

CS FOR HOUSE BILL NO. 100 (HES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/26/91  
Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES DONLEY, Ulmer, Larson, Parnell, Barnes, G.Phillips, Sharp, Martin, Leman, Carney, Zawacki, Baker, R.Phillips, M.A.Miller

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the rights of victims of crime; and amending Rule 82 of the Alaska  
2 Rules of Civil Procedure, Rule 32 of the Alaska Rules of Criminal Procedure and Rules  
3 3 and 22 of the Alaska Delinquency Rules."

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

5 \* Section 1. This Act may be known as the Victims' Rights Act of 1991.

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

7 (c) A creditor may levy upon earnings exempt under (a) and (b) of this section if the  
8 creditor's claim is

9 (1) enforceable against exempt property under AS 09.38.065(a)(1) or (3)  
10 [AS 09.38.065(a)(1)]; or

11 (2) enforceable under an order of a court of bankruptcy under 11 U.S.C. 1301 -  
12 1330 (Bankruptcy Reform Act of 1978).

13 \* Sec. 3. AS 09.38.065(a) is amended to read:

14 (a) Notwithstanding other provisions of this chapter,

1 (1) a creditor may make a levy against exempt property of any kind to enforce  
2 a claim for

3 (A) child support;

4 (B) unpaid earnings of up to one month's compensation or the full-time  
5 equivalent of one month's compensation for personal services of an employee; or

6 (C) state or local taxes; [AND]

7 (2) a creditor may make a levy against exempt property to enforce a claim for

8 (A) the purchase price of the property or a loan made for the express  
9 purpose of enabling an individual to purchase the property and used for that purpose;

10 (B) labor or materials furnished to make, repair, improve, preserve, store,  
11 or transport the property; and

12 (C) a special assessment imposed to defray costs of a public improvement  
13 benefiting the property; and

14 (3) a creditor may make a levy against exempt property of any kind to  
15 enforce the claim of a crime victim if the claim arises from criminal conduct of the debtor  
16 that results in a felony conviction, except that the debtor is entitled to an exemption in  
17 property

18 (A) not to exceed an aggregate value of \$3,000 chosen by the debtor  
19 from the following categories of property:

20 (i) household goods and wearing apparel reasonably  
21 necessary for one household;

22 (ii) books and musical instruments, if reasonably held  
23 for the personal use of the debtor or a dependent of the debtor; and

24 (iii) family portraits and heirlooms of particular  
25 sentimental value to the debtor; and

26 (B) not to exceed an aggregate value of \$2,800 of the debtor's  
27 implements, professional books, and tools of the trade.

28 \* Sec. 4. AS 09.38.065 is amended by adding a new subsection to read:

29 (d) In this section, "victim" has the meaning given in AS 12.55.185.

30 \* Sec. 5. AS 09.55 is amended by adding a new section to read:

31 ARTICLE 7A. ACTIONS BY CRIME VICTIMS.

1                   Sec. 09.55.601. DAMAGES AND ATTORNEY FEES FOR VICTIMS OF VIOLENT  
2 CRIME. (a) A victim of a violent crime who has been injured or damaged may recover from  
3 the offender treble the amount of damages that may be awarded in a civil action if the injury or  
4 damage resulted from

5                   (1) an attempt on the part of the victim to prevent the commission of a violent  
6 crime or to apprehend an offender who has committed a violent crime, or aiding or attempting  
7 to aid a police officer to do so, or aiding another victim of a violent crime; or

8                   (2) the commission or attempt on the part of the offender to commit a violent  
9 crime.

10                  (b) A victim who prevails in an action under (a) of this section is entitled to recover full  
11 reasonable attorney fees.

12                  (c) In this section,

13                   (1) "victim" has the meaning given in AS 12.55.185;

14                   (2) "violent crime" means the following offenses:

15                   (A) murder in any degree;

16                   (B) manslaughter;

17                   (C) criminally negligent homicide;

18                   (D) assault in any degree;

19                   (E) kidnapping;

20                   (F) sexual assault in any degree;

21                   (G) sexual abuse of a minor in any degree;

22                   (H) robbery in any degree;

23                   (I) coercion;

24                   (J) extortion;

25                   (K) arson in any degree;

26                   (L) unlawful exploitation of a minor;

27                   (M) burglary in any degree;

28                   (N) criminal mischief in the first, second, or third degree;

29                   (O) endangering the welfare of a minor;

30                   (P) escape in the first, second, or third degree;

31                   (Q) interference with official proceedings;

- 1 (R) promoting prostitution in the first degree;
- 2 (S) driving while intoxicated or another crime resulting from the operation
- 3 of a motor vehicle, boat, or airplane when the offender is intoxicated.
- 4 \* Sec. 6. AS 12.55.023(b) is amended to read:
- 5 (b) A victim may submit to the sentencing court a written statement that the victim
- 6 believes is relevant to the sentencing decision, and may give sworn testimony or make an
- 7 unsworn oral presentation to the court at the sentencing hearing.
- 8 \* Sec. 7. AS 12.55.088(d) is amended to read:
- 9 (d) A victim has the right to comment in writing to the court on a motion to modify or
- 10 reduce a sentence filed by the person who perpetrated the offense against the victim, and has the
- 11 right to give sworn testimony or make an unsworn oral presentation at a hearing held in
- 12 connection with the motion.
- 13 \* Sec. 8. AS 12.55.088(f) is amended to read:
- 14 (f) The court shall provide copies of the victim's written comments to the prosecuting
- 15 attorney, the person filing the motion to reduce or modify a sentence, and that person's attorney.
- 16 \* Sec. 9. AS 12.55.088(g) is amended to read:
- 17 (g) In deciding whether to modify or reduce a sentence, the court shall consider the
- 18 victim's comments, testimony, or unsworn oral presentation, when relevant, and any response
- 19 by the prosecuting attorney and the person filing the motion.
- 20 \* Sec. 10. AS 12.61.010(a) is amended to read:
- 21 (a) Victims of crimes have the following rights:
- 22 (1) the right to be informed by the appropriate law enforcement agency or the
- 23 prosecuting attorney of the date of trial and the date of sentencing of the case in which the victim
- 24 is involved;
- 25 (2) the right to be notified that a sentencing hearing or a court proceeding to
- 26 which the victim has been subpoenaed will not occur as scheduled;
- 27 (3) the right to receive protection from harm and threats of harm arising out of
- 28 cooperation with law enforcement and prosecution efforts, and to be provided with information
- 29 as to the protection available;
- 30 (4) the right to be informed of the procedure to be followed to apply for and
- 31 receive any compensation under AS 18.67;

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

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

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

12 (8) [IF THE CRIME FOR WHICH THE DEFENDANT WAS CONVICTED  
13 WAS A FELONY OR A DOMESTIC VIOLENCE ASSAULT,] the right to appear personally  
14 at the defendant's sentencing hearing to present a written [OR ORAL.] statement, and to give  
15 sworn testimony or an unsworn oral presentation; and

16 (9) the right to be informed by the prosecuting attorney, at any time after the  
17 defendant's conviction, about the complete record of the defendant's convictions.

18 \* Sec. 11. AS 12.61.015(a) is amended to read:

19 (a) If a victim of a felony or a domestic violence assault requests, the prosecuting  
20 attorney shall make a reasonable effort to

21 (1) confer with the person against whom the offense has been perpetrated about  
22 that person's testimony before the defendant's trial;

23 (2) in a manner reasonably calculated to give prompt actual notice, notify the  
24 victim

25 (A) of the defendant's conviction and the crimes of which the defendant  
26 was convicted;

27 (B) of the victim's right in a case that is a felony to make a written or oral  
28 statement for use in preparation of the defendant's presentence report, and of the victim's  
29 right to appear personally at the defendant's sentencing hearing to present a written [OR  
30 ORAL.] statement and to give sworn testimony or an unsworn oral presentation;

31 (C) of the address and telephone number of the office that will prepare the

1 presentence report; and

2 (D) of the time and place of the sentencing proceeding;

3 (3) notify the victim in writing of the final disposition of the case within 30 days  
4 after final disposition of the case.

5 \* Sec. 12. AS 12.61.015(b) is amended to read:

6 (b) The notice given under (a)(2) of this section must inform the victim that the  
7 statement, sworn testimony, or unsworn oral presentation of the victim may contain any  
8 relevant information including

9 (1) an explanation of the nature and extent of physical, psychological, or  
10 emotional harm or trauma suffered by the victim;

11 (2) an explanation of the extent of economic loss or property damage suffered by  
12 the victim;

13 (3) an opinion of the need for and extent of restitution and whether the victim has  
14 applied for or received compensation for loss or damage; and

15 (4) the recommendation of the victim for an appropriate sentence

16 \* Sec. 13. AS 47.10.070 is amended by adding a new subsection to read:

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

24 \* Sec. 14. AS 47.10.081(a) is amended to read:

25 (a) Before the disposition hearing of a delinquent minor the department shall submit a  
26 predisposition report with a recommended plan of treatment to aid the court in its selection of  
27 a disposition, a victim impact statement reporting the information set out in AS 12.55.022,  
28 and any further information that the court may request. In preparing the predisposition report,  
29 the department shall contact the victim of the minor's offense.

30 \* Sec. 15. AS 47.10.990 is amended by adding a new paragraph to read:

31 (9) "victim" has the meaning given in AS 12.55.185.

1 \* Sec. 16. Rule 32(g), Alaska Rules of Criminal Procedure, is amended to read:

2 (g) MATTERS [WRITTEN STATEMENT] SUBMITTED BY VICTIM OR VICTIM'S  
3 REPRESENTATIVE. If a written statement is prepared and submitted by the victim of an [A  
4 FELONY] offense [OR A DOMESTIC VIOLENCE ASSAULT] under AS 12.55.023, or if the  
5 victim gives sworn testimony or makes an unsworn oral presentation under AS 12.55.023,  
6 the trial court:

7 (1) shall take the content of the [WRITTEN] statement, testimony, or  
8 presentation into consideration:

9 (A) when preparing those elements of the sentencing report required by  
10 AS 12.55.025 that relate to the effect of the offense on the victim;

11 (B) when considering the need for restitution under AS 12.55.045; and

12 (2) may take the content of the [WRITTEN] statement, testimony, or  
13 presentation into consideration in any other circumstances that the court believes necessary.

14 \* Sec. 17. Rule 32(h), Alaska Rules of Criminal Procedure, is amended to read:

15 (h) In (g) of this rule [,

16 (1) "DOMESTIC VIOLENCE ASSAULT" HAS THE MEANING GIVEN IN  
17 AS 12.61.900;

18 (2)] "victim" has the meaning given in AS 12.55.185.

19 \* Sec. 18. Rule 3(c), Alaska Delinquency Rules, is amended to read:

20 (c) GENERAL PUBLIC EXCLUDED. Hearings are not open to the public unless  
21 requested by the juvenile. However, the court may, after due consideration for the welfare of the  
22 juvenile and the interests of the public, admit specific individuals to a hearing, and shall admit  
23 victims of the juvenile's offense to hearings as required by AS 47.10.070(b).

24 \* Sec. 19. Rule 22(a)(1), Alaska Delinquency Rules, is amended to read:

25 (1) The predisposition report filed by the Department may include information  
26 concerning the following: the juvenile's family background, educational history, past  
27 adjudications, verified past incidents of delinquent behavior; the juvenile's medical, psychological  
28 and psychiatric history; and a description of the delinquent act and the juvenile's attitude about  
29 the act. The report must contain a recommendation regarding the recommended form of  
30 treatment that would be in the best interests of the juvenile and the public, and the victim  
31 impact statement required by AS 47.10.081(a).

- 1 \* **Sec. 20.** AS 47.10.072 is repealed.
- 2 \* **Sec. 21. APPLICABILITY.** AS 09.38.030(c) and 09.38.065(a), as amended by secs. 2 and 3 of  
3 this Act, and AS 09.38.065(d), added by sec. 4 of this Act, apply to a levy to enforce a claim if the  
4 claim arises from a crime committed on or after the effective date of this Act. AS 09.55.601, added by  
5 sec. 5 of this Act, applies to an action arising from a crime committed or attempted on or after the  
6 effective date of this Act.
- 7 \* **Sec. 22.** AS 09.55.601(b), added by sec. 5 of this Act, amends Rule 82, Alaska Rules of Civil  
8 Procedure, by requiring an award of full reasonable attorney fees to prevailing victims of certain crimes.
- 9 \* **Sec. 23.** AS 09.55.601(b), added by sec. 5 of this Act, takes effect only if sec. 22 of this Act  
10 receives the 2/3 vote required by art. IV, sec. 15, Constitution of the State of Alaska.