

ALASKA LEGISLATURE

1610

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

HB

9

HFIN

FILE

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE OF DELEGATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND SOCIAL SERVICES
COMMITTEE ON HEALTH AND HUMAN SERVICES



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SECTIONAL ANALYSIS

OF

CS FOR HOUSE BILL NO. 9(FIN)

Sections 1, 2, 14 19, and 20 of this Act clarify the right of crime victims to be present at all criminal or juvenile proceedings where the accused or juvenile has the right to be present.

Sections 3, 4, 5, and 6 create an exception to the weekly earnings and liquid assets exemptions from execution to allow a victim, in attempting to collect on an order of restitution, to levy upon assets held by a prisoner outside an institution. Under present law, assets held inside the institution are already available to victims under AS 09.38.030(f).

Section 7 amends the definition of "incapacitated" in the sexual assault statutes. Sexual Assault in the Third Degree prohibits, for example, sexual contact with a person who the offender knows is incapacitated. The definition is amended so that the state, in proving its case, must prove either that the victim was temporarily unable to appraise the nature of his or her conduct, or that the victim was temporarily unable to express unwillingness to act. At present the statutes require the state to prove both in order to establish its case.

Section 8 adds a new provision to the criminal code making it a class A misdemeanor to interfere with a person who is reporting or attempting to report a domestic violence crime to the police.

Sections 9, 10, 11, and 12 amend the bail statutes to require that the safety of the victim be considered by the court when it makes decisions concerning bail and conditions of release for the defendant pending trial, sentence and appeal.

Section 13 limits the cases where the court can order a victim to undergo a psychiatric or psychological examination to cases where (1) the victim's psychiatric condition is an element of the offense (for example, in sexual assault in the first degree under AS 11.41.410(a)(3), the defendant is charged

with sexual penetration with a person who the defendant knows is mentally incapable and who is under the defendant's care; or (2) the state gives notice that it will rely on evidence that the victim is suffering from a continuing psychological condition (such as rape trauma syndrome).

Section 15 provides that applications for compensation and personally identifying information are confidential records in proceedings before the Violent Crimes Compensation Board.

Section 17 allows victims who are subpoenaed to testify before a grand jury, who live more than 50 miles from the site of the grand jury, or who must customarily fly to the site of the grand jury, to testify telephonically. Other witnesses are allowed under present law to testify by telephone under these circumstances.

Section 18 amends Alaska Evidence Rule 404(b) to allow, in a prosecution of a crime involving domestic violence or interfering with a report of domestic violence, evidence to be introduced that the defendant has committed other crimes involving domestic violence or interfering with the report of a crime involving domestic violence against the same or another victim.

Section 20 repeals Alaska Delinquency Rule 3(c) because the definition of "victim" is no longer required under the circumstances summarized in Section 17.

Sections 22 - 23 include applicability and effective date provisions.

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: January 27, 1997

FURTHER REFERRALS:

Date of Committee Action: 2/18/97

The FINANCE Committee considered:

HB 9

HOUSE BILL NO. 9

VICTIM'S RIGHT TO BE PRESENT AT TRIAL

"An Act relating to the right of crime victims and victims of juvenile offenses to be present at court proceedings; and amending Rule 615, Alaska Rules of Evidence."

recommends it be replaced with the following committee substitute OSHB9 (Fin) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) DOR, ~~_____~~ fiscal note(s) _____

zero fiscal note(s) LAW, DOA(3) zero fiscal note(s) DPS, 1/27/97, Court, 1/27
DHSS, 1/27/97.

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Care Therriault</i>	Therriault			X	
<i>Mark Hanley</i>	Hanley	X			
<i>Alan Mulder</i>	Mulder	X			
<i>Terry Martin</i>	Martin	X			
<i>Vic Kohring</i>	Kohring	X			
<i>Col & James D</i>	Davis	X			
<i>Ben Grussendorf</i>	Grussendorf			X	
<i>Wesley Moses</i>	Moses			X	
<i>Frank Davis</i>	DAVIS			X	
<i>Peter Kelly</i>	Kelly			✓	
<i>Richard Foster</i>	Foster	X			

CHAIR'S SIGNATURE *Care Therriault* *Mark Hanley*
 Therriault Hanley

FISCAL NOTE

Work Draft H

BILL NO. CS HB 9 (FIN)

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: _____	Dept. Affected: <u>Department of Law</u>
Title: <u>... to the rights of crime victims . . collection by</u>	BRU: <u>Criminal Division/Civil Division</u>
<u>victims of restitution . . safety of victims . . amending court rules</u>	Component: <u>Criminal Division/General Legal Services</u>
Sponsor: <u>Representative Porter</u>	
Requester: <u>House Finance Committee</u>	COMPONENT SERIAL NO. <u>2085/2087</u>

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: <u>Joan M. Kasson</u>	Phone: <u>465-5370</u>
Division: <u>Administrative Services Division</u>	Date: <u>2/14/97</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u>	Date: <u>2/14/97</u>
Agency: <u>Department of Law</u>	

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FISCAL NOTE

STATE OF ALASKA
.997 LEGISLATIVE SESSION

BILL NO. CSHB 9 (JUD)

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	00	00	00	00	00	00

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will have no impact on Office of Public Advocacy.

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

Phone: 274-1684
 Date: _____

Approved by Commissioner: Mark Boyer *Alison M. Skage*
 Agency: Administration

Date: 2/4/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 9 (FIN)

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

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

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 2/17/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO:

No. 4
Bill Version: CSHB 9 (JUD)
(H) Publish Date: 1/27/97

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

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

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

FUNDING: (Thousands of Dollars)

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

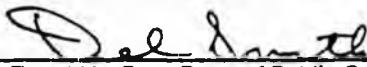
Estimate of current year (FY 97) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill does not impact the Department of Public Safety

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

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FISCAL NOTE

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

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

Revision Date: _____
Title: Rights of Victim's to be present at court proceedings
Sponsor: Representative Porter
Requestor: House (JUD)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: DFYS Central Office
COMPONENT SERIAL NO. 259
See also (SN#): _____

Expenditures/Revenue:

(Thousands of Dollars)

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

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

CHANGES IN REVENUES	()					
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FUND SOURCE

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the Division if this bill were to become law.

5/13/97 Prepared by: L. Diane Worley, Director Phone: 465-3191
Division: Family & Youth Services Date: 01/23/97
Approved by Commissioner: Karen Perdue, Commissioner Date: 1/23/97
Agency: Department of Health & Social Services

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FISCAL NOTE

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

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

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

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

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

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

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

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

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

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COMMITTEE COPY

*Adopted
2/18/97*

0-LS0088VH
Luckhaupt
2/12/97

*Rep. Porter
ATTN: Jim*

CS FOR HOUSE BILL NO. 9()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES PORTER, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the rights of crime victims and victims of juvenile offenses;
2 relating to the collection by victims of restitution from prisoners; relating to the
3 definition of 'incapacitated' for sexual offenses; creating the crime of interfering
4 with a report of a crime involving domestic violence; relating to mental
5 examinations of victims in criminal prosecutions; relating to the safety of
6 victims, other persons, and the community in setting bail or conditions of
7 release; relating to access to certain records of the Violent Crimes Compensation
8 Board; amending Rule 6, Alaska Rules of Criminal Procedure, Rules 404 and
9 615, Alaska Rules of Evidence, and Rule 3, Alaska Delinquency Rules; and
10 providing for an effective date."

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

12 * **Section 1. PURPOSE.** The purpose of secs. 2, 14, 16, 19, and 20 of this Act is to clarify

1 that the right of crime victims "to be present at all criminal or juvenile proceedings where the
2 accused has the right to be present," which is a right protected under art. I, sec. 24, of the
3 state constitution, may not be abridged by the sequestration rule applicable to most witnesses.

4 * Sec. 2. AS 09.20.180 is amended to read:

5 Sec. 09.20.180. **Exclusion of witnesses from courtroom.** Except as
6 provided in AS 12.61.010 and AS 47.12.110(b), upon [UPON] the request of either
7 party the judge may exclude from the courtroom any witness of the adverse party not
8 under examination at the time so that the witness may not hear the testimony of other
9 witnesses.

10 * Sec. 3. AS 09.38.030(a) is amended to read:

11 (a) Except as provided in (b), (c), [AND] (f), and (h) of this section and
12 AS 09.38.050, an individual debtor is entitled to an exemption of the individual
13 debtor's weekly net earnings not to exceed \$350. The weekly net earnings of an
14 individual are determined by subtracting from the weekly gross earnings all sums
15 required by law or court order to be withheld. The weekly net earnings of an
16 individual paid on a monthly basis are determined by subtracting from the monthly
17 gross earnings of the individual all sums required by law or court order to be withheld
18 and dividing the remainder by 4.3. The weekly net earnings of an individual paid on
19 a semi-monthly basis are determined by subtracting from the semi-monthly gross
20 earnings all sums required by law or court order to be withheld and dividing the
21 remainder by 2.17.

22 * Sec. 4. AS 09.38.030(b) is amended to read:

23 (b) An individual who does not receive earnings either weekly, semi-monthly,
24 or monthly is entitled to a maximum exemption for the aggregate value of cash and
25 other liquid assets available in any month of \$1,400, except as provided in (f) and (h)
26 of this section and in AS 09.38.050. The term "liquid assets" includes deposits,
27 securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables,
28 but does not include permanent fund dividends before or after receipt by the
29 individual.

30 * Sec. 5. AS 09.38.030(g) is amended to read:

31 (g) In this section,

- 1 (1) "correctional facility" has the meaning given in AS 33.30.901;
- 2 (2) "official detention" has the meaning given in AS 11.81.900(b):
- 3 (3) "prisoner" means a person held under the authority of state or
- 4 municipal law in official detention.

5 * Sec. 6. AS 09.38.030 is amended by adding a new subsection to read:

6 (h) A creditor may levy upon earnings or liquid assets exempt under (a) or (b)

7 of this section if the money is held outside a correctional facility and the claim is for

8 court-ordered restitution to be paid by a prisoner to the creditor under a judgment for

9 conviction of a crime or an adjudication of delinquency.

10 * Sec. 7. AS 11.41.470(2) is amended to read:

11 (2) "incapacitated" means temporarily incapable of appraising the nature

12 of one's own conduct or [AND] physically unable to express unwillingness to act;

13 * Sec. 8. AS 11.56 is amended by adding a new section to read:

14 **Sec. 11 45. Interfering with a report of a crime involving domestic**

15 **violence.** (a) A person, other than the victim, commits the crime of interfering with

16 a report of a crime involving domestic violence if the person knowingly interferes

17 with another person who is reporting or attempting to report a crime involving

18 domestic violence to a law enforcement agency.

19 (b) In this section, "crime involving domestic violence" has the meaning given

20 in AS 18.66.990.

21 (c) Violation of this section is a class A misdemeanor.

22 * Sec. 9. AS 12.30.010 is amended to read:

23 **Sec. 12.30.010. Bail before conviction is matter of right.** The defendant in

24 a criminal proceeding is entitled to be admitted to bail before conviction as a matter

25 of right if the alleged victim can be reasonably protected through the imposition

26 of bail and conditions of release.

27 * Sec. 10. AS 12.30.020(a) is amended to read:

28 (a) A person charged with an offense shall, at that person's first appearance

29 before a judicial officer, be ordered released pending trial on the person's personal

30 recognizance or upon the execution of an unsecured appearance bond in an amount

31 specified by the judicial officer unless the offense is an unclassified felony or class A

1 felony or unless the officer determines that the release of the person will not
2 reasonably assure the appearance of the person as required [,] or will pose a danger
3 to the alleged victim, other persons, or [AND] the community. If the offense with
4 which a person is charged is a felony, on motion of the prosecuting attorney, the
5 judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that
6 release of the person on the person's personal recognizance or upon the execution of
7 an unsecured appearance bond will not reasonably assure the appearance of the person
8 [,] or will pose a danger to the alleged victim, other persons, or [AND] the
9 community.

10 * Sec. 11. AS 12.30.020(b) is amended to read:

11 (b) If a judicial officer determines under (a) of this section that the release of
12 a person will not reasonably assure the appearance of the person, or will pose a danger
13 to the alleged victim, other persons, or [AND] the community, the judicial officer
14 may

15 (1) place the person in the custody of a designated person or
16 organization agreeing to supervise the person;

17 (2) place restrictions on the travel, association, or place of abode of the
18 person during the period of release;

19 (3) require the person to return to custody after daylight hours on
20 designated conditions;

21 (4) require the execution of an appearance bond in a specified amount
22 and the deposit in the registry of the court, in cash or other security, a sum not to
23 exceed 10 percent of the amount of the bond; the deposit to be returned upon the
24 performance of the condition of release;

25 (5) require the execution of a bail bond with sufficient solvent sureties
26 or the deposit of cash; or

27 (6) impose any other condition considered reasonably necessary to
28 assure the defendant's appearance as required and the safety of the alleged victim,
29 other persons, or [AND] the community.

30 * Sec. 12. AS 12.30.040(a) is amended to read:

31 (a) A person who has been convicted of an offense and is awaiting sentence,

1 or who has filed an appeal, shall be treated in accordance with the provisions of
 2 AS 12.30.020 unless the court has reason to believe that no one or more conditions of
 3 release will reasonably assure the appearance of the person as required or prevent the
 4 person from posing a danger to the victim, other persons, or [AND] the community.
 5 If that determination is made, the person may be remanded to custody. This section
 6 does not affect the right of a person appealing from a judgment of conviction from a
 7 district court to the superior court to be released on bail pending appeal under Rule
 8 603(b) of the Rules of Appellate Procedure; however, the court shall consider the
 9 safety of the victim, other persons, and the community before the person is
 10 released under the rule.

11 * Sec. 13. AS 12.45 is amended by adding a new section to read:

12 **Sec. 12.45.02. Mental examination of victim.** In a criminal prosecution
 13 under AS 11.41, the court may not order or compel the victim to undergo a psychiatric
 14 or psychological examination unless

15 (1) the victim's psychiatric or psychological condition is an element of
 16 the offense charged; or

17 (2) the prosecution has given notice that it will present evidence at trial
 18 that the victim suffers from a continuing psychological or psychiatric condition that
 19 resulted from the offense charged.

20 * Sec. 14. AS 12.61.010 is amended to read:

21 **Sec. 12.61.010. Rights of crime victims.** (a) Victims of crimes have the
 22 following rights:

23 (1) the right to be present during any proceeding in

24 (A) the prosecution of a defendant if the defendant has the
 25 right to be present, including being present during testimony even if the
 26 victim is likely to be called as a witness;

27 (B) the adjudication of a minor as provided under
 28 AS 47.12.110;

29 (2) [(1)] the right to be notified [INFORMED] by the appropriate law
 30 enforcement agency or the prosecuting attorney of the date of trial, [AND THE DATE
 31 OF] sentencing, and any hearing in which the defendant's release from custody is

1 considered [OF THE CASE IN WHICH THE VICTIM IS INVOLVED];

2 (3) [(2)] the right to be notified that a sentencing hearing or a court
3 proceeding to which the victim has been subpoenaed will not occur as scheduled;

4 (4) [(3)] the right to receive protection from harm and threats of harm
5 arising out of cooperation with law enforcement and prosecution efforts [,] and to be
6 provided with information as to the protection available;

7 (5) [(4)] the right to be notified [INFORMED] of the procedure to be
8 followed to apply for and receive any compensation under AS 18.67;

9 (6) [(5)] at the request of the prosecution or a law enforcement agency,
10 the right to cooperate with the criminal justice process without loss of pay and other
11 employee benefits except as authorized by AS 12.61.017 and without interference in
12 any form by the employer of the victim of crime;

13 (7) [(6)] the right to obtain access to immediate medical assistance and
14 not to be detained for an unreasonable length of time by a law enforcement agency
15 before having medical assistance administered; however, an employee of the law
16 enforcement agency may, if necessary, accompany the person to a medical facility to
17 question the person about the criminal incident if the questioning does not hinder the
18 administration of medical assistance;

19 (8) [(7)] the right to make a written or oral statement for use in
20 preparation of the presentence report of a felony defendant;

21 (9) [(8)] the right to appear personally at the defendant's sentencing
22 hearing to present a written statement [,] and to give sworn testimony or an unsworn
23 oral presentation;

24 (10) [AND (9)] the right to be informed by the prosecuting attorney,
25 at any time after the defendant's conviction, about the complete record of the
26 defendant's convictions;

27 (11) the right to notice under AS 12.47.095 concerning the status
28 of the defendant found not guilty by reason of insanity;

29 (12) the right to notice under AS 33.16.087 of a hearing concerning
30 special medical parole of the defendant;

31 (13) the right to notice under AS 33.16.120 of a hearing to consider

1 or review discretionary parole of the defendant: and

2 (14) the right to notice under AS 33.30.013 of the release or escape
3 of the defendant.

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

9 * Sec. 15. AS 18.67.030 is amended by adding a new subsection to read:

10 (c) An application for compensation and personally identifying information
11 relating to an applicant for compensation are confidential records and may not be
12 released by the board.

13 * Sec. 16. AS 47.12.110(b) is amended to read:

14 (b) Notwithstanding (a) of this section, the victim of an offense that a minor
15 is alleged to have committed, or the designee of the victim, has a right to be present
16 at all hearings or proceedings held under this section at which the minor has a right
17 to be present. If the minor is found to have committed the offense, the victim may
18 at the disposition hearing give sworn testimony or make an unsworn oral presentation
19 concerning the offense and its effect on the victim. If there are numerous victims of
20 a minor's offense, the court may limit the number of victims who may give sworn
21 testimony or make an unsworn oral presentation, but the court may not limit the right
22 of a victim to attend a hearing even if the victim is likely to be a witness in a
23 hearing concerning the minor's alleged offense.

24 * Sec. 17. Rule 6(u)(1), Alaska Rules of Criminal Procedure, is amended to read:

25 (1) A witness may participate telephonically in grand jury proceedings
26 if the witness [IS NOT A VICTIM AND THE WITNESS:]

27 (A) would be required to travel more than 50 miles to the situs
28 of the grand jury; or

29 (B) lives in a place from which people customarily travel by air
30 to the situs of the grand jury.

31 * Sec. 18. Rule 404(b), Alaska Rules of Evidence, is amended by adding a new paragraph

1 to read:

2 (4) In a prosecution for a crime involving domestic violence or of
3 interfering with a report of a crime involving domestic violence, evidence of other
4 crimes involving domestic violence by the defendant against the same or another
5 person or of interfering with a report of a crime involving domestic violence is
6 admissible. In this paragraph, "domestic violence" and "crime involving domestic
7 violence" have the meanings given in AS 18.66.990.

8 * Sec. 19. Rule 615, Alaska Rules of Evidence, is amended to read:

9 Rule 615. Exclusion of Witnesses. At the request of a party the court may
10 order witnesses excluded so that they cannot hear the testimony of other witnesses, and
11 it may make the order on its own motion. This rule does not authorize exclusion of

12 (1) a party who is a natural person; [, OR]

13 (2) an officer or employee of a party which is not a natural person
14 designated as its representative by its attorney; [, OR]

15 (3) a person whose presence is shown by a party to be important to the
16 presentation of the party's [HIS] cause; or

17 (4) the victim of the alleged crime or juvenile offense during
18 criminal or juvenile proceedings when the accused has the right to be present; in
19 this paragraph, "victim" has the meaning given in AS 12.55.185.

20 * Sec. 20. Rule 3(c), Alaska Delinquency Rules, is amended to read:

21 (c) **General Public Excluded.** Hearings are not open to the public unless requested
22 by the juvenile. However, the court may, after due consideration for the welfare of the
23 juvenile and the interests of the public, admit specific individuals to a hearing, and shall admit
24 victims of the juvenile's offense to hearings and proceedings as required by AS 47.12.110
25 [AS 47 0.070(b)].

26 * Sec. 21. Rule 6(u)(4), Alaska Rules of Criminal Procedure, is repealed.

27 * Sec. 22. APPLICABILITY. (a) Except as provided in (c) of this section, this Act
28 applies to a criminal or juvenile hearing and proceedings held on or after the effective date
29 of this Act, regardless of whether the criminal offense or delinquent act occurred before, on,
30 or after the effective date of this Act.

31 (b) Sections 3 - 6 of this Act apply to collections regardless of whether the judgment,

1 offense, or delinquent act occurred before, on, or after the effective date of this Act.

2 (c) Sections 7 - 8 of this Act apply to offenses committed on or after the effective
3 date of this Act.

4 * Sec. 23. This Act takes effect July 1, 1997.

Section analysis CSHB 9.

Section 1, 14; 19-20: Attendance. The bill provides that "victims" of crimes have the right to be present during any court proceeding for a defendant or a minor if the accused has the right to be present. Formerly any witness for either side was excluded from such a proceeding, so that their own independent memory and perception was not clouded or impacted by the testimony of other witnesses. The rule was to assure the accuracy of the fact-finding process, not to hide the process. A court will have to balance the due process right of the defendant to have a fair trial with the witness' need to be present for personal satisfaction to determine if this is constitutional.

Sections 2-6 and 22: Execution of Judgment. The bill removes the weekly income and liquid assets exemptions from collections of court-ordered restitution from prisoners if the money is held outside a correctional center. While the obvious and laudable intent is to improve collections of court-ordered restitution, providing the exemptions to debtors (including prisoners) allows them to provide for the basic needs of their families even while incarcerated, and to have the ability to make the difficult transition to being a productive member of society upon release from custody. Removing the exemption for such a limited population may appear punitive and a violation of the equal protection of the laws. Additionally, this change is to be retroactive, which may violate protections against ex post facto laws.

Section 7: Incapacitated persons. The bill expands the definition of who is an incapacitated person for those laws that make it a crime to engage in sexual conduct with such a person.

Section 8: Domestic violence. The bill creates a new Class A misdemeanor for knowingly interfering with a person reporting or attempting to report a crime including domestic violence to a law enforcement agency.

Section 9-12: Bail. The bill requires judges to consider the safety of the alleged victim before setting bail for a person accused of a crime. Judges already consider this in the general question of whether or not the accused presents "a danger to the community". It also creates an additional burden for the prosecutor in that a "victim" must be notified of any bail hearing.

Section 13: Mental examination. This bill precludes a court-ordered psychiatric or psychological examination unless the victim's mental condition is an element of the offense charged or the victim's mental condition resulted from the offense charged. The obvious interest is to make a psychological or psychiatric examination of the complaining witness impossible to obtain. In actuality it is already a very rare occurrence. A defendant must currently demonstrate that the complaining witness may have some type of psychological or psychiatric disorder directly related to their veracity. Second, the defendant must demonstrate that the testimony of the witness to be examined is uncorroborated or otherwise untrustworthy. Anderson v. State, 249 P.2d 369, 371 (Alaska App. 1988). The Court of Appeals had previously specifically cautioned that "care must be taken to assure that requests for psychiatric evaluation will in fact yield relevant evidence and that such requests have not been submitted to harass and embarrass the victim, in the hope of discouraging effective prosecution." Pickens v. State, 675 P.2d 665 (Alaska App. 1984). These safeguards protect most witnesses from such an intrusion. Due process requires that the jury be informed if there is a mental condition that affects the credibility of a witness. This portion of the bill is unconstitutional.

Section 14: Notice. The bill provides that prosecutors, corrections agencies and social service agencies have an obligation to provide victims with notice regarding bail hearings, special medical parole hearings, discretionary parole hearings, the release or escape of the defendant or the status of a person found not guilty by reason of insanity.

Section 15: Records. The bill provides that an application for compensation and identifying information to the Violent Crimes Compensation Commission are confidential records.

Section 17: Grand Jury. The bill further erodes the constitutional right to grand jury by providing that all alleged victims may testify by telephone if they live more than 50 miles from the grand jury site or live in a place where people customarily travel by air to the grand jury site. While this may be more convenient to an alleged victim, it certainly deprives the grand jury of the opportunity to personally observe the demeanor of the witness and make an

informed decision with regard to the witness' credibility.

Section 18: Domestic violence. The bill provides that in a prosecution for domestic violence, evidence of other crimes of domestic violence by the accused would be admissible. The intent is obviously to make it easier to convict someone, not based upon evidence that they committed the crime charged, but upon the proof simply that the defendant was an unlikable person or had a propensity for such a type of offense.

This bill assumes a faulty premise: that is, that making it easier to obtain a criminal conviction is better for the victim. In reality, it is better for the justice system as a whole including the victim for convictions to be obtained of guilty people after full consideration of the jury of all the relevant evidence of the crime untainted by unfair procedures or rules designed to skew the process. Precluding evidence concerning the victim if relevant, or including irrelevant evidence concerning the defendant, does not assist the jury in an accurate fact-finding process.

1

0-LS0088VH.3

Luckhaupt

2/18/97

failed

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: Draft CSHB 9() ("H" Version, Dated 2/12/97)

1 Page 2, line 3, following "not":

2 Insert "in most cases"

3 Page 5, lines 25 - 26:

4 Delete "even if the victim is likely to be called as a witness"

5 Insert "unless

6 (i) the testimony concerns the subject about which
7 the victim is expected to testify; and

8 (ii) the victim is likely to be called as a witness and
9 has not, at the time of the testimony, testified"

10 Page 7, lines 22 - 23:

11 Delete "even if the victim is likely to be a witness in a hearing concerning the
12 minor's alleged offense"

13 Insert "or exclude the victim from a hearing during testimony when the minor has
14 a right to attend unless

15 (1) the testimony concerns the subject about which the victim is
16 expected to testify; and

17 (2) the victim is likely to be called as a witness and has not, at the
18 time of the testimony, testified"

19 Page 8, line 18, following "present":

20 Insert "unless the testimony of the other witness concerns the subject about which
21 the victim is expected to testify, the victim is likely to be called as a witness, and the
22 victim has not, at the time of the testimony of the other witness, testified"

#2

0-LS0088'H.2
Luckhaupt
2/18/97

Withdrawn

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: Draft CSHB 9() ("H" Version, Dated 2/12/97)

1 Page 7, line 23, following "offense":

2 Insert "However, when it is known that a victim will be called as a witness,
3 reasonable efforts shall be made by the parties and the court to schedule the victim's
4 testimony as early as possible in the proceedings"

5 Page 8, line 18, following "present":

6 Insert "however, when it is known that a victim will be called as a witness,
7 reasonable efforts shall be made by the parties and the court to schedule the victim's
8 testimony as early as possible in the proceedings;"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 16, 1997

SUBJECT: Sectional Summary of HB 9 (Work Order No. 0-LS0088AE)

TO: Representative Brian Porter
Attn: Jim Sourant

FROM: Gerald P. Luckhaupt *JLB*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill provides a purpose section.

Section 2 of the bill amends AS 09.20.180 to ensure the effectiveness of the substantive changes being made in bill secs. 3 - 4.

Section 3 of the bill adds a new section to AS 12.50 providing that a crime victim may not be excluded from the courtroom during proceedings at which the defendant has a right to present, including situations where the victim may be called as a witness.

Section 4 of the bill amends AS 47.12.110(b) by providing that a crime victim may not be excluded from juvenile hearings involving the minor alleged to have committed the crime even if the victim may be called as a witness.

Section 5 of the bill amends Rule 615, Alaska Rules of Evidence, by providing that that rule does not authorize the exclusion of a crime victim from criminal or juvenile hearings involving the alleged offender.

Section 6 of the bill provides notice that bill secs. 2 - 5 are effecting a change to Rule 615, Alaska Rule of Evidence. Court rule changes require a two-thirds vote of each house of the legislature to become effective.

Section 7 of the bill is an applicability section.

Representative Brian Porter
January 16, 1997
Page 2

Section 8 of the bill provides that the bill, if passed, only takes effect if the court rule changes receive the required two-thirds vote.

GPL:lmb
97-005.lmb

Date: January 15, 1997

To: Representative Joe Green
Chairman, House Judiciary Committee

From: Representative Brian Porter
House Majority Leader

Subject: Additional Sectional Analysis of HB 9

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

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

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

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

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

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

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

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

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

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

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

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Current with amendments received through 12-15-95

RULE 615. EXCLUSION OF WITNESSES

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

Federal Rule: Exclusion of Witnesses.

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

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

Reporter's Notes

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

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

the discretion of the trial judge.

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

EXHIBIT A

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

would not color his testimony by listening to other witnesses.

Affirmed.

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

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

AFFIRMED.

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



The STATE of New Hampshire

v.

Gilbert HAMEL.

No. 87-246.

Supreme Court of New Hampshire.

July 8, 1988.

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

1. Criminal Law \S 665(1)

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

2. Criminal Law \S 665(2)

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

3. Criminal Law \S 680(1)

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

4. Criminal Law \S 680(1)

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

5. Criminal Law \S 1168(2)

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

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

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

BATCHELDER, Justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMED.

All concurred.



BEDFORD RESIDENTS GROUP

v.

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

No. 87-396.

Supreme Court of New Hampshire.

July 11, 1988.

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

Affirmed.

1. Zoning and Planning ¶194

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

21-M:8-k

21-M:8-k Rights of Crime Victims.

I. As used in this section:

(a) "Victim" means a person who suffers direct or threatened physical, emotional, psychological or financial harm as a result of the commission or the attempted commission of a crime. "Victim" also includes the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim.

(b) "Crime" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than one year or an offense expressly designated by law to be a felony.

II. To the extent that they can be reasonably guaranteed by the courts and by law enforcement and correctional authorities, and are not inconsistent with the constitutional or statutory rights of the accused, crime victims are entitled to the following rights:

(a) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

(b) The right to be informed about the criminal justice process and how it progresses.

(c) The right to be free from intimidation and to be reasonably protected from the accused throughout the criminal justice process.

(d) The right to be notified of all court proceedings.

(e) The right to attend trial and all other court proceedings the accused has the right to attend.

(f) The right to confer with the prosecution and to be consulted about the disposition of the case, including plea bargaining.

(g) The right to have inconveniences associated with participation in the criminal justice process minimized.

(h) The right to be notified if presence in court is not required.

(i) The right to be informed about available resources, financial assistance, and social services.

(j) The right to restitution, as granted under RSA 651:62-67 or any other applicable state law, or victim's compensation, under RSA 21-M:8-h or any other applicable state law, for their losses.

(k) The right to be provided a secure, but not necessarily separate, waiting area during court proceedings.

(l) The right to be advised of case progress and final disposition.

(m) The right of confidentiality of the victim's address, place of employment, and other personal information.

(n) The right to the prompt return of property when no longer needed as evidence.

(o) The right to have input in the probation presentence report impact statement.

(p) The right to appear and make a written or oral victim impact statement at the sentencing of the defendant or, in the case of a plea bargain, prior to any plea bargain agreement.

(q) The process, the appeal hearing

(r) The sentence

(s) The release, parole board hearing

(t) The decision of the advocate.

III. No action against the instrument as created by the defendant

Source: 19

Amendment
plea bargain

Victim's ri

21-M:8-
standing
assistance
awarded t
court find

I. Rest:
II. Res
III. Th
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Source: 1'

21-M:9
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II. The
following:

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(t) [F
(u) I
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(q) The right to be notified of an appeal, an explanation of the appeal process, the time, place and result of the appeal, and the right to attend the appeal hearing.

(r) The right to be notified and to attend sentence review hearings and sentence reduction hearings.

(s) The right to be notified of any change of status such as prison release, permanent interstate transfer, or escape, and the date of the parole board hearing, when requested by the victim through the victim advocate.

(t) The right to address or submit a written statement for consideration by the parole board on the defendant's release and to be notified of the decision of the board, when requested by the victim through the victim advocate.

III. Nothing in this section shall be construed as creating a cause of action against the state, a county or municipality, or any of their agencies, instrumentalities, or employees. Nothing in this section shall be construed as creating any new cause of action or new remedy or right for a criminal defendant.

HISTORY

Source. 1991, 39:2. 1993, 356:2, eff. Aug. 5, 1993.

Amendments—1993. Paragraph II(p): Added "or, in the case of a plea bargain, prior to any plea bargain agreement" following "defendant".

CROSS REFERENCES

Victim's rights in cases involving violent crimes by minor, see RSA 169-B:35-a.

21-M:8-1 Restitution to the Victims' Assistance Fund. Notwithstanding RSA 651:63, a court may order restitution to the victims' assistance fund as a part of a sentence, to the extent that moneys were awarded to the victim of the crime from the victims' assistance fund, if the court finds that:

I. Restitution shall serve to rehabilitate the offender.

II. Restitution shall replenish the victims' assistance fund.

III. The victims' assistance fund has not been reimbursed for the moneys expended from another source.

HISTORY

Source. 1993, 42:1, eff. Jan. 1, 1994.

21-M:9 Consumer Protection and Antitrust Bureau.

[No change in paragraph I.]

II. The duties of the bureau shall include, but not be limited to, the following:

[No changes in subparagraphs (a)-(s).]

(t) [Repealed.]

(u) Investigating and prosecuting disciplinary proceedings before state professional licensing boards.

[No change in paragraph III.]

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

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

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

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

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

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

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

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

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

Article II

The Legislature

Section 1. Legislative Power; Membership. The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty.

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

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

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

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

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

NOTES TO DECISIONS

Separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

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

some specific instances by constitution to the legislative branch of government. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

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

injustice. *Duncan v. State*, 782 P.2d 301 (Alaska Ct. App. 1989).

Panel not bound by trial court's evaluation. — The three-judge panel is not bound by the trial court's evaluation of the facts or determination of the law. *Winther v. State*, 749 P.2d 1356 (Alaska Ct. App. 1988).

Trial court should not propose a nonstatutory mitigating factor to the three-judge panel where the legislature specifically rejected that factor for inclusion in AS 12.55.155(d). Where the legislature has expressly addressed a consideration, such as the relationship between a defendant's past conduct and his present offense, and imposed limitations on the trial court's power to consider that relationship in mitigation of sentence, the trial court should not propose the same mitigating factor to the three-judge panel without complying with the limitations; to do so is to suggest a common-law development inconsistent with legislation. *Totemoff v. State*, 739 P.2d 769 (Alaska Ct. App. 1987).

Applied in *McManners v. State*, 650 P.2d 414 (Alaska Ct. App. 1982); *Shaw v. State*, 673 P.2d 781 (Alaska Ct. App. 1983); *Degler v. State*, 741 P.2d 659 (Alaska Ct. App. 1987); *Totemoff v. State*, 739 P.2d 769 (Alaska Ct. App. 1987); *Lowe v. State*, 866 P.2d 1320 (Alaska Ct. App. 1994).

Sec. 12.55.180. Designation of representative. If more than one person who qualifies as a victim under AS 12.55.185 desires notice under AS 12.55.088, the prosecuting attorney shall designate one person to represent all victims for purposes of receiving the notice required and exercising the rights granted under this chapter. (§ 6 ch 59 SLA 1989)

Revisor's notes. — Formerly AS 12.55.172. Renumbered in 1990.

Sec. 12.55.185. Definitions. In this chapter, unless the context requires otherwise,

- (1) "crime against a person" has the meaning given in AS 33.30.901;
- (2) "criminal street gang" has the meaning given in AS 11.81.900(b);
- (3) "dangerous instrument" has the meaning given in AS 11.81.900;
- (4) "domestic violence" has the meaning given in AS 18.66.990;
- (5) "firearm" has the meaning given in AS 11.81.900;
- (6) "first felony conviction" means that the defendant has not been previously convicted of a felony;
- (7) "judicial officer" has the meaning given in AS 11.56.900;
- (8) "most serious felony" means
 - (A) arson in the first degree, promoting prostitution in the first degree under AS 11.66.110(a)(2), or any unclassified or class A felony prescribed under AS 11.41; or
 - (B) an attempt, or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified felony prescribed under AS 11.41;
 - (9) "paramedic" means a mobile intensive care paramedic licensed under AS 08.64;
 - (10) "peace officer" has the meaning given in AS 11.81.900;
 - (11) "pecuniary gain" means the amount of money or value of property at the time of commission of the offense derived by the defendant from the commission of the offense, less the amount of money or value of property returned to the victim of the offense or seized by or surrendered to lawful authority before sentence is imposed;
 - (12) "second felony conviction" means that the defendant previously has been con-

Quoted in *Kirby v. State*, 748 P.2d 757 (Alaska Ct. App. 1987); *Wiley v. State*, 822 P.2d 940 (Alaska Ct. App. 1991).

Stated in *Erhart v. State*, 656 P.2d 1199 (Alaska Ct. App. 1982); *State v. Rastopsoff*, 659 P.2d 630 (Alaska Ct. App. 1983); *Maldonado v. State*, 676 P.2d 1093 (Alaska Ct. App. 1984); *Tulowitzke v. State*, Dep't of Pub. Safety, 743 P.2d 368 (Alaska 1987).

Cited in *Juneby v. State*, 641 P.2d 823 (Alaska Ct. App. 1982); *Griffith v. State*, 653 P.2d 1057 (Alaska Ct. App. 1982); *Neakov v. State*, 653 P.2d 658 (Alaska Ct. App. 1982); *Wright v. State*, 656 P.2d 1226 (Alaska Ct. App. 1983); *Langton v. State*, 662 P.2d 954 (Alaska Ct. App. 1983); *State v. LaPorte*, 672 P.2d 466 (Alaska Ct. App. 1983); *Walsh v. State*, 677 P.2d 912 (Alaska Ct. App. 1984); *State v. Brinkley*, 681 P.2d 351 (Alaska Ct. App. 1984); *Flink v. State*, 683 P.2d 725 (Alaska Ct. App. 1984); *Dancer v. State*, 715 P.2d 1174 (Alaska Ct. App. 1986); *Kuvas v. State*, 717 P.2d 855 (Alaska Ct. App. 1986); *James v. State*, 739 P.2d 1314 (Alaska Ct. App. 1987); *Schnecker v. State*, 739 P.2d 1310 (Alaska Ct. App. 1987); *Comegys v. State*, 747 P.2d 554 (Alaska Ct. App. 1987); *James v. State*, 754 P.2d 1336 (Alaska Ct. App. 1988); *Russell v. State*, 752 P.2d 1022 (Alaska Ct. App. 1988); *Seauvois v. State*, 837 P.2d 1118 (Alaska Ct. App. 1992).

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

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

(16) "victim" means

(A) a person against whom an offense has been perpetrated;

(B) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is a minor, incompetent, or incapacitated:

(i) an individual living in a spousal relationship with the person specified in (A) of this paragraph; or

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

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

(i) a person living in a spousal relationship with the deceased before the deceased died;

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

or

(iii) any other interested person, as may be designated by a person having authority in law to do so. (§ 12 ch 166 SLA 1978; am E.O. No. 55, § 9 (1984); am § 3 ch 154 SLA 1984; § 7 ch 59 SLA 1989; am § 6 ch 64 SLA 1991; am § 8 ch 36 SLA 1993; am § 5 ch 6 SLA 1996; am § 13 ch 7 SLA 1996; am § 10 ch 60 SLA 1996; am § 15 ch 64 SLA 1996)

Revisor's notes. — Paragraph (3) was enacted as paragraph (12). Renumbered in 1991, at which time former paragraphs (3)-(11) were renumbered as (4)-(12).

Paragraph (7) enacted as (13). Renumbered in 1993, at which time former paragraphs (7)-(12) were renumbered as (8)-(13), respectively.

Paragraphs (2), (8), and (10) were enacted as (14). Renumbered in 1996, at which time former paragraphs (2)-(6) were renumbered as (3)-(7), former paragraph (7) was renumbered as (9), and former paragraphs (8)-(13) were renumbered as (11)-(16).

Cross references. — For findings related to the definition of "most serious felony," see § 1, ch. 7, SLA 1996 in the Temporary and Special Acts.

Effect of amendments. — The 1991 amendment, effective September 16, 1991, added paragraph (3) (now (4)).

The 1993 amendment, effective August 25, 1993, added paragraph (9).

The first 1996 amendment, effective June 27, 1996, added paragraph (10).

The second 1996 amendment, effective June 27, 1996, added paragraph (8).

The third 1996 amendment, effective September 1, 1996, added paragraph (2).

The fourth 1996 amendment, effective July 1, 1996, rewrote paragraph (4).

Legislative history reports. — For House letter of intent relating to the definition of "victim" in this section, as amended by § 7, ch. 59, SLA 1989 (CSHB 36(Fin) am), and related letter from the Department of Law, see 1989 House Journal 710 — 712.

NOTES TO DECISIONS

Prior convictions for presumptive sentencing. — Under the plain terms of former AS 12.55.145(a)(3) and 12.55.185(6), (7), and (8) (now see (6), (13), and (14)), one conviction must precede the next before presumptive sentencing can apply. *State v. Rastopsoff*, 659 P.2d 630 (Alaska Ct. App. 1983).

Where defendant's three separate criminal episodes occurred in close proximity and his convictions were entered after all of the offenses had been committed, he cannot be deemed to be a second felony offender under AS 12.55.125 and AS 12.55.185. *State v. Rastopsoff*, 659 P.2d 630 (Alaska Ct. App. 1983).

A person has not been convicted of a felony offense for presumptive sentencing purposes until after he has been sentenced on the first felony offense. *Snwyer v. State*, 663 P.2d 230 (Alaska Ct. App. 1983).

"Unconditional discharge" construed. — The definition of "unconditional discharge" in AS 15.60.010(33) is functionally identical to the definition

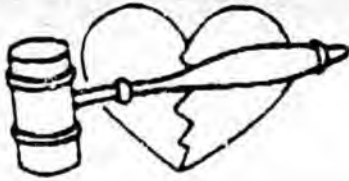
The definition of "unconditional discharge" set forth in this section must be interpreted to require the completion of any sentence of imprisonment, discharge from parole or probation, and release from any other restriction directly imposed as part of the judgment of conviction; restoration of collaterally affected rights or privileges, such as to vote and to carry a gun, is not required. *Singleton v. State*, Ct. App. Op. No. 1475 (File No. A-5578), P.2d (1996).

"Victim." — The legislature did not intend the definition of "victim" to be limited to "offenses against the person," because the term appears in statutes defining property crimes that are outside that class. *Municipality of Anchorage v. Sanders*, 902 P.2d 310 (Alaska Ct. App. 1995).

Applied in *Fry v. State*, 655 P.2d 789 (Alaska Ct. App. 1983); *Wealoc v. State*, 837 P.2d 130 (Alaska Ct. App. 1992).

Quoted in *Wright v. State*, 656 P.2d 1226 (Alaska Ct. App. 1983).

VICTIMS



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

January 15, 1997

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

Dear Representative Porter:

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

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

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

Representative Porter

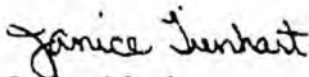
Page 2

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

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

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

Sincerely,



Janice Lienhart
Executive Director
Victims for Justice



MADD

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

Mothers Against Drunk Driving

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

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

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

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

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

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

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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



January 17, 1997

Business Manager

Joseph E. Young
Anchorage

Board of Directors

Michael Corkill, President
Fairbanks

Robin Lown, Vice President
Juneau

Mike Gimes, Past President
Anchorage

Ron Belden, Member
Kenai
Pres. Kenai Chapter

Leo Brandler, Member
Anchorage
Pres. Anchorage Chapter

Sam Edwards, Member
Palmer
Pres. Mat-Su Chapter

Steve Heckman, Member
Fairbanks
Pres. Fairbanks North Chapter

Steve Kalwara, Member
Juneau
Pres. Capitol City Chapter

Scott Chafin, Member
Wrangell
Pres. Wrangell Chapter

Leroy Mestas, Member
Ketchikan
Pres. First City Chapter

James See, Member
Craig
Pres. Prince of Wales Chapter

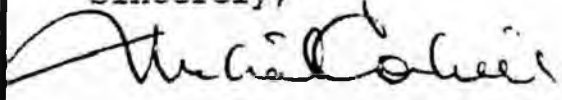
Representative Brian Porter
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Porter,

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

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

Sincerely,


Michael Corkill
APOA State President

Minutes
Criminal Rules Committee
August 23, 1996
Page No. 5

appointment of guardians ad litem (GAL) for child witnesses in criminal cases. In her view, the GAL's role is not clear and GALs are not appointed as often as they should be. Laurie Otto thinks district attorneys assume there is no need for a GAL where the child has parents who can protect his/her interests. But, according to Cindy, parents are often as overwhelmed by the process as the child and may not be effective advocates because they don't understand what options they have. Judge Greene pointed out that judges can't really appoint GALs on their own because they usually don't know that a child will be testifying until fairly late in the process. She asked whether Cindy thinks there are appropriate cases for automatic appointment. Cindy suggested child sexual abuse cases. But even these cases may not need automatic appointments if the child has supportive parents. She suggested in these cases perhaps an automatic inquiry into whether an appointment should be made. In her view, the inquiry into whether a GAL is appointed should be made early in the case so that the GAL is available for pretrial proceedings and to explain the process to the parents. According to Cindy, the GAL usually advocates for the child regarding the child's testimony and continuances, which can have a more serious impact on children than on adults. The committee identified the following questions regarding GAL appointments: (1) what is the standard for appointment of a GAL (that is, under what circumstances is a GAL needed?); (2) can a GAL file motions; and (3) what filings must be served on a GAL? The committee ultimately decided to table this proposal for six months. In the meantime, the Department of Law and the court system will attempt to do some education of both district attorneys and judges regarding GAL appointments and the issues that should be addressed in any GAL appointment order.

3. Evidence Rule 615: Exclusion of Victims from Courtroom. The committee reviewed the Department of Law's request (dated July 10, 1996) that Evidence Rule 615 be amended to prevent victims from being excluded from proceedings at which the defendant is present. Chuck Pengilly expressed the view that Rule 615 should be eliminated entirely. He would like to do further research on this possibility. The committee agreed, however, in the meantime, to ask the supreme court to include the following note at the end of the rule:

This rule does not authorize the exclusion of a crime victim, as defined by law, from any hearing at which the defendant has a right to be present. See Alaska Const. art. I, § 24.

c:\MIN\CRIM9608.MIN

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER



DISTRICT 20

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
LEGISLATIVE COUNCIL JOINT COMMITTEE

SESSION:
STATE CAPITOL, ROOM 216
JUNEAU, ALASKA 99501-1182
PHONE: (907) 465-4930
FAX: (907) 465-3834

INTERIM:
716 W. 4TH AVE., SUITE 360
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

SPONSOR STATEMENT

For

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

The Constitution of the State of Alaska was amended in 1994 by adding to Article 1, a new Section 24, which specifically extended to crime victims "the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present..."

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

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

HB

9

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/15/97

FURTHER: REPORTED OUT OF: 4/23/97

DATE TURNED IN TO OFFICE: 4/23/97

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

VICTIM'S RIGHT TO BE PRESENT AT TRIAL

and recommends:

- be replaced with S CS CS HB 9 (FIN)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

Senate Bill:

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Paul E. Kelly</i>	✓				
<i>Debra</i>	X				
<i>John Ingman</i>	✓				
Co-Chair: <i>Peace</i>	✓	Co-Chair:			
Co-Chair: <i>Barry</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Alaska Court	4/10/97	Ø	
Admin/PDA	2/17/97	Ø	
Admin/OPA	2/4/97	Ø	
Law	4/16/97	Ø	
Pub. Safety	4/15/97	Ø	
HESS/DFYS	1/23/97	Ø	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES PORTER, Green, Croft, Kubina, Kemplen, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the rights of crime victims and victims of juvenile offenses;
 2 relating to the collection by victims of restitution from prisoners; relating to the
 3 definition of 'incapacitated' for sexual offenses; creating the crime of interfering
 4 with a report of a crime involving domestic violence; relating to mental
 5 examinations of victims in criminal prosecutions; relating to the safety of
 6 victims, other persons, and the community in setting bail or conditions of
 7 release; relating to access to certain records of the Violent Crimes Compensation
 8 Board; amending Rules 6 and 43(d), Alaska Rules of Criminal Procedure, Rules
 9 404 and 615, Alaska Rules of Evidence, and Rule 3, Alaska Delinquency Rules;
 10 and providing for an effective date."

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

12 * Section 1. PURPOSE. The purpose of secs. 2, ¹⁶15, ¹⁷17, ²⁰20, and ²³21 of this Act is to clarify

L

FISCAL NOTE

No. 5

Version: CSHB 9(FIN)

(H) Publish Date: 2/19/97

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Department of Law
 Title: ... to the rights of crime victims, collection by BRU: Criminal Division/Civil Division
victims of restitution, safety of victims, amending court rules Component: Criminal Division/General Legal Services
 Sponsor: Representative Porter
 Requester: House Finance Committee COMPONENT SERIAL NO. 2085/2087

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 2/14/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce M. Botelho for* Date: 2/14/97
 Agency: Department of Law

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FISCAL NOTE

No. 6

Bill Version: GSHB 9(FIN)

(H) Publish Date: 2/19/97

STATE OF ALASKA
.997 LEGISLATIVE SESSION

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

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will have no impact on Office of Public Advocacy.

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

Phone: 274-1684
Date: _____

Approved by Commissioner: Mark Bover *Hanson M Stage*
Agency: Administration

Date: 2/4/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

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

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL EXPENDITURES	**	**	**	**	**	**
-----------------------------	----	----	----	----	----	----

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

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

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

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 2/17/97

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1997 LEGISLATIVE SESSION

Revision Date: 2/15/97

Dept. Affected: Public Safety

Title: Victim's Rights to be Present at Trial

DPS Statewide Support

Component: Commissioner's Office

Sponsor: Representative Porter

Requestor: S.JUD

COMPONENT SERIAL NO. 0523

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

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

FUNDING: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated to the Department of Public Safety

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

Phone: 465-4322

Division: Commissioner's Office

Date: 4/15/97

Approved by Commissioner: *Ronald L. Otte*

Date: 4/15/97

Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

No. 4

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO:

Bill Version: CSHB 9 (JUD)

(H) Publish Date: 1/27/97

Revision Date: _____
 Title: "An Act relating to the rights of crime victimsto be present at court proceedings"
 Sponsor: Representative Porter
 Requestor: House Judiciary Committee

Dept. Affected: Public Safety
 BRU: Statewide Support
 Component: Commissioner's Office
 COMPONENT SERIAL NO. 0523

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

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

FUNDING: (Thousands of Dollars)

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

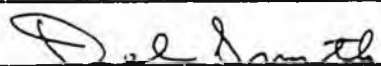
Estimate of current year (FY 97) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill does not impact the Department of Public Safety

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

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FISCAL NOTE

No. 2
 Bill Version: CSHB 9 (JUD)
 (H) Publish Date: 1/27/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Rights of Victim's to be present at court BRU: Family and Youth Services
 proceedings Component: DFYS Central Office
 Sponsor: Representative Porter COMPONENT SERIAL NO. 259
 Requestor: House (JUD) See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the Division if this bill were to become law.

5/23/97 Prepared by: L. Diane Worley, Director Phone: 465-3191
 Division: Family & Youth Services Date: 01/23/97
 Approved by Commissioner: Karen Perdue, Commissioner Date: 1/23/97
 Agency: Department of Health & Social Services

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FISCAL NOTE

NOT PUBLISHED

B) Identical to No. 1
 Bill Version: SCS CSHB 9 (JUD)

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

Revision Date: 04/10/97 Dept. Affected: Alaska Court System
 Title: Victim's right to be present at trial BRU: Trial Courts
 Sponsor: Rep. Porter Component: _____
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 708

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (

Fund Source (Thousands of Dollars)

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

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

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 254-8285
 Agency: Alaska Court System Date: 04/10/97
 Approved by: Stephanie J. Cole, Acting Administrative Director Date: 04/10/97
 Agency: Alaska Court System

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FISCAL NOTE

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

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

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

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

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

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

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

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

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

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COMMITTEE COPY

A F A X

Alaska State Legislature

Date: 4/23/97 8:25 p.m.

To: Legal Services

Fax #: 2029 Phone #: 2450

From: Terry Lee, Sen. Fin. Committee Secretary

Phone #: 2618

Re: please incorporate attached amend #1 into SCS CSHB 9 (JUD)
C-LS0088\ P into final finance form.

Many thanks!

Following this page, please find 1 pages(s). If this does not reach you in full, please inform us ASAP.



THANK YOU

A FAX

Alaska State Legislature

Date: 4/24/97

To: Legal Services

Fax #: 2029 Phone #: 2450

From: Jerry Lee, Sen. Fin. Committee Secretary

Phone #: 2618

Re: Apparently page 1, line 12 the section numbers changed as to how I have written them in per Larry. Please conform into new final CS (FIN) Thanks!

Following this page, please find 1 pages(s). If this does not reach you in full, please inform us ASAP.



THANK YOU

SENATE FINANCE
COMMITTEE
Amendment Number: 1
Bill Number: HB 9
Sponsor: _____ Date: 11/23/97
Logged In By: Sceltani

AMENDMENT

*moved by Sen. Pearce.
w/o objection adopted*

OFFERED IN THE SENATE FINANCE COMMITTEE BY PEARCE

TO: SCS for CSHB 9 (JUD)

Page 5, following line 14:

Insert a new bill section to read:

"Sec. 14. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.042. Mental examination of victim. In a criminal prosecution under AS 11.41, the court may not order or compel the victim to undergo a psychiatric or psychological examination unless

(1) the victim's psychiatric or psychological condition is an element of the offense charged; or

(2) the prosecution has given notice that it will present evidence at trial that the victim suffers from a continuing psychological or psychiatric condition that resulted from the offense charged."

Renumber following bill sections accordingly.

SENATE CS FOR CS FOR HOUSE BILL NO. 9(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/15/97
Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Green, Croft, Kubina, Kemplen, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the rights of crime victims and victims of juvenile offenses;
2 relating to the collection by victims of restitution from prisoners; relating to the
3 definition of 'incapacitated' for sexual offenses; creating the crime of interfering
4 with a report of a crime involving domestic violence; relating to the safety of
5 victims, other persons, and the community in setting bail or conditions of
6 release; relating to access to certain records of the Violent Crimes Compensation
7 Board; amending Rules 6 and 43(d), Alaska Rules of Criminal Procedure, Rules
8 404 and 615, Alaska Rules of Evidence, and Rule 3, Alaska Delinquency Rules;
9 and providing for an effective date."

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

11 * Section 1. PURPOSE. The purpose of secs. ^{16 18 27 23} 2, ~~15~~, 17, 20, and 21 of this Act is to clarify
12 that the right of crime victims "to be present at all criminal or juvenile proceedings where the

SENATE FINANCE
COMMITTEE
Amendment Number: 2
Bill Number: HB 9
Sponsor: _____ Date: 4/23/97
Logged In By: J. Kottlaoui

AMENDMENT

not offered

OFFERED IN THE SENATE FINANCE COMMITTEE

BY PEARCE

TO: SCS for CSHB 9 (JUD)

Page 5, following line 14:

Insert a new bill section to read:

“**Sec. 14.** AS 12.45 is amended by adding a new section to read:

Sec. 12.45.042. Mental examination of sexual assault or sexual abuse victim.

In a criminal prosecution under AS 11.41.410 - 11.41.470, the court may not order or compel the victim to undergo a psychiatric or psychological examination unless

(1) the victim’s psychiatric or psychological condition is an element of the offense charged; or

(2) the prosecution has given notice that it will present evidence at trial that the victim suffers from a continuing psychological or psychiatric condition that resulted from the offense charged.”

Renumber following bill sections accordingly.

SENATE CS FOR CSHB 9 (JUD)
SECTIONAL ANALYSIS

Sections one, 15, 17, 21, and 22 implement art. I, sec. 24 of the Alaska Constitution by allowing the victim to be present at every stage of a criminal prosecution or adjudication of a juvenile where the defendant or the juvenile has a right to be present. The Alaska Constitution guarantees these rights; these provisions amend the statutes and court rules to implement them.

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

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

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

Sections nine, 10, 11 and 13 amend the bail statutes to require that the safety of the victim be considered by the court when it makes its decision concerning bail and conditions of release for the defendant pending trial, sentence, and appeal. Art. I, sec. 24 of the Alaska Constitution guarantee a victim the right to be reasonably protected from the accused through the imposition of bail or conditions of release by the court. These sections implement that guarantee.

Section 12 provides that when the trial court dismisses an indictment or grants the defendant a new trial, and the state appeals the dismissal or order for a new trial, the decision to release the defendant shall be determined according to the statutes governing release before trial.

Section 14 addresses cases that are referred to a three-judge panel for sentencing. The law allows the panel to sentence a defendant to a lower or higher term of imprisonment, under certain circumstances, than the presumptive sentence which would otherwise apply. This section provides that if the panel hears additional testimony regarding the appropriate sentence, the victim of the crime will also be allowed to testify.

Section 15 amends the victims' rights statute. In addition to setting forth the right to be present, it implements Art. I, sec. 24 of the Alaska Constitution by providing that a victim has the right to notice of any hearing where the defendant's release from custody will be considered. Additionally, notice to victims required by other provisions of law, for example, the right to notice of the status of a defendant found not guilty by reason of insanity, are set forth in the victims' rights statute.

Section 16 provides that applications and personally identifying information in the files of the Violent Crimes Compensation Board are confidential.

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

Section 19 amends Rule 43(d), Alaska Rules of Criminal Procedure, to require, when the state appeals a decision dismissing an indictment or granting a new trial, that the court consider the release of the defendant under the laws addressing pretrial release.

Section 20 amends the Alaska Rules of Evidence to allow, in a prosecution of a crime involving domestic violence or interfering with a report of domestic violence, evidence to be introduced that the defendant has committed other crimes involving domestic violence or interfering with the report of a crime involving domestic violence against the same or another victim.

Sections 23 - 27 include effective date, applicability, and repealer provisions, and the court rule change notations.

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH EDUC. & SOCIAL SERVICES COMMITTEE
LEGISLATIVE COUNCIL JOINT COMMITTEE



DISTRICT 20

SESSION:
STATE CAPITOL, ROOM 216
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-4100
FAX: (907) 465-3434

INTERIM:
716 W. 4TH AVE., SUITE 160
ANCHORAGE, AK 99501-2134
PHONE: (907) 258-4197
FAX: (907) 258-3510

To: Senator Bert Sharp
Senator Drue Pearce
Senate Finance Committee

Fm: Representative Brian Porter

Re: HB 9 Rights of Crime Victims

April 17, 1997

At your earliest convenience, please set HB 9 on for consideration by the Senate Finance Committee.

Attached please find the following documents:

1. Copy of the most recent version of the bill, together with a resolution which may or may not have to be acted upon by the committee, depending upon whether a provision deleted by the Judiciary Committee is reinstated.
2. A Sponsor Statement
3. A Sectional Analysis
4. Supporting research materials and letters.

Thank you for your prompt attention to this matter.

Respectfully yours,

A handwritten signature in cursive script that reads "Brian S. Porter".

Brian Porter

SENATE CONCURRENT RESOLUTION NO. 12
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 4/16/97
Referred: Rules

A RESOLUTION

1 **Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the Alaska State**
2 **Legislature concerning House Bill No. 9, relating to victims of crime and other**
3 **criminal law matters.**

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

5 That under Rule 54 of the Uniform Rules of the Alaska State Legislature, the
6 provisions of Rules 24(c), 35, 41(b), and 42(e) of the Uniform Rules, regarding changes to the
7 title of a bill, are suspended in consideration of House Bill No. 9, relating to victims of crime
8 and other criminal law matters.

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
LEGISLATIVE COUNCIL JOINT COMMITTEE



DISTRICT 20

SESSION:
STATE CAPITOL ROOM 216
JUNEAU, ALASKA 99901-1182
PHONE: (907) 465-4930
FAX: (907) 465-3834

INTERIM:
716 W. 4TH AVE., SUITE 360
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

SPONSOR STATEMENT

For

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

The Constitution of the State of Alaska was amended in 1994 by adding to Article 1, a new Section 24, which specifically extended to crime victims "the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present..."

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

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

Alaska State Legislature



Official Business

House Majority Leader

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

SECTIONAL ANALYSIS

OF

SENATE CS FOR CS FOR HOUSE BILL NO. 9(JUD)

Sections 1, 2, 15, 17, 20, 21 and 22 of this Act clarify the right of crime victims to be present at all criminal or juvenile proceedings where the accused or juvenile has the right to be present.

Sections 3, 4, 5, and 6 create an exception to the weekly earnings and liquid assets exemptions from execution to allow a victim, in attempting to collect on an order of restitution, to levy upon assets held by a prisoner outside an institution. Under present law, assets held inside the institution are already available to victims under AS 09.38.030(f).

Section 7 amends the definition of "incapacitated" in the sexual assault statutes. Sexual Assault in the Third Degree prohibits, for example, sexual contact with a person who the offender knows is incapacitated. The definition is amended so that the state, in proving its case, must prove either that the victim was temporarily unable to appraise the nature of his or her conduct, or that the victim was temporarily unable to express unwillingness to act. At present the statutes require the state to prove both in order to establish its case.

Section 8 adds a new provision to the criminal code making it a class A misdemeanor to interfere with a person who is reporting or attempting to report a domestic violence crime to the police.

Sections 9, 10, 11, 12, 13, 19 and 24 amend the bail statutes to require that the safety of the victim be considered by the court when it makes decisions concerning bail and conditions of release for the defendant pending trial, sentence and appeal.

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

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

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

Section 20 amends Alaska Evidence Rule 404(b) to allow, in a prosecution of a crime involving domestic violence or interfering with a report of domestic violence, evidence to be introduced that the defendant has committed other crimes involving domestic violence or interfering with the report of a crime involving domestic violence against the same or another victim.

Section 23 repeals Rule 6(u)(4), Alaska Rules of Criminal Procedure.

Sections 25-27 include applicability and effective date provisions.

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

Name appropriation by employer or former employer. 32 ALR4th 156.

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

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

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

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

Effective dates. — This section took effect January 4, 1939 (15th Legislature's CSHJR 18 (1988).)

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

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

Article II

The Legislature

Section 1. Legislative Power; Membership. The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty.

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

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

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

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

The apparent invalidity of Alaska's apportionment plan does not transform its legislature into an illegal assembly, prohibited from meeting and enacting laws. 1954 Op. Att'y Gen. No. 4.

NOTES TO DECISIONS

Separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

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

some specific instances by constitution to the legislative branch of government. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

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

Injustice. *Duncan v. State*, 782 P.2d 381 (Alaska Ct. App. 1989).

Panel not bound by trial court's evaluation. — The three-judge panel is not bound by the trial court's evaluation of the facts or determination of the law. *Winther v. State*, 749 P.2d 1356 (Alaska Ct. App. 1988).

Trial court should not propose a nonstatutory mitigating factor to the three-judge panel where the legislature specifically rejected that factor for inclusion in AS 12.55.185(d). Where the legislature has expressly addressed a consideration, such as the relationship between a defendant's past conduct and his present offense, and imposed limitations on the trial court's power to consider that relationship in mitigation of sentence, the trial court should not propose the same mitigating factor to the three-judge panel without complying with the limitations; to do so is to suggest a common-law development inconsistent with legislation. *Totemoff v. State*, 739 P.2d 769 (Alaska Ct. App. 1987).

Applied in *McMannera v. State*, 650 P.2d 414 (Alaska Ct. App. 1982); *Shaw v. State*, 673 P.2d 781 (Alaska Ct. App. 1983); *Negler v. State*, 741 P.2d 659 (Alaska Ct. App. 1987); *Totemoff v. State*, 739 P.2d 769 (Alaska Ct. App. 1987); *Lowe v. State*, 866 P.2d 1320 (Alaska Ct. App. 1994).

Sec. 12.55.180. Designation of representative. If more than one person who qualifies as a victim under AS 12.55.185 desires notice under AS 12.55.088, the prosecuting attorney shall designate one person to represent all victims for purposes of receiving the notice required and exercising the rights granted under this chapter. (§ 6 ch 59 SLA 1989)

Revisor's notes. — Formerly AS 12.55.172. Renumbered in 1990.

Sec. 12.55.185. Definitions. In this chapter, unless the context requires otherwise,

- (1) "crime against a person" has the meaning given in AS 33.30.901;
- (2) "criminal street gang" has the meaning given in AS 11.81.900(b);
- (3) "dangerous instrument" has the meaning given in AS 11.81.900;
- (4) "domestic violence" has the meaning given in AS 18.66.990;
- (5) "firearm" has the meaning given in AS 11.81.900;
- (6) "first felony conviction" means that the defendant has not been previously convicted of a felony;
- (7) "judicial officer" has the meaning given in AS 11.56.900;
- (8) "most serious felony" means
 - (A) arson in the first degree, promoting prostitution in the first degree under AS 11.66.110(a)(2), or any unclassified or class A felony prescribed under AS 11.41; or
 - (B) an attempt, or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified felony prescribed under AS 11.41;
- (9) "paramedic" means a mobile intensive care paramedic licensed under AS 08.64;
- (10) "peace officer" has the meaning given in AS 11.81.900;
- (11) "pecuniary gain" means the amount of money or value of property at the time of commission of the offense derived by the defendant from the commission of the offense, less the amount of money or value of property returned to the victim of the offense or seized by or surrendered to lawful authority before sentence is imposed;
- (12) "second felony conviction" means that the defendant previously has been con-

Quoted in *Kirby v. State*, 748 P.2d 767 (Alaska Ct. App. 1987); *Wiley v. State*, 822 P.2d 940 (Alaska Ct. App. 1991).

Stated in *Erhart v. State*, 856 P.2d 1199 (Alaska Ct. App. 1982); *State v. Rastopoff*, 659 P.2d 630 (Alaska Ct. App. 1983); *Maldonado v. State*, 676 P.2d 1093 (Alaska Ct. App. 1984); *Tulowitzke v. State*, Dep't of Pub. Safety, 743 P.2d 368 (Alaska 1987).

Cited in *Juneby v. State*, 641 P.2d 823 (Alaska Ct. App. 1982); *Griffith v. State*, 653 P.2d 1067 (Alaska Ct. App. 1982); *Neahok v. State*, 653 P.2d 658 (Alaska Ct. App. 1982); *Wright v. State*, 656 P.2d 1226 (Alaska Ct. App. 1983); *Langton v. State*, 662 P.2d 954 (Alaska Ct. App. 1983); *State v. LaPorte*, 672 P.2d 466 (Alaska Ct. App. 1983); *Walsh v. State*, 677 P.2d 912 (Alaska Ct. App. 1984); *State v. Brinkley*, 661 P.2d 351 (Alaska Ct. App. 1984); *Flink v. State*, 683 P.2d 725 (Alaska Ct. App. 1984); *Dancer v. State*, 715 P.2d 1174 (Alaska Ct. App. 1986); *Kuvana v. State*, 717 P.2d 855 (Alaska Ct. App. 1986); *James v. State*, 739 P.2d 1314 (Alaska Ct. App. 1987); *Schnecker v. State*, 739 P.2d 1310 (Alaska Ct. App. 1987); *Comegys v. State*, 747 P.2d 654 (Alaska Ct. App. 1987); *James v. State*, 754 P.2d 1336 (Alaska Ct. App. 1988); *Russell v. State*, 752 P.2d 1022 (Alaska Ct. App. 1988); *Beauvois v. State*, 837 P.2d 1118 (Alaska Ct. App. 1992).

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

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

(16) "victim" means

- (A) a person against whom an offense has been perpetrated;
- (B) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is a minor, incompetent, or incapacitated:
 - (i) an individual living in a spousal relationship with the person specified in (A) of this paragraph; or
 - (ii) a parent, adult child, guardian, or custodian of the person;
- (C) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is dead:
 - (i) a person living in a spousal relationship with the deceased before the deceased died;
 - (ii) an adult child, parent, brother, sister, grandparent, or grandchild of the deceased; or
 - (iii) any other interested person, as may be designated by a person having authority in law to do so. (§ 12 ch 166 SLA 1978; am E.O. No. 55, § 9 (1984); am § 3 ch 15 SLA 1984; § 7 ch 59 SLA 1989; am § 6 ch 64 SLA 1991; am § 8 ch 36 SLA 1993; am § 5 ch 6 SLA 1996; am § 13 ch 7 SLA 1996; am § 10 ch 60 SLA 1996; am § 15 ch 64 SLA 1996)

Revisor's notes. — Paragraph (3) was enacted as paragraph (12). Renumbered in 1991, at which time former paragraphs (3)-(11) were renumbered as (4)-(12).

Paragraph (7) enacted as (13). Renumbered in 1993, at which time former paragraphs (7)-(12) were renumbered as (8)-(13), respectively.

Paragraphs (2), (8), and (10) were enacted as (14). Renumbered in 1996, at which time former paragraphs (2)-(6) were renumbered as (3)-(7), former paragraph (7) was renumbered as (9), and former paragraphs (8)-(13) were renumbered as (11)-(16).

Cross references. — For findings related to the definition of "most serious felony," see § 1, ch. 7, SLA 1996 in the Temporary and Special Acts.

Effect of amendments. — The 1991 amendment, effective September 16, 1991, added paragraph (3) (now (4)).

The 1993 amendment, effective August 25, 1993, added paragraph (9).

The first 1996 amendment, effective June 27, 1996, added paragraph (10).

The second 1996 amendment, effective June 27, 1996, added paragraph (8).

The third 1996 amendment, effective September 1, 1996, added paragraph (2).

The fourth 1996 amendment, effective July 1, 1996, rewrote paragraph (4).

Legislative history reports. — For House letter of intent relating to the definition of "victim" in this section, as amended by § 7, ch. 59, SLA 1989 (CS118 36(Fin) am), and related letter from the Department of Law, see 1989 House Journal 710 — 712.

NOTES TO DECISIONS

Prior convictions for presumptive sentencing. — Under the plain terms of former AS 12.55.145(a)(3) and 12.55.185(6), (7), and (8) (now see (6), (13), and (14)), one conviction must precede the next before presumptive sentencing can apply. *State v. Rastopoff*, 659 P.2d 630 (Alaska Ct. App. 1983).

Where defendant's three separate criminal episodes occurred in close proximity and his convictions were entered after all of the offenses had been committed, he cannot be deemed to be a second felony offender under AS 12.55.125 and AS 12.55.185. *State v. Rastopoff*, 659 P.2d 630 (Alaska Ct. App. 1983).

A person has not been convicted of a felony offense for presumptive sentencing purposes until after he has been sentenced on the first felony offense. *Sawyer v. State*, 663 P.2d 230 (Alaska Ct. App. 1983).

"Unconditional discharge" construed. — The definition of "unconditional discharge" in AS 15.60.010(33) is functionally identical to the definition

The definition of "unconditional discharge" set forth in this section must be interpreted to require the completion of any sentence of imprisonment, discharge from parole or probation, and release from any other restriction directly imposed as part of the judgment of conviction; restoration of collaterally affected rights or privileges, such as to vote and to carry a gun, is not required. *Singleton v. State*, Ct. App. Op. No. 1475 (File No. A-5378), P.2d (1996).

"Victim." — The legislature did not intend the definition of "victim" to be limited to "offenses against the person," because the term appears in statutes defining property crimes that are outside that class. *Municipality of Anchorage v. Sanders*, 902 P.2d 310 (Alaska Ct. App. 1995).

Applied in *Fry v. State*, 655 P.2d 789 (Alaska Ct. App. 1983); *Weeslie v. State*, 837 P.2d 130 (Alaska Ct. App. 1992).

Quoted in *Wright v. State*, 656 P.2d 1226 (Alaska Ct. App. 1983).

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

--H.R.924--

H.R.924

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

Begun and held at the City of Washington on Tuesday,

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

An Act

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

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

SECTION 1. SHORT TITLE.

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

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

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

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

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

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

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

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

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

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

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

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

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--H.R.924--

H.R.924

One Hundred Fifth Congress
of the

United States of America

AT THE FIRST SESSION

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

An Act

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the right of victims of crime to attend and observe the trials of
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[Italic->] Be it enacted by the Senate and House of
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This Act may be cited as the 'Victim Rights Clarification Act of
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SEC. 2. RIGHTS OF VICTIMS TO ATTEND AND OBSERVE TRIAL.

(a) IN GENERAL- Chapter 213 of title 18, United States Code, is
amended by adding at the end the following:

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defendant accused of that offense because such victim may, during
the sentencing hearing, make a statement or present any information
in relation to the sentence.

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

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defined in section 3510, attended or observed the trial shall not
be construed to pose a danger of creating unfair prejudice,
confusing the issues, or misleading the jury.' after 'misleading
the jury.'

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

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

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APRIL 1, 1997

CRIMINAL JUSTICE NEWSLETTER

AN INDEPENDENT REPORT
ON ISSUES IN CRIMINAL JUSTICE
POLICY AND ADMINISTRATION

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*Providing a Systemwide Perspective on
Law Enforcement, the Courts, and Corrections*

SUMMARY

"Many missing children do not know that they are missing, having been abducted when they were very young and told that their mother is dead, or that their father left them, or that they are not wanted anymore by the other parent."

—The National Center for Missing and Exploited Children, on efforts to locate children who have been taken away from one parent by the other (p. 4)

Victims

- Congress moves quickly to help Oklahoma City victims (1)
- Justice Dept. funds search for good restitution plans (3)

Probation & Parole

- Supreme Court requires due process for "pre-parole" (3)

Law Enforcement

- Some progress seen in state laws protecting children (4)

Juvenile Justice

- Justice Dept. begins probe of Georgia facilities (5)
- Police and prosecutors create anti-truancy programs (5)

VICTIMS

CONGRESS VOTES TO LET VICTIMS ATTEND TRIAL AND MAKE STATEMENTS

Congress has approved, and President Clinton has signed into law, a measure allowing crime victims to be present at trial in their cases without compromising their right to make a victim-impact statement at the time of sentencing.

Quick action on the measure, H.R. 924, the Victim Rights Clarification Act of 1997, was prompted by the impending trial of Timothy McVeigh for the bombing of a federal office building in Oklahoma City. The judge handling the case, Richard P. Matsch of the U.S. District Court in Denver, had issued a controversial ruling that victims of the bombing had to choose between watching the trial and making a victim-impact statement if McVeigh is convicted.

Soon after Congress approved the new law, Judge Matsch reversed himself, saying if survivors of the bombing and relatives of those who were killed choose to attend the trial or watch it on closed-circuit television, they still can be considered for offering victim-impact statements at sentencing.

Witnesses generally are excluded from attending a trial until after they have testified, in order to prevent them from tailoring their testimony to fit the accounts already provided by previous witnesses. But sponsors of the Victim Rights Clarification Act said there needs to be an exception for "victim-impact" testimony, in which crime victims testify only about the effects that the crime had on them, not on matters pertaining to the guilt or innocence of the accused.

"The victims in the Oklahoma City bombing case are being categorically excluded from both watching the trial and providing victim-impact testimony," said Sen.

Patrick Leahy, the ranking Democrat on the Senate Judiciary Committee, as the legislation reached the Senate floor. "Thus, the victims are faced with an excruciating dilemma: If they sit outside the courtroom during the trial, they may never learn the details of how the justice system responded to this horrible crime. On the other hand, if they attend the trial, they will never be able to tell the jury the full extent of the suffering the crime has caused to them and to their families."

When Congress passed a law in 1994 allowing for victim impact statements, it intended only to ensure that sentencing hearings were even-handed, not to prevent victims from attending trials, Senator Leahy said.

"During my days as a prosecutor, I found many times (that) the person being sentenced had suddenly gotten religion, had suddenly become a model person, usually dressed in a better suit and tie than I wore as a prosecutor, and was able to cry copious tears seeking forgiveness and saying how it was all a mistake," Leahy said. "Sometimes reality came to the courtroom only when the victim would speak."

Leahy and other supporters of the legislation said they considered the judge's ruling in the Oklahoma City case a misinterpretation of the Federal Rules of Evidence. The new law affects only testimony by victims during sentencing hearings, in cases where the defendant already has been found guilty beyond a reasonable doubt.

The legislation was placed on a fast track in Congress, because sponsors wanted to reverse the judge's ruling in the Oklahoma City case before McVeigh's trial was scheduled to begin on March 31. The trial judge's ruling was upheld by the 10th Circuit U.S. Court of Appeals on February 4, and on March 5, Rep. Bill McCollum, chairman of the House Subcommittee on Crime, introduced the legislation to reverse it. The full House approved the measure by a 418-10-9 vote on March 18, and the Senate approved it the next day under a unanimous-consent agreement. President Clinton signed the bill into law on March 19, and Judge Matsch reversed his previous order on March 25.

Congress acting to protect Oklahoma City victims: Sponsors of the bill noted that it was not the first time Congress has acted to protect victims of the Oklahoma City bombing. Last year, after there was a change of venue in the case to Denver, Congress approved legislation providing closed-circuit television coverage of the trials to the victims.

Outrage over the Oklahoma City bombing also was widely credited with propelling Congress to approve habeas corpus reform legislation last year. That legislation is designed to make it more difficult for death row inmates to delay their executions for many years. Various versions of the measure had been stalled in Congress for years, despite repeated efforts to get them passed. But when a habeas corpus bill was attached to an anti-terrorism bill in the wake of the Oklahoma City bombing, sponsors said it

would help ensure the speedy execution of whoever was responsible, and the bill was approved easily. President Clinton signed that legislation last April, a few days after the first anniversary of the Oklahoma City bombing.

To ensure there would be no doubt that the most recent measure would apply to the Oklahoma City trials, the legislation specifies that it "shall apply in cases pending on the date of . . . enactment."

Sponsors of the legislation said they intended it to benefit victims in any future trial in which a judge might require them to choose between observing the trial and making a victim-impact statement. "This bill in no way singles out a case for unique or special treatment," said Sen. Don Nickles (R-Okla.).

Sponsors acknowledged, however, that the bill was rushed to passage in order to ensure that it would affect the trial of McVeigh and that of his alleged partner, Terry Nichols, whose trial is to begin after McVeigh's. "It is critical that we pass H.R. 924 before the trial in the Oklahoma City bombing case begins on March 31," said Sen. James M. Inhofe (R-Okla.).

The few opponents of the measure argued that it was improper to pass a law to reverse a judge's ruling in a particular case. "Whether or not Congress agrees with this ruling, the judge should have the ability to render it according to the law and the facts before him in this particular case," said Rep. Robert C. Scott (D-Va.). "The judge should be allowed to run his courtroom and conduct these trials without Congress grabbing the gavel from him after a ruling not to our political liking."

Congressman Scott called the measure "a blatant intrusion upon the Constitutional principles of separation of powers."

Rep. William D. Delahunt (D-Mass.) warned that the measure could backfire. "Congress should not be changing the rules in the middle of a trial," he said. "As a former district attorney, I know it does no good to secure a guilty verdict that is vulnerable to reversal on appeal. Defense attorneys have already announced their intention to challenge Congressional action in this case. Whether or not their challenge succeeds, why would we go out of our way to increase the government's burden and put a possible guilty verdict at risk? . . . It would be truly unfortunate were our actions to create the possibility of a retrial, further compounding the terrible trauma suffered by both the victims and their families."

Oklahoma Attorney General W. A. Drew Edmondson rejected the idea that the legislation would create grounds for appealing any guilty verdict. "Congress has the power to set the rules for federal cases," he said in a letter to the sponsors of the bill, joined by the attorneys general of 22 other states. Many states already have state constitutional amendments or legislation guaranteeing victims the right to attend trials and make victim-impact statements, the state attorneys general wrote. "The federal government needs to join the states and put in place these protections for victims," they said.

Date: January 15, 1997

To: Representative Joe Green
Chairman, House Judiciary Committee

From: Representative Brian Porter
House Majority Leader

Subject: Additional Sectional Analysis of HB 9

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

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

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

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

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

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

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

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

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

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New Hampshire Rules of EVIDENCE, RULE 615

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

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Current with amendments received through 12-15-95

RULE 615. EXCLUSION OF WITNESSES

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

Federal Rule: Exclusion of Witnesses.

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

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

Reporter's Notes

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

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

the discretion of the trial judge.

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

EXHIBIT A

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

would not color his testimony by listening to other witnesses.

Affirmed.

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

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

AFFIRMED.

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



The STATE of New Hampshire

v.

Gilbert HAMEL.

No. 87-246.

Supreme Court of New Hampshire.

July 8, 1988.

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

1. Criminal Law §665(1)

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

2. Criminal Law §665(2)

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

3. Criminal Law §680(1)

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

4. Criminal Law §680(1)

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

5. Criminal Law §1168(2)

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

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

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

BATCHELDER, Justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMED.

All concurred.



BEDFORD RESIDENTS GROUP

v.

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

No. 87-396.

Supreme Court of New Hampshire.

July 11, 1988.

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

Affirmed.

1. Zoning and Planning §-194

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

21-M:8-k

21-M:8-k Rights of Crime Victims.

I. As used in this section:

(a) "Victim" means a person who suffers direct or threatened physical, emotional, psychological or financial harm as a result of the commission or the attempted commission of a crime. "Victim" also includes the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim.

(b) "Crime" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than one year or an offense expressly designated by law to be a felony.

II. To the extent that they can be reasonably guaranteed by the courts and by law enforcement and correctional authorities, and are not inconsistent with the constitutional or statutory rights of the accused, crime victims are entitled to the following rights:

(a) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

(b) The right to be informed about the criminal justice process and how it progresses.

(c) The right to be free from intimidation and to be reasonably protected from the accused throughout the criminal justice process.

(d) The right to be notified of all court proceedings.

(e) The right to attend trial and all other court proceedings the accused has the right to attend.

(f) The right to confer with the prosecution and to be consulted about the disposition of the case, including plea bargaining.

(g) The right to have inconveniences associated with participation in the criminal justice process minimized.

(h) The right to be notified if presence in court is not required.

(i) The right to be informed about available resources, financial assistance, and social services.

(j) The right to restitution, as granted under RSA 651:62-67 or any other applicable state law, or victim's compensation, under RSA 21-M:8-h or any other applicable state law, for their losses.

(k) The right to be provided a secure, but not necessarily separate, waiting area during court proceedings.

(l) The right to be advised of case progress and final disposition.

(m) The right of confidentiality of the victim's address, place of employment, and other personal information.

(n) The right to the prompt return of property when no longer needed as evidence.

(o) The right to have input in the probation presentence report impact statement.

(p) The right to appear and make a written or oral victim impact statement at the sentencing of the defendant or, in the case of a plea bargain, prior to any plea bargain agreement.

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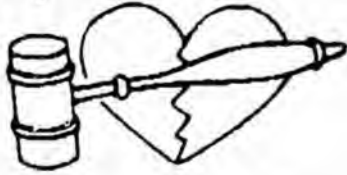
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VICTIMS

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

January 15, 1997

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

Dear Representative Porter:

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

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

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

Representative Porter

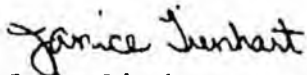
Page 2

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

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

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

Sincerely,



Janice Lienhart
Executive Director
Victims for Justice