

**HB**

**9**

**FISCAL NOTE**

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

No. 7  
 Bill Version: CSHB 9(FIN)  
 (H) Publish Date: 2/19/97

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to the right of crime victims..."  
 Sponsor: Representative Porter  
 Requestor: (H) FIN

Department Affected: Administration  
 BRU: Public Defender Agency  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

**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						
<b>TOTAL OPERATING</b>	**	**	**	**	**	**

<b>CAPITAL EXPENDITURES</b>	**	**	**	**	**	**
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<b>CHANGE IN REVENUES ( )</b>	**	**	**	**	**	**
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**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	**	**	**	**	**	**

Estimate of any current year (FY 97) cost: \$ \*\*

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

*This bill revises a number of criminal statutes from the "victim's rights" perspective. It creates new crimes and makes it easier to obtain convictions by altering the rules of admissibility of evidence. These changes will result in additional cases and additional work for the Public Defender. Without accurate predictors as to numbers, fiscal impact is impossible to quantify.*

Prepared by: Barbara K Brink, Director  
 Division: Public Defender Agency

Phone: (907) 264-4414  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Bovee  
 Agency: Department of Administration

Date: 2/17/97

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FISCAL NOTE

No. 6  
 Bill Version: CSHB 9(FIN)  
 (H) Publish Date: 2/19/97

STATE OF ALASKA  
 .997 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to the right of crime victims and victims of juvenile offenses to be present at court..."  
 Sponsor: Representative Porter  
 Requestor: (H) FIN

Department Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 COMPONENT SERIAL NO. 43

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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)  
 This bill will have no impact on Office of Public Advocacy.

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

Phone: 274-1684  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Administration

*Alison M. Elgee*  
 Date: 2/4/97

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# FISCAL NOTE

No. 5

Version: CSHB 9(FIN)

(H) Publish Date: 2/19/97

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: ... to the rights of crime victims ... collection by BRU: Criminal Division/Civil Division  
victims of restitution ... safety of victims ... amending court rules Component: Criminal Division/General Legal Services  
 Sponsor: Representative Porter  
 Requester: House Finance Committee 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

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 clarifies the "rights of crime victims" amendment contained in art. 1, sec. 24, of the Alaska Constitution. 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 of court-ordered restitution from a prisoner from funds held outside a correctional facility.

CSHB 9 (FIN) workdraft H will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson* Pt no: 465-5370  
 Division: Administrative Services Division Date: 2/14/97  
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce M. Botelho* Date: 2/14/97  
 Agency: Department of Law

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# FISCAL NOTE

No. 4

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO:**

Bill Version: CSHB 9 (JUD)

(H) Publish Date: 1/27/97

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to the rights of crime victims .....to be present at court proceedings" BRU: Statewide Support  
 Sponsor: Representative Porter Component: Commissioner's Office  
 Requestor: House Judiciary Committee COMPONENT SERIAL NO. 0523

**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 EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 97) 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.)

This bill does not impact the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner Phone: 465-4322  
 Division: Commissioner's Office Date: 1/14/97  
 Approved by Commissioner: *Ronald L. Otte* Date: 1/14/97  
 Agency: Ronald L. Otte, Dept. of Public Safety

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# FISCAL NOTE

No. 1  
 Bill Version: CSHB 9 (JUD)  
 (H) Publish Date: 1/27/97

STATE OF ALASKA  
 1997 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: Victim's right to be present at trial BRU: Trial Courts  
 Component: \_\_\_\_\_  
 Sponsor: Rep. Porter  
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228  
 Agency: Alaska Court System Date: 01/23/97

Approved by: Arthur H. Snowden, II, Administrative Director *ASD* Date: 01/23/97  
 Agency: Alaska Court System

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02:11 PM  
 Rev 1/97

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**cc:Mail for: Laura Chase**

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**Subject:** Re: CSSHB 9

**From:** Sam Shepard at Gov\_Admin\_Svcs 4/16/97 9:58 AM

**To:** Laura Chase at LAA\_STAY

---

Laura, I think that is all of them. Thanks.sam

---

Forward Header

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**Subject:** Re: CSSHB 9

**Author:** David Koivuniemi at DOA-DAS

**Date:** 4/16/97 9:54 AM

No impact to DOA

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Reply Separator

---

**Subject:** CSSHB 9

**Author:** Sam Shepard at Gov\_Admin\_Svcs

**Date:** 4/15/97 7:09 AM

CSHB 9 passed out of s jud with cs on 4/11. Need fiscal notes from following departments, tell us if no impact.

DOA

Law

DHESS

DPS

---

cc:Mail for: Laura Chase

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Subject: RE: CSSHB 9  
From: Sam Shepard at Gov\_Admin\_Svcs 4/15/97 12:50 PM  
To: Laura Chase at LAA\_STAY

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FYI

Forward Header

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Subject: RE: CSSHB 9  
Author: ELindstr@HEALTH.ALASKA (Lindstrom, Elmer A.) at CC2MHS1  
Date: 4/15/97 12:41 PM

Previous zero FN applies.

-----  
From: 'Sam Shepard@Gov.Alaska'  
To: Lindstrom, Elmer A.; 'david.koivuniemi@admin.alaska';  
'psprovos@psafety.alaska'; 'Joan\_Kasson@law.state.ak.us'  
Cc: 'Shari Kochman@cchub.Alaska'  
Subject: CSSHB 9  
Date: Tuesday, April 15, 1997 9:32AM

CSSHB 9 passed out of s jud with cs on 4/11. Need fiscal notes from following departments, tell us if no impact.

DOA  
Law  
DHSS  
DPS

1997 LEGISLATIVE SESSION

Revision Date: 2/15/97

Dept. Affected: Public Safety

Title: Victim's Rights to be Present at Trial

DPS Statewide Support

Component: Commissioner's Office

Sponsor: Representative Porter

Requestor: S.JUD

COMPONENT SERIAL NO. 0523

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 EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES ( )	-0-	-0-	-0-	-0-	-0-	-0-
Code Revenue						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 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.)

No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner

Phone: 465-4322

Division: Commissioner's Office

Date: 4/15/97

Approved by Commissioner: *Ronald L. Otte*  
Agency: Ronald L. Otte, Dept. of Public Safety

Date: 4/15/97

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SCS CSHB 9 (JUD)

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: ... to the rights of crime victims . collection by BRU: Criminal Division/Civil Division  
victims of restitution . . safety of victims . .amending court rules Component: Criminal Division/General Legal Services  
 Sponsor: Representative Porter  
 Requester: Senate Judiciary Committee 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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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 clarifies the "rights of crime victims" amendment contained in art. I, sec. 24, of the Alaska Constitution. 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. The bill facilitates the collection of restitution by providing that the weekly income and liquid assets exemptions from execution do not apply to collection of court-ordered restitution from a prisoner from funds held outside a correctional facility. Finally, the Senate Judiciary Committee Substitute for HB 9 provides that if the state is appealing an order dismissing an indictment or

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: 4/15/97  
 Date: 4/15/97

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FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SCS CSHB 9 (JUD)

ANALYSIS CONTINUATION:

complaint, or granting a new trial, the defendant will be treated the same as if under pretrial release, and be subject to custody or bail.

SCS CSHB 9(JUD) will have no fiscal impact on the Department of Law.

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SCS CSHB 9 (JUD)

Revision Date: 04/10/97

Dept. Affected: Alaska Court System

Title: Victim's right to be present at trial

BRU: Trial Courts

Component: \_\_\_\_\_

Sponsor: Rep. Porter

Requestor: Senate Judiciary

COMPONENT SERIAL NO. 768

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						
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CHANGE IN REVENUES (						
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Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal imp. act.

Prepared by: Doug Woolver, Administrative Attorney

Agency: Alaska Court System

Phone: 264-8265

Date: 04/10/97

Approved by: Stephanie J. Cole, Acting Administrative Director

Agency: Alaska Court System

Date: 04/10/97

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# SENATE COMMITTEE REPORT

DATE: 3/10/97

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: 4/15/97

Judiciary Committee considered CS FOR HOUSE BILL NO. 9(FIN) am

VICTIM'S RIGHT TO BE PRESENT AT TRIAL

and recommends:

- be replaced with SS CS HB 9 (JUD)
- adopt previous CS ( )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical change
  - new: SCR# 12

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>John Harnell</i>	✓		
		<i>John Eilers</i>	✓		
CHAIR: <i>John Harnell</i>		CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
FISCAL NOTES			
FORTHCOMING			

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
COURTS	1/23/97	⊖	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

A M E N D M E N T

TO: CSHB 9(FIN) am

BY:

Page 4, following line 29:

Insert a new bill section to read:

**\*\* Sec. 12.** AS 12.30 is amended by adding a new section to read:

**Sec. 12.30.035. Release pending appeal by state.** If the state appeals an order dismissing an indictment, information, or complaint, or granting a new trial after verdict or judgment, the court shall treat the defendant in accordance with the provisions governing pretrial release under this chapter.”

Renumber the following bill sections accordingly.

Page 9, following line 9:

Insert a new bill section to read:

**\*\* Sec. 24.** Rule 43(d), Alaska Rules of Criminal Procedure, is amended to read:

**(d) Discharge from Custody - Exoneration of bail.** Except as provided in AS 12.30.035, when [WHEN] dismissal is ordered pursuant to this rule the defendant shall be discharged from custody, or if admitted to bail, the bail exonerated, or money deposited in lieu thereof refunded to the depositors.”

Renumber the following sections accordingly.

Page 9, line 10:

Following "(c)":

Insert "and (d)"

Page 9, following line 17:

Insert the following:

"(d) Sections 12 and 24 this Act apply to all criminal prosecutions and appeals pending on or arising after the effective date of secs. 12 and 24 this Act, regardless of whether the prosecution was initiated or the appeal was filed before the effective date secs. 12 and 24 of this Act.

\* Sec. 26. Sections 12 and 24 of this Act take effect immediately in accordance with AS 10.01.070(c)."

Renumber the following bill section accordingly.

Page 9, following line 18:

Delete all material and insert the following:

"\* Sec. 27. Except as provided in sec. 26 of this Act, this Act takes effect July 1, 1997."

**DEPARTMENT OF LAW**

*CRIMINAL DIVISION*

April 9, 1997

**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

The Honorable Brian Porter  
Alaska House of Representatives  
State Capitol, Room 216  
Juneau, Alaska 99801-1182

Re: CSHB 9 (FIN)am.

Dear Representative Porter:

Thank you for agreeing to propose the attached amendment to CSHB 9 (FIN)am. We have suggested this amendment because on March 17, 1997, the Alaska Supreme Court issued a decision that could have serious consequences for public safety. The court's holding is this: when a trial court grants a defendant's motion to dismiss the indictment, and the state appeals the dismissal, the defendant is entitled to unconditional release pending resolution of the appeal, regardless of whether the dismissal order was mistaken, regardless of whether the defendant poses an extreme danger to the public, and regardless of whether the defendant will flee the state.

It is unreasonable and potentially dangerous to deny the trial courts the authority to stay an order of dismissal pending appeal. The trial courts are not infallible, and will occasionally err in granting a defendant's motion to dismiss an indictment. If the supreme court's holding is given effect, an erroneous dismissal of an indictment will lead inevitably to the unconditional release of the offender. The state's right to appeal the dismissal will be reduced to a nullity, since the defendant can flee the jurisdiction while the appeal is pending.

In the long run, the supreme court's rule will not always advance the interests of criminal defendants. A judge who is faced with the prospect of releasing unconditionally a dangerous defendant may well be influenced by this prospect in the resolution of the defendant's motion to dismiss. That is, when confronted by a difficult legal question, the trial judge may well resolve doubts in favor of the state.

The Honorable Brian Porter  
Alaska House of Representatives

April 9, 1997  
Page 2

In the federal courts, this situation is specifically addressed by statute, 18 U.S.C. § 3143(c). This statute provides that, in a case where the government has appealed, the release of the defendant shall be governed by the same provisions that govern release before trial. This amendment is modeled after 18 U.S.C. § 3143(c).

Thank you for your help.

Sincerely

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:



Anne D. Carpeneti  
Assistant Attorney General

ADC:tg

Enclosure

cc:

(3) No response shall be made to a motion for reconsideration unless requested by the court, but a motion for reconsideration will ordinarily not be granted in the absence of such a request.

(4) If the motion for reconsideration has not been ruled upon by the court within 30 days from the date of the filing of the motion, or within 30 days of the date of filing of a response requested by the court, whichever is later, the motion shall be taken as denied.

(5) The court, on its own motion, may reconsider a ruling at any time not later than 10 days from the date of notice of the final judgment in the case.

(l) **Citation of Supplemental Authorities.** When pertinent authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, the party may promptly advise the court, by letter, with a copy to adversary counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the letter may not contain argument or explanations. Any response must be made promptly and must be similarly limited.

(m) **No Effect on Substantive Law.** Nothing in this rule should be construed as allocating the burden of pleading or production to any party.

(n) **Variations on Time Periods.** The court may vary any of the time periods established in this rule for good cause shown.

(Adopted by SCO 4, October 4, 1959; repealed and reenacted by SCO 1126 effective July 15, 1993)

**Rule 43. Dismissal.**

(a) **By Prosecuting Attorney.** The prosecuting attorney may file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal shall not be filed during the trial without the consent of the defendant.

(b) **By Court.** If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the superior court, or if there is unnecessary delay in bringing a defendant to trial pursuant to Criminal Rule 45, the court shall dismiss the indictment, information or complaint.

(c) **In Furtherance of Justice.** The court may, either on its own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action, after indictment or waiver of indictment, to be dismissed. The reasons for the dismissal shall be set forth in the order.

(d) **Discharge from Custody — Exoneration of Bail.** When dismissal is ordered pursuant to this rule

the defendant shall be discharged from custody, or if admitted to bail, the bail exonerated, or money deposited in lieu thereof refunded to the depositors.

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; amended by SCO 157 effective February 15, 1973; and by SCO 1153 effective July 15, 1994)

**Cross References**

(a) **CROSS REFERENCES:** AS 12.20.020; AS 12.20.050

**Annotations**

**Cases**

Right to speedy-trial was waived by failure to assert it. *Goss v. State*, Op. No. 193, 390 P2d 220 (Alaska 1964).

This rule does not authorize court to accept plea of guilty to lesser included offense without concurrence of district attorney. *State v. Carlson*, Op. No. 1327, 555 P2d 269 (Alaska 1976).

Trial judge did not abuse his discretion in reinstating by court order a dismissed rape charge without reindictment. *Morgan v. State*, Op. No. 320, 673 P2d 897 (Alaska App. 1983).

Trial judge did not abuse his discretion in ordering the State to give use immunity to a witness or, in the interest of justice, face dismissal of sexual abuse charges against defendant. *State v. Echols*, Op. No. 1045, 793 P2d 1066 (Alaska App. 1990).

**Rule 43.1 Clerk's Authority.**

Unless otherwise ordered by the court, the clerk is authorized to quash or recall warrants, summonses, and orders to show cause where it is uncontroverted or clearly proven that:

(a) The defendant has paid the fine or restitution for which the warrant, summons, or order to show cause was issued;

(b) The defendant has posted the bail listed on the warrant; or

(c) The charging document for which the warrant, summons, or order to show cause was issued has been dismissed or withdrawn.

(Adopted by SCO 1079 effective January 15, 1992)

**Rule 44. Service and Filing of Papers.**

(a) **Service — When Required.** Written motions other than those which are heard ex parte, written notices, and similar papers shall be served upon the adverse parties.

(b) **Service — How Made.** Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is

I am testifying today in support of House Bill 9. As a legal advocate at the Tundra Women's Coalition here in Bethel I have accompanied many victims of domestic violence and sexual assault to court. Victims often feel nervous and scared when they go to court. They fear seeing the defendant again, perhaps for the first time since the incident. However, they also fear how they, as a victim, will be attacked in court. Traditional defenses for crimes of domestic violence and sexual assault often place the victim on trial instead of the defendant. We sometimes forget that when a victim finds the courage to testify in a courtroom she is fighting not only to punish the defendant but she is also fighting to clear herself of the gossip, ridicule, and shame that our society places on her and is reinforced in the courtroom. By barring her from hearing testimony of other witnesses we often give defense attorneys full license to slander and blame victims. As long as victims are prohibited from hearing the entire trial, unlike the defendant a victim is often unable to "face her accuser."

We need to acknowledge that victims of violent crime are often victims of the criminal justice system as well. We should encourage victims to become active participants in the criminal justice process rather than treat them as simply another piece of evidence. By allowing victims to be present during the entire trial we take one step towards showing victims of violent crime the respect they deserve.

*Connie Trumble*

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

April 1, 1997

**SUBJECT:** Sequestration of Victim-Witnesses (Work Order No. 20-LS0088\K)

**TO:** Senator Robin Taylor  
Attn: Joe Ambrose

**FROM:** Gerald P. Luckhaupt *JGL*  
Legislative Counsel

You have asked if Rule 615, Alaska Rules of Evidence, is in conflict with Art. I, § 24, Constitution of Alaska? You have also asked if there are any constitutional problems with CSHB 9(FIN) providing that a court may never sequester a victim-witness?

Art. I, § 24, Constitution of Alaska, provides that a crime victim shall have "the right to obtain information about and be present at all criminal or juvenile proceedings where the accused has a right to be present. . . ." Rule 615, A.R.E., provides "[a]t the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order on its own motion."

To the best of the limited research I have performed the sequestration of witnesses, as permitted in Rule 615, is not a constitutional right of the defendant. It is my opinion that to the extent that a court routinely sequesters victim-witnesses from the courtroom pursuant to Rule 615, then the court is violating the spirit and intent of Art. I, § 24.<sup>1</sup>

It is also my opinion that CSHB 9(FIN), by providing that a court can never sequester a victim-witness from the courtroom before the victim-witness testifies, could run afoul of other constitutional provisions in a particular case. A defendant's right to procedural due process could be implicated if the defendant were able to make a sufficient factual showing that allowing a particular victim-witness to be present in the courtroom during the testimony of other witnesses denies the defendant an opportunity for a fair trial. This burden would

---

<sup>1</sup>There is a question as to whether Art. I, § 24 is self-executing. The opening language of the amendment provides: "Crime victims, as defined by law, shall have the following rights as provided by law. . . ." Absent legislative action defining the reach of Art. I, § 24, it can be argued that there is no present conflict between Rule 615, A.R.E., and Art. I, § 24.

Senator Robin Taylor

April 1, 1997

Page 2

probably be quite rigorous; for example, the burden may be on the defendant to show that a victim-witness has actually made statements that he or she will color his or her testimony based upon what other witnesses are going to testify to. If a defendant were to meet this burden so that the defendant's right to a fair trial is implicated by allowing a victim-witness to remain in the courtroom, I believe that the dictates of Art. I, § 24, as implemented by CSHB 9(FIN) would have to fall in the face of a sequestration request that was of constitutional magnitude to guarantee a defendant a fair trial, considering the loss of liberty the defendant is facing.

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# Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER



SESSION:  
STATE CAPITOL ROOM 216  
JUNEAU, ALASKA 99501-1182  
PHONE: (907) 465-4930  
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MEMBER  
HOUSE JUDICIARY COMMITTEE  
HOUSE RULES COMMITTEE  
HEALTH, EDU. & SOCIAL SERVICES COMMITTEE  
LEGISLATIVE COUNCIL JOINT COMMITTEE

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ANCHORAGE, AK 99501-2133  
PHONE: (907) 258-8197  
FAX: (907) 258-5510

**DISTRICT 20**

## SPONSOR STATEMENT

For

### HB 9 RIGHT OF CRIME VICTIMS AND VICTIMS OF JUVENILE OFFENSES TO BE PRESENT AT COURT PROCEEDINGS

The Constitution of the State of Alaska was amended in 1994 by adding to Article 1, a new Section 24, which specifically extended to crime victims "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..."

Currently at least two Superior Court judges are interpreting the Alaska Statutes, and Rule 615, Alaska Rules of Evidence, to exclude victims of crimes and juvenile offenses from being present in the courtroom during a trial of the accused until after the victim has testified.

This bill is then offered to implement the mandate of the 1994 Amendment to the Constitution and to make absolutely clear to the judiciary a crime victim's right to be present at the trial and other proceedings of the accused, including juvenile proceedings, whenever the accused has the right to be present.

# Alaska State Legislature



Official Business

House Majority Leader

State Capitol  
Juneau, AK 99801-1182  
(907) 465-3718

## SECTIONAL ANALYSIS

OF

### CS FOR HOUSE BILL NO. 9(FIN)

Sections 1, 2, 14, 15, 17, 20 and 21 of this Act clarify the right of crime victims to be present at all criminal or juvenile proceedings where the accused or juvenile has the right to be present.

Sections 3, 4, 5, and 6 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. Under present law, assets held inside the institution are already available to victims under AS 09.38.030(f).

Section 7 amends the definition of "incapacitated" in the sexual assault statutes. Sexual Assault in the Third Degree prohibits, for example, 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, and that the victim was temporarily unable to express unwillingness to act. At present the statutes require the state to prove both in order to establish its case.

Section 8 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 domestic violence crime to the police.

Sections 9, 10, 11, and 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).

Section 14 allows a crime victim to testify before a three judge sentencing panel.

Section 16 provides that applications for compensation and personally identifying information are confidential records in proceedings before the Violent Crimes Compensation Board.

Section 18 allows victims who are subpoenaed to testify before a 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 Alaska Evidence Rule 404(b) 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.

Section 21 repeals Alaska Delinquency Rule 3(c) because the definition of "victim" is no longer required under the circumstances summarized in Section 18.

Section 22 repeals Rule 6(U)(4), Alaska Rules of Criminal Procedure.

Sections 23 - 24 include applicability and effective date provisions.

Date: January 15, 1997

To: Representative Joe Green  
Chairman, House Judiciary Committee

From: Representative Brian Porter  
House Majority Leader

Subject: Additional Sectional Analysis of HB 9

In general, at common law it was within the discretion of a trial judge to exclude witnesses from the courtroom during a trial on the theory that a witness who sits through a court proceeding could shape his or her testimony to match the testimony given by other witnesses. Even at common law, however, the exclusion of witnesses applied only to ordinary witnesses, and not to witnesses who were also parties to the litigation. The exemptions from exclusion enjoyed by party witnesses extended to prosecution witnesses in criminal proceedings. So under common law, a judge exercising sound discretion generally refused to exclude crime victims from the trial of an accused.

The reason underlying the common law exception which allowed crime victims to be present throughout a trial is that a crime victim's presence at the prosecutor's table was necessary in most instances because the crime victim was the only person with personal knowledge of what occurred during the criminal activity. Information which the crime victim could furnish to the prosecutor during the course of the trial could not be obtained from anyone else other than the crime victim. Excluding the crime victim would, in almost all cases, place the state at an enormous disadvantage. See *Miller v. State*, 648 N.E. 2d 1208, 1210 (Ind. 1995).

This rationale was implicitly accepted by the Alaska Supreme Court in a decision which predated Alaska's adoption of the Federal Rules of Evidence in 1979. In *Dickens v. State*, 398 P.2d 1008 (Ak. 1965), the court upheld the right of a police officer who was in charge of a criminal investigation to remain in the courtroom, despite the fact that he was to testify during the trial.

With the adoption of the Federal Rules of Evidence by Congress in 1973, the issue of which witnesses should or should not be excluded was finally settled in the federal courts. Federal Evidence Rule 615 mandated that a party witness could not be excluded if the party was a "natural person". By definition, all crime victims are "natural persons". The Federal Evidence Rules applied to both civil and criminal cases. Moreover, under the Federal

Evidence Rule 615, there no longer was discretion to exclude a party witness. It was now mandatory for a judge to refuse to exclude a crime victim from the trial of the accused.

Effective August 1, 1979, Alaska adopted, with few modifications, the Federal Rules of Evidence. Alaska Evidence Rule 615, as adopted, was virtually identical to the Federal Evidence Rule 615. The provisions regarding nonexclusion of party witnesses was identical in both the Federal and Alaska versions of Rule 615.

The Alaska Evidence Rules Commentary to Rule 615 reiterate the consistency of interpretations between Federal and Alaska Evidence Rules 615. In Alaska, natural persons who are parties clearly have the right to be present at criminal trials.

Even though Alaska Evidence Rule 615 on its face expressly makes mandatory the nonexclusion of a party witness, at least two Alaska Superior Court judges have insisted on exercising discretionary powers to exclude crime victims. This is so despite the absence of discretion under the applicable portion of Rule 615. Apparently state and municipal authorities have neither the inclination nor the means to take the issue to the Alaska Supreme Court.

A similar problem may have arisen in New Hampshire, since that state's Evidence Rule 615 now specifically includes "a victim of the crime" provision to the category of party witnesses who are exempt from exclusion. See New Hampshire Evidence Rule 615, attached hereto as exhibit A. This could serve as a model for the very minor changes which will need to be made to Alaska Rule 615. See also *State v. Hamil*, 547 A.2d 223, 224 (N.H. 1988) in which the Supreme Court of New Hampshire affirmed that the trial court was correct in refusing to exclude the crime victim from the court room on the basis of its Evidence Rule 615, which explicitly exempted "a victim of crime" from being excluded during the trial.

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Became Law 3/11/97

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## Victim Rights Clarification Act of 1997 (Enrolled Bill (Sent to President))

--H.R.924--

H.R.924

*One Hundred Fifth Congress*  
*of the*  
*United States of America*  
**AT THE FIRST SESSION**

*Begun and held at the City of Washington on Tuesday,*

*the seventh day of January, one thousand nine hundred and ninety-seven*

**An Act**

*To amend title 18, United States Code, to give further assurance to the right of victims of crime to attend and observe the trials of those accused of the crime.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE.**

*This Act may be cited as the 'Victim Rights Clarification Act of 1997'.*

### **SEC. 2. RIGHTS OF VICTIMS TO ATTEND AND OBSERVE TRIAL.**

*(a) IN GENERAL- Chapter 223 of title 18, United States Code, is amended by adding at the end the following:*

**Sec. 3510. Rights of victims to attend and observe trial.**

*(a) NON-CAPITAL CASES- Notwithstanding any statute, rule, or other provision of law, a United States district court shall not order any victim of an offense excluded from the trial of a defendant accused of that offense because such victim may, during the sentencing hearing, make a statement or present any information in relation to the sentence.*

*(b) CAPITAL CASES- Notwithstanding any statute, rule, or other provision of law, a United States district court shall not order any victim of an offense excluded from the trial of a defendant accused of that offense because such victim may, during the sentencing hearing, testify as to the effect of the offense on the victim and the victim's family or as to any other factor for which notice is required under section 3593(a).*

*(c) DEFINITION- As used in this section, the term 'victim' includes all persons defined as victims in section 503(e)(2) of the Victims' Rights and Restitution Act of 1990.'*

*(b) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 223 of title 18, United States Code, is amended by adding at the end the following new item:*

*'3510. Rights of victims to attend and observe trial.'*

*(c) CLARIFICATION OF GROUNDS FOR EXCLUSION- Section 3593(c) of title 18, United States Code, is amended by inserting 'For the purposes of the preceding sentence, the fact that a victim, as defined in section 3510, attended or observed the trial shall not be construed to pose a danger of creating unfair prejudice, confusing the issues, or misleading the jury.' after 'misleading the jury.'*

*(d) EFFECT ON PENDING CASES- The amendments made by this section shall apply in cases pending on the date of the enactment of this Act.*

*Speaker of the House of Representatives.*

*Vice President of the United States and*

*President of the Senate.*

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--H.R.924--

H.R.924

One Hundred Fifth Congress  
of the

United States of America

AT THE FIRST SESSION

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Speaker of the House of Representatives.  
Vice President of the United States and  
President of the Senate.

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Text of 924

5 of 5 items

CO's WASHINGTON ALERT 03/21/97

HR924 McCollum (R-FL) 03/19/97 (50 lines)  
Enrolled (Finally passed both houses)

Victim Allocation Clarification Act of 1997.

No special typefaces used in this bill version.  
Item Key: 2210

H.924

One Hundred Fifth Congress

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of the

United States of America

AT THE FIRST SESSION

Began and held at the City of Washington on Tuesday,  
the seventh day of January, one thousand nine hundred and

ninety-seven

AN ACT

PL 105-6  
HAS BEEN  
SIGNED INTO  
LAW ACCORDING  
TO SEN. MURKOWSKI'S  
OFFICE.



To amend title 18, United States Code, to give further assurance to  
the right of victims of crime to attend and observe the trials of  
those accused of the crime.

Be it enacted by the Senate and House of Representatives of the  
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Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

There are no more items to read.

Enter one or more numbers or ALL to display item(s).  
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physical examination of the victim which are necessary for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense. This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c).

(e) Definitions. For the purposes of this section—

(1) the term "responsible official" means a person designated pursuant to subsection (a) to perform the functions of a responsible official under that section; and

(2) the term "victim" means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

- (i) a spouse;
- (ii) a legal guardian;
- (iii) a parent;
- (iv) a child;
- (v) a sibling;
- (vi) another family member; or
- (vii) another person designated by the court.

(Nov. 29, 1990, P. L. 101-647, Title V, § 503, 104 Stat. 4820; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle E, § 40503(a), 108 Stat. 1946.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### References in text:

"Section 1102(b)(4)", referred to in this section, is probably a reference to § 502(b)(4) of Act Nov. 29, 1990, P. L. 101-647, which appears as 42 USC § 10606(b)(4).

##### Explanatory notes:

This section was enacted as part of Act Nov. 29, 1990, P. L. 101-647, Title V, 104 Stat. 4821, and not as part of Act Oct. 12, 1984, P. L. 98-473, which generally comprises this chapter.

##### Amendments:

1994, Act Sept. 13, 1994, in subsec. (c), added the sentence beginning "The Attorney General shall provide . . ."

#### RESEARCH GUIDE

##### Annotations:

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 ALR5th 391.

### CHAPTER 113. STATE JUSTICE INSTITUTE

#### § 10701. Definitions

As used in this title, the term—

(1)–(5) [Unchanged]

(6) "State" means any State of the United States; the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(7) "Supreme Court" means the highest appellate court within a State unless, for the purposes of this title, a constitutionally or legislatively established judicial council acts in place of that court; and

(8) "domestic violence" means—

(A) any action that constitutes—

(i) attempting to cause or intentionally, knowingly, or recklessly causing bodily injury or physical illness;

(ii) rape, sexual assault, or causing involuntary deviate sexual intercourse;

(iii) placing by physical menace another in fear of imminent serious bodily injury; or

(iv) the infliction of false imprisonment;

if such action is taken by one of 2 spouses, former spouses, or sexual or intimate partners against the other spouse, former spouse, or partner and the 2 of whom share biological parenthood of, have adopted, are legal custodians of, or are stepparents of a minor child; or

(B) physically or sexually abusing such minor child if such abuse is inflicted by either of such spouses, former spouses, or partners.

Amendments:  
1992, Act Oct. 27, 1992  
for the concluding period

§ 10702. Establishment of (a)–(e) [Unchanged]

(f) Rules, regulations, etc. opportunity for comment, conditions under this title, and instructions. The publication date of such rule, except with the rule.

(As amended Nov. 18, 1988 P. L. 100-702, Title VI, § 6

Amendments:  
1988, Act Nov. 18, 1988, in s. 1992, Act Oct. 27, 1992, less than 30 days before good cause found and

Other provisions:  
Battered Women's Testimony Act, Section 1. Short title "This Act may be cited as 'The State Justice Institute'."

"(1) collect national information from sources particularly in

"(2) develop training programs for attorneys to using indigent victims to providing services

"(3) disseminate information and assistance to battered women

"Sec. 3. Administration. For purposes of this section, (1) subsections (d) and (e) (2) subsections (d) and (e) in the same manner

"Sec. 4. Authorization. There is authorized to be appropriated

#### § 10703. Board of Directors

(a) Appointment and term of office

(3) The President shall submit a list of at least 10 members to the Conference. The Conference shall appoint a new member to fill the vacancy. The Conference of Chief Justices shall submit to the President, the Chief Justice of the United States, and the interested organizations of this title.

(4)–(6) [Unchanged]

(b)–(k) [Unchanged]

(As amended Oct. 29, 1992)

Copr. (C) West 1997 No claim to orig. U.S. govt. works

Citation Rank(R) Page(P) Database Mode  
NH R REV Rule 615 R 1 OF 1 P 1 OF 3 NH-RULES TERM  
New Hampshire Rules of EVIDENCE, RULE 615

WEST'S NEW HAMPSHIRE RULES OF COURT  
NEW HAMPSHIRE RULES OF EVIDENCE  
ARTICLE VI. WITNESSES

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Current with amendments received through 12-15-95

**RULE 615. EXCLUSION OF WITNESSES**

At the request of a party the court shall in criminal cases and may in civil cases order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person or a victim of the crime or (2) an officer or employee of a party in a civil case which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

**Federal Rule: Exclusion of Witnesses.**

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.

Current New Hampshire Law: New Hampshire law is silent on the subject matter of this Rule.

**Reporter's Notes**

Sequestration of witnesses in criminal trials has long been New Hampshire practice. *State v. Peters*, 90 N.H. 438, 10 A.2d 242 (1939). There does not appear to be any express rule with respect to exclusion of witnesses in civil proceedings. Nor does there appear to be any express clarification of which persons are allowed to remain in attendance, such as exists in the Federal Rule. This Rule appears to be consistent with the considerable discretion allowed trial judges.

Under this Rule requests for sequestration of witnesses in criminal cases must be honored, while such requests in civil proceedings should be within

the discretion of the trial judge.

The Rule is not intended to exclude the police prosecutor in a criminal case.

duction cost evidence or, concomitantly, in instructing the jury that it might consider such evidence.

would not color his testimony by listening to other witnesses.

Affirmed.

[5] The housing authority also contends that the trial judge improperly suggested to the jury that the property's physical condition made it unique. We find no merit in MHA's contention, first, because it presupposes a uniqueness requirement that we decline to adopt, for the reasons provided above. In addition, however, our consideration of the instruction reveals the trial judge's purpose, in referring to fire damage and deterioration, to explain the unavailability of comparable sales rather than to describe any uniqueness of the property.

Because we now affirm the result reached below, we need not address the issues raised in the cross-appeal.

AFFIRMED.

THAYER, J., did not sit; the others concurred.



The STATE of New Hampshire

v.

Gilbert HAMEL.

No. 87-246.

Supreme Court of New Hampshire.

July 8, 1988.

Defendant was convicted in the Superior Court, Hillsborough County, O'Neil, J., as accomplice to robbery. Defendant appealed. The Supreme Court, Batchelder, J., held that: (1) trial court was not authorized to sequester victim as witness, and (2) trial court did not abuse discretion by failing to order State to present allegedly inebriated victim as first witness so that he

1. Criminal Law  $\S$ 665(1)

Trial court must order sequestration of witnesses in criminal cases upon request. Rules of Evid., Rule 615.

2. Criminal Law  $\S$ 665(2)

Trial court was not authorized to sequester victim as witness. Rules of Evid., Rule 615.

3. Criminal Law  $\S$ 680(1)

Trial court's decision to direct order of witnesses lies within its sound discretion.

4. Criminal Law  $\S$ 680(1)

Trial court did not abuse discretion by failing to order State to present victim, who was allegedly inebriated during crime, as first witness so that he would not color his testimony by listening to other witnesses; defendant made only conclusory allegations that police officer's testimony gave victim unfair opportunity to color his testimony.

5. Criminal Law  $\S$ 1168(2)

Trial court's failure to require State to present victim, who was allegedly inebriated during crime, as first witness so that he would not color his testimony by hearing other witnesses did not require reversal in prosecution for being accomplice to robbery; record did not indicate that victim colored testimony to conform to that of police officer; and defendant unsuccessfully tried to impeach victim's ability to perceive and relate facts and presented defense witness who gave different account of victim's activities on night of incident. RSA 626:8, 636:1.

Stephen E. Merrill, Atty. Gen. (T. David Plourde, Asst. Atty. Gen., on the brief), for the State.

Joanne Green, Asst. Appellate Defender, Concord, for defendant.

## BATCHELDER, Justice.

The defendant was convicted after a jury trial in Superior Court (O'Neil, J.) of accomplice to robbery. RSA 626:8; RSA 636:1. He was sentenced to twelve months at the county house of correction, with a twelve-month probation period following incarceration, and ordered to make restitution in the amount of \$100. We affirm.

The testimony in this case reveals that in the early morning of October 9, 1986, the victim, Roland Roy, reported that he had been robbed by a group of five young men outside the Mayflower restaurant in Manchester. Roy testified at trial that, upon leaving the restaurant after an afternoon and evening of heavy drinking, he encountered the group of men and agreed to accompany them to a nearby party. He recognized one of the men as the brother of a former girlfriend. He later identified the man by name as the defendant, but not until after he had overheard Officer Kinney of the Manchester Police Department mention the name to another officer. According to Roy, as the group was en route to the party, he was struck in the face by one of the men and fell to the ground. He testified that the defendant kneeled on his chest and pinned him down while one of the other men took his wallet, which contained approximately \$80. Roy further testified that after he was released he called to the fleeing men, "Hamel, give me back my wallet."

Officer Kinney testified before Roy at trial. He described Roy's disheveled physical appearance, including his apparent drunkenness, and testified that he took a description of the defendant from Roy. He added that Roy identified the defendant by name after Kinney mentioned it. He further testified that he saw a group of several young men in the area at the approximate time of the reported robbery.

Prior to trial, the defendant moved to sequester all of the witnesses, which included the two State's witnesses, Roy and Officer Kinney, to prevent them from hearing each other's testimony. The defendant argued that Roy's drunkenness at the time of the incident rendered his potential testi-

mony suspect, and that he should not be permitted the opportunity to conform his testimony to that of Officer Kinney. The defendant suggested, alternatively, that the trial court could order the State to present Roy's testimony first. The trial court granted the sequestration motion except with respect to Roy.

The defendant pursues the same issue on appeal. He claims that under the circumstances of this case it was an abuse of discretion for the trial court not to have sequestered the victim-witness or, in the alternative, to have directed the State to call the victim as its first witness. The State argues, on the other hand, that Rule 615 of the New Hampshire Rules of Evidence precludes the trial court from sequestering the victim of the crime and that, in any event, the defendant has failed to show any prejudice as a result of the trial court's complete denial of relief.

[1, 2] Rule 615 of the New Hampshire Rules of Evidence provides, in pertinent part:

"At the request of a party the court shall in criminal cases . . . order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) . . . a victim of the crime . . ."

N.H.R.Ev. 615. The rule alters our common law to the extent that sequestration of witnesses in criminal cases has traditionally been within the discretion of the trial court. See *State v. Blake*, 113 N.H. 115, 119, 305 A.2d 300, 303 (1973); *State v. Peters*, 90 N.H. 438, 439, 10 A.2d 242, 244 (1939). Under the rule, the trial court must order sequestration in criminal cases upon request. The rule also plainly states that it does not authorize the trial court to exclude the victim of the crime. The trial court here cannot then be said to have committed error with respect to its refusal to sequester Roy.

[3, 4] The defendant's alternative request for the court to direct the order of the State's witnesses requires a different analysis. Authorities have suggested that in certain cases it may be appropriate for a

BEDFORD RESIDENTS v. BEDFORD PLANNING BD. N.H. 225

Cite as 547 A.2d 225 (N.H. 1988)

trial court to direct the order of witnesses so as to achieve the same purpose as that underlying sequestration; i.e., to prevent witnesses from conforming their testimony to that of others. See 6 Wigmore, *Evidence* § 1841, at 476 (Chadbourn rev. 1976) (where party witness not excluded); see also 88 C.J.S. *Trial* § 68 (1955). That decision, however, lies within the sound discretion of the trial court, and it will not be upset on review absent a showing of abuse of discretion. Cf. *McKinney v. Riley*, 105 N.H. 249; 250, 197 A.2d 218, 220 (1964) (order of calling witnesses, at least in civil case, rests in sound discretion of trial court); 6 Wigmore *supra*. Moreover, as the State argues, establishing abuse of discretion necessarily entails a showing of prejudice to the defendant by the trial court's decision. See C. Torcia, *Wharton's Criminal Evidence* § 376, at 502-03 (14th ed. 1986) (denial of motion to sequester not reversible error absent a showing of prejudice); cf. *State v. Hotchkiss*, 129 N.H. 260, 264, 525 A.2d 270, 272 (1987) (admission of evidence must be to prejudice of defendant to constitute abuse of discretion). We are also mindful that the presentation of evidence, which includes the order in which witnesses are called, is a matter of trial strategy for counsel. J. Weinstein & M. Berger, *Weinstein's Evidence* ¶ 611[01], at 611-16 (1987).

[5] Here, the defendant has made only conclusory allegations to the effect that permitting Roy to hear the testimony of Officer Kinney gave Roy an unfair opportunity to color his testimony. Upon review of the record, we do not see that Roy gave testimony that so mirrored that of Officer Kinney as to lead to the conclusion that Roy colored his own testimony to conform to that of Officer Kinney. Nor did the defendant describe any instances in his brief where this occurred. Moreover, defense counsel tried several avenues of impeachment, including focusing on Roy's ability to perceive and relate the facts, as limited by his inebriation, and presenting a defense witness who gave a different account of Roy's activities on the evening of the incident. That the jury was not swayed by these efforts is not enough to

prompt us to overturn the conviction and order a new trial. Finally, while the record reveals that Roy was deposed prior to trial, absent from the record is any attempt on the part of defense counsel to impeach Roy through the use of his deposition.

AFFIRMED.

All concurred.



BEDFORD RESIDENTS GROUP

v.

TOWN OF BEDFORD, PLANNING BOARD, Grove Realty Trust & Roland & Diane Auger.

No. 87-396.

Supreme Court of New Hampshire.

July 11, 1988.

Property owners challenged the validity of a town's zoning amendment. The Superior Court, Hillsborough County, O'Neil, J., found that the property owners had been denied notice. Appeal was taken. The Supreme Court, Johnson, J., held that: (1) the notice provided by the town planning board of the proposed zoning amendment did not comply with the statutory requisites for constructive notice; (2) the defective notice was not cured by subsequent publication of a warrant for the town meeting; and (3) the property owners were not required to exhaust their administrative remedies before challenging the adequacy of notice.

Affirmed.

1. Zoning and Planning ¶194

While property owners need not be afforded actual notice of proposed zoning change, they must be afforded constructive

**Collateral references.** — Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information. 1 ALR4th 959.

Name appropriation by employer or former employer. 52 ALR4th 156.

False light invasion of privacy — cognizability and elements. 57 ALR4th 22.

Invasion of privacy by a clergyman, church, or religious group. 67 ALR4th 1086.

Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guarantee. 74 ALR4th 1099.

**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.

**Effective dates.** — This section took effect January 4, 1989 (15th Legislature's CSHJR 18 (1988).)

**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.

**Effective dates.** — This section took effect December 30, 1994 (18th Legislature's Legislative Resolve No. 58).

## 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.

**Opinions of attorney general.** — Distinction between legislative and executive powers. See July 22, 1976, Op. Att'y Gen.

Vesting authority in the legislative Budget and Audit Committee to approve transfers between appropriation items violates the separation of powers doctrine and is an improper delegation of a legislative function to an interim committee. July 22, 1976 Op. Att'y Gen.

Section 13(3) of the 1976 budget bill, which autho-

ritized the Budget and Audit Committee to supervise the governor's execution of the budget act, specifically over that portion of it which permitted him to transfer appropriation items constituted an encroachment on executive power and offended the Alaska Constitution. July 22, 1976 Op. Att'y Gen.

The apparent invalidity of Alaska's apportionment plan does not transform its legislature into an illegal assembly, prohibited from meeting and enacting laws. 1964 Op. Att'y Gen. No. 4.

#### NOTES TO DECISIONS

Separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision. *Bradner v. Hammond*, 563 P.2d 1 (Alaska 1978).

Confirmation is not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in

some specific instances by constitution to the legislative branch of government. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1978).

Limitation on legislative checks on governor's power. — The lack of ambiguity in Alaska Const., art. III, §§ 25 and 26 mandate that the supreme court interpret these express provisions as embodying not only the maximum parameters of the delegation of the

ALASKA STATE LEGISLATURE  
HOUSE BILL NO. 9

HISTORY IN THE HOUSE

HISTORY IN THE SENATE

1997  
1/13 Read first time and referred to:  
Jud FIN

1/27 Jud RPT CS(Jud) 5 DP 0 DNP 2 NR 0 AM  
FN 4 OFN Previous FN

2/19 Fin RPT CS(FIN) 10 DP 0 DNP 5 NR 0 AM  
FN 1 OFN 2 Previous FN 3

RPT CS( ) New Title  
DP DNP NR AM  
FN OFN Previous FN

3/7 Read second time  
CS(FIN) Adopted

3/7 Amended

3/7 Advanced

3/7 Read third time

Return to second for specific amendment

3/7 PASSED <sup>COURT RULES AND</sup> EFD Same  or  
Yea 29 Yes  
Nays 4 Nays  
Excused 2 Excused  
Absent 5 Absent

Intent adopted

3/7 Reconsideration Kott

3/7 Reconsideration ~~not~~ taken up

3/7 PASSED ON RECON. <sup>COURT RULES AND</sup> EFD Same  or  
Yea 31 Yes  
Nays 4 Nays  
Excused 2 Excused  
Absent 1 Absent

Intent adopted

3/7 Reported correctly engrossed  
Signed by Speaker, to the Senate  
Suzi Lowell  
Chief Clerk of the House

1997  
3/10 Read first time and referred to:  
JUD, FIN

RPT( ) CS DP NR DNP AM  
New Title Same Title Previous FN  
FN OFN To

RPT( ) CS DP NR DNP AM  
New Title Same Title Previous FN  
FN OFN To

RPT( ) CS DP NR DNP AM  
New Title Same Title Previous FN  
FN OFN To

Rules Calendar( ) CS AM Other  
New Title Same Title Previous FN  
FN OFN

Read second time

CS Adopted ( ) New Title  
Amended Advanced

Read third time

Letter of Intent adopted  
Return to second for specific amendment

PASSED EFD Same or  
Yea Yes  
Nays Nays  
Excused Excused  
Absent Absent

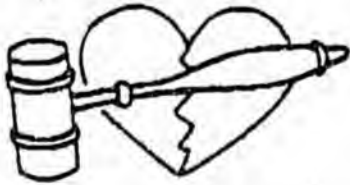
Reconsideration  
Reconsideration not taken up

PASSED EFD Same or  
Yea Yes  
Nays Nays  
Excused Excused  
Absent Absent

Reported correctly engrossed  
Signed by President, to the House

Secretary of the Senate

# VICTIMS



**for Justice** 619 East Fifth Avenue • Anchorage, AK 99501  
(907) 278-0977 • Fax: (907) 258-0740

January 15, 1997

The Honorable Brian Porter  
Alaska House of Representatives  
Juneau, AK 99811

Dear Representative Porter:

My name is Janice Lienhart. I am the co-founder of Victims for Justice in Anchorage. Victims for Justice and its Board of Directors have long been champions in Alaska for the rights of crime victims.

I am joining with scores of other crime victims and concerned citizens across Alaska to support HB 9, "the right of crime victims and victims of juvenile offenses to be present at court proceedings; and amending Rule 615, Alaska Rules of Evidence, by making the witness exclusion rule inapplicable to victims of offenses."

To fully understand the need for this amendment, each of us must answer this question: How would I wish to be treated if I or a loved one were a victim of a violent crime? No one expects or deserves to be a victim of a violent crime. And when that happens victims not only suffer crime's consequences, but are victimized by the criminal justice system as well. Despite the passage of the Alaska's Victims' Bill of Rights Amendment to our state constitution in 1994, Alaskan victims of crime are still being re-victimized. *Because the system is perfectly tolerant of the unequal treatment for victims who are daily excluded from courtrooms because they may be called as witnesses.* Defendants may be witnesses in their own trials but they of course have a right nonetheless to remain in the courtroom. If juries can put aside influences by the defendants they certainly can by victims.

*Providing services to survivors of homicide victims and physical assaults*

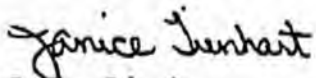
Representative Porter  
Page 2

*The right to be informed of and given the opportunity to be present at every proceeding in which those rights are extended to the accused or convicted offender* should be intended to expressly overturn all witness exclusion rules that presently result in the expulsion of the victims from the courtroom. It should mandate that the same standard be used for the victim and the defendant; hence it should be intended that the same rules govern the presence of the victim that govern the presence of the defendant.

Only when the rights of victims, *such as the right to be present at trial proceedings*, are given equal weight to the rights of the accused, will they be guaranteed protection under the law.

Passage of HB 9 sends a clear message that *victim justice* must be an integral component of criminal justice in Alaska, as well as setting an unprecedented standard for our nation.

Sincerely,



Janice Lienhart  
Executive Director  
Victims for Justice



# MADD

Telephone: (907) 522-6233  
FAX: (907) 522-6234

Mothers Against Drunk Driving

Anchorage Chapter  
615 East 82nd Avenue, Ste. B 1  
Anchorage, AK 99518-3157

DATE: January 16, 1997  
TO: Representative Brian Porter  
FROM: Marti Greeson, Executive Director  
Mothers Against Drunk Driving  
RE: House Bill No. 9

*Marti Greeson*

This letter is in support of House Bill No. 9 which will ensure the protection of a victim's right to be present during criminal proceedings including juvenile proceedings.

The rights of victims as stated in the Victims Rights amendment must be protected at least to the extent that defendant's rights are protected. Victims have been excluded from the criminal justice process and left to suffer unanswered questions, trauma and loss, and frequently second and ensuing victimization through that exclusion far too long.

The fact that a perpetrator of a criminal act is a juvenile does not negate nor diminish the impact and affect of the violation or trauma for the victim.

Please feel free to contact me if you have any questions.

184  
File

STATE OFFICE  
**ALASKA PEACE OFFICERS ASSOCIATION**

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



January 17, 1997

**Business Manager**

Joseph E. Young  
Anchorage

**Board of Directors**

- Michael Corkill, President  
Fairbanks
- Robin Lown, Vice President  
Juneau
- Mike Grimes, Past President  
Anchorage
- Ron Belden, Member  
Kenai  
Pres. Kenai Chapter
- Leo Brandlen, Member  
Anchorage  
Pres. Anchorage Chapter
- Sam Edwards, Member  
Palmer  
Pres. Mat-Su Chapter
- Steve Heckman, Member  
Fairbanks  
Pres. Farthest North Chapter
- Steve Kalwara, Member  
Juneau  
Pres. Capitol City Chapter
- Scott Chafin, Member  
Wrangell  
Pres. Wrangell Chapter
- Leroy Mestas, Member  
Ketchikan  
Pres. First City Chapter
- James See, Member  
Craig  
Pres. Prince of Wales Chapter

Representative Brian Porter  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Dear Representative Porter,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing House Bill 9 relating to the right of crime victims and victims of juvenile offenses to be present at court proceedings and amending Rule 615 of the Alaska Rules of Evidence. At a recent meeting of the APOA State Board, we decided to unanimously support this legislation. We believe that this legislation would better communicate to offenders especially juveniles how their illegal activities affect victims. We also believe that this legislation would further tear down the walls of confidentiality that currently protect juvenile offenders. Finally, we feel that victims should have the right to know how their case is being handled by the courts.

We encourage you to call on us when there are hearings on this bill, so that we may testify about the need for this legislation. If you need assistance as you shepherd this bill through the legislative process, please call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely,

Michael Corkill  
APOA State President

RECEIVED FEB 3 1997

The Honorable Senator Robin Taylor, Chairman  
Judiciary Committee  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Taylor:

I am writing to you to urge you to support HB 9 with an amendment to **NOT LIMIT** the number of victims that can speak at a juvenile proceeding. Victims of crime deserve equal rights to the defendant and have a right to attend all hearings the defendant attends. Healing comes to victims as they are provided with information that enables them to find answers to their victimization. The trial is the vehicle for this closure.

Section 4 line 12 and 13 states "if there are numerous victims of a minor's offense the court may limit the number of victims who may give sworn testimony." Sentencing is the only time in the criminal proceedings that the victim has a say. Therefore, it is important that each family member who wants to speak gets the opportunity to speak at the sentencing, especially in juvenile proceeding. The juvenile **MUST** be told about the traumatic impact his or her crime has on the family and the volumes of other people that are affected by his or her criminal behavior.

The judge should not be the one to choose which family members should speak at the sentencing. Whoever needs to speak at the sentencing should have that right. When a person is murdered studies show there are at least seven to ten family members who experience acute grief. How can a judge decide who is the most important family member to share their pain? This is the victim's day in court and they should have the privilege and more importantly, the constitutional right to be allowed to tell the defendant what their criminal actions do to the family and a community.

Sincerely,

## SUPPORT HOUSE BILL 9 (HB 9)

HB 9 states "that a victim may not be excluded from the courtroom during testimony that occurs when the accused has the right to be present even if the victim is likely to be called as a subsequent witness."

It also states in HB 9 Section 4: line 12 and 13. "If there are numerous victims of a minor's offense, the court may limit the number of victims who may give sworn testimony or make an unsworn oral presentation, but the court may not limit the right of a victim to attend a hearing even if the victim is likely to be a witness in a hearing concerning the minor's alleged offense." **Victims for Justice does not agree with limiting the number of victims who testify.**

Please help Victims for Justice's efforts to support this important legislation, with the amendment of not limiting the number of victims who may give testimony about the impact of the violent crime on them. You can show your support by acting quickly on the following two suggestions:

**1. Send a public opinion message (POM):**

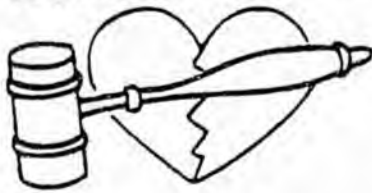
Call the Legislative Information Office at 258-8111. Tell them you would like to send a public opinion message (POM).

They will ask you:

1. Your name
2. Your address
3. Your zip code
4. A day time phone number
5. The bill number (HB 9)
6. Who to (all the legislators)
7. Your message (use the sample below or state in your own words):

**"The Victims' Constitutional Amendment states that victims have the right to be present at all hearings the accused are present at. I strongly support HB 9 with the amendment to not limit the number of victims. HB 9 will guarantee my constitutional right to be present throughout the trial."**

- 2. Write a letter to Senator Robin Taylor, Chairman of the Judiciary Committee. He can influence the committee to support HB 9 if he receives your letter. I am enclosing a sample letter for you to use if you choose. (mail or fax to 1-907-465-3922)**



**for Justice** 619 East Fifth Avenue • Anchorage, AK 99501  
(907) 278-0977 • Fax: (907) 258-0740

January 27, 1997

Dear Friends,

Grief support is **Thursday, February 6th at 7:00 PM and Thursday, February, 20th at 7:00 PM.** The grief support meeting are held in the conference room at Victims for Justice which is located at 619 E. 5th Avenue.

### **You Know You Are Making Progress When**

*Judy Osgood*

**You Know You Are Making Progress When...**

**You can remember your child with a smile.**

**You can reach out to help someone else.**

**You stop dreading the holidays.**

**You can be alone in your house without it bothering you.**

**You can talk about what happened to your child without falling apart.**

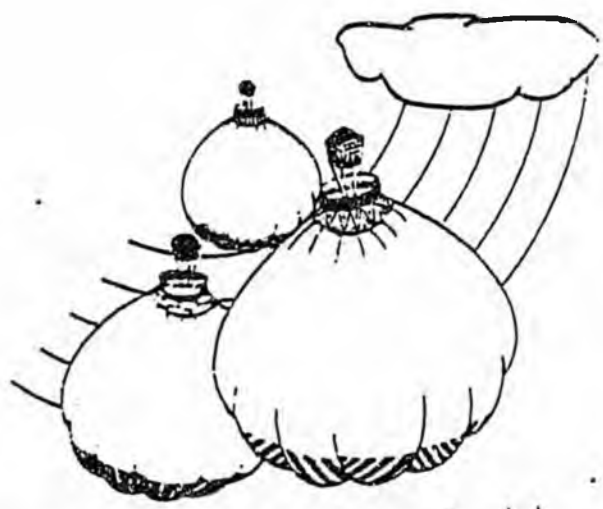
**You no longer feel you have to go to the cemetery every day or week.**

**You can appreciate a sunset, the beauty of freshly fallen snow, and the love of those you have.**

Sincerely,

A handwritten signature in cursive script that reads "Janice Lienhart".

Janice Lienhart




Dear Friends,


# HOPE FOR YOUTH



2-97




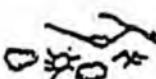
There are points in our grief journey where we can become very FRUSTRATED. 



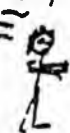
















FRUSTRATION is a feeling we might have when we are both sad and angry together. When we are FRUSTRATED, we may be

"sick and tired" of being in grief.  We

could miss our loved one who died.  and just want them back,  no matter what! We

might think,  "I don't care if my loved one died, or why they died, I just want them

to come back - Now!!!"  Of course, the

feelings of frustration become stronger  when our  
 loved one doesn't return to us  physically.  
 Frustration can become a problem  $\cong x+y=? \cong$  if  
 we don't do anything with it.  Frustration can  
 build up,  and we can become so angry   
 and sad  that we stop talking about our feelings,  
 and stop reaching out to others.  If we do  
 this, we can "build a wall" around ourselves and  
 become very alone  My friends, it is important  
 to know  that we can use frustration to  
 actually HELP  ourselves through our grief  
 journey! Frustration is often necessary for us to  
 CHANGE.  If we become frustrated  and "sick  
 and tired" of things, we might be more willing  
 to take risks  and try new ways  to cope.  
 Taking risks, whether it works or not, will always  
 lead to learning  and growth.  FRUSTRATION  
 can be the feeling that leads us to better paths!  LOVE,   
 MARK 

&gt; 3

3 of 7 items

CQ's WASHINGTON ALERT 03/21/97

\*\*\*FULL REPORT - DIGEST, LEGISLATIVE ACTION, COSPONSORS, SPEECHES\*\*\*

MEASURE:

HR924

SPONSOR:

McCollum (R-FL)

BRIEF TITLE:

Victim Allocation Clarification Act of 1997.

OFFICIAL TITLE: A bill to amend title 18, U.S. Code, to give further assurance to the right of victims of crime to attend and observe the trials of those accused of the crime.

QUICK REFERENCE: Allow victims of crimes to attend court proceedings

INTRODUCED: 03/05/97

-More- (Q = Quit, G = Go, Space Bar = Next Line, Return = Next Screen)

COSPONSORS: 2 (Demo: 1 Rep: 1 Ind: 0)

COMMITTEES:

House Judiciary

RELATED BILLS: Sen S447, SJRes8

CQ BILLWATCH BRIEF:

By Emily Pierce, CQ Staff Writer

As passed by the Senate and the House, HR924 would prevent judges from barring victims of a crime from attending the trial of those accused of the crime.

Currently, victims are allowed to attend sentencing hearings, but some judges do not allow victims to attend the actual trial.

The bill would allow victims who may testify during the sentencing phase to attend the trial also.

While the bill generally applies to all criminal cases, bill cosponsor Frank D. Lucas, R-Okla., said he supported the measure because he felt the victims of the April 1995 bombing of a federal building in Oklahoma City deserved to be present at the trial of the accused bomber. A provision in the bill would allow the act to apply to cases currently pending in court, such as the trial of Timothy McVeigh, the alleged Oklahoma City bomber.

Bill supporters contend that no one will be negatively impacted by the bill, but Massachusetts Democrat Bill Delahunt said that HR924 "strikes at the integrity of the judicial process" and "may ultimately do a disservice to the very victims."

**CQ BILLWATCH INSIGHT:**

The Senate passed HR924 by a voice vote, with no debate, on March 18, 1997. The measure has been cleared for the president's signature.

The House passed the bill by a voice vote on March 18 under suspension of the rules, an expedited procedure that limits debate and requires a two-thirds majority of members present for passage.

The House Judiciary Committee approved the bill on March 12 after amending it to clarify that victims could testify at a sentencing hearing even if they attend the trial.

The committee rejected amendments by Democratic opponents of the measure that would have exempted cases currently pending in court and cases in which the death penalty may be invoked.

2

## SHORT TITLE AS INTRODUCED:

Victim Allocation Clarification Act of 1997

## LEGISLATIVE ACTION:

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01/21/97 \*\*\* Related measure (S.1558) Introduced in Senate. \*\*\*

03/05/97 Referred to Committee on the Judiciary (CR p. H765)

03/06/97 Original Cosponsor(s): 2  
Lucas (R-OK) Schumer (D-NY)03/06/97 Subcommittee consideration and markup held by the House  
Judiciary Committee, Subcommittee on Crime. (CR p. D197)03/08/97 \*\* SUBCOMMITTEE VOTE \*\* HR924. Victim Allocation  
Clarification Act of 1997/Vote to Report. Prevent federal  
judges from excluding witnesses who wish only to make  
"victim impact statements" related to the sentencing of a  
defendant after the fact-finding portion of a trial is  
completed. Approved en bloc with other legislation by  
voice vote March 8, 1997.03/08/97 Approved for full committee action by the House Judiciary  
Committee, Subcommittee on Crime. (CR p. D197)03/12/97 Committee consideration and markup session held by the  
House Judiciary Committee. (CR p. D228)03/12/97 \*\* COMMITTEE VOTE \*\* HR924. Victim Allocation  
Clarification Act/Sentencing hearing. McCollum, R-Fla.,  
amendment that would clarify that victims could testify  
with a victim impact statement during the sentencing  
hearing of a defendant even if the victim is present  
during the trial. Approved by voice vote March 12, 1997.03/12/97 \*\* COMMITTEE VOTE \*\* HR924. Victim Allocation  
Clarification Act/Pending cases. Scott, D-Va., amendment  
that would require that the provisions of the bill not  
apply to cases currently pending in court. Rejected by  
voice vote March 12, 1997.03/12/97 \*\* COMMITTEE VOTE \*\* HR924. Victim Allocation  
Clarification Act/Death penalty cases. Scott, D-Va.,  
amendment that would require that the provisions of the  
bill not apply to cases in which the death penalty may be  
sentenced. Rejected by voice vote March 12, 1997.03/12/97 \*\* COMMITTEE VOTE \*\* HR924. Victim Allocation  
Clarification Act/Vote to Report. Change the rules  
governing witness testimony at criminal trials. The  
measure would prevent federal judges from excluding  
witnesses from criminal trial proceedings in certain  
cases. Reported favorably to the full House by voice vote  
March 12, 1997.03/12/97 Ordered to be reported by the House Judiciary Committee  
amended. (CR p. D228)

03/14/97 \*\*\* Related measure (S447) Introduced in Senate. \*\*\*

03/17/97 Reported to the House amended by the House Committee on  
the Judiciary H/Rpt 103-29 (CR p. H1039)

03/17/97 Placed on the Union Calendar by unanimous consent. (CR p. H1039)

03/18/97 MCCOLLUM, R-Fla., motion to suspend the rules and pass the bill. (CR p. H1048-H1062, H1067-H1068)

03/18/97 Measure, as amended, passed in House by yeas-nays vote: 415-9, under suspension of the rules (two-thirds vote required). (see CR p.H1068) (Text of bill, as passed by the House, appears on pg. H1048 of the March 18, 1997, Congressional Record.) (House Vote 82) (CR p. H1048-H1052, H1067-H1068)

03/18/97 Considered by the Senate. (CR p. S2507-S2509)

03/19/97 Measure passed in Senate by unanimous consent. (see CR p.S2509) (CR p. S2507-S2509)

03/19/97 Measure has now been cleared for enrollment. (CR p. S2509)

03/19/97 Enrolled measure signed in the Senate. (CR p. S2557)

03/19/97 Enrolled measure signed in the House. (CR p. H1164)

There are no more items to display.

Enter one or more numbers or ALL to display item(s).  
Enter another display command and one or more numbers or ALL.  
Enter MARK or SAVE and one or more numbers to limit or save your set.  
Enter SMARTMATCH and a number to find comparable items.  
Or enter BACK, HELP, or STOP

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You have entered an invalid command. Please try again, or you can enter HELP or call customer service for assistance. For details on using the Washington Alert hotline, enter HELP HOTLINE.

Re-enter your command or enter MENU or HELP

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Text of 924

5 of 5 items

CC's WASHINGTON ALERT 03/21/87

HR924 McCollum (R-FL) 03/19/87 (80 lines)  
Enrolled (finally passed both houses)

Victim Allocation Clarification Act of 1987.

No special typefaces used in this bill version.  
Item Key: 2210

H.924

One Hundred Fifth Congress

-More- (Q = Quit, G = Go, Space Bar = Next Line, Return = Next Screen)

of the

United States of America

AT THE FIRST SESSION

Began and held at the City of Washington on Tuesday,  
the seventh day of January, one thousand nine hundred and  
ninety-seven

AN ACT

To amend title 18, United States Code, to give further assurance to  
the right of victims of crime to attend and observe the trials of  
those accused of the crime.

Be it enacted by the Senate and House of Representatives of the  
United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Victim Rights Clarification Act  
of 1987".

SEC. 2. RIGHTS OF VICTIMS TO ATTEND AND OBSERVE TRIAL.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code,  
is amended by adding at the end the following:

"18A3510. Rights of victims to attend and observe trial.

(a) NON-CAPITAL CASES.—Notwithstanding any statute, rule, or  
other provision of law, a United States district court shall not  
order any victim of an offense excluded from the trial of a  
defendant accused of that offense because such victim may, during  
the sentencing hearing, make a statement or present any information  
in relation to the sentence.

(b) CAPITAL CASES.—Notwithstanding any statute, rule, or  
other provision of law, a United States district court shall not  
order any victim of an offense excluded from the trial of a  
defendant accused of that offense because such victim may, during  
the sentencing hearing, testify as to the effect of the offense on

5

the victim and the victim's family or as to any other factor for which notice is required under section 3503(a).

"(e) DEFINITION.--As used in this section, the term 'victim' includes all persons defined as victims in section 503(e)(2) of the Victims' Rights and Restitution Act of 1990."

(b) CLERICAL AMENDMENT.--The table of sections at the beginning of chapter 223 of title 18, United States Code, is amended by adding at the end the following new item:

"3510. Rights of victims to attend and observe trial."

(c) CLARIFICATION OF GROUNDS FOR EXCLUSION.--Section 3503(c) of title 18, United States Code, is amended by inserting "For the purposes of the preceding sentence, the fact that a victim, as defined in section 3510, attended or observed the trial shall not be construed to pose a danger of creating unfair prejudice, confusing the issues, or misleading the jury." after "misleading the jury."

(d) EFFECT ON PENDING CASES.--The amendments made by this section shall apply in cases pending on the date of the enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

There are no more items to read.

Enter one or more numbers or ALL to display item(s).  
Enter another display command and one or more numbers or ALL.  
Enter MARK or SAVE and one or more numbers to limit or save your set.  
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Or enter BACK, HELP, or STOP

6

RECEIVED FEB 17 1997

The Honorable Senator Robin Taylor, Chairman  
Judiciary Committee  
State Capitol  
Juneau, AK 99801-1182

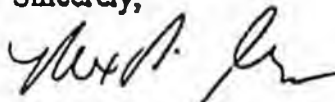
Dear Senator Taylor:

I am writing to you to urge you to support HB 9 with an amendment to NOT LIMIT the number of victims that can speak at a juvenile proceeding. Victims of crime deserve equal rights to the defendant and have a right to attend all hearings the defendant attends. Healing comes to victims as they are provided with information that enables them to find answers to their victimization. The trial is the vehicle for this closure.

Section 4 line 12 and 13 states "if there are numerous victims of a minor's offense the court may limit the number of victims who may give sworn testimony." Sentencing is the only time in the criminal proceedings that the victim has a say. Therefore, it is important that each family member who wants to speak gets the opportunity to speak at the sentencing, especially in juvenile proceeding. The juvenile MUST be told about the traumatic impact his or her crime has on the family and the volumes of other people that are affected by his or her criminal behavior.

The judge should not be the one to choose which family members should speak at the sentencing. Whoever needs to speak at the sentencing should have that right. When a person is murdered studies show there are at least seven to ten family members who experience acute grief. How can a judge decide who is the most important family member to share their pain? This is the victim's day in court and they should have the privilege and more importantly, the constitutional right to be allowed to tell the defendant what their criminal actions do to the family and a community.

Sincerely,



REX P. GONZALEZ  
925 EAST 17TH AVENUE  
ANCHORAGE, ALASKA  
99501-560X

The Honorable Senator Robin Taylor, Chairman  
Judiciary Committee  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Taylor:

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Sincerely,

*Rebecca L. Stephon*

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Judiciary Committee  
State Capitol  
Juneau, AK 99801-1182

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Sincerely,

Art McHall  
535 N Blagden #3  
272-8603

The Honorable Senator Robin Taylor, Chairman  
Judiciary Committee  
State Capitol  
Juneau, AK 99801-1182


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Sincerely,

  
3705 Arctic Blvd #2718  
Anchorage, AK 99503

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Judiciary Committee  
State Capitol  
Juneau, AK 99801-1182

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Sincerely,

*Charles W. Doty*  
516 N. BRAGAW  
ANCH. AK. 99508

The Honorable Senator Robin Taylor, Chairman  
Judiciary Committee  
State Capitol  
Juneau, AK 99801-1182

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Sincerely,

*Richard F. Coydell*

Pearlene Hernandez-Villa, 9499 Brayton Dr., #267, Anchorage, Alaska, 99507, (907) 349-4685

February 28, 1997

The Honorable Senator Robin Taylor, Chairman  
Judiciary Committee  
State Capitol  
Juneau, AK 99801-1182

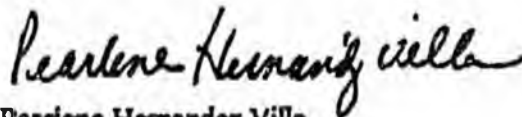
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Sincerely,



Pearlene Hernandez Villa  
UAA - BSW Student