

SENATE CS FOR CS FOR HOUSE BILL NO. 9(FIN) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 4/30/97

Offered: 4/25/97

Sponsor(s): REPRESENTATIVES PORTER, Green, Croft, Kubina, Kemplen, Dyson

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to the rights of crime victims and victims of juvenile offenses;
2 relating to the collection by victims of restitution from prisoners; relating to the
3 definition of 'incapacitated' for sexual offenses; creating the crime of interfering
4 with a report of a crime involving domestic violence; relating to mental
5 examinations of victims in criminal prosecutions; relating to the safety of
6 victims, other persons, and the community in setting bail or conditions of
7 release; relating to access to certain records of the Violent Crimes Compensation
8 Board; amending Rules 6 and 43(d), Alaska Rules of Criminal Procedure, Rules
9 404 and 615, Alaska Rules of Evidence, and Rule 3, Alaska Delinquency Rules;
10 and providing for an effective date."**

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

12 * Section 1. PURPOSE. The purpose of secs. 2, 17, 19, 23, and 24 of this Act is to clarify

1 that the right of crime victims "to be present at all criminal or juvenile proceedings where the
 2 accused has the right to be present," which is a right protected under art. I, sec. 24, of the
 3 state constitution, may not be abridged by the sequestration rule applicable to most witnesses.

4 * **Sec. 2.** AS 09.20.180 is amended to read:

5 **Sec. 09.20.180. Exclusion of witnesses from courtroom. Except as**
 6 **provided in AS 12.61.010 and AS 47.12.110(b), upon** [UPON] the request of either
 7 party the judge may exclude from the courtroom any witness of the adverse party not
 8 under examination at the time so that the witness may not hear the testimony of other
 9 witnesses.

10 * **Sec. 3.** AS 09.38.030(a) is amended to read:

11 (a) Except as provided in (b), (c), [AND] (f), **and (h)** of this section and
 12 AS 09.38.050, an individual debtor is entitled to an exemption of the individual
 13 debtor's weekly net earnings not to exceed \$350. The weekly net earnings of an
 14 individual are determined by subtracting from the weekly gross earnings all sums
 15 required by law or court order to be withheld. The weekly net earnings of an
 16 individual paid on a monthly basis are determined by subtracting from the monthly
 17 gross earnings of the individual all sums required by law or court order to be withheld
 18 and dividing the remainder by 4.3. The weekly net earnings of an individual paid on
 19 a semi-monthly basis are determined by subtracting from the semi-monthly gross
 20 earnings all sums required by law or court order to be withheld and dividing the
 21 remainder by 2.17.

22 * **Sec. 4.** AS 09.38.030(b) is amended to read:

23 (b) An individual who does not receive earnings either weekly, semi-monthly,
 24 or monthly is entitled to a maximum exemption for the aggregate value of cash and
 25 other liquid assets available in any month of \$1,400, except as provided in (f) **and (h)**
 26 of this section and in AS 09.38.050. The term "liquid assets" includes deposits,
 27 securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables,
 28 but does not include permanent fund dividends before or after receipt by the
 29 individual.

30 * **Sec. 5.** AS 09.38.030(g) is amended to read:

31 (g) In this section,

1 (1) "correctional facility" has the meaning given in AS 33.30.901;

2 (2) "official detention" has the meaning given in AS 11.81.900(b);

3 (3) "prisoner" means a person held under the authority of state or
4 municipal law in official detention.

5 * **Sec. 6.** AS 09.38.030 is amended by adding a new subsection to read:

6 (h) A creditor may levy upon earnings or liquid assets exempt under (a) or (b)
7 of this section if the money is held outside a correctional facility and the claim is for
8 court-ordered restitution to be paid by a prisoner to the creditor under a judgment for
9 conviction of a crime or an adjudication of delinquency.

10 * **Sec. 7.** AS 11.41.470(2) is amended to read:

11 (2) "incapacitated" means temporarily incapable of appraising the nature
12 of one's own conduct or [AND] physically unable to express unwillingness to act;

13 * **Sec. 8.** AS 11.56 is amended by adding a new section to read:

14 **Sec. 11.56.745. Interfering with a report of a crime involving domestic**
15 **violence.** (a) A person, other than the victim, commits the crime of interfering with
16 a report of a crime involving domestic violence if the person knowingly interferes
17 with another person who is reporting or attempting to report a crime involving
18 domestic violence to a law enforcement agency.

19 (b) In this section, "crime involving domestic violence" has the meaning given
20 in AS 18.66.990.

21 (c) Violation of this section is a class A misdemeanor.

22 * **Sec. 9.** AS 12.30.010 is amended to read:

23 **Sec. 12.30.010. Bail before conviction is matter of right.** The defendant in
24 a criminal proceeding is entitled to be admitted to bail before conviction as a matter
25 of right if the alleged victim can be reasonably protected through the imposition
26 of bail and conditions of release.

27 * **Sec. 10.** AS 12.30.020(a) is amended to read:

28 (a) A person charged with an offense shall, at that person's first appearance
29 before a judicial officer, be ordered released pending trial on the person's personal
30 recognizance or upon the execution of an unsecured appearance bond in an amount
31 specified by the judicial officer unless the offense is an unclassified felony or class A

felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required [,] or will pose a danger to the alleged victim, other persons, or [AND] the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person [,] or will pose a danger to the alleged victim, other persons, or [AND] the community.

* **Sec. 11.** AS 12.30.020(b) is amended to read:

(b) If a judicial officer determines under (a) of this section that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to the alleged victim, other persons, or [AND] the community, the judicial officer may

(1) place the person in the custody of a designated person or organization agreeing to supervise the person;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the person to return to custody after daylight hours on designated conditions;

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 percent of the amount of the bond; the deposit to be returned upon the performance of the condition of release;

(5) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(6) impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of the alleged victim, other persons, or [AND] the community.

* **Sec. 12.** AS 12.30.020(c) is amended to read:

(c) In determining the conditions of release under (b) of this section, the

judicial officer shall take into account

(1) the nature and circumstances of the offense charged, **including the effect of the offense upon the alleged victim;** [,]

(2) the weight of the evidence against the person; [,]

(3) the person's family ties; [,]

(4) the person's employment; [,]

(5) the person's financial resources; [,]

(6) the person's character and mental condition; [,]

(7) the length of the person's residence in the community; [,]

(8) the person's record of convictions; [,]

(9) the person's record of appearance at court proceedings; [,]

(10) the flight of the accused to avoid prosecution or the person's failure to appear at court proceedings; **and**

(11) threats the person has made, and the danger the person poses, to the alleged victim.

* **Sec. 13.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.035. Release pending appeal by state. If the state appeals an order dismissing an indictment, information, or complaint, or granting a new trial after verdict or judgment, the court shall treat the defendant in accordance with the provisions governing pretrial release under this chapter.

* **Sec. 14.** AS 12.30.040(a) is amended to read:

(a) A person who has been convicted of an offense and is awaiting sentence, or who has filed an appeal, shall be treated in accordance with the provisions of AS 12.30.020 unless the court has reason to believe that no one or more conditions of release will reasonably assure the appearance of the person as required or prevent the person from posing a danger to **the victim**, other persons, **or** [AND] the community. If that determination is made, the person may be remanded to custody. This section does not affect the right of a person appealing from a judgment of conviction from a district court to the superior court to be released on bail pending appeal under Rule 603(b) of the Rules of Appellate Procedure; **however, the court shall consider the safety of the victim, other persons, and the community before the person is**

1 released under the rule.

2 * **Sec. 15.** AS 12.45 is amended by adding a new section to read:

3 **Sec. 12.45.042. Mental examination of victim.** In a criminal prosecution
4 under AS 11.41, the court may not order or compel the victim to undergo a psychiatric
5 or psychological examination unless

6 (1) the victim's psychiatric or psychological condition is an element of
7 the offense charged; or

8 (2) the prosecution has given notice that it will present evidence at trial
9 that the victim suffers from a continuing psychological or psychiatric condition that
10 resulted from the offense charged.

11 * **Sec. 16.** AS 12.55.175(b) is amended to read:

12 (b) Upon receipt of a record of proceedings under AS 12.55.165, the three-
13 judge panel shall consider all pertinent files, records, and transcripts, including the
14 findings and conclusions of the judge who originally heard the matter. The panel may
15 hear oral testimony to supplement the record before it. **If the panel supplements the**
16 **record, the panel shall permit the victim to testify before the panel.** If the panel
17 finds that manifest injustice would result from failure to consider relevant aggravating
18 or mitigating factors not specifically included in AS 12.55.155 or from imposition of
19 the presumptive term, whether or not adjusted for aggravating or mitigating factors,
20 it shall sentence the defendant in accordance with this section. If the panel does not
21 find that manifest injustice would result, it shall remand the case to the sentencing
22 court, with a written statement of its findings and conclusions, for sentencing under
23 AS 12.55.125.

24 * **Sec. 17.** AS 12.61.010 is amended to read:

25 **Sec. 12.61.010. Rights of crime victims.** (a) Victims of crimes have the
26 following rights:

27 **(1) the right to be present during any proceeding in**

28 **(A) the prosecution and sentencing of a defendant if the**
29 **defendant has the right to be present, including being present during**
30 **testimony even if the victim is likely to be called as a witness;**

31 **(B) the adjudication of a minor as provided under**

AS 47.12.110;

(2) [(1)] the right to be notified [INFORMED] by the appropriate law enforcement agency or the prosecuting attorney of the date of trial, [AND THE DATE OF] sentencing, including a proceeding before a three-judge panel under AS 12.55.175, an appeal, and any hearing in which the defendant's release from custody is considered [OF THE CASE IN WHICH THE VICTIM IS INVOLVED];

(3) [(2)] the right to be notified that a sentencing hearing or a court proceeding to which the victim has been subpoenaed will not occur as scheduled;

(4) [(3)] the right to receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts [,] and to be provided with information as to the protection available;

(5) [(4)] the right to be notified [INFORMED] of the procedure to be followed to apply for and receive any compensation under AS 18.67;

(6) [(5)] at the request of the prosecution or a law enforcement agency, the right to cooperate with the criminal justice process without loss of pay and other employee benefits except as authorized by AS 12.61.017 and without interference in any form by the employer of the victim of crime;

(7) [(6)] the right to obtain access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having medical assistance administered; however, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance;

(8) [(7)] the right to make a written or oral statement for use in preparation of the presentence report of a felony defendant;

(9) [(8)] the right to appear personally at the defendant's sentencing hearing to present a written statement [,] and to give sworn testimony or an unsworn oral presentation;

(10) [AND (9)] the right to be informed by the prosecuting attorney, at any time after the defendant's conviction, about the complete record of the defendant's convictions;

1 (11) the right to notice under AS 12.47.095 concerning the status
 2 of the defendant found not guilty by reason of insanity;

3 (12) the right to notice under AS 33.16.087 of a hearing concerning
 4 special medical parole of the defendant;

5 (13) the right to notice under AS 33.16.120 of a hearing to consider
 6 or review discretionary parole of the defendant; and

7 (14) the right to notice under AS 33.30.013 of the release or escape
 8 of the defendant.

9 (b) Law enforcement agencies, prosecutors, corrections agencies, social
 10 services agencies, and the courts shall make every reasonable effort to ensure that
 11 victims of crimes have the rights set out in (a) of this section. However, a failure to
 12 ensure these rights does not give rise to a separate cause of action against law
 13 enforcement agencies, other agencies of the state, or a political subdivision of the state.

14 * **Sec. 18.** AS 18.67.030 is amended by adding a new subsection to read:

15 (c) An application for compensation and personally identifying information
 16 relating to an applicant for compensation are confidential records and may not be
 17 released by the board.

18 * **Sec. 19.** AS 47.12.110(b) is amended to read:

19 (b) Notwithstanding (a) of this section, the victim of an offense that a minor
 20 is alleged to have committed, or the designee of the victim, has a right to be present
 21 at all hearings or proceedings held under this section at which the minor has a right
 22 to be present. If the minor is found to have committed the offense, the victim may
 23 at the disposition hearing give sworn testimony or make an unsworn oral presentation
 24 concerning the offense and its effect on the victim. If there are numerous victims of
 25 a minor's offense, the court may limit the number of victims who may give sworn
 26 testimony or make an unsworn oral presentation, but the court may not limit the right
 27 of a victim to attend a hearing even if the victim is likely to be a witness in a
 28 hearing concerning the minor's alleged offense.

29 * **Sec. 20.** Rule 6(u)(1), Alaska Rules of Criminal Procedure, is amended to read:

30 (1) A witness may participate telephonically in grand jury proceedings
 31 if the witness [IS NOT A VICTIM AND THE WITNESS:]

(A) would be required to travel more than 50 miles to the situs of the grand jury; or

(B) lives in a place from which people customarily travel by air to the situs of the grand jury.

* **Sec. 21.** Rule 43(d), Alaska Rules of Criminal Procedure, is amended to read:

(d) **Discharge from Custody -- Exoneration of Bail.** Except as provided in AS 12.30.035, when [WHEN] dismissal is ordered pursuant to this rule the defendant shall be discharged from custody, or if admitted to bail, the bail exonerated, or money deposited in lieu thereof refunded to the depositors.

* **Sec. 22.** Rule 404(b), Alaska Rules of Evidence, is amended by adding a new paragraph to read:

(4) In a prosecution for a crime involving domestic violence or of interfering with a report of a crime involving domestic violence, evidence of other crimes involving domestic violence by the defendant against the same or another person or of interfering with a report of a crime involving domestic violence is admissible. In this paragraph, "domestic violence" and "crime involving domestic violence" have the meanings given in AS 18.66.990.

* **Sec. 23.** Rule 615, Alaska Rules of Evidence, is amended to read:

Rule 615. Exclusion of Witnesses. At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order on its own motion. This rule does not authorize exclusion of

(1) a party who is a natural person; [, OR]

(2) an officer or employee of a party which is not a natural person designated as its representative by its attorney; [, OR]

(3) a person whose presence is shown by a party to be important to the presentation of the party's [HIS] cause; or

(4) the victim of the alleged crime or juvenile offense during criminal or juvenile proceedings when the accused has the right to be present; in this paragraph, "victim" has the meaning given in AS 12.55.185.

* **Sec. 24.** Rule 3(c), Alaska Delinquency Rules, is amended to read:

(c) **General Public Excluded.** Hearings are not open to the public unless requested

1 by the juvenile. However, the court may, after due consideration for the welfare of the
2 juvenile and the interests of the public, admit specific individuals to a hearing, and shall admit
3 victims of the juvenile's offense to hearings **and proceedings** as required by **AS 47.12.110**
4 [AS 47.10.070(b)].

5 * **Sec. 25.** Rule 6(u)(4), Alaska Rules of Criminal Procedure, is repealed.

6 * **Sec. 26.** AS 12.30.035, added by sec. 13 of this Act, amends Rule 43(d), by changing
7 the standard for discharge from custody and exoneration of bail in certain cases.

8 * **Sec. 27.** APPLICABILITY. (a) Except as provided in (c) and (d) of this section, this
9 Act applies to a criminal or juvenile hearing and proceedings held on or after the effective
10 date of this Act, regardless of whether the criminal offense or delinquent act occurred before,
11 on, or after the effective date of this Act.

12 (b) Sections 3 - 6 of this Act apply to collections regardless of whether the judgment,
13 offense, or delinquent act occurred before, on, or after the effective date of this Act.

14 (c) Sections 7 - 8 of this Act apply to offenses committed on or after the effective
15 date of this Act.

16 (d) Sections 13 and 21 of this Act apply to all criminal prosecutions and appeals
17 pending on or arising after the effective date of secs. 13 and 21 of this Act, regardless of
18 whether the prosecution was initiated or the appeal was filed before the effective date of
19 secs. 13 and 21 of this Act.

20 * **Sec. 28.** Sections 13 and 21 of this Act take effect immediately in accordance with
21 AS 01.10.070(c).

22 * **Sec. 29.** Except as provided in sec. 28 of this Act, this Act takes effect July 1, 1997.