a person is incarcerated for
22 nonpayment of a fine or restitution.

23 * Sec. 4. AS 12.55.051 is amended by adding a new subsection to read:

24 (d) The state may enforce payment of a fine and the restitution
25 recipient may enforce payment of a restitution order against a defen-
26 dant under AS 09.35 as if the order were a civil judgment enforceable
27 by execution. This subsection does not limit the authority of the
28 court to enforce fines and orders of restitution to victims.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CSHB 106(Fin)
Publish Date: HOUSE 3/18/87

Revision Date: _____
Title: An Act relating to restitution

Agency Affected: Public Safety
BRU: _____

Sponsor: Davidson
Requestor: House Finance Committee

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Al Adams, Chair Phone: 465-3706
Division: House Finance Committee Date: 3/17/87

Approved by Commissioner: _____ Date: _____
Agency: _____

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

APA

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FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Corrections
 Title: "An Act relating to the payment of
criminal fines and restitution." BRU: Operations
 Sponsor: Rep Davidson, Brown, Goll, et al
 Requestor: House Judiciary Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
 Division: Administrative Services

Phone: 465-3376
 Date: 1-15-88

Approved by Commissioner: Susan Humphrey-Barnett
 Agency: Department of Corrections

Date: 2-19-88

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

*Corrections
House
Version*

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CS HB 106 (Finance) am
Publish Date: _____

Revision Date: _____
Title: An Act relating to the payment
of criminal fines and restitution
Sponsor: Davidson, Brown, Goll, et al.
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic
Violence & Sexual Assault
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Section 1 may provide additional funding for domestic violence and sexual assault programs by permitting restitution to these programs from defendants convicted of an offense.

Jnr
3/31/87
Prepared by: Barbara Miklos, Executive Director *BM* Phone: 465-4356
Division: Council on Domestic Violence and Sexual Assault Date: 3-31-87

Approved by Commissioner: *X* *hmm* *ks* Date: 4/21/87
Agency: Department of Public Safety

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

D. P. S.
House
Version

BILL NO: CSHB 106 (Finance) am .

DATE: March 31, 1987

TITLE: An Act relating to the payment of criminal fines and restitution

CONTACT: Barbara Miklos APR 7 1987
Executive Director
Council on Domestic Violence and Sexual Assault


DEPARTMENT OF PUBLIC SAFETY

CSHB 106 (Finance) am, Section 1 (a), permits payment of restitution by a defendant convicted of an offense to a public, private or private nonprofit organization that has provided counseling, medical or shelter services to the victim, as well as to the victim.

Since many agencies that provide services to victims have inadequate funding, additional financial support is needed. It is difficult to determine if this provision will engender much money for domestic violence and sexual assault programs because its use may not be appropriate in most cases. Domestic violence and sexual assault programs cannot reveal clients' identities without the express permission of the victim and guarantee for the victim's safety. However, there may be instances where this could be accomplished and the perpetrator should be held accountable to the victim and pay for harm done to her as well as services received.

Section 2 clarifies AS 12.55.045(d) to enable the court to provide restitution for loss of income to a victim of any crime. The legislation originally specified theft of commercial fishing gear.

The Council on Domestic Violence and Sexual Assault supports these two provisions. The Council is not commenting on Section 3 due to lack of expertise in that area.


William R. Nix
Acting Commissioner

RECEIVED

330

STATE OF ALASKA
1988 LEGISLATIVE SESSION

(c)

BILL VERSION: SCS CSHB 106 (Jud)
PUBLISH DATE: SENATE 4/22/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
Title: An Act relating to the payment of criminal fines & restitution BRU: Council on Domestic Violence and Sexual Assault
Sponsor: Davidson, Brown, Goll, et. al Components: _____
Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
 Division: Council on Domestic Violence & Sexual Assault Date: 1/25/88
 Approved by Commissioner: Paul A. Hackett, Dep. Comm. Date: 1-22-88
 Agency: Public Safety

- Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

update
4/22/88

SCS (Jud.)
Version

330
(b)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

SENATE CS FOR CS FIN
HB 106 (JUDICIARY)
BILL VERSION:
PUBLISH DATE: SENATE 1/22/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the payment of criminal fines and restitution."
Sponsor: Rep Davidson, Brown, Goll, et al
Requestor: House Judiciary

Agency Affected: Department of Corrections
BRU: Operations
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Division: Administrative Services

Phone: 465-3376
Date: 4-22-88

Approved by Commissioner: Susan Humphrey-Barnett
Agency: Department of Corrections

Date: 4-22-88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the
pavment of criminal fines..."
Sponsor: Davidson, Brown, et al.
Requestor: Rules

Agency Affected: Administration
BRU: Office of Public Advocacy
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: 1/20/88

Approved by Commissioner: John Andrews
Agency: Department of Administration

Date: 1/21/88

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

updated
4/21/88

5-0378Z

Chenoweth
4/28/88

5/6/88

RV: *y JV*

Adopted

Original sponsors: Davidson, Brown,
Goll, et al.

BY THE FINANCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 106 *(Finance)*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the payment of criminal fines and
7 restitution."

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

9 * Section 1. AS 12.55.045(a) is repealed and reenacted to read:

10 (a) The court may order a defendant convicted of an offense to
11 make restitution as provided in this section, including restitution to
12 the victim, to a public, private, or private nonprofit organization
13 that has provided counseling, medical, or shelter services to the
14 victim, or as otherwise authorized by law. A defendant is presumed to
15 have the ability to pay restitution unless the defendant establishes
16 the inability to pay by a preponderance of the evidence. In determin-
17 ing the amount and method of payment of restitution, the court shall
18 take into account the

19 (1) public policy that favors requiring criminals to com-
20 pensate for damages and injury to their victims;

21 (2) financial burden placed on the victim and those who
22 provide services to the victim as a result of the criminal conduct of
23 the defendant; and

24 (3) financial resources of the defendant and the nature of
25 the burden its payment will impose *on dependents of the defendant*

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

27 (d) In any case, including a case in which the defendant is
28 convicted of a violation of AS 11.46.120 - 11.46.150 and [IN WHICH]
29 the property is commercial fishing gear as defined in AS 16.43.990,

1 the court shall consider the victim's loss [NEED FOR,] and may order
2 [,] restitution that may include compensation for loss of income.

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

4 (a) If the defendant defaults in the payment of a fine or any
5 installment or of restitution or any installment, the court may order
6 the defendant to show cause why the defendant should not be sentenced
7 to imprisonment for nonpayment. If the state presents evidence of the
8 defendant's failure to pay restitution, the court may presume that the
9 defendant has intentionally refused to pay the fine or restitution or
10 has not made a good faith effort to pay the fine or restitution unless
11 the defendant presents some evidence that the defendant's failure to
12 pay the fine or restitution was not intentional or that the defendant
13 has made a good faith effort to pay the fine or restitution. If the
14 court finds by a preponderance of the evidence that the default was
15 attributable to an intentional refusal or failure to make a good faith
16 effort to pay the fine or restitution, the court may order the de-
17 fendant imprisoned until the order of the court is satisfied. A term
18 of imprisonment imposed under this section may not exceed one day for
19 each \$50 of the unpaid portion of the fine or restitution or one year,
20 whichever is shorter. [Credit shall be given toward satisfaction of
21 the order of the court for every day a person is incarcerated for
22 nonpayment of a fine or restitution.]

23 * Sec. 4. AS 12.55.051 is amended by adding a new subsection to read:

24 (d) The state may enforce payment of a fine and the restitution
25 recipient may enforce payment of a restitution order against a defen-
26 dant under AS 09.35 as if the order were a civil judgment enforceable
27 by execution.
28
29

5/6/88
Adopted

Amendment to SCS CS HB 106 (JUD)

By Hensley

Page 1, line 25

After "impose" , insert

"on dependents of the defendant"



STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON

District 27

Box 746, Kodiak, Alaska 99615

M E M O R A N D U M

TO: Senator Halford, Co-chair
Senator Binkley, Co-chair
Senate Finance Committee

FROM: Representative Cliff Davidson

DATE: May 4, 1988

SUBJECT: Senate CS for CSHB106(FIN)

SCS CSHB106(FIN) relates to criminal fines and restitution, and has a zero fiscal note. In a time when violence is reaching a disturbing and unacceptable level in our society, I introduced this bill to help the victims of crime. The bill focuses on restitution, and tries to help victims actually receive this compensation for damage and injury suffered as a result of the criminal action.

Many times, victims must bear the cost of the medical treatment, counselling, and lost income that result from criminal activity. These are costs that the victim should not have to pay, but the criminal.

I urge the passage of SCS CSHB106(FIN).

Thank you.

Kay Brown

Alaska State Legislature House of Representatives

M E M O R A N D U M

TO: Rep. Adams, Chairman
House Finance Committee

DATE: March 17, 1987

FROM: Rep. Kay Brown

RE: CSHB 106
Subcommittee Report

The Subcommittee is pleased to recommend for passage the attached draft of CSHB 106 (Finance). This draft incorporates four amendments to CSHB 106 (Judiciary). Each amendment has been approved by the prime sponsor.

1. Page 1, line 12:

This amendment makes it clear that a judge could order restitution directly to the victim of a crime and to an organization which provided the victim with counseling, medical, or shelter services. The former version may have been construed to encourage or allow restitution only to the victim or for certain types of damages.

2. Page 1, line 12:

This amendment added the word "private" to make it clear that a private organization could get restitution to the same extent as a public or private nonprofit organization.

3. Page 1, Line 27:

The words "in which" were deleted to improve the clarity of the sentence; no substantive change resulted; the amendment still recognizes the right to be awarded restitution for lost income when fishing gear is stolen.

4. Page 1, Line 29:

The subcommittee deleted language requiring the judge to consider the victim's need before ordering restitution. Under the subcommittee's amendment all victims, regardless of financial condition, could be awarded restitution.

The subcommittee is not recommending an amendment which would require the defendant to establish his need for a public defender. Although the subcommittee recognizes the probable merit of this idea, it appears it would not be appropriate in this bill because it would change the focus of the bill from restitution. Such an amendment is not supported by the prime sponsor. Additionally, the subcommittee feels this subject would benefit from the information gained in hearings before other committees.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 5, 1987

SUBJECT: Criminal fines and restitution
CSHB 106(Jud)

TO: Representative Cliff Davidson

FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of CSHB 106(Judiciary):

Section 1 - Allows the court to order a convicted defendant to make restitution and establishes a presumption of ability to pay. Establishes criteria for the court to apply in determining the amount and method of restitution.

Section 2 - Requires the court to consider the victim's need for restitution.

Section 3 - Requires the defendant to establish by a preponderance of the evidence that refusal or failure to pay restitution was not intentional, or the court may imprison the defendant. Allows the state enforce payment of a fine and the recipient of the restitution to enforce payment of the restitution, by execution under AS 90.35. Removes credit for time in prison for failure to pay restitution.

MFF:mkr
m9/096



STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON

District 27

Box 746, Kodiak, Alaska 99615

March 6, 1987

To: Representative Al Adams, Chairman
House Finance Committee

From: Representative Cliff Davidson

Re: CS FOR HOUSE BILL NO. 106 (Judiciary)

In the last few minutes of the Judiciary hearing on HB 106, three words were inserted into the bill which narrowed my intent of the bill. In lines 11 and 12 of the first page, the words "to the victim" were inserted. While I agreed with the committee that the object of the bill was to make the victim as whole as possible, I had additional reasons for the bill.

In testimony we heard that costs billed to the victim for care in the shelter programs ranged from \$3.50 to \$10 per day, while the actual cost might be \$80 to \$100 per day. For a five day stay in a shelter, a restitution of \$17.50, while the actual cost was \$400, doesn't seem to me to send the right kind of message. I would like to have the judge be able to look at these actual costs in ordering the restitution. Protection against unrealistic or oppressive restitution is guaranteed in the three provisions of Section 1.

Paying the restitution to the victim would make the victim vulnerable to continued violence. The message should be that the defendant is answerable to society through the court for their violence. I equate restitution with a sentence of responsibility for the violence by the court to the defendant.

Also in testimony, it was explained that studies show the incidence of violence is lowered when the perpetrator is arrested and brought to trial. I think a sentence of counseling and restitution would be preferable to expensive incarceration.

Thank you for allowing my explanation.



STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON

District 27

Box 746, Kodiak, Alaska 99615

February 23, 1987

To: John Sund, Chairman
House Judiciary Committee

From: Cliff Davidson

Re: Re-write of HB 106

Upon reading the enclosed letter from Public Defender Dana Fabe, I would like to request that the suggested changes be made. My two main inclusions in the bill were to allow the judge to ask for restitution to care-giving institutions, and that the defendant be required to establish inability to pay restitution rather than requiring the prosecution to establish ability of the defendant to pay.

I appreciate the assistance in the suggested re-write.

Thank you.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

PUBLIC DEFENDER AGENCY

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 279-7541

February 19, 1987

John Hartle
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

RE: HOUSE BILL NO. 106

Dear John:

A copy of our position paper on HB 106 is currently being routed through the Commissioner's office. Since you have requested an immediate response to this legislation, this letter contains the concerns I expressed over the phone to you.

HB 106 does three things:

1. It changes the burden of proof at sentencing to require a defendant to prove that he or she does not have the ability to pay full restitution. Currently the prosecution must prove that the defendant does have the ability to pay.
2. It shifts the burden to the defendant of proving that he or she did not intentionally refuse or fail to pay the fine; and
3. It requires the judge to mandatorily impose an entire suspended jail sentence on the defendant if there is any default in the fine or restitution payment.

This third provision of the bill is extremely problematical. It mandates that the court incarcerate a defendant who fails to make a single installment of his fine, a result which is contrary to Alaska Supreme Court law which requires the court to find that reincarceration is necessary once a probation violation has been found. A defendant could be incarcerated for years if he were to miss one fine payment unless he had the financial resources to pay the total amount of the fine or restitution.

This provision violates equal protection standards and penalizes an indigent defendant. Two identically situated defendants would be treated differently under this provision based only on their financial status. Take the following example. Defendant A has \$3,000 of restitution to pay. He has a low-paying job and is thus ordered to pay \$100 a month. He has five years of suspended time hanging over his head. If he misses one of his \$100 installments he would be revoked and would face a mandatory term of five years in jail. The judge could not

modify or lessen that term under this bill. Furthermore, he would remain in jail for that five years if he didn't have the funds to pay the \$3,000 total.

Defendant B, who is wealthy, has also intentionally failed to make his restitution payment. His probation would also be revoked but he would be able to pay the full \$3,000 amount, thus enabling him to buy his way out of jail. This disparate treatment of two persons based on their economic standing violates equal protection standards and comes close to debtor's prison in that a person's incarceration will depend totally on his ability to pay the total fine (not simply the missed installment).

This provision penalizes those on probation and rewards repeat offenders who are subject to presumptive time. This bill states that a person who does not have probationary time hanging over his head will be required to serve one day of jail for every \$50 of the fine or restitution which has not been paid. On the other hand, a probationer who has three years of suspended time over his head will spend the entire period of suspended time if the total amount of the fine cannot be paid.

Take the following example: Two defendants who have committed identical property offenses and each has a \$1000 restitution requirement for property damage to the home which was burglarized. Offender A is a first offender who has no prior record and the court gives him three years with all three suspended on the condition that he pay restitution. Offender B is a second time offender and is given the four-year presumptive term. He cannot receive any additional suspended probationary time on top of that four-year term under the current presumptive sentencing scheme.

Each of the offenders is found to have intentionally missed a restitution payment. Offender A, the first time offender, will be required to serve three years in jail unless he can come up with the \$1000. Offender B, the repeat burglar, will be able to work off his fine in 20 days ($20 \times \$50 = \1000). This type of anomaly will penalize first offenders who are more likely to receive probation and will reward repeat offenders who receive presumptive time.

This provision removes discretion from the judges. Current Alaska Supreme Court case law requires each judge to go through a two-prong analysis when determining whether to revoke probation. First, the judge must decide whether a condition of probation has been violated. If it has, the judge must then decide whether reincarceration is necessary, for what period of time that reincarceration should extend, and whether further restrictions or modifications of probation might solve the problem which caused the violation.

Thus, if a defendant is found to have been using cocaine, the judge can incarcerate him for a lengthy period of time, incarcerate him for a short period of time and then require drug rehabilitation, or can send him directly into a residential drug rehabilitation program as a new condition of probation. The judge's decision will depend greatly upon

the nature of the underlying offense, whether the violation of probation was an isolated incident or a repeated course of conduct, whether the offender's attitude requires jail time to get his attention, and whether the nature of the violation of probation indicates that reincarceration is necessary to protect the public.

Under this law, failure to make one installment of a fine or restitution will often result in a much more severe form of punishment than many other more serious types of probation violations. The trial judge who has heard the facts of the case, has had experience with the offender, and can hear the recommendations of the probation officer is in the best position to determine whether reincarceration is necessary. Often, a defendant will have a good payment record on restitution and an outside pressure or stress will cause one or more missed payments. Bringing that offender back before the judge for a stiff lecture or a small jolt of jail time as a reminder of the alternative may be as effective in motivating full payment of restitution.

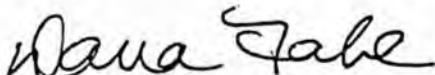
In summary, this section of the bill deprives the trial court of discretion, penalizes first offenders and indigent defendants and will result in unnecessary incarceration of defendants who are otherwise on the road to rehabilitation.

Also problematical is the second section of the bill which shifts the burden of proof of a probation violation from the prosecution, which normally has the burden to prove that a defendant has violated a condition, to the defendant to prove that he did not violate it. This bill requires a defendant to establish by a preponderance of the evidence that he did not intentionally fail to pay his fine or restitution. This reversal of the burden of proof differs from that of all other probation violations where the prosecution is required to prove the defendant's violation.

Finally, the Public Defender Agency agrees that requiring a defendant to establish his inability to pay restitution rather than requiring the prosecution to establish his ability to pay, makes good sense. The defendant will usually have better access to the types of records necessary to establish an inability to pay and the prosecution may often be groping in the dark to try to establish an ability to pay.

The official position paper on this bill will be available to you shortly. I hope this is of some assistance. I will see you on Thursday, February 26th.

Sincerely,



Dana Fabe
Public Defender

DF:sh

Original sponsors: Davidson, Brown,
Goll, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 106 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the payment of criminal fines and
7 restitution."

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

9 * Section 1. AS 12.55.045(a) is repealed and reenacted to read:

10 (a) The court may order a defendant convicted of an offense to
11 make restitution as provided in this section, including restitution to
12 the victim, to a public, private, or private nonprofit organization
13 that has provided counseling, medical, or shelter services to the
14 victim, or as otherwise authorized by law. A defendant is presumed to
15 have the ability to pay restitution unless the defendant establishes
16 the inability to pay by a preponderance of the evidence. In determin-
17 ing the amount and method of payment of restitution, the court shall
18 take into account the

19 (1) public policy that favors requiring criminals to com-
20 pensate for damages and injury to their victims;

21 (2) financial burden placed on the victim and those who
22 provide services to the victim as a result of the criminal conduct of
23 the defendant; and

24 (3) financial resources of the defendant and the nature of
25 the burden its payment will impose.

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

27 (d) In any case, including a case in which the defendant is
28 convicted of a violation of AS 11.46.120 - 11.46.150 and [IN WHICH]
29 the property is commercial fishing gear as defined in AS 16.43.990,

1 the court shall consider the victim's loss [NEED FOR,] and may order
2 [,] restitution that may include compensation for loss of income.

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

4 (a) If the defendant defaults in the payment of a fine or any
5 installment or of restitution or any installment, the court may order
6 the defendant to show cause why the defendant should not be sentenced
7 to imprisonment for nonpayment. If the state presents evidence of the
8 defendant's failure to pay restitution, the court may presume that the
9 defendant has intentionally refused to pay the fine or restitution or
10 has not made a good faith effort to pay the fine or restitution unless
11 the defendant presents some evidence that the defendant's failure to
12 pay the fine or restitution was not intentional or that the defendant
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14 court finds by a preponderance of the evidence that the default was
15 attributable to an intentional refusal or failure to make a good faith
16 effort to pay the fine or restitution, the court may order the de-
17 fendant imprisoned until the order of the court is satisfied. A term
18 of imprisonment imposed under this section may not exceed one day for
19 each \$50 of the unpaid portion of the fine or restitution or one year,
20 whichever is shorter. The state may enforce payment of a fine and the
21 restitution recipient may enforce payment of a restitution order
22 against a defendant under AS 09.35 as if the order were a civil judg-
23 ment enforceable by execution. Credit shall be given toward satisfac-
24 tion of the order of the court for every day a person is incarcerated
25 for nonpayment of a fine or restitution.

Original sponsors: Davidson, Brown,
Goll, et al.

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 106 (Finance) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the payment of criminal fines and
7 restitution."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
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4 (a) If the defendant defaults in the payment of a fine or any
5 installment or of restitution or any installment, the court may order
6 the defendant to show cause why the defendant should not be sentenced
7 to imprisonment for nonpayment. If the defendant fails to establish
8 [COURT FINDS] by a preponderance of the evidence that the defendant
9 did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN
10 INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the
11 fine or restitution, the court may order the defendant imprisoned
12 until the order of the court is satisfied. A term of imprisonment
13 imposed under this section may not exceed one day for each \$50 of the
14 unpaid portion of the fine or restitution or one year, whichever is
15 shorter. The state may enforce payment of a fine and the restitution
16 recipient may enforce payment of a restitution order against a defen-
17 dant under AS 09.35 as if the order were a civil judgment enforceable
18 by execution. Credit shall be given toward satisfaction of the order
19 of the court for every day a person is incarcerated for nonpayment of
20 a fine [OR RESTITUTION].

SENATE COMMITTEE REPORT

2/12/86
Sen Jud reg.
notice given

FURTHER:

FINANCE

3/26/87

DATE TURNED INTO OFFICE _____

Mr. President:

JUDICIARY

Committee considered _____

CSHB 106(Fin)am

payment of criminal fines and restitution.

and recommended:

replace with § CS FOR CSHB 106 (Jud) same title (e)
 or adopt _____ CS FOR _____ new title
 attached amendment(s) and *report it back as follows*

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
 zero fiscal impact

MEMBERS SIGNING DO PASS

1 Patrol Boney

OTHER RECOMMENDATIONS

2 Frank No Rec
2 Joseph No Rec

Committee Backup Attached

Verth... Do pass
Chairman signature and recommendation

Judiciary Report