

S B

6 6

FISCAL NOTE

Bill Version: SB66

STATE OF ALASKA
1997 LEGISLATIVE SESSION

(S) Publish Date: 1/28/97

Revision Date: _____ Dept. Affected: Department of Law
 Title: ... to the collection by victims of restitution ... BRU: Criminal Division/Civil Division
safety of victims . . . mental examinations of victims . . . rights of victims Component: Criminal Division/General Legal Services
 Sponsor: Rules Committee
 Requester: Governor COMPONENT SERIAL NO. 2085/2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill implements the "rights of crime victims" amendment contained in art. I, sec. 24, of the Alaska Constitution. Specifically, the bill amends AS 12.61 by providing that the victim has a right to be present at every proceeding in a criminal prosecution or delinquency adjudication in which the defendant or a minor has the right to be present. Further, the bill amends provisions in the substantive and procedural criminal law to facilitate, particularly from the victim's perspective, the prosecution of a person charged with a crime or the adjudication of a minor for delinquent acts. The bill also adopts provisions intended to better protect the safety and welfare of victims, other persons, and the community. It requires a court to consider the safety of the victim in setting bail and conditions of release. It makes it a class A misdemeanor to interfere with the report to law enforcement of a domestic violence crime. Finally the bill facilitates the collection of restitution by providing that the weekly income and liquid assets exemptions from execution do not apply to collection by a victim of court-ordered restitution from a prisoner.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce M. Botelho*
 Agency: Department of Law

Phone: 465-5370
 Date: 1/21/97
 Date: 1/21/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

No. 3

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: _____

Version: SB66

(S) Publish Date: 1/28/97

Revision Date: _____

Dept. Affected: Public Safety

Title: Victim's Rights

BRU: Alaska State Troopers

Component: Detachments

Sponsor: Rules Committee

Requestor: Governor

COMPONENT SERIAL NO. 0799

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

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.)

This bill will have a negligible fiscal impact to the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden

Phone: 269-5412

Division: Alaska State Troopers

Date: January 21, 1997

Approved by Commissioner: *Ronald L. Otte*

Date: 1/21/97

Agency: Ronald L. Otte, Department of Public

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

No. 2

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Version: SB66

(S) Publish Date: 1/29/97

Revision Date: _____ Dept. Affected: Corrections
 Title: Victims Omnibus Bill BRU: ALL
 Sponsor: Rules Committee Component: ALL
 Requester: Governor COMPONENT SERIAL NO. #0694

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS				25.2	63.6	102.1
TOTAL OPERATING	0.0	0.0	0.0	25.2	63.6	102.1

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF				25.2	63.6	102.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	25.2	63.6	102.1

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Section 6 of this legislation changes the definition of "serious provocation" for purposes of the "heat of passion" defense to a charge of murder. This change will prevent the need to use self defense for qualifying as serious provocation by the victim for purposes of the "heat of passion" defense. The Department of Law estimates there may be one case per year that is affected by this legislation. This will result in an additional 10 years (actual time) of incarceration per individual. The average daily cost of prison care is \$105.27.

The fiscal impact of this legislation would not occur until the year 2001 because the convicted felon would have received a 5 year sentence under current law. The additional sentence (cost) would begin after this time is served.

Prepared by: Bruce Richards Phone: 465-3307
 Division: Office of the Commissioner Date: 1/21/97
 Approved by Commissioner: Margaret M. Pugh Date: 1/21/97
 Agency: Department of Corrections

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

No. 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

B.I. Bill No: SB66
(S) Publish Date: 1/28/97

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Omnibus victim's BRU: #N/A
 Component: #N/A
 Sponsor: Rules Commit COMPONENT SERIAL NO. _____
 Requestor: Governor See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

We find that this bill proposed legislation has no fiscal impact on the Division or the Department. We have consulted with DFYS and it is our joint opinion that administratively our Social Workers and staff will have to be made aware of their responsibilities to advocate for victims and victims rights.

Prepared by: *Jessie Leland*
 Division: _____
 Approved by Commissioner: *Karen Perdue*
 Agency: Department of Health & Social Services

Phone: 4114
 Date: 01/23/97
 Date: 1/23/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

**SB 66 - VICTIMS' RIGHTS
SECTIONAL ANALYSIS**

Sections one and 14 (proposed AS 12.61.010(a)(1) and (2)) implement art. I, sec. 24 of the Alaska Constitution by allowing the victim to be present at every stage of a criminal prosecution where a defendant has a right to be present, and to be notified of every hearing where the defendant's release from custody will be considered; (AS 47.12.110(b) was adopted in 1996 to allow the victim of a delinquent act to be present at every hearing where the juvenile has a right to be present.)

Sections two through five create an exception to the weekly earnings and liquid assets exemptions from execution to allow a victim, in attempting to collect on an order of restitution, to levy upon assets held by a prisoner outside an institution (assets held inside the institution are already available to victims under AS 09.38.030(f)).

Section six amends the definition of "serious provocation" in the heat of passion defense to a murder charge to specify that an unreasonable belief in the need to act in self defense may not be considered serious provocation for the heat of passion defense to murder. (Note that a reasonable belief in the need to act in self defense is a defense to murder, but it is not part of the heat of passion defense.)

Section seven amends the definition of "incapacitated" in the sexual assault statutes. Sexual Assault in the Third Degree, for example, prohibits sexual contact with a person who the offender knows is incapacitated. The definition is amended so that the state, in proving its case, must prove either that the victim was temporarily unable to appraise the nature of his or her conduct, or that the victim was temporarily unable to express unwillingness to act. At present the statutes require the state to prove both in order establish its case.

Section eight adds a new provision to the criminal code making it a class A misdemeanor to interfere with a person who is reporting or attempting to report a crime of domestic violence to the police.

Sections nine through 12 amend the bail statutes to require that the safety of the victim be considered by the court when it makes decisions concerning bail and conditions of release for the defendant pending trial, sentence, and appeal.

Section 13 limits the cases where the court can order a victim to undergo a psychiatric or psychological examination to cases where (1) the victim's psychiatric condition is an element of the offense (for example, in sexual assault in the first degree under AS 11.41.410(a)(3), the defendant is charged with sexual penetration with a person who the defendant knows is mentally incapable and who is under the defendant's care); or (2) the state gives notice that it will rely on evidence that the victim is suffering from a continuing psychological condition (such as rape trauma syndrome).

Sections 14 and 15 amend the victims' rights statute by specifying that a victim has the right to be present in any proceeding in the prosecution of a defendant or adjudication of a minor where the defendant or juvenile has the right to be present, and that a victim has the right to notice of any hearing where the defendant's release from custody will be considered. Additionally, notice to victims required by other provisions of law, for example, the right to notice of a hearing to consider discretionary parole of a prisoner, are set forth in the victims' rights statute, so that a person may turn to one place in the law to find the rights of victims.

Section 16 provides that custody of the body of a deceased person transfers to his or her family at the completion of a medical death investigation, and that a subsequent autopsy may not be ordered if the state medical examiner has performed an autopsy and has documented the procedure with photographs.

Section 17 provides that applications and personally identifying information in the files of the Violent Crimes Compensation Board are confidential.

Section 18 allows victims who are subpoenaed to testify at the grand jury, who live more than 50 miles from the site of the grand jury or who must customarily fly to the site of the grand jury, to testify telephonically. Other witnesses are allowed under present law to testify by telephone under these circumstances.

Section 19 amends the Alaska Rules of Evidence to allow, in a prosecution of a crime involving domestic violence or interfering with a report of domestic violence, evidence to be introduced that the defendant has committed other crimes involving domestic violence or interfering with the report of a crime involving domestic violence against the same or another victim.

Sections 20 - 24 include effective date, applicability, court rule and repealer provisions, and the court rule change notations.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

January 30, 1997

The Hon. Gary Wilken
Chair, Senate Health, Education, and
Social Services Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Re: SB 66 (Victims' Rights)

Dear Senator Wilken:

Senate Bill 66, which implements art. I, sec. 24 of the Alaska Constitution, Rights of Crimes Victims, was introduced January 28, 1997, and referred to your committee. I am writing to request that the bill be scheduled for hearing at your earliest convenience.

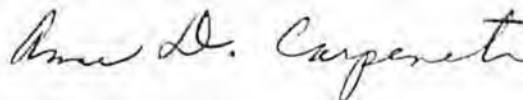
Crimes victims often say that they are victimized twice - first by the defendant, and second by the criminal justice system that prosecutes the defendant. Senate Bill 66 contains amendments to the substantive and procedural law which will help victims through the prosecution process, so that they will understand the system better, and so that the system better protects them.

If you have any questions about the bill or require any further information, please feel free to call me any time.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Anne D. Carpeneti
Assistant Attorney General

ADC:jf

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL
OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 269-6270

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

66
P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

January 27, 1997

The Honorable Mike Miller
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Miller:

In a civilized society, people who are criminally wronged by others do not seek personal retribution; rather, society seeks justice on behalf of the victim. There have been instances, however, when our efforts to insure a fair trial for defendants have caused us to ignore or overlook the rights of victims. In response, the people of Alaska ratified in 1994 the Rights of Crime Victims amendment to our state Constitution as art. I, sec. 24. This bill I transmit to you today will implement the victims' rights amendment through substantive and procedural changes to our law.

The bill guarantees a victim has the right to be present at every proceeding during a criminal prosecution or delinquency adjudication in which the defendant or minor has the right to be present. Although the constitution explicitly provides this right, victims in our state are still occasionally excluded from hearings. This exclusion can be very difficult for victims, particularly those who have lost family members as a result of the crime.

The constitutional amendment provides that victims have the right to be reasonably protected from a defendant through bail requirements or conditions of release prior to the defendant's trial. In the spirit of that provision, this bill requires the court to consider the safety of the victim when setting bail and imposing conditions of release.

The bill also closes up certain loopholes in the law that allow the crime of murder to be reduced to manslaughter. It's clear these loopholes were an unintended result of a 1980 change in the law. In addition, provisions in this legislation will make it easier for victims to collect restitution from prisoners.

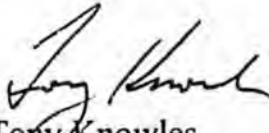
The Honorable Mike Miller
January 23, 1997
Page 2

I also feel it is important to address in this bill an unfortunate situation that arose from the recent tragic murder of Alaska State Trooper Bruce Heck while on duty. A successful defense request for a subsequent autopsy on Trooper Heck delayed his family's plans for cremation. This caused needless suffering for a family already stricken with grief. A provision in this bill will tighten the parameters for allowing subsequent autopsies, in the hope of shielding other families from this unnecessary pain.

Finally, the bill continues the effort I began last year in my legislation to fight domestic violence by making it a class A misdemeanor to interfere with a person who is attempting to report a domestic violence offense to the police.

The people of Alaska told us in 1994 they want victims' rights clearly protected in the state Constitution. This bill will put that public sentiment into practice.

Sincerely,



Tony Knowles
Governor

Article I

shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

SECTION 16. CIVIL SUITS; TRIAL BY JURY. In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law. The legislature may make provision for a verdict by not less than three-fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve.

SECTION 17. IMPRISONMENT FOR DEBT. There shall be no imprisonment for debt. This section does not prohibit civil arrest of absconding debtors.

SECTION 18. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation.

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State.

SECTION 20. QUARTERING SOLDIERS. No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power.

SECTION 21. CONSTRUCTION. The enumeration of rights in this constitution shall not impair or deny others retained by the people.

SECTION 22. RIGHT OF PRIVACY. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

SECTION 23. RESIDENT PREFERENCE. This constitution does not prohibit the State from granting preferences, on the basis of Alaska residence, to residents of the State over nonresidents to the extent permitted by the Constitution of the United States.

SECTION 24. RIGHTS OF CRIME VICTIMS. Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.

ARTICLE II. THE LEGISLATURE.

SECTION 1. LEGISLATIVE POWER; MEMBERSHIP. The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty.

SECTION 2. MEMBERS' QUALIFICATIONS. A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office. A senator shall be

at least twenty-five years of age and a representative at least twenty-one years of age.

SECTION 3. ELECTION AND TERMS. Legislators shall be elected at general elections. Their terms begin on the fourth Monday of the January following election unless otherwise provided by law. The term of representatives shall be two years, and the term of senators, four years. One-half of the senators shall be elected every two years.

SECTION 4. VACANCIES. A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.

SECTION 5. DISQUALIFICATIONS. No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

SECTION 6. IMMUNITIES. Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. Members attending, going to, or returning from legislative sessions are not subject to civil process and are privileged from arrest except for felony or breach of the peace.

SECTION 7. SALARY AND EXPENSES. Legislators shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. Presiding officers may receive additional compensation.