

SENATE CS FOR CS FOR HOUSE BILL NO. 100 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/19/91
Referred: Rules

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, Rules 16 and 32 of the Alaska Rules of Criminal Procedure,
3 and Rules 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. ATTORNEY FEES FOR VICTIMS OF SERIOUS CRIMINAL
2 OFFENSES. (a) A person who has been injured or damaged, or the estate of a person who has
3 died, may recover from the offender full reasonable attorney fees in a civil action or a wrongful
4 death action if the injury, damage, or death resulted from

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

9 (2) the commission or attempt on the part of the offender to commit a serious
10 criminal offense.

11 (b) If a judgment for attorney fees is entered against an offender in a civil action brought
12 under this section, and a contract of insurance requires an insurer to pay the attorney fees, the
13 insurer shall be liable only for the attorney fees that would be awarded to the plaintiff under
14 Alaska Rule of Civil Procedure 82(a)(1).

15 (c) In this section, "serious criminal offense" means the following offenses:

- 16 (1) murder in any degree;
17 (2) manslaughter;
18 (3) criminally negligent homicide;
19 (4) assault in any degree;
20 (5) kidnapping;
21 (6) sexual assault in any degree;
22 (7) sexual abuse of a minor in any degree;
23 (8) robbery in any degree;
24 (9) coercion;
25 (10) extortion;
26 (11) arson in any degree;
27 (12) burglary in any degree;
28 (13) criminal mischief in the first, second, or third degree;
29 (14) driving while intoxicated or another crime resulting from the operation of
30 a motor vehicle, boat, or airplane when the offender is intoxicated.

31 * Sec. 6. AS 12.55.023(b) is amended to read:

1 (b) A victim may submit to the sentencing court a written statement that the victim
2 believes is relevant to the sentencing decision, and may give sworn testimony or make an
3 unsworn oral presentation to the court at the sentencing hearing. If there are numerous
4 victims, the court may limit the number of victims who may give sworn testimony or make
5 an unsworn oral presentation during the hearing.

6 * Sec. 7. AS 12.55.088(d) is amended to read:

7 (d) A victim has the right to comment in writing to the court on a motion to modify or
8 reduce a sentence filed by the person who perpetrated the offense against the victim, and has the
9 right to give sworn testimony or make an unsworn oral presentation at a hearing held in
10 connection with the motion. If there are numerous victims, the court may limit the number
11 of victims who may give sworn testimony or make an unsworn oral presentation during the
12 hearing.

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 12.61 is amended by adding new sections to read:

17 ARTICLE 2. VICTIM AND WITNESS INFORMATION CONFIDENTIALITY.

18 Sec. 12.61.100. DECLARATION OF PURPOSE. The purpose of AS 12.61.100 -
19 12.61.150 is to protect victims of and witnesses to crime from risk of harassment, intimidation,
20 and unwarranted invasion of privacy by prohibiting the unnecessary disclosure of their addresses
21 and telephone numbers.

22 Sec. 12.61.110. CONFIDENTIALITY OF VICTIM AND WITNESS ADDRESSES AND
23 TELEPHONE NUMBERS. The residence and business addresses and telephone numbers of a
24 victim of a crime or witness to a crime are confidential. A report, paper, picture, photograph,
25 court file, or other document that relates to a crime and contains the residence or business address
26 or telephone number of a victim or witness, and that is in the custody or possession of a public
27 officer or employee, may not be made available for public inspection unless the residence and
28 business addresses and telephone numbers of all victims and witnesses have been deleted.

29 Sec. 12.61.120. DISCLOSURE TO DEFENSE. (a) The prosecution in a criminal case
30 may not be required to furnish to the defendant personally the address or telephone number of
31 a victim or witness absent a showing of good cause as determined by the court. Except as

1 provided in (b) of this section, good cause exists when the defendant is proceeding without
2 counsel. When a defendant is represented by counsel, the address and telephone number of a
3 victim or witness may be disclosed to the defendant's counsel, but the court shall order the
4 defendant's counsel to not disclose the information to the defendant.

5 (b) If the defendant is proceeding without counsel in a case involving a charged violation
6 of AS 11.41, AS 11.46.300 - 11.46.330, AS 11.56.8110, AS 11.61.120(a)(6), or 11.61.200 -
7 11.61.210 and the court finds that the defendant may pose a continuing threat to the victim of
8 or witness to the offense charged, the court shall protect the address and telephone number of
9 the victim or witness by providing the information only to a person specified by the court or by
10 imposing other restrictions that the court considers necessary. When an address or telephone
11 number is released to a person specified by the court under this subsection, that person, who shall
12 be ordered not to disclose the information to the defendant, shall contact the victim or witness
13 on behalf of the defendant, and the defendant shall meet or speak with the victim or witness only
14 in the presence of that person.

15 (c) If a person representing the defendant, including the defendant's attorney or a person
16 specified by the court under (b) of this section, contacts the victim of an offense with which the
17 defendant is charged, the person shall clearly inform the victim

18 (1) of the person's identity and specific association with the defendant;
19 (2) that the victim does not have to talk to the person unless the victim wishes;
20 and

21 (3) that the victim may have a prosecuting attorney or other person present during
22 an interview.

23 Sec. 12.61.130. DISCLOSURE DURING COURT PROCEEDINGS. (a) During a trial
24 or hearing related to a criminal prosecution, the residence and business addresses and telephone
25 numbers of a victim of or witness to the charged offense may not be disclosed in open court, and
26 a victim or witness may not be required to provide the addresses or telephone numbers in
27 response to questioning, unless the court determines that the information is necessary and relevant
28 to the facts of the case. The burden to establish the need and relevance for disclosure is on the
29 party seeking disclosure. Before ordering disclosure, the court shall take appropriate measures
30 to minimize the risk of personal harm to the victim or witness that would result from the
31 disclosure.

1 (b) The address or telephone number of a victim of or witness to a charged offense may
2 not be placed in the court file or court documents relating to that offense except when

- 3 (1) the address is used to identify the place of the crime; or
4 (2) the address or telephone number is contained in a transcript of a court
5 proceeding and disclosure of the address or telephone number was ordered under (a) of this
6 section.

7 Sec. 12.61.140. DISCLOSURE OF VICTIM'S NAME. (a) The portion of the records
8 of a court or law enforcement agency that contains the name of the victim of an offense under
9 AS 11.41.300(a)(1)(C) or 11.41.410 - 11.41.460

10 (1) shall be withheld from public inspection, except with the consent of the court
11 in which the case is or would be prosecuted; and

12 (2) is not a public record under AS 09.25.110 - 09.25.125.

13 (b) In all written court records open to public inspection, the name of the victim of an
14 offense under AS 11.41.300(a)(1)(C) or 11.41.410 - 11.41.460 may not appear. Instead, the
15 victim's initials shall be used. However, a sealed record containing the victim's name shall be
16 kept by the court in order to ensure that a defendant is not charged twice for the same offense.

17 Sec. 12.61.150. PUBLIC AND MEDIA ACCESS. This article may not be construed to
18 require the court to exclude the public from any stage of the criminal proceeding or to interfere
19 with the right of news media to report information lawfully obtained.

20 * Sec. 14. AS 33.30.013(a) is amended to read:

21 (a) The commissioner shall notify the victim if the offender

22 [(1)] escapes from custody or [;

23 (2)] is released to the community on a furlough, [; OR

24 (3) IS RELEASED] on an early release program, or for any other reason.

25 * Sec. 15. AS 33.30.013 is amended by adding a new subsection to read:

26 (e) As part of the notice under this section, the commissioner shall send the victim a
27 photograph of the offender if the victim has specifically requested in writing that a photograph
28 be sent. The photograph must have been taken within three weeks of the offender's release or,
29 if the offender escapes from custody, must be the most recent photograph in the commissioner's
30 possession. The photograph is for the victim's personal use, and the victim may not make copies
31 of the photograph for distribution to others. An offender who is released under (a) of this section

1 shall be notified that a photograph has been sent to the victim under this subsection.

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

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

10 * Sec. 17. AS 47.10.081(a) is amended to read:

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

16 * Sec. 18. AS 47.10.990 is amended by adding a new paragraph to read:

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

18 * Sec. 19. Rule 32(g), Alaska Rules of Criminal Procedure, is amended to read:

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

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

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

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

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

31 * Sec. 20. Rule 32(h), Alaska Rules of Criminal Procedure, is amended to read:

1 (h) In (g) of this rule [,
2 (1) "DOMESTIC VIOLENCE ASSAULT" HAS THE MEANING GIVEN IN
3 AS 12.61.900;
4 (2)] "victim" has the meaning given in AS 12.55.185.
5 * Sec. 21. Rule 3(c), Alaska Delinquency Rules, is amended to read:
6 (c) GENERAL PUBLIC EXCLUDED. Hearings are not open to the public unless
7 requested by the juvenile. However, the court may, after due consideration for the welfare of the
8 juvenile and the interests of the public, admit specific individuals to a hearing, and shall admit
9 victims of the juvenile's offense to hearings as required by AS 47.10.070(b).
10 * Sec. 22. Rule 22(a)(1), Alaska Delinquency Rules, is amended to read:
11 (1) The predisposition report filed by the Department may include information
12 concerning the following: the juvenile's family background, educational history, past
13 adjudications, verified past incidents of delinquent behavior; the juvenile's medical, psychological
14 and psychiatric history; and a description of the delinquent act and the juvenile's attitude about
15 the act. The report must contain a recommendation regarding the recommended form of
16 treatment that would be in the best interests of the juvenile and the public, and the victim
17 impact statement required by AS 47.10.081(a)
18 * Sec. 23. AS 47.10.072 is repealed.
19 * Sec. 24. APPLICABILITY. AS 09.38.030(c) and 09.38.065(a), as amended by secs. 2 and 3 of
20 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
21 claim arises from a crime committed on or after the effective date of this Act. AS 09.55.601, added by
22 sec. 5 of this Act, applies to an action arising from a crime committed or attempted on or after the
23 effective date of this Act.
24 * Sec. 25. AS 09.55.601, added by sec. 5 of this Act, amends Rule 82, Alaska Rules of Civil
25 Procedure, by requiring an award of full reasonable attorney fees to prevailing victims of certain crimes.
26 * Sec. 26. AS 12.61.120, added by sec. 13 of this Act, amends Rule 16, Alaska Rules of Criminal
27 Procedure, by restricting discovery available to criminal defendants.
28 * Sec. 27. AS 09.55.601, added by sec. 5 of this Act, takes effect only if sec. 25 of this Act receives
29 the 2/3 vote required by art. IV, sec. 15, Constitution of the State of Alaska.
30 * Sec. 28. AS 12.61.120, added by sec. 13 of this Act, takes effect only if sec. 26 of this Act receives
31 the 2/3 vote required by art. IV, sec. 15, Constitution of the State of Alaska.