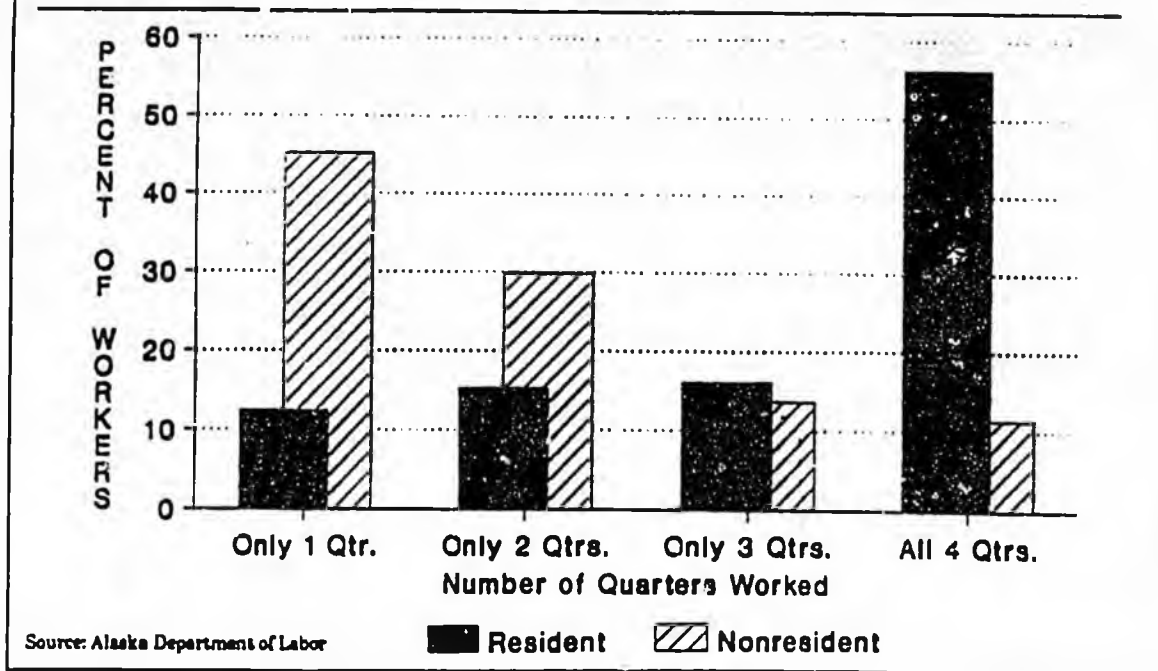


LEGISLATIVE FINANCE-HOUSE / SENATE FINANCE COMM. FILES 8879

HB 34 cont. - 36 432 23

Figure 2.5

### Number of Calendar Quarters Worked in Alaska During 1987



a high percentage of nonresident workers. Consequently, this shift in Alaska's industrial composition accounts, in part, for the decrease in the number of nonresidents working in the state.

### Economic Impact of Workers' Earnings

The residency of the worker is an important factor in determining the overall impact of earnings. More specifically, where is the worker spending wages and unemployment insurance compensation? Generally, the earnings of an individual create earnings for others. As workers spend their wages on housing, food and clothing, their earnings continue to trickle through the economy. If compensation goes to a nonresident who spends little money in the state, few income-induced effects can be measured.

Compared to resident workers, nonresidents work fewer quarters in the state. Figure 2.5 (on this page) illustrates the difference between residents' and nonresidents' ties to the Alaska labor market. More than 45% of nonresidents worked in Alaska during only one calendar quarter of 1987. By comparison, over 56% of residents worked during all four quarters of 1987.

The assumption that nonresidents spend less of their earnings in Alaska than their resident counterparts is reinforced by two factors: 1) They work fewer quarters in the state and because of this are likely to spend a higher portion of their Alaska earnings outside of the state than resident workers, and 2) They also have a higher rate of interstate unemployment insurance claims than do residents. Consequently, nonresident compensation — in the form of either wages or unemployment insurance benefits — produces a reduced amount of induced earnings within Alaska.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
707 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 10, 1989

SUBJECT: Durational residency requirements under  
Alaska law (W.O. No. 16-0182)

TO: Representative Dave Donley

FROM: John Gaguine *JG*  
Legislative Counsel

You have asked for an update to a memorandum, prepared in December 1982 by then-Attorney General Wilson Condon, which set out all durational residency requirements found in the Alaska statutes, and expressed an opinion as to whether those requirements were constitutional. Enclosed is the updated memorandum, which I believe is complete.

I have used different meanings than did the Attorney General in the "constitutional problem" column. I have not considered the likelihood of a challenge, as he did, but instead just the probable outcome of a challenge (in my opinion) if one were to be brought. Thus my terms "probably not" and "maybe" have their normal meanings. I have not exhaustively researched the constitutional questions involved with every requirement. Instead I have generally adopted the Condon view (which my reading of the caselaw suggests is correct), while noting some more recent developments in the law in this area. (For instance, the Condon memorandum was written before the decision in Andress v. Baxter, upholding the two-year residency requirement for student loans.) Where the statutes have been changed, as many of the ones listed here have been, I have relied for my opinion on the Attorney General's assessment of similar statutes and on general conclusions that I think can be drawn from the caselaw (such as that a one-year residency requirement for loan and grant programs in general is permissible). If you would like more in-depth research into a particular provision, I will be happy to oblige you.

The vast majority of constitutionally suspect durational residency requirements have been eliminated by the legislature. The primary vehicle for this was ch. 67, SLA 1983

Representative Dave Donley  
Page 2  
March 10, 1989

(copy attached). This Act was apparently adopted in response to the U.S. Supreme Court's Zobel decision (invalidating the \$50/year of residency provision of the Permanent Fund Dividend program) and several Attorney General opinions expressing doubt as to the constitutionality of many durational residency provisions in the statutes. In addition, chapter 67 also eliminated many residency requirements, primarily in Title 8 (Occupational Licensing), that apparently would be unconstitutional under the Privileges and Immunities clause of the U.S. Constitution (Art. IV, sec. 2, cl. 1).

Chapter 67 replaced many durational residency requirements of varying lengths with a uniform 30-day requirement. It did this by repealing those requirements and adding AS 01.10.055, which reads:

Sec. 01.10.055. RESIDENCY. (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, that may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.

Because a thirty-day residency requirement was sanctioned by the Alaska Supreme Court for a basic right, the right to vote, in State v. Van Dort, 502 P.2d 453 (Alaska 1972), it

Representative Dave Donley  
Page 3  
March 10, 1989

appears not to be susceptible to challenge. The Alaska Supreme Court in Perito v. Perito, 756 P.2d 895 (Alaska 1988) (also attached), held that the requirements of AS 01.10.055 defined residency as used elsewhere in the statutes, unless a contrary statutory definition applies (as, for instance, AS 16.05.940(24), applicable to the term "resident" as it appears in most of Title 16).

In compiling this memorandum, I have not included those statutes requiring simple residency (i.e., the thirty-day requirement of AS 01.10.055); I have only listed those that couple residency with a specific durational requirement. I have also not listed those with a thirty-day requirement, such as the voting statute and the statutes requiring certain positions to be filled by registered voters. I have listed some that have no residency requirements but that require some past activities (such as mining or guiding) in the state. This memorandum therefore differs slightly from the Condon memorandum, which listed some statutes with simple residency requirements (apparently those where he felt such requirements were illegal under the Privileges and Immunities clause). If you wish, I can prepare another memorandum on simple residency statutes. I suspect that that one would be far longer.

For comparison, I have also attached a copy of the Condon memorandum with hand written changes.

JG:kb  
wkk2/108

Enclosures

I. PUBLIC OFFICE HOLDING

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM
A. <u>General</u>			
1. Governor	7 Years	Ak. Const. art III, § 2	No
2. Lieutenant Governor	7 Years	Ak. Const. art.III, §§ 2 & 7	No
3. Board of Education Member	3 Years	AS 14.07.075, 39.05.065(a)	No
4. Legislator	3 Years	Ak. Const. art. II, § 2 AS 24.05.030	No
5. Supreme Court Justice	5 Years	AS 22.05.070	No
6. Court of Appeals Judge	5 Years	AS 22.07.040	No
7. Superior Court Judge	5 Years	AS 22.10.090	No
8. District Court Judge	5 Years	AS 22.15.160(a)	No
9. Magistrate	6 Months	AS 22.15.160(b)	No
10. Ombudsman	3 Years	AS 24.55.030	No
11. Borough Mayor	Up to 3 Years	AS 29.20.240	No
12. Borough Assembly	Up to 3 Years	AS 29.20.140(b)	No
13. City Mayor	Up to 3 Years	AS 29.20.240	No
14. City Council	Up to 3 Years	AS 29.20.140(b)	No
15. Municipal Charter Commission	3 Years	AS 29.13.010	No

If adopted  
by ordinance  
of local  
Government

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM
B. <u>Boards and Commissions other than Occupational Licensing Boards.</u> <sup>1</sup>			
1. Rural Affairs Commission	5 Years	AS 44.19.102	Maybe <sup>2</sup>
2. Board of Fisheries	1 Year	AS 16.05.221(a) AS 16.05.940(24)	No
3. Board of Game	1 Year	AS 16.05.221(b) AS 16.05.940(24)	No
4. Judicial Conduct Commission (lawyer members)	10 Years practice in Alaska	Ak. Const. art. IV, § 10 AS 22.30.010	Maybe <sup>2</sup>
C. <u>Occupational Licensing Boards.</u>			
1. Public Accounting Board	1 Year	AS 08.04.020	No
2. Board of Chiropractic Examiners	2 Years	AS 08.20.020	No
3. Board of Dental Examiners	5 Years practice in Alaska	AS 08.36.010	Maybe <sup>2</sup>
4. State Board of Registration for Architects, Engineers, and Land Surveyors	3 Years	AS 08.48.031	No
5. Guide Licensing and Control Board	10 Years	AS 08.54.010	Maybe <sup>2</sup>
6. Board of Examiners in Optometry	3 Years	AS 08.72.040	No
7. Board of Pharmacy	3 Years in-state practice although not a specific residence requirement	AS 08.80.010	No
8. Board of Veterinary Examiners	5 Years in-state practice although not a specific residence requirement	AS 08.98.010	Maybe <sup>2</sup>

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM
II. LICENSES			
A. <u>Occupational Licenses</u>			
1. Funeral Director	1 Year	AS 08.42.110	Yes <sup>3</sup>
2. Guides			
Master Guide	No residence requirement, but must have hunted in area 10 years	AS 08.54.100	Probably not
Registered Guide	Same, except hunted five years in area	AS 08.54.110	Probably not
Class-A Assistant Guide	Same, except hunted twenty years in area	AS 08.54.120	Maybe
Special Guide - Marine Mammals	10 Years residency in area	AS 08.54.045	Yes
B. <u>Other Licenses</u>			
1. Alcoholic Beverage License	1 Year	AS 04.11.390	Probably not
2. Fish and Game Licenses			
Resident fishing, hunting and trapping licenses (cost less than non-resident ones)	1 Year (per AS 16.-05.940(24))	AS 16.05.340	Probably not
Free hunting and trapping licenses for residents 16 and under; free F & G licenses for residents over 60	1 Year (per AS 16.-05.940(24))	AS 16.05.400	Probably not
Hunting license for blind (privileges not available to blind non-residents)	1 Year (per AS 16.-05.940(24))	AS 16.05.405	Probably not

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM
Resident commercial fishing licenses (cost less than non-resident ones)	1 Year (per AS 16.-05.940(24))	AS 16.05.480	Probably not
Resident CFEC permit fees	1 Year	AS 16.43.160; 20 AAC 05.240(c)(2)	Probably not
3. Coin-Operated Device Distributor License	1 Year	AS 43.35.030(2)	Maybe

### III. PUBLIC RIGHT AND BENEFITS

#### A. Loan and Grant Programs

1. Permanent Fund Dividends	6 Months <sup>4</sup>	AS 43.23.005(a)	No
2. Longevity Bonus	1 Year <sup>4</sup>	AS 47.45.010	No
3. Commercial Fishing Loans	2 Years	AS 16.10.310(a)	Maybe <sup>5</sup>
4. CFAB Limited Entry Permit Loans	2 Years	AS 44.81.210(a)(20)	Maybe <sup>5</sup>
5. Other CFAB Loans	2 Years	Bank policy	Maybe <sup>5</sup>
6. Veterans' Loans	1 Year	AS 26.15.130(a)	No
7. Veterans' Death Gratuity	1 Year	AS 26.10.080	No
8. Mining Business Loans	Residency and 5 years mining experience in State	AS 27.09.020	Probably not
9. Memorial Scholarship Loan Fund	No durational requirement to apply. 1/5 loan forgiven for each year employed in specialized field in Alaska.	AS 14.43.305(e)	No

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM
10. Student Loan Program and Family Education Loan Program	2 Years	AS 14.43.125(a)(3) AS 14.43.750(a)(1)	Maybe <sup>6</sup>
11. Alaska Educational Incentive Grant Program	2 Years	AS 14.43.405(b)	Maybe <sup>6</sup>
<b>B. <u>Land Disposal Programs</u></b>			
1. Land Disposal by Lottery	1 Year	AS 38.05.057(b)(2)	Probably not <sup>7</sup>
2. Veteran's Discount on Purchase of Some State Lands	1 Year	AS 38.05.940(b)(2)	Probably not
3. Homesite Entry Program	1 Year	AS 38.08.030(a)(2)	Probably not <sup>7</sup>
4. Homestead Entry Program	1 Year	AS 38.09.030(a)(1)	Probably not <sup>7</sup>
<b>C. <u>Fish and Game Programs (other than licenses)</u></b>			
1. Residents Taking Moose, Deer, Elk and Caribou for Personal Use and Consumption Favored Over Non-Residents	1 Year (per AS 16.-05.940(24))	AS 16.05.255(d)	Probably not
2. Limitations on Non-Resident Big Game Permits	1 Year (per AS 16.-05.940(24))	AS 16.05.256	Probably not
3. Non-Resident Hunters for Some Game Species Must be Accompanied	1 Year (per AS 16.-05.940(24))	AS 16.05.407	Probably not
4. Resident Preference for ADF&G Exploration Work	1 Year (per AS 16.-05.940(24))	AS 16.05.902	Maybe <sup>8</sup>
<b>D. <u>Other Programs</u></b>			
1. Low-Cost Housing Preference for Veterans	1 Year at some point	AS 18.55.330 AS 18.55.470(5)	Maybe <sup>9</sup>
2. Pioneers' Home Program	15 Years immediately before application, or 30 Years total	AS 47.25.020(a) AS 47.25.030(a) AS 47.25.035	Maybe <sup>10</sup>

- 1/ This list includes only boards and commissions which have express durational residency requirements. Many boards have ex officio members who must meet durational residency requirements for those offices or positions. These boards include:
- (1) Alcohol Beverage Control Board (certain licensees);
  - (2) Coastal Policy Council (mayors, assembly and council members);
  - (3) Code Revision Commission (members of legislature);
  - (4) Citizens Advisory Commission on Federal Management Areas in Alaska (governor and other public officers);
  - (5) Commission on Conference of the Law of the Sea (members of legislature);
  - (6) Rural Development Council (members of legislature);
  - (7) Teacher's Retirement Board (resident who is receiving retirement benefits);
  - (8) Tourism Advisory Board (members of legislature); and
  - (9) Governor's Commission on the Administration of Justice (judicial officers, legislators, and municipal officials)
- 2/ As Attorney General Condon said, it is difficult to imagine anyone challenging this requirement.
- 3/ A similar one-year requirement for embalmers (that a license applicant train for a year under someone licensed in Alaska), found in the same statute, was removed by ch. 67, SLA 1983. The failure to remove the requirement for funeral directors was likely an oversight.
- 4/ HR 34, currently before the legislature, would raise the residency requirement to two years.
- 5/ The federal district court in Alaska has upheld a two-year residency requirement for student loans, in part on the basis that students are highly mobile and a longer durational requirement is justified to establish bona fide residency. The same argument can be made for fishermen. Since the district court decision was not appealed, it is unclear how much authority it carries.
- 6/ The two-year residency requirement was upheld by the federal district court for Alaska in Andress v. Baxter, No. A82-307 Civ. However, the court did not issue a written opinion in the case, and the decision was not appealed. It is not clear how much weight the decision would carry if the requirement were challenged in state court.
- 7/ This issue was presented to the Alaska Supreme Court in Gilman v. Martin, 662 P.2d 120 (Alaska 1983), a challenge to a Kenai Peninsula Borough ordinance limiting the borough's land lottery program to one-year borough residents. The court invalidated the ordinance, but on the ground that the ordinance had not stated benefiting borough residents as one of its purposes, id. at 126, and therefore any residency requirement was unconstitutional. However, in two footnotes the court seems to express skepticism about the one-year residency requirement, even if the program had been intended to benefit borough residents. Id. at 126 n. 6 and 127 n. 7.
- 8/ A simple residency requirement here might be suspect under the Privileges and Immunities clause of the federal constitution.

- 9/ Ch. 67, SLA 1983 repealed a one-year residency requirement to get low-cost housing, AS 18.55.470(4), but left in the one-year requirement for veterans' preference under AS 18.55.470(5). This may have been an oversight.
- 10/ The Attorney General issued an opinion on November 26, 1982, summarizing the arguments that could be made for and against these lengthy requirements. He concluded that the answer was unclear, and the matter should thus be left to the courts, if a challenge ever arose.

JBG:kb  
WKL7/030

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN • SPENARD  
SEAT A  
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629



CHAIRMAN  
LABOR AND COMMERCE COMMITTEE

MEMBER  
STATE AFFAIRS COMMITTEE  
HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE  
HOUSING AND BANKING SUBCOMMITTEE  
FINANCE BUDGET SUBCOMMITTEE  
DEPT. OF COMMERCE AND  
ECONOMIC DEVELOPMENT

February 6, 1989

## M E M O R A N D U M

To: Members, House Judiciary Committee

From: Representative Dave Donley *LD*

Re: HB 34 - Durational residency requirements for  
Longevity Bonus and Permanent Fund Dividends

HB 34, a measure establishing a two year residency requirement to be eligible for a Permanent Fund dividend and the Alaska Longevity bonus, is before the House Judiciary Committee.

The current durational residency requirement for the Longevity Bonus is one year and for the Permanent Fund Dividend, six months of continuous residency prior to April 1 of the current dividend year. HB 34 retains that April 1 determination date and increases the residency period to 24 months. A January 1, 1991 effective date is included so that the new residency requirement would coincide with the calendar year to facilitate the administration of the permanent fund dividend program.

There are four proposed amendments to HB 34 in your files for your consideration. The first establishes legislative findings; the reasoning behind adopting the two year residency requirement. ~~The second amendment, modeled after current law, requires the way children's applications for Permanent Fund Dividends are handled under the current residency requirement.~~ The third amendment provides that if the courts overturn the two year residency requirement established under HB 34, then the residency requirement becomes the longest permitted by law. The final amendment "grandfathers" in any person who has already received either benefit under the previous residency requirement until they meet the two year requirement established under HB 34.

The residency requirement under the original Longevity Bonus program required continuous residency since statehood. The Alaska Supreme Court struck down the program in the Vest decision, in part because of the lengthy residency requirement, although they did not elaborate on what length of residency they would find acceptable. The state subsequently adopted the one year requirement.

Originally, the Permanent Fund dividends were disbursed according to the number of years a particular Alaskan had maintained residency in the state. The U.S. Supreme Court struck down the program in the Zobel decision, because the

residency requirement was arbitrary and unfair and violated both the privileges and immunities and equal protection clause of the Constitution. Again, they did not elaborate on what residency requirement would meet a constitutional challenge.

Traditionally the courts have applied two "tests" when considering residency requirements. The first, "strict scrutiny", is applied when a particular program provides the basic necessities of life (medical care, welfare benefits etc.) or when an important constitutional right is at stake, such as the right to vote. In these cases, even a one year residency requirement would not be upheld.

The second standard, applied when dealing with laws that do not affect a basic necessity or a fundamental right, is called "rational basis". Under the "rational basis" standard, the courts weigh the nature and extent of the residency required against the state's purpose in enacting the statute and the fairness and substantially of the relationship between the purpose and the requirement. In other words, what are the reasons for requiring two years of residency and does the requirement satisfy the purposes for which it was adopted?

In addition, the courts recognize that for the purpose of determining residency the state can require both actual residency and intent to become or remain a resident. However, the state must be careful to not impose standards that result in bone fide residents being treated differently under the law, such as under the original permanent fund dividend program.

It is clear that neither of the programs affected by HB 34 involve a fundamental right or a basic necessity of life. Therefore, the "rational basis" standard would apply. Both the Longevity Bonus and the Permanent Fund Dividend are unique programs uniquely created to benefit Alaska's residents. The Longevity Bonus is designed to enable life-long Alaskans to spend their retirement years in the state they helped build. The Permanent Fund Dividend is designed to create a direct link between the residents of Alaska and the Fund they created through a constitutional amendment.

Therefore, the state has clear and compelling reasons to assure that benefits from these programs accrue to bone fide residents of the state. The pertinent question is whether the state has compelling reasons to require two years of residency in these cases and whether the requirement is reasonable to establish that a person is a bone fide resident of the state. I believe we do and I believe it can be successfully defended in court.

In a federal District Court decision that upheld the two year residency requirement for the Alaska Student Loan Program, the judge took into consideration certain unique circumstances about the program that justified a longer durational residency requirement. Among them were: the student loan program was the most generous in the nation, students as a class are a mobile population, and there was evidence of "loan-shopping" by students which may encourage applicants to fraudulently claim residency status. Therefore, the court reasoned, the state had cause to apply a strict standard to assure that applicants were, in fact, bone fide residents.

Both the Longevity Bonus and the Permanent Fund dividend program are generous benefits that are unique to Alaska. There is certainly evidence that "benefit shopping" occurs in that citizens move to Alaska to take advantage of the Longevity Bonus as well as the dividend and may be encouraged to fraudulently claim residency because of the generous nature of the benefits. Finally, the population group affected by HB 34 is, by definition, transient.

In addition, our state has one of the highest rates of transients in the nation. A large percentage of our population comes to work in Alaska or is assigned to work here on a temporary basis. Therefore, Alaska has a unique problem in determining residency for the purposes of eligibility for these state programs.

Because of this, I believe the state has sufficient grounds to adopt a two year residency requirement. Significant constitutional questions remain, and you should be aware that we are venturing into many legal unknowns. However, as long as we proceed in good faith, with an understanding of the unique set of circumstances we are attempting to deal with, I believe we have a chance of arguing our case successfully in court under the "rational basis" standard.

FISCAL NOTE

REQUEST:

Revision Date: March 21, 1989 Agency Affected: Administration  
Title: \* See below BRU: Longevity Bonus

Sponsor: Donley Components: Administration, Grants  
Requestor: State Affairs Committee

\* An Act relating establishing durational residency requirements, not to exceed two years, for receipt of the permanent fund dividend and receipt of benefits under the longevity bonus program; and providing for an effective date

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	(210.0)	(1080.0)	(120.0)	(120.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	(210.0)	(1080.0)	(120.0)	(120.0)

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

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	(210.0)	(1080.0)	(120.0)	(120.0)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	(210.0)	(1080.0)	(120.0)	(120.0)

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)

See attached

Prepared By: James H. Chase  
Division: Pioneers' Benefits

Phone: 465-4400  
Date: 3/21/89

Approved by Commissioner: John M. Andrews  
Agency: Department of Administration

Date: 3/21/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)  
cc: "House Bills" Binder

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (JUD)

In order to project the fiscal impact of the passage of CSHB 34 some assumptions had to be made. These assumptions were:

- 1) That the number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state will remain at the same ratio to the total number of applicants.

Rationale: This ratio has remained constant for the past two years.

- 2) That the ratio of applicants for the Longevity Bonus who have a minimum of one year of residence in the state to the total number of applicants will remain at one in five.

Rationale: This is the ratio demonstrated in the last two years.

- 3) That the passage of CSHB 34 will impact only those applicants with less than two years of residence the year following its passage.

Rationale: Those applicant who would otherwise be qualified would have to wait another year for their applications to be accepted. Those who learn of the passage of CSHB 34 who do not have the one year of residence would apply two years after its passage and continue to do so in the following years.

- 4) That the average number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state is 40 per month.

Rationale: Historical trend analysis result.

With these assumptions, the following calculations were made. Each month the number of applicants who only have the minimum of one year in the state is multiplied by \$250 to compute the projected savings. The first month would be 40 times \$250, the second month it would be 80 times \$250 and so forth until the original "40" became eligible by having the minimum of two years in the state a year after the effective date of the bill. From that point, the amount of savings would decrease until all of those originally affected would have become eligible. The savings then would level out at the initial monthly rate of 40 one year minimum applicants times the \$250.

FISCAL NOTE

REQUEST:

Revision Date: January 23, 1989  
Title: \* See below

Agency Affected: Administration  
BRU: Longevity Bonus

Sponsor: Donley  
Requestor: State Affairs Committee

Components: Administration, Grants

\* An Act relating to durational residency requirements for certain state benefit programs; and providing for an effective date

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)

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)

See attached

Prepared By: James H. Chase  
Division: Pioneers' Benefits

Phone: 465-4400  
Date: \_\_\_\_\_

Approved by Commissioner: James Fort for John M. Andrews  
Agency: Department of Administration

Date: 1/25/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

## CONTINUATION of FISCAL NOTE ANALYSIS

CSHB 34 (SA)  
HOUSE 1/27/89

In order to project the fiscal impact of the passage of HB 34 some assumptions had to be made. These assumptions were:

- 1) That the number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state will remain at the same ratio to the total number of applicants.

Rationale: This ratio has remained constant for the past two years.

- 2) That the ratio of applicants for the Longevity Bonus who have a minimum of one year of residence in the state to the total number of applicants will remain at one in five.

Rationale: This is the ratio demonstrated in the last two years.

- 3) That the passage of HB 34 will impact only those applicants with less than two years of residence the year following its passage.

Rationale: Those applicant who would otherwise be qualified would have to wait another year for their applications to be accepted. Those who learn of the passage of HB 34 who do not have the one year of residence would apply two years after its passage and continue to do so in the following years.

- 4) That the average number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state is 40 per month.

Rationale: Historical trend analysis result.

With these assumptions the following calculations were made. The number of applicants, 40, is multiplied by \$250 and that product multiplied by six for the second half of FY 90 or 12 for the FY 91 or six for the first half of FY 92. These products were the savings in the grant component. The savings in postage cost is reflected in the contractual component.

**FISCAL NOTE**

**REQUEST:**

Revision Date: March 21, 1989  
Title: "An Act establishing durational  
residency requirements..."  
Sponsor: House Judiciary  
Requestor: House Finance

Agency Affected: Department of Law  
BRU: Legal Services  
Components: Operations

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL					30.0	30.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	30.0	30.0

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

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

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	30.0	30.0
FEDERAL FUNDS						
OTHER						
TOTAL						

**POSITIONS:**

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

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

Please see the attached analysis.

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

Phone: 465-3672  
Date: March 21, 1989

Approved by Commissioner: Douglas B. Baily, Attorney Gen.  
Agency: Department of Law

Date: March 21, 1989

**Distribution (by preparer):**

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (Jud)

The committee substitute for HB 34 adds legislative findings, and it also provides for reduced durational residency requirements if a court finds that the bill's 24 month durational requirements are invalid. Specifically, Sections 3 and 6 appear to delegate the legislature's law making authority to the court, if a court finds either a two year or a one year residency requirement invalid. In the case of the Longevity Bonus Program, this delegation could conceivably result in a shorter durational residency requirement than currently exists. However, these changes do not alter the fact that state laws containing lengthy durational residency requirements come under legal attack in Alaska. Consequently, the fiscal impact noted in the Department of Law's fiscal note of February 8, 1989, are still appropriate. The department's previous comments regarding that impact are repeated below.

Section 2 of this bill amends AS 43.23.005(a)(2) to increase the residency requirement, for an individual to receive the state's annual permanent fund dividend, from six consecutive months' residence to 24 consecutive months' residence immediately preceding April 1 of the current dividend year.

Section 5 of the bill amends AS 47.45.010(a) to increase the residency requirement, for an individual to receive the state's longevity bonus, from one year's residency to two year's residency immediately preceding an individual's application for the longevity bonus.

Historically, state laws containing lengthy durational requirements have come under legal attack in Alaska. The department anticipates that if the bill is enacted it will be challenged in the courts, on federal constitutional grounds. Fiscal note funds, in the amount of 30.0, are therefore being requested to pay for outside counsel legal scholar costs, to assist in the preparation and review of arguments that will be needed by the department to defend the state.

In addition to these costs, the department also has a hidden cost whenever it has to divert existing staff resources from other work to defend against durational residency lawsuits. As an example, the longevity bonus lawsuit, Vest v. State, cost the department about \$70,000 in staff salaries and associated overhead expenses. Approximately ten weeks of attorney time was required to prepare for and defend the state at trial, on the constitutionality and retroactivity issues. Approximately eight weeks of attorney time was spent on the Alaska Supreme Court appeals, on the same issues. The average cost for the department's attorneys who handle this level of work, including normal office support costs, is \$96.00 per hour. The department also paid Professor Walter Dellinger \$8,200 to review and help prepare its briefs in the Vest trials. Professor Dellinger is a noted legal scholar and an expert on constitutional law. The department's outside legal expert costs in this matter would have been substantially greater had the case reached the U.S. Supreme Court. Because this particular

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (Jud)

dispute was settled on a request for a motion for summary judgement and did not require a trial on the facts, and because the dispute ended at the state supreme court level. the department's total costs were probably somewhat less than they would have been if the case had gone to the U.S. Supreme Court. Lastly, the costs, attorney fees, and interest that were awarded to the plaintiff by the court in Vest, and which were subsequently paid by the state, totalled \$149,383.88.

Although an opinion cannot be offered, it should also be noted that if the bill becomes law and then is subsequently overturned by the courts, the state might be exposed to the payment of damages for any injuries or loss suffered by any classes of persons, as a result of the bill's enactment.

FISCAL NOTE

REQUEST

Revision Date: \_\_\_\_\_  
Title: Durational residency require-  
ments for state benefit programs  
Sponsor: State Affairs  
Requestor: \_\_\_\_\_

Agency Affected: Revenue  
BRU: Permanent Fund Dividend Division  
Components: Permanent Fund Dividend  
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: See Attached.

Prepared By: Ervin Jones  
Division: Permanent Fund Dividend Division

Phone: 465-2323  
Date: February 8, 1989

Approved by Commissioner: [Signature]  
Agency: Revenue

Date: 2/8/89

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

RECEIVED  
FEB 8 1989

Alaska Department of Revenue  
Permanent Fund Dividend Division  
CS HB 34 (SA) Fiscal Note Analysis  
February 8, 1989

Section 1 modifies one of the four general eligibility requirements to receive a permanent fund dividend. Under the law enacted in 1982, an individual must have been "a state resident for a period of at least six consecutive months immediately preceding April 1 of the current dividend year." For example, in addition to the other requirements, to be eligible for the 1991 dividend under current law, an individual must have been a state resident during the ELIGIBILITY PERIOD of October 1, 1990 through March 31, 1991. Section 1 extends the six month requirement to 24 months. In other words, the individual in the above example, in order to qualify for the 1991 dividend (see Section 3) must have been a state resident for the entire ELIGIBILITY PERIOD of April 1, 1989 through March 31, 1991 (see Attachment A).

Conservatively speaking, there are approximately 60,000 new dividend applicants each year. The first effect of Section 1 would be felt in 1991 when 60,000 new Alaskans who thought they would be eligible, find that they are not. The second and most difficult effect would be when approximately 60,000 individuals who did qualify for the 1990 dividend find that they are now not eligible for the 1991 dividend (see Attachment A).

It will take considerable effort on the Department's part, in conjunction with the state demographer, to predict the final effect of this bill. Some of the factors to be considered include:

- 1) the length of the period (current proposal - 24 months);
- 2) the number of eligible individuals who leave Alaska each year;
- 3) the number of new persons arriving each year;
- 4) the percentage of individuals moving to Alaska who leave after six months, one year, eighteen months, etc.;
- 5) the seasonal distribution of new arrivals;
- 6) the relative birth rate of new arrivals versus individuals who have been in Alaska over two years; and
- 7) the reaction of military personnel to the new proposal, i.e. how do they respond to the new choice presented relative to overseas pay, overseas duty credit, etc.

The final effect on administrative costs of the Permanent Fund Dividend program would depend upon such factors as mentioned above. For the first two years, the additional costs would include informing, advising, and counseling the public; answering repeated questions as to "why was I a resident in 1990 and not in 1991," plus the costs of denying the applicants who would file anyway and hearing their appeals; and the costs of assisting the Department

Alaska Department of Revenue  
Permanent Fund Dividend Division  
CS HB 34 (SA) Fiscal Note Analysis  
February 8, 1989

of Law in defending the new requirement. These cost increases might be offset partially by the document processing cost savings of initially reducing the number of applicants by approximately 60,000.

At this point, the net effect in administrative costs appears to be zero. If this does not prove to be the case upon implementation, a supplemental appropriation would be sought.

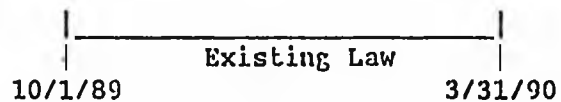
The Department's primary concern with the bill is a clear policy call -- the likelihood of a successful legal challenge to the extended ELIGIBILITY PERIOD on constitutional grounds, i.e. durational residency tests. This issue should be carefully weighed before jeopardizing the existing dividend program.

A handwritten signature in cursive script, appearing to read "H. Malone". The signature is written in dark ink and is positioned in the lower-left quadrant of the page.

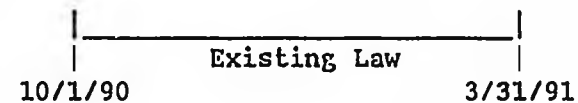
DIVIDEND  
YEAR

COMPARISON OF ELIGIBILITY PERIODS

1990



1991



H

E

B

H

SENATE COMMITTEE REPORT

FURTHER

5/5/89

DATE TURNED INTO OFFICE

5/7/89

Mr. President:

Finance

Committee considered

CSHB 34 (FIN)

establishing durational residency requirements, not to exceed two years, for receipt of the permanent fund dividend and receipt of benefits under the longevity bonus program; efd and recommended

- replace with \_\_\_\_\_ CS \_\_\_\_\_ )  same title
- or adopt \_\_\_\_\_ CS \_\_\_\_\_ )  new title
- attached amendment(s) and  technical title change (HB only)
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

FISCAL NOTE(S)  zero  fiscal impact  appropriation no FN  
 new  updated  previous 206 & 207 (210.0)  
 same as previous fiscal note(s) published

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]  
 \_\_\_\_\_  
[Signature]  
 \_\_\_\_\_  
[Signature]  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[Signature]  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[Signature]  
 Chair: signature and recommendation  
[Signature] Co-Chair  
 \_\_\_\_\_  
 \_\_\_\_\_

Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: March 21, 1989  
Title: \* See below

Agency Affected: Administration  
BRU: Longevity Bonus

Sponsor: Donley  
Requestor: State Affairs Committee

Components: Administration, Grants

\* An Act relating establishing durational residency requirements, not to exceed two years, for receipt of the permanent fund dividend and receipt of benefits under the longevity bonus program; and providing for an effective date

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	(210.0)	(1080.0)	(120.0)	(120.0)	(120.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(210.0)	(1080.0)	(120.0)	(120.0)	(120.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	(210.0)	(1080.0)	(120.0)	(120.0)	(120.0)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	(210.0)	(1080.0)	(120.0)	(120.0)	(120.0)

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)

See attached

Prepared By: James M. Chase  
Division: Pioneers' Benefits

Phone: 465-4400  
Date: 3/21/89

Approved by Commissioner: John M. Andrews  
Agency: Department of Administration

Date: 3/21/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

cc: "House Bills" Binder

Adopted

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (FIN)

In order to project the fiscal impact of the passage of CSHB 34 some assumptions had to be made. These assumptions were:

- 1) That the number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state will remain at the same ratio to the total number of applicants.

Rationale: This ratio has remained constant for the past two years.

- 2) That the ratio of applicants for the Longevity Bonus who have a minimum of one year of residence in the state to the total number of applicants will remain at one in five.

Rationale: This is the ratio demonstrated in the last two years.

- 3) That the passage of CSHB 34 will impact only those applicants with less than two years of residence the year following its passage.

Rationale: Those applicant who would otherwise be qualified would have to wait another year for their applications to be accepted. Those who learn of the passage of CSHB 34 who do not have the one year of residence would apply two years after its passage and continue to do so in the following years.

- 4) That the average number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state is 40 per month.

Rationale: Historical trend analysis result.

With these assumptions, the following calculations were made. Each month the number of applicants who only have the minimum of one year in the state is multiplied by \$250 to compute the projected savings. The first month would be 40 times \$250, the second month it would be 80 times \$250 and so forth until the original "40" became eligible by having the minimum of two years in the state a year after the effective date of the bill. From that point, the amount of savings would decrease until all of those originally affected would have become eligible. The savings then would level out at the initial monthly rate of 40 one year minimum applicants times the \$250.

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 34 (FIN)  
PUBLISH DATE: HOUSE 3/24/89

FISCAL NOTE

REQUEST:

Revision Date: March 21, 1989  
Title: "... for establishing durational  
residency requirements..."  
Sponsor: House Judiciary  
Requestor: House Finance

Agency Affected: Department of Law  
BRU: Legal Services  
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL				30.0	30.0	
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	30.0	30.0	-0-

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	30.0	30.0	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

*Richard L. Pegues*

Prepared by: Richard L. Pegues, Director

Phone: 465-3672

Division: Administrative Services Division

Date: March 21, 1989

*Richard L. Pegues FOR*

Approved by Commissioner: Douglas B. Bailly, Attorney Gen.

Date: March 21, 1989

Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Adopted

## CONTINUATION of FISCAL NOTE ANALYSIS

No. 5  
CSHB 34 (FIN)  
HOUSE 3/24/89For Bill/Resolution No. CSHB 34 (Fin)

The committee substitute for HB 34 adds legislative findings, and it also provides for reduced durational residency requirements if a court finds that the bill's 24 month durational requirements are invalid. Specifically, Sections 3 and 6 appear to delegate the legislature's law making authority to the court, if a court finds either a two year or a one year residency requirement invalid. In the case of the Longevity Bonus Program, this delegation could conceivably result in a shorter durational residency requirement than currently exists. However, these changes do not alter the fact that state laws containing lengthy durational residency requirements come under legal attack in Alaska. Consequently, the fiscal impact noted in the Department of Law's fiscal note of February 8, 1989, are still appropriate. The department's previous comments regarding that impact are repeated below.

Section 2 of this bill amends AS 43.23.005(a)(2) to increase the residency requirement, for an individual to receive the state's annual permanent fund dividend, from six consecutive months' residence to 24 consecutive months' residence immediately preceding April 1 of the current dividend year.

Section 5 of the bill amends AS 47.45.010(a) to increase the residency requirement, for an individual to receive the state's longevity bonus, from one year's residency to two year's residency immediately preceding an individual's application for the longevity bonus.

Historically, state laws containing lengthy durational requirements have come under legal attack in Alaska. The department anticipates that if the bill is enacted it will be challenged in the courts, on federal constitutional grounds. Fiscal note funds, in the amount of 30.0, are therefore being requested to pay for outside counsel legal scholar costs, to assist in the preparation and review of arguments that will be needed by the department to defend the state.

In addition to these costs, the department also has a hidden cost whenever it has to divert existing staff resources from other work to defend against durational residency lawsuits. As an example, the longevity bonus lawsuit, Vest v. State, cost the department about \$70,000 in staff salaries and associated overhead expenses. Approximately ten weeks of attorney time was required to prepare for and defend the state at trial, on the constitutionality and retroactivity issues. Approximately eight weeks of attorney time was spent on the Alaska Supreme Court appeals, on the same issues. The average cost for the department's attorneys who handle this level of work, including normal office support costs, is \$96.00 per hour. The department also paid Professor Walter Dellinger \$8,200 to review and help prepare its briefs in the Vest trials. Professor Dellinger is a noted legal scholar and an expert on constitutional law. The department's outside legal expert costs in this matter would have been substantially greater had the case reached the U.S. Supreme Court. Because this particular

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (Fin)

No. 5  
CSHB 34 (FIN)  
HOUSE 3/24/89

dispute was settled on a request for a motion for summary judgement and did not require a trial on the facts, and because the dispute ended at the state supreme court level, the department's total costs were probably somewhat less than they would have been if the case had gone to the U.S. Supreme Court. Lastly, the costs, attorney fees, and interest that were awarded to the plaintiff by the court in Vest, and which were subsequently paid by the state, totalled \$149,383.88.

Although an opinion cannot be offered, it should also be noted that if the bill becomes law and then is subsequently overturned by the courts, the state might be exposed to the payment of damages for any injuries or loss suffered by any classes of persons, as a result of the bill's enactment.

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 34 (FIN)  
PUBLISH DATE: HOUSE 3/24/89

FISCAL NOTE

REQUEST

Revision Date: March 21, 1989  
Title: Durational residency require-  
ments for state benefit programs  
Sponsor: Donley, Boucher, Boyer et al.  
Requestor: House Finance

Agency Affected: Revenue  
BRU: Permanent Fund Dividend Division  
Components: Permanent Fund Dividend  
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: See Attached

Prepared By: Ervin Jones Phone: 465-2323  
Division: Permanent Fund Dividend Division Date: March 21, 1989

Approved by Commissioner: Hugh Malone Date: 3/21/89  
Agency: Revenue

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Adopted

Alaska Department of Revenue  
Permanent Fund Dividend Division  
CS HB 34 (Fin) Fiscal Note Analysis  
March 21, 1989

No. 6  
CSHB 34 (FIN)  
HOUSE 3/24/89

Section 2 modifies one of the four general eligibility requirements to receive a permanent fund dividend. Under the law enacted in 1982, an individual must have been "a state resident for a period of at least six consecutive months immediately preceding April 1 of the current dividend year." For example, in addition to the other requirements, to be eligible for the 1990 dividend under current law, an individual must have been a state resident during the ELIGIBILITY PERIOD of October 1, 1989 through March 31, 1990. Section 2 extends the six month requirement to 24 months. In other words, the individual in the above example, in order to qualify for the 1990 dividend (see Section 9) must have been a state resident for the entire ELIGIBILITY PERIOD of April 1, 1988 through March 31, 1990.

Conservatively speaking, there are approximately 60,000 new dividend applicants each year. The first effect of Section 2 would be felt in 1990 when 60,000 new Alaskans who thought they would be eligible, find that they are not.

It will take considerable effort on the Department's part, in conjunction with the state demographer, to predict the final effect of this bill. Some of the factors to be considered include:

- 1) the length of the period (current proposal - 24 months);
- 2) the number of eligible individuals who leave Alaska each year;
- 3) the number of new person's arriving each year;
- 4) the percentage of individuals moving to Alaska who leave after six months, one year, eighteen months, etc.;
- 5) the seasonal distribution of new arrivals;
- 6) the relative birth rate of new arrivals versus individuals who have been in Alaska over two years; and
- 7) the reaction of military personnel to the new proposal, i.e. how do they respond to the new choice presented relative to overseas pay, overseas duty credit, etc.

The final effect on administrative costs of the Permanent Fund Dividend program would depend upon such factors as mentioned above. For the first two years, the additional costs would include informing, advising, and counseling the public; answering repeated questions as to their eligibility, plus the costs of denying the applicants who would file anyway and hearing their appeals; and the costs of assisting the Department of Law in defending the new requirement. These cost increases might be offset partially by the document processing cost savings of initially reducing the number of applicants by approximately 60,000.

Alaska Department of Revenue  
Permanent Fund Dividend Division  
CS HB 34 (Fin) Fiscal Note Analysis  
March 21, 1989

No. 6  
CSHB 34 (FIN)  
HOUSE 3/24/89

The Department's primary concern with the bill is a clear policy call -- the likelihood of a successful legal challenge to the extended ELIGIBILITY PERIOD on constitutional grounds, i.e. durational residency tests, and the likelihood of a successful injunction request, prohibiting the Department of Revenue from distributing dividends in 1990 until the court has resolved any litigation. An effective date of 1990 does not allow much time for the courts to resolve any possible litigation, making an injunction more likely. A successful injunction request, preventing the timely distribution of the 1990 dividends, would have a definite negative effect on Alaska's economy. For those residents who depend upon the annual dividend for basic necessities, an injunction would have serious consequences. A successful injunction would also cause increased costs in the administration of the dividend program as we deal with the predictable outpouring of concern and complaints from 536,000 Alaskan residents. For the above reasons, the Department of Revenue strongly opposes changing the effective date to January 1, 1990. This issue should be carefully weighed before jeopardizing the existing dividend program.

Original sponsors: Donley, Boucher,  
Boyer, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

CS FOR HOUSE BILL NO. 34 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act establishing durational residency require-  
7 ments, not to exceed two years, for receipt of the  
8 permanent fund dividend and receipt of benefits under  
9 the longevity bonus program; and providing for an  
10 effective date."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 \* Section 1. FINDINGS. (a) The legislature finds with respect to the  
13 permanent fund dividend program that

14 (1) compared with other states, Alaska has one of the highest  
15 ratios of transients to permanent state residents;

16 (2) a significant number of people from other states come to  
17 Alaska to work in temporary or seasonal jobs or on short-term projects;

18 (3) because of the large number of transients it is very diffi-  
19 cult for the state to determine whether a person is actually a resident  
20 with the intent to remain in the state;

21 (4) the permanent fund dividend program is unique to the state  
22 and provides generous benefits;

23 (5) the generous nature of this benefit program creates an  
24 inducement for people to claim residency inaccurately;

25 (6) a two-year residency requirement is a reasonable way to  
26 determine bona fide residency for the purposes of eligibility for this  
27 benefit program;

28 (7) a two-year residency requirement will not discourage mi-  
29 gration to the state or otherwise interfere with interstate travel;

1           (8) this program does not involve a basic right under the state  
2 or federal constitutions or a basic necessity of life;

3           (9) a two-year residency requirement will more accurately indi-  
4 cate actual domicile and the intent to remain a resident than the require-  
5 ment under current law; and

6           (10) the interest of the state in determining bona fide residence  
7 for purposes of this program is at least equal to the interest recognized  
8 in *Andress v. Baxter*, U.S. District Court for the District of Alaska, No.  
9 A82-307 Civ., September 8, 1983.

10          (b) The legislature finds with respect to the longevity bonus program  
11 that

12           (1) the longevity bonus is immediately payable to an applicant  
13 upon acceptance into the program;

14           (2) acceptance into the program is primarily based on a state-  
15 ment from the applicant that the applicant is a resident for the purposes  
16 of eligibility for this benefit program and that the applicant intends to  
17 remain a resident of the state;

18           (3) a two-year residency requirement will more accurately indi-  
19 cate actual domicile and the intent to remain a resident than the require-  
20 ment under current law;

21           (4) the longevity bonus program is unique to the state and  
22 provides generous benefits;

23           (5) the generous nature of this benefit program creates an  
24 inducement for people to claim residency inaccurately;

25           (6) a two-year residency requirement is a reasonable way to  
26 determine bona fide residency for the purposes of eligibility for this  
27 benefit program;

28           (7) the two-year residency requirement will not discourage  
29 migration to the state or otherwise interfere with interstate travel;

1           (8) this program does not involve a basic right under the state  
2 or federal constitutions or a basic necessity of life; and

3           (9) the interest of the state in determining bona fide residence  
4 for purposes of this program is at least equal to the interest recognized  
5 in Andress v. Baxter, U.S. District Court for the District of Alaska, No.  
6 A82-307 Civ., September 8, 1983.

7       \* Sec. 2. AS 43.23.005(a) is amended to read:

8           (a) An individual is eligible to receive one permanent fund  
9 dividend each year in an amount to be determined under AS 43.23.025 if  
10 the individual applies to the department, and if

11           (1) on the date of application the individual is a state  
12 resident;

13           (2) the individual was a state resident for a period of at  
14 least 24 [SIX] consecutive months immediately preceding April 1 of the  
15 current dividend year; and

16           (3) the individual has been physically present in the state  
17 at some time during the period beginning July 1 two years before the  
18 date of application and ending on the date of application.

19       \* Sec. 3. AS 43.23.005 is amended by adding a new subsection to read:

20           (e) If a court finds the durational residency requirement under  
21 (a)(2) of this section is invalid and no appeal is pending, the resi-  
22 dency requirement is one year. If a court finds the one year resi-  
23 dency requirement is invalid and no appeal is pending, the residency  
24 requirement is the longest duration permitted by law. The department  
25 shall change the statement of eligibility under AS 43.23.015(b) as  
26 necessary to conform to this subsection.

27       \* Sec. 4. AS 43.23.015(b) is amended to read:

28           (b) The department shall prescribe and furnish an application  
29 form for claiming a permanent fund dividend. The application must

1 contain a statement of eligibility and a certification of residency in  
2 substantially the following form:

3 I certify that

4 ( ) I am a state resident on the date of this application, I have  
5 been a state resident for at least 24 [SIX] months immediately preced-  
6 ing April 1 of the current dividend year, and I have been physically  
7 present in the State of Alaska at some time during the period begin-  
8 ning July 1 two years before the date of application and ending on the  
9 date of this application; or

10 ( ) (name), the individual on whose behalf I am applying, is a  
11 state resident on the date of this application, has been a state  
12 resident for at least 24 [SIX] months immediately preceding April 1 of  
13 the current dividend year, and has been physically present in the  
14 State of Alaska at some time during the period beginning July 1 two  
15 years before the date of application and ending on the date of this  
16 application.

17 I understand that a false claim of eligibility to obtain a perma-  
18 nent fund dividend for myself or for another is a criminal offense,  
19 that if convicted I will forfeit future dividends, and that I must  
20 repay all dividends that have been paid to me. I understand that if I  
21 wilfully misrepresent, exercise gross negligence, or recklessly disre-  
22 gard a material fact regarding my eligibility for a permanent fund  
23 dividend I will forfeit the dividend, be subject to a civil fine of up  
24 to \$5,000, and lose my eligibility for the next five dividends. I  
25 understand that these penalties are in addition to any criminal pen-  
26 alties imposed.

27  
28  
29

\_\_\_\_\_  
(signature of individual,  
parent, guardian, or other

1 authorized representative)

2 \* Sec. 5. AS 47.45.010(a) is amended to read:

3 (a) A person who is 65 years of age or over, who resides in the

4 state for at least two years [ONE YEAR] immediately preceding applica-

5 tion for a longevity bonus under this chapter may apply to the commis-

6 sioner of administration for qualification to receive a monthly bonus

7 [of \$250.]

8 \* Sec. 6. AS 47.45.010 is amended by adding a new subsection to read:

9 (d) If a court finds the durational residency requirement under

10 (a) of this section is invalid and no appeal is pending, the residency

11 requirement is one year. If a court finds the one year residency

12 requirement is invalid and no appeal is pending, the residency re-

13 quirement is the longest duration permitted by law.

14 \* Sec. 7. Notwithstanding the amendments to AS 43.23 made by secs. 2 -

15 4 of this Act, if an individual received a permanent fund dividend for 1989

16 the individual's eligibility to receive a dividend for 1990 shall be de-

17 termined under the law as it existed before those amendments.

18 \* Sec. 8. Notwithstanding the amendment to AS 47.45 made by secs. 5 and

19 6 of this Act, if an individual received a longevity bonus payment for any

20 month during 1989, the individual's eligibility to receive bonus payments

21 during 1990 shall be determined under the law as it existed before that

22 amendment.

23 \* Sec. 9. This Act takes effect January 1, 1990.

H

B

3

6

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 17, 1989

FURTHER REFERRALS:

Date of Committee Action: 3/8/89

The FINANCE Committee considered:

HB 36

HOUSE BILL NO. 36 [RIGHTS OF CRIME VICTIMS]
"An Act relating to victims of crime, claims by victims of crime arising from criminal conduct, and service of process on prisoners; and amending Rules 32(d) (1) and 35 of the Alaska Rules of Criminal Procedure."

RECOMMENDS:

- Replacing with CS HB 36 (Fin.) the same title a new title
[ ] the attached amendment(s)
[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the Committee

ADOPTS: letter of intent

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

- (2) [X] fiscal impact (Law) (Corrections) [ ] fiscal note(s) published:
[ ] zero fiscal note (HESS)
[ ] zero with analysis

[X] zero fiscal notes(s) published:
2/17/89 (Public Safety) (HESS) (COURTS)

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS: (Do Not Pass, No Recommendation, Amend)

Signatures and names: LARSON, SWACKHAMMER, BROWN, KOPONEN, WLMER, BARNES, SHULTZ, PHILLIPS

Signatures and notes: Hoffman (No Rec), RIEGEL (No Recommendation), WALLIS (No Rec)

Chairman's signature: Ronald J. Larson

## FISCAL NOTE

**REQUEST:**

Revision Date: March 6, 1989  
Title: "An Act relating to victims of crimes..."  
Sponsor: House Finance  
Requestor: House Finance

Agency Affected: Department of Law  
BRU: Prosecution  
Components: Third Judicial District,  
Fourth Judicial District

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		67.3	69.3	71.4	73.5	75.5
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		8.2	8.4	8.7	9.0	9.3
SUPPLIES		3.6	3.7	3.8	3.9	4.0
EQUIPMENT		16.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		95.1	81.4	83.9	86.4	89.0

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

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

**FUNDING:** (Thousands of Dollars)

GENERAL FUND		95.1	81.4	83.9	86.4	89.0
FEDERAL FUNDS						
OTHER						
TOTAL						

**POSITIONS:**

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

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

Please see the attached analysis.

*Richard I. Pegues*

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

Phone: 465-3672

Date: March 6, 1989

Approved by Commissioner: Douglas B. Bailey, Attorney Gen.  
Agency: Department of Law

Date: March 6, 1989

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

**RECEIVED**  
MAR 7 1989

Adopted

M10319

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 36 (Fin.)

The Finance Committee substitute for HB 36 makes changes to the bill, requiring revision of the Department of Law's fiscal notes, which were submitted on November 10, 1988, January 17, 1989, and February 16, 1989.

The bill adds a new subsection to AS 12.61 that requires that upon request of the victim of a felony, or a domestic violence assault, the prosecuting attorney shall: (1) confer with the victim about the victim's testimony before the trial of the defendant; (2) give prompt actual notice to the victim of the defendant's conviction and the crimes of which the defendant was convicted, including advising the victim of his or her right to make a written or oral statement for use in preparation of the defendant's presentence report, and including advising the victim of his or her right to appear personally at the defendant's sentencing hearing to present a written or oral statement, and advising of the address and telephone number of the office that will prepare the presentence report, advising of the time and place of the sentencing proceeding, and advising of the types of information that a victim may include in a statement a victim provides for a presentence report or a sentencing hearing.

This section would also require that the prosecuting attorney notify the victim in writing of the final disposition of the case within 30 days after final disposition of the case. It appears that notification of final disposition would be required at both the trial and appellate levels. Similarly, a preceding section grants the right to victims to be informed by the prosecuting attorney at any time after the defendant's conviction of the record of all the defendant's convictions.

Currently, about 18,000 new criminal matters are referred to the department's criminal division each year. It is estimated that of this number, about 2,000 are felony cases covered by this bill. Furthermore, many felony cases have multiple victims. Although the department does not keep separate statistics for misdemeanor domestic violence assaults, it is believed that there are about 300 of these offenses, each year. Consequently, this bill has the potential for generating a substantial body of new work at all of the department's prosecution offices. Most of this required work would be handled by paralegals and legal secretaries. The requirement for prosecutors to confer with victims before the trial of the defendant in felony and domestic violence assault cases, is generally already being met.

The majority of the new work, however, will occur at Anchorage and Fairbanks because of the higher number of covered crimes at those locations. It will therefore be necessary to add a legal secretary at both Anchorage and Fairbanks to handle the additional workload that will be caused by this section of the bill; at a start up cost of \$95,300, and recurring annual costs of \$81,400, thereafter.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 36 (Fin.)

Fiscal Summary - CSHB 36 (Fin.)

	<u>Pers. Svcs.</u>	<u>Contractual</u>	<u>Supplies</u>	<u>Equip.</u>	<u>Total</u>
Anchorage					
Legal Secretary I	33.1	4.1	1.8	8.0	47.7
PFT					
Fairbanks					
Legal Secretary I	34.2	4.1	1.8	8.0	48.1
PFT					
	—	—	—	—	—
Total	67.3	8.2	3.6	16.0	95.1

Costs beyond FY 90 include a 3 percent annual inflation factor, less one-time costs.

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/13
<b>Justification</b>				
This full-time position is needed to provide for the victim notification and liaison requirements of CSHB 36. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.				
Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.				
<b>Type of Expenditure</b>		<b>Amount</b>		
1	2	3		
Salary	22,716			
Benefits	10,412			
Premium Pay				
Other				
<b>Total Personal Services</b>		<b>33,128</b>		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		8,000		
Other				
<b>Total Cost</b>		<b>47,028</b>		
<b>Funding Source for Total Cost</b>				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	47,028		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For  
New Position**

Agency Department of Law  
 BRU Prosecution  
 Component Third Judicial District

Page 1 of 2  
 Revised Date

**FY 90**

Position Title <b>Legal Secretary I</b>		No. of Positions <b>1</b>	Range/Step <b>10B</b>	Barg. Unit <b>GCU</b>
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>Fairbanks</b>		Election District <b>19/20A/21</b>
<b>Type of Expenditure</b>		<b>Amount</b>		
<b>1</b>	<b>2</b>	<b>3</b>		
Salary	23,628			
Benefits	10,615			
Premium Pay				
Other				
<b>Total Personal Services</b>		<b>34,243</b>		
<b>Travel</b>		<b>-0-</b>		
<b>Contractual</b>		<b>4,100</b>		
<b>Commodities</b>		<b>1,800</b>		
<b>Equipment</b>		<b>8,000</b>		
<b>Other</b>				
<b>Total Cost</b>		<b>48,143</b>		
<b>Funding Source for Total Cost</b>				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	<b>48,143</b>		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Justification**

This full-time position is needed to provide for the victim notification and liaison requirements of CSHB 36. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.

Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.

**Request For  
New Position**

Agency Department of Law  
 BRU Prosecution  
 Component Fourth Judicial District

Page 2 of 2  
 Revised Date

**FY 90**

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: "An Act relating to victims of  
Sponsor: Reps. Doniev & Gruenberg  
Requestor: \_\_\_\_\_

Agency Affected: Department of Corrections  
BRU: Administration & Support  
Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		25.3	27.1	27.9	28.7	29.5
TRAVEL		3.1	3.4	3.4	3.1	3.1
CONTRACTUAL		5.4	6.4	6.1	5.4	5.1
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>36.1</b>	<b>36.9</b>	<b>37.7</b>	<b>38.5</b>	<b>39.1</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**FUNDING:** (Thousands of Dollars)

GENERAL FUND		36.1	36.9	37.7	38.5	39.1
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>36.1</b>	<b>36.9</b>	<b>37.7</b>	<b>38.5</b>	<b>39.1</b>

**POSITIONS:**

FULL-TIME	0	1	1	1	1	1
PART-TIME						
TEMPORARY						

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

See Attached Analyst.

*Susan E. Knighton*

Prepared by: Susan E. Knighton, Director  
Division: Administrative Services

Phone: 465-3376  
Date: 3-3-89

Approved by Commissioner: Susan Humphrey - Barnett  
Agency: Department of Corrections

Date: 3-3-89

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Adopted

FISCAL NOTE  
CSHB 36 (Finance)

ANALYSIS

The Department of Corrections would experience fiscal impact due to the longer parole hearings that would be necessary. The increases are in the per diem and daily fees paid to board members and overtime for correctional officers providing security.

Additional cost will be required to accomplish notifying victims by hiring a full-time Clerk III.

Cost Analysis:

Five Board Members @ \$80.00/day Per Diem x 8.5 additional meeting days/year	\$ 3,400.00
Five Board Members @ \$150.00/day Compensation x 8.5 additional meeting days/year	\$ 6,400.00
64 hours of Correctional Officer over-time for prisoner transport and security @ \$25.00/hr.	\$ 1,600.00
One Clerk III @ \$24,700.00/year	\$24,700.00
Total	\$36,100.00

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to victims of crime....  
Sponsor: Donlev, Gruenberg, et al.  
Requestor: \_\_\_\_\_

Agency Affected: Health & Social Services  
BRU: Youth Services  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill has no fiscal impact on the agency.

Prepared by: Yvonne M. Chase, Director Phone: 465-3170  
Division: Family & Youth Services Date: 2/14/89  
Approved by Commissioner: Myra A. Hanson Date: 2/16/89  
Agency: Department of Health & Social Services

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

RECEIVED  
FEB 21 1989

Adopted

WV 510

**STATE OF ALASKA 1989 LEGISLATIVE SESSION  
FISCAL NOTE**

Bill Version: HB 36  
Publish Date:

**REQUEST:**

Revision Date:  
Title: ...victims of crime, claims by  
victims..., and service of process  
Sponsor: Donley, Gruenberg, Boucher...  
Requestor:

Agency Affected: Alaska Court System  
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
<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	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING:		(Thousands of Dollars)				
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<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>

POSITIONS:		(Thousands of Dollars)				
Full-time	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

**Adopted**

Prepared by: *Jan Strandberg*  
Jan Strandberg, General Counsel  
Division: Alaska Court System  
Approved by: *Arthur H. Snowden, II*  
Arthur H. Snowden, II, Administrative Director  
Agency: Alaska Court System

Phone: 264-8228  
Date: 01/17/89  
Date: 01/17/89

- Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

received  
1-19-89

111

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 36 (Jud)  
PUBLISH DATE: HOUSE 2/17/89

FISCAL NOTE

REQUEST:

Revision Date: 1/18/89 Agency Affected: Public Safety  
Title: "An Act relating to victims of crime, claims by victims of crime..." BRU: Council on Domestic Violence and Sexual Assault  
Sponsor: Rep. Donley, et al. Component: \_\_\_\_\_  
Requestor: House Judiciary

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The Judiciary committee substitute establishes a "victim and survivor assistance program" in the Department of Law rather than in the Department of Public Safety. The revised bill is not expected to have a fiscal impact on the Department of Public Safety.

Prepared by: Gayle A. Horetski  
Division: Office of the Commissioner

Phone: 465-4322  
Date: 1/18/89

Approved by Commissioner: J.A.H. Arthur English  
Agency: Department of Public Safety

Date: 1/28/89

Adopted



1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 36 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes, the rights, entitlements,  
7 and services that are due to victims of crime, and to  
8 service of process on prisoners; redefining the term  
9 'crime against a person'; and amending Rules 32 and  
10 35 of the Alaska Rules of Criminal Procedure."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 \* Section 1. SHORT TITLE. This Act may be referred to as the "Alaska  
13 Crime Victim's Rights Act."

14 \* Sec. 2. AS 09.05 is amended by adding a new section to read:

15 Sec. 09.05.050. SERVICE OF PROCESS ON STATE PRISONERS. (a) In  
16 a civil action to which a person committed to the custody of the  
17 commissioner of corrections is a party or witness, service of process  
18 shall be made by delivering a copy of the summons and the complaint or  
19 pleadings, together with a form for affidavit of proof of service, to  
20 the shift supervisor of the correctional facility in which the person  
21 is housed. The shift supervisor shall

22 (1) immediately hand deliver the summons and complaint or  
23 pleadings to the person whose name appears on the summons; and

24 (2) promptly complete the affidavit of proof of service on  
25 the form provided and return it to the party requesting service of  
26 process.

27 (b) A party requesting service of process under this section may  
28 locate a person committed to the custody of the commissioner of cor-  
29 rections by contacting the chief classification officer of the

1 Department of Corrections during that officer's regular hours of work.

2 \* Sec. 3. AS 12.47 is amended by adding a new section to read:

3 Sec. 12.47.095. NOTICE TO VICTIMS. (a) If an offender has been  
4 committed to the custody of the commissioner of health and social  
5 services under AS 12.47.090, the victim of that crime is entitled to  
6 notice of a pending change in the status of the offender. The commis-  
7 sioner of health and social services shall give notice as required by  
8 this section if

9 (1) the offender has been continued in commitment following  
10 expiration of the maximum term of imprisonment under AS 12.47.090(f)  
11 and the commissioner gives notice of release of the offender;

12 (2) the court is to consider modification of an order of  
13 conditional release for the offender under AS 12.47.092(e);

14 (3) a court is to consider conditional release of the  
15 offender under AS 12.47.090(k) and 12.47.092(a); or

16 (4) the offender petitions for discharge under AS 12.47.-  
17 092(f).

18 (b) If a victim desires notice under this section, the victim  
19 shall maintain a current, valid mailing address on file with the  
20 commissioner of health and social services. The commissioner shall  
21 send the notice required by this section to the victim's last known  
22 address. The victim's address may not be disclosed to the offender or  
23 offender's attorney.

24 (c) The commissioner of health and social services is required  
25 to give notice of a change in the status of an offender under this  
26 section to any victim who has requested notice.

27 (d) If more than one person who qualifies as a victim under  
28 AS 12.55.185 desires notice, the commissioner of health and social  
29 services shall designate one person for purposes of receiving any

1 notice required and exercising the rights granted by this section.

2 (e) In this section

3 (1) "offender" has the meaning given in AS 12.61.020;

4 (2) "victim" has the meaning given in AS 12.55.185.

5 \* Sec. 4. AS 12.55 is amended by adding a new section to read:

6 Sec. 12.55.023. PARTICIPATION BY VICTIM IN SENTENCING. (a) If  
7 a victim requests, the prosecuting attorney shall provide the victim  
8 with a copy of the following portions of the presentence report:

9 (1) the summary of the offense prepared by the Department  
10 of Corrections;

11 (2) the defendant's version of the offense;

12 (3) all statements and summaries of statements of the  
13 victim; and

14 (4) the sentence recommendation of the Department of Cor-  
15 rections.

16 (b) A victim may submit to the sentencing court a written state-  
17 ment that the victim believes is relevant to the sentencing decision.

18 \* Sec. 5. AS 12.55.088 is amended by adding new subsections to read:

19 (d) A victim has the right to comment in writing to the court on  
20 a motion to modify or reduce a sentence filed by the person who perpe-  
21 trated the offense against the victim.

22 (e) If a motion is filed to modify or reduce a sentence by a  
23 defendant who perpetrated a crime against a person or arson in the  
24 first degree, the court shall, if feasible, send a copy of the motion  
25 to the Department of Corrections sufficiently in advance of any  
26 scheduled hearing or briefing deadline to enable the department to  
27 notify the victim of that crime. If that victim has earlier requested  
28 to be notified, the Department of Corrections shall send the victim a  
29 copy of the motion and inform the person of that person's rights under

1 this section, the deadline for receipt of written comments, the hear-  
2 ing date, and the court's address.

3 (f) The court shall provide copies of the victim's comments to  
4 the prosecuting attorney, the person filing the motion to reduce or  
5 modify a sentence, and that person's attorney.

6 (g) In deciding whether to modify or reduce a sentence, the  
7 court shall consider the victim's comments, when relevant, and any  
8 response by the prosecuting attorney and the person filing the motion.

9 (h) If a victim desires notice under this section, the victim  
10 shall maintain a current, valid mailing address on file with the  
11 commissioner of corrections. The commissioner shall send the notice  
12 to the victim's last known address. The victim's address may not be  
13 disclosed to the offender or to the offender's attorney.

14 \* Sec. 6. AS 12.55 is amended by adding a new section to read:

15 Sec. 12.55.172. DESIGNATION OF REPRESENTATIVE. If more than one  
16 person who qualifies as a victim under AS 12.55.185 desires notice  
17 under AS 12.55.088, the prosecuting attorney shall designate one  
18 person to represent all victims for purposes of receiving the notice  
19 required and exercising the rights granted under this chapter.

20 \* Sec. 7. AS 12.55.185 is repealed and reenacted to read:

21 Sec. 12.55.185. DEFINITIONS. In this chapter, unless the con-  
22 text requires otherwise,

23 (1) "crime against a person" has the meaning given in  
24 AS 33.30.901;

25 (2) "dangerous instrument" has the meaning given in AS 11.-  
26 81.900;

27 (3) "firearm" has the meaning given in AS 11.81.900;

28 (4) "first felony conviction" means that the defendant has  
29 not been previously convicted of a felony;

1 (5) "judicial officer" has the meaning given in AS 11.56.-  
2 900;

3 (6) "pecuniary gain" means the amount of money or value of  
4 property at the time of commission of the offense derived by the  
5 defendant from the commission of the offense, less the amount of money  
6 or value of property returned to the victim of the offense or seized  
7 by or surrendered to lawful authority before sentence is imposed;

8 (7) "second felony conviction" means that the defendant  
9 previously has been convicted of a felony;

10 (8) "serious physical injury" has the meaning given in  
11 AS 11.81.900;

12 (9) "third felony conviction" means that the defendant has  
13 been at least twice previously convicted of a felony;

14 (10) "unconditional discharge" means that a defendant is  
15 released from all disability arising under a sentence, including  
16 probation and parole;

17 (11) "victim" means

18 (A) a person against whom an offense has been perpe-  
19 trated;

20 (B) one of the following, not the perpetrator, if the  
21 person specified in (A) of this paragraph is a minor, incompe-  
22 tent, or incapacitated:

23 (i) an individual living in a spousal relation-  
24 ship with the person specified in (A) of this paragraph; or

25 (ii) a parent, adult child, guardian, or custodian  
26 of the person;

27 (C) one of the following, not the perpetrator, if the  
28 person specified in (A) of this paragraph is dead:

29 (i) a person living in a spousal relationship

1 with the deceased before the deceased died;

2 (ii) an adult child, parent, brother, sister,  
3 grandparent or grandchild of the deceased; or

4 (iii) any other interested person, as may be des-  
5 ignated by a person having authority in law to do so.

6 \* Sec. 8. AS 12.61.010 is amended to read:

7 Sec. 12.61.010. RIGHTS OF CRIME VICTIMS. (a) Victims of crimes  
8 have the following rights:

9 (1) the right to be informed by the appropriate law en-  
10 forcement agency or the prosecuting attorney of the date of trial and  
11 the date of sentencing of the case in which the victim is involved;

12 (2) the right to be notified that a sentencing hearing or a  
13 court proceeding to which the victim has been subpoenaed will not  
14 occur as scheduled;

15 (3) the right to receive protection from harm and threats  
16 of harm arising out of cooperation with law enforcement and prosecu-  
17 tion efforts, and to be provided with information as to the protection  
18 available;

19 (4) the right to be informed of the procedure to be fol-  
20 lowed to apply for and receive any [VICTIM] compensation under AS 18.-  
21 67;

22 (5) at the request of the prosecution or a law enforcement  
23 agency, the right to cooperate with the criminal justice process  
24 without loss of pay and other employee benefits except as authorized  
25 by AS 12.61.017 and without interference in any form by the employer  
26 of the victim of crime; [AND]

27 (6) the right to obtain access to immediate medical assis-  
28 tance and not to be detained for an unreasonable length of time by a  
29 law enforcement agency before having medical assistance administered;

1 however, an employee of the law enforcement agency may, if necessary,  
2 accompany the person to a medical facility to question the person  
3 about the criminal incident if the questioning does not hinder the  
4 administration of medical assistance;

5 (7) the right to make a written or oral statement for use  
6 in preparation of the presentence report of a felony defendant;

7 (8) if the crime for which the defendant was convicted was  
8 a felony or a domestic violence assault, the right to appear person-  
9 ally at the defendant's sentencing hearing to present a written or  
10 oral statement; and

11 (9) the right to be informed by the prosecuting attorney,  
12 at any time after the defendant's conviction, about the complete  
13 record of the defendant's convictions.

14 (b) Law [VICTIMS' EMPLOYERS, LAW] enforcement agencies, prosecu-  
15 tors, and the courts shall make every reasonable effort to ensure that  
16 victims of crimes have the rights set out in (a) of this section.  
17 However, a failure to ensure these rights does not give rise to a  
18 separate cause of action against [VICTIMS' EMPLOYERS,] law enforcement  
19 agencies, other agencies of the state, or a political subdivision of  
20 the state.

21 \* Sec. 9. AS 12.61 is amended by adding new sections to read:

22 Sec. 12.61.015. DUTIES OF PROSECUTING ATTORNEY. (a) If a  
23 victim of a felony or a domestic violence assault requests, the pros-  
24 ecuting attorney shall make a reasonable effort to

25 (1) confer with the person against whom the offense has  
26 been perpetrated about that person's testimony before the defendant's  
27 trial;

28 (2) in a manner reasonably calculated to give prompt actual  
29 notice, notify the victim

1 (A) of the defendant's conviction and the crimes of  
2 which the defendant was convicted;

3 (B) of the victim's right in a case that is a felony  
4 to make a written or oral statement for use in preparation of the  
5 defendant's presentence report, and to appear personally at the  
6 defendant's sentencing hearing to present a written or oral  
7 statement;

8 (C) of the address and telephone number of the office  
9 that will prepare the presentence report; and

10 (D) of the time and place of the sentencing proceed-  
11 ing;

12 (3) notify the victim in writing of the final disposition  
13 of the case within 30 days after final disposition of the case.

14 (b) The notice given under (a)(2) of this section must inform  
15 the victim that the statement of the victim may contain any relevant  
16 information including

17 (1) an explanation of the nature and extent of physical,  
18 psychological, or emotional harm or trauma suffered by the victim;

19 (2) an explanation of the extent of economic loss or prop-  
20 erty damage suffered by the victim;

21 (3) an opinion of the need for and extent of restitution  
22 and whether the victim has applied for or received compensation for  
23 loss or damage; and

24 (4) the recommendation of the victim for an appropriate  
25 sentence.

26 (c) The state and the prosecuting attorney may not be held  
27 liable in damages for any failure to comply with the requirements of  
28 this section.

29 Sec. 12.61.017. INTERFERENCE BY VICTIM'S EMPLOYER. (a) An

1 employer may not penalize or threaten to penalize a victim because the  
2 victim is subpoenaed or requested by the prosecuting attorney to  
3 attend a court proceeding for the purpose of giving testimony. In  
4 this section, "penalize" means to take action affecting the employment  
5 status, wages, and benefits payable to the victim, including:

6 (1) demotion or suspension;

7 (2) dismissal from employment; and

8 (3) loss of pay or benefits, except pay and benefits that  
9 are directly attributable to the victim's absence from employment to  
10 attend the court proceeding.

11 (b) A person who violates (a) of this section is guilty of a  
12 violation.

13 (c) A victim who suffers a pecuniary loss as a result of an  
14 employer's act prohibited by this section may bring a civil action to  
15 recover actual damages and punitive damages of three times the actual  
16 damages sustained.

17 \* Sec. 10. AS 12.61 is amended by adding a new section to read:

18 Sec. 12.61.030. DESIGNATION OF REPRESENTATIVE. If more than one  
19 person who qualifies as a victim under AS 12.55.185 makes a request  
20 under this chapter, the prosecuting attorney shall designate one  
21 person for purposes of receiving the notice required and exercising  
22 the rights granted under this chapter.

23 \* Sec. 11. AS 12.61 is amended by adding a new section to read:

24 Sec. 12.61.900. DEFINITIONS. In this chapter

25 (1) "domestic violence assault" means an assault under  
26 AS 11.41.200 - 11.41.230 or 11.41.410 - 11.41.425 constituting a  
27 domestic violence offense under AS 25.35.060;

28 (2) "victim" has the meaning given in AS 12.55.185.

29 \* Sec. 12. AS 33.16.120(a) is repealed and reenacted to read:

1 (a) If the victim of a crime against a person or arson in the  
2 first degree requests notice of a scheduled hearing to review or con-  
3 sider discretionary parole for a prisoner convicted of that crime, the  
4 board shall send notice of the hearing to the victim at least 30 days  
5 before the hearing. The notice must be accompanied by a copy of the  
6 prisoner's application for parole submitted under AS 33.16.130(a).  
7 However, the copy of the application sent to the victim may not  
8 include the prisoner's proposed residence and employment addresses.

9 \* Sec. 13. AS 33.16.120(b) is repealed and reenacted to read:

10 (b) A victim who requests notice under this section shall main-  
11 tain a current, valid mailing address on file with the board. The  
12 board shall send the notice required by this section to the last known  
13 address of the victim. The victim's address may not be disclosed to  
14 the prisoner or the prisoner's attorney.

15 \* Sec. 14. AS 33.16.120(c) is amended to read:

16 (c) The victim has a right to attend meetings of the parole  
17 board in which the status of the prisoner convicted of the crime  
18 against that victim is officially considered and to comment, in writ-  
19 ing or in person, on the proposed action of the board. Copies of any  
20 written [THE] comments shall be provided to the prisoner and the  
21 prisoner's attorney before action by the board.

22 \* Sec. 15. AS 33.16.120(e) is repealed and reenacted to read:

23 (e) If the victim requests, the board shall make every reason-  
24 able effort to notify the victim as soon as practicable in writing of  
25 its decision to grant or deny discretionary parole or to release the  
26 prisoner under AS 33.16.010(c). The notice under this subsection must  
27 include the expected date of the prisoner's release, the geographic  
28 area in which the prisoner is required to reside, and other pertinent  
29 information concerning the prisoner's conditions of parole that may

1 affect the victim.

2 \* Sec. 16. AS 33.16.150(b) is amended to read:

3 (b) The board may require as a condition of discretionary or  
4 mandatory parole that a prisoner released on parole

5 (1) meet family obligations;

6 (2) pursue employment, education, counseling, or training;

7 (3) remain within stated geographic limits unless written  
8 permission to depart from the stated limits is granted the parolee;

9 (4) report upon release to the parole officer assigned to  
10 the parolee;

11 (5) report as required to the parole officer assigned to  
12 the parolee;

13 (6) reside at a stated place and notify the board of any  
14 change in place of residence;

15 (7) not possess or control firearms or other dangerous  
16 weapons;

17 (8) refrain from possessing or consuming alcoholic beverages;  
18

19 (9) submit to reasonable searches and seizures by a parole  
20 officer, or a peace officer acting under the direction of a parole  
21 officer;

22 (10) submit to appropriate medical, mental health, or controlled  
23 substance or alcohol examination, treatment, or counseling;

24 (11) submit to periodic examinations designed to detect the  
25 use of alcohol or controlled substances;

26 (12) make restitution ordered by the court [TO A VICTIM OF  
27 THE PRISONER'S CRIME,] according to a schedule established by the  
28 board;

29 (13) refrain from opening, maintaining, or using a checking

1 account or charge account;

2 (14) refrain from entering into a contract other than a  
3 prenuptial contract or a marriage contract;

4 (15) refrain from operating a motor vehicle;

5 (16) refrain from entering an establishment where alcoholic  
6 beverages are served, sold, or otherwise dispensed;

7 (17) refrain from participating in any other activity or  
8 associating with any other person that the board determines is rea-  
9 sonably likely to diminish the rehabilitative goals of parole, or that  
10 may endanger the public.

11 \* Sec. 17. AS 33.16 is amended by adding a new section to read:

12 Sec. 33.16.260. DESIGNATION OF REPRESENTATIVE. If more than one  
13 person who qualifies as a victim under AS 12.55.185 requests notice  
14 under this chapter, the commissioner shall designate one person for  
15 purposes of receiving the notice required and exercising the rights  
16 granted by this chapter.

17 \* Sec. 18. AS 33.20.080 is amended to read:

18 Sec. 33.20.080. BOARD OF PAROLE TO INVESTIGATE APPLICATIONS FOR  
19 EXECUTIVE CLEMENCY. The governor may refer applications for executive  
20 clemency to the board of parole. The board shall investigate each  
21 case and submit to the governor a report of the investigation, to-  
22 gether with all other information the board has regarding the appli-  
23 cant. When the report or investigation is submitted, the board shall  
24 also transmit to the governor the comments it has received under (b)  
25 of this section.

26 \* Sec. 19. AS 33.20.080 is amended by adding new subsections to read:

27 (b) If requested by the victim of a crime against a person or  
28 arson in the first degree, the board shall send notice of an applica-  
29 tion for executive clemency submitted by the state prisoner who was

1 convicted of that crime. The victim may comment in writing to the  
2 board on the application for executive clemency.

3 (c) If the victim desires notice under (b) of this section, the  
4 victim shall maintain a current, valid mailing address on file with  
5 the board. The board shall send the notice required under this sec-  
6 tion to the victim's last known address. The victim's address may not  
7 be disclosed to the applicant for executive clemency or the appli-  
8 cant's attorney.

9 (d) In this section,

10 (1) "crime against a person" has the meaning given in  
11 AS 33.30.901;

12 (2) "victim" has the meaning given in AS 12.55.185.

13 \* Sec. 20. AS 33.30 is amended by adding a new section to read:

14 Sec. 33.30.013. COMMISSIONER TO NOTIFY VICTIMS. (a) The com-  
15 missioner shall notify the victim if the offender

16 (1) escapes from custody;

17 (2) is released to the community on a furlough; or

18 (3) is released on an early release program.

19 (b) The commissioner is required to give notice of a change in  
20 the status of an offender under this section only if the victim has  
21 requested notice of the change.

22 (c) A victim who has requested notice under (b) of this section  
23 shall maintain a current, valid mailing address on file with the  
24 commissioner. The commissioner shall send the notice from the depart-  
25 ment required by this section to the victim's last known address. The  
26 victim's address may not be disclosed to the offender or the offend-  
27 er's attorney.

28 (d) The state may not be held liable in damages for the failure  
29 of the commissioner to comply with the requirements of this section.

1 \* Sec. 21. AS 33.30.111(f) is repealed and reenacted to read:

2 (f) If the commissioner considers a prisoner convicted of a  
3 crime against a person or arson in the first degree for a prerelease  
4 furlough and the victim has requested notice under AS 33.30.013, the  
5 commissioner shall send notice of intent to consider the prisoner for  
6 a prerelease furlough to the victim. The victim may comment in writ-  
7 ing on the commissioner's intent to release the prisoner on prerelease  
8 furlough status. The commissioner shall consider the victim's com-  
9 ments before making a final decision to release a prisoner on a pre-  
10 release furlough. The commissioner shall make a reasonable effort to  
11 notify the victim of an intent to release the prisoner on a prerelease  
12 furlough. The notice must contain the expected date of the prisoner's  
13 release, the geographic area in which the prisoner will reside, and  
14 other pertinent information concerning the prisoner's release that may  
15 affect the victim.

16 \* Sec. 22. AS 33.30 is amended by adding a new section to read:

17 Sec. 33.30.292. DESIGNATION OF REPRESENTATIVE. If more than one  
18 person who qualifies as a victim under AS 12.55.185 requests notice  
19 under this chapter, the commissioner shall designate one person for  
20 purposes of receiving the notice required and of exercising the rights  
21 granted by this chapter.

22 \* Sec. 23. AS 33.30.901(6) is amended to read:

23 (6) "crime against a person" means a crime as set out in  
24 AS 11.41, [EXCEPT CUSTODIAL INTERFERENCE UNDER AS 11.41.320 AND 11.-  
25 41.330;] or a crime against a person in this or another jurisdiction  
26 having elements substantially identical to those of a crime as set out  
27 in AS 11.41 [, EXCEPT CUSTODIAL INTERFERENCE UNDER AS 11.41.320 AND  
28 11.41.330];

29 \* Sec. 24. AS 47.10 is amended by adding a new section to read:

1           Sec. 47.10.072. ACCESS TO HEARING BY VICTIM. (a) If a crime  
2 was committed by a minor who is scheduled for a hearing under AS 47.-  
3 10.070, the victim may request from the court permission to attend the  
4 hearing. If the victim requests, the department shall provide techni-  
5 cal assistance to the victim in preparing a written submission to the  
6 court requesting access to the hearing. The department shall make  
7 reasonable efforts to inform victims of the availability of this  
8 assistance.

9           (b) If more than one person who qualifies as a victim under  
10 AS 12.55.185 makes a request, the commissioner of health and social  
11 services shall designate one person for purposes of receiving the  
12 notice and exercising the rights granted by this section.

13           (c) In this section, "victim" has the meaning given in AS 12.-  
14 55.185.

15 \* Sec. 25. AS 12.61.020(e)(2) is repealed.

16 \* Sec. 26. Rule 32(d)(1), Alaska Rules of Criminal Procedure, is amend-  
17 ed to read:

18           (1) WHEN MADE. The probation service shall make a presen-  
19 tence investigation and report before the court imposes sentence or  
20 grants probation. The presentence investigation and report shall be  
21 completed and made available to the court. The report shall not be  
22 disclosed to any one except counsel unless the defendant has tendered  
23 a plea of guilty or nolo contendere or has been found guilty. If the  
24 crime for which the person is to be sentenced is a felony, the con-  
25 tents shall be disclosed to counsel for the parties before the time of  
26 the hearing on the aggravator and mitigator factors and sentencing.  
27 The court may utilize the report in determining if a bargained sen-  
28 tence recommendation will be followed pursuant to Rule 11. In the  
29 event the attorneys for the parties request the preparation of a

1 presentence report to aid them in plea bargaining the court may order  
2 such report to be made prior to the time stated in this rule.

3 \* Sec. 27. Rule 32, Alaska Rules of Criminal Procedure, is amended by  
4 adding new paragraphs to read:

5 (g) WRITTEN STATEMENT SUBMITTED BY VICTIM OR VICTIM'S REPRESENTATIVE.  
6 If a written statement is prepared and submitted by the  
7 victim of a felony offense or a domestic violence assault under AS 12.-  
8 55.023, the trial court

9 (1) shall take the content of the written statement into  
10 consideration

11 (A) when preparing those elements of the sentencing  
12 report required by AS 12.55.025 that relate to the effect of the  
13 offense on the victim;

14 (B) when considering the need for restitution under  
15 AS 12.55.045; and

16 (2) may take the content of the written statement into  
17 consideration in any other circumstance that the court believes neces-  
18 sary.

19 (h) In (g) of this rule,

20 (1) "domestic violence assault" has the meaning given in  
21 AS 12.61.900;

22 (2) "victim" has the meaning given in AS 12.55.185.

23 \* Sec. 28. Rule 35, Alaska Rules of Criminal Procedure, is amended by  
24 adding new paragraphs to read:

25 (c) The victim may comment on motions made under this rule as  
26 follows:

27 (1) When an individual convicted of a crime against a  
28 person or arson in the first degree files a motion to modify or reduce  
29 a sentence, the court shall, if feasible, send a copy of the motion to

1 the Department of Corrections sufficiently in advance of any scheduled  
2 hearing or briefing deadline to enable the department to notify the  
3 victim, as directed by AS 12.55.088(e).

4 (2) The court shall provide copies of the victim's comments  
5 to the prosecuting attorney and to the person filing the motion to  
6 reduce or modify a sentence, or the person's attorney.

7 (3) The court shall consider the comments of the victim  
8 when relevant, and any response offered by the prosecuting attorney or  
9 the person filing the motion. in deciding whether to reduce or modify  
10 a sentence.

11 (4) If more than one person who qualifies as a victim under  
12 paragraph (d)(2) of this rule requests the opportunity to exercise  
13 rights under this paragraph, the court shall allow the person des-  
14 • igned under AS 12.55.172 to exercise those rights, or if a person  
15 has not been designated under AS 12.55.172, the court shall designate  
16 one person for purposes of exercising rights under this paragraph.

17 (d) In this rule,

18 (1) "crime against a person" has the meaning given in  
19 AS 33.30.901;

20 (2) "victim" has the meaning given in AS 12.55.185.

21 \* Sec. 29. APPLICABILITY. The provisions of this Act prescribing the  
22 rights of a crime victim and of a crime victim's relative or survivor  
23 during the course of criminal, civil, and administrative proceedings apply  
24 to proceedings against defendants initiated on or after the effective date  
25 of this Act.

February 28, 1989

An Act relating to the rights, entitlements, and services that are due to victims of crimes and their survivors arising from criminal conduct; and amending Rules 32 and 35 of the Alaska Rules of Criminal Procedure

Barbara Miklos  
Executive Director  
Council on Domestic  
Violence & Sexual  
Assault

OFFICE OF  
SENTENCE  
CORRECTIONS  
PUBLIC  
AFFAIRS

The Council on Domestic Violence and Sexual Assault supports HB 36, the "Victims Rights Bill", which addresses some of the recommendations of the President's Task Force on Victims of Crime. This task force was established by the federal government in 1982 in recognition of the problems crime victims face when encountering the criminal justice system. As the report of this task force stated:

Victims who do survive their attack, and are brave enough to come forward, turn to their government expecting it to do what a good government should - protect the innocent.... Without the cooperation of victims and witnesses in reporting and testifying about crime, it is impossible in a free society to hold criminals accountable. When victims come forward to perform this vital service, however, they find little protection. They discover instead that they will be treated as appendages of a system appallingly out of balance... Somewhere along the way, the system began to serve lawyers and judges and defendants, treating the victim with institutionalized disinterest.

The Council does not have sufficient expertise to comment upon legal issues raised in this legislation. However we will comment on some of the provisions of the bill with which we have particular interest.

The Council supports the provisions of the bill which give notification to victims and their survivors of proposed actions affecting prisoners, including sentencing, requests for parole or executive clemency, early release, and escapes. The Council also supports the provisions which allow for victims' participation in the sentencing and parole hearings, both by submitting written statements and by attending the hearings. Victims have a legitimate interest in these decisions, not only because of their desire for the service of a just sentence, but also because of their legitimate fear of revictimization once the defendant is released.

The Council supports placing the duties of prosecuting attorneys in statute so that it is clear how victims can be involved in the process. It would be helpful if a booklet or handout for victims were prepared that would let victims know their rights.

In conclusion, the Council on Domestic Violence and Sexual Assault supports efforts to ensure that the rights of crime victims are better taken into account by the criminal justice system.

  
\_\_\_\_\_  
Arthur English  
Commissioner

REPRESENTATIVE  
C.E. "SWACK" SWACKHAMMER

# Alaska State Legislature



SOLDOTNA

312 TYEE STREET  
SOLDOTNA, ALASKA 99699  
(907) 262-7841

JUNEAU

BOX V  
JUNEAU, ALASKA 99811  
(907) 465-2689

## House of Representatives

March 7, 1989

### MEMORANDUM

TO: All Members,  
House Finance Committee

FROM: Rep. C.E. Swackhammer, Chair  
Finance Subcommittee on HB36 *Swack*

RE: Alaska Crime Victim's Rights Act

---

The Finance Subcommittee, with the support of the bill's sponsor, the Dept. of Law and the Dept. of Corrections has drafted a proposed committee substitute for HB 36, relating to the rights of crime victims.

Focusing primarily on the fiscal impact of the bill, the subcommittee removed the section which created a statewide crime victims' assistance program. It is the subcommittee's belief that preceding sections of the bill mandate adequate notification of victims, regarding their rights, and allow full participation of victims in the legal process. (907) 262-7841

As a result of this amendment, the new fiscal note for the Department of Law has been reduced from \$238.1 to \$95.1.

A new Department of Corrections fiscal note reflects a reduction from \$119.3 to \$36.1. The department felt the additional notification of victims required by HB 36 could be handled by a Clerk III instead of two parole officers.

It is the intent of the subcommittee that HB 36 be funded with the Permanent Fund Dividend money that has been denied convicted felons. The Department of Revenue anticipates approximately \$1.6 million of permanent fund dividend money will be unexpended this year as a result of HB 245, which passed last session.

The subcommittee supports both new fiscal notes and urges members to adopt the committee substitute for HB 36.

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN • SPENARD  
SEAT A  
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629



CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBER

STATE AFFAIRS COMMITTEE

HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

HOUSING AND BANKING SUBCOMMITTEE

FINANCE BUDGET SUBCOMMITTEE  
DEPT. OF COMMERCE AND  
ECONOMIC DEVELOPMENT

March 4, 1989

## M E M O R A N D U M

TO: Members of the House Finance Committee  
FROM: Representative Dave Donley **DB**  
RE: Alaska Crime Victims Rights Act

CSHB 36 (Jud), Alaska Crime Victims Rights Act includes funding to create a Victim Assistance Program through the Department of Law. This program funds two positions, a volunteer coordinator and clerical backup. It also includes funds to train the volunteers.

According to the U.S. Department of Justice's survey, 77% of all prosecutors, 34% of all police and 38% of all sheriff's offices had some type of victim assistance program in place. Attached you will find a copy of their findings.

Alaska at one time also had a victim assistance office through the Department of Law which was cut for lack of funding. This type of assistance to our victims is important. Our judicial system may seem like a strange and ominous machine to many victims and short of hiring their own lawyers, they are clueless to what their rights may be.

I realize that there is some concern about basing this program on volunteers. According to victim groups such as the Victims For Justice located in Anchorage, there are many volunteer group all over Alaska already that would benefit from a volunteer coordinator and believe that it would increase their effectivity.

I believe this inexpensive basic assistance for innocent victims of crime is a more important state function than many things we currently spend state money on. I would appreciate your support.

# Alaska State Legislature



## House of Representatives House Judiciary Committee

P. O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990  
(907) 465-4712

March 1, 1989

### MEMORANDUM

TO: All Members  
House Finance Committee

FROM: Rep. Max Gruenberg, Co-chair  
Rep. Peter Goll, Co-chair *(Signature)*  
House Judiciary Committee

RE: Alaska Crime Victim's Rights Act

CSHB 36 (Jud), Alaska Crime Victim's Rights Act, is before the House Finance Committee on Wednesday, March 1. This bill was in House Judiciary and underwent a number of changes based upon consensus among the Administration, the Judiciary Committee and the sponsor. The finished product is a bill with which we were all satisfied, and which will contribute to the rights of crime victims.

Under current law, the judicial and correctional system cannot allow for adequate participation by the victim of the crime. The victim's participation is important. This bill will allow full participation in the process, while recognizing the due process and fiscal needs of all parties.

The Administration and all the state departments affected were actively involved throughout the work on this legislation, and they do support the new committee substitute. I would ask that you give this delicately balanced legislation your support.

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN • SPENARD  
SEAT A  
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629



CHAIRMAN  
LABOR AND COMMERCE COMMITTEE

MEMBER  
STATE AFFAIRS COMMITTEE  
HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE  
HOUSING AND BANKING SUBCOMMITTEE  
FINANCE BUDGET SUBCOMMITTEE  
DEPT. OF COMMERCE AND  
ECONOMIC DEVELOPMENT

February 14, 1989

FEB 15 1989

## MEMORANDUM

TO: Representative Ron Larson, Co-chair  
House Finance Committee

Representative Lyman Hoffman, Co-chair  
House Finance Committee

FROM: Representative Dave Donley *DD*

RE: Scheduling CSHB 36 (Jud)

I would like to request that CSHB 36 (Jud), "Alaska Crime Victim's Rights Act" be scheduled for a hearing in the House Finance Committee as soon as possible.

This is a comprehensive bill that will raise Alaska's victims' rights legislation to the standards set by the President's Task Force on Victims of Crime. Among the rights that victims would receive are: the right to make a statement for presentencing and sentencing; notification to the victim in the case of trial dates, parole hearings, escape, furlough and other instances involving the prisoner, and the right to attend parole hearings.

I would appreciate your cooperation in this matter. This is legislation that is sorely needed for our victims and long overdue.

If you have any questions, please don't hesitate to contact me, or my aide, Michael Ward at 3892.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 28, 1989

SUBJECT: Sectional analysis of draft CSHB 36 (Jud)  
(relating to victim's rights)

TO: Representative Dave Donley

FROM: Jack Chenoweth  
Legislative Counsel *CC*

The following is an analysis of draft CSHB 36 (Jud), legislation adding to the rights of crime victims and persons who, for reasons indicated, act in the victim's stead.

OVERVIEW:

A significant feature of this draft is the handling of the definition of the term "victim" to mean the person against whom the offense has been perpetrated and certain others, specified in the definition of the term, to whom the rights of a "victim" are given by law. This key definition is set out in AS 12.55.185(11), and appears in bill section 7, at page 5, line 17.

The extension of the enumerated rights potentially opens exercise of the claim of rights to a sizable number of persons. In those instances, a collateral change made in various sections throughout the bill, applicable to programs identified in the bill, authorizes a designated executive branch official or other entity to appoint one of the class of persons acting in the place of the victim to represent all those persons for purposes of receiving notice and claiming rights, entitlements, and services under the legislation.

The amendments made by this bill substantively amend and extend the rights of a victim

-- as respects an offender who is mentally ill or insane (bill section 3);

- relating to an offender's sentencing and postconviction proceedings (bill sections 4 - 7);
- given under the existing "Crime Victim's Rights Act," (AS 12.61) (bill sections 8 - 11);
- in proceedings of the state Parole Board (bill sections 12 - 19) involving award of parole and applications for executive clemency;
- in other activities involving the offender's assignment of custody to the Department of Corrections, including situations such as escape, placement in a community furlough program, and early release (bill sections 20 - 23); and
- as to access to proceedings if the offender was a minor (bill section 25).

One provision, bill section 24, assigns the Department of Law a new responsibility, to develop and implement a program to assist victims to an understanding and full exercise of the rights, entitlements, and services provided to crime victims by law.

Bill sections 27 - 29 make necessary and related court rule changes, while the concluding bill section, section 20, indicates how these provisions shall be applied.

\*

Bill section 1 adds a short title for the bill.

\*

Claims may be brought by victims against persons who were convicted of the crime and imprisoned. Bill section 2 clarifies the service of process on state prisoners. The bill section specifies service of process on the shift supervisor of the institution, immediate delivery to the prisoner, and prompt return of affidavit of proof of service. The section also indicates how a plaintiff intending to serve a prisoner may determine the institution to which the prisoner has been assigned.

\*

Bill section 3 adds a new section, AS 12.47.095, that places additional duties on the commissioner of health and social services for offenders who are determined to be guilty but mentally ill or, alternatively, who are found to be not

guilty by reason of insanity. The section enumerates instances in which the commissioner must communicate to the victim a change in the status of the offender. The section places a burden on the victim to request a notice of the offender's change of status and to act only if the victim has maintained a current, valid mailing address on file with the commissioner. In the event of the victim's death, the section authorizes the commissioner to designate one among those who may qualify to receive notice and to exercise the rights granted on behalf of all. The section provides definitions of "offender" and "victim," the latter cross-referenced to AS 12.55.185.

\*

AS 12.55, part of the Code of Criminal Procedure, generally addresses the subject of sentencing and postconviction proceedings. Bill sections 4 - 7 amend pertinent provisions of these criminal sentencing provisions.

Bill section 4 enumerates the rights of a victim in the sentencing process. If the victim requests, the prosecuting attorney is to provide specified information from the presentence report to the person making the request. The section authorizes the victim to submit to the court a written statement that the writer believes would be "relevant to the sentencing decision."

Bill section 5 provides that a victim has a right to comment in writing to the court on a motion filed by the perpetrator of a crime to modify or reduce the person's sentence (AS 12.55.085(d)). It also adds to the rights of a victim of a violent crime (i.e. a "crime against a person," that is, a person convicted under AS 11.41) or arson in the first degree to comment in certain postconviction proceedings. The postconviction proceedings addressed in this provision involve motions to modify or reduce sentence. If an offender files a motion to modify or reduce a sentence, the Department of Corrections is directed to provide notice to the victim so that the victim may submit written comments (AS 12.55.088(e)). The court is to provide the comments to the victim and to the offender or the offender's attorney (AS 12.55.088(f)) and the comments are to be considered by the court in conjunction with disposition of the motion (AS 12.55.088(g)). The responsibility to maintain a current address with the commissioner of corrections in order to

receive notice under this section rests with the victim, and that address may not be disclosed (AS 12.55.088(h)).

If more than one person may qualify to receive notice, bill section 6 directs the commissioner to designate one to represent all.

Bill section 7 incorporates a definition of the term "crime against a person," a term that is used in the preceding bill section, and amends the term "victim." The change in the definition of the term "victim" is particularly critical in that it is used not only in the sentencing provisions (AS 12.55), but is cross-referenced in other victim's rights-related provisions of state law affected by the provisions of this legislation. Note in the amended definition the inclusion of alternate parties in the event the person against whom the crime was perpetrated meets one of the several specified contingencies.

\*

AS 12.61 collects and reports the rights of crime victims. Bill sections 8 - 11 clarify and extend those rights.

Bill section 8 expands existing rights enumerated in AS 12.61.010(a) by adding to the list of enumerated rights the right to make a statement in conjunction with preparation of a presentencing report for a felony offender; the right to appear personally at the defendant's sentencing hearing, for sentencing for certain crimes, to present a written or oral statement; and the right to be informed by the prosecutor of the crimes for which the defendant has been convicted. A related change made in subsection (b) of AS 12.61.010 by the bill section deletes "victim's employers" from the scope of the chapter's coverage.

Bill section 9 adds to the list of duties of the prosecuting attorney with respect to the victim of a crime that is a felony or domestic violence assault in the event the victim makes a request. The provisions added include the duty to

- (1) confer with the victim about testimony before jury selection and trial;
- (2) notify the victim of
  - the defendant's conviction and the crimes for which convicted;

- the rights to make a statement for use in conjunction with preparation of the presentence report, and to appear personally at a sentencing hearing and to make a statement at the time of sentencing;
  - the address and telephone number of the office that will prepare the presentencing report; and
  - the time and place of the sentencing hearing;
- (3) notify the victim in writing of the final disposition of the case within 30 days.

Subsection (b) of AS 12.61.015 directs the prosecutor's office to advise the victim that the content of the material that may be presented in conjunction with the presentence statement or sentencing statement is limited, and describes the nature of what the victim may address in those statements.

AS 12.61.015(c) precludes imposition of liability in damages for a prosecuting attorney's failure to comply with the requirements of the section.

AS 12.61.017, another provision of bill section 9 makes it a violation for an employer of a crime victim to "penalize" or to threaten to penalize the victim who is subpoenaed or who is requested by the prosecution to attend a court proceeding for the purpose of providing testimony. The provision defines the term "penalize." Action contrary to this section is a violation, for which a penalty, not exceed a fine of \$300, may be imposed. However, another provision allows the victim to recover for interference by the employer actual damages and punitive damages (treble damages).

Bill section 10 provides that, where more than one person may qualify as a victim, the prosecuting attorney is to designate one person to act on behalf of all.

Bill section 11 adds to AS 12.61 the definition for the crime "domestic violence assault" and a cross-referenced definition of the term "victim" that is to be applicable to the chapter.

\*

Bill sections 12 - 19 are applicable to a victim's rights as they relate to the proceedings of the state's Parole Board.

Bill section 12 and 13 prescribe responsibilities of the board as it considers discretionary parole applications. The first bill section provides guidance to the board as to the notice to be given to a victim of a crime against a person or of an arson in the first degree who wants to receive notice of board deliberation with respect to the proposed change in the status of the offender. The second of the two sections imposes on the victim the requirements of maintenance of a current address while directing non-disclosure of that address to the prisoner or the prisoner's attorney.

Bill section 14 amends AS 33.16.120(c) to give victims the rights of attendance at meetings of the Parole Board and of comment, in writing or personally at the meeting, relative to proposed action that the Parole Board is considering concerning the offender.

Bill section 15 amends existing law to provide that the Parole Board must "make every reasonable effort" to notify the victim not only of its decision to grant discretionary parole, but also if it decides to deny discretionary parole. The section also specifies the information about the prospective parolee that is to be disclosed to the victim.

Bill section 16 makes a technical amendment with reference to payment of restitution. Since, elsewhere, the court is obliged to consider imposing a broader restitution obligation than merely restitution to the victim, a reference to "restitution . . . to a victim of the prisoner's crime" is deleted as too narrow a statement of the scope of the restitution obligation that may be imposed.

Bill section 17 incorporates language directing the commissioner of corrections to determine, among several persons who may qualify in the stead of the victim, the name of the individual who may speak or act for all.

Bill sections 18 and 19 assign certain additional responsibilities to the Parole Board when the governor refers to that board applications for executive clemency. The board is to give the victim of a crime against a person or arson in the first degree notice of an application for clemency and opportunity to submit written comment to the board as it considers the executive clemency request. The requirement is to be met only if the victim maintains a current mailing address and so requests, coupled with non-disclosure of

address language. Additional essential definitions are included.

\*

The responsibility of the Department of Corrections to a victim is addressed in bill sections 20 - 23.

Bill section 20 adds a new section, AS 33.30.013, that requires the commissioner of corrections to notify the victim if the offender escapes, is released on furlough, or is released on an early release program. The requirement is to be met only if the victim entitled to notice maintains a current valid mailing address on file with the commissioner. The section also details how the commissioner is to give that notice, adds nondisclosure of address language, and incorporates a liability disclaimer for failure to comply with the requirements imposed.

Bill section 21 revises existing law governing notice to victims of the possible release on a prerelease furlough of a prisoner convicted of a crime against a person or of first degree arson. The requirement of notice is to be met as to a victim who satisfies the requirements of AS 33.30.013. The victim may comment on the prospective furlough; the commissioner is to consider the comments received before making a final decision. If furlough is granted, the commissioner is to "a reasonable effort to notify . . . of an intent to release," and indicates the information that is then to be shared with the victim.

Under bill section 22, among a number of persons who may claim to act in the stead of the victim, the commissioner has a duty to choose one to represent all and to deal with the individual chosen.

Bill section 23 amends the definition of the term "crime against a person" by extending the definition to cover custodial interference.

\*

Bill section 24 adds a new program component in the Department of Law. Under the material added by that section, the department shall establish and maintain a victim assistance program--a paid supervisor and any volunteers--to manage the

victim assistance program and to recruit, train, and evaluate the efforts of the volunteers under this program.

The last substantive change, made in bill section 25, authorizes the victim of an offense by a minor to request permission from the court to attend any hearing scheduled for the minor under AS 47.10.070. The section also directs the commissioner of health and social services to select from among persons claiming to act in place of the actual victim one person to speak and act on behalf of all.

\*

The repeal made in bill section 26 deletes an unnecessarily limiting reference to "victim" in AS 12.61.020. A substitute definition applicable to the entire chapter is offered by bill section 11.

\*

Bill sections 27 - 29 directly amend pertinent court rules of criminal procedure.

The change made by bill section 27 when a presentence investigation shall be completed and the report made available to the parties and their counsel; the change abets exercise of the crime victim's right to comment in conjunction with preparation of the presentence report.

Bill section 28 adds a new provision that directs the trial court to consider the written statement submitted by a victim of a felony offense or domestic violence assault under AS 12.55.023 as the court prepares the sentencing report and considers claims for restitution.

The court rule additions made by bill section 29 parallel the changes set out in bill sections 5 and 6 covering postconviction relief for crime victims.

\*

Bill section 30, an uncodified provision, directs that the amendments and additions made by this bill are to apply "to proceedings against defendants initiated on or after the effective date of the Act." Since the bill does not itself specify an effective date, it becomes effective 90 days

Representative Dave Donley  
Page 9  
February 28, 1989

after signature, becoming law without signature, or by over-  
ride of any imposed veto.

JC:gc  
WkG7/064



# Alaska State Legislature

RECEIVED FEB - 8 1989

REPRESENTATIVE DICK SHULTZ

Member  
Finance Committee

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4940  
Home: P.O. Box 487  
Tok, Alaska 99780

## MEMORANDUM

TO: Representative Peter Goll  
 Representative Max Gruenberg  
 Co-Chairs, House Judiciary Committee

FROM: Representative Dick Shultz *DS*

DATE: February 6, 1989

RE: HB 36

\*\*\*\*\*

Attached is a letter dated February 3, 1989 from Ms. Regina Soltis of Healy, Alaska concerning House Bill 36 (Victim's Rights).

I thought it appropriate to share her concerns with you as you deliberate this piece of legislation in committee.

a:hb36

*Franklin*  
*placed in ~~Franklin~~ Members packets*

Rep. Mike Miller  
Rep. Richard Shultz  
Sen. Jack Coghill  
P.O. Box V  
Juneau, Alaska 99811

Regina C. Soltis  
P.O. Box 46  
Healy, Ak. 99743  
(907)683-2651  
February 3, 1989

Gentlemen:

At January 17's teleconference, I spoke to you regarding HB36 Alaska Crime Victim's Rights Act. After expressing my support for this bill, and my concerns in areas where I feel the bill is lacking, you asked me to send a letter listing these concerns.

THE VICTIM'S RIGHTS NEED TO BE PROTECTED THROUGHOUT THE ENTIRE JUDICIAL PROCESS:

After my own experience as a victim of a crime in Alaska, I see that the victim is an insignificant part of our judicial system. Just as the rights of the defendant are protected from the time that a charge is filed against him, the rights of the victim need to be protected from the time that charges are filed. This bill primarily addresses the rights of victims beginning with the trial.

THE DISTRICT ATTORNEY'S OFFICE SHOULD BE REQUIRED TO SPEAK WITH THE VICTIM BEFORE ANY SIGNIFICANT DECISION ABOUT THE DISPOSITION OF THE CASE IS MADE:

It appears to be common practice that charges are reduced or dismissed without the District Attorney's Office ever contacting the victim. Background information not appearing on the police report may give the information needed to make a wise decision. In my own case, the Fairbanks District Attorney's Office almost dismissed the charge of Fourth Degree Assault, a misdemeanor, against my assailant who had been abusing me for months. I found out about the impending dismissal indirectly since notice to the victim is not required of the District Attorney's Office. I began to write letters, the case was brought to trial, and the perpetrator was found guilty.

I would like to see this bill changed to require the District Attorney's Office to contact the victim and discuss the case before a crime can be reduced or dismissed.

Also in my own case, I did not speak to the Assistant District Attorney about the particulars of the case until after jury selection. This was too late, due to rules of discovery to give the D.A. any supporting evidence that might have been used in the trial. I had witnesses and letters from the defendant which were, fortunately, used successfully as rebuttal evidence.

HB36 should be changed to require that the District Attorney's Office speak to the victim at least once before the trial about the case, and in time to use any evidence that the victim may have.