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STATE COMMITTEE REPORT

DATE: 2/26/92

FURTHER:

DATE TURNED INTO OFFICE: 3/26/92

Judiciary Committee considered CS FOR HOUSE BILL NO. 376 (JUDICIARY)

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

and recommends:

- replace with _____ CS _____ ()
- or adopt previous _____ CS _____ ()
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

- do pass
- do not pass
- no recommendation
- individual recommendations

NEW FISCAL NOTES: Dept/Date

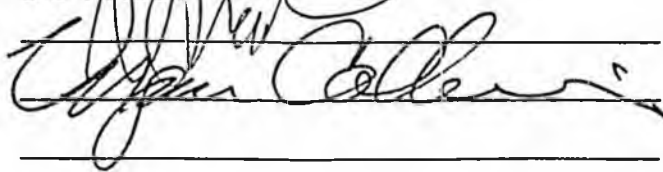
zero fiscal notes _____

DHSS 1/28/92
Admin 08/1/27/92 PD 1/27/92

fiscal notes _____

appropriation--no fiscal note

DO PASS:

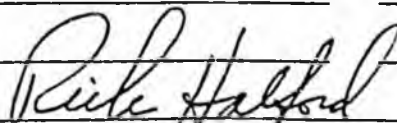


PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

OTHER RECOMMENDATIONS:



Chair: Signature and Recommendation

Revision Date: February 14, 1992
 Title: "An Act relating to the rights of victims of crimes committed by defendants found not guilty by reason of insanity."
 Sponsor: MacLean, Donley
 Requestor: _____

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency

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.)

This committee substitute requires notice to a victim of an actual, as well as pending, change in status of an NGI offender. This explicitly includes escape, conditional release, furlough, authorized absence, or discharge or release for any reason.

No anticipated fiscal impact.

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: February 13, 1992

Approved by Commissioner: Nancy Bear Usara
 Agency: Administration

Date: 2/24/92

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
Kivallina
Kobuk
Kotzebue
Noatak
Noorvik
Selawik
Shungnak

MEMORANDUM

DATE: February 26, 1991
TO: Senator Rick Halford, Chairman
Senate Judiciary Committee
FROM: Representative Eileen P. MacLean *EPM*
SUBJ: Committee Hearing on HB 376

This is to request a hearing on CSHB 376, relating to the rights of victims of crimes committed by defendants found not guilty by reason of insanity.

This bill would give victims of crimes committed by defendants found not guilty by reason of insanity the same right to directly participate in court proceedings as other victims of crime.

Under existing law, victims of crimes committed by defendants found not guilty by reason of insanity are only notified of changes in the offenders status but do not have the right to present a written or oral statement to the court, as are other victims of crime. This is an apparent loophole in the statutes.

The House Judiciary Committee Substitute further clarifies that victims are entitled to receive notice of pending or actual changes of status of the offender; and if the offender escapes, or is released from custody for any reason.

If you have any questions, please contact Rena Bukovich of my staff at 465-4525.

SPONSOR STATEMENT
HB 376
REPRESENTATIVE EILEEN P. MACLEAN

HB 376 would give victims of crimes committed by defendants found "not guilty by reason of insanity" the same right to directly participate in court proceedings as other victims of crime.

Under existing law, victims of crimes committed by defendants found "not guilty by reason of insanity" are only notified of changes in the offenders status but do not have the right to present a written or oral statement to the court, as are other victims of crime.

HB 376 would remove a loophole in the statutes and provide this type of victim the same rights as other victims of crime.

The Committee Substitute further clarifies on page one, that victims are entitled to receive notice of pending or actual changes in the status of the offender; and on page two, if the offender escapes, or is released from custody for any reason.

HB 376 passed the House with overwhelming support.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

WALTER J. HICKEL, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

March 20, 1992

The Honorable Rick Halford
Alaska State Senate
Room 103, Capitol
P.O. Box V
Juneau, Alaska 99811

re: SB376

Dear Senator Halford,

Thank you very much for your positive consideration of our insurance reform bill, SB376, when it was before the Senate Labor and Commerce Committee. Your help was invaluable.

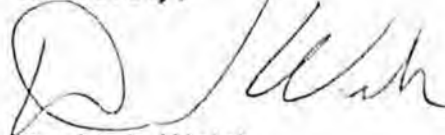
Now that the bill is in front of the Judiciary Committee, we would like to ask for your help and support again. As you know the bill received microscopic attention in front of Labor and Commerce and we feel that it is ready for immediate consideration before your committee.

Please consider this a formal request that SB376 be scheduled for hearing before the Judiciary Committee as soon as possible. I know that you and the committee have numerous issues before you for consideration, but I feel that this bill can be handled quickly without a lot of controversy.

Your aid, Rick Cook, has been excellent to work with and if you or he has need for additional information, please do not hesitate to contact me.

Thank you. I look forward to hearing from you.

Sincerely,



David J. Walsh

ALASKA STATE LEGISLATURE

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



WHILE IN JUNEAU
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HOUSE OF REPRESENTATIVES

District 22

North Slope
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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.

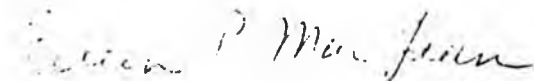
Finally, last week a hearing was held in Barrow regarding Arnold's unescorted passes from API. The family was concerned that no one from the state was represented at the hearing. I would like to know what the state's role is, in cases like this, where individuals are sentenced to API for lengthy terms, 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,

A handwritten signature in cursive script, appearing to read "Eileen P. MacLean".

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

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
msg. re: 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

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.

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.
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

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 scheduled and held before Judge Jeffries where the Alaska Psychiatric Institute petitioned and won unescorted passes to enable Arnold 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 been 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.

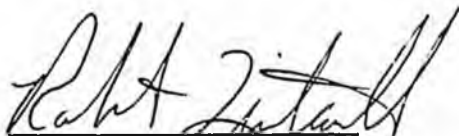
Secondly, what avenue, if any, do we the victims family have to insure that we may participate in any release hearing so that we may continue to live in this community with a solid piece of mind knowing that our families would not be threatened.

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

FEB 21 1992

Sally J. Brower
P. O. BOX 312
Barrow, Alaska 99723

Representative Eileen MacLean
Box V, Room 507
Juneau, Alaska 99811

Dear Eileen,

Please accept this letter as my complete support of House Bill number 376. Ironic as it may seem, I had to become a victim of a heinous crime to validate my support of any legislation during my lifetime.

May God bless and keep you in good health during this session, Eileen.

Quyanak.

With kind regards,

Sally
Sally Brower

cc: Dr. Theodore Mala
Commissioner, Dept. of Health and social Services

Michael I. Jeffery
Barrow Superior Court

