

HB 1000

HOUSE BILL NO. 100

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DONLEY, Ulmer, Larson, Parnell, Barnes, G.Phillips, Sharp, Martin, Leman, Carney,
Zawacki

Introduced: 2/4/91

Referred: Health, Education and Social Services, Judiciary, Finance

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 09.55 is amended by adding a new section to read:

29 ARTICLE 7A. ACTIONS BY CRIME VICTIMS.

30 Sec. 09.55.601. DAMAGES AND ATTORNEY FEES FOR VICTIMS OF VIOLENT

31 CRIME. (a) A victim of a violent crime who has been injured or damaged may recover from

1 the offender treble the amount of damages that may be awarded in a civil action if the injury or
2 damage resulted from

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

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

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

10 (c) In this section, "violent crime" means the following offenses:

11 (1) murder in any degree;

12 (2) manslaughter;

13 (3) criminally negligent homicide;

14 (4) assault in any degree;

15 (5) kidnapping;

16 (6) sexual assault in any degree;

17 (7) sexual abuse of a minor in any degree;

18 (8) robbery in any degree;

19 (9) coercion;

20 (10) extortion;

21 (11) driving while intoxicated or another crime resulting from the operation of
22 a motor vehicle, boat, or airplane when the offender is intoxicated.

23 * Sec. 5. AS 12.55.023(b) is amended to read:

24 (b) A victim may submit to the sentencing court a written statement that the victim
25 believes is relevant to the sentencing decision, and may give sworn testimony or make an
26 unsworn oral presentation to the court at the sentencing hearing.

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

28 (d) A victim has the right to comment in writing to the court on a motion to modify or
29 reduce a sentence filed by the person who perpetrated the offense against the victim, and has the
30 right to give sworn testimony or make an unsworn oral presentation at a hearing held in
31 connection with the motion.

1 * Sec. 7. AS 12.55.088(f) is amended to read:

2 (f) The court shall provide copies of the victim's written comments to the prosecuting
3 attorney, the person filing the motion to reduce or modify a sentence, and that person's attorney.

4 * Sec. 8. AS 12.55.088(g) is amended to read:

5 (g) In deciding whether to modify or reduce a sentence, the court shall consider the
6 victim's comments, testimony, or unsworn oral presentation, when relevant, and any response
7 by the prosecuting attorney and the person filing the motion.

8 * Sec. 9. AS 12.61.010(a) is amended to read:

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

10 (1) the right to be informed by the appropriate law enforcement agency or the
11 prosecuting attorney of the date of trial and the date of sentencing of the case in which the victim
12 is involved;

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

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

18 (4) the right to be informed of the procedure to be followed to apply for and
19 receive any compensation under AS 18.67;

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

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

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

31 (8) [IF THE CRIME FOR WHICH THE DEFENDANT WAS CONVICTED

1 WAS A FELONY OR A DOMESTIC VIOLENCE ASSAULT,) the right to appear personally
2 at the defendant's sentencing hearing to present a written [OR ORAL] statement, and to give
3 sworn testimony or an unsworn oral presentation; and

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

6 * Sec. 10. AS 12.61.015(a) is amended to read:

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

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

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

13 (A) of the defendant's conviction and the crimes of which the defendant
14 was convicted;

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

20 (C) of the address and telephone number of the office that will prepare the
21 presentence report; and

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

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

25 * Sec. 11. AS 12.61.015(b) is amended to read:

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

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

31 (2) an explanation of the extent of economic loss or property damage suffered by

1 the victim;

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

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

5 * Sec. 12. AS 47.10.070 is amended by adding a new subsection to read:

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

13 * Sec. 13. AS 47.10.081(a) is amended to read:

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

19 * Sec. 14. AS 47.10.990 is amended by adding a new paragraph to read:

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

21 * Sec. 15. Rule 32(g), Alaska Rules of Criminal Procedure, is amended to read:

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

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

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

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

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

3 * Sec. 16. Rule 32(h), Alaska Rules of Criminal Procedure, is amended to read:

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

5 (1) "DOMESTIC VIOLENCE ASSAULT" HAS THE MEANING GIVEN IN
6 AS 12.61.900;

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

8 * Sec. 17. Rule 3(c), Alaska Delinquency Rules, is amended to read:

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

13 * Sec. 18. Rule 22(a)(1), Alaska Delinquency Rules, is amended to read:

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

21 * Sec. 19. AS 47.10.072 is repealed.

22 * Sec. 20. APPLICABILITY. AS 09.38.030(c) and 09.38.065(a), as amended by secs. 2 and 3 of
23 this Act, apply to a levy to enforce a claim if the claim arises from a crime committed on or after the
24 effective date of this Act. AS 09.55.601, added by sec. 4 of this Act, applies to an action arising from
25 a crime committed or attempted on or after the effective date of this Act.

26 * Sec. 21. AS 09.55.601(b), added by sec. 4 of this Act, amends Rule 82, Alaska Rules of Civil
27 Procedure, by requiring an award of full reasonable attorney fees to prevailing victims of certain crimes.

28 * Sec. 22. AS 09.55.601(b), added by sec. 4 of this Act, takes effect only if sec. 21 of this Act
29 receives the 2/3 vote required by art. IV, sec. 15, Constitution of the State of Alaska.