

SJR

2

SJR-2

ALASKA PEACE OFFICERS ASSOCIATION

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March 22, 1993

APR 7 1993

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Senator Loren Leman
Alaska State Legislature
Capitol, Room 113
P.O. Box V (MS 3100)
Juneau, Alaska 99801

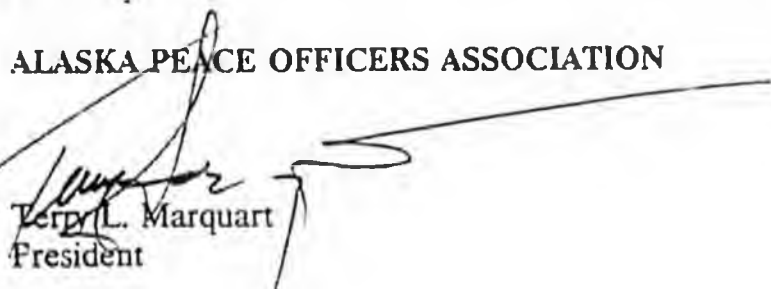
Dear Senator Leman:

On behalf of Alaska's Peace Officers we encourage you to support SJR 2, the Victim's Rights Bill. In 1990 the U.S. Congress passed the Victim's Rights and Restitution Act and urged the States to follow suit. To be both effective and humane, a criminal justice system must respond to the needs and concerns of the victims of crime at all stages of the criminal justice process.

One way to ensure appropriate consideration of victim's rights is to codify and enforce a "Victims' Bill of Rights." Victims' needs can include protection from further violence or retribution, restitution to cover economic loss and information about and participation in the criminal justice process. The criminal justice system should do all it can to minimize the pain of victims and victim-witnesses.

Sincerely,

ALASKA PEACE OFFICERS ASSOCIATION


Terpy L. Marquart
President

Ms. Janice Liennart 278-0977
619 E. 5th Avenue
Anchorage AK 99501 Date POM Sent 01/29/93
Constituency C Bill Number SJR 2 Response SUPPORTS
Subject

I ENCOURAGE YOU TO PASS THIS OUT OF COMMITTEE. THIS HELPS TO GIVE VICTIMS EQUAL RIGHTS.

Mrs. Theresa Cain 694-9997
P. O. Box 771318
Eagle River AK 99577 Date POM Sent 01/28/93
Constituency N Bill Number SJR 2 Response SUPPORTS
Subject

AS A VICTIM OF A CRIME, I ENCOURAGE THIS BILL TO PASS.



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

August 17, 1993

AUG 17 1993

Senator Loren Leman
Chair
Senate State Affairs Committee
716 West 4th Avenue
Suite 540
Anchorage, Alaska 99501

Dear Senator Leman:

The United States Constitution guarantees criminals certain rights and protections. Unfortunately, until recently innocent victims of crime have not been afforded the same protections. Although some progress has been made in statutory law, victims are still not given the same constitutional protections as are afforded criminals.

To help to rectify this injustice, I introduced Senate Joint Resolution 2 (SJR 2) last session, which would provide these constitutional protections to victims of crime. I was pleased to see you as a co-sponsor of this important resolution. Unfortunately, SJR 2 was not scheduled for any hearings during session, so I am asking if you would schedule it for interim hearings before our return to Juneau, so that interested members of the public have an opportunity to discuss this important matter with us in person.

Secondly, I would like to ask that as a committee chair, you request agency fiscal notes on this resolution. Apparently fiscal notes are only being issued to committee chairs, not sponsoring legislators, so your assistance on this score would be appreciated.

Thank you for your consideration of these requests.

Sincerely,

A handwritten signature in cursive script that reads "Dave Donley".

Senator Dave Donley

DD/jbv

CC: Victims for Justice
Anchorage Crime Commission
Alaska Peace Officers Association
STAR

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December 7, 1993

Ms. Janice Lienhart
Victims for Justice
619 E. Fifth Avenue
Anchorage, Alaska 99501

Re: Alaska Victims' Rights Constitutional Amendment

Dear Janice:

I did not want the year to end without formally thanking you for your courtesy and hospitality during my recent visit in Alaska.

In the time intervening since my visit, I have continued to seek out information that may be helpful as we approach the legislative session early next year. I spoke today with Senator William Van Regenmorter in Michigan. He wrote and sponsored both the Michigan victims' rights statute and subsequently the Michigan victims' rights constitutional amendment. The Senator is sending me a booklet prepared after the passage of their law to explain victims' rights to citizens in Michigan. He also had some suggestions about how to approach certain sensitive issues.

Senator Van Regenmorter indicated that states opting for what he calls the "philosophical approach" (broad statements preserving and protecting the rights of victims to due process and fair treatment without specifying those rights) have found that they left too much discretion in the courts without sufficient direction regarding what those rights should be. He told me that in Michigan a victim's right to be present in the courtroom after he or she had testified was not adequately assured until a constitutional amendment was passed. Judicial power to control the courtroom preempted the victim's right to be present without reliance on any right of the defendant. It is therefore not simply a matter of defendants' rights defeating victims' rights.

I specifically asked about any legislative implementation language in their constitutional amendment. He said that his staff had researched the issue and felt that it was necessary. Without it, the Senator opined that the legislature would not be able to fully implement the victims' rights to provide for such things as enforcement, limitations, and means of implementation.

As for opposition to the proposed constitutional amendment, a Michigan taxpayer organization initially opposed the proposed constitutional amendment because they feared that prosecutors (and hence the state) could be liable to victims for violation of their rights. The resulting monetary damages would be paid out of the public coffers and place an additional burden on the taxpayer, hence their opposition. Senator Van Regenmorter indicated that as a result of this concern language was added restricting suits for monetary damages.

Finally, the Michigan victims' rights amendment was drafted to provide that an assessment against defendants could be ordered by the court to pay for the preservation and implementation of victims' rights. This provision was added to allow the state to shift the cost of implementation to the defendants. He cautioned however that the state needs to be prepared to meet this cost initially and not depend on revenues from defendants who frequently are indigent. Senator Van Regenmorter indicated that the it has cost the State of Michigan approximately \$1 1/2 million dollars to implement their constitutional amendment state wide, but in his opinion it is well worth the cost.

The Senator would be happy to answer any questions that we may have, or talk to any legislator that has questions. He is deeply committed to victims and victims rights and may be a valuable ally. His opinion as a Senator (and elected official) may be more persuasive to other Legislators since he understands the political implications of support for victims' rights.

Please keep me informed of the progress of your legislation. I am prepared to return to Alaska as needed to ensure our goal of passing a victims' rights constitutional amendment. Best regards to you and your sister, Sharon, for a safe and happy holiday season!

Sincerely,

Linda
Linda A. Akers
Deputy Director
Crimes *Linda*

la A.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 4, 1994

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
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The Honorable Loren Leman
Chairman, State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: CS SS SJR 2(STA)

Dear Senator Leman:

You have asked the Department of Law to address several issues relating to CS SS SJR 2(STA), "Proposing an amendment to the Constitution of the State of Alaska relating to the rights of victims of crimes and to criminal and juvenile justice administration." Please be advised that an attorney from the Department's Civil Division is responding to the your questions regarding the probable effect of this proposed constitutional amendment on the juvenile justice system as currently administered under Title 47 of the Alaska Statutes and caselaw from our appellate courts.

I will attempt here to address your other questions, relating to the phrase "community condemnation of the offender" and to the term "restitution." The phrase "community condemnation of the offender" is not a synonym for punishment or retribution. Instead, it is a part of the *Chaney* criteria that was expressed by the Alaska courts as follows:

Under Alaska's Constitution, the principles of reformation and necessity of protecting the public constitute the touchstones of penal administration. Alaska Const., art. I, § 12. Multiple goals are encompassed within these broad constitutional standards. Within the ambit of this constitutional phraseology are found the objectives of rehabilitation of the offender into a noncriminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community

condemnation of the individual offender, *or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves.*

State v. Chaney, 477 P.2d 441, 444 (Alaska 1970) (emphasis added) (footnote incorporated into text). See also AS 12.55.005(6) ("In imposing sentence, the court shall consider . . . the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms").

In *Smothers v. State*, 579 P.2d 1062 (Alaska 1978), the Alaska Supreme Court offered the following:

We note that the trial court expressed some uncertainty as to the meaning of the fourth *Chaney* criterion, the reaffirmation of societal norms, questioning whether it actually was a disguise for retribution. The use of retribution as a goal of sentencing is inconsistent with the mandate of art. I, § 12 of the Alaska Constitution that "Penal administration shall be based on the principle of reformation and upon the need for protecting the public," and was not adopted as one of the four goals in *State v. Chaney*, 477 P.2d at 444.

The support of community expectations that existing norms will be enforced and delicts will be punished is separate from retribution.

579 P.2d at 1064. The Alaska Supreme Court further addressed the matter in *Leuch v. State*, 633 P.2d 1006 (Alaska 1981), a copy of which is attached to this letter.

As I indicated at the hearing before the Senate State Affairs Committee, the term "restitution" has thus far been defined by the legislature in title 12 only to refer to payments made to persons harmed by the defendant's conduct, and not to also refer to payments the defendant should make to the "system" for the cost he is imposing on society as a whole. The legislature, however, may define the term more broadly if it so chooses. This, however, would not require a constitutional amendment. I have not been successful in thinking of a term that could be used instead of "restitution" in this constitutional amendment that would convey the sense you have tried to create. If ever one comes to me, I will be pleased to let you and the committee know.

Finally, I would like to reiterate the Department of Law's desire to see this proposal amended as suggested in our memorandum dated January 26, 1994. We believe that such an amendment would protect the state from unintended and undesired effects that might arise from this proposal.

The Honorable Loren Leman

February 4, 1994
Page 3

Thank you for your consideration. If you have any further questions that we might be able to address, please do not hesitate to contact us.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

MOK:jf

for an employer to hire an employee to work long overtime hours rather than to hire more workers, contrary to one purpose of the overtime provision, which was to force employers to spread employment by hiring more persons.¹⁵

We are persuaded that the state's position is correct. Under a standard hourly wage salary, as a worker's overtime hours increase, the average hourly wage increases. Under the FWW, as a worker's overtime hours increase, the average hourly wage decreases. This contravenes the policies of requiring increased overtime compensation and promoting the spreading of employment.

Thus, we must conclude that the regulation's definition of "regular rate of pay" so as to exclude use of the FWW is consistent with, and reasonably necessary to carry out, the purposes of the relevant statutory provisions. The regulation does not exceed the power delegated by the legislature. Further, 8 AAC 15.100(d)(3) is a reasonable and non-arbitrary method of furthering the statute's policies.¹⁶

Dresser raises several collateral arguments concerning the regulation's prohibition of the "Belo" pay plan, *see Walling v. A.H. Belo Corp.*, 316 U.S. 624, 62 S.Ct. 1223, 86 L.Ed. 1716 (1942); 29 U.S.C.A. § 207(f), and the permissibility of piece-work and commission pay plans. The validity of these provisions is not before us, and we perceive no inconsistency so blatant as to render the prohibition of the FWW unreasonable or arbitrary.

The judgment of the superior court is **AFFIRMED**.



15. The United States Supreme Court has repeatedly emphasized this point. In *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446, 460, 68 S.Ct. 1186, 1194, 92 L.Ed. 1502, 1514 (1948), the Court said, "The purpose was to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment

David LEUCH, Appellant,

v.

STATE of Alaska, Appellee.

No. 5255.

Supreme Court of Alaska.

Sept. 25, 1981.

Defendant was convicted, pursuant to guilty pleas, before the Superior Court, Fourth Judicial District, Fairbanks, James R. Blair, J., of two counts of grand larceny, and he appealed sentence. The Supreme Court, Rabinowitz, C. J., held that: (1) where an offense is against only property, involving no physical threats or violence, where it is the offender's first felony conviction, and where there is no background of unsuccessful paroles or probations which would indicate that probation is unsuitable to protect the public, to deter the offender, and to further his rehabilitative process, probation, coupled with restitution, is the appropriate sentence unless other factors militate against it, and (2) concurrent sentences of eight years with four suspended was excessive and upon remand defendant should receive concurrent sentences which, including any period of suspension and probation, did not exceed five years in total length.

Sentence reversed and remanded.

Matthews, J., dissented and filed opinion in which Burke, J., joined.

1. Criminal Law ⇔ 986.2(1)

Absent a conviction, an indictment is absolutely no evidence of guilty conduct.

through inducing employers to shorten hours because of the pressure of extra cost."

16. The parties have not addressed, and we express no opinion concerning, the question whether there may be any conflict between 8 AAC 15.100(d)(3) and AS 23.10.060(17) and (18), enacted in ch. 31, § 1, SLA 1980.

2. Criminal Law \Leftrightarrow 1184(1)

Supreme Court will modify a sentence only if, after independent review of the record, it concludes that superior court was clearly mistaken.

3. Criminal Law \Leftrightarrow 1134(2)

In reviewing a sentence, a portion of which is suspended, period of suspension as well as period of incarceration must be weighed.

4. Criminal Law \Leftrightarrow 986.2(4)

A significant indication that a noncustodial sentence is inappropriate would be a past history of unsuccessful attempts at such sentences. AS 12.55.015(b).

5. Criminal Law \Leftrightarrow 28

Offenses which are committed solely against property or the public order are, on the whole, less severe than offenses involving threats, injuries, or death, or other invasions of another's person. AS 11.41.100 et seq., 11.46.100 et seq., 12.55.155(c), (c)(1, 2, 4-6, 8, 12, 18).

6. Criminal Law \Leftrightarrow 986.2(1)

Extent of harm visited upon victim by the offender is a proper consideration at sentencing.

7. Criminal Law \Leftrightarrow 982.4(2)

Where an offense is against only property, involving no physical threats or violence, where it is the offender's first felony conviction, and where there is no background of unsuccessful paroles or probations which would indicate that probation is unsuitable to protect the public, to deter the offender, and to further his rehabilitative process, probation, coupled with restitution, is the appropriate sentence unless other factors militate against it.

8. Criminal Law \Leftrightarrow 986.2(1)

Financial inability of an offender to make restitution should not be regarded as a factor favoring a sentence of incarceration.

1. Both were also charged with an additional count of grand larceny, three counts of burgla-

9. Larceny \Leftrightarrow 88

Where, although defendant's convictions on two counts of grand larceny were his first felony convictions, defendant had record of numerous misdemeanors which involved extreme dishonesty, where, although there was no background of supervised probation, defendant had failed to make restitution for prior offenses and, where, although offenses in question were solely against property, one of the felonies was a large scale crime and had severe impact on uninsured victim, some period of incarceration was warranted. AS 11.41.100 et seq., 12.55.015(b).

10. Larceny \Leftrightarrow 88

Concurrent sentences of eight years with four suspended after conviction on two counts of grand larceny were excessive and upon remand defendant should receive concurrent sentences which, including any period of suspension and probation, did not exceed five years in total length. AS 11.41.100 et seq., 12.55.015(b).

David C. Backstrom, Deputy Public Defender, Fairbanks, for appellant.

Bill D. Murphree, Asst. Dist. Atty., and Harry L. Davis, Dist. Atty., Fairbanks, for appellee.

Before RABINOWITZ, C. J., and CONNOR, BURKE, MATTHEWS and COMPTON, JJ.

OPINION

RABINOWITZ, Chief Justice.

David Leuch pled guilty to two counts of grand larceny. The superior court imposed concurrent sentences of eight years with four suspended. Leuch now appeals this sentence, claiming it is excessive.

[1] The offenses to which Leuch and his co-defendant, Michael Darr, pled guilty involved the theft of two motorcycles from the Fairbanks Harley-Davidson dealership and the theft of a safe, a dolly, and approximately \$12,000 from the Healy Roadhouse on the Parks Highway.¹

ry not in a dwelling, and one count of concealing stolen property, and Darr was charged with

The presentence report on Leuch's background shows that he grew up in a "stable, loving environment" with his adoptive parents in California. During that time, he graduated from high school, having participated in the tennis and music programs and served as class president. He attended college for a time, but his grades show that he was a poor student at this level.

In 1975, having taken a three-month course in truck driving, Leuch began to drive a truck cross-country. In 1976, he worked for a few months for a Manpower program in Denver, Colorado, then came to Anchorage in June of 1976 to find a trucking job. For three months in 1977, he was employed as a driller's helper. From June of 1977 to February of 1979 he worked as a cab driver, leasing his own taxi for the last nine months of that time.

His criminal record up to that point consisted only of several traffic offenses. On February 14, 1979, however, he was convicted of twenty-six counts of unemployment fraud, for which he was given a ninety-day sentence with all but fifty-four suspended, together with a fine of \$260, and was required to make restitution in the amount of \$1,274.²

It was during this initial incarceration on the unemployment fraud charges that he met his co-defendant Michael Darr. After their release, the two traveled to Fairbanks together purportedly intending to file on a gold claim of Darr's. Upon their arrival in Fairbanks, their truck broke down. They tried to spend the night in the truck until it got too cold, according to Leuch, and then they entered a church (unlocked, by Leuch's account) which apparently led to their conviction in Fairbanks on June 12 of petty larceny and unauthorized entry.³ Leuch

an additional count of receiving stolen property. The state argues that these additional counts "cannot be overlooked," forcing us to repeat once again that, absent a conviction, an indictment is absolutely no evidence of guilty conduct. *Waters v. State*, 483 P.2d 199 (Alaska 1971).

2. On November 15, 1979, Leuch admitted failure to make restitution on this charge, and was sentenced to an additional 30 days in jail.

was given ten days in jail. During that time, he apparently injured his knee, was hospitalized for surgery on some torn cartilage in that knee, and later convalesced at Careage North a convalescent home in Fairbanks. There he met a health care assistant who, presumably concerned about the fact that he knew few people in Fairbanks apart from Darr, allowed Leuch to reside with her until he was able to find suitable work.

The theft of the motorcycles was, in Leuch's words, sheer impulse on his part; he indicated that Darr, who had been considering the act for a couple of weeks, suggested it. They went to the motorcycle store; Leuch broke a window with a rock; Darr climbed through the window and opened the door; and each removed a motorcycle which they stored at a friend's cabin.

The Healy Roadhouse theft was to get money to ship the motorcycles out of the state. The health care assistant with whom Leuch was residing had a friend who had formerly been employed at the Roadhouse and apparently had a grudge against its owner. This friend supplied Darr and Leuch with the floor plans of the Roadhouse to enable them to locate the safe. Darr and Leuch, having planned the venture for two weeks in advance, broke in by unscrewing a single bolt lock on the back door. They then found a dolly and used it to remove the safe, taking both safe and dolly in a station wagon to a dirt road off Chena Pump Road. They broke into the safe and found about \$7500 cash, along with numerous checks and notes which they burned.⁴ They then dumped the safe into the river.

3. We cannot tell from the record whether these convictions were based on the entry into the church or on another incident.

4. Appellant asserts that the amount which the owner of the Healy Roadhouse stated was in the safe (\$16,000 in currency and checks) does not square with the amount of money Leuch

Leuch's letter explaining the incidents expressed his remorse over the harm caused the victims by his actions.⁵ He stated that he had been in a depressed state of mind during his recuperation, and that he was too easily influenced by his companions.

Letters on Leuch's behalf were submitted from Leuch's girlfriend, opining that Leuch, being new to Fairbanks, had been unduly influenced by his relationship with Darr, whom she had known for a long time and regarded as "bad company"; from his girlfriend's mother, stressing that she would continue to accept him into her home and endeavor to provide a positive influence; and from Leuch's parents, stating that Leuch's criminal activity came as a shock to them and that they were sure he would never engage in criminal behavior again. An institutional counselor in Anchorage indicated that Leuch had adjusted well to incarceration and was in the less secure section of the jail.

The probation officer preparing the presentence report noted that Leuch was the product of a stable home environment; that he appeared to be a dependable worker; that he was cooperative during the interview; and that he appeared to feel remorse for his actions. Although Leuch used alcohol and drugs (marijuana and occasionally cocaine), they were not a factor in the of-

said was in the safe when it was torn open (\$7,500 in cash). However, Leuch also stated in his letter to the court that he and Darr burned the checks and notes they found in the safe, which accounts for any discrepancy.

5. His letter said:

I know that when I had the money and the motorcycles I felt guilty and trapped and had the empty and insecure feeling of knowing they didn't belong to me. It feels good to have something that you make for yourself and pretty bad if someone takes it away from you. I can assure you that I am truly sorry about the events that took place and to the people I offended!

6. Although the theft of the motorcycles was apparently impulsive on the part of Leuch, the theft of the safe, as the probation officer pointed out, was a deliberately planned act.

7. The state notes that Leuch is not claiming that he did not receive the benefit of this or any

fenses. The probation officer attributed Leuch's criminal conduct to several factors: the fact that Leuch was an impulsive individual⁶ with poor judgment, especially with respect to choosing his associates; his lack of employment and poor financial situation; his lack of discipline and structure in goal orientation; and his lack of familial ties in Alaska, where he apparently plans to reside. The probation officer noted that Leuch stated he had two job offers, one as a trucker north of Fairbanks and the other as a laborer in a cannery in Dutch Harbor. The probation officer did not, however, regard either of these opportunities as a viable job plan. The presentence report concluded by recommending incarceration, in view of the seriousness of the offenses and the large amounts of money involved, and the fact that Leuch had apparently not learned from his prior contacts with the criminal justice system.

At the sentencing hearing, the prosecutor apparently ignored his agreement with Leuch's defense counsel to bring to the court's attention Leuch's cooperation with the state in offering to testify against Darr, and this was pointed out by defense counsel.⁷ It was also brought out that Darr, learning of Leuch's cooperation, had made statements indicating that he intended to retaliate physically against Leuch.⁸

other concession expected. We agree, and this aspect of the case is not before us here.

8. The record contains a transcript of an interview between one of the investigators on the case and an inmate who had overheard Darr talking about the offense. The primary content of the transcript concerns Darr's statements incriminating himself in the motorcycle and safe thefts. At the end, the following fact came to light:

Q. Can you think of anything else?

A. Ah . . . The only thing I can think of is that . . . [Darr] does, that he does intend to, to settle it with David Leuch in the event that something physically does happen to David Leuch by him that he did have intent previous to that of doing something to him.

Q. What you're trying to say is that ah, he is upset with David Leuch? Why is that?

A. I think he's more or less upset with David Leuch because ah, he refers to it as snitching but—he has reason to believe that

The superior court did not find Leuch to be the worst offender within the class, but found the question a close one. The court stated that although this was Leuch's first felony offense, his misdemeanor convictions showed extreme dishonesty, and that he was on his way to becoming a professional criminal. But the court also noted that, to Leuch's credit, he had admitted his participation and that his attitude in jail appeared to be good. The superior court assessed the *Chaney* factors⁹ as follows: Leuch's chances of rehabilitation were greater than those of Darr, which were described as "slim"; there was also a little higher likelihood that Leuch would be deterred by a sentence than in the case of Darr, where the likelihood was "not that good"; the necessity of isolation for the protection of the community was high; and the extent of community condemnation was also high. The superior court also expressed the view that the deterrent effect of a sentence on the general community is negligible in practically any case because, in the superior court's view, sentences are not sufficiently publicized to have any significant impact. The court's main concern was the proximity of this offense to Leuch's two prior jail sentences, which precluded a suspended sentence. The court then imposed the concur-

David Leuch snatched on him for, for ah, getting a lesser sentencing in his particular crime . . . and then being transferred to a different . . . incarcerated area, he has reason to believe that there was more or less foul play on David Leuch's part.

Q. OK. So in other words, he may try to, to get back at David Leuch if possible in some manner?

A. Ah, I have reason to believe that ah, psychologically that ah, Mr. Darr, ah, shows signs of rebelliousness, ah, not just to his other inmates but to the guards and so forth and that I would not put it past ah, his particular situation to want to do bodily injury to David Leuch.

9. In *State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970), we said:

Under Alaska's Constitution, the principles of reformation and necessity of protecting the public constitute the touchstones of penal administration. Multiple goals are encompassed within these broad constitutional standards. Within the ambit of this constitutional phraseology are found the objectives of rehabilitation of the offender into a non-

rent eight year sentences with four years suspended.

[2, 3] We will modify a sentence only if, after an independent review of the record, we conclude that the superior court was clearly mistaken. *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974). In reviewing a sentence, a portion of which is suspended, the period of suspension as well as the period of incarceration must be weighed. It would, of course, be unrealistic to consider the suspended time to be as harsh a sanction as time to be served in prison. However, it would also be incorrect to consider suspended time as a nugatory or insignificant sanction. Thus, this appeal involves concurrent eight-year sentences four years of which have been suspended. We have previously indicated that, except for cases involving particularly serious offenses, dangerous offenses, and professional criminals, maximum sentences ought not to exceed five years. *Donlun v. State*, 527 P.2d 472, 475 (Alaska 1974).

We are in general agreement with the position of the ABA Standards that, in the absence of affirmative reasons to the contrary, a sentence not involving confinement is to be preferred.¹⁰ "Affirmative reasons

criminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the individual offender, or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves. [Footnotes omitted.]

10. The ABA Standards Relating to Sentencing Alternatives and Procedures § 2.3(c) (Approved Draft 1968) states: "A sentence not involving confinement is to be preferred to a sentence involving partial or total confinement in the absence of affirmative reasons to the contrary." Section 2.4(c) of the same document indicates that "[a] sentence involving partial confinement is to be preferred to a sentence of total confinement in the absence of affirmative reasons to the contrary."

to the contrary" should be found on the basis of a showing that probation, or some other alternative to incarceration, is inadequate to serve one or more of the *Chaney* criteria. The ABA Standards list the following legitimate reasons for the selection of total confinement:

(i) Confinement is necessary in order to protect the public from further criminal activity by the defendant; or

(ii) The defendant is in need of correctional treatment which can most effectively be provided if he is placed in total confinement; or

(iii) It would unduly depreciate the seriousness of the offense to impose a sentence other than total confinement.

ABA Standards Relating to Sentencing Alternatives and Procedures § 2.5(c) (Approved Draft 1968). The Standards go on to specify that "[o]n the other hand, community hostility to the defendant is not a legitimate basis for imposing a sentence of total confinement." *Id.* We read these considerations as corresponding to the *Chaney* criteria of isolation, rehabilitation, and community condemnation. We also think that a finding that a non-custodial sentence would fail to deter the defendant and/or others to the requisite degree, the other factors in the *Chaney* list, justifies a sentence of incarceration. These "affirmative reasons to the contrary" should have some basis in the record.

[4] A significant indication that a non-custodial sentence is inappropriate would be

To the extent that this policy is inconsistent with the presumptive sentences laid out in the new criminal code or the sentencing guidelines proposed by the Sentencing Guidelines Committee, the latter are to prevail. For most first offenders, however, these guidelines leave the choice between probation and short periods of incarceration open.

11. This policy is also reflected in the new statutory sentencing provisions. AS 12.55.015(b) reads:

The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of his present offense and his prior criminal history, and imprisonment is equitable consider-

a past history of unsuccessful attempts at such sentences. If an individual has not proven amenable to parole or probation in the past, it is likely that, absent some change, he will not prove to be so in the future.¹¹

A lack of information which stems from the absence of any experience as to how the offender will perform on probation renders it especially difficult to make any judgment as to three of the *Chaney* factors: the need to deter the offender, the need to isolate the offender, and the offender's amenability to the rehabilitative process. On the other hand, it is clear from Leuch's record that a pattern of short incarcerations followed by unsupervised release has been insufficient to protect the public, to deter Leuch himself, or to assist him in rehabilitating himself.

The preference for non-incarcerative sanctions may be overridden, even if information is lacking regarding their past use in terms of the above three factors, by the other *Chaney* considerations, general deterrence and community condemnation, which are not as closely tied to information regarding past performance on probation programs.

Here, the superior court opined that the general deterrence factor played little or no role.¹² The community condemnation factor, however, was regarded as significant by the superior court.

ing sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

12. The superior court was of the view that whatever sentence was imposed would have little or no impact on the community in general, as sentencings are regarded by the news media as insufficiently newsworthy to receive adequate publicity.

In light of the fact that the community condemnation factor has been the cause of some concern in this and other recent cases, we think a discussion of this sentencing factor is appropriate.

We recently discussed the community condemnation factor in *Kelly v. State*, 622 P.2d 432, 435-36 (Alaska 1981). There we emphasized that community condemnation is a different concept from general deterrence, a separate sentencing goal under *Chaney*, and from retribution, an impermissible consideration in sentencing.

Many theoretical explanations of this concept have been put forward, all of which are useful in understanding why this aspect of *Chaney* is to be retained in sentencing decisions. The Kantian view is that each member of society is granted certain benefits, and agrees to subject himself to certain restraints so that other members of society may enjoy these same benefits. When an individual ignores these restraints, he achieves an unfair advantage over other members of society by avoiding his obligations while continuing to enjoy his benefits.

13. See J. Murphy, *Kant: The Philosophy of Right* 109-12, 140-44 (1970).

14. O. W. Holmes, *The Common Law* 36 (Howe ed. 1963). See also Weiler, *Why Do We Punish? The Case for Retributive Justice*, 12 U.B.C.L.Rev. 295, 308 (1978):

Sir James Stephen, the famed Victorian jurist and historian of criminal law once said, '[t]he criminal law stands to the passion of revenge in much the same relation as marriage to the sexual appetite.' He believed that authoritative punishment of criminals was a desirable institution because it provided an orderly outlet for emotions that would otherwise express themselves in socially less acceptable ways. If the state did nothing about punishing an offender, the natural and potentially destructive feelings of resentment aroused in victims of the offence or other interested parties would no doubt result in attempts at private vengeance.

15. See Morris, *The Future of Imprisonment: Toward a Punitive Philosophy*, 72 Mich.L.Rev. 1161, 1173 (1974):

No sanction greater than that 'deserved' by the last crime, or series of crimes, for which the offender is being sentenced should be imposed. The principle strikes directly at the larger question I have deferred, namely, why not hold all convicted criminals until risk of recidivism is past? My answer, in part, is

According to Kant, restoration of the balance on which society depends requires that such an individual be deprived of those benefits to some extent.¹³ Oliver Wendell Holmes believed that, since society has required individual victims to set aside their tendency toward private vengeful action in favor of societal remedies against the offender, society must punish the offender on behalf of the victim or else risk a return to private methods of forcing the offender to suffer.¹⁴ More recently, concern over the disparity in sentences under rehabilitation-oriented systems has led to the conclusion that some notion of just punishment must be included in sentencing considerations.¹⁵

[5] Theoretical justifications are of limited value in the difficult sentencing decision itself in a particular case. Our decisions have not provided the internal structure which is necessary to implement this concept in sentencing decisions. We have been reluctant to provide this structure ourselves because judgments as to the extent to which the community condemns a partic-

ular - legis new sions crim to se emer from whic ty or seve ries, er's tor i is al new Th retic with bilit; whic prop mor whic or di can pure (idei victi sens tim .

that the link between established crime and deserved suffering is a central precept of everyone's sense of justice, or, more precisely, of everyone's perception of injustice. To use the innocent as a vehicle for general deterrence would be seen by all as unjust, although it need not be ineffective if the innocence of the punished is concealed from the threatened group. Punishment in excess of what the community feels is the maximum suffering justly related to the harm the criminal has inflicted is, to the extent of the excess, a punishment of the innocent, notwithstanding its effectiveness for a variety of purposes.

Compelling reasons for accepting a notion of just punishment are explained thoroughly and intelligently in several recent works on sentencing theory and proposals, which we commend to sentencing courts and others interested in sentencing. See A. von Hirsch, *Doing Justice: The Choice of Punishments*, Report of the Committee for the Study of Incarceration (1976); Weiler, *Why Do We Punish? The Case for Retributive Justice*, 12 U.B.C.L.Rev. 295 (1978). See also A. Dershowitz, *Background Paper to Fair and Certain Punishment*, Report of the Twentieth Century Fund Task Force on Criminal Sentencing (1976); M. Frankel, *Criminal Sentences: Law Without Order* (1973).

16. n.6 15' 17. (cl th; Tit ag inv 2, off 18. iit, W. i 'Ty i Bu Re At 19. lat re:

ular offense are more properly made in the legislative area than by the judiciary. The new criminal code with its sentencing provisions provides this structure for most crimes, and should be of immense guidance to sentencing courts. One principle which emerges, both from our prior case law and from the new criminal code, is that offenses which are committed solely against property or the public order are, on the whole, less severe than offenses involving threats, injuries, or death, or other invasions of another's person. We have emphasized this factor in several of our prior decisions,¹⁶ and it is also inherent in several aspects of the new code.¹⁷

This is congruent, not only with the theoretical justifications noted above, but also with common-sense notions of reprehensibility. In Kantian terms, the imbalance which is solely one person's wrongful loss of property and another's wrongful gain is more easily righted than the imbalance which involves the victim's loss of life, limb or dignity. Under the Holmes view, society can fulfill its obligation to the victim of a purely financial loss with less drastic means (ideally, restitution) than in the case of a victim of a physical assault. In common-sense terms, the harm imposed on the victim of a financial loss is generally much less

injurious, degrading and painful than the harm stemming from a personal threat or physical injury.¹⁸ Yet another relevant aspect of purely property crime is that the remedy of restitution can approximate the "making whole" of a victim in this context in a way which it cannot in the context of crimes involving physical threats or invasions of a victim's person.¹⁹

[6] This is not meant to indicate that the loss occasioned by property crimes is an insignificant one, or that it should be disregarded, or that it can never result in incarceration. We do think, however, that the extent of harm visited upon the victim by the offender is a proper consideration at sentencing, and that the proper *Chaney* vehicle for this consideration is the community condemnation factor.

[7, 8] Taking all these factors into account, we think that where an offense is against only property, involving no physical threats or violence; where it is the offender's first felony conviction; and where there is no background of unsuccessful paroles or probations which would indicate that probation is unsuitable to protect the public, to deter the offender, and to further his rehabilitative progress, probation, coupled with restitution,²⁰ is the appropriate

16. See, e. g., *Black v. State*, 569 P.2d 804, 805 n.6 (Alaska 1977); *Andrews v. State*, 552 P.2d 150, 154 (Alaska 1976).

17. Generally, offenses against the person (chapter 41 of Title 11) carry higher sentences than offenses against property (chapter 46 of Title 11). Additionally eight of the eighteen aggravating factors listed in AS 12.55.155(c) involve potential physical injury (subsections 1, 2, 4, 5, 6, 8, 12, and 18) as a part of the present offense or the offender's record.

18. Cf. W. Shakespeare, *Othello*, Act III, Scene iii, lines 157-61:

Who steals my purse steals trash—'tis something, nothing.

'Twas mine, 'tis his, and has been slave to thousands—

But he that filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed.

19. Again, we find significance in the new legislative enactments which give a greater role to restitution in the sentencing provisions:

The Code gives greater emphasis to restitution than is the case under existing law. Restitution is available in *all* cases and in connection with most kinds of sentences. As it now stands, only passing reference is made to restitution in AS 12.55.100(a)(2), where it is listed as a possible condition of probation.

Further, because restitution is the one sanction which has the potential for making a victim 'whole,' or nearly so, and because a victim is the most frequently ignored party in the justice system, the Subcommittee felt that restitution should be given more extended treatment as a complementary sanction in the Revised Code.

Criminal Code Revision Subcommittee, Alaska Criminal Code Revision, Commentary to ch. 36, art. 6, at 54 (Tent. Draft, Part 6, 1978).

20. The probation officer in the instant case noted that Leuch did not have the financial resources to make restitution. We do note that, generally, an offender will be in a better position to make restitution while in the com-

sentence unless other factors militate against it.²¹ Naturally, this is not to be construed as a hard and fast rule.

[9, 10] Here, several factors are present which would justify a departure from this general rule. Although these were Leuch's first felony convictions, he had a record of numerous misdemeanors which the sentencing judge found had involved "extreme dishonesty"; although there was no background of supervised probation, there was a failure to make restitution for the prior offenses; and although the offenses in question here were solely against property, one of the felonies was a large-scale crime and had a severe impact on the uninsured victim. Consequently, the community condemnation factor must be placed on the

munity than while incarcerated. Also, the statute is designed to permit the imposition of restitution without creating undue financial burdens on the offender or his dependents, a concern to which the court should give weight in cases arising before the application of the new statutory provisions. Further, the financial inability of an offender to make restitution should not be regarded as a factor favoring a sentence of incarceration.

21. It was while serving his initial sentence for his prior misdemeanors that Leuch met Darr, striking up a relationship which has led to nothing but trouble for both and for their innocent victims. Given the probation officer's opinion that there was a direct correlation between Leuch's criminal behavior and his peer group association, Leuch's own admission that he was unduly influenced by Darr, and Leuch's girlfriend's statements that Leuch, who was new to Fairbanks, had erred in regarding as his friend such "bad company" as Darr, the only possible conclusion is that Leuch's prior incarceration had a net impact of furthering his criminal career. This is a classic illustration of the counter-productive effect which incarceration can have.

Cf. C.B. Shaw, The Crime of Imprisonment 32-33 (Citadel ed. 1961):

He is, at the expiration of his sentence, flung out of the prison into the streets to earn his living in a labor market where nobody will employ an ex-prisoner He seeks the only company in which he is welcome: the society of criminals; and sooner or later, according to his luck, he finds himself in prison again. . . . The criminal, far from being deterred from crime, is forced into it; and the citizen whom his punishment was meant to protect suffers from his depredations.

upper end of the spectrum for property crimes. Thus, we are unwilling to hold that the general rule articulated above must be applied literally in the case at bar. Therefore we think the sentencing court was correct in concluding that some period of incarceration was appropriate. We think the court was clearly mistaken, however, in imposing concurrent sentences of eight years with four suspended. Given the circumstances of this case we think the superior court was clearly mistaken in imposing a total sentence which exceeded five years.²² In short, we hold the sentence is excessive and that upon remand appellant should receive concurrent sentences which, including any period of suspension and probation, do not exceed five years in total length.

Obviously, we do not mean to intimate that incarceration always has this effect, or that the end result is solely caused by the incarceration rather than by the offender's exercise of free will. The pattern here, however, is too striking for us not to notice it.

22. Under the new criminal code, Leuch's offenses would be classified as Theft in the Second Degree, a class C felony. AS 11.46.130. Under that statute, no presumptive sentence is given for first offenders, but we note that the maximum sentence would be five years, the presumptive sentence for a second offender two years, and the presumptive sentence for a third offender three years. AS 12.55.125(e).

The Sentencing Guidelines Committee's current recommendations as to first offenses, which had not been promulgated as of the time sentence was imposed in this case, coordinate well with this statutory scheme. For this particular class C felony, the presumptive sentence under those recommendations for a first offender is probation, with up to sixty days incarceration. The presence of aggravating factors (including a history of misdemeanor convictions involving fraud, theft, or violence), to be specified by the sentencing judge, may support any sentence between sixty days and two years. A sentence in excess of two years (which would exceed the presumptive sentence for second offenders) should not be imposed unless the court finds on the basis of clear and convincing evidence that manifest injustice would result from the imposition of a sentence of two years or less, and the "extraordinary" circumstances necessary to support this finding are to be specified in the record.

MATTHEWS, Justice, with whom BURKE, Justice, joins, dissenting. as extinguishing aboriginal title to the same interest.

In view of the fact that the defendant had been twice incarcerated for two separate crimes not long before he committed the two felonies of which he now stands convicted, and in view of the premeditated nature of the theft of the safe, I am unable to say that the trial court was clearly mistaken in imposing concurrent eight year sentences with four years suspended.

Affirmed.

1. Waters and Water Courses ⇨23

Water rights acquired by appropriation under federal public land law is an interest in real property and, when it is acquired, it becomes private property. 43 U.S.C. (1976 Ed.) § 661.

2. United States ⇨105

Waters and Water Courses ⇨20

Water rights acquired by appropriation under federal public land laws were "conveyances of an interest in public land and water areas" pursuant to federal law within meaning of the Alaska Native Claims Settlement Act and, therefore, would be regarded as extinguishing aboriginal title to the same interest. 43 U.S.C. (1976 Ed.) § 661; Alaska Native Claims Settlement Act, § 4(c), 43 U.S.C.A. § 1603(c).

See publication Words and Phrases for other judicial constructions and definitions.

David C. Crosby, Wickwire, Lewis, Goldmark & Schorr, Seattle, Wash., and Robert S. Spitzfaden, Smith & Gruening, Anchorage, for appellant/cross-appellee.

R. Eldridge Hicks, Ruskin, Barker & Hicks, Anchorage, for appellee Wards Cove Packing Co.

Thomas E. Meacham, Asst. Atty. Gen., Anchorage, and Avrum M. Gross, Atty. Gen., Juneau, for appellee/cross-appellant State of Alaska.

Before RABINOWITZ, C. J., CONNOR, BURKE, and MATTHEWS, JJ., and SCHULZ, Superior Court Judge.*

OPINION

MATTHEWS, Justice.

Paug-Vik, Inc., the native village corporation of the village of Naknek, has appealed

the Constitution of Alaska.

PAUG-VIK, INC., LTD., Appellant,
v.
WARDS COVE PACKING CO., INC., and
State of Alaska, Appellee,
STATE of Alaska, Cross-Appellant,
v.
PAUG-VIK, INC., LTD., Cross-Appellee.
Nos. 5015, 5149.
Supreme Court of Alaska.
Sept. 25, 1981.

Village appealed decision of the Commissioner of Natural Resources that canyery was entitled to its requested appropriation of water. The Superior Court of the State of Alaska, Third Judicial District, Anchorage, James K. Singleton, J., found appropriation was proper, and village appealed. The Supreme Court, Matthews, J., held that water rights acquired by appropriation under federal public land laws were conveyances of an interest in public land and water areas pursuant to federal law within meaning of Alaska Native Claims Settlement Act and, therefore, would be regarded

* Schulz, Superior Court Judge, sitting by assignment made pursuant to article IV, section 16 of



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MEMORANDUM

March 17, 1994

SUBJECT: CSHJR 43(FIN) and CSSSSJR 2(STA)
(Work Order No. 8-LS1056\I and 18-LS0164\R)

TO: Senator Loren Leman
Attn: Portia Babcock

FROM: Jerry Luckhaupt *JLB*
Legislative Counsel

You have asked various questions concerning the above-referenced bill.

Question 1: Is there a single subject problem with CSSSSJR 2 (STA)?

In response to your question, I do not see any problem with CSSSSJR 2(STA) vis-a-vis the single subject requirement concerning bills that is contained in the constitution. Article II, § 13 of the Alaska Constitution provides that "[e]very bill shall be confined to one subject" Since art. XIII, § 1 of the Alaska Constitution does not refer to a bill being used to amend the constitution it is debatable whether the single subject requirement applies to constitutional amendments.^{1/} In my view at least (and the view historically taken by this office), the single subject requirement does not apply to constitutional amendments under art. XIII, § 1. In any event, even if the single subject requirement is applied to this resolution, I believe that the resolution is confined to a single subject, that being "crime". In this regard, the Alaska Supreme Court has held that what constitutes one subject should be broadly construed so as to allow the legislature to embrace in one act all matters properly connected with one general subject. North Slope Borough v. SOHIO Petroleum Company, 585 P.2d 534 (Alaska 1978); Gellert v. State, 522 P.2d 1120 (Alaska 1974). To that end, the Alaska courts have upheld such broad general single subjects as "land," see State v. First National Bank of Anchorage, 660 P.2d 406 (Alaska 1982), and "criminal law," see Galbraith v. State, 693 P.2d 880 (Alaska App. 1985). Considering the wide latitude the courts have afforded the legislature in this regard,

^{1/} For an example of the difference between bills and constitutional amendment proposals, bills are subject to veto by the governor under art. II, § 15, while constitutional amendment proposals under art. XIII, § 1 are not.

Senator Loren Leman
March 17, 1994
Page 2

I have no reason to doubt that sections 1 and 2 can survive together and that there is but one single subject.

Question 2: What, from CSSSSJR 2(STA) can be put into CSHJR 43(FIN) without changing the title of the resolution?

Sections 2 and 3 of CSSSSJR 2(STA) can be rolled into CSHJR 43(FIN) without any trouble (if I understand that you would like to replace all of CSHJR 43). Of section 1 of CSSSSJR 2(STA), I believe that only the additions of ", the rights of victims of crime, and restitution" may be added to the bases provided in the second sentence of section 1.^{2/} All of the other changes made to art. I, sec. 12 in section 1 of the resolution cannot be made without a change in the title to CSHJR 43(FIN).

Question 3: If all of CSSSSJR 2(STA) is rolled into CSHJR 43(FIN) what would need to be done?

As stated in response to Question 1, Uniform Rule 49(a)(5) provides that joint resolutions shall be treated in all respects as bills. Uniform Rule 41(b) provides an amendment in the second house to the title of a bill is not in order unless the title change is merely clerical or technical. Uniform Rule 54 allows the rules, including Rule 41(b) to be suspended by a concurrent resolution approved by a two-thirds vote of each house. It is my opinion that rolling all of CSSSSJR 2(STA) into CSHJR 43(FIN) would necessitate a substantive change to the title. So to comply with the Uniform Rules you would need a title change resolution. Of course the legislature could always ignore the Uniform Rules. Such an action would probably not be fatal to the resolution if it passed and was subsequently challenged. Bear in mind also that unlike a bill, there is no constitutional requirement that the contents of a resolution proposing amendments to the constitution be reflected in its title.

Generally, the courts will not consider questions regarding the procedure of the legislature because of separation of powers considerations. (Malone v. Meekins, 650 P.2d 351 (Alaska 1982); Aboud v. League of Women Voters of Alaska, 743 P.2d 333 (Alaska 1987)) Only failure to comply with constitutional requirements regarding the enactment of legislation will cause a court to invalidate the legislation. Even the Uniform Rules themselves recognize the principal that violations of the rules can be waived by the body through failure to object. (Uniform Rule 54)

When a rule is cooperatively disregarded by both legislative bodies, it is, as a practical matter suspended despite the failure to take formal action suspending the rule. Mason's Manual provides in Section 24

^{2/} This change would necessitate the removal of the words "and upon" in that sentence following "reformation."

Sec. 24. Failure of a House of the Legislature to Conform to Its Rules
Does not Invalidate Its Acts.

1. Violation of rules of procedure adopted by a house of the legislature for its own convenience and not required by the constitution will not impair the validity of a statute.
2. A legislative body having the right to do an act must be allowed to select the means of accomplishing such act within reasonable bounds.
3. A rule is virtually repealed for the occasion when it is disregarded by those who have power to control it; and the act of breaking it is at least a suspension of it. The body at its preceding meetings does not have the power to bind its successors or to put shackles on it that might be cast off only in a particular way.
4. Under a constitutional provision declaring that each house of the legislature shall determine the rules of its own proceedings, the fact that a house acted in violation of its own rules or in violation of parliamentary law in a matter clearly within its power does not make its action subject to review by the courts.

The Abood case, involved violation of the Open Meeting Statute, not a Uniform Rule. The court still held that violation of committee procedures, even of procedures set out in statute rather than rule, does not invalidate the resulting legislation.

Rule 54 provides to each house of the legislature a method of enforcing a Uniform Rule that has been violated by the other house:

If either house violates a uniform rule a question of order may be raised in the other house. If it is decided by the other house that the Uniform Rules have been violated, the bill involved in that violation shall be returned to its house of origin without further action.

SPONSOR STATEMENT

SENATE JOINT RESOLUTION NUMBER 2

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA RELATING TO THE RIGHTS OF VICTIMS OF CRIMES.

In the past, courts both state and national, have leaned toward the rights of the accused in concern to judicial process, trial proceedings, and sentencing. This has led in some cases to the rights of the victims of crime being overlooked or even overtly ignored.

SJR 2 seeks to balance the approach courts take in trial proceedings, by mandating that the impact on the victims of crime be taken into account in nine specific areas. These nine rights of crime victims are:

1. The right to be treated with fairness and respect for their dignity and privacy; throughout the criminal justice process;
2. The right to timely disposition of the case following arrest of the accused;
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 trial and all other court proceedings that 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;
8. The right to restitution as provided by law;
9. The right to information about the conviction, sentence, imprisonment, and release of the accused.

None of these guaranteed rights of the victim in any way diminish the rights of the defendant or his/her defense.



OVERVIEW OF CRIME AND VICTIMIZATION IN AMERICA

GENERAL DATA

- About 34.7 million Americans age 12 or older were victims of crime in 1987. This is a 1.8% increase in overall crimes from 1986, the lowest level of crime since 1971. (Bureau of Justice Statistics, *Criminal Victimization in 1987*, NCJ-113587, October 1988)
- One violent crime occurred every 21 seconds in 1987. (Federal Bureau of Investigation, Uniform Crime Reports, *Crime in the United States*, JUS-432, Release date July 10, 1988)
- Almost 6,000,000 of the crimes committed in 1987 were classified as violent. (Bureau of Justice Statistics, *Criminal Victimization 1987*, NCJ-113587, October 1988)
- One in four American households were touched by a crime of violence or theft in 1987, the same proportion as in the previous two years. (Bureau of Justice Statistics, *Households Touched by Crime, 1987*, NCJ-111240 May 1988)
- The *National Crime Survey* determined that an estimated 34.1 million crimes, including both completed and attempted offenses, were committed against individuals or households across the United States in 1986. (Bureau of Justice Statistics, *Criminal Victimization in the United States, 1986*, NCJ-111456, August 1988)
- Almost 5% of the nation's households had a member who was the victim of a violent crime in 1987. (Bureau of Justice Statistics, *Households Touched by Crime, 1987*, NCJ-111240, May 1988)
- Males were more often victimized by strangers than were females: 67% of violent crimes committed against males and 45% of violent crimes committed against females were committed by strangers. (Bureau of Justice Statistics, *Criminal Victimization in the United States, 1986*, NCJ-111456, August, 1988)
- Approximately a third of violent crimes involved the presence or use of a weapon. (Bureau of Justice Statistics, *Criminal Victimization in the United States, 1986*, NCJ-111456, August 1988)
- At current crime rates, an estimated five-sixths of U.S. citizens will be victims of attempted or completed violent crimes during their lifetimes. The risk is greater for males than females and for blacks than whites. (Bureau of Justice Statistics, *Report to the Nation on Crime and Justice, Second Edition*, NCJ-105506, March 1988)

DOMESTIC VIOLENCE

- Conservative estimates predict domestic violence affects more than 2.1 million women, four million children and one million older people each year. (Family Violence Project, San Francisco, California, *Safe At Home: Domestic Violence is Everyone's Business*)
- The most likely classification for incidents of domestic violence is simple assault, which is a misdemeanor in most jurisdictions. (American Bar Association *Journal, Violence in the Home*, May 1, 1987)
- In 1986, at least half of the domestic "simple assaults" actually involved bodily injury as serious or more serious than 90% of all rapes, robberies and aggravated assaults. (Bureau of Justice Statistics, *Preventing Domestic Violence Against Women*, NCJ-102037, August, 1986)
- Twenty to fifty percent of American couples have suffered violence regularly in their marriage. (National Institute of Mental Health, *Plain Talk About Wife Abuse*, July 29, 1987)
- In the *National Crime Survey*, seven out of ten incidents of domestic violence were committed by the woman's spouse, ex-spouse, boyfriend or ex-boyfriend. An estimated 52% of all incidents of domestic violence were reported to police. (Bureau of Justice Statistics, *BJS Data Report, 1987*, NCJ-110643, April 1988).

DRUNK DRIVING

- Every 22 minutes, one person dies in an alcohol-related auto crash. (National Highway Traffic Safety Administration, *Preliminary Estimates of 1987 Highway Safety Statistics, 1988*)
- Estimates of the economic costs of drunk driving range from \$11 billion (NHTSA, 1985) to \$24 billion (Allstate, 1982) each year. (Mothers Against Drunk Driving, *A Summary of Statistics Related to the National Drunk Driving Problem*, October 1988)
- In 1987, nearly nine 15- to 19-year-olds died each day in alcohol-related traffic crashes. (National Highway Traffic Safety Administration, *Preliminary Estimates of 1987 Highway Statistics, 1988*)
- Between 1970 and 1986 arrests for DWI increased nearly 223%, while the number of licensed drivers increased by 42%. (Bureau of Justice Statistics, *Drunk Driving*, NCJ-109945, February 1988)
- Nearly half of those in jail for DWI had previously been sentenced to probation, jail, or prison for DWI. (Bureau of Justice Statistics, *Drunk Driving*, NCJ-109945, February 1988)

HATE/VIOLENCE CRIMES (cont'd)

- The incidents of anti-gay violence rose 42% in 1987. A record 7,008 incidents, ranging from verbal abuse to slayings, were reported to the *National Gay and Lesbian Task Force*. Fifteen percent of all incidents reported in 1987 and five percent of the physical assaults involved verbal references to AIDS. (National Gay and Lesbian Task Force, *Anti-Gay Violence, Victimization & Defamation in 1987*)
- In January of 1988, five states required police to record and report incidents of racial, religious and ethnic violence. Three states had established procedures to collect data, although there was no data collection legislation. (National Institute Against Prejudice and Violence, *Forum* newsletter, Vol 3, No. 1, January 1988)

HOMICIDE

- In 1987, there was one murder every 26 seconds. (Federal Bureau of Investigation, Uniform Crime Reports, *Crime in the United States*, JUS-432, Release date July 10, 1988)
- Criminal homicide is one of the 15 most frequent causes of death, and for the 15- to 34-year age group, it is second only to accidents as a cause of death. (Washington Criminal Justice Reports, *Crime Victims Digest*, Vol 5, No. 11, November 1988)
- At the current homicide rates, about one out of every 133 Americans will become a murder victim. For black males, the proportion is estimated to be one in 30. (Bureau of Justice Statistics, *Lifetime Likelihood of Victimization*, NCJ-104274, March 1987)
- In 1986, 95% of the black murder victims were slain by black offenders; 88% of the white murder victims were killed by white offenders; males were most often slain by males (83%); however, 9 out of every 10 female victims were murdered by males. (Federal Bureau of Investigation, *Uniform Crime Reports 1986*, JUS-432, Release date July 25, 1987)

SEXUAL ASSAULT

- Every six minutes during 1987, one American was forcibly raped. (Federal Bureau of Investigation, Uniform Crime Reports, *Crime in the United States*, JUS-432, Release date July 10, 1988)
- Of the almost 125,000 rapes reported to the *Bureau of Justice Statistics* in 1987, 36.4% happened between 6:00 a.m. and 6:00 p.m. and 35.9% occurred between 6:00 p.m. and midnight. (Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics*, 1987, NCJ-111612)

LEGISLATION (cont'd)

- Forty-eight states now allow the use of victim impact statements.
- Seventeen states mandate court appearance for victims.
- Twenty-four states have plea bargain/consultation legislation.
- Forty-four states have victim/witness information statutes.
- Thirty-four states have notification of final disposition.
- Thirty-nine states have notification of the release of prisoners in felony cases.
- Forty-six states have victim compensation programs.
- Every state, including the District of Columbia, have some sort of restitution legislation, and 23 states have mandatory restitution legislation.

Source: *National Organization for Victim Assistance*, January 1988.

FOR FURTHER INFORMATION CONTACT:

National Victim Center
307 W. 7th Street, Suite 1001
Fort Worth, TX 76102
(817) 877-3355

U.S. Department of Justice
633 Indiana Avenue, N.W.
Washington, DC 20531

Bureau of Justice Statistics: (202) 724-7782
National Institute of Justice: (202) 724-2949
Office for Victims of Crime: (202) 724-6134

Federal Bureau of Investigation
Office of Public Affairs
10th and Pennsylvania Avenue
Washington, DC 20535
(202) 324-3000

Constitutional Amendments Enacted

- Arizona:** After the amendment failed in the 1988 legislative session, a state coalition of victims' rights organizations began a citizens' initiative to qualify the amendment for the November 1990 ballot. The amendment received support from 58% of the voters and was passed into law in 1990.
- California:** Proposition 8 -- the *Victims' Bill of Rights* -- was ratified by voters in 1982. Among the rights granted to crime victims are the rights to speak at sentencing and parole hearings.
- Colorado:** During 1991 National Crime Victims' Rights Week, supporters kicked off the Colorado campaign to pass a constitutional amendment. Two weeks later, the amendment had passed both the Senate and the House, and was signed by the Governor. Comprehensive enabling legislation was also passed in 1992. The amendment was ratified with support from 86% of voters in the November 1992 General Election.
- Florida:** The state legislature passed the amendment during the 1987 legislative session, which was ratified by 90% of the voters during the 1988 November General Election.
- Illinois:** House Joint Resolution Constitutional Amendment 21 was introduced during the 1990 legislative session. It failed to move out of Committee. A strong coalition succeeded in getting a new amendment introduced and passed during the 1992 legislative session. Illinois voters overwhelmingly supported constitutional rights for crime victims with 77% of the vote in the 1992 November General Election.
- Kansas:** Attorney General Bob Stephan made the passage of a constitutional amendment a priority in his 1992 legislative package. Senate Resolution 1634 passed through the legislature, and was ratified with 84% of the electorate in the 1992 November General Election.
- Michigan:** The amendment submitted by Rep. Bill Van Regenmorter was passed by the state legislature during the 1988 session, and won an overwhelming 80% voter approval in the November 1988 General Election.

TC 40096

Post-It™ brand fax transmittal memo 7671 # of pages 4

To: <i>Sen. Stemen</i>	From: <i>Anch LIO</i>
Co: <i>State Affairs</i>	Co: <i>Senior President</i>
Dept.:	Phone #:
Fax #:	Fax #:

Constitutional Amendment Enacted (continued)

- Missouri:** An amendment introduced during the 1990 legislative session was passed by the House of Representatives, but failed to pass out of the Senate by the end of the legislative session. It was successfully re-introduced and passed during the 1991 legislative session. In the General Election of 1992, 84% of Missouri voters supported passage of the constitutional amendment.
- New Mexico:** The amendment was introduced during the 1991 legislative session. It was heard and passed out of three Senate committees, but the session ended before a vote of the full Senate was taken. The amendment was re-introduced in the 1992 legislative session and passed. In the General Election of 1992, 68% of voters supported the constitutional amendment for victims' rights.
- New Jersey:** The amendment was passed by the legislature and ratified by the voters in November of 1991.
- Washington:** Submitted by Attorney General Eikenberry, the amendment was passed by the 1989 legislature and ratified by 78% of voters in November 1989.
- Rhode Island:** In 1986, voters passed a constitutional amendment granting victims the right to be treated with dignity and respect, the right to victim impact statements, and the right to receive restitution.
- Texas:** The amendment was submitted and passed during the 1989 legislative session, and ratified by 73% of the voters in November of 1989.
- Wisconsin:** Legislation was introduced prior to the conclusion of the 1990 legislative session and was re-introduced in April 1991, where it worked through the Senate Judiciary Committee. During the 1992 session, the bill was passed by the Senate and the House. By law, an amendment to the Wisconsin Constitution must be passed by two consecutive legislative sessions; it did so in the 1993 legislative session, and was ratified on April 6, 1993.

Pending Constitutional Amendments

- Alaska:** Representative Dave Donnelly introduced HJR 76 during the 1992 legislative session. Now Senator Donnelly, he will re-introduce the amendment with bi-partisan representation.
- Georgia:** A constitutional amendment will be introduced in the 1993 legislative session.
- Maryland:** The amendment was originally introduced during the legislative session of 1989. Despite several failures, dedicated coalition members continue to press for the amendment's passage.
- Maine:** An amendment was introduced in 1991, and is currently pending.
- Massachusetts:** Legislation was originally introduced in 1990. Senate Bill 706 was re-introduced during the 1992 legislative session. A hearing was held by the Senate Judiciary Committee on March 16, 1992, but the Committee has yet to vote upon the amendment.
- Nebraska:** Legislation was introduced during the 1992 legislative session, where it passed out of Committee. It is waiting to be heard on the Senate Floor.
- Nevada:** Senate Joint Resolution 2 was introduced during the 1993 legislative session.
- New York:** Legislation was introduced in the Senate in June of 1990. During the 1991 legislative session, Assemblyman Yevoli introduced the Assembly version of the bill. The bill was re-introduced during the 1992 legislative session in the Senate and a companion bill was introduced in the Assembly.
- N. Carolina:** The Legislative Research Commission (LRC) subcommittee studying the rights of victims in North Carolina voted unanimously in December of 1992 to support the current language of the proposed victims' rights constitutional amendment legislation. The bill will be presented to the full LRC in January 1993 for approval, then will be introduced into the 1993 session of the General Assembly.

Pending Constitutional Amendments (continued)

- Ohio:** Members of the victims' rights coalition continue to work toward the passage of a constitutional amendment in Ohio. Language was first introduced during the 1989 legislative session. Currently assigned to the House Judiciary Committee, a hearing date for the amendment has not been set.
- S. Carolina:** Legislation was introduced during the 1991 legislative session. Buoyed by a 1992 statewide public opinion poll which showed very strong support for a victims' rights constitutional amendment, supporters hope to re-introduce an amendment in the 1993 legislative session.

Updated 4/26/93

02/03/94 12:05 907 586 7402
02-03-94 04:08PM FROM SENATOR STEVENS

TO JUNEAU

P001/002

PUBLIC LAW 103-29—MAY 6, 1993

107 STAT. 75

Public Law 103-29
103d Congress

Joint Resolution

To designate the week beginning April 25, 1993, as "National Crime Victims' Rights Week".

May 6, 1993
[S.J. Res. 62]

Whereas there were over thirty-five million crimes committed last year in America, with one violent crime occurring every seventeen seconds;

Whereas victims of crime across America deserve respect and assistance not only from the criminal justice system, but from society as well;

Whereas there is a crucial need to provide crime victims with quality programs and services to help them recover from the devastating psychological, physical, emotional, and financial hardships resulting from their victimization;

Whereas there are ten thousand public and private agencies and organizations in the United States that are dedicated to improving the plight of crime victims;

Whereas the Nation's victims' rights movement and allied professions deserve recognition for their tireless efforts on behalf of victims of crime and to reduce senseless violence in America; and

Whereas it is essential for all Americans to join together and commit their individual and collective resources to victim assistance and violence reduction: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning April 25, 1993, is hereby designated as "National Crime Victims' Rights Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

Approved May 6, 1993.

LEGISLATIVE HISTORY—S.J. Res. 62:

CONGRESSIONAL RECORD, Vol. 139 (1993):
Mar. 29, considered and passed Senate.
Apr. 22, considered and passed House.

FISCAL NOTE

STATE OF ALASKA

BILL NO. SS SJR 2

1994 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Office of the Governor

Title: Amendment to the Constitution RE: Rights of Victims of Crimes

BRU: Division of Elections

Sponsor: Senators Donley & Leman

Component: General and Primary Elections

Requestor: _____

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
---------	---	---	---	---	---	---

REVENUE						
---------	--	--	--	--	--	--

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: 12/19/94

Approved by Commissioner: Lt. Governor John B. Coghill

Agency: Office of the Lt. Governor

Date: _____

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Department of Law

Proposed Amendment to SS SJR 2

January 26, 1994

Replace page 2, lines 12 - 14, with the following:

(b) Law enforcement agencies, prosecutors, and the courts shall make every reasonable effort to ensure that victims of crimes have the rights set out in (a) of this section. However, a failure to ensure these rights does not give rise to a separate cause of action against law enforcement agencies, other agencies of the state, or a political subdivision of the state.

FISCAL NOTE

STATE OF ALASKA
93 LEGISLATIVE SESSION

BILL NO. SJR 2

Revision Date: _____
Title: Amendment to the Constitution RE: rights of victims of crimes
Sponsor: Senators Donley and Leman
Requestor: _____

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

PENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	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 & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

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

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

FUNDING:						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF March	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program Receipts	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 (FY93) 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 and additional ballot card, the fiscal impact would be 53.4.

Prepared by: Charlot E. Thickstun, Director *Charlot E. Thickstun* Phone: 465-4611
Division: Division of Elections Date: 1/15/93
Approved by Commissioner: Lt. Governor John B. Coghill *J. B. Coghill*
Agency: Office of the Lt. Governor Date: 1/15/93

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SJR 2

Revision Date: January 14, 1994
Title: "...amendment to the Constitution...relating to the right of victims of crime..."
Sponsor: Senator Donley
Requestor: Senate State Affairs

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

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

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division

Phone: 465-3672
Date: January 14, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: January 14, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SJR 2

ANALYSIS CONTINUATION:

SJR 2 would place an amendment to the state's constitution before the voters at the next general election that would establish certain constitutional rights for victims of crime. Currently, victims rights are provided by statute (AS 12.61.010-AS 12.61.900) and the effect of the amendment, if approved by the voters, would be to guarantee those rights in a far broader and absolute fashion. For instance, AS 12.61.015 provides for many of the same rights that are included in the proposed amendment. Adoption of this resolution will not have a fiscal impact for the Department of Law.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE
BILL NO.

SJR 2

Revision Date: _____ Dept. Affected: Corrections
 Title: Amendment to the Constitution RE: Penal Administration BRU: All
 Component: All
 Sponsor: Sen. Donley
 Requestor: Senate State Affairs COMPONENT SERIAL NO. 694-1884

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	
MISCELLANEOUS:	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

CHANGE IN REVENUES ()	0	0	0	0	0	0
-------------------------------	----------	----------	----------	----------	----------	----------

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY94) impact: \$ 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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Diane Schenker Phone: 465-3315/561-4426
 Division: Office of the Commissioner Date: 1/17/94
 Approved by Commissioner: J. Frank Prewitt, Jr. (For) Date: 1/18/94
 Agency: Department of Corrections

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8-LS1056B
Luckhaupt
3/21/94

SENATE CS FOR CS FOR HOUSE JOINT RESOLUTION NO. 43(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PORTER, Phillips, Barnes, Bunde, Green, Sitton, Nordlund
SENATORS Donley, Leman

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to the
2 rights of victims of crimes and to penal administration.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article I, sec. 12, Constitution of the State of Alaska, is amended to read:
5 SECTION 12. PENAL ADMINISTRATION [EXCESSIVE PUNISHMENT].
6 Excessive bail shall not be required, nor excessive fines imposed, nor cruel and
7 unusual punishments inflicted. Penal administration shall be based [ON THE
8 PRINCIPLE OF REFORMATION AND] upon the following in the order provided:
9 the need for protecting the public, community condemnation of the offender, the
10 rights of victims of crimes, restitution from the offender, and the principle of
11 reformation.

12 * Sec. 2. Article I, Constitution of the State of Alaska, is amended by adding a new section
13 to read:

14 SECTION 24. RIGHTS OF CRIME VICTIMS. To preserve and protect
15 victims' rights to justice and due process, a victim of crime shall have the right to be
16 reasonably protected from the accused, to confer with the prosecution, and to be

1 treated with dignity, respect, and fairness during all phases of the criminal and juvenile
2 justice process. A victim of crime shall be entitled to the right: to timely disposition
3 of the case following the arrest of the accused; to be informed of and allowed to be
4 present at all criminal or juvenile proceedings where the accused has the right to be
5 present; to be allowed to be heard, upon request, at sentencing, before or after
6 conviction or juvenile adjudication, and at any proceeding where the accused's release
7 from custody is considered; to restitution from the accused; and to be informed, upon
8 request, of the accused's escape or release from custody before or after conviction or
9 juvenile adjudication. The legislature shall implement this section.

10 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of
11 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
12 State of Alaska, and the election laws of the state.

8-LS1836A
Luckhaupt
3/17/94

**SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION**

BY THE SENATE STATE AFFAIRS COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 **Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the Alaska State**
2 **Legislature concerning House Joint Resolution No. 43, relating to a constitutional**
3 **amendment concerning victims of crime.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 That under Rule 54 of the Uniform Rules of the Alaska State Legislature, the
6 provisions of Rules 24(c), 35, 41(b), and 42(e) of the Uniform Rules, regarding changes to the
7 title of a bill, are suspended in consideration of House Joint Resolution No. 43, relating to a
8 constitutional amendment concerning victims of crime, by inserting "and to penal
9 administration" on page 1, line 2, following "victims" in the title of the version that passed
10 the House.

SPONSOR SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 2

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS DONLEY, Leman

Introduced: 3/5/93
Referred: STA, JUD, FIN

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 the rights of victims of crimes and to penal administration.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article I, sec. 12, Constitution of the State of Alaska, is amended to read:

5 SECTION 12. EXCESSIVE PUNISHMENT. Excessive bail shall not be
6 required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
7 Penal administration shall be based [ON THE PRINCIPLE OF REFORMATION
8 AND] upon the following in the order provided: the need for protecting the public,
9 the rights of victims of crimes, and the principle of reformation.

②
"Community
condemnation"
of the
offender"

10 * Sec. 2. Article I, Constitution of the State of Alaska, is amended by adding a new
11 section to read:

restitution ④

12 SECTION 24. RIGHTS OF VICTIMS OF CRIMES. (a) Crime victims, as
13 defined by law, shall have the following rights, as provided by law:

- 14 (1) the right to be treated with fairness and respect for their dignity and
- 15 privacy throughout the criminal justice process;
- 16 (2) the right to timely disposition of the case following arrest of the

1 accused:

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

4 (4) the right to notification of court proceedings;

5 (5) the right to attend trial and all other court proceedings that the
6 accused has the right to attend;

7 (6) the right to confer with the prosecution;

8 (7) the right to make a statement to the court at sentencing;

9 (8) the right to restitution as provided by law;

10 (9) the right to information about the conviction, sentence,
11 imprisonment, criminal record, and release of the accused.

12 (b) The legislature may provide by law for the enforcement of this section.

13 (c) The legislature may provide for assessments against convicted defendants
14 to pay for crime victims' rights.

15 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of
16 the state at the next general election in conformity with art. XIII, sec. 1. Constitution of the
17 State of Alaska, and the election laws of the state.

We Alaskans

THE ANCHORAGE DAILY NEWS MAGAZINE

DECEMBER 12, 1993



**FACING
WINONA**

Editor's Notes

By GEORGE BRYSON

How would you react to the murder of your parents?

For nearly all of us, the question is academic. Our answers would be hypothetical. But for longtime Anchorage residents Janice Liennart and Sharon Nahorney, the question isn't academic at all — it's real. So real, it's managed to define who they are and how they've lived their lives for eight years — ever since that spring day in 1985 when 14-year-old Winona Fletcher and 19-year-old Cordell Boyd broke into the home shared by their parents, Tom and Ann Faccio, and aunt, Emelia Elliott, holding all three elderly residents at gunpoint, robbing them, listening to their cries for mercy, laughing, then shooting them one by one, execution style — all because the youngest robber forgot to wear her ski mask.

How Liennart and Nahorney reacted to these murders is the focus of this week's magazine. In today's cover story, Anchorage free-lance writer Linda Weiford explores what's happened to the victims, the killer, and the Alaska criminal justice system ever since Winona Fletcher's trial made her the youngest convicted female murderer in state history.

Among other changes in their lives, the Faccio sisters founded Victims for Justice, an advocacy group with thousands of members statewide. Through it they've helped counsel and console hundreds of victims of violent crime. They've attended countless trials. They've lobbied the legislature to promote their view of a more victim-friendly criminal justice system — particularly in cases of juvenile crime. Along the way they've helped remove the legal veil that previously prevented youthful criminals from ever meeting face-to-face with their victims, a form of therapy endorsed by both sides as a step toward healing. Ironically, it's a step that the sisters and Winona Fletcher haven't yet taken. Fletcher was serving her time in far-away North Dakota. It wasn't convenient. But last month, prison officials suddenly transferred her back to Alaska. Would Janice, Sharon and Winona finally meet? That's where our story today begins.

This Week



Sisters for justice: Janice Liennart, left, and Sharon Nahorney.

WINONA AND THE JUSTICE SISTERS:

After years spent convincing victims of juvenile crime to confront the perpetrators, Anchorage sisters Janice Liennart and Sharon Nahorney now must consider it themselves: Winona Fletcher, who with Cordell Boyd robbed and killed their parents, has been moved back to an Alaska prison. By Linda Weiford. **Page 6.**

COVER: Winona Fletcher at her sentencing in 1986. Daily News file photo by Fran Durner.

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December 12, 1993

Vol. 15, No. 50

Editor George Bryson
 Staff writer Doug O'Hara
 Design Pam Dunlap-Shohl, Mike Campbell
 Photography Fran Durner
 Contributors Diana Conway, Bill Hunt, Frank Gerjevic, Linda Weiford

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Free-lance articles for We Alaskans may be sent on speculation to the magazine editor at the Anchorage Daily News, P.O. Box 149001, Anchorage, AK 99514-9001. Topics should focus on Alaska environments and lifestyles. Payment upon publication.

Letters

A wonderful article

I can't remember all the times I've complained about what I perceived as biased reporting by the Daily News. Now at last, I am favorably impressed! Your article in We Alaskans Nov. 29 about the Mormon missionaries was wonderful.

So often, members of the Church of Jesus Christ of Latter-day Saints get a little defensive when we see a story about our church. We know that most reporters can't seem to write anything without working in a little nasty dig or unfounded information.

This was just a regular story, presented in a

me and my husband because we first heard of the church through missionaries tracting through our neighborhood. That was in 1953, in Anchorage. The church has grown considerably in Anchorage and throughout the world since then, largely as a result of missionary work.

My husband and I are going on a mission for the church also. We are going to the England Manchester Mission about the middle of February. We will be gone for 18 months. Thank you again for the great article.

—Marie Dickey

Some wolves must die

start to starve, feed them animal-rights people. Surely they wouldn't mind giving up their lives for their beloved wolves. Maybe they won't love them quite so much as the hungry animals move in for the kill.

However we take care of the wolf problem, it has to be done. Humans messed up the wilderness cycles by killing caribou, so we had better smooth it out as much as possible.

These people also seem to think that we trappers are all blood-thirsty, inhumane murderers that just like to wipe out all fur animals for a little money. I can't say that I have ever heard of a trapper that didn't feel regret when they had to finish off fuzzy little



Janico Lienhart, who with sister Sharon Nahomey formed Victims For Justice, says she's prepared to meet the woman who killed her parents. "I could see Winona now," Lienhart says. "Still, I'll wait for Sharon. When she's ready, and if Winona's ready, we'll go."

FLAN DURMER / Anchorage Daily News

By
LINDA WEIFORD

Alaska's youngest murderer has come home.

The daughters of one of her victims must now decide whether they're ready to confront her.

Sitting in their Fifth Avenue office in Anchorage, sisters Janice Lienhart and Sharon Nahorney

tried to absorb the news that their nightmare had returned. Their family's killer was back in Alaska.

Lienhart and Nahorney hadn't seen Winona Fletcher in seven years. She was just 15 then, crying in an Anchorage courtroom after Judge Victor Carlson sentenced her to 297 years behind bars. Since then, the sisters kept close track of her whereabouts. The last they heard, she was still serving time at North Dakota State Penitentiary.

So they were surprised last month to learn that Fletcher, now 22, had recently been transferred to Juneau's Lemon Creek Correctional Center to serve her remaining years. North Dakota's penitentiary warden evicted her from his jurisdiction in October because she was caught sexually involved with a male inmate in a coed

Continued on next page

Winona and the Justice Sisters

prison program.

But the sisters were even more surprised to hear what Fletcher said about them during her five-day stop-over in Anchorage before being flown to Juneau. She said she might want to see the two women now that she's back.

"I'd like to talk to them, but not like this," Fletcher said, motioning to the commotion in the small, noisy visiting room at the Sixth Avenue Jail. "They hate me. ... I'd like to see them ... (but) I honestly don't know what I'd say."

"I think I'd like to see her, too," Lienhart said.

"I'm shaking," said Nahorney.

Nearly nine years have passed since 14-year-old Winona Fletcher blasted her way through the sisters' lives and made alarming headlines for the execution-style murders of their parents and aunt.

Her crimes today define much of who the sisters are and what they do. As Alaska's premiere champions of victims' rights, the two women have fought court battles, changed laws and held the hands of hundreds of victims who also were belted by crime.

Fletcher's crimes are also rooted in one of the toughest questions facing Alaska's lawmakers: What to do about the soaring frequency and brutality of juvenile crime.

THE FACCIOS

In 1949, Janice and Sharon Faccio moved with their parents from California to Alaska. Janice was 11, Sharon was 5.

Their father, Tom Faccio, was a business-savvy construction worker who came to Anchorage to build military housing for Elmendorf Air Force Base. In the early '50s, he opened the Tom's Plumbing and Heating store on Mountain View Drive, where it remains open today.

Their mother, Ann, devoted her time to the two girls. She gardened, canned fish and raised chickens to help provide food for the family.

Also in the '50s, their father built a large home in East Anchorage on two wooded acres bordering Russian Jack Springs Park. The trilevel house was perched on a hill, and when the Faccios moved in, it offered solitude and scenery.

"It was the peacefulness and the view — that's why Daddy built it there," Nahorney says today. "We could look out the window and see Mount McKinley and the Inlet, and outside all we could hear were the birds."

As teenagers, the two sisters were active in student clubs at East High School. They also found fulfillment in worshipping God. Lienhart made the discovery first while attending Bible camp one summer.

"God became very real to me, and it was such a wonderful experience," she says today. "When I got back, I went on

they discovered the reality of God.

The Faccios were a close-knit family and the kids were governed by strict rules.

"We knew our boundaries and never got into trouble," recalls Nahorney. "The worst I did was wear lipstick too young."

While Janice was studying nursing at a Christian college in Washington state, her parents adopted a baby boy. Originally the son of a relative, Tom Jr. grew up angry and rebellious, and the sisters never got very close to him. He would be convicted of drunken driving, assault and battery and malicious destruction of property.

The Faccios' house would serve as a center for family reunions, Christmas and even marriage celebrations. Champagne flowed there in 1960 when Janice, 22, married her high school sweetheart, Wayne Lienhart. And vows were exchanged there nine years later when Sharon, 25, married the family dentist, Harry Nahorney.

THE MAKINGS OF WINONA

Two years after Sharon married, Winona Marie Fletcher was born in Milwaukie, Ore., the first of two children. Her father walked out on the family when Winona was just 4. By the age of 10, she had her first drink of alcohol, and by 11 her first joint of marijuana. Her mother, an alcoholic, took what was left of the family to Alaska in 1983, and moved in with an abusive, drug-addicted boyfriend. Winona would argue with them and flee their East Anchorage apartment. She dressed tough, wearing heavy makeup, black leather and studs. She began burglarizing homes with the teen-age son of her mother's boyfriend.

"I didn't care about anyone or anything back then," recalls Fletcher today. "My mom's boyfriend, I hated him. He was always drunk and high. He'd hit her. She'd leave him and go back to him. She was so involved with all that, she lost track of me."

At 14, Winona met a street-smart young man who paid attention to her. He was 19-year-old Cordell Boyd, a West High School dropout who, like Winona, had a passion for stealing. Winona stopped attending classes at Clark Junior High when the two moved in together and began burglarizing homes to buy food and drugs.

During the spring of 1985, while Winona and Boyd were on a stealing spree, Lienhart and Nahorney were leading lives of church, family and work.

Lienhart, then 46, was a Sunday school teacher and mother of five. Her husband was the manager of her father's plumbing business, which, after 33 years, was the oldest plumbing supply store in Anchorage.

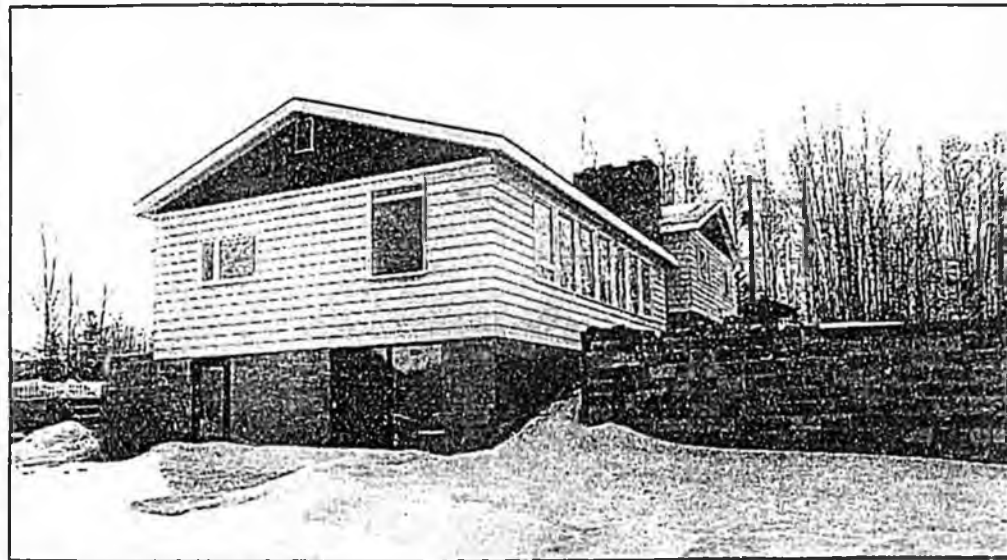
Nahorney, 40, was an interior decorator and office manager for her husband's orthodontic practice. A



Sharon Nahorney, left, and Janice Lienhart at the trials in January of 1986.



FRAN DURNER / Anchorage Daily News file photo



The Faccio home in East Anchorage was a large trilevel built in the 1950s on a hill bordering Russian Jack Springs Park.



Daily News file photo

Above: Emelia Elliott, a year before she was murdered at age 76.

Left: Ann and Tom Faccio moved to Alaska from California in 1949.

stepmother of five grown children, she spent much of her free time with her husband's children.

The sisters kept in close touch with their mother, 70, and father, 69, and their 76-year-old aunt on their mother's side, Emelia Elliott, who had moved in with the elder Faccios 10 years earlier.

On the afternoon of April 22, 1985, Lienhart and her mother watched proudly as Lienhart's daughter performed in a church musical. Lienhart dropped her

mother off at the Faccio house just before suppertime.

It was the last time she saw her mother alive.

THE MURDERS

The following morning, Lienhart was beginning another day of home-schooling her youngest child when the phone rang. Her husband sounded shaken. He had just received a call at work from the Anchorage Police Department. Her parents and aunt were dead, he said, and investigators were still

inside the house with the bodies.

Lienhart drove across town to her parents' home thinking it was all a mistake. When she arrived, she was met by members of Anchorage's Homicide Response Team. The men explained that her parents and aunt had been shot to death. Bullets had been fired close-range through their skulls.

Several hours later and thousands of miles away, Nahorney

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...the slayings at an Anchorage mortuary, where the two sisters wept as they brushed their mother's hair.

At the service the following day, mourners filled the Abbott Loop Christian Center and eulogies were spoken throughout the city. Tom and Ann Faccio had lived in Anchorage for 36 years, leaving behind hundreds of grieving friends and relatives.

A 'SECRET' KILLER

Six weeks later, there were still no arrests. Then Nahorney got a call from a police investigator. She was unprepared for the news he delivered: The reward they offered had led to the arrest of a female in connection with the slayings.

She was only 14 years old. Other than that, the detective would say little more about the suspect. Because she was a juvenile, he said, the girl was protected by privacy laws.

Nahorney hung up. The stormy grief that had gripped her since the murders slowly gave way to searing anger.

The suspect was Winona Fletcher. Despite the privacy shield designed to protect her, the media soon learned her name — and it was reported everywhere.

But it wasn't until her boyfriend was arrested a few days later that Lienhart and Nahorney learned the brutal truth of what had happened. Since Cordell Boyd was 19 and an adult, police and prosecutors were able to reveal more facts about the shootings.

Winona and Boyd got caught because a Crimestopper informant — a former jailmate of Boyd's — blew the whistle to collect the record \$50,000 reward offered through the Faccio estate. With his help, police had secretly tape-recorded conversations with the couple as they discussed the killings.

Winona and Boyd told the informant they had targeted the Faccio home for a robbery because of its elderly residents and secluded location. They said they forced their way into the house at dinnertime. They killed the three residents because Winona, unlike Boyd, wasn't wearing a mask and didn't want to be later identified.

Details of the murders were even more shocking. Winona had taken Ann Faccio upstairs to a bedroom after she showed signs of a heart attack. In the taped conversations between Winona and the informant, she laughed as she told how Mrs. Faccio prayed just before she shot her through the skull.



Cordell Boyd after his arrest in 1985. Boyd, a 19-year-old West High dropout and imprisoned at Seward's Spring Creek Correctional Center. "I haven't talked to (Cordell) since the sentencing," Fletcher says. "I don't hate him and I'm not angry. I just think we both need to get on with our lives."

JIM LAVRAKAS / Anchorage Daily News

Winona and Boyd took \$700 in cash and fled.

Several nights after the arrests, Lienhart was preparing dinner when she heard a TV news report that her father had begged for his life just before Boyd shot him.

"It absolutely took my breath away," she remembers. "I turned off the TV, and curled up and cried."

family and then have the power to say we can't attend? By trying her behind closed doors, the system was overprotecting her, not helping her."

Meanwhile, in a deal worked out with prosecutors, Cordell Boyd pleaded no contest to one count of first-degree murder and two counts of second-degree murder. At his request, he would serve his prison

"(The sisters) injected the human side of the victim into the process," McKay says today. "They told the court, 'We're human beings. We want to understand this system. We need to know what happened to our family.'"

Following weeks of legal wrangling between the sisters and Fletcher's court appointed-attorney, they

Winona was stripped of her privacy veil. Eight days later, cameras rolled and heads turned as the short, pudgy girl walked into the courtroom and pleaded not guilty to three counts of first-degree murder.

Later, after exhausting her appeals to avoid being tried as an adult, she pleaded no contest to the charges. Winona Fletcher became the youngest convicted female murderer in Alaska's history.



FRAN DURNER / Anchorage Daily News file photo

Fletcher, right, talks to defense attorney Valerie Tehan at the sentencing.

With taped confessions and a match made on Winona's fingerprints, investigators had the case solved. Boyd was jailed at the Cook Inlet Pre-trial Facility, and Winona at the McLaughlin Youth Center.

Some friends and family members started urging Lienhart and Nahorney to put the murders behind them — that it was time to start healing. But the sisters' plight was far from over. In some ways, it was just beginning.

JUVENILES AND JUSTICE

The sisters learned they were banned from attending Winona Fletcher's juvenile-waiver hearing, and they wanted inside. The hearing would be a secret mini-trial to determine whether the courts regarded

term in Alaska. In exchange, Boyd would testify against Winona. His version of events portrayed her as the instigator of the killings.

The sisters thought this made it all the more important for them to be allowed inside. Sharon woke up nights thinking about Winona holding a gun to her mother's head.

"I absolutely had to look her in the eye," says Nahorney. "The 'why' was tearing at my guts."

One of the reasons that Alaska's juvenile offenders are swaddled in privacy is to keep them from being publicly branded as crooks. The law operates under the assumption that since young offenders can be reformed before reaching adulthood, they deserve a clean slate so they can start over. This means their identi-

ties were finally allowed to attend Winona's hearing. Unfortunately, it was the last day of the three-week proceeding.

Six days after the juvenile-waiver hearing — and eight months after the murders — Judge Karl Johnstone ruled that Winona should be tried as an adult. Johnstone said it was a "missing piece," not a troubled past, that drove Winona to kill, and she was beyond the help of local juvenile corrections experts.

Today, even after spending more than a third of her life in prison, it's difficult for Winona to talk about the murders. During our conversation, she wept and tapped her fingers nervously whenever the subject was raised. She talked about her life

Judge Victor Carlson sentenced Cordell Boyd to 297 years in prison.

In an overflowing courtroom the next day, Carlson gave Winona the same maximum sentence. He rejected her attorney's plea to make allowances for Winona's young age, saying he felt it unlikely she could be rehabilitated.

"There's nothing to explain your doing three cold-blooded murders," the judge said to Winona. "... I don't know what it is you'd be rehabilitated over, or for, or from."

Speaking from the prosecution table, Lienhart also had words for Winona. "Sometimes," she said, "I think I'd like to sit in a room with you, and take a gun and let you know what my family went through."

Her wrists in shackles and tears streaming down her face, Winona walked out of the courtroom and into an adult prison.

The sisters haven't seen her since.

When Alaska's legislators reconvene in Juneau this January, they'll face a crime issue that's been gaining momentum since Winona aimed her gun and fired.

The Faccio murders drew statewide attention to the subject of juvenile crime and punishment. Long gone are the Ozzie and Harriet days when driving fast or stealing hub-caps were considered serious trouble for a teen-ager, Alaska, like much of the nation, is seeing the handiwork of increasingly violent teens. The question is what to do about it.

Two juvenile-waiver bills are being offered as solutions. The controversial proposals would make it easier to try accused youthful offenders as adults.

Under Senate Bill 54, teen-agers 16 and older charged with murder or attempted murder would automatically be waived to adult court. Under current law, teen-agers under 18 can be tried as adults only when a judge determines it is unlikely the juvenile can be rehabilitated by the age of 19.

Sponsored by Sen. Rick Halford,

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including kidnap or rape, but it was scaled back to get more lawmakers to support it.

A more extreme solution is being offered by Anchorage Rep. Con Bunde, who recently introduced a measure that would try teens 13 and older as adults whenever they are charged with using a weapon to commit a crime.

"These kids are no longer involved in petty crime resulting from bad judgment," says Bunde. "They're career criminals."

Should juvenile offenders be locked up like adult criminals, or should society try to rehabilitate them, and turn them into productive citizens?

"We now have some very sophisticated 16- and 17-year-old murderers, and we need to do what we can to see the system deals with them," says Sen. Loren Leman, one of SB 54's co-sponsors. "With such serious crimes, the responsibility should be placed on the teen-ager, not society."

Adulthood was legally defined as the age of 18 nearly 100 years ago, when the first juvenile court was formed in Illinois. The goal of the system was to reform — not punish — "wayward youth." Illinois now sends teen-agers charged with murder, rape or armed robbery to adult court.

"Things are so different now," says Leman. "Teen-agers' crimes are worse; so are their weapons."

Alaska legislators have been grappling with the juvenile waiver issue for nearly a decade. Since the Faccio murders, some form of the proposal has been introduced each session, only to die in committee.

Lienhart and Nahorney write letters and speak out on juvenile waiver whenever they can. This time around, their pitch is backed by more statistics and victims than ever.

Anchorage Police Department statistics show the number of Anchorage juveniles arrested for violent crime during the first half of 1993 is nearly double the number for the entire year of 1991. And while just one juvenile was arrested for murder in 1991, five juveniles have been arrested for murder so far this year.

Even so, opponents argue, changing a court procedure won't change juvenile behavior, and putting troubled teens in the adult system may only make matters worse.

"Do we really want teens incarcerated with seasoned criminals?" asks former state legislator Joe Josephson. "Many of these young offenders are victims themselves."

Winona Fletcher was not your run-of-the-mill teen criminal, says local criminal defense attorney Carmen Gutierrez. "We had this one horrific crime. Should we use that as the



FRAN DURNER / Anchorage Daily News

Sharon Nahorney talks to people who stopped at the Victims for Justice booth at the Alaska State Fair in August.

standard to making sweeping changes?"

Some critics also argue that the proposal takes discretion away from judges who are best equipped to decide what's right for the teen-ager and society.

If either version of the juvenile-waiver bill gets enough votes to become law, Alaska will join 24 other states in automatically sending certain juvenile offenders to adult court.

THE RIGHTEOUS SISTERS

The Faccio murders — and how Lienhart and Nahorney reacted to their treatment by "the system" — ignited a flourishing victims' rights movement throughout the state. The sisters formed Victims for Justice and altered the way Alaska law treats victims.

"As horrible as the crimes were," says longtime Anchorage prosecutor Stephen Branchflower, "they were a catalyst to change. That was our wake-up call."

Spurred by their own experiences, the sisters took the lead in making Alaska's crime laws tougher and more pro-victim. Among the changes:

- Where before a person had to be physically injured to be a "victim," the legislature in 1989 expanded the definition to include people close enough to the victim to be emotionally devastated by the crime.

- Legislation was also passed allowing victims to have their say at sentencing hearings in otherwise private criminal juvenile trials.

- In 1991, the legislature cleared the way for law enforcement officers



FRAN DURNER / Anchorage Daily News

Lienhart speaks at a Victims for Justice tree ceremony on the park strip for the family of a murder victim.

much sooner had it been legal to keep the fingerprints of juvenile offenders on file.)

• Finally, when juveniles commit violent crimes, the doors of their court proceedings are now open to their victims.

A HELPING HAND

Lienhart and Nahorney formed their victims' group mainly to change Alaska law. But their role expanded after Anchorage was hit by another murder spree two years after their parents were slain.

Lienhart recalls the afternoon in May 1988 when she was seated in a downtown restaurant in the company of a man on the brink of exploding. He clenched his fists as he spoke and his eyes brimmed with tears. His name was John Newman, and he was suffering more than even Lienhart could comprehend.

In March 1987, Newman's wife and two young daughters were found dead in the family's Midtown apartment. Nancy, 33, and Melissa, 8, had been strangled and raped. Angela's throat had been cut. She was only 3. The bodies of all three had been mutilated.

Now, one year later, Newman was in town to testify at the trial of his family's killer. Lienhart had introduced herself to Newman after the district attorney's office called her to say he would probably need some emotional support getting through the trial.

The suspected killer was Newman's nephew, Kirby Anthony. Near the time of the murders, he had been living with Newman's wife and two daughters while Newman was away at trade school in California.

At the start of the trial, while meeting with Lienhart, Newman spoke about his struggle to start over in the small Idaho town where his family lived before moving to Alaska.

"Everybody there knew what happened to him," Lienhart recalls. "He told me how one day a fellow approached him on the sidewalk to ask how he'd managed not to kill himself yet."

In Anchorage, Newman was a dam waiting to burst. Lienhart encouraged him to talk about his feelings, reminding him that she, too, had been full of rage over the murders of her parents and aunt.

"We both had suffered, but I felt his struggle was much greater than mine ever was," she says. "I had my husband and kids to go back to. He had nothing."

Each day of the trial, both sisters stayed at Newman's side. During breaks, they'd walk from the courthouse to Cook Inlet, where he threw rocks in the water to relieve pressure. One day, Lienhart took him bike riding. Another day, she and her husband took him out on their boat.

She was also there when — nearly



FRAN DURMER/Anchorage Daily News

Janice Lienhart

a year after his family's murders — he finally exploded from grief. It happened early in the trial when the jury was out of the room. Anthony turned in his seat at the defense table and looked at his uncle. "I love you, John," he taunted.

Newman struggled to control himself. Then he ran from the courtroom with Lienhart not far behind. She found him hurling objects at the walls of his downtown hotel room. He yelled. She talked.

"I told him how my husband went to the shooting range after my parents were killed and that it had really helped him," she says.

After getting her husband's gun, the two of them drove to the shooting range south of Anchorage, where Newman fired bullets at targets until late in the afternoon.

"It really freaked out the police when I told them," Lienhart says, "but it sure helped John."

Both sisters were seated near Newman in the courtroom when the jury found Anthony guilty of first-degree murder.

At that moment, the two realized they could do a lot more than improve laws. They could help victims get through the agony of grief and the rigors of trial.

"When I was in Anchorage ... I was dying inside," Newman says today from his Boise home. "Everyone was so focused on the trial. But Janice and Sharon focused on life ahead. I grabbed that, and didn't let go."

So far, the sisters and their organization have assisted 800 victims of crime. Their names read like a who's who of Alaska crime tragedy: Dave and Valerie Lemaire, whose 11-year-old daughter, Mandy, was raped and fatally shot near Glennallen; Zenovia Lestenkoif, an Aleut widow and mother of 17 children, whose 23-year-old son died after being shot in the face on St. Paul Island; Chui Huang of Anchorage, whose husband and 2-year-old daughter were murdered over a gambling debt.

"Victims for years had felt left out," remembers Assistant District Attorney Branchflower. "Law enforcement just didn't have the time to sit down and listen to their

willingness."

THE GROWN-UP WINONA

Winona Fletcher is no longer the frumpy, pug-nosed girl with hair hanging over her face who could hardly read or write. In her place is a slimmer, 22-year-old woman with an attractive face and bright smile. Her coal black hair, neatly brushed, falls several inches past her shoulders. She is well-spoken; her handwriting is neat, with few grammatical errors.

Gone, says Fletcher, is her selfish I-hate-the-world attitude. Gone, too, is her partner in crime, Cordell Boyd. At 28, he remains imprisoned at Seward's Spring Creek Correctional Center, where he's not eligible for parole until the age of 53. Fletcher will be eligible when she's 60.

"I haven't talked to (Cordell) since the sentencing," she says, speaking from behind a glass partition in a visiting booth. "I don't hate him and I'm not angry. I just think we both need to get on with our lives."

Dressed in a low-cut, bright red prison jumpsuit, Fletcher talks about her accomplishments since being locked up. Like earning her high school diploma, becoming a carpenter and being just a few credits shy of acquiring an associate of arts degree.

According to Fletcher, she can cry now. She prays. She cares about people. She attributes this alleged transformation to years of drug abuse counseling, group therapy, and faith in God — but mostly to the birth of her child.

"She's really changed me," Fletcher says with enthusiasm. "She cares about me, all the time. She's given me the will power to change."

Fletcher became pregnant in early 1987 — only weeks after she was sentenced — when a friend was allowed to visit her for an hour in Anchorage's Sixth Avenue Jail.

"When my daughter was born, it really hit me," she says. "I cried for two days straight when they took her away. I realized the value of a human life. What I had done ... really hit."

Her daughter, now 6, is being raised by Fletcher's mother in Anchorage. Fletcher and the girl talk on the phone at least once a month.

"My daughter knows I did something very bad, but doesn't know what. Someday, I will tell her the best I can, but not now. She's too young. It would really hurt and confuse her. She just couldn't ... it would mess her up."

Fletcher's mother has "totally changed," claims the prisoner — she no longer drinks or smokes. She's in counseling. The abusive boyfriend she and Winona used to argue over is long gone. Today, they argue over different matters — like the correct way to raise a child.

"My mom is giving her everything she wants," Fletcher says. "I keep telling her that's wrong. That if she wants something, she's got to earn it.

see them in another place, another time. She grapples for an answer when asked what she would say to them. She squirms, wrings her hands and weeps. Finally she responds: "It's so hard. ... I don't want to sound insincere. How do I tell them?..."

MEETING THE OFFENDER

Nahorney reacted with shock to her sister's suggestion that the two meet with Fletcher in Juneau.

"I've really had to do a lot of analyzing of my feelings," she explains. "Victims have to be ready to meet their offenders. I'm not."

Besides monitoring judges, helping victims and making changes in Alaska law, the sisters — through Victims for Justice — started a mediation program in which juvenile offenders meet their victims face to face.

They've worked with McLaughlin Youth Center officers, attorneys and youth advocacy groups to make the program permanent. To date, seven teen-age offenders have sat down to talk with their victims. Each offender apologized — and each victim accepted the apology.

The sisters believe the program has re-socialized treatment for juvenile offenders and their victims in Alaska. But that doesn't mean Nahorney is personally ready for the same treatment.

She blames Fletcher for a lot that's gone wrong in life since the murders — like her husband's heart attack and the couple's divorce after 19 years of marriage. That adds up to a lot of anger.

"Those juveniles (in the mediation program) didn't wipe out a family like Winona did," Nahorney says. "All these years, knowing Winona was locked up somewhere far away made me feel comfortable, like having something safely tucked away in a drawer. When she came back, a lot of my anger resurfaced. The idea of seeing her was just too much."

Even so, Nahorney thinks a meeting will happen.

"It will come; I just have to be emotionally ready for it," she says.

Her sister doesn't have to wait.

"I could see Winona now," Lienhart says. "God says, if someone offends you, you go to that brother and talk to them, so that's what I'm prepared to do. Still, I'll wait for Sharon. When she's ready, and if Winona's ready, we'll go."

Lienhart even knows the first question she'll ask. It's the question that's haunted her since learning of her family's 14-year-old female killer nearly a decade ago.

"I want to know why, when Winona saw my mother crying and praying, and when she saw my dad begging for his life ... when she saw their fear, how could she still kill them?"

□ Linda Wedford is a freelance writer living in Anchorage.

Nov. 17 1990

Anchorage Daily News

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Justice?

Innocent victims find indifference

Alaska, like the rest of the country, strives to have a law enforcement system in which justice is blind. For those accused of crimes, it's a noble and appropriate goal.

But as presently structured, the criminal justice system too often is blind to the plight of innocent victims and witnesses. All the attention focuses on uncovering suspects and proving their guilt or innocence. The needs of victims and witnesses are an afterthought.

Take the case of Eagle River resident Rob Chamberlain. He was driving his \$5,000 sports car when his passenger was shot and killed by another motorist. His car has been impounded as evidence until the suspect goes on trial. In the meantime, Mr. Chamberlain has to bum rides for his lengthy trip to work, while he's stuck paying for a car he cannot use.

In a system that cared about justice for innocent bystanders, there would be a simple process for helping people like Mr. Chamberlain. Society has a legitimate need to take his car for evidence. It's less clear why society should be allowed to take it without just compensation.

The violent crimes compensation board, welcome as it is, provides no relief here. The board does not compensate victims of property crimes. It cannot pay for economic losses that an investigation or prosecution inflicts on innocent witnesses.

One reason society doesn't do more for victims and witnesses is money. The \$600,000 a year Alaska spends on victims of violent crimes is barely enough to meet the demand. Helping innocent witnesses with their losses and expenses could cost considerably more.

But then, no one ever said justice is cheap.

Wounded by a gunman, hobbled by the system

Injured bystander struggles to piece life together

By SHEILA TOOMEY
Daily News reporter

John Miller was strolling down Fourth Avenue picking breakfast out of his teeth when he saw the guns.

It was 5 a.m. on an August Sunday and Miller had stumbled into an armed confrontation between the Anchorage police and Roy Fox, a deranged loner with a stolen shotgun.

As Miller remembers it, he had a choice of getting shot by Fox, crouched in the doorway of an Army-Navy store, or shot by the police under the assumption he was involved in whatever was going on.

When Miller dreams about what happened, he dreams about being trapped.

As it turned out, his decision to just keep walking, looking as uninvolved as possible, didn't work. Fox nailed him in the back, right at the belt line, lifting Miller off his feet and slamming him to the pavement, where he lay in terror as the

police fired more than 20 shots, hitting Fox 15 times.

It all happened more than a year ago and, as angry as he was at Fox, Miller is angrier at what has happened since, namely, not much.

Miller, 32, was a building trades worker before the shooting, working job-to-job as a subcontractor on renovations. He had no medical insurance. He had just finished a home burned out in a fire and was scheduled to start another job in a few days.

He had his own apartment and an unremarkable life that suited him fine.

Now he has a hole in his back you could put your fist in. He spent 2½ months in the hospital, had three operations and still has a bunch of birdshot in his body. He has nerve damage in his back, his left thigh is numb and doctors have told him to get ready for arthritis.

"I really wanted to know that," Miller said Wednesday, sitting in the living room of his mother's Sand Lake condo which he now shares. "Like, here I am in my prime and I'm looking forward to having arthritis in 10 years."

He can't do construction any

Please see Back Page TALES



John Miller says he's angry at the way assistance agencies have let him down after his 1989 injury.

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THE BACK PAGE

TALES OF THE CITY: Wounded bystander tries to rebuild his life

Continued from Page A-1

more because he can't lift heavy weights. He says all he wants is re-training and a chance to work at a decent job like the one he lost.

As Miller remembers it, the first sign that the world didn't care much about him was when the hospital told him to stop going to physical therapy because state emergency medical assistance didn't cover it. His \$59,000 hospital bill was taken care of but out of hospital medi-

cal expenses were his problem.

He had lost his apartment. He had no income. So he went to welfare for help. He wasn't disabled enough to qualify, but they offered \$120 a month toward rent. "I couldn't even find a roommate who would let me move in for that."

He ended up back home with mom, an arrangement that neither finds satisfactory.

"Luckily, I had someone to stay with," Miller said.

"Where would I go, the Brother Francis Shelter?"

At vocational rehabilitation they gave him lots of tests and made lots of appointments. Either he was too disabled for a program or not disabled enough, he said. They told him to get some special tests — he's not sure what — but they cost money Miller doesn't have. No tests, no re-training program.

And he still hadn't figured out how to get the physical therapy he needed.

"The baddest part about it, I needed it so bad at the time," Miller said Wednesday. "They should have helped me at the time."

By now the bills were piling up. Doctors who had extended credit figured out Miller wasn't eligible for anything reliable. He applied for help to the Violent Crimes Compensation Board, but he wasn't an emergency and the board only meets quarterly. He and the board's executive director, Nola Capp, still disagree about whether he has sub-

mitted all the necessary paperwork.

Miller is not adept at working the system. He's not sure exactly what he applied for and exactly why he didn't get it. He says he filled out all the forms people gave him and went where they told him to go but nothing happened. "They're just giving me a runaround," he concluded.

On Oct. 17, the board paid \$5,000 of Miller's outstanding medical bills and approved funds for physical therapy — a year after he

got out of the hospital. "Of all the people in the world he was purely innocent," Capp said. "But the board has to have regulations. We can't just give out money."

Russ Cusack over at vocational rehab says he'll check Miller's case file and see what he can do.

Miller still has flashbacks about the shooting, dreams that wake him up with the sweats. But he's madder at the system now than he ever was at Roy Fox.

“The Spark of Justice”: A Call for Enacting A Constitutional Amendment

By Steve Twist

The welcoming ceremonies at the Fourteenth Annual Conference followed traditional form, with a warm greeting from Pima County Attorney Stephen Neely and a thoughtful address by NOVA President Daniel Rosenblatt, among others. Greetings from Attorney General Robert Corbin, delivered by his Chief Assistant, were expected to lean more towards a friendly welcome than towards the thought-provoking. If that is what the participants wanted of Steve Twist, they were disappointed. Judging from their reactions, however, they were anything but disappointed.

As a service to the many conference-goers who asked for a copy of Steve Twist's stemwinder on victim rights, we are reprinting it here:

Steve comes by his impatience the hard way. As a principal supporter of a victim rights amendment to the Arizona constitution, he led the fight that found that proposal just one vote short of ratification in the Arizona legislature last session. He and other victim advocates in the state are determined to get their proposal on the ballot through a petition drive. It seems likely that they will succeed. Steve's speech follows.

Good evening. It is my great privilege to join Steve Neely in welcoming you to Tucson and to the warm hospitality of Southern Arizona.

It is highly appropriate to have selected Tucson as the host site for this meeting. Steve Neely has been one of the pioneers of victim/witness programs among prosecutors in America and his program, run by Vicki Sharp, Sharon Hochman, Stuart Gellman and the many fine and dedicated staff and volunteers, is consistently regarded as among the best in the nation.

It has brought new sensitivity to the business of prosecution by recognizing the plight of victims as they suffer not only the ordeal of the crime, but also the ordeal of the criminal justice system. Pima County's program helps victims



Steve Twist speaks at the opening ceremonies. The platform is a made-for-movies train, at the second stage of Old Tucson. Other whistle-stoppers are (l. to r.) Dan Rosenblatt, Marlene Young, and Stuart Gellman.

cope with both ordeals. We are proud to have them in Arizona.

But the strength of their program has also taught us that new frontiers must be explored, that new answers must be found. Here in Tucson, as elsewhere in Arizona and America, the most caring and effective victim/witness program cannot protect victims from a criminal justice system which is itself at times, destructive, and deaf to the cry for victims' rights.

The best counseling programs are strained to breaking when the system itself causes the emotional pain which needs treatment.

The most caring prosecutor, who regularly consults with victims about their cases, cannot overcome the trauma caused by the incessant delays he must report, or the procedural setbacks, the suppression of evidence, the repeated releases of defendants, or sentences that neither deter nor punish nor protect future victims.

The strongest victims' rights statutes will never protect victims if they are

always second to the constitutional rights of defendants . . . or for that matter, to the interests or convenience of the judges or the lawyers.

The best-funded compensation and assistance programs, even if they had badly-needed additional revenues, will never compensate for the injustice or the indignity of our systems' treatment of victims.

Many of us in the victims' movement believe that we must seek more fundamental reforms in the justice system if we are to make our dreams of justice a reality.

In 1988 in Arizona, over 200,000 of our neighbors will be victims of either murder, rape, robbery, aggravated assault, or serious theft. As they begin to cope with the crime and the justice system, in many ways we force them to face it legally alone. In my state, victims have not one constitutional right or remedy to protect them.

They have no right to a speedy trial.

They have no right to privacy.

They have no right to a lawyer.

They have no right to refuse a pre-trial interview.

They have no right to be informed or consulted.

They have no right to be in the courtroom.

They have no right to finality to their ordeal.

They have no right to be heard until the trial is over.

They have no right to access to the entire court record.

They have no right to due process.

In short, they are treated as a hard piece of evidence in our system.

Having failed victims in our duty to protect them from crime, we then subject them to a system which affords them no constitutional rights and they are brutalized by it.

Many of us believe the answer lies in constitutional reform. Unless victims' rights are made a part of our basic law — our constitutional law — victims will always be second-class citizens. It is time for this atrocity to stop.

As those of us in Arizona know, our

challenge is great and our opposition is strong. Not all the venom in my state is found in the creatures of the Arizona desert.

Of course none of our opponents are against "victims' rights". The strength of the movement you have forged has captured the agenda and they are afraid to oppose us.

They are for "victims rights but . . ." — but they don't believe those rights should be in the Constitution.

They are for victim rights but

. . . they are not for the right of the victim to be in the courtroom throughout the trial;

. . . they are not for the victims right to a speedy trial;

. . . or reasonable finality;

. . . or to refuse pre-trial interviews;

. . . or to have all relevant evidence introduced so the truth of what happened can fully be heard.

They are not for the child victims

right to testify outside the threatening presence of the defendant.

They are not for the victims' right to prison sentences which will protect future victims.

Those who say they are for "victim rights but

“ . . . you've seen it in the eyes of caring police and dedicated prosecutors; you've seen it in the mirror.”

are deceitful, fraudulent, and they have no right to associate with you or carry the banner which you have raised.

Our movement is the most important civil rights movement of the Eighties and Nineties. Our success will depend on courage and spirit and perseverance.

Napoleon said there are only two powers in the world, the sword and the spirit. In the end, he said, the sword will always be conquered by the spirit.

For now, it seems, the sword is in the

hands of the criminal and we have lost the spirit to overcome him.

But in all the injustice we see, in all the victims' pain, there is a spark. You know that spark. You have seen it in the eyes of those you counsel and comfort; you've seen it in the eyes of citizens who

can no longer stomach the repeated honor stories which daily come from our system; you've seen it in the eyes of caring police and dedicated

prosecutors; you've seen it in the mirror.

It is the spark of justice. Remember when you first felt that spark, when your hearts were touched and filled by it. Inspire yourself again for this cause and you will inspire others. Use this conference to re-ignite the spark, or feed it with the oxygen that is here. Share your ideas, share your vision of our new frontier, and we will see justice for victims in our day.

Thank you. □

News from the States:

California Updates "Miranda" Warnings

For years, victim advocates have spoken of a "Reverse Miranda" warning or card — one that would routinely be used to read to the victim that person's rights.

Due to an initiative of the California Youth Authority and the California Corrections Department — supported by the state's major law enforcement associations — victims there may soon receive such a recital of their rights as a standard part of filing a crime report.

The following is an announcement describing the new program.

"You have a right to remain silent . . ." That's a phrase that has become well known to law enforcement and criminal suspects with whom they deal. If police agencies, the California Youth Authority (CYA), the California Department of Corrections (CDC) and victim rights advocates have their way, crime victims will have their rights explained at the scene of crimes too.

That is why the CYA, CDC and

major law enforcement organizations are distributing cards to law enforcement officers throughout the state that can be used not only to advise suspects of their rights, but the victims of their rights as well.

The cards will be accompanied by a letter signed by Cal Testame, Director, CYA; Jim Rowland, Director, CDC; Glen Craig, President, California Peace Officers Association (CPOA); Craig Moscham, President, California Police Chiefs' Association; and Sherman Block, President, California State Sheriffs' Association.

Although victims of crime in California have had these rights for years, only the suspects have had their rights read to them at the time of arrest. This card will inform the victims of their rights under the law and provide them with information for assistance.

The local law enforcement agencies are being encouraged to use the same information with local assistance phone

numbers for distribution to victims, who may not remember the information given to them by the officers at the scene of the crime.

The implementation of the project is the accomplishment of a cooperative effort between law enforcement associations, CYA, CDC, and the office of Governor George Deukmejian, who has fully supported the project.

If all those involved have their way, "As a victim of a crime, you may . . ." will become as well known as the Miranda warning given to criminal suspects.

For more information, write:

Sharon English
California Youth Authority
4241 Williamsborough Drive
Sacramento, CA 95823 □

Substance abuse is an almost universal problem among criminals. New misdemeanor centers with on-site alcohol screening, and residential treatment programs in existing facilities are all cost-effective ways to combat the problem.

The Administration recognizes the need for additional high security beds at the Spring Creek Correctional Facility. The Department of Corrections has been operating over emergency capacity for more than a year. The Department will be reporting its projections for the future jail and prison populations in the upcoming weeks. The report will identify the immediate and long-term needs to expand the correctional system.

More prison beds are not the department's only answer to reducing crime. The department can achieve impressive success with innovative, cost-effective programs which emphasize offender responsibility and can lower recidivism.

New policies place the lowest risk offenders in the lowest cost placements so that secure prison beds can be used for the most dangerous criminals. Offenders who don't pose an immediate risk to the public are being placed in pre-release programs to help reduce recidivism. These programs emphasize personal responsibility by requiring community work service and requiring offenders with jobs to pay for part of the costs of their incarceration. Most prisoners will be returning to society eventually, and these programs insure a careful, closely supervised reintegration to help them avoid returning to crime after release from prison.

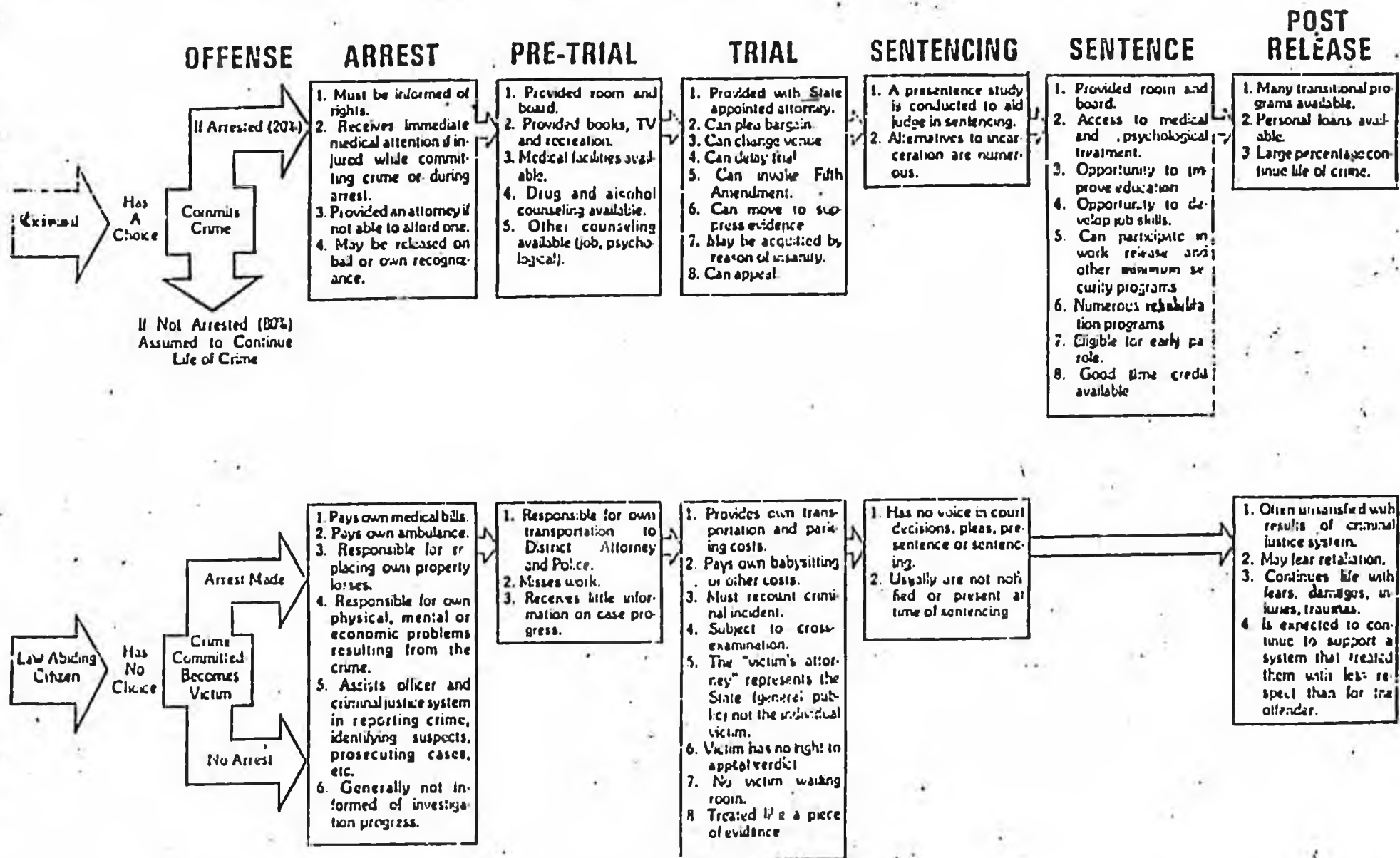
Constitutional Amendment -- House and Senate Resolutions have been introduced by Rep. Brian Porter and Sen. Dave Donley for Constitutional amendments which would change the emphasis of penal administration in Alaska. The Constitution should clarify that public protection, deterrence, and reaffirmation of societal norms are chief goals of incarceration. The rights of the offender must be balanced with the rights of victims and law-abiding citizens.

Offender Fees -- Increasingly, offenders are being required to pay their fair share, just like other Alaskans. The Administration is exploring ways to expand the state's ability to collect fees for certain medical, program, housing, and supervision services. Contracting out the fee collection to the private sector in some instances may be an efficient way to increase offender responsibility as well as offset the expenses of the correctional system.

Alternative Punishments -- Highly structured day reporting programs can be operated out of existing Community Residential Centers. Graduated levels of

See Minutes: Alternative Punishments

THE CRIMINAL INJUSTICE SYSTEM



WORK ORDER REQUEST FORM

W.O. [18] LS-1836

KEYWORDS: UNIFORM RULES ASSIGNED: Luckhaupt

REQUEST FOR: Resolution TAKEN BY: Luckhaupt

SUBJECT: Suspend UN RLS: Title Change for HB 43

REQUESTED FOR: SC SSTA BY: Portia PHONE: 465-4522

DELIVER TO: Sen. Leman, Attn. Portia, Cap. 115

INSTRUCTIONS: Do specific title change resolution for CSHB 43(FIN), rolling in "and penal administration" on p.1, line 2, following "victims".

<p>OBTAIN</p>	<p>SPECIAL DRAFTING INSTRUCTIONS ATTACHED [] AUTHORIZED TO CONFER WITH _____ _____ RETURN _____ _____ TO REQUESTOR APPROVED: <u> X </u> DIRECTOR, LEGAL SERVICES</p>
<p>REVIEWED _____ IN <u>03/17/94</u> DUE <u>TODAY</u> TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____</p>	<p>SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ _____ Request for DRAFT</p>



Senate Committee On State Affairs

Dept. of Law - Margo Kuehl

(timely disposition)
① Balance Court. Rights —
defendants continuance
may/will be better kept in line;
will help state. Help
Prosecutors protect public

② Right to confer w/ Prosecution.

③

14 states passed Const. Amend.

13 states pending (as of: 4/93)