

HOUSE BILL NO. 93

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/29/97

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the collection by victims of restitution from prisoners;
2 relating to the definition of 'serious provocation' as a defense to murder;
3 relating to the definition of 'incapacitated' for sexual offenses; creating the crime
4 of interfering with a report of a crime involving domestic violence; relating to
5 the safety of victims, other persons, and the community in setting bail or
6 conditions of release; relating to mental examinations of victims in criminal
7 prosecutions; relating to the rights of victims of crimes under AS 12.61; relating
8 to access to certain records of the Violent Crimes Compensation Board; relating
9 to medical death investigations; amending Alaska Rules of Criminal Procedure
10 5 and 6, Alaska Rules of Evidence 404 and 615, and Alaska Delinquency Rule
11 3; and providing for an effective date."

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

1 * **Section 1.** AS 09.20.180 is amended to read:

2 **Sec. 09.20.180. Exclusion of witnesses from courtroom. Except as**
3 **provided in AS 12.61, upon** [UPON] the request of either party the judge may
4 exclude from the courtroom any witness of the adverse party not under examination
5 at the time so that the witness may not hear the testimony of other witnesses.

6 * **Sec. 2.** AS 09.38.030(a) is amended to read:

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

18 * **Sec. 3.** AS 09.38.030(b) is amended to read:

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

26 * **Sec. 4.** AS 09.38.030(g) is amended to read:

27 (g) In this section,

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

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

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

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

2 (h) A creditor may levy upon earnings or liquid assets exempt under (a) or (b)
3 of this section if the money is held outside a correctional facility and the claim is for
4 court-ordered restitution to be paid by a prisoner to the creditor under a judgment for
5 conviction of a crime or delinquent act.

6 * **Sec. 6.** AS 11.41.115(f)(2) is amended to read:

7 (2) "serious provocation" means conduct **that** [WHICH] is sufficient to
8 excite an intense passion in a reasonable person in the defendant's situation, other than
9 a person who is intoxicated, under the circumstances as the defendant reasonably
10 believed them to be; insulting words, insulting gestures, or hearsay reports of conduct
11 engaged in by the intended victim do not, alone or in combination with each other,
12 constitute serious provocation; **conduct by the intended victim that creates a**
13 **reasonable or unreasonable belief in the defendant that it is necessary to act in**
14 **self-defense does not constitute serious provocation.**

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

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

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

19 **Sec. 11.56.745. Interfering with a report of a crime involving domestic**
20 **violence.** (a) A person commits the crime of interfering with a report of a crime
21 involving domestic violence if the person knowingly interferes with another person
22 who is reporting or attempting to report a crime involving domestic violence to a law
23 enforcement agency.

24 (b) Violation of this section is a class A misdemeanor.

25 (c) In this section, "crime involving domestic violence" has the meaning given
26 in AS 18.66.990.

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

28 **Sec. 12.30.010. Bail before conviction is matter of right.** The defendant in
29 a criminal proceeding is entitled to be admitted to bail before conviction as a matter
30 of right, **if the safety of the alleged victim can be protected from the defendant.**

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

1 (a) A person charged with an offense shall, at that person's first appearance
 2 before a judicial officer, be ordered released pending trial on the person's personal
 3 recognizance or upon the execution of an unsecured appearance bond in an amount
 4 specified by the judicial officer unless the offense is an unclassified felony or class A
 5 felony or unless the officer determines that the release of the person will not
 6 reasonably assure the appearance of the person as required, or will pose a danger to
 7 **the alleged victim**, other persons, **or** [AND] the community. If the offense with
 8 which a person is charged is a felony, on motion of the prosecuting attorney, the
 9 judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that
 10 release of the person on the person's personal recognizance or upon the execution of
 11 an unsecured appearance bond will not reasonably assure the appearance of the person,
 12 or will pose a danger to **the alleged victim**, other persons, **or** [AND] the community.

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

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

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

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

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

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

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

30 (6) impose any other condition considered reasonably necessary to
 31 assure the defendant's appearance as required and the safety of **the alleged victim**,

1 other persons, or [AND] the community.

2 * **Sec. 12.** AS 12.30.040(a) is amended to read:

3 (a) A person who has been convicted of an offense and is awaiting sentence,
4 or who has filed an appeal, shall be treated in accordance with the provisions of
5 AS 12.30.020 unless the court has reason to believe that no one or more conditions of
6 release will reasonably assure the appearance of the person as required or prevent the
7 person from posing a danger to **the victim**, other persons, or [AND] the community.
8 If that determination is made, the person may be remanded to custody. This section
9 does not affect the right of a person appealing from a judgment of conviction from a
10 district court to the superior court to be released on bail pending appeal under Rule
11 603(b) of the Rules of Appellate Procedure; **however, the court shall consider the**
12 **safety of the victim, other persons, and the community before the person is**
13 **released under the rule.**

14 * **Sec. 13.** AS 12.45 is amended by adding a new section to read:

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

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

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

23 * **Sec. 14.** AS 12.61.010(a) is amended to read:

24 (a) Victims of crimes have the following rights:

25 (1) **the right to be present during any proceeding in the**
26 **prosecution of a defendant or the adjudication of a minor if the defendant or the**
27 **minor has the right to be present;**

28 (2) [1] the right to be informed by the appropriate law enforcement
29 agency or the prosecuting attorney of the date of trial, [AND THE DATE OF]
30 sentencing, **and any hearing in which the defendant's release from custody is**
31 **considered** [OF THE CASE IN WHICH THE VICTIM IS INVOLVED];

1 (3) [(2)] the right to be notified that a sentencing hearing or a court
2 proceeding to which the victim has been subpoenaed will not occur as scheduled;

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

6 (5) [(4)] the right to be informed of the procedure to be followed to
7 apply for and receive any compensation under AS 18.67;

8 (6) [(5)] at the request of the prosecution or a law enforcement agency,
9 the right to cooperate with the criminal justice process without loss of pay and other
10 employee benefits except as authorized by AS 12.61.017 and without interference in
11 any form by the employer of the victim of crime;

12 (7) [(6)] the right to obtain access to immediate medical assistance and
13 not to be detained for an unreasonable length of time by a law enforcement agency
14 before having medical assistance administered; however, an employee of the law
15 enforcement agency may, if necessary, accompany the person to a medical facility to
16 question the person about the criminal incident if the questioning does not hinder the
17 administration of medical assistance;

18 (8) [(7)] the right to make a written or oral statement for use in
19 preparation of the presentence report of a felony defendant;

20 (9) [(8)] the right to appear personally at the defendant's sentencing
21 hearing to present a written statement, and to give sworn testimony or an unsworn oral
22 presentation; [AND]

23 (10) [(9)] the right to be informed by the prosecuting attorney, at any
24 time after the defendant's conviction, about the complete record of the defendant's
25 convictions;

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

28 (12) **the right to notice under AS 33.16.087 of a hearing concerning**
29 **special medical parole of the defendant;**

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

1 **(14) the right to notice under AS 33.30.013 of the release or escape**
 2 **of the defendant.**

3 * **Sec. 15.** AS 12.61.010(b) is amended to read:

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

9 * **Sec. 16.** AS 12.65.020 is amended by adding new subsections to read:

10 (h) When the state medical examiner elects to conduct a medical death
 11 investigation under this section, the state medical examiner shall take custody of the
 12 body of the deceased completion of the investigation. When the state medical
 13 examiner has completed the medical death investigation, custody of the body of the
 14 deceased transfers to the deceased's spouse or next of kin.

15 (i) A court in this state may not order an autopsy on the body of the deceased
 16 if the state medical examiner has performed an autopsy and has documented the
 17 autopsy with photographs of the procedure.

18 * **Sec. 17.** AS 18.67.030 is amended by adding a new subsection to read:

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

22 * **Sec. 18.** Rule 6(u)(1), Alaska Rules of Criminal Procedure, is amended to read:

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

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

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

29 * **Sec. 19.** Rule 404(b), Alaska Rules of Evidence, is amended by adding a new paragraph
 30 to read:

31 (4) In a prosecution for a crime involving domestic violence or of

1 interfering with a report of a crime involving domestic violence, evidence of other
2 crimes involving domestic violence by the defendant against the same or another
3 person or of interfering with a report of a crime involving domestic violence is
4 admissible. In this paragraph "domestic violence" and "crime involving domestic
5 violence" have the meaning given in AS 18.66.990.

6 * **Sec. 20.** Rule 6(u)(4), Alaska Rules of Criminal Procedure, is repealed.

7 * **Sec. 21.** The provisions of secs. 9 - 12 of this Act have the effect of changing Alaska
8 Rule of Criminal Procedure 5(c) by requiring a court to consider the safety of the victim, other
9 persons, and the community in setting bail and conditions of release.

10 * **Sec. 22.** The provisions of secs. 1 and 14 of this Act have the effect of changing Alaska
11 Rule of Evidence 615 and Alaska Delinquency Rule 3 by providing that a victim may attend
12 any proceeding in the prosecution of a defendant or the adjudication of a minor that the
13 defendant or minor has a right to attend.

14 * **Sec. 23.** APPLICABILITY. (a) Sections 2 - 5 of this Act apply to collections regardless
15 of whether the judgment, offense, or delinquent act occurred before, on, or after the effective
16 date of this Act.

17 (b) Except as provided in (a) of this section, this Act applies to offenses committed
18 on or after the effective date of this Act.

19 * **Sec. 24.** This Act takes effect July 1, 1997.