

**IN THE SUPREME COURT OF THE STATE OF ALASKA**  
**ORDER NO. 1554**

Amending Criminal Rules 32.1  
and 32.6 to implement chapter  
17, SLA 2004 concerning  
restitution

**IT IS ORDERED:**

1. Criminal Rule 32.1 is amended to read as follows:

**Rule 32.1. Presentence Procedure for Felony Sentencings.**

\* \* \* \*

**(b) Presentence Investigation and Report.**

\* \* \* \*

(2) *Restitution Information.* In cases where the court may order the defendant to pay restitution~~may be ordered~~, the presentence report must include:

(A) defendant's financial statement completed under subparagraph (a)(2)(B) of this rule; and

(B) information ~~and supporting documentation~~ concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages ~~incurred by the victims together with any supporting documentation~~, a restitution amount recommendation, and the names of any co-defendants and their case numbers.

\* \* \* \*

**(c) Notice of Aggravating Factors, Extraordinary Circumstances, and Restitution.** Within seven days after service of the presentence report on the parties:

\* \* \* \*

(2) The state shall give notice if it will seek restitution from the defendant in an amount different from the recommendation in the presentence report. The notice shall specify the amount of restitution sought and shall set forth the facts establishing the basis for this amount, and shall include information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, and the names of any co-defendants and their case numbers.

\* \* \* \*

**(d) Notice of Mitigating Factors, Extraordinary Circumstances, and Responses to State's Notices.** Within seven days after service of the notices required by paragraph (c):

\* \* \* \*

(3) If the defendant objects to any recommendation for restitution included in the presentence report or in a notice filed by the state under paragraph (c)(2), the defendant shall file a notice disputing the legal basis for restitution, the factual basis for restitution, or the amount sought. and The notice shall setting set out the specific grounds for contesting the restitution\_or provide information that the victim or other person entitled to the restitution expressly declines restitution.

\* \* \* \*

**(h) Restitution Procedures When No Presentence Investigation.**

(1) In cases where the court may order the defendant to pay restitution ~~may be ordered~~ but no presentence investigation report is submitted, the prosecuting authority must file a notice concerning restitution ~~the following~~ at least ten days before the sentencing hearing, unless otherwise ordered by the court: The notice shall include information ~~and supporting documentation~~ concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages ~~incurred by the victims, together with any supporting documentation~~, a restitution amount recommendation, and the names of any co-defendants and their case numbers.

(2) Unless otherwise ordered by the court, the defendant shall file any objections to the information submitted under subparagraph (h)(1), or provide information that the victim or other person expressly declines restitution, at least five days before the sentencing hearing, together with defendant's financial statement on a form designated by the Administrative Director.

2. Criminal Rule 32.6 is amended to read as follows:

**Rule 32.6. Judgment for Restitution.**

\* \* \* \*

(b) **Content.** The judgment for restitution must:

(1) Identify each victim or other person entitled to restitution and the amount of restitution owed to each ~~victim~~.

\* \* \* \*

(3) State whether payment must be made through the clerk of court or the Collections Unit of the Department of Law. Ordinarily, the restitution payment will ~~Payment must be made~~ through the Collections Unit of the Department of Law unless (A) the victim or other person elects to pursue collection without the assistance of the Collections Unit; ~~or~~ (B) the order requires restitution to be made in a form other than payment of a specific dollar amount; or (C) the case is being prosecuted by a municipality. When payment is to be made through the Collections Unit, the judgment must state that the court will also accept payments and prepayments of restitution.

(4) Identify by name and case number any defendants who are jointly and severally liable for the restitution owed to each victim or other person.

\* \* \* \*

(c) **Entering the Judgment for Restitution.**

(1) *At Sentencing.* If the amount of restitution and the names of the victims are known at the time of sentencing, the court shall enter the judgment ~~for~~ restitution at the time of sentencing.

(2) *After Sentencing.* If the amount of restitution and the names of the victims or other persons seeking restitution are not known at the time of sentencing, the prosecutor shall file and serve within 90 days after sentencing a proposed judgment for restitution on a form designated by the Administrative Director, and a notice that includes information concerning the identity of any victims or other persons seeking restitution, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers. Within 30 days after receipt of the proposed judgment for restitution, the defense shall file any objection to the proposed judgment, a statement of grounds for the objection, and a financial statement on a form designated by the Administrative Director under AS 12.55.045(j). ~~If no objection is filed~~ If the defendant does not file an objection, the court may enter the judgment ~~for~~ restitution without further proceedings. If the defendant files an objection and either party requests a hearing, the court shall schedule a hearing.

\* \* \* \*

(d) **Hearing Regarding Payment Schedule.** A defendant who is unable to pay restitution because of financial circumstances may request a hearing to ask the court to modify the restitution payment schedule. If the court holds a hearing and the defendant proves by a preponderance of the evidence that the defendant is unable through good faith efforts to satisfy the payment schedule in the judgment for restitution, the court

may modify the payment schedule, but may not reduce the amount of restitution.

~~(d)~~**(e) Execution.**

\* \* \* \*

~~(e)~~**(f) Transfer of State Restitution Judgments and Payments Cases to the Collections Unit of the Department of Law.**

(1) Upon issuance of a judgment for restitution in cases prosecuted by the state, the court will transfer the judgment send, either on paper or electronically, a copy of the judgment to the Collections Unit of the Department of Law, for collection pursuant to AS 12.55.051(f). To transfer the judgment to the Collections Unit, the court will send a copy of the judgment, either in paper or electronic format, to the unit. The court will also send victim and defendant identifying information, including the name, address, birth date, and social security number of each victim and defendant, or other person entitled to restitution and each defendant, to the extent the court has the information.

(2) If payment for restitution is tendered to the court, the court shall accept the tendered payment. If the victim or other person entitled to restitution has elected to proceed through the Collections Unit, the court shall forward the payment to the Collections Unit within five days after clearance of the payment tendered to the court.

~~(f)~~**(g) Priority of Payments.**

\* \* \* \*

~~(g)~~**(h) Financial Statement.**

\* \* \* \*

~~(h)~~(i) **Victim Election.**

\* \* \* \*

~~(i)~~(j) **Suspended Imposition of Sentence.**

\* \* \* \*

DATED: February 9, 2006

EFFECTIVE DATE: April 15, 2006

/s/  
Chief Justice Bryner

/s/  
Justice Matthews

/s/  
Justice Eastaugh

/s/  
Justice Fabe

/s/  
Justice Carpeneti