

HB

376

(7)
Date Referred: 1/13/92

FURTHER REFERRALS:

2-5-92
Finance

Date of Committee Action: 2/3/92

The JUDICIARY Committee considered:

HB 376

HOUSE BILL NO. 376

VICTIM RIGHTS: OFFENDER STATUS CHANGE

"An Act relating to the rights of victims of crimes committed by defendants found not guilty by reason of insanity."

RECOMMENDATIONS:

be replaced with CSHB 376 (JUD) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note ^{Dept of Health & Social Svcs.} Dept of Administration (2)

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>J. Ellis</i>	X				
<i>Mark Hendrix</i>	X				
<i>Mike Miller</i>	X				
<i>Terry Martin</i>	X				
<i>Mr. Gumbert</i>	-				
<i>Kevin P. Phelan</i>	✓				
<i>Mike Conley</i>	✓				

Mike Conley
CHAIRMAN'S SIGNATURE ✓

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 376

Revision Date: _____ Department Affected: _____
 Title: "An Act relating to the rights of victims/rights committed by defendant found not guilty by reason of insanity." BRU: Alaska Psychiatric Institute
 Sponsor: _____ Component: _____
 Requestor: Representative MacLean COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
	-0-	-0-	-0-	-0-	-0-	-0-

REVENUE						
FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

This would have no measurable fiscal impact.

Prepared By: Margaret D. Lowe Margaret D. Lowe, M.Ed., Ed.S. Phone: 465-3370
 Division: Mental Health & Developmental Disabilities Date: January 28, 1992
 Approved by Commissioner: Theodore A. Mala Theodore A. Mala, MD; MPH
 Agency: Health & Social Services Date: 1/28/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 376

Revision Date: _____

Department Affected: Administration

Title: "An Act relating to the rights of victims of crimes committed by defendants found not guilty by reason of insanity."

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: MacLean

Requestor: House Judiciary

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John Salemi, Public Defender

Phone: 279-7541

Division: Public Defender Agency

Date: January 22, 1992

Approved by Commissioner: Nancy Bear Usara

Agency: Administration

Date: 1/22/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act relating to the rights of victims
of crimes . . ."
Sponsor: MacLean
Requestor: House Judiciary

Department Affected: Administration
BRU: Office of Public Ad vacy
Component: Office of Pub. Advocacy

COMPONENT SERIAL NO.

		4	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: (907) 274-1684
Date: January 22, 1992

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Date: 1/27/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

ALASKA STATE LEGISLATURE

Representative Eileen Panigeo MacLean
Co-Chair House Finance Committee
P.O. Box 830
Barrow, Alaska 99723



WHILE IN JUNEAU
Box V
Juneau, Alaska 99811
465-4525
465-4833

HOUSE OF REPRESENTATIVES

District 22

North Slope
Borough

Anaktuvuk Pass
Atkasuk
Barrow
Kaktovik
Nuiqsut
Point Hope
Point Lay
Wainwright

Northwest Arctic
Borough

Ambler
Buckland
Deering
Kiana
Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
Selawik
Shungnak

August 23, 1991

Ms. Margot Knuth
Assistant Attorney General
Department of Law
P.O. Box K-C
Juneau, Alaska 99811

Dear Ms. Knuth:

I have been requested to look into a matter involving the potential release of murderer found "not guilty by reason of insanity" from the Alaska Psychiatric Institute. My office was contacted by the family of the victim of the crime, Roberta (Brower) Quintavel.

In 1982, Roberta's father, Robert Brower, was killed by his brother Arnold A. Brower. Arnold, a Vietnam veteran was classified as a schizophrenic and found not guilty by reason of insanity. He was committed to the Alaska Psychiatric Institute (API) for forty years. The case number is 2EA-82-265CR.

Recently, that family has become aware that API has petitioned Judge Jeffries to grant Arnold unescorted passes from API four times a week to look for a job. The family is concerned that Arnold could eventually come back to Barrow and would like to have some say about his release.

Ms. Margot Knuth
Assistant Attorney General
August 23, 1991
Page 2

It is my understanding that because Arnold is in API, the victims rights law does not apply due to the confidentiality requirements. The result is that the victim's family is not notified of hearings regarding Arnold's sentence or release from API.

My immediate concern is to allow the family to become involved in the hearing process. They should be notified to enable them to have a say in conditions that may be imposed during Arnold's unescorted passes during the week and, his potential release from API.

A longer term concern is that there may be a loophole in the statutes. Prisoners sentenced to API are protected by confidentiality laws. This apparently supersedes the victims rights law (which enables victims to be notified and to have a say in sentencing procedures). Another area to review has to do with when an individual becomes "competent to stand trial." You indicated that after an individual becomes "competent to stand trial" there is no legal hold in the person. I would appreciate your review of this matter and recommendation on potential legislation to be introduced next session.

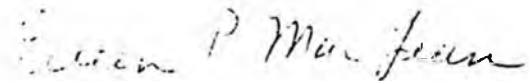
Finally, last week a hearing was held in Barrow regarding Arnold's unescorted passes from API. The family was concerned that no one from the state was represented at the hearing. I would like to know what the state's role is, in cases like this, where individuals are sentenced to API for lengthy terms, but later in sentencing procedures are allowed to be released much earlier. Does the state have any role or responsibility in providing input at hearings which essentially reduce the sentence of prisoners sentenced to API?

I'm interested in helping my constituents from Barrow, but I am also interested in improving the judicial system. If there are changes that can be made to the statutes, the hearing process, or to your departmental budget, as Co-Chair of the Finance Committee, I may be able to help. I would be glad to work with you or your staff in reviewing this matter.

Ms. Margot Knuth
Assistant Attorney General
August 23, 1991
Page 3

If you have any questions, or need any additional information,
please contact Rena Bukovich, of my Anchorage office at 561-7611.

Sincerely,



Representative Eileen P. MacLean
Co-Chair Finance Committee

cc: Commissioner Ted Mala
Dept. of Health and Social Services

Roberta Smith

NOV 28 1991

WALTER J. HICKEL, GOVERNOR

STATE OF ALASKA
DEPARTMENT OF LAW

CRIMINAL DIVISION

September 30, 1991

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

*sent on 11/12 @ her
neg. not didn't arrive*

The Honorable Eileen P. MacLean
Representative, Alaska Legislature
P.O. Box 830
Barrow, Alaska 99723

Re: Notice to Victims in NGBROI Cases

Dear Representative MacLean:

Thank you for your letter of August 23, 1991, in which you related that you have been requested to look into a matter involving the potential release from API of a murder defendant who was found "not guilty by reason of insanity" in 1982. You have been contacted by Roberta Quintavel, whose father, Robert Brower, was killed by Arnold Brower. Arnold Brower, the decedent's brother, was a Vietnam veteran who was classified as schizophrenic and, after being found not guilty by reason of insanity, was committed to the Alaska Psychiatric Institute for a period of up to forty years.

Recently, Roberta Quintavel and her family has learned that API is petitioning the court to grant Arnold unescorted passes from API four times a week to look for a job. The family is concerned that Arnold may wish to return to Barrow in the near future and it would like to have some say about his release.

You have correctly noted that, because Arnold is being held at API and is not within the custody of the Department of Corrections, there is no provision under AS 33.30.013 for Roberta Quintavel to receive notice of Arnold's potential release. The issue you have raised is whether this means there is a notice "loophole" for defendants who are found not guilty by reason of insanity that should be corrected by legislation.

Interestingly enough, this problem was noted and resolved by the legislature in 1989. AS 12.47.095 now requires the commissioner of health and social services to provide various notices to the victim of a crime committed by a person who has been found not guilty by reason of insanity. Included within the requirements of this statute are: notice when a court is considering a conditional release for the offender; notice when a court is considering modifying an order of conditional release; and

notice when an offender petitions the court for discharge from custody.

Victims who desire notice under this statute must maintain a current, valid mailing address on file with the Department of Health & Social Services (which cannot be revealed to the offender). The commissioner is required to give notice of a change in the status of an offender "to any victim who has requested notice." AS 12.47.095.

You have provided me with a copy of a letter Ms. Quintavel wrote to James Doogan, an Assistant District Attorney in Fairbanks. I have no doubt that Mr. Doogan will be preparing an appropriate response to Ms. Quintavel's letter. For your benefit, I note that Judge Jeffries seems not to be aware of the provisions of AS 12.47.95. I expect he will become familiar with them in due course.

Next, you have inquired what the state's role is when offenders who have been ordered into the custody of API for lengthy terms seek early release. When such a petition is filed, both the attorney general and the attorney who represented the state at the initial proceedings are notified, as required by AS 12.47.090(e). Usually, although not always, an attorney from the civil division is expected to appear on behalf of the state. This is because the state's criminal prosecution is ended by the verdict of "not guilty by reason of insanity"; thereafter, the case becomes a civil commitment proceeding.

This means that, contrary to Ms. Quintavel's assumption, a victim's avenue for input to the court is frequently not going to be through the District Attorney's office, but instead will be through the Attorney General's Civil Division. She is correct, however, in recognizing that there is no provision for her to directly participate in the court's hearing on the question of release. Instead, her views can be presented to the court only through the state (i.e., one of the parties to the case).

As I noted in a telephone conversation with your staff, the issue I raised about notice to the state when an "incompetent to stand trial" defendant is about to be released by API is quite distinct from the "not guilty by reason of insanity" situation covered by AS 12.47.095. The lack of any requirement that notice be provided when a defendant becomes competent to stand trial means that a defendant may be released by API without the state's knowledge. ~~This is a problem that the legislature may be able to resolve.~~ If the issue is not addressed by one of the governor's bills this coming session, perhaps I could discuss it further with your staff members.

The Honorable Eileen P. MacLean

September 30, 1991
Page 3

If you have any further questions or concerns, please do not hesitate to contact me.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: M Knuth
Margot O. Knuth
Assistant Attorney General

September 5, 1991

James P. Doogan, District Attorney
604 Barnet Street Room 247
Fairbanks, Alaska 99701

Dear Mr. Doogan,

Understanding that the demands on the District Attorney and his office are such that every case to be tried by you and your office may not be followed up on. However, I feel that the issues surrounding this case are worthy of continued follow up as well as participation from your office for the following reasons.

It is my understanding, and please correct me if I am wrong, in the case of State of Alaska vs. Arnold A. Brower case number 2EA-82-265CR the assailant was found "not guilty by reason of insanity" for the murder of his brother Robert Brower Jr. and subsequently committed to the Alaska Psychiatric Institute for forty years. In such cases there has not been a determination that the victims have rights under the victims rights law. In light of these circumstances it came to our attention that a hearing was schedule and held before Judge Jeffries where the Alaska Psychiatric Institute petitioned and won unescorted passes to enable Aronld A. Brower to seek employment and to further his rehabilitation into the community. This raises two issues that concern me a great deal.

First off it would help you to know that I am a member of the victims family, and the views that I have are very personal. Never the less, the first concern is that what roll does the district Attorney's office play in continuing to insure that the welfare of the community is not jeopardized by the rehabilitations process? Understand that we have been aware that Arnold A. Brower has be allowed escorted pass for some time now, it has always been our hope that judicial system would allow for community input at such times when Arnold A. Brower would be allowed to move freely about the community. Much to our surprise this is not the case. It appears to me that, by law, the only avenue for input would have to come from the District Attorney's Office. We were able to gain some support from the court when Judge Jeffries, subsequent to the last hearing, entered an order to notify some family members including myself (enclosed is a copy) of any future hearings. Understanding that ~~this is not required by law~~, I am disturb by the fact that the District Attorney's office was not represented at that hearing. Furthering my fears that should Arnold A. Brower complete the rehabilitation process long before the forty years sentence is complete the community may not be aware, nor be in a position to accept his return.

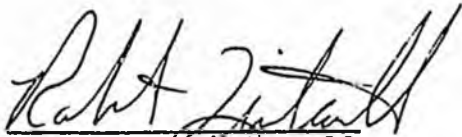
Secondly, what avenue, if any, do we the victims family have to insure that we may participate in any release hearing so that we may continue to live in this community with a solid piece of mind knowing that our families would not be threatened.

James P. Doogan
District Attorney
September 5, 1991
Page two

Please understand that I not trying to put you or your staff in a defensive position I merely would like to find a means to protect our community from a situation that potentially would divide not only our family but the community as a whole. As you are well aware Barrow is made up of 3,500 people and has all the characteristics of a small town.

I would like to thank you for taking the time to look into these concerns and look forward to hearing from you soon.

Respectfully,



Roberta Quintavell
P.O. Box 547
Barrow, Alaska 99723

cc: Ted Mala, Commissioner, Dept. of Health and Social Services
✓ Representative Eileen P. MacLean
Senator Al Adams

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT BARROW

STATE OF ALASKA,)
)
 plaintiff,)
)
 vs.)
)
 ARNOLD A. BROWER,)
)
 defendant.)
)

FILED IN THE TRIAL COURTS
STATE OF ALASKA AT BARROW

AUG 23 1991

[Signature]
MAGISTRATE/CLERK

ORDER FOR NOTICE

Case No. 2BA-S82-265 CR

In exercise of the court's discretion and in the interests of justice, and on request of the following concerned individuals,

IT IS HEREBY ORDERED that notice of any future hearings in this case shall be provided to:

Bill Brower
P.O. Box 845
Kenai, AK 99611

Roberta Quintavell
P.O. Box 547
Barrow, AK 99723

Sally Brower
P.O. Box 312
Barrow, AK 99723

Effective Date: August 22, 1991

ENTERED AT Barrow, Alaska, this 22 day of August, 1991.

[Signature]

Michael I. Jeffrey
Superior Court



I certify that I sent Alaska Court System copies to: DA-Doogan/PD-Wright/above persons

on 8/23/91 *[Signature]* Clerk

SEP 25 1991

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION/FOURTH JUDICIAL DISTRICT

OFFICE OF THE DISTRICT ATTORNEY

REPLY TO:

- P.O. BOX 755
BETHEL, ALASKA 99559-0755
PHONE: (907) 543-2055
- 604 BARNETTE ST., RM 247
STATE COURT & OFFICE BLDG.
FAIRBANKS, ALASKA 99701-4573
PHONE: (907) 452-1565

September 13, 1991

Roberta Quintavell
P.O. Box 547
Barrow, AK 99723

Re: Arnold A. Brower, 2BA-S82-265

Dear Ms. Quintavell:

Your letter of September 5 raises some interesting questions. I will try to answer them to the best of my ability.

This is why no notice for

In 1989, many years after Mr. Brower was found not guilty by reason of insanity and committed, the legislature passed a new law (A.S.12.47.095) requiring the Commissioner of the Department of Health and Social Services, hereafter called "the commissioner", to notify the victims of the crime for which the defendant was committed if the defendant is to be released, or if the defendant is to be allowed conditional release, or if he has petitioned for release. The definition of "victim" in the law (A.S.12.55.185) includes, in a murder case, the deceased's spouse, parents, grandparents, brothers and sisters, and adult children and grandchildren. However, a "victim" must first send a current mailing address to the commissioner with a request for notification. Also, if there are many relatives who qualify as "victims", the commissioner may pick one of them as the person to be notified, and that person is then responsible to tell the others.

Please note that the law only requires notice to victims if the defendant might be "released" or granted "conditional release". Unescorted passes from API do not constitute "release" or "conditional release" under the law. The law as presently written does not require that victims be notified before API grants temporary passes to persons such as Mr. Brower.

From your letter, it appears that no one explained the law to you before. Since you have sent a copy of your letter to the commissioner, I am sure you will be receiving notice of any requests for "release" or "conditional release" by Mr. Brower. I note also that Judge Jeffery has issued an order in this case to insure that the court will notify you and certain other family members of future hearings, even if they do not involve release or conditional release of Mr. Brower.

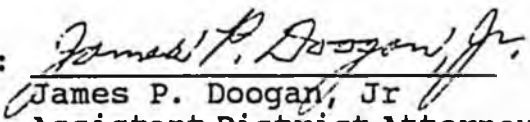
In this case, the request to allow Mr. Brower limited unescorted passes in the Anchorage area was made by the state's Department of Health and Social Services, through representatives of the Alaska Psychiatric Institute. These representatives are mental health experts who work for the state, and who have been treating and supervising Mr. Brower. Under present law, there is no requirement that API request court approval before granting unescorted passes, nor that any court hearings be held on such requests. However, Judge Jeffery, in his discretion, decided to have a hearing on the API request. It was perfectly proper for him to do this. My office, part of the Criminal Division of the Department of Law, does not provide legal representation to the Department of Health and Social Services or to API. Consequently, there was no role for the District Attorney's Office to play at the hearing held by Judge Jeffery.

Our office does receive and review reports from API on persons such as Mr. Brower. If anything in the reports indicates that proposed treatment plans might create an unacceptable danger to the public, we notify attorneys in the Civil Division of the Department of Law, who represent the Department of Health and Social Services, of our concerns. We did review the API letter concerning unescorted passes for Mr. Brower. The API proposal to grant Mr. Brower limited, carefully controlled unescorted passes in the Anchorage area did not seem unreasonable, and so no further action was taken by this office.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: 
James P. Doogan, Jr.
Assistant District Attorney

- cc - Dr. Theodore Mala
Commissioner, Dept. Of Health and Social Services
- ✓ - Rep. Eileen P. MacLean
Alaska House of Representatives
- Sen. Al Adams
Alaska State Senate