

HB

366

HB 366

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 10, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

The Victims' Rights Amendment (art. I, sec. 24, of the Alaska Constitution) was approved by 87 percent of Alaskan voters, and has been in effect since December 30, 1994. Since then, our knowledge of both the difficulties that a crime victim suffers and efforts to minimize the effects of victimization continues to grow. This bill I am transmitting today results from this increased knowledge. It contains four proposals, which are described in further detail below.

- Allowing a mitigated presumptive sentence for speedy no contest or guilty pleas;
- Simplifying procedures for victims to recover stolen property;
- Establishing a crime for violating protective injunctions in child in need of aid cases;
- Extending current disallowance of civil compromise in some domestic violence cases to all domestic violence cases.

Mitigated Presumptive Sentences. The bill allows the court to mitigate a presumptive sentence when the defendant pleads no contest or guilty within 30 days after being charged. The reasoning is that early admission on the part of the defendant relieves the victim of some of the suffering involved in long, drawn out court procedures. This concept has already been recognized by the courts as a non-statutory mitigating factor. State v. McKinney, 946 P.2d 456 (Alaska 1997).

Recovering Stolen Property. The bill establishes a simplified procedure for theft victims to recover property that is in the possession of a law enforcement agency after having been recovered from a pawnshop or secondhand dealer. The current process is based on federal procedure and requires the victim to initiate formal legal proceedings to recover

The Honorable Brian Porter
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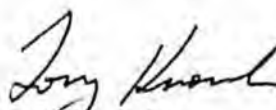
property. Under this less formal procedure, the victim could file a petition in state court supported by affidavit of ownership. The pawnshop or secondhand dealer can file a response supported by affidavit. Ownership may then be decided based on the information in the affidavits.

Protective Injunction Violations. Alaska law authorizes the court to issue a protective injunction in child in need of aid (CINA) proceedings that orders perpetrators to stay away from a child. These are similar to protective orders in domestic violence cases. Unlike domestic violence protective orders, however, it is not a separate crime to violate a protective injunction for a child in a CINA proceeding. The bill corrects this unjust inconsistency by making it a class A misdemeanor for a perpetrator to violate the CINA injunction.

Civil Compromise in Domestic Violence Cases. Alaska allows a person charged with a misdemeanor that harms a person or property to enter into a civil compromise by agreeing to pay the victim for personal costs, such as medical expenses or property damage. If the victim appears in court and acknowledges in writing that the defendant has paid the damages, the court may dismiss the charges, even if the prosecution objects to the dismissal. There are several exceptions in the statute allowing for civil compromise. One of the exceptions disallows compromise of cases between spouses and former spouses, or persons living together in a family or spousal relationship. The exception does not, however, include all domestic violence crimes. For example, it does not include domestic violence by a person who lived with another person if the court determines that the relationship was not a spousal relationship. This bill extends the disallowance of civil compromise to all cases involving domestic violence as defined in the Domestic Violence Prevention and Victim Protection Act of 1996. Civil compromise is not appropriate in domestic violence cases. This bill ensures that it will not occur.

This bill continues the state's efforts to better protect victims of crimes and deserves your favorable consideration.

Sincerely,


Tony Knowles
Governor

FISCAL NOTE

Bill Version: HB 366
(H) Publish Date: 2/11/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act relating to the rights of crime victims..."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
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						
TOTAL	**	**	**	**	**	**

Estimate of an current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
See attached sheet.

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

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Robert Poe, Jr. *Robert Poe, Jr.*
Agency: Department of Administration

Date: 2/10/99

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FISCAL NOTE

STATE OF ALASKA

BILL NO. _____

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill contains a number of provisions that would affect the Public Defender Agency's operations. The bill makes violating protective orders entered in Child in Need of Aid (CINA) cases a misdemeanor. It reduces the authority of the courts to allow compromises in misdemeanor cases. Finally, it creates a mitigating factor that can be used in felony sentencings. An offense can be mitigated if the defendant reduces the impact of the offense on the victim by pleading guilty or no contest within 30 days of the arraignment.

We expect to have some additional misdemeanor cases because of the new misdemeanor offense of violating a CINA protective order. However, we cannot make an accurate estimate of the number of additional cases to which we would be appointed.

Allowing fewer civil compromises and creating the new mitigator will result in more work in our existing caseload. However, we do not expect a significant fiscal impact.

Based on this analysis, the Public Defender Agency is submitting an indeterminate fiscal note on this bill.

FISCAL NOTE

Bill Version: HB 366

(H) Publish Date: 2/11/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to the rights of crime victims, BRU Administration and Operations
the crime of violating a protective order of injunction, ... Component All
 Sponsor Rules Committee
 Requester Governor Component No. #0694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

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

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 (Specify Type)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections is submitting an indeterminate fiscal note for this legislation. This legislation will provide criminal consequences for a person who violates a protective injunction in child in need of aid proceedings.

Information provided by the Dept. of Law suggests approximately 12 offenders per year will be convicted. It is difficult to determine the length of sentence the Court will assign to these offenders. It presumably will be less than the mandatory minimum sentence of 20 days for an assault 4 in conjunction with the violation of a domestic violence restraining order.

Prepared by: Candy Brower, Legislative Liaison Phone 465-3307
 Division Commissioner's Office Date/Time 2/9/00 9:30 AM
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 2-9-00
 Agency Dept. of Corrections

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FISCAL NOTE

Bill Version: HB 366

(H) Publish Date: 2/11/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title "An Act relating to the rights of crime victims, the crime of violating a protective order or injunction ..."	BRU	Criminal Division
Sponsor Rules Committee	Component	1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Requester Governor	Component No.	2198-99;2201/03/61/79

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill makes several amendments related to the protection of crime victims. It makes the violation of a protective injunction a class A misdemeanor. Like protective orders in a domestic violence case, protective injunctions may be ordered by the court to prevent or limit a person's contact with a child if it is established that the person has sexually or physically abused the child, or engages in conduct that constitutes a clear and present danger to the welfare of the child. While domestic violence protective orders are a class A misdemeanor, under current law, the only remedy for violations of a protective injunction is a finding of contempt by the court.

The bill also would clarify the means by which a victim can petition for the return of their property seized by law enforcement from a pawnbroker or second hand dealer; and broadens prohibitions against "compromising

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date/Time: 2/10/00, 11:27 AM
 Date: 2/10/00

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO.

ANALYSIS CONTINUATION

misdemeanors" (paying a victim's expenses in return for criminal charges being dropped) to include domestic violence as defined in current law. The bill also adds a new mitigating factor for presumptive sentences when a defendant pleads guilty or no contest within 30 days of arraignment on a charge.

Any potential fiscal impact of the bill on the Department of Law would come from the creation of the new class A misdemeanor for violating a protective injunction. The department expects to see only a handful of new cases arising from this provision each year, and anticipates any increased workload can be handled with existing resources.

FISCAL NOTE

Bill Version: HB 366

(H) Publish Date: 2/11/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date _____ Dept. Affected Public Safety
 Title An Act relating to the rights of crime victims ... BRU CDVSA
 Component CDVSA
 Sponsor Rules Committee
 Requester Governor Component No. 521

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to adversely impact the budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
 Division Office of the Commissioner Date/Time 12/21/99
 Approved by Commissioner Ronald L. Otte Date 12/21/99
 Agency Department of Public Safety

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