

HJR

43

Alaska State Legislature

Representative Brian S. Porter



DISTRICT 20

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SPONSOR STATEMENT

HJR 43 RIGHTS OF CRIME VICTIMS

The Alaska Constitution establishes the right of due process. "No person shall be deprived of *life, liberty, or property, without due process of law.*" Historically, the due process clause was interpreted in the context of criminal law to protect the offenders, not the victims. The due process clause, and other Alaska constitutional provisions presently provide offenders with volumes of protection. Yet, victims are afforded no constitutional protection. For victims, this amendment will provide rights of notice and participation at all critical stages of a criminal case, including post-arrest release hearings, pretrial motions, trial and sentencing.

The purpose of a victim's rights amendment to the Alaska Constitution is to provide the *basic right of due process* (the right to proper notification and the opportunity to be heard) to victims of crime throughout criminal justice proceedings. The history of our nation teaches us that constitutions and not the mere protection of changing statutes or the courts discretion, are needed to protect the basic rights of the people. Basic rights, such as due process for victims, needs to be in our basic law, the Alaska Constitution.

The victim's rights amendment does not deny any existing constitutional right to defendants, but simply *establishes due process rights for the victims.* Currently, specific rights are afforded to victims by statute. However, these specific statutory rights do not afford the victim *the right to proper notification and the opportunity to be heard throughout the criminal justice process.* Without this restoration of fundamental rights, the balance of the judicial system remains tilted. This amendment will restore the criminal justice system to its original purpose: to serve and protect the law abiding, to be fair, and to seek justice. At this time, victims are powerless without a right to be notified of all proceedings and a right to be heard throughout the criminal justice process. Victims have no constitutional rights and no constitutional standing. To date, fourteen (14) states recognizing the lack of due process rights afforded to victims, amended their constitutions to provide these *fundamental rights* to victims of crime.

Crime makes victims of us all. Yet, victims of crime have no constitutional right to justice or due process, no right to respect or fair treatment as their case proceeds, no right to either be heard or informed at all the critical stages throughout the criminal

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Sponsor Statement
HJR 43 Rights Of Crime Victims

justice process. Victims have no constitutional rights at all. It is time to return to a system that is about protecting innocence and order - about preserving liberty.

I would appreciate favorable consideration of this needed resolution.

Legislative Research Agency

Alaska State Legislature



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September 16, 1993


Received

SEP 17 1993

BRIAN PORTER

MEMORANDUM

TO: Representative Brian Porter

FROM: Paula d. Scavera 
Legislative Analyst

RE: **Constitutional Rights for Victims of Crime**
Research Request 94.039

Your office requested copies of constitutional provisions from states that have constitutional rights for crime victims. Attached you will find copies of pertinent constitutional provisions from California, Colorado, Florida, Illinois, Kansas, Michigan, Missouri, New Jersey, New Mexico, Rhode Island, Texas and Washington.

These "Victims Bill of Rights" became constitutional amendments through various political methods. California's began as a statewide initiative measure, which became Proposition 8, was voted on by the people and became effective June 9, 1992. Other constitutional amendments such as Missouri's, started out as a Senate Joint Resolution, which was ratified by the electorate. New Mexico's constitutional amendment is still a proposed amendment which will be submitted to the people for their approval or rejection at the next general election in 1994.

We hope this information is useful to you. If you need further assistance, please contact this office.

Attachments

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HAND-DELIVERED

October 22, 1993

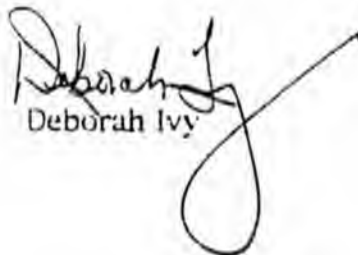
Ms. Daniella Loper
Legislative Assistant to
Rep. Brian Porter
716 W. 4th Ave, Suite 640

Dear Ms. Loper:

Enclosed for your review in connection with your work regarding the proposed constitutional amendment being sponsored by Representatives Porter, Barnes, and Phillips, is a copy of the implementing legislation relating to Arizona's victims rights constitutional amendment. Attorney Linda Akers of Crimestrike kindly provided this information to me earlier today.

Reviewing these statutes should serve to assist you and the sponsors of the Resolution in understanding how one other state (Arizona) implemented its victims rights constitutional amendment. I think reviewing the enclosed statutes will assist in responding to questions which will foreseeably be presented to you and/or the sponsors concerning actual implementation of the proposed constitutional amendment (e.g., the enclosed Arizona statutes specifically address which department or division of government has the responsibility of keeping the victim informed throughout the criminal proceedings). During the process of getting the Resolution passed to amend the Alaska Constitution, I foresee questions being presented by legislators concerning the actual implementation of a victim's constitutional rights. I think if the major questions can be answered satisfactorily by referring to specifics of other states implementation as an example, I believe legislators will generally be more inclined to vote in favor of the Resolution. A review of the enclosed statutes should provide you with a guide and a fairly good working knowledge of how a victim's constitutional rights have been implemented in another state's criminal justice system. I found the language of the implementing statutes to be clear and concise and the length succinct - which helps in quickly gaining an understanding of the overall scheme of implementing victims' constitutional rights in a state criminal justice system.

Sincerely,


Deborah Ivy

cc Sharon Nahorney
Janice Lienhart

Constitutional Provisions of:

California

Colorado

Florida

Illinois

Kansas

Michigan

Missouri

New Jersey

New Mexico

Rhode Island

Texas and Washington

Arizona

Art. 2 § 1

CONSTITUTION

§ 1. Fundamental principles, recurrence to

Law Review Commentaries

Double security of federalism: Protecting individual liberty under the Arizona Constitution. Stanley G. Feidman and David L. Abney, 20 Ariz.State L.J. 115 (1988).
 Role of the supreme court in the adjudication of constitutional rights. Ariz.State L.J. 2, 1984, p. 253.
 Fundamental rights and judicial review. 26 Ariz.L.Rev. 5 (1984); 26 Ariz.L.Rev. 237 (1984).

Library References

Constitutional Law § 12 et seq., 44 et seq.
 C.J.S. Constitutional Law §§ 17 et seq., 86 et seq.

§ 2. Political power; purpose of government

Library References

Constitutional Law § 1.
 C.J.S. Constitutional Law § 2 et seq.

Notes of Decisions

1. In general
 State constitutional amendment which permitted victims of crime to refuse interviews with defendants was procedural, rather than substantive, even though amendment deprived defendants of method of discovery, since amendment did not affect defendant's right to confront and cross-examine witnesses at trial, and thus application of amendment to pending cases did not impair any substantive or vested rights of defendants. State v. Warner (App.1990) 168 Ariz. 261, 312 P.2d 1079, review denied.
 The power to grant franchises resides in the state and a city in granting a franchise acts as an agent for the state. City of Mesa v. Salt River Project Agr. Imp. and Power Dist. (1962) 92 Ariz. 91, 373 P.2d 722, appeal dismissed 372 U.S. 1018, 372 U.S. 704, 10 L.Ed.2d 124.

§ 2.1. Victims' Bill of Rights

Section 2.1. (A) To preserve and protect victims' rights to justice and due process, victim of crime has a right:

- ✓ 1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
- ✓ 2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
- ✓ 3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
- ✓ 4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
- ✓ 6. To confer with the prosecution, after the crime against the victim has been charged before trial or before any disposition of the case and to be informed of the disposition.
7. To read presentence reports relating to the crime against the victim when they are available to the defendant.

THE
FOLLOWING
DOCUMENTS
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- 10. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
 - 11. To be heard at any proceeding when any post-conviction release from confinement being considered.
 - 12. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
 - 13. To have all rules governing criminal procedure and the admissibility of evidence in criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.
 - 14. To be informed of victims' constitutional rights.
- 3) A victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.
- 4) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.
- 5) The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.
- 6) The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislature or retained by victims.
- Adoption approved election Nov. 6, 1990, eff. Nov. 26, 1990.

Historical Notes

Proposition 104, based on an initiative measure, proposing an amendment of Article 2 of the Arizona Constitution by the addition of § 2.1, providing for a victims' Bill of Rights, was approved by the electors at the November 6, 1990 general election, as proclaimed by the governor on November 26, 1990.

Laws 1991, Ch. 229, § 2, effective January 1, 1992, provides:

Sec. 2. Legislative intent

The legislature recognizes that many innocent persons suffer economic loss and personal injury or death as a result of criminal acts. It is the intent of the legislature of this state to:

1. Enact laws that define, implement, preserve and protect the rights guaranteed to crime victims by article II, § 2.1, Constitution of Arizona.

2. Ensure that article II, § 2.1, Constitution of Arizona, is fully and fairly implemented and that all crime victims are provided with basic rights of respect, protection, participation and hearing of their ordeals.

3. Ensure at all stages of the criminal justice process that the duties established by article II, § 2.1, Constitution of Arizona, are fairly apportioned among all law enforcement agencies, prosecution agencies, courts and corrections agencies in this state.

4. Ensure that employees of this state and its political subdivisions who engage in the detention, investigation, prosecution and adjudication of crime use reasonable efforts to see that crime victims are accorded the rights established by article II, § 2.1, Constitution of Arizona.

Laws 1991, 4th S.S., Ch. 1, § 3, eff. Dec. 4, 1991, provides:

Sec. 3. Liability under victims' bill of rights

Until October 15, 1992 this state, a political subdivision, agency, board or committee of this state or an employee or agent of this state or a political subdivision of this state is not liable for a violation of the victims' bill of rights pursuant to article II, § 2.1, Constitution of Arizona, title 13, chapter 40, Arizona Revised Statutes or court rule.

Cross References

Victims Rights Implementation Act, see § 13-4401 et seq.

Law Review Commentaries

Arizona criminal procedure after the victims' Bill of Rights Amendment: Implications of a victim's absolute right to refuse a defendant's

recovery request. Thomas B. Dixon, 23 Ariz.St. 227-231 (1991).

Notes of Decisions

In general 1
Victim 2

1. In general

Trial judge could not order that dual juries be empaneled in first-degree murder case in which state had requested imposition of death penalty, in the absence of approved guidelines or trial court's obtaining approval from Supreme Court. *Hedlund v. Superior Court In and For Maricopa County*, 1992, 332 P.2d 219.

State constitutional provision which affords victims right to speedy trial or disposition does not provide crime victims with any substantive right to have dual juries empaneled; it does not make any reference to procedures by which right to speedy trial or disposition is to be enforced. *Hedlund v. Superior Court In and For Maricopa County*, 1992, 332 P.2d 219.

Victims' bill of rights does not give crime victim right to refuse to testify at accused's criminal trial. *S.A. v Superior Court, In and For County of Maricopa*, 1992, 331 P.2d 1297.

Victims' Bill of Rights applied to case filed before effective date of the Bill of Rights. *Knapp v. Martone* (1992) 170 Ariz. 237, 323 P.2d 685.

Trial courts must follow and apply plain language of Victims' Bill of Rights, rather than

making ad hoc exceptions. *Knapp v. Martone* (1992) 170 Ariz. 237, 323 P.2d 685.

Although trial court orders which required victims of crime to be interviewed by defendant may have been valid when entered, legal basis for order was supplanted and no longer existed when constitutional amendment which provided victims right to refuse interviews became effective and, thus, orders were no longer valid. *State v. Warner* (App.1990) 168-Ariz. 261; 812 P.2d 1079, review denied.

Victims who presently asserted right to preclude any interview with defendants after effective date of amended state constitutional article granting such right did not present issue of retroactivity in special action to enforce right, since amendment was not invoked for refusal to be interviewed prior to amendment's effective date. *State v. Warner* (App.1990) 168 Ariz. 261, 812 P.2d 1079, review denied.

2. Victim

Mother of two children alleged to have been murdered was "victim" under Victims' Bill of Rights and thus could properly refuse request of defendant, her husband, to depose her, even though defendant was charged with murder and as an accessory, and mother was unnamed and uncharged coconspirator; mother was not an "accused." *Knapp v. Martone* (1992) 170 Ariz. 237, 323 P.2d 685.

§ 4. Due process of law

Law Review Commentaries

Fundamental rights and judicial review. 26 *Ariz.L.Rev.* 5 (1984); 26 *Ariz.L.Rev.* 237 (1984).

Role of the supreme court in the adjudication of constitutional rights. *Ariz.State-L.J.* 2, 1984, p. 233.

Library References

Constitutional Law ¶251 et seq., 255.
C.J.S. Constitutional Law §§ 704 et seq., 977.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

United States Supreme Court

Abortion

Minors, two-parent notification requirement, delay period, see *Hodgson v. Minnesota*, 1990, 110 S.Ct. 2926, 497 U.S. 417, 111 L.Ed.2d 344.

Parental notification by minors and physicians, judicial bypass procedures, complaint forms, time limits, and confidentiality, see *Ohio v. Akron Center for Repro-*

ductive Health, 1990 110 S.Ct. 2972, 497 U.S. 502, 111 L.Ed.2d 405, on remand 911 F.2d 731, 733.

Unmarried natural father's right to prevent, see *Doe v. Smith*, 1988, 108 S.Ct. 2136, 486 U.S. 1308, 100 L.Ed.2d 909.

Use of public employees and facilities, see *Webster v. Reproductive Health Services*,

reason, is not a bar to consideration of a capital defendant's claim that the death penalty is disproportionate to his culpability under the facts of the

case. *People v Bean* (1985) 46 Cal 3d 919, 251 Cal Rptr 467, 760 P2d 996.

§ 28. Victims' Bill of Rights

(a) The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern. The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.

(b) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

(c) Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

(d) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(e) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.

A person may be released on his or her own recognizance in the court's

discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter. When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(f) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(g) As used in this article, the term "serious felony" is any crime defined in Penal Code, Section 1192.7(c).

Adopted June 8, 1982.

Collateral References:

Witkin & Epstein, *Criminal Law* (2d ed) §§ 7, 8, 1253, 1325, 1453, 1474, 1487, 1492, 1497, 1509, 1526, 1527, 1777, 1997, 2241, 2521, 2557, 2833.

Witkin *Evidence* (3d ed) §§ 299, 1962, 8, 326, 624, 1313, 1791, 1911, 1968.

Cal Jur 3d (Rev) *Constitutional Law* § 10, *Criminal Law* §§ 51, 54, 2040, 2215, 2582, 3131, 3167, 3247, *Delinquent and Dependent Children* § 156.

Modern Cal *Discovery* (4th ed) §§ 18.3, 22.10.

Cal *Trial Handbook* 2d (BW, 1987) § 11.6, 14:14, 19:19, 28:13, 29:36.

Preservation of material evidence in California: does *People v Hitch* survive *California v Trombetta*. 13 *Hast Const LQ* 147.

The "Safe Schools" provision of the California Constitution: Can a nebulous constitutional right be a vehicle for change (right to safe schools under the "Victims' Bill of Rights")? 14 *Hast Const LQ* 789.

Admissibility of expert testimony in child sexual abuse cases in California: Retire *Kelly-Frye* and return to a traditional analysis. 22 *Loyola U of LA LR* 1103.

Warrant requirement for bugged informants under the California right to privacy. 14 *Pacific LJ* 1057.

Victims' rights symposium. 23 *Pacific LJ* 815.

Enhancing sentences with prior felony convictions: The limits of "without limitation." 23 *Pacific LJ* 1051.

Truth in evidence and the privilege clause — a compromised relationship. 23 *Pacific LJ* 1061.

Proposition 8 and the exclusionary rule: Towards a new balance of defendant and victim rights. 23 *Pacific LJ* 1101.

Proposition 8: California Law after *In re Lance W.* and *People v Castro*. 12 *Pep L R* 1059.

Proposition 8 (the "Victims' Bill of Rights") and the California Supreme Court: Interpretation run riot? 60 *SCLR* 539.

Restricting Gang Clothing in Public Schools: Does A Dress Code Violate A Student's Right of Free Expression? 64 *SCLR* 1321.

Proposition 8: It may go beyond the Fourth Amendment. 19 *Southwestern U LR* 57.

The wrongs of victim's rights. 37 *Stan LR* 937.

Dilution of Fourth Amendment rights on public high-school campuses. 21 *USF LR* 555.

Symposium: Proposition 8 comes of age. 13 *Western St LR* 1.

NOTES OF DECISIONS

The provisions of a statewide initiative measure, known as The Victims' Bill of Rights, were reasonably germane to each other and thus satisfied the requirement that initiative measures embrace a single subject (Cal. Const., art. II, § 8, subd. (d)). Each of the measure's several facets, which dealt with matters such as restitution, safe schools, bail, and prior convictions, shared the common concern of promoting the rights of actual or potential crime victims, and it was this goal that united all of the measure's provisions in advancing its common pur-

pose. *Brosnahan v Brown* (1982) 32 Cal 3d 236, 186 Cal Rptr 30, 651 P2d 274.

An initiative measure known as The Victims' Bill of Rights did not constitute a revision of the state Constitution, rather than a mere amendment thereof, so as to require its adoption pursuant to a constitutional convention or legislative submission to the people. The measure's quantitative changes, which amounted to repealing one constitutional section and adding another, were not so extensive

Colorado

ARTICLE II

Bill of Rights

Section 16a. Rights of crime victims. Any person who is a victim of a criminal act, or such person's designee, legal guardian, or surviving immediate family members if such person is deceased, shall have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice process. All terminology, including the term "critical stages", shall be defined by the general assembly.

As enacted November 3, 1992 — Effective upon proclamation of the Governor. (See Laws 1991, p. 2031.)

Section 30b. No Protected Status Based on Homosexual, Lesbian or Bisexual Orientation. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.

Enacted by the people November 3, 1992 — Effective upon proclamation of the Governor.

Editor's note: Although this section was numbered as section 30 as it appeared on the ballot, for ease of location it has been numbered as section 30b.

ARTICLE VII

Suffrage and Elections

Section 7. General election. The general election shall be held on such day as may be prescribed by law.

As amended November 3, 1992 — Effective upon proclamation of the Governor. (See Laws 1992, p. 2316.)

ARTICLE IX

Education

Section 1. Supervision of schools - board of education. (1) The general supervision of the public schools of the state shall be vested in a board of

SECTION 9. Due process.—No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.

SECTION 10. Prohibited laws.—No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

SECTION 11. Imprisonment for debt.—No person shall be imprisoned for debt, except in cases of fraud.

SECTION 12. Searches and seizures.—The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

History.—Am. H.J.R. 31—H. 1982 adopted 1982

SECTION 13. Habeas corpus.—The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.

SECTION 14. Pretrial release and detention.—Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

History.—Am. H.J.R. 43—H. 1982 adopted 1982

SECTION 15. Prosecution for crime; offenses committed by children.—

(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.

(b) When authorized by law a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Any

child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.

SECTION 16. Rights of accused and of victims.—

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation against him, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront a trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties he will be tried. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

(b) Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

History.—Am. S.J.R. 25—S. 1987 adopted 1988

SECTION 17. Excessive punishments.—Excessive fines, cruel or unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden.

SECTION 18. Administrative penalties.—No administrative agency shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.

SECTION 19. Costs.—No person charged with crime shall be compelled to pay costs before a judgment of conviction has become final.

SECTION 20. Treason.—Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort, and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on confession in open court.

SECTION 21. Access to courts.—The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

SECTION 22. Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

SECTION 23. Right of privacy.—Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to

§ 8.1. Crime Victim's Rights

(a) Crime victims, as defined by law, shall have the following rights as provided by law:

- (1) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
- (2) The right to notification of court proceedings.
- (3) The right to communicate with the prosecution.
- (4) The right to make a statement to the court at sentencing.
- (5) The right to information about the conviction, sentence, imprisonment, and release of the accused.
- (6) The right to timely disposition of the case following the arrest of the accused.
- (7) The right to be reasonably protected from the accused throughout the criminal justice process.
- (8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.
- (9) The right to have present at all court proceedings, subject to the rules of evidence, an advocate or other support person of the victim's choice.
- (10) The right to restitution.

(b) The General Assembly may provide by law for the enforcement of this Section.

(c) The General Assembly may provide for an assessment against convicted defendants to pay for crime victims' rights.

(d) Nothing in this Section or in any law enacted under this Section shall be construed as creating a basis for vacating a conviction or a ground for appellate relief in any criminal case.

Adopted general election Nov. 3, 1992, eff. Nov. 3, 1992.

Historical Notes

Schedule:

The schedule contained in the 1992 amendment provides:

"This Amendment takes effect upon its approval by the electors of this State."

§ 9. Bail and Habeas Corpus

All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.

Legis. Reference Library

Kansas

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Lotteries; indian gaming regulating act. 91-119, 92-1.

CASE ANNOTATIONS

1. Amendment to Art. 11, § 1 of Kansas Constitution as self-executing relative to assessment and taxation of property noted. *Colorado Interstate Gas Co. v. Board of Morton County Comm'rs*, 247 K. 654, 659, 502 P.2d 584 (1990).

§ 6.

CASE ANNOTATIONS

30. Spouse obligated to pay other spouse's necessities, including medical services. *St. Francis Regional Med. Center, Inc. v. Bowles*, 16 K.A.2d 374, 375, 378, 823 P.2d 226 (1992).

§ 9.

Law Review and Bar Journal References:

"Exemption Laws in Kansas: Recent Amendments and Bankruptcy Estate Planning," Mark A. Andersen, 38 K.L.R. 143, 149 (1989).

"Divorce Law: Lis Pendens, Judgment Liens, Homestead Exemptions, and Bankruptcy," John C. Peck, Shala M. Bannister and W. Thomas Gilman, 60 J.K.B.A. No. 2, 25, 30 (1991).

CASE ANNOTATIONS

186. Proceeds from involuntary transfer of homestead pursuant to divorce exempt where debtor intended to invest in another homestead. *In re Daniels*, 65 B.R. 703, 706 (1986).

187. Sales tax lien held as attaching to real property which is subject to constitutional claim of homestead exemption. *Homestead Land Title Co. v. United States*, 249 K. 569, 819 P.2d 660 (1991).

188. No forfeiture of homestead upon drug conviction unless consent of both husband and wife. *City of Garden City v. Lot Nine, Block Three*, 16 K.A.2d 174, 819 P.2d 1250 (1991).

189. Homestead, establishment, occupancy, intent; debtor claimed 160 acres. *In re Snook*, 134 B.R. 424 (1991).

§ 10.

Attorney General's Opinions:

City election to permit or prohibit sale of liquor by the drunk; city's authority to prevent licensure thereof. 91-91.

CASE ANNOTATIONS

25. Amendment to Art. 11, § 1 of Kansas Constitution as self-executing relative to assessment and taxation of property noted. *Colorado Interstate Gas Co. v. Board of Morton County Comm'rs*, 247 K. 654, 659, 802 P.2d 584 (1990).

§ 12.

Attorney General's Opinions:

Membership or nonmembership in labor organizations. 98-121.

Membership or nonmembership in labor organizations; representation fee; employer and employee relations; rights of employees. 92-42.

§ 15. Victims' rights.

(a) Victims of crime, as defined by law, shall be entitled to certain basic rights, including the right to be informed of and to be present at public hearings, as defined by law, of the criminal justice process, and to be heard at sentencing or at any other time deemed appropriate by the court, to the extent that these rights do not interfere with the constitutional or statutory rights of the accused.

(b) Nothing in this section shall be construed as creating a cause of action for money damages against the state, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The legislature may provide for other remedies to ensure adequate enforcement of this section.

(c) Nothing in this section shall be construed to authorize a court to set aside or to void a finding of guilty or not guilty or an acceptance of a plea of guilty or to set aside any sentence imposed or any other final disposition in any criminal case.

History: L. 1992, ch. 343, § 1; Nov. 3, 1992.

List of Amendments and Proposed Amendments to the Kansas Constitution

YEAR	SUBJECT	ART.	SEC.
1990.	A proposition to revise article 6 of the constitution of the state of Kansas, relating to education. L. 1990, ch. 371; H.C.R. 5010; rejected Nov. 6, 1990: For 245,132; Against 377,625	6	1-7
1992.	A proposition to amend section 1 of article 11 of the constitution of the state of Kansas, relating to the taxation of property. L. 1992, ch. 342; H.C.R. 5007; adopted Nov. 3, 1992: For 473,415; Against 421,313 (Unofficial count)	11	1
1992.	A proposition to amend article 15 of the constitution of the state of Kansas by adding a new section thereto, prescribing certain rights for victims of crime. L. 1992, ch. 343; S.C.R. 1634; adopted Nov. 3, 1992: For 775,846; Against 145,374 (Unofficial count)	15	15

MICHIGAN CONSTITUTION

Crawford (1985) 383 N.W.2d 172, 147 Mich.App. 244.

V. RIGHT TO APPEAL

Waiver of right to appeal
Sentencing issues not first presented to court are considered waived for appeal. Rodriguez (1991) 480 N.W.2d 287, 192 Mich.App. 1.

Defendants did not waive their right to appeal suppression issue by pleading guilty, if guilty pleas were accepted in understanding defendant's right to appeal suppression not waived; defendants were entitled to trial on the merits or to have their pleas set aside. People v. Reid (1984) 362 N.W.2d 655, 132 Mich.App. 326.

Waiver of right to appeal
Defendant was entitled to appeal as of right sentencing where his first sentence was on appeal and his resentencing was based on original conviction and resulted in less severe than originally imposed; it was error for court's decision to grant or deny remission for resentencing, that was based on. People v. Martinez (1992) 485 N.W.2d 193, 193 Mich.App. 377.

Waiver of right to appeal
Trial court can accept plea of guilty and upon defendant's waiver of right to appeal must determine if waiver is voluntary and intelligent; furthermore, court must determine whether agreement in waiver of right to appeal, defendant's understanding as well as conviction and; if so, whether defendant understands and agrees; to determine if waiver meets such requirements, court must consider all relevant facts and circumstances surrounding waiver, including: nature of agreement and age, experience, sound mind of defendant. People v. Rodriguez (1991) 480 N.W.2d 287, 192 Mich.App. 1.
Waiver of pleading guilty, defendant waives review of all nonjurisdictional defects on appeal. People v. Rodriguez (1991) 480 N.W.2d 287, 192 Mich.App. 1.

Defendant may voluntarily and knowingly waive constitutional right to appeal guilty plea and sentence while reserving right to appeal and right to appointed counsel, when indigent, in exchange for sentencing concessions. People v. Rodriguez (1991) 480 N.W.2d 287, 192 Mich.App. 1.

Defendant's waiver of his right to appeal in sentencing does not preclude him from obtaining review of his sentence or conviction when warranted. People v. Rodriguez (1991) 480 N.W.2d 287, 192 Mich.App. 1.

MICHIGAN CONSTITUTION

Art. 2, § 1
Note 18

§ 24. Rights of crime victims: enforcement: assessment against convicted defendants

Sec. 24. (1) Crime victims, as defined by law, shall have the following rights, as provided by law:

The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

The right to timely disposition of the case following arrest of the accused.

The right to be reasonably protected from the accused throughout the criminal justice process.

The right to notification of court proceedings.

The right to attend trial and all other court proceedings the accused has the right to attend.

The right to confer with the prosecution.

The right to make a statement to the court at sentencing.

The right to restitution.

The right to information about the conviction, sentence, imprisonment, and release of the accused.

(2) The legislature may provide by law for the enforcement of this section:

(3) The legislature may provide for an assessment against convicted defendants to pay for crime victims' rights.

Enactment ratified Nov. 8, 1988. Eff. Dec. 24, 1988.

Historical Notes

The 1988 enactment was proposed by 1988 and approved by the electors as Proposal B at House Joint Resolution P, and was submitted to the November 3, 1988, general election.

ARTICLE II

Elections

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

§ 1. Qualifications of electors: residence

Notes of Decisions

Primary elections 18:

18. Primary elections

Requirement that person declare party preference before voting in closed presidential primary did not violate State Constitution; closed primary system was not prohibited by constitution-

al requirement that all individuals who meet citizenship, residency, and age requirements be allowed to vote. Ferency v. Secretary of State (1991) 476 N.W.2d 417, 190 Mich.App. 398, appeal denied 482 N.W.2d 768, vacated in part on other grounds 486 N.W.2d 664.

Primaries are basically party functions so that there is legitimate state interest in restricting

WESTLAW - 9/15/93

Citation	Rank(R)	Page(P)	Database	Mode
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VERNON'S ANNOTATED MISSOURI STATUTES
 CONSTITUTION OF 1945
 ARTICLE I. BILL OF RIGHTS
 COPR. (c) WEST 1993 No Claim to Orig. Govt. Works
 Current through amendments approved 11-3-92

§ 32. (Crime VICTIMS' RIGHTS)

< Section head was editorially supplied >

Section 32. 1. Crime victims, as defined by law, shall have the following rights, as defined by law:

- (1) The right to be present at all criminal justice proceedings at which the defendant has such right, including juvenile proceedings where the offense would have been a felony if committed by an adult;
- (2) Upon request of the victim, the right to be informed of and heard at guilty pleas, bail hearings, sentencing, probation revocation hearings, and parole hearings, unless in the determination of the court the interests of justice require otherwise;
- (3) The right to be informed of trials and preliminary hearings;
- (4) The right to restitution, which shall be enforceable in the same manner as any other civil cause of action, or as otherwise provided by law;
- (5) The right to the speedy disposition and appellate review of their cases, provided that nothing in this subdivision shall prevent the defendant from having sufficient time to prepare his defense;
- (6) The right to reasonable protection from the defendant or any person acting on behalf of the defendant;
- (7) The right to information concerning the escape of an accused from custody or confinement, the defendant's release and scheduling of the defendant's release from incarceration; and
- (8) The right to information about how the criminal justice system works, the rights and the availability of services, and upon request of the victim the right to information about the crime.

of pupils into area by bus, expense of such transportation could not be said to have resulted from state's taking of part of school property and was not item of damage to remaining land and building. *State by State Highway Com'r v. Board of Ed. of City of Elizabeth*, 116 N.J.Super. 305, 282 A.2d 71 (L.1971).

52.5. Burden of proof

Burden of demonstrating that a taking has occurred lies on the party alleging that state action is unconstitutional, and proof must be by clear and convincing evidence. *Matter of Egg Harbor Associates (Bayshore Centre)*, 94 N.J. 358, 464 A.2d 1115 (1983).

54. — Expert witnesses

A court will not permit an expert to testify to the value of vacant land, for condemnation purposes, based on projected income which could be earned from operation of building which might be erected thereon; such a valuation is too speculative. *State by Com'r of Transp. v. P & J Partnership*, 250 N.J.Super. 19, 593 A.2d 332 (A.D.1991).

55. Leasehold interests

Determination of just compensation allows all interests, including the leasehold, to be compensated, but New Jersey follows the unit rule which means that although a tenant may participate in the condemnation hearing, he is not entitled to have his tenancy separately and specifically evaluated in the condemnation award; actual apportionment of the condemnation award will take place at a separate and later proceeding. *State v. Whitehead Bros. Co., Inc.*, 210 N.J.Super. 359, 509 A.2d 832 (L.1986).

59. Cable installation

Finding by Board of Public Utilities that damage from taking needed for installation of cable television service is nominal, thus warranting presumption that \$1.00 satisfies just compensation requirements, was supported by expert's testimony

at rule-making hearing that in cases he had examined cable had been installed without damage to property owners. *NYT Cable TV v. Homestead At Mansfield, Inc.*, 214 N.J.Super. 148, 518 A.2d 748 (A.D.1986) affirmed 111 N.J. 21, 543 A.2d 10.

60. Private owner's, public use

Anticipated private ownership of shopping center to be built on land being condemned by Housing and Mortgage Finance Agency did not violate federal or state constitutional limits on power of eminent domain where condemnation was intended to serve public purpose of providing supplies and services for residents of publicly financed housing projects in the area. *New Jersey Housing and Mortg. Finance Agency v. Monast*, 213 N.J.Super. 318, 521 A.2d 1307 (A.D.1987) certification denied 107 N.J. 638, 527 A.2d 460.

61. Utility easements

Even though utility was granted general easement over private property without specification of course over which its lines were to be placed; once it placed lines and fixed easement's location, grant was essentially the same as if fixed in original grant, and general or specific nature of original grant was not dispositive of utility's claim against township alleging a "taking" by forced relocation of lines. *Sussex Rural Elec. Co-op. v. Wantage Tp.*, 217 N.J.Super. 487, 526 A.2d 259 (A.D.1987).

Forced relocation of preexisting utility transmission facilities necessitated by township's road construction project amounted to a compensable taking, and utility was entitled to recover costs of relocation, since utility's interest mandated public's interest in roads in question, even though utility may have placed its lines specifically to accommodate subdivision developments of which, the roads were a critical part. *Sussex Rural Elec. Co-op. v. Wantage Tp.*, 217 N.J.Super. 481, 526 A.2d 259 (A.D.1987).

21. Saving clause

Notes of Decisions

Elections. 2

2. Elections

In view of fact that state has a legitimate interest in preventing "raiding" or crossover voting in a primary election N.J.S.A. 19:23-45 of

primary elections law requiring that voter who is not affiliated with a political party by virtue of a previous declaration or previous primary participation and who is not excused as a newly registered voter must file declaration for party on or before 30th day preceding primary election is not unconstitutional. *Friedland v. State*, 149 N.J.Super. 483, 374 A.2d 60 (L.1977).

22. Rights of victims of crimes

A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered in accordance with law or the Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the Legislature. For the purposes of this paragraph, "victim of a crime" means: a) a person who has

Last additions in text indicated by underline; deletions by strikeouts

Sec. 22. [Alien landownership.]

Until otherwise provided by law no alien, ineligible to citizenship under the laws of the United States, or corporation, copartnership or association, a majority of the stock or interest in which is owned or held by such aliens, shall acquire title, leasehold or other interest in or to real estate in New Mexico. (As amended September 20, 1921.)

Cross-references. — As to statutory authority for aliens to acquire or hold real estate by deed, will, inheritance or otherwise, see 45-2-112 NMSA 1978.

The 1921 amendment, which was proposed by J.R. No. 9 (Laws 1921) and adopted at the special election held on September 20, 1921, with a vote of 25,921 for and 18,342 against, amended this section, which formerly provided that no distinction should be made by law between resident aliens and citizens in regard to the ownership or descent of property.

Constitutionality of alien land laws is open to certain doubts. 1963-64 Op. Att'y Gen. No. 63-120.

Legislation enacted prior to amendment not "otherwise provided". — This section, as amended in 1921, is broad enough to prohibit the acquiring of any interest whatever in real estate by an alien ineligible to citizenship, and no legislation enacted prior to 1921 could be construed as a provision of law such as contemplated by the words "until otherwise provided by law." 1929-30 Op. Att'y Gen. 11.

Prohibition suspended. — Because 45-2-112 NMSA 1978 was enacted subsequent to the 1921 amendment to this section, it operates to suspend the

prohibition against ownership of real property in New Mexico by persons other than United States citizens. 1981 Op. Att'y Gen. No. 81-6.

Phrase "eligible to citizenship" means a person belonging to a class which is eligible and who is capable of becoming a citizen upon due compliance with naturalization laws. 1963-64 Op. Att'y Gen. No. 63-120.

Law reviews. — For article, "The Perils of Intestate Succession in New Mexico and Related Will Problems," see 7 Nat. Resources J. 555 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3A Am. Jur. 2d Aliens and Citizens §§ 2003, 2005.

Escheat for alienage of owner, or kindred of owner, who dies intestate. 23 A.L.R. 1237; 79 A.L.R. 1364.

Escheat of property of alien corporation, 23 A.L.R. 1247; 79 A.L.R. 1364.

Escheat as affecting contract for sale or lease to alien. 23 A.L.R. 1250; 79 A.L.R. 1366.

State regulation of landownership by alien corporation. 21 A.L.R. 4th 1329.

3 C.J.S. Aliens §§ 16, 17.

Sec. 23. [Reserved rights.]

The enumeration in this constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people.

Comparable provisions. — Idaho Const., art. I, § 21.

Iowa Const., art. I, § 25.

Montana Const., art. II, § 34.

Utah Const., art. I, § 25.

Wyoming Const., art. I, § 36.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 16 Am. Jur. 2d Constitutional Law §§ 7, 280.

16 C.J.S. Constitutional Law §§ 53, 58; 16A C.J.S. Constitutional Law § 445.

Sec. 24. (Proposed) [Victim's rights.]

A. A victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child or that victim's representative shall have the following rights as provided by law:

(1) the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;

(2) the right to timely disposition of the case;

(3) the right to be reasonably protected from the accused throughout the criminal justice process;

(4) the right to notification of court proceedings;

(5) the right to attend all public court proceedings the accused has the right to attend;

(6) the right to confer with the prosecution;

(7) the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused;

(8) the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury;

(9) the right to information about the conviction, sentencing, imprisonment, escape or release of the accused;

(10) the right to have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause; and

(11) the right to promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property.

B. A person accused or convicted of a crime against a victim shall have no standing to object to any failure by any person to comply with the provisions of Subsection A of Section 24 of Article 2 of the constitution of New Mexico.

C. The provisions of this amendment shall not take effect until the legislature enacts laws to implement this amendment.

Compiler's notes. — Section 2 of S.J.R. No. 4 (Laws 1992) provides that this proposed amendment shall be submitted to the people for their approval or

rejection at the next general election or at any special election prior to that date which may be called for that purpose.

ARTICLE III

Distribution of Powers

Sec.

1. Separation of departments; establishment of workers' compensation body.

Section 1. [Separation of departments; establishment of workers' compensation body.]

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted. Nothing in this section, or elsewhere in this constitution, shall prevent the legislature from establishing, by statute, a body with statewide jurisdiction other than the courts of this state for the determination of rights and liabilities between persons when those rights and liabilities arise from transactions or occurrences involving personal injury sustained in the course of employment by an employee. The statute shall provide for the type and organization of the body, the mode of appointment or election of its members and such other matters as the legislature may deem necessary or proper. (As amended November 4, 1986.)

- I. General Consideration.
- II. Legislative Delegation of Power.
- III. Legislation Affecting Judiciary.
 - A. Legislature Validly Affecting Courts.
 - B. Legislation Improperly Conferring Powers on Courts.
 - C. Improper Interference with Judiciary by Legislature.
- IV. Judicial Review over Legislative Affairs.
- V. Powers of Executive Department.

I. GENERAL CONSIDERATION.

Cross-references. — As to the workers' compensation division, see 52-5-1 NMSA 1978.

The 1986 amendment, which was proposed by H.J.R. No. 7 (Laws 1986) and adopted at the general election held on November 4, 1986, by a vote of 173,989 for and 92,419 against, added the last two sentences.

State constitutions are not grants of power to the legislative, executive or judiciary branches, but are limitations on the powers of each, and no branch of the state may add to, nor detract from, its clear mandate. State ex rel. Hovey Concrete Prods. Co. v. Mechem, 63 N.M. 250, 316 P.2d 1069 (1957), overruled on other grounds, Wylie Corp. v. Mowrer, 104 N.M. 751, 726 P.2d 1381 (1986).

Each of three departments of government is

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Section 22. Right to bear arms. — The right of the people to keep and bear arms shall not be infringed.

Cross References. Federal guaranty of right to bear arms. U.S. Const., Amend. II.
Comparative Provisions. Bearing arms:

Conn. 1965 Const., art. First, § 15.
Mass. Const. (3) 181.

NOTES TO DECISIONS

1. Licensing Requirements.
Constitutional guarantee of the right to keep and bear arms is not infringed by state licensing requirements in § 11-47-3 which prohibit unlicensed carrying of a pistol or re-

volver on one's person except in his home, his place of business, or upon land possessed by him. *State v. Storms*, 112 R.I. 121, 308 A.2d 463 (1973).

Section 23. Rights of victims of crime. — A victim of crime shall, as a matter of right, be treated by agents of the state with dignity, respect and sensitivity during all phases of the criminal justice process. Such person shall be entitled to receive, from the perpetrator of the crime, financial compensation for any injury or loss caused by the perpetrator of the crime, and shall receive such other compensation as the state may provide. Before sentencing, a victim shall have the right to address the court regarding the impact which the perpetrator's conduct has had upon the victim.

Section 24. Rights not enumerated — State rights not dependent on federal rights. — The enumeration of the foregoing rights shall not be construed to impair or deny others retained by the people. The rights guaranteed by this Constitution are not dependent on those guaranteed by the Constitution of the United States.

Cross References. Federal guaranties as to rights retained by people, U.S. Const., Amend. 9, 10.

NOTES TO DECISIONS

ANALYSIS

1. "Justifiable assault."
2. Right to resist arrest.
3. Unreasonable seizures.
4. Self-defense.
5. Law affecting particular city.
6. Local self-government.

1. "Justifiable Assault."
This section does not secure to husband the right to commit the "justifiable" assault upon the wife. *Berberian v. Berberian*, 109 R.I. 273, 284 A.2d 72 (1971).

2. Right to Resist Arrest.
Any rights reserved to an individual by the state constitution were subject to the general assembly's police power, and the abolition of the right to resist an unlawful arrest was a

proper exercise of that power. *State v. Ramsdell*, 109 R.I. 320, 295 A.2d 399 (1971).

3. Unreasonable Seizures.
By constitutionally providing against unreasonable seizures, the people have inferentially recognized the necessity for reasonable regulations in this regard. *Kavanagh v. Stenhouse*, 93 R.I. 252, 174 A.2d 560 (1961), appeal dismissed, 368 U.S. 516, 82 S. Ct. 529, 7 L. Ed. 2d 521 (1962).

4. Self-Defense.
No right of self-defense is assured by the provision that the enumeration of rights in the declaration of rights shall not be construed to impair or deny others retained by the people. *State v. Storms*, 112 R.I. 121, 308 A.2d 463 (1973).

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Texas

TEXAS CONSTITUTION

Art. 1, § 30

school district alleging deprivation of their constitutional statutory rights by school district in refusing to allow hearing before board of trustees in which they could complain of superintendent's denial of their employee grievances; school district and superintendent submitted detailed

affidavit of superintendent's copies of relevant correspondence and board policies, including board's "open forum." Corpus Christi Independent School Dist. v. Padilla (App. 13 Dist.1986) 709 S.W.2d 700.

§ 29. Suspension of laws

Notes of Decisions

5. Administrative bodies

Regulations under which State Parks and Wildlife Commission regulated sports and commercial activities involving redfish and speckled sea trout did not violate Const. Art. 1, § 28

providing that no power of suspending laws in the state could be exercised except by the legislature. Baggett v. State (App. 9 Dist.1984) 673 S.W.2d 908, appeal after remand 691 S.W.2d 777, 779 affirmed, reversed on other grounds 722 S.W.2d 700.

§ 29. Provisions of Bill of Rights excepted from powers of government; to forever remain inviolate

Notes of Decisions

5. Remedies and procedure

O'Hair v. Hill (C.A.1981) 641 F.2d 307 (Main.. Volume) rehearing granted 652 F.2d 423, on rehearing 675 F.2d 680.

§ 30. Rights of crime victims

Sec. 30. (a) A crime victim has the following rights:

- (1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and
- (2) the right to be reasonably protected from the accused throughout the criminal justice process.

(b) On the request of a crime victim, the crime victim has the following rights:

- (1) the right to notification of court proceedings;
- (2) the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;
- (3) the right to confer with a representative of the prosecutor's office;
- (4) the right to restitution; and
- (5) the right to information about the conviction, sentence, imprisonment, and release of the accused.

(c) The legislature may enact laws to define the term "victim" and to enforce these and other rights of crime victims.

(d) The state, through its prosecuting attorney, has the right to enforce the rights of crime victims.

(e) The legislature may enact laws to provide that a judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this section. The failure or inability of any person to provide a right or service enumerated in this section may not be used by a defendant in a criminal case as a ground for appeal or post-conviction writ of habeas corpus. A victim or guardian or legal representative of a victim has standing to enforce the rights enumerated in this section but does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

Adopted Nov. 7, 1989.

Historical Notes

This section was adopted at the Nov. 7, 1989 election, as proposed by Acts 1989, 71st Leg., H.J.R. 19, § 1.

ARTICLE II

THE POWERS OF GOVERNMENT

§ 1. Division of powers; three separate departments; exercise of power properly attached to other departments

Law Review Commentaries

Ad hoc rulemaking in Texas: The scope of judicial review. Ron Beal, 42 Baylor L.Rev. 459 (July/Aug. 1990).

Five commandments of Texas speedy trial: A post-Meshell analysis. Carl S. Lobitz, 54 Tex. B.J. 220 (1991).

Judicial review of agency law decisions on scope of agency authority. Hume. Cofer, 42 Baylor L.Rev. 255 (1990).

Legal profession at stake: Why the sun should not set on the State Bar of Texas. Dan R. Price, 53 Tex.B.J. 1197 (1990).

Notes of Decisions

Bail bonds, scope of limitations of judicial powers 172.5
Parole 9

9. Parole

Instruction given pursuant to mandate in Code of Criminal Procedure regarding parole law and good conduct time did not violate defendant's right to due course of law or separation of powers doctrine. Marks v. State (App. 11 Dist. 1991) 815 S.W.2d 817. affirmed 830 S.W.2d 113.

I. IN GENERAL

5. Dual office holding

School board trustee was not prohibited from simultaneously holding offices of justice of peace and school board trustee where nothing in functions as justice of peace interfered with or would interfere with functions as member of board. Turner v. Trinity Independent School Dist. Bd. of Trustees (App. 14 Dist.1983) 700 S.W.2d 1.

A county commissioner is not barred by this section or Art. 16, § 40, or by the common law doctrine of incompatibility from serving on the Texas Sesquicentennial Commission. Op. Atty. Gen.1984, No. JM-141.

One person is not prohibited from concurrently holding offices of constable and school trustee by article II, section 1 of the Texas Constitution, article XVI, section 40 of the Texas Constitution, or the common law doctrine of incompatibility. Op. Atty. Gen.1986, No. JM-519.

6. Infringement of powers

Separation of powers provision of State Constitution is violated when one branch of government assumes a power that is more "properly attached" to another branch or when one branch of government unduly interferes with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers. Armadillo Bail Bonds v. State (Cr.App.1990) 802 S.W.2d 237, rehearing on petition for discretionary review denied.

II. LEGISLATIVE POWERS

67. Courts and judges, legislative powers

Valid, final judgment of court may not be modified by legislature; once actions have passed into judgment power of legislature to disturb rights created thereby ceases. Williams v. State (Cr.App.1986) 707 S.W.2d 40.

68. Fines and penalties, legislative powers

Anguiano v. Jim Walter Homes, Inc. (Civ.App. 1978) 561 S.W.2d 249 [Main Volume] ref. n.r.e.

Fixing of penalties for crime is legislative function; what constitutes adequate penalty is matter of legislative judgment and discretion, and courts will not interfere therewith unless penalty prescribed is outside of constitutional invitations. Muse v. State (App. 10 Dist.1991) 815 S.W.2d 769.

73. — Necessity of standards and guidelines, delegation of legislative powers

State ex rel. Grimes County Taxpayer Ass'n v. Texas Municipal Power Agency (Civ.App.1978) 565 S.W.2d 258 [Main Volume] error dismissed.

78. — Judiciary, delegation of legislative powers

Extent of legislature's power to confer upon district court authority to review administrative action is limited by separation-of-powers principle found in Constitution. Spring Independent

Washington
Art. 1, § 24
Note 6

CONSTITUTION OF WASHINGTON

v. Neslund (1988) 50 Wash.App. 531, 749 P.2d 725.

v. Blaker (1992) 118 Wash.2d 133, 821 P.2d 482.

7. Involuntary commitment

City's immediate revocation of concealed weapons permit pursuant to state firearms statute after learning of involuntary commitment order did not violate any liberty or property interest which holder may have had in permit. *Morris*

Compelling state interest in safety of public justified reasonable restrictions on right to concealed weapons permits to persons who had been involuntarily committed for treatment of mental disorder pursuant to statute. *Morris v. Blaker* (1992) 118 Wash.2d 133, 821 P.2d 482.

§ 30. Rights Reserved

Notes of Decisions

Executions 4

4. Executions

Journalist failed to establish right to attend execution absent proof that at-

tendance at execution was "fundamental, inalienable right under the laws of God and nature" protected under State Constitution. *Halquist v. Department of Corrections* (1989) 113 Wash.2d 818, 783 P.2d 1065.

§ 35. [Rights of Crime Victims]

Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel.

Adopted by Amendment 84 (Laws 1989, S.J.R. No. 8200, approved Nov. 7, 1989), eff. Dec. 7, 1989.

ARTICLE II—LEGISLATIVE DEPARTMENT

§ 1. Legislative Powers, Where Vested

Notes of Decisions

V. INITIATIVE AND REFERENDUM

281. In general, Initiative and referendum

Authority of judiciary over initiative or referendum process is limited to areas in which there is express statutory or constitutional law making question judicial. *Schrempp v. Munro* (1991) 116 Wash.2d 929, 809 P.2d 1381.

Legislation concerning initiative or referendum process may be enacted only

to facilitate its operation. *Schrempp v. Munro* (1991) 116 Wash.2d 929, 809 P.2d 1381.

287. — Declaration of emergency, exceptions, Initiative and referendum

Legislation enacted on emergency basis goes into effect immediately and is exempt from People's constitutional power to reject legislation by referen-

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

HJR 43 RIGHTS OF CRIME VICTIMS

RIGHTS

CURRENT LAW

- | | |
|--|---|
| 1. RIGHT to be reasonably protected from the accused. | 1. AS 12.61.101 |
| 2. RIGHT to confer with the prosecution | 2. AS 12.61.101 (by request) |
| 3. RIGHT to be treated with dignity, respect and fairness | 3. AS 12.61.100 |
| 4. RIGHT to timely disposition | 4. no current law |
| 5. RIGHT to restitution from the accused | 5. AS 18.67.080. |
| 6. RIGHT to be informed of and present at all criminal or juvenile proceedings | 6. AS 12.61.010 |
| 7. RIGHT to be heard, upon request, at sentencing and accused release from custody is considered | 7. AS12.61.101, AS12.55.023, AS 33.16.120 |
| 8. RIGHT to be informed, upon request, of the accused escape or release from custody | 8. AS 33.16.120 (partially) |

Number 3605

JANICE LEINHART with Victims for Justice testified in support of the legislation. She suggested adding language to the bill that victims "be informed of rights herein."

Number 4052

REP. NORDLUND asked the sponsor if there would be two separate amendments to the constitution based on this bill.

Number 4056

REP. PORTER responded that it would amend one section and add another, but would be one vote, one issue, and one ballot proposition.

Number 4107

REP. NORDLUND followed up by asking what if someone goes to the polls and wants to vote yes on one section and no on the other. He commented that they are two completely separate issues.

Number 4120

REP. PORTER responded that to him they addressed the same basic proposition, and that community as opposed to criminal defendant should have equal status.

Number 4142

DEAN GUANELI, Assistant Attorney General, Criminal Division, Department of Law, stated that he knew very little about the single subject requirement and would check on that, but first the administration supports this resolution. He explained why, starting with the rights of crime victims. He said there is a statute on the books that gives crime victims certain rights. One of the primary differences with the proposed constitutional amendment is a clause that provides a right to a timely disposition to the case following the arrest of the accused. Mr. Guaneli said this would not require a defendant to go to trial before they are prepared, but would require a judge to think carefully about whether to grant that fourth or fifth postponement of the proceedings. Further, he said, it will tend to level the playing field among victims and defendants of crimes, but will not give crime victims all the same rights as defendants. For example, it will not give victims the right to a court appointed attorney to represent them in the proceedings.

MR. GUANELI said he thinks the critical phrase in here is that they have a right to be treated with dignity, respect and fairness. He used another example where a victim of an assault has all of his or her past conduct paraded before the jury, to be basically labeled a violent, aggressive person, when at the same time the jury is not allowed to hear about the defendant's own past violent tendencies.

TAPE 94-1, SIDE 2
Number 017

MR. GUANELI moved on to the other provision and said it affects the criminal justice system in two distinct ways. One, it tends to affect the sentencing process and two, it tends to affect the way the prisons are administered, which provides some appropriate guidance for the courts.

In response to a question raised earlier by Rep. Nordlund, MR. GUANELI replied that the state already has a very detailed sentencing system called presumptive sentencing, which sets out in a fair amount of detail what kind of sentences the judges are supposed to impose in run-of-the-mill cases that fit in with certain criteria. He continued by saying there are cases that don't fit neatly within the presumptive sentencing system, and in those instances the courts look to what the Supreme Court has said, and as mentioned earlier, comes from the Cheney case. The court sets out five criteria for judges to set sentences. He briefly described the criteria: 1) isolation of the offender; 2) deter others; 3) deter individual from doing it again; 4) community condemnation; and 5) rehabilitate the person.

Number 208

MR. GUANELI continued his testimony, saying that the Supreme Court has never really articulated how these are to be weighed; it is left to the discretion of the judge. He cited examples of how the court might weigh various crimes. He said that when everything else is equal, the need to protect the public ought to be considered first. He made a comment regarding the phrase "community condemnation", saying he could envision cases where it might not be appropriate to send someone to jail for any other reason than community condemnation. He cited an example where a person may have suffered shame, etc., and the judge sentenced the person because of public outrage by what happened. By that reason alone, that person ought to spend some time in jail. The Supreme Court has recognized this as an appropriate situation in sentencing for over twenty years, and there is no reason why that can't be in the constitution. He said he didn't

FISCAL NOTE

**STATE OF ALASKA
1994 LEGISLATIVE SESSION**

BILL NO: CSHJR43 (JUD)

Revision Date: _____ Dept. Affected: Public Safety
 Title: Relating to Penal Administration BRU: Alaska State Troopers
and the Rights of Crime Victims" Component: Detachments
 Sponsor: Representative Porter
 Requestor: Representative Porter COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

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

FINDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) impact: \$0.00 _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Fiscal Notes

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 11/10/93

FISCAL NOTE

STATE OF ALASKA

BILL NO. HJR 43

1994 LEGISLATIVE SESSION

Revision Date: _____
 Title: Amendment to the Constitution RE:
Penal Administration
 Sponsor: Reps. Porter, Phillips & Barnes
 Requestor: _____

Department Affected: Office of the Governor
 BRU: Division of Elections
 Component: General and Primary Elections
 COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS,	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.2*	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 (FY94) impact: 0

ANALYSIS: (Attach a separate page if necessary.)*This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be 53.4.

Prepared by: Joseph L. Swanson, Director
 Division: Division of Elections

Phone: 465-4611
 Date: 1/11/94

Approved by Commissioner: Lt. Governor John B. Coghill
 Agency: Office of the Lt. Governor

Date: 1/11/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HJR 43

ANALYSIS:

This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58., and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be 53.4.