

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4701 HJUD HB 293

273

CORRECTION

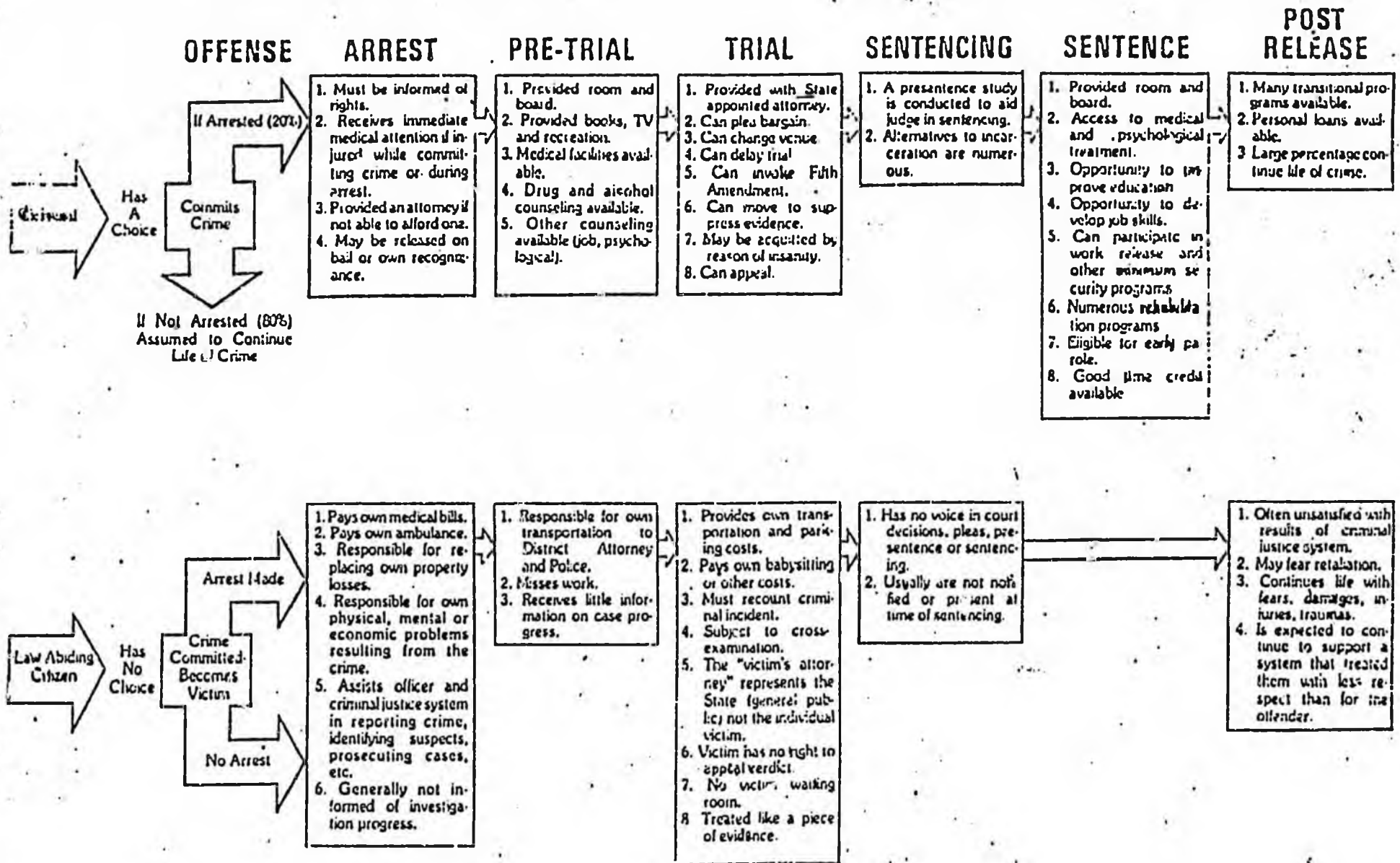
**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

HB296

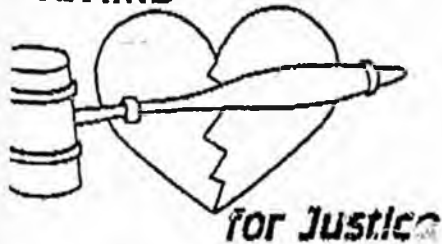
In the past five years, the issue of victims' rights has received much attention in the media and in state legislatures. See ABA, Guidelines for Fair Treatment of Crime Victims and Witnesses (1983). A number of academic commentators have addressed the topic. See, e.g., Henderson, The Wrongs of Victim's Rights, 37 Stan. L. Rev. 937 (1985); Abrahamson, Redefining Roles: The Victim's Rights Movement, 1985 Utah L. Rev. 517 (1985); Victim's Rights Symposium, 11 Pepperdine L. Rev. 1 (1984). In 1984, the Alaska legislature passed an Act Relating to Victim's Rights and Amending Criminal Rule 32(d)(2) of the Alaska Rules of Criminal Procedure. Section 4 ch. 154 SLA 1984. See AS 12.55.022;

025(a) 12.61.010 3 3.15.068(a) 33.15.065
33.15.260 33.30.250 -3- 33.30.260

THE CRIMINAL INJUSTICE SYSTEM



VICTIMS



MAY 13, 1987

Representative Dave Donley
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley,

Thank you for writing a victim's bill. In response to your bill I will use some of my personal experiences in responding. I hope this will help legislators to better see how some of the present laws are working on the streets.

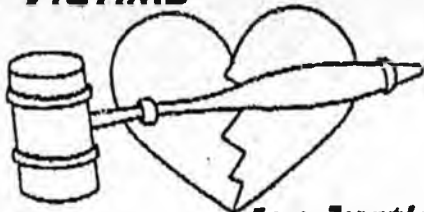
Section 3. I trust section 3 includes this example. My brother does not work and has lived and supported himself from illegal gain most of his teenage and adult life. He now has a large inheritance. He bills most of his medical, hotels, etc. to our business. We turn it over to his trust officer. His trust officer informs us that he does not pay Tom's bills. He can give Tom the money to pay the bills, but if he chooses not pay too bad for the creditor. Tom's lifestyle has never supported the paying of bills. When my dad was alive he ended up helping Tom.

Rehabilitation is making a person responsible for his actions. Whatever means it takes the person who steals must be required to repay the victim, even to the extent of paying the medical or funeral of the victim. I wish there was a way that a prison could be centered around a gold mine or some money producing project. This would alleviate the state burden and keep idle time from the prisoners. Hard work would eliminate time to feed on pornography and other mind destroying materials.

Section 5 and section 15 are so important to help the healing process of the victim. In our case, I was first enraged that this young girl could come into my families private domain and brutally murder them and than have the right to determine if I could be a part of the trial!

Our mind is the biggest enemy or our biggest friend. When your loved ones die tragically there are so many unanswered questions that flood your mind and torment you. Whenever your life is not filled with business your mind wanders to those precious lives you love and their last moments. Knowing all the gorey details was the beginning of our healing. Not knowing keeps one in a quandary. After our \$10,000 court battle, (which was so unfair and unjust) knowing was the most painful thing I ever experienced, yet

VICTIMS



for Justice

after I knew, and understood I found I thought about it less and was able to deal with the pain better. Not knowing you wonder, day dream and become even more preoccupied with your thoughts.

Section 6 defining victims to include family members is imperative. When a crime is committed against a person the extended family is also affected emotionally and must be considered.

Section 7 It is about time that the victim's rights are enumerated. We certainly are careful to make sure the criminal's rights are protected. The criminal forces himself on others, hurts others and is so protected! It is hard for the perpetrator to accept responsibility for his actions because of his rights. A sociopathic mind only becomes more manipulative.

Section 8 I like the idea of the prosecuting attorney having to conferring with the victim. The prosecuting attorney should also see the whole picture. He also needs to be aware of the victim's pain. Most prosecuting attorney's tend to want to avoid the victim's pain.

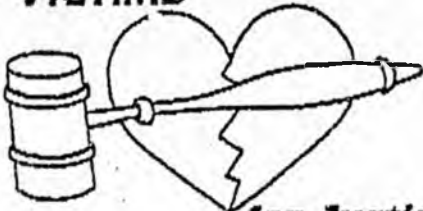
Section 9 It is important for the victim to be informed of the perpetrators jail time, bail, hearings etc. The more you know the better you learn to cope and protect yourself. It is most helpful to let the victim be a part of the parole hearing. The more the victim feels he has input the better he will accept the perpetrator's release even if they disagree. I found that writing the judge a letter concerning the sentencing of Winona and Cordell to be very helpful. We even had the relatives and friends do the same. It is an impactful release to the victim and family to feel that their feelings are considered.

Section 10 Especially in murder and violence the victim's family needs to know that the perpetrator is being released.

Section 11 I support. In some cases, the prisoner's residence address and employer might be misused, but should always be known in murder or violence cases. But whatever the charge, the conditions of parole should always be extended to the victim or close family members.

Section 12 (6) I totally support and if there is a question of safety to the victim upon the escape of the offender, somehow the state needs to provide protection for the victim.

VICTIMS



for Justice

Section 13 I totally support. Every close member of a family is so affected by tragedy they always need to be considered.

Section 15 absolutely needs to be put in place. No one should have to go through what I went through in our case.

Thank you Dave for writing this legislation. It has long been needed. I trust the rest of the legislators will agree. We will certainly try to support and help you with this legislation.

Sincerely,

Janice Lienhart

Janice Lienhart

it was held that the introduction of a VIS at the sentencing phase of a capital murder trial violates the Eighth Amendment and therefore the Maryland statute is invalid to the extent that it requires consideration of this information, because this information is irrelevant to a capital sentencing decision and its admission creates a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner, in that: (1) since the focus of a VIS is not on the defendant, but on the character and reputation of the victim and the effect on his family, factors which may be wholly unrelated to the blameworthiness of a particular defendant, allowing the jury to rely on a VIS therefore could result (a) in imposing the death sentence because of factors—such as the degree to which a family is willing and able to express its grief, or the relative worth of the victim's character—about which the defendant was unaware and that were irrelevant to the decision to kill, and (b) in diverting the jury's attention away from the defendant's background and record and from the circumstances of the crime; (2) it would be difficult, if not impossible, to provide a fair opportunity to rebut the evidence contained in the VIS without shifting the focus of the sentencing hearing away from the defendant; and (3) the formal presentation by the state of the information in the VIS can serve no other purpose than to inflame the jury and divert it from deciding the case on the relevant evidence concerning the crime and the defendant, the admission of the VIS being inconsistent with the reasoned decisionmaking required in capital cases.

WHITE, J., joined by REHNQUIST, Ch. J., and O'CONNOR and SCALIA, JJ., dissented, expressing the view that (1) the Maryland legislature's decision—that the jury should have the testimony of the victim's family in order to assist in weighing the degree of harm that the defendant has caused and the corresponding degree of punishment that should be inflicted—was entitled to particular deference, because in a democratic society, legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people, and (2) if punishment can be enhanced in noncapital cases on the basis of the harm caused, irrespective of the offender's intention to cause such harm, there is no reason why the same approach is unconstitutional in death cases, in which the state has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.

SCALIA, J., joined by REHNQUIST, Ch. J., and WHITE and O'CONNOR, JJ., dissented, expressing the view that (1) the principle—that the amount of harm one causes bears upon the extent of his personal responsibility—is not departed from where capital punishment is concerned, and (2) the principle upon which the court's opinion rests—that the imposition of capital punishment is to be determined solely on the basis of moral guilt—does not exist, either in the text of the Federal Constitution, in the historic practices of American society, or even in the opinions of the Supreme Court.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Criminal Law §§ 82, 83 — cruel and unusual punishment — death penalty — victim impact statement

1a-1b. The introduction at the sentencing phase of a capital murder trial in a state court of a victim impact statement (VIS), describing the effect of the crime on the victim and his family, violates the Eighth Amendment to the Federal Constitution, and therefore a state statute is invalid to the extent that it requires consideration of this information, because this information is irrelevant to a capital sentencing decision and

its admission creates a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner, in that: (1) since the focus of a VIS is not on the defendant, but on the character and reputation of the victim and the effect on his family, factors which may be wholly unrelated to the blameworthiness of a particular defendant, allowing the jury to rely on a VIS therefore could result (a) in imposing the death sentence because of factors—such as the degree to which a family is willing and able to express its grief, or the

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

21 Am Jur 2d, Criminal Law § 628

9 Federal Procedure, L Ed, Criminal Procedure § 22:925

7 Federal Procedural Forms, L Ed, Criminal Procedure § 20:1201

USCS, Constitution, Amendment 8

US L Ed Digest, Criminal Law §§ 82, 83, 93

Index to Annotations, Capital Offenses and Punishment; Cruel and Unusual Punishment

VERALEX™: Cases and annotations referred to herein can be further researched through the VERALEX electronic retrieval system's two services, Auto-Cite® and SHOWME™. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

ANNOTATION REFERENCES

Supreme Court's views on constitutionality of death penalty and procedures under which it is imposed. 51 L Ed 2d 886.

Federal constitutional guaranty against cruel and unusual punishment—Supreme Court cases. 33 L Ed 2d 932.

Instructions to jury: Sympathy to accused as appropriate factor in jury consideration. 72 ALR3d 842.

relative worth of the victim—about which the defendant was unaware and that were the decision to kill, and drawing the jury's attention to the defendant's background and from the circumstances of the crime; (2) it would be not impossible, to provide opportunity to rebut the evidence obtained in the VIS with the focus of the sentencing away from the defendant's formal presentation by the information in the VIS no purpose other than to jury and divert it from case on the relevant evidence concerning the crime and defendant, the admission of the inconsistent with the reasoning required in (White, J., Rehnquist, O'Connor and Scalia, J. from this holding.)

Criminal Law § 77 — unusual punishment — application to states

2a, 2b. The Eighth Amendment prohibition against cruel and unusual punishment applies to states through the clause of the Fourteenth Amendment.

Criminal Law § 93 — death penalty — jury's discretion

3. A jury's discretion to impose a death sentence must be directed and limited so as to avoid the risk of wholly arbitrary and capricious action.

Appeal § 732; Criminal Law — death penalty — sentencing considerations

4. Although the United States Supreme Court normally reviews a state legislature's deter-

relative worth of the victim's character—about which the defendant was unaware and that were irrelevant to the decision to kill, and (b) in diverting the jury's attention away from the defendant's background and record and from the circumstances of the crime; (2) it would be difficult, if not impossible, to provide a fair opportunity to rebut the evidence contained in the VIS without shifting the focus of the sentencing hearing away from the defendant; and (3) the formal presentation by the state of the information in the VIS can serve no purpose other than to inflame the jury and divert it from deciding the case on the relevant evidence concerning the crime and the defendant, the admission of the VIS being inconsistent with the reasoned decisionmaking required in capital cases. (White, J., Rehnquist, Ch. J., and O'Connor and Scalia, JJ., dissented from this holding.)

Criminal Law § 77 — cruel and unusual punishment — application to states

2a, 2b. The Eighth Amendment prohibition against cruel and unusual punishment applies to the states through the due process clause of the Fourteenth Amendment.

Criminal Law § 93 — death penalty — jury's discretion

3. A jury's discretion to impose the death sentence must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action.

Appeal § 732; Criminal Law § 93 — death penalty — sentencing considerations

4. Although the United States Supreme Court normally will defer to a state legislature's determination of

what factors are relevant to the sentencing decision in a state capital case, the Federal Constitution places some limits on this discretion; thus, a sentencing jury must make an individualized determination whether the defendant in question should be executed, based on the character of the individual and the circumstances of the crime; and even if the defendant's record, characteristics, and the circumstances of the crime are not the only permissible sentencing considerations, a state statute that requires consideration of other factors must be scrutinized to insure that the evidence has some bearing on the defendant's personal responsibility and moral guilt and thereby to avoid the risk that a death sentence will be based on considerations that are constitutionally impermissible or totally irrelevant to the sentencing process.

Criminal Law § 93 — death penalty — sentencing hearing — relevant facts

5. While the full range of foreseeable consequences of a defendant's actions may be relevant in other criminal and civil contexts, it is not relevant in the unique circumstance of a capital sentencing hearing; in such a case, it is the function of the sentencing jury to express the conscience of the community on the ultimate question of life or death, and when carrying out this task, the jury is required to focus on the defendant as a uniquely individual human being.

Criminal Law §§ 82, 83 — cruel and unusual punishment — death penalty — knowledge of consequences of actions

6. For purposes of determining whether the imposition of the death penalty in a particular case violates

on
s a constitution-
sk that the jury
ch penalty in an
ious manner, in
ocus of a VIS is
nt, but on the
ation of the vic-
on his family,
be wholly unre-
worthiness of a
t, allowing the
S therefore could
g the death sen-
ors—such as the
family is willing
its grief, or the

ENCES
25
Procedure
ishment;
erein can
electronic
te^o and
for form,
notation
t of cases
ty and proce-
l punishment
factor in jury

the Eighth Amendment to the Federal Constitution, the defendant's degree of knowledge of the probable consequences of his actions may increase his moral culpability in a constitutionally significant manner.

Criminal Law §§ 82, 83; Evidence §§ 816, 859; Trial § 19 — victim impact statements — admissibility

7a, 7b. The type of information contained in victim impact statements, that is, information which describes the effect of a crime on the victim and his family, may be admissible in a capital case, other than at

the sentencing phase, because such information relates directly to the circumstances of the crime; facts about the victim and family may also be relevant in a noncapital criminal trial, and there may be times that the victim's personal characteristics are relevant to rebut an argument offered by the defendant; the trial judge has the primary responsibility for deciding when this information is sufficiently relevant to some legitimate consideration to be admissible, and when its probative value outweighs any prejudicial effect.

SYLLABUS BY REPORTER OF DECISIONS

Having found petitioner guilty of two counts of first-degree murder and related crimes, the jury sentenced him to death after considering a presentence report prepared by the State of Maryland. The report included a victim impact statement (VIS), as required by state statute. The VIS was based on interviews with the family of the two victims, and it provided the jury with two types of information. First, it described the severe emotional impact of the crimes on the family, and the personal characteristics of the victims. Second, it set forth the family members' opinions and characterizations of the crimes and of petitioner. The state trial court denied petitioner's motion to suppress the VIS, rejecting the argument that this information was irrelevant, unduly inflammatory, and therefore violative of the Eighth Amendment. The Maryland Court of Appeals affirmed petitioner's conviction and sentence, finding that the VIS did not inject an arbitrary factor into the sentencing decision. The court concluded

that a VIS serves an important interest by informing the sentencer of the full measure of harm caused by the crime.

Held: The introduction of a VIS at the sentencing phase of a capital murder trial violates the Eighth Amendment, and therefore the Maryland statute is invalid to the extent it requires consideration of this information. Such information is irrelevant to a capital sentencing decision, and its admission creates a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner.

(a) The State's contention that the presence or absence of emotional distress of the victims' family and the victims' personal characteristics are proper sentencing considerations in a capital case is rejected. In such a case, the sentencing jury must focus on the background and record of the accused and the particular circumstances of the crime. The VIS information in question may be wholly unrelated to the blame-wor-

thiness of a partici and may cause the s sion to turn on irr such as the degree victim's family is will articulate its grief, worth of the victi Thus, the evidence in improperly divert th tion away from the de over, it would be c impossible, to provide nity to rebut such ev shifting the focus of hearing away from th

(b) The admission members' emotionally ions and characteri crimes could serve no

George E. Bur
Charles O. Mo

Justice Powell deli
ion of the Court.

[1a] The question whether the Constitut jury from considering pact statement" durin ing phase of a capital

In 1983, Irvin Bro his wife Rose, 75, we murdered in their W home. The murderer and Willie Reid, enter home for the appare stealing money to buy a neighbor of the Br that the elderly couple him. The victims we

1. Booth's accomplice, W victed and sentenced to de in the first degree to the

... because such directly to the he crime; facts und family may n a noncapital there may be ctim's personal relevant to rebut d by the defen- has the primary ciding when this iciently relevant consideration to when its proba- s any prejudicial

... an important in- the sentencer of harm caused by

... ction of a VIS at ase of a capital ites the Eighth therefore the s invalid to the consideration of huch information apital sentencing mission creates a nacceptable risk impose the death itrary and capri-

... ntention that the ce of emotional tims' family and al characteristics ng considerations rejected. In such ncilg jury must round and record d the particular ie crime. The VIS uestion may be o the blame-wor-

thiness of a particular defendant, and may cause the sentencing decision to turn on irrelevant factors such as the degree to which the victim's family is willing and able to articulate its grief, or the relative worth of the victim's character. Thus the evidence in question could ir... properly divert the jury's atten- sion away from the defendant. Moreover, it would be difficult, if not impossible, to provide a fair opportunity to rebut such evidence without shifting the focus of the sentencing hearing away from the defendant.

(b) The admission of the family members' emotionally charged opinions and characterizations of the crimes could serve no other purpose

than to inflame the jury and divert it from deciding the case on the relevant evidence concerning the crime and the defendant. Such admission is therefore inconsistent with the reasoned decisionmaking required in capital cases.

306 Md 172, 507 A2d 1098, vacated in part and remanded.

Powell, J., delivered the opinion of the Court, in which Brennan, Marshall, Blackmun, and Stevens, JJ., joined. White, J., filed a dissenting opinion in which Rehnquist, C.J., and O'Connor and Scalia, JJ., joined. Scalia, J., filed a dissenting opinion, in which Rehnquist, C.J., and White and O'Connor, JJ., joined.

APPEARANCES OF COUNSEL

George E. Burns, Jr. argued the cause for petitioner.

Charles O. Monk II argued the cause for respondent.

OPINION OF THE COURT

Justice Powell delivered the opinion of the Court.

[1a] The question presented is whether the Constitution prohibits a jury from considering a "victim impact statement" during the sentencing phase of a capital murder trial.

In 1983, Irvin Bronstein, 78, and his wife Rose, 75, were robbed and murdered in their West Baltimore home. The murderers, John Booth and Willie Reid, entered the victims' home for the apparent purpose of stealing money to buy heroin. Booth, a neighbor of the Bronsteins, knew that the elderly couple could identify him. The victims were bound and

gagged, and then stabbed repeatedly in the chest with a kitchen knife. The bodies were discovered two days later by the Bronsteins' son.

A jury found Booth guilty of two counts of first-degree murder, two counts of robbery, and conspiracy to commit robbery.¹ The prosecution requested the death penalty, and Booth elected to have his sentence determined by the jury instead of the judge. See Md Ann Code, Art 27, § 413(b) (1982). Before the sentencing phase began, the State Division of Parole and Probation (DPP) compiled a presentence report that described Booth's background, education and employment history, and criminal record. Under a Maryland statute, the presentence report in all

1. Booth's accomplice, Willie Reid, was convicted and sentenced to death as a principal in the first degree to the murder of Mrs.

Bronstein. His conviction was affirmed and his sentence is currently under review. See Reid v State, 305 Md 9, 501 A2d 436 (1985).

felony cases' also must include a victim impact statement (VIS), describing the effect of the crime on the victim and his family. Md. Ann. Code, Art. 41, § 4-609(c) (1986). Specifically, the report shall:

"(i) Identify the victim of the offense;

"(ii) Itemize any economic loss suffered by the victim as a result of the offense;

"(iii) Identify any physical injury suffered by the victim as a result of the offense along with its seriousness and permanence;

"(iv) Describe any change in the victim's personal welfare or familial relationships as a result of the offense;

"(v) Identify any request for psychological services initiated by the victim or the victim's family as a result of the offense; and

"(vi) Contain any other information related to the impact of the offense upon the victim or the vic-

tim's family that the trial court requires." § 4-609(c)(3).

Although the VIS is compiled by the DPP, the information is supplied by the victim or the victim's family. See § 4-609(c)(4), (d). The VIS may be read to the jury during the sentencing phase, or the family members may be called to testify as to the information.

The VIS in Booth's case was based on interviews with the Bronsteins' son, daughter, son-in-law, and granddaughter. Many of their comments emphasized the victims' outstanding personal qualities, and noted how deeply the Bronsteins would be missed.² Other parts of the VIS described the emotional and personal problems the family members have faced as a result of the crimes. The son, for example, said that he suffers from lack of sleep and depression, and is "fearful for the first time in his life." App 61. He said that in his opinion, his parents were "butchered like animals." Ibid. The daughter said she also suffers from lack of sleep, and that since the murders

2. When the statute was enacted it was unclear whether a VIS was admissible in a capital case. See § 4-609(c)(2)(i) (1986) (VIS required if victim suffered injury, whereas for a misdemeanor, VIS required if victim suffers injury or death); *Lodowski v State*, 302 Md 691, 761, 490 A2d 1228, 1264 (1985) (Cole, J., concurring), vacated on other grounds, 475 US —, 89 L Ed 2d 711, 106 S Ct 1452 (1986). In 1983, the Maryland General Assembly amended the VIS provision to provide that:

"In any case in which the death penalty is requested . . . a presentence investigation, including a victim impact statement, shall be completed by the Division of Parole and Probation, and shall be considered by the court or jury before whom the separate sentencing proceeding is conducted . . ." § 4-609(d) (1986).

3. The VIS stated:

"[T]he victims' son reports that his parents had been married for fifty-three years and enjoyed a very close relationship, spending each day together. He states that his father had worked hard all his life and had been retired for eight years. He describes his mother as a woman who was young at heart and never seemed like an old lady. She taught herself to play bridge when she was in her seventies. The victims' son relates that his parents were amazing people who attended the senior citizens' center and made many devout friends." App 59.

"As described by their family members, the Bronsteins were loving parents and grandparents whose family was most important to them. Their funeral was the largest in the history of the Levinson Funeral Home and the family received over one thousand sympathy cards, some from total strangers." Id., at 63.

she has become wistful. She states longer watch vices at kitchen knives minded of the murder concluded that a person could "[n]ot be forgiven." Id., at 62. F daughter described had ruined the we close family membe a few days after discovered. Both th the reception were instead of leaving moon, the bride a tims' funeral. The that the granddaug counseling for seve the incident, but stopped because sh "no one could help!

[2a] The DPP conducted the interview VIS by writing:

"It became incre to the writer as family members of Mr. and Mrs. such a shocking, astating memory permeates every daily lives. It is d will ever be able from this traged haunted by the brutal manner loved ones were taken from them."

Defense counsel mo

4. The complete VIS Appendix to this opinion

5. [2b] The Eighth / "Excessive bail shall n excessive fines imposed,

the trial court (3).

complied by the n is supplied by tim's family. See e VIS may be ing the sentenc- family members testify as to the

s case was based the Bronsteins' law, and grand- their comments ms' outstanding and noted how eins would be of the VIS de- al and personal members have the crimes. The d that he suffers and depression, he first time in said that in his were "butchered". The daughter s from lack of ce the murders

ts that his parents fly-three years and relationship, spending ates that his father life and had been He describes his was young at heart old lady. She taught en she was in her on relates that his people who attended er and made many

family members, the parents and grandpar- most important to the largest in the Funeral Home and one thousand sympa- al strangers." Id., at

she has become withdrawn and distrustful. She stated that she can no longer watch violent movies or look at kitchen knives without being reminded of the murders. The daughter concluded that she could not forgive the murderer, and that such a person could "[n]ever be rehabilitated." Id., at 62. Finally, the granddaughter described how the deaths had ruined the wedding of another close family member, that took place a few days after the bodies were discovered. Both the ceremony and the reception were sad affairs, and instead of leaving for her honeymoon, the bride attended the victims' funeral. The VIS also noted that the granddaughter had received counseling for several months after the incident, but eventually had stopped because she concluded that "no one could help her." Id., at 63.

[2a] The DPP official who conducted the interviews concluded the VIS by writing:

"It became increasingly apparent to the writer as she talked to the family members that the murder of Mr. and Mrs. Bronstein is still such a shocking, painful, and devastating memory to them that it permeates every aspect of their daily lives. It is doubtful that they will ever be able to fully recover from this tragedy and not be haunted by the memory of the brutal manner in which their loved ones were murdered and taken from them." Id., at 63-64.⁴

Defense counsel moved to suppress

the VIS on the ground that this information was both irrelevant and unduly inflammatory, and that therefore its use in a capital case violated the Eighth Amendment of the Federal Constitution.⁵ The Maryland trial court denied the motion, ruling that the jury was entitled to consider "any and all evidence which would bear on the [sentencing decision]." Id., at 6. Booth's lawyer then requested that the prosecutor simply read the VIS to the jury rather than call the family members to testify before the jury. Defense counsel was concerned that the use of live witnesses would increase the inflammatory effect of the information. The prosecutor agreed to this arrangement.

The jury sentenced Booth to death for the murder of Mr. Bronstein and to life imprisonment for the murder of Mrs. Bronstein. On automatic appeal, the Maryland Court of Appeals affirmed the conviction and the sentences. *Booth v State*, 306 Md 172, 507 A2d 1098 (1986). The court rejected Booth's claim that the VIS injected an arbitrary factor into the sentencing decision. The court noted that it had considered this argument in *Lodowski v State*, 302 Md 691, 490 A2d 1228 (1985), vacated on other grounds, 475 US —, 89 L Ed 2d 711, 106 S Ct 1452 (1986), and concluded that a VIS serves an important interest by informing the sentencer of the full measure of harm caused by the crime. The Court of Appeals then examined the VIS in Booth's case, and concluded that it is a "relatively straightfor-

4. The complete VIS is reprinted in the Appendix to this opinion.

5. [2b] The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unu-

sual punishments inflicted." The prohibitions of the Eighth Amendment apply to the States through the Due Process Clause of the Fourteenth Amendment. See *Robinson v California*, 370 US 660, 666, 8 L Ed 2d 758, 82 S Ct 1417 (1962).

ward and factual description of the effects of these murders on members of the Bronstein family." 306 Md., at 223, 507 A2d, at 1124. It held that the death sentence had not been imposed under the influence of passion, prejudice, or other arbitrary factors. See Md Ann Code, Art 27, § 414(e)(1) (1982).

We granted certiorari to decide whether the Eighth Amendment prohibits a capital sentencing jury from considering victim impact evidence. 479 US —, 93 L Ed 2d 246, 107 S Ct 269 (1986). We conclude that it does, and now reverse.

II

[3, 4] It is well-settled that a jury's discretion to impose the death sentence must be "suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action." *Gregg v Georgia*, 428 US 153, 189, 49 L Ed 2d 859, 96 S Ct 2909 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.); *California v Ramos*, 463 US 992, 999, 77 L Ed 2d 1171, 103 S Ct 3446 (1983). Although this Court normally will defer to a state legislature's determination of what factors are relevant to the sentencing decision, the Constitution places some limits on this discretion. See, e.g., *id.*, at 1000-1001, 77 L Ed 2d 1171, 103 S Ct 3446. Specifically, we have said that a jury must make an "individualized determination" of whether the defendant in question should be executed, based on "the character of the individual and the circumstances of the crime." *Zant v Stephens*, 462 US 862, 879, 77 L Ed 2d 235, 103 S Ct 2733 (1983) (emphasis in original). See also *Eddings v Oklahoma*, 455 US 104, 112, 71 L Ed 2d 1, 102 S Ct 869 (1982). And while this Court has never said that the

defendant's record, characteristics, and the circumstances of the crime are the *only* permissible sentencing considerations, a state statute that requires consideration of other factors must be scrutinized to ensure that the evidence has some bearing on the defendant's "personal responsibility and moral guilt." *Enmund v Florida*, 458 US 782, 801, 73 L Ed 2d 1140, 102 S Ct 3368 (1982). To do otherwise would create the risk that a death sentence will be based on considerations that are "constitutionally impermissible or totally irrelevant to the sentencing process." See *Zant v Stephens*, supra, at 885, 77 L Ed 2d 235, 103 S Ct 2733.

[1b] The VIS in this case provided the jury with two types of information. First, it described the personal characteristics of the victims and the emotional impact of the crimes on the family. Second, it set forth the family members' opinions and characterizations of the crimes and the defendant. For the reasons stated below, we find that this information is irrelevant to a capital sentencing decision, and that its admission creates a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner.

A

The greater part of the VIS is devoted to a description of the emotional trauma suffered by the family and the personal characteristics of the victims. The State claims that this evidence should be considered a "circumstance" of the crime because it reveals the full extent of the harm caused by Booth's actions. In the State's view, there is a direct, foreseeable nexus between the murders

and the harm to the family, thus it is not "arbitrary" for the jury to consider these factors in deciding whether to impose the death penalty. Although "aggravating quality" is not an aggravating factor under Maryland law,⁶ the State claims that by knowing the impact upon the family and the loss to the family, the jury is better able to assess the "aggravating quality" of the crime. Brief for Respondent 21 (*Dowds v State*, supra, at 490 A2d, at 1254).

[1c, 5] While the full foreseeable consequences of the defendant's actions may be considered in other criminal and civil cases, the jury cannot agree that it is the unique circumstance of the sentencing hearing. In such cases, it is the function of the jury to "express the concerns of the community on the ultimate

6. Before the jury may impose the death sentence, it must find that at least one of the following aggravating circumstances exists:

"(1) The victim was a law enforcement officer who was murdered while performing his duties.

"(2) The defendant committed the crime at a time when he was confined in a penal institution.

"(3) The defendant committed the crime in furtherance of an escape or to escape from custody, or to evade the law.

"(4) The victim was taken or was to be taken in the course of a kidnapping, abduction, or an attempt to kidnap.

"(5) The victim was a child under the age of 12 years at the time of the violation of § 2 of this article.

"(6) The defendant committed the crime pursuant to an agreement or promise of remuneration or the promise of a reward to commit the murder.

"(7) The defendant engaged another person to commit the murder and the murder was committed pursuant to the agreement.

characteristics, the possible sentencing state statute that provision of other factors is minimized to ensure that there is some bearing on the personal responsibility of the defendant." *Enmund v Florida*, 458 U.S. 881, 73 L Ed 2d 68 (1982). To do so is to create the risk that the sentencing will be based on factors that are "constitutionally impermissible or totally irrelevant to the sentencing process." *Anders*, supra, at 885, 50 S Ct 2733.

In this case provided the types of information described the personal characteristics of the victims and the impact of the crimes. Second, it set forth the courts' opinions and the reasons for the crimes and found that this information is relevant to a capital sentence and that its admission is constitutionally unacceptable. The jury may impose a capital sentence in an arbitrary manner.

Part of the VIS is the description of the emotions suffered by the family members. The characteristics of the crime are considered a factor in the sentencing because of the extent of the harm caused by the actions. In the VIS is a direct, foreseeable link between the murders

and the harm to the family, and thus it is not "arbitrary" for the jury to consider these consequences in deciding whether to impose the death penalty. Although "victim impact" is not an aggravating factor under Maryland law,⁶ the State claims that by knowing the extent of the impact upon and the severity of the loss to the family, the jury was better able to assess the "'gravity or aggravating quality'" of the offense. Brief for Respondent 21 (quoting *Lodowski v State*, supra, at 741-742, 490 A.2d, at 1254).

[1c, 5] While the full range of foreseeable consequences of a defendant's actions may be relevant in other criminal and civil contexts, we cannot agree that it is relevant in the unique circumstance of a capital sentencing hearing. In such a case, it is the function of the sentencing jury to "express the conscience of the community on the ultimate ques-

6. Before the jury may impose a capital sentence, it must find that at least one of the following aggravating circumstances are present:

"(1) The victim was a law enforcement officer who was murdered while in the performance of his duties.

"(2) The defendant committed the murder at a time when he was confined in any correctional institution.

"(3) The defendant committed the murder in furtherance of an escape or an attempt to escape from custody, or to evade capture.

"(4) The victim was taken or attempted to be taken in the course of a kidnapping or abduction, or an attempt to kidnap or abduct.

"(5) The victim was a child abducted in violation of § 2 of this article.

"(6) The defendant committed the murder pursuant to an agreement or contract for remuneration or the promise of remuneration to commit the murder.

"(7) The defendant engaged or employed another person to commit the murder and the murder was committed pursuant to an agree-

ment or contract for remuneration or the promise of remuneration.

"(8) At the time of the murder the defendant was under sentence of death or imprisonment for life.

"(9) The defendant committed more than one offense of murder in the first degree arising out of the same incident.

"(10) The defendant committed the murder while committing or attempting to commit a robbery, arson, rape, or sexual offense in the first degree. See Md Ann Code, Art 27, § 413(d) (1982 and Supp 1986). Because the impact of the crime on the victim is not a statutorily defined aggravating circumstance, it would not be sufficient, standing alone, to support a capital sentence. § 413(f).

7. As one state court has noted: "We think it obvious that a defendant's level of culpability depends not on fortuitous circumstances such as the composition of his victim's family, but on circumstances over which he has control. A defendant may choose, or decline, to premeditate, to act callously, to attack a vulnerable victim, to commit a crime while on probation, or to amass a record of offenses. . . . In contrast, the fact

tion of life or death." *Witherspoon v Illinois*, 391 US 510, 519, 20 L Ed 2d 776, 88 S Ct 1770, 46 Ohio Ops 2d 368 (1968). When carrying out this task the jury is required to focus on the defendant as a "uniquely individual human being[.]" *Woodson v North Carolina*, 428 US 280, 304, 49 L Ed 2d 944, 96 S Ct 2978 (1976) (plurality opinion of Stewart, Powell, and Stevens, JJ.). The focus of a VIS, however, is not on the defendant, but on the character and reputation of the victim and the effect on his family. These factors may be wholly unrelated to the blameworthiness of a particular defendant. As our cases have shown, the defendant often will not know the victim, and therefore will have no knowledge about the existence or characteristics of the victim's family. Moreover, defendants rarely select their victims based on whether the murder will have an effect on anyone other than the person murdered.⁷ Allowing

the jury to rely on a VIS therefore could result in imposing the death sentence because of factors about which the defendant was unaware, and that were irrelevant to the decision to kill. This evidence thus could divert the jury's attention away from the defendant's background and record, and the circumstances of the crime.

[1d, 6] It is true that in certain cases some of the information contained in a VIS will have been known to the defendant before he committed the offense. As we have recognized, a defendant's degree of knowledge of the probable consequences of his actions may increase his moral culpability in a constitutionally significant manner. See *Tison v Arizona*, 481 US —, —, 95 L Ed 2d 127, 107 S Ct 1676 (1987). We nevertheless find that because of the nature of the information contained in a VIS, it creates an impermissible risk that the capital sentencing decision will be made in an arbitrary manner.

[1e] As evidenced by the full text of the VIS in this case, see Appendix to this opinion, the family members were articulate and persuasive in expressing their grief and the extent of their loss. But in some cases the victim will not leave behind a family, or the family members may be less articulate in describing their feelings even though their sense of loss is equally severe. The fact that

that a victim's family is irredeemably bereaved can be attributable to no act of will of the defendant other than his commission of homicide in the first place. Such bereavement is relevant to damages in a civil action, but it has no relationship to the proper purposes of sentencing in a criminal case." *People v Levitt*, 156 Cal App 3d 500, 516-517, 203 Cal Rptr 276, 287-288 (1984).

the imposition of the death sentence may turn on such distinctions illustrates the danger of allowing juries to consider this information. Certainly the degree to which a family is willing and able to express its grief is irrelevant to the decision whether a defendant, who may merit the death penalty, should live or die. See 306 Md., at 223, 507 A2d, at 1129 (Cole, J., concurring in part and dissenting in part) (concluding that it is arbitrary to make capital sentencing decisions based on a VIS, "which vary greatly from case to case depending upon the ability of the family member to express his grief").

Nor is there any justification for permitting such a decision to turn on the perception that the victim was a sterling member of the community rather than someone of questionable character.⁸ This type of information does not provide a "principled way to distinguish [cases] in which the death penalty was imposed, from the many cases in which it was not." *Godfrey v Georgia*, 446 US 420, 433, 64 L Ed 2d 398, 100 S Ct 1759 (1980) (opinion of Stewart, J.). See also *Skipper v South Carolina*, 476 US —, —, 90 L Ed 2d 1, 106 S Ct 1669 (1986) (Powell, J. concurring in judgment).

[1f, 7a] We also note that it would be difficult—if not impossible—to provide a fair opportunity to rebut such evidence without shifting the

8. We are troubled by the implication that defendants whose victims were assets to their community are more deserving of punishment than those whose victims are perceived to be less worthy. Of course, our system of justice does not tolerate such distinctions. Cf. *Furman v Georgia*, 408 US 238, 242, 33 L Ed 2d 346, 1 S Ct 2726 (1972) (Douglas, J., concurring).

focus of the sentence from the defendant. The problem is that victim information is not easily rebuttal. Presumably the declarant would have the right to line the declarant would be able to state if family members have a degree of sleeplessness or emotional trauma. However, if the state introduces evidence of personal qualities, it is doubted that the state must be given this evidence. See 430 US 349, 362, 1 S Ct 1197 (1977) (J.) (due process requires defendant be given a presentence report). Ann Code, Art 27. Putting aside the attacking the victim before the jury, in the defendant pre

9. See n. 3, *supra*. The statute does not express the victim's character to be included in the Court of Appeals, however, determined that the state the minimum amount must be provided. Confidentiality in the VIS judge's discretion. See 811, 820-821, 490 A2d

This type of information in the VIS in Booth's case the trial court admitted interview with the victim part:

"[The victim] was the one he was totally devoted to. It was like a miracle to find something very special that could withstand were not only his friends." 302 Md., at (Cole J., concurring)

The court in *Lodows*

the death sentence distinctions illustrating the possibility of allowing juries to receive information. Certain information which a family member is permitted to express its views to the decision maker, who may be a juror, should live on. See, e.g., at 223, 507 A2d, concurring in part (part) (concluding that the state should be permitted to make capital sentencing decisions based on a VIS, but not to depart from case to case on the ability of a family member to express his

views in justification for a decision to turn down the death sentence. The number of the members of the community who are asked to provide a "principle" to distinguish [cases] in which the death penalty was imposed. See, e.g., *Booth v Maryland*, 482 U.S. 69, 90 L Ed 2d 109, 53 A2d 809 (1986) (Powell, J., concurring).

It is not possible to shift the burden of proof without shifting the

burden of proof. The implication that the death penalty was imposed on the basis of the victim's family members' views is perceived to be a departure from our system of justice. Cf. *Furman v Georgia*, 408 U.S. 214, 33 L Ed 2d 233, 242, 94 S Ct 584, 593 (1972) (Douglas, J., concur-

ing). The focus of the sentencing hearing away from the defendant. A threshold problem is that victim impact information is not easily susceptible to rebuttal. Presumably the defendant would have the right to cross-examine the declarants, but he rarely would be able to show that the family members have exaggerated the degree of sleeplessness, depression, or emotional trauma suffered. Moreover, if the state is permitted to introduce evidence of the victim's personal qualities,⁹ it cannot be doubted that the defendant also must be given the chance to rebut this evidence. See *Gardner v Florida*, 430 U.S. 349, 362, 51 L Ed 2d 393, 97 S Ct 1197 (1977) (opinion of Stevens, J.) (due process requires that defendant be given a chance to rebut presentence report). See also, Md Ann Code, Art 27, § 413(c)(v) (1982). Putting aside the strategic risks of attacking the victim's character before the jury, in appropriate cases the defendant presumably would be

9. See n. 3, supra. The Maryland sentencing statute does not expressly permit evidence of the victim's character and community status to be included in the VIS. The Maryland Court of Appeals, however, apparently has determined that the statute only establishes the minimum amount of information that must be provided. Consideration of other information in the VIS is subject to the trial judge's discretion. See *Reid v State*, 302 Md. 811, 820-821, 490 A2d 1289, 1294 (1985).

This type of information is not unique to the VIS in *Booth's* case. In *Lodowski v State*, the trial court admitted a VIS based on an interview with the victim's wife that said in part:

"[The victim] was the perfect family person, he was totally devoted to his family. It was like a miracle to find a man like him—we had something very special. We had created a love that could withstand anything in life. We were not only husband and wife, but best friends." 302 Md., at 766, 490 A2d, at 1266 (Cole J., concurring)

The court in *Lodowski* found that VIS evi-

dence is not constitutionally proscribed, and is relevant to a capital sentencing determination. *Id.*, at 751, 752, 490 A2d, at 1259.

permitted to put on evidence that the victim was of dubious moral character, was unpopular, or was ostracized from his family. The prospect of a "mini-trial" on the victim's character is more than simply unappealing; it could well distract the sentencing jury from its constitutionally required task—determining whether the death penalty is appropriate in light of the background and record of the accused and the particular circumstances of the crime. We thus reject the contention that the presence or absence of emotional distress of the victim's family, or the victim's personal characteristics, are proper sentencing considerations in a capital case.¹⁰

B

[1g] The second type of information presented to the jury in the VIS was the family members' opinions and characterizations of the crimes. The Bronsteins' son, for example,

dence in general is not constitutionally proscribed, and is relevant to a capital sentencing determination. *Id.*, at 751, 752, 490 A2d, at 1259.

10. [7b] Our disapproval of victim impact statements at the sentencing phase of a capital case does not mean, however, that this type of information will never be relevant in any context. Similar types of information may well be admissible because they relate directly to the circumstances of the crime. Facts about the victim and family also may be relevant in a noncapital criminal trial. Moreover, there may be times that the victim's personal characteristics are relevant to rebut an argument offered by the defendant. See, e.g., Fed Rule Evid 404(a)(2) (prosecution may show peaceable nature of victim to rebut charge that victim was aggressor). The trial judge, of course, continues to have the primary responsibility for deciding when this information is sufficiently relevant to some legitimate consideration to be admissible, and when its probative value outweighs any prejudicial effect. Cf. Fed R Evid 403.

stated that his parents were "butchered like animals," and that he "doesn't think anyone should be able to do something like that and get away with it." App 61. The VIS also noted that the Bronstein's daughter:

"could never forgive anyone for killing [her parents] that way. She can't believe that anybody could do that to someone. The victims' daughter states that animals wouldn't do this. [The perpetrators] didn't have to kill because there was no one to stop them from looting. . . . The murders show the viciousness of the killers' anger. She doesn't feel that the people who did this could ever be rehabilitated and she doesn't want them to be able to do this again or put another family through this." Id., at 62.

One can understand the grief and anger of the family caused by the brutal murders in this case, and there is no doubt that jurors generally are aware of these feelings. But the formal presentation of this information by the State can serve no other purpose than to inflame the jury and divert it from deciding the case on the relevant evidence con-

cerning the crime and the defendant. As we have noted, any decision to impose the death sentence must "be, and appear to be, based on reason rather than caprice or emotion." *Gardner v Florida*, supra, at 358, 51 L Ed 2d 393, 97 S Ct 1197 (opinion of Stevens, J.). The admission of these emotionally-charged opinions as to what conclusions the jury should draw from the evidence clearly is inconsistent with the reasoned decisionmaking we require in capital cases.¹¹

III

[1h] We conclude that the introduction of a VIS at the sentencing phase of a capital murder trial violates the Eighth Amendment, and therefore the Maryland statute is invalid to the extent it requires consideration of this information.¹² The decision of the Maryland Court of Appeals is vacated to the extent that it affirmed the capital sentence. The case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

11. The same problem is presented by the VIS summary written by the DPP, that might be viewed by the jury as representing the views of the State. As noted supra, at —, 96 L Ed 2d 447, the writer concluded that the crimes had a "shocking, painful, and devastating" effect on the family, and that "[i]t is doubtful that they will ever be able to fully recover." App 63-64. See Appendix to this opinion.

12. We note, however, that our decision today is guided by the fact death is a "punishment different from all other sanctions," see *Woodson v North Carolina*, 428 US 280, 303-304, 49 L Ed 2d 444, 96 S Ct 2978 (1976) (plurality opinion of Stewart, Powell, and Stevens, JJ.), and that therefore the considera-

tions that inform the sentencing decision may be different from those that might be relevant to other liability or punishment determinations. At least 36 States permit the use victim impact statements in some contexts, reflecting a legislative judgment that the effect of the crime on victims should have a place in the criminal justice system. See National Organization for Victim Assistance, *Victim Rights and Services: A Legislative Directory* 32-33 (1985) (chart); McLeod, *Victim Participation at Sentencing*, 22 Crim L Bull 501, 507, and n 22 (1986). Congress also has provided for victim participation in federal criminal cases. See Fed Rule Crim Proc 32(c)(2)(C). We imply no opinion as to the use of these statements in non-capital cases.

APPENDIX TO OPINION COURT

"VICTIM IMPACT STATEMENT"

[The Victim Impact Statement in this case was prepared by the Maryland Division of Parole and Pardon Commission. See n 2, supra.]

"Mr. and Mrs. Bronstein's daughter, son-in-law, and daughter were interviewed and their responses are included in the Victim Impact Statement. There are also four grandchildren in the family. The victims' son reports that he had been married for 15 years and enjoyed a close relationship with his wife. They spent a great deal of time together. He states that he worked hard all his life and has been retired for eight years. He describes his mother as a very young woman who seemed like an old lady when she was in her seventies. The victims' daughter relates that his parents were very active in their church and in their community. He attended citizens' center and was a very close friend of his parents. He and his wife were very close to his parents. He and his wife talked to the victims' daughter often and spent a great deal of time with them.

"The victims' son was born in 1955 and was alive for the last time in 1978. They were having their wedding in the spring of 1978. He called his father on the phone that evening and he answered. He had made arrangements to pick up Mr. Bronstein on 20th. They were both going to pick up their daughter. He was going to pick up their daughter when he arrived at the house. He noticed that his father wasn't there. A neighbor

and the defended, any decision a sentence must be, based on re- arice or emotion." supra, at 358, 51 1197 (opinion of mission of these opinions as to the jury should dence clearly is e reasoned deci- quire in capital

that the intro- at the sentencing murder trial vio- Amendment, and yland statute is it it requires con- nformation." The aryland Court of to the extent that tal sentence. The for further pro- sistent with this

ntencing decision may that might be relevant unishment determina- permit the use victim me contexts, reflecting that the effect of the d have a place in the . See National Organi- stance, Victim Rights lative Directory 32-33 . Victim Participation L Bull 501, 507, and n o has provided for vic- ederal criminal cases. c 32(c)(2)(C). We imply se of these statements

APPENDIX TO OPINION OF THE COURT

"VICTIM IMPACT STATEMENT"

[The Victim Impact Statement in this case was prepared by the Maryland Division of Parole and Probation. See n 2, supra.]

"Mr. and Mrs. Bronstein's son, daughter, son-in-law, and grand-daughter were interviewed for purposes of the Victim Impact Statement. There are also four other grandchildren in the family. The victims' son reports that his parents had been married for fifty-three years and enjoyed a very close relationship, spending each day together. He states that his father had worked hard all his life and had been retired for eight years. He describes his mother as a woman who was young at heart and never seemed like an old lady. She taught herself to play bridge when she was in her seventies. The victims' son relates that his parents were amazing people who attended the senior citizens' center and made many devout friends. He indicates that he was very close to his parents, and that he talked to them every day. The victims' daughter also spent lots of time with them.

"The victims' son saw his parents alive for the last time on May 18th. They were having their lawn manicured and were excited by the onset of spring. He called them on the phone that evening and received no answer. He had made arrangements to pick Mr. Bronstein up on May 20th. They were both to be ushers in a granddaughter's wedding and were going to pick up their tuxedos. When he arrived at the house on May 20th he noticed that his parents' car wasn't there. A neighbor told him

that he hadn't seen the car in several days and he knew something was wrong. He went to his parents' house and found them murdered. He called his sister crying and told her to come right over because something terrible had happened and their parents were both dead.

"The victims' daughter recalls that when she arrived at her parents' house, there were police officers and television crews everywhere. She felt numb and cold. She was not allowed to go into the house and so she went to a neighbor's home. There were people and reporters everywhere and all she could feel was cold. She called her older daughter and told her what had happened. She told her daughter to get her husband and then tell her younger daughter what had happened. The younger daughter was to be married two days later.

"The victims' granddaughter reports that just before she received the call from her mother she had telephoned her grandparents and received no answer. After her mother told her what happened she turned on the television and heard the news reports about it. The victims' son reports that his children first learned about their grandparents' death from the television reports.

"Since the Jewish religion dictates that birth and marriage are more important than death, the granddaughter's wedding had to proceed on May 22nd. She had been looking forward to it eagerly, but it was a sad occasion with people crying. The reception, which normally would have lasted for hours, was very brief. The next day, instead of going on her honeymoon, she attended her

grandparents' funerals. The victims' son, who was an usher at the wedding, cannot remember being there or coming and going from his parents' funeral the next day. The victims' granddaughter, on the other hand, vividly remembers every detail of the days following her grandparents' death. Perhaps she described the impact of the tragedy most eloquently when she stated that it was a completely devastating and life altering experience.

"The victims' son states that he can only think of his parents in the context of how he found them that day, and he can feel their fear and horror. It was 4:00 p. m. when he discovered their bodies and this stands out in his mind. He is always aware of when 4:00 p. m. comes each day, even when he is not near a clock. He also wakes up at 4:00 a. m. each morning. The victims' son states that he suffers from lack of sleep. He is unable to drive on the streets that pass near his parents' home. He also avoids driving past his father's favorite restaurant, the supermarket where his parents shopped, etc. He is constantly reminded of his parents. He sees his father coming out of synagogues, sees his parents' car, and feels very sad whenever he sees old people. The victims' son feels that his parents were not killed, but were butchered like animals. He doesn't think anyone should be able to do something like that and get away with it. He is very angry and wishes he could sleep and not feel so depressed all the time. He is fearful for the first time in his life, putting all the lights on and checking the locks frequently. His children are scared for him and concerned for his health. They phone him several

times a day. At the same time he takes a fearful approach to the whereabouts of his children. He also calls his sister every day. He states that he is frightened by his own reaction of what he would do if someone hurt him or a family member. He doesn't know if he'll ever be the same again.

"The victims' daughter and her husband didn't eat dinner for three days following the discovery of Mr. and Mrs. Bronstein's bodies. They cried together every day for four months and she still cries every day. She states that she doesn't sleep through a single night and thinks a part of her died too when her parents were killed. She reports that she doesn't find much joy in anything and her powers of concentration aren't good. She feels as if her brain is on overload. The victims' daughter relates that she had to clean out her parents' house and it took several weeks. She saw the bloody carpet, knowing that her parents had been there, and she felt like getting down on the rug and holding her mother. She wonders how this could have happened to her family because they're just ordinary people. The victims' daughter reports that she had become noticeably withdrawn and depressed at work and is now making an effort to be more outgoing. She notes that she is so emotionally tired because she doesn't sleep at night, that she has a tendency to fall asleep when she attends social events such as dinner parties or the symphony. The victims' daughter states that wherever she goes she sees and hears her parents. This happens every day. She cannot look at kitchen knives without being reminded of the murders and she is never away from it.

She states that s
ies with bodies
She can't tolera
violence. The vi
lates that she us
ing, but is not a
doorbell rings sh
not to answer it
cious of people
way before.

"The victims'
the defendant's t
co-defendant bec
one should be th
parents. She had
exact details of
and had to list
examiner's repo
point, her mind
stopped hearing
parents were
with viciousness
forgive anyone f
way. She can't b
could do that t
tims' daughter
wouldn't do this
kill because the
them from lootin
have given them
ders show the v
ers' anger. She
people who did
rehabilitated an
them to be able
put another fam
feels that the
members will
again.

"The victin
states that un
something like
stand how it fee
of shock for
then a terrible
You are so ang
She states tha
the image of th

the same time he approach to the children. He also 7 day. He states ed by his own e would do if r a family mem- v if he'll ever be

ughter and her dinner for three discovery of Mr. 's bodies. They y day for four cries every day. e doesn't sleep ht and thinks a when her par- he reports that uch joy in any- rs of concentra- e feels as if her d. The victims' at she had to ts' house and it. She saw the ng that her par- e, and she felt on the rug and r. She wonders happened to her 're just ordinary s' daughter re- become notice- d depressed at king an effort to e notes that she red because she t, that she has a sleep when she s such as dinner phony. The vic- s that wherever and hears her ens every day. kitchen knives ded of the mur- er away from it.

She states that she can't watch mov- ies with bodies or stabbings in it. She can't tolerate any reminder of violence. The victims' daughter re- lates that she used to be very trust- ing, but is not any longer. When the doorbell rings she tells her husband not to answer it. She is very suspi- cious of people and was never that way before.

"The victims' daughter attended the defendant's trial and that of the co-defendant because she felt some- one should be there to represent her parents. She had never been told the exact details of her parents' death and had to listen to the medical examiner's report. After a certain point, her mind blocked out and she stopped hearing. She states that her parents were stabbed repeatedly with viciousness and she could never forgive anyone for killing them that way. She can't believe that anybody could do that to someone. The vic- tims' daughter states that animals wouldn't do this. They didn't have to kill because there was no one to stop them from looting. Her father would have given them anything. The mur- ders show the viciousness of the kill- ers' anger. She doesn't feel that the people who did this could ever be rehabilitated and she doesn't want them to be able to do this again or put another family through this. She feels that the lives of her family members will never be the same again.

"The victims' granddaughter states that unless you experience something like this you can't under- stand how it feels. You are in a state of shock for several months and then a terrible depression sets in. You are so angry and feel such rage. She states that she only dwells on the image of their death when think-

ing of her grandparents. For a time she would become hysterical when- ever she saw dead animals on the road. She is not able to drive near her grandparents' house and will never be able to go into their neigh- borhood again. The victims' grand- daughter also has a tendency to turn on all the lights in her house. She goes into a panic if her husband is late coming home from work. She used to be an avid reader of murder mysteries, but will never be able to read them again. She has to turn off the radio or T.V. when reports of violence come on because they hit too close to home. When she gets a newspaper she reads the comics and throws the rest away. She states that it is the small everyday things that haunt her constantly and al- ways will. She saw a counselor for several months but stopped because she felt that no one could help her.

"The victims' granddaughter states that the whole thing has been very hard on her sister too. Her wedding anniversary will always be bittersweet and tainted by the mem- ory of what happened to her grand- parents. This year on her anniver- sary she and her husband quietly went out of town. The victims' granddaughter finds that she is un- able to look at her sister's wedding pictures. She also has a picture of her grandparents, but had to put it away because it was too painful to look at it.

"The victims' family members note that the trials of the suspects charged with these offenses have been delayed for over a year and the postponements have been very hard on the family emotionally. The vic- tims' son notes that he keeps seeing news reports about his parents' mur-

der which show their house and the police removing their bodies. This is a constant reminder to him. The family wants the whole thing to be over with and they would like to see swift and just punishment.

"As described by their family members, the Bronsteins were loving parents and grandparents whose family was most important to them. Their funeral was the largest in history of the Levinson Funeral Home and the family received over one thousand sympathy cards, some from total strangers. They attempted to answer each card personally. The family states that Mr. and Mrs. Bronstein were extremely good

people who wouldn't hurt a fly. Because of their loss, a terrible void has been put into their lives and every day is still a strain just to get through. It became increasingly apparent to the writer as she talked to the family members that the murder of Mr. and Mrs. Bronstein is still such a shocking, painful, and devastating memory to them that it permeates every aspect of their daily lives. It is doubtful that they will ever be able to fully recover from this tragedy and not be haunted by the memory of the brutal manner in which their loved ones were murdered and taken from them." App 59-64.

SEPARATE OPINIONS

Justice White, with whom The Chief Justice, Justice O'Connor and Justice Scalia join, dissenting.

"[T]he decision that capital punishment may be the appropriate sanction in extreme cases is an expression of the community's belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death." *Gregg v Georgia*, 428 US 153, 184, 49 L Ed 2d 859 96 S Ct 2909 (1976) (opinion of Stewart, Powell and Stevens, JJ.). The affront to humanity of a brutal murder such as petitioner committed is not limited to its impact on the victim or victims; a victim's community is also injured, and in particular the victim's family suffers shock and grief of a kind difficult even to imagine for those who have not shared a similar loss. Maryland's legislature has decided that the jury should have the testimony of the victim's family in order to assist it in weighing the degree of harm that

the defendant has caused and the corresponding degree of punishment that should be inflicted. This judgment is entitled to particular deference; determinations of appropriate sentencing considerations are "peculiarly questions of legislative policy," *id.*, at 176, 49 L Ed 2d 859, 96 S Ct 2909 (quoting *Gore v United States*, 357 US 386, 393, 2 L Ed 2d 1405, 78 S Ct 1280 (1958)), and the Court should recognize that "[i]n a democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people," 428 US, at 175, 49 L Ed 2d 859, 96 S Ct 2909 (quoting *Furman v Georgia*, 408 US 238, 383, 33 L Ed 2d 346, 92 S Ct 2726 (1972) (Burger, C.J., dissenting)). I cannot agree that there was anything "cruel or unusual" or otherwise unconstitutional about the legislature's decision to use victim impact statements in capital sentencing hearings.

The Court's judgment is based on

the premises that the murderer causes a does not in general blameworthiness, and hence going to blame relevant to the capital decision. Many if not however, will look to a capital defendant appreciate the full extent he caused, including the victim's family. The aberrant in a juror's hold a murderer a only for his internal committing the crime the full extent of cause; many if not would also agree, for someone who drove less through a stop tententionally killed a its significantly more than someone who recklessly through light at a time when was there to be hit. that the Court would sentence for reckless automobile merely punishment exceeded the tence for reckless would hope that the overturn the sentence if a judge mentioned his sentencing decision the victim was a man But if punishment in noncapital cases the harm caused, it

1. Congress considers its victims a relevant factor. Thus, presentence pursuant to Federal Rule of 32(c)(2) must include "in any harm, including financial, and physical harm suffered by any victim of This Court's cases al

in't hurt a fly. Be-
 ss, a terrible void
 to their lives and
 a strain just to get
 ie increasingly ap-
 er as she talked to
 rs that the murder
 Bronstein is still
 painful, and devas-
 them that it per-
 ect of their daily
 ful that they will
 fully recover from
 not be haunted by
 e brutal manner in
 d ones were mur-
 from them." App

is caused and the
 ree of punishment
 nflicted. This judg-
 to particular defer-
 ions of appropriate
 siderations are
 tions of legislative
 76, 49 L Ed 2d 859,
 ting Gore v United
 86, 393, 2 L Ed 2d
 80 (1958)), and the
 ognize that "[i]n a
 y legislatures, not
 tuted to respond to
 equently the moral
 ople," 423 US, at
 859, 96 S Ct 2909
 v Georgia, 408 US
 Ed 2d 346, 92 S Ct
 rger, C.J., dissent-
 ree that there was
 or unusual" or oth-
 ational about the
 sion to use victim
 ts in capital sen-

gment is based on

the premises that the harm that a murderer causes a victim's family does not in general reflect on his blameworthiness, and that only evidence going to blameworthiness is relevant to the capital sentencing decision. Many if not most jurors, however, will look less favorably on a capital defendant when they appreciate the full extent of the harm he caused, including the harm to the victim's family. There is nothing aberrant in a juror's inclination to hold a murderer accountable not only for his internal disposition in committing the crime but also for the full extent of the harm he caused; many if not most persons would also agree, for example, that someone who drove his car recklessly through a stoplight and unintentionally killed a pedestrian merits significantly more punishment than someone who drove his car recklessly through the same stoplight at a time when no pedestrian was there to be hit. I am confident that the Court would not overturn a sentence for reckless homicide by automobile merely because the punishment exceeded the maximum sentence for reckless driving; and I would hope that the Court would not overturn the sentence in such a case if a judge mentioned, as relevant to his sentencing decision, the fact that the victim was a mother or father. But if punishment can be enhanced in noncapital cases on the basis of the harm caused, irrespective of the

1. Congress considers the effect of crime on its victims a relevant sentencing consideration. Thus, presentence reports prepared pursuant to Federal Rule of Criminal Procedure 32(c)(2) must include "information concerning any harm, including financial, social, psychological, and physical harm, done to or loss suffered by any victim of the offense . . ."

This Court's cases also indicate that the

offender's specific intention to cause such harm,¹ I fail to see why the same approach is unconstitutional in death cases. If anything, I would think that victim impact statements are particularly appropriate evidence in capital sentencing hearings: the State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, see, e.g., *Eddings v Oklahoma*, 455 US 104, 71 L Ed 2d 1, 102 S Ct 869 (1982), by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.

The Court is "troubled by the implication that defendants whose victims were assets to their community are more deserving of punishment than those whose victims are perceived to be less worthy," and declares that "our system of justice does not tolerate such distinctions." Ante, at —, n 8, 96 L Ed 2d 450. It is no doubt true that the State may not encourage the sentencer to rely on a factor such as the victim's race in determining whether the death penalty is appropriate. Cf. *McCleskey v Kemp*, 481 US —, 95 L Ed 2d 262, 107 S Ct 1756 (1987). But I fail to see why the State cannot, if it chooses, include as a sentencing consideration the particularized harm that an individual's mur-

harm caused by an offense may be the basis for punishment even if the offender lacked the specific intent to commit that harm. See, e.g., *United States v Feola*, 420 US 671, 43 L Ed 2d 541, 95 S Ct 1255 (1975) (conviction under 18 USC § 111 [18 USCS § 111] for assaulting a federal officer does not require proof that the defendant knew the victim's status).

der causes to the rest of society² and in particular to his family. To the extent that the Court is concerned that sentencing juries might be moved by victim impact statements to rely on impermissible factors such as the race of the victim, there is no showing that the statements in this case encouraged this, nor should we lightly presume such misconduct on the jury's part. Cf. *McCleskey v Kemp*, supra.

The Court's reliance on the alleged arbitrariness that can result from the differing ability of victims' families to articulate their sense of loss is a makeweight consideration: No two prosecutors have exactly the same ability to present their arguments to the jury; no two witnesses have exactly the same ability to communicate the facts; but there is no requirement in capital cases that the evidence and argument be reduced to the lowest common denominator.

The supposed problems arising from a defendant's rebuttal of victim impact statements are speculative and unconnected to the facts of this case. No doubt a capital defendant must be allowed to introduce relevant evidence in rebuttal to a victim impact statement, but Maryland has in no wise limited the right of defendants in this regard. Petitioner introduced no such rebuttal evidence, probably because he considered,

wisely, that it was not in his best interest to do so.³ At bottom, the Court's view seems to be that it is somehow unfair to confront a defendant with an account of the loss his deliberate act has caused the victim's family and society. I do not share that view, but even if I did I would be unwilling to impose it on States that see matters differently.

The Court's concern that the grief and anger of a victim's family will "inflamm[e] the jury," ante, at —, 96 L Ed 2d 452, is based in large part on its view that the loss which such survivors suffer is irrelevant to the issue of punishment—a view with which I have already expressed my disagreement. To the extent that the Court determines that in this case it was inappropriate to allow the victims' family to express their opinions on, for example, whether petitioner could be rehabilitated, that is obviously not an inherent fault in all victim impact statements and no reason to declare the practice of admitting such statements at capital sentencing hearings per se unconstitutional. I respectfully dissent.

Justice Scalia, with whom The Chief Justice, Justice White, and Justice O'Connor join, dissenting.

The Court holds that because death is a "punishment different from all other sanctions," ante, at —, n 12, 96 L Ed 2d 452 (quoting

2. I doubt that the Court means to suggest that there is any constitutional impediment, for example, to authorizing the death sentence for the assassination of the President or Vice-President, see 18 USC §§ 1751, 1111 [18 USCS §§ 1751, 1111], a Congressman, cabinet official, Supreme Court Justice, or the head of an executive department, 18 USC § 351 [18 USCS § 351], or the murder of a policeman on active duty, see Md Ann Code, Art 27, § 413(a)(1)(1982).

3. The possibility that the jury would be distracted by rebuttal evidence is purely hypothetical, since petitioner introduced no such evidence. It is also unclear how distracting (as opposed to offending) the jury would disadvantage the defendant, and why, if there were some disadvantage to the defendant in pressing too hard a rebuttal to a victim impact statement, he should be heard to complain of the consequences of his tactical decisions.

Woodson v North
280, 303-304, 49 L
2978 (1976) (plu
Stewart, Powell,
considerations no
defendant's 'pers
and moral guilt'
into account in d
defendant who is
death penalty sho
at —, 96 L Ed
Enmund v Florida
73 L Ed 2d 1114
(1982)). It seems
and, I think, to n
that the amount c
does bear upon
"personal respons
take away the li
who goes 60 mil
residential street;
him in jail for
though his moral
he is unlucky en
one during the esc

Nor, despite wh
today, do we depa
ple where capital
cerned. The Court
explain why a def
for the death sen
ways does) turn u
not relevant to h
bank robber air
guard, pulls the tr
target, he may b
the gun unexpect
may not. His m
cases is identical,
ity in the forme
than two months
two brothers wh
sisted in their fa
prison could be
because in the co
their father and
dered a married c
dren. Tison v Ar

not in his best
At bottom, the
to be that it is
confront a defen-
it of the loss his
caused the vic-
society. I do not
t even if I did I
to impose it on
ers differently.

rn that the grief
im's family will
ante, at —, 96
ed in large part
loss which such
relevant to the
it—a view with
ly expressed my
e extent that the
at in this case it
o allow the vic-
ress their opin-
e, whether peti-
bilitated, that is
herent fault in
atements and no
e practice of ad-
nents at capital
per se unconsti-
tly dissent.

with whom The
tice White, and
in, dissenting.

s that because
shment different
tions," ante, at
2d 452 (quoting

t the jury would be
vidence is purely hy-
er introduced no such
ur how distracting (as
jury would disadvan-
why, if there were
a defenuant in press-
to a victim impact
heard to complain of
actical decisions.

BOOTH v MARYLAND

96 L Ed 2d 440

Woodson v North Carolina, 428 US 280, 303-304, 49 L Ed 2d 944, 96 S Ct 2978 (1976) (plurality opinion of Stewart, Powell, and Stevens, JJ.), considerations not relevant to "the defendant's 'personal responsibility and moral guilt'" cannot be taken into account in deciding whether a defendant who is eligible for the death penalty should receive it, ante, at —, 96 L Ed 2d 448 (quoting *Enmund v Florida*, 458 US 782, 801, 73 L Ed 2d 1140, 102 S Ct 3368 (1982)). It seems to me, however—and, I think, to most of mankind—that the amount of harm one causes does bear upon the extent of his "personal responsibility." We may take away the license of a driver who goes 60 miles an hour on a residential street; but we will put him in jail for manslaughter if, though his moral guilt is no greater, he is unlucky enough to kill someone during the escapade.

Nor, despite what the Court says today, do we depart from this principle where capital punishment is concerned. The Court's opinion does not explain why a defendant's *eligibility* for the death sentence can (*and always does*) turn upon considerations not relevant to his moral guilt. If a bank robber aims his gun at a guard, pulls the trigger, and kills his target, he may be put to death. If the gun unexpectedly misfires, he may not. His moral guilt in both cases is identical, but his responsibility in the former is greater. Less than two months ago, we held that two brothers who planned and assisted in their father's escape from prison could be sentenced to death because in the course of the escape their father and an accomplice murdered a married couple and two children. *Tison v Arizona*, 481 US —,

95 L Ed 2d 127, 107 S Ct 1676 (1987). Had their father allowed the victims to live, the brothers could not be put to death; but because he decided to kill, the brothers may. The difference between life and death for these two defendants was thus a matter "wholly unrelated to the[ir] blameworthiness." Ante, at —, 96 L Ed 2d 449. But it was related to their personal responsibility, i.e., to the degree of harm that they had caused. In sum, the principle upon which the Court's opinion rests—that the imposition of capital punishment is to be determined solely on the basis of moral guilt—does not exist, neither in the text of the Constitution, nor in the historic practices of our society, nor even in the opinions of this Court.

Recent years have seen an outpouring of popular concern for what has come to be known as "victims' rights"—a phrase that describes what its proponents feel is the failure of courts of justice to take into account in their sentencing decisions not only the factors mitigating the defendant's moral guilt, but also the amount of harm he has caused to innocent members of society. Many citizens have found one-sided and hence unjust the criminal trial in which a parade of witnesses comes forth to testify to the pressures beyond normal human experience that drove the defendant to commit his crime, with no one to lay before the sentencing authority the full reality of human suffering the defendant has produced—which (and *not* moral guilt alone) is one of the reasons society deems his act worthy of the prescribed penalty. Perhaps these sentiments do not sufficiently temper justice with mercy, but that is a question to be decided through the

democratic processes of a free people, and not by the decrees of this Court. There is nothing in the Constitution that dictates the answer, no more in the field of capital punishment than elsewhere.

To require, as we have, that all mitigating factors which render capital punishment a harsh penalty in the particular case be placed before the sentencing authority, while si-

multaneously requiring, as we do today, that evidence of much of the human suffering the defendant has inflicted be suppressed, is in effect to prescribe a debate on the appropriateness of the capital penalty with one side muted. If that penalty is constitutional, as we have repeatedly said it is, it seems to me not remotely unconstitutional to permit both the pros and the cons in the particular case to be heard.

SOCIETE NATIONALE
DE CONSTRUCTION

UNITED STATES

Argued

Decision: Under p.
Taking of Evidence
provide optional
District Court.

Two corporations
tured, and market
crashed in Iowa,
corporations in the
Iowa, and alleged
sold a defective p
warranty. The two
consolidated and
began. Eventually,
the production of
Civil Procedure, (2
requests for admis
motion for a protec
corporations and t
only in France, the
the Hague Conve
Commercial Matte
States, France, and
law (the "blocking
requests that did n
the motion insofa

JOHN BOOTH, Petitioner

MARYLAND

482 US —, 96 L Ed 2d 440, 107 S Ct —

[No. 86-5020]

Argued March 24, 1987. Decided June 15, 1987.

Decision: Introduction of victim impact statement at sentencing phase of capital murder trial held to violate Eighth Amendment, and Maryland statute requiring consideration of statement held invalid.

SUMMARY

Having found a defendant guilty of two counts of first-degree murder, two counts of robbery, and conspiracy to commit robbery in connection with the robbery and murder of an elderly couple in their home, a Maryland state court jury sentenced him to death after considering a presentence report compiled by the state division of parole and probation. As required by a Maryland statute, the report included a victim impact statement (VIS), which described the personal characteristics of the victims and the emotional impact of the crimes on the family, and set forth the family members' opinions and characterizations of the crimes and the defendant. The state trial court (1) refused to suppress the VIS, (2) rejected the defendant's contention that the VIS was irrelevant and unduly inflammatory and that therefore its use in a capital case violated the Eighth Amendment of the Federal Constitution, and (3) ruled that the jury was entitled to consider any and all evidence which would bear on the sentencing decision. The jury sentenced the defendant to death for one of the murders and to life imprisonment for the other murder. The Maryland Court of Appeals affirmed the convictions and sentences, holding that a VIS serves an important interest by informing the sentencer of the full measure of harm caused by the crime (306 Md 172, 507 A2d 1098).

On certiorari, the United States Supreme Court (1) vacated the decision of the Maryland Court of Appeals to the extent that it affirmed the capital sentence, and (2) remanded the case for further proceedings. In an opinion by POWELL, J., joined by BRENNAN, MARSHALL, BLACKMUN, and STEVENS, JJ.,

it was held that the introduction of a victim impact statement at a capital murder trial violated the Eighth Amendment and the Maryland statute is invalid for this information, because the admission of this information was an error of law, and its admission was a prejudicial error. The court's decision and its admission that the jury may impose the death sentence in that manner, in that: (1) since the defendant's character and reputation are factors which may be wholly irrelevant to the defendant, allowing the jury to consider them in imposing the death sentence is a violation of the Eighth Amendment which a family is willing to accept as a part of the victim's character—although the admission of this information was an error of law, it was irrelevant to the decision of the jury on the circumstances of the crime; (2) to provide a fair opportunity to the defendant without shifting the focus of the trial to the defendant; and (3) the formal presentence report (VIS) can serve no other purpose than to assist in deciding the case on the merits of the defendant, the admission of this information at the sentencing phase of the trial is a violation of the decisionmaking required in a capital case.

WHITE, J., joined by REHNQVIST, J., dissented, expressing the view that the jury should have been allowed to assist in weighing the degree of culpability corresponding degree of punishment to particular deference, because the courts, are constituted to represent the values of the people, and (2) cases on the basis of the harm caused by the defendant to cause such harm, the admission of this information is unconstitutional in death cases in counteracting the mitigation of the harm put in, by reminding the jury that the defendant is considered as an individual, and that the defendant represents a unique loss to society.

SCALIA, J., joined by REHNQVIST, J., dissented, expressing the view that the harm one causes bears upon the determination of the punishment to be imposed upon which the court's opinion is to be determined solely on the basis of either in the text of the Federal Constitution or the American society, or even in

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE

DISTRICT ELEVEN • SPENARD

NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE

February 17, 1988

MEMORANDUM

TO: Members of the House Judiciary Committee

FROM: Representative Dave Donley *DD*

RE: Victims' Rights Bill

HB 296 is currently before the Judiciary Committee and I ask for your support in passing this legislation.

There is a need to develop methods to reduce the trauma that victims may experience in the wake of crime. All too often citizens who become involved with the criminal justice system, as victims of crime, are further victimized by the system and insensitive treatment.

When a crime is committed the chief concern of criminal justice agencies has been apprehending and dealing with the criminal. Unfortunately after the police leave the scene of the crime the victim is frequently forgotten.

HB 296 is a comprehensive bill that would give victims greater rights in the criminal and civil justice systems. When compared to other states such as California, Massachusetts, New Jersey, Michigan, Connecticut, Colorado, Florida and Arkansas, when it comes to victim's rights, Alaska is far behind. This type of legislation is long overdue.

I urge the members of the Judiciary Committee to pass HB 296 which will help to ease the hardships that victims face.

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE

DISTRICT ELEVEN • SPENARD

NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE

HB 296

ALASKA CRIME VICTIM'S RIGHTS ACT

As prime sponsor of HB 296, Representative Dave Donley hopes to reduce the trauma that victims may experience in the wake of a crime. All too often citizens who become involved with the criminal justice system, as victims to crime, are further victimized by the system and insensitive treatment.

Representative Donley also realizes that when a crime is committed, the chief concern of criminal justice agencies has been apprehending and dealing with the criminal. Unfortunately, after the police leave the scene of the crime, the victim is frequently forgotten.

HB 296 is a comprehensive bill that would give victims greater rights in the criminal and civil justice systems. A few are:

*Allow the victim to attend meetings of the parole board and to comment in person on the proposed action of the board.

*Give victim access to presentence and police reports unless just cause not to is shown. Also allows victim to make a written or oral statement for use in preparation of the presentence report and at sentencing.

*Protects victim from discharge or discipline from an employer if victim is subpoenaed or requested to attend court.

*Victim will be given written notice of all trial dates involving the defendant.

*Victim will be notified if a defendant has escaped or is released on furlough, to a correctional restitution center, or an early release. Also in the case of an offender who was found guilty but mentally ill, the offender is being considered for a screening investigation to determine the need for further treatment.

*Victim will be able to appear personally in court if the offender files a motion for modification or reduction of sentence.

ANCHORAGE OFFICE

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

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

BOARD OF PAROLE

STEVE COWPER, GOVERNOR

ALASKA BOARD OF PAROLE
P.O. BOX 1
JUNEAU, ALASKA 99811-2000
PHONE: (907) 465-3384

November 18, 1987

Honorable Johnny Ellis
Honorable Nillo E. Koponen
Co-Chairmen
Health, Education & Social Services Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Chairmen Ellis and Koponen:

The staff of several Representatives have requested the Parole Board to comment on House Bill 296. Since the bill has substantial impact on many segments of the criminal justice system, and others are expected to testify on the bill, we will confine our comments to those sections of the bill that pertain directly to the parole process. Members and/or staff of the Board will be available at the hearing on November 20 to answer questions if they arise.

On page 4, lines 1-4, the definition of victim is expanded significantly. Since the definition applies to the parole process under AS 33.16, this section will have an impact on the Board. Absent some way of limiting testimony, having more than one relative of the victim testify at a parole hearing could draw a hearing out to many hours or even more than one day. Currently, we usually conduct up to 10 to 12 parole hearings a day. The financial impact could reach into the many thousands of dollars quickly.

On page 5, lines 1-5, the victim would have the right to obtain the presentence report and other reports that may be used in preparation for that report. There is no prohibition in this bill on redisclosure and even if there was, it would probably be very difficult to enforce. Currently, the presentence report and attachments provide the Board with a lot of relevant background information on which to make good parole decisions. Many community sources are helpful in preparing these reports. Many citizens will not cooperate if they thought their comments would be used by persons outside the criminal justice system. The same is true of defendants, their families and friends. Also, much of the criminal justice system information contained in the presentence report might be eliminated from the report if this bill passes, since many state and federal laws prohibit the redisclosure of those records to non-criminal justice people. If we don't get comprehensive presentence reports and attachments, our ability to make the most rational release decisions will be severely compromised. Frequently, there is information in the presentence about victims of uncharged crimes. Many of these victims are children. They or their families would not want their names or information regarding circumstances of the crimes released to the public.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

P.O. BOX V, JUNEAU 99811
(907) 465-3892



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE

HB 296

ALASKA CRIME VICTIM'S RIGHTS ACT

As prime sponsor of HB 296, Representative Dave Donley hopes to reduce the trauma that victims may experience in the wake of a crime. All too often citizens who become involved with the criminal justice system, as victims to crime, are further victimized by the system and insensitive treatment.

Representative Donley also realizes that when a crime is committed, the chief concern of criminal justice agencies has been apprehending and dealing with the criminal. Unfortunately, after the police leave the scene of the crime, the victim is frequently forgotten.

HB 296 is a comprehensive bill that would give victims greater rights in the criminal and civil justice systems. A few are:

*Allow the victim to attend meetings of the parole board and to comment in person on the proposed action of the board.

*Give victim access to presentence and police reports unless just cause not to is shown. Also allows victim to make a written or oral statement for use in preparation of the presentence report and at sentencing.

*Protects victim from discharge or discipline from an employer if victim is subpoenaed or requested to attend court.

*Victim will be given written notice of all trial dates involving the defendant.

*Victim will be notified if a defendant has escaped or is released on furlough, to a correctional restitution center, or an early release. Also in the case of an offender who was found guilty but mentally ill, the offender is being considered for a screening investigation to determine the need for further treatment.

*Victim will be able to appear personally in court if the offender files a motion for modification or reduction of sentence.

*Victim can make a written statement to the governor for consideration if the governor considers a pardon, commutation of sentence, reprieve, suspension or remission of a fine, forfeiture, or if the offender applies to the governor for clemency.

*Allows a victim of a crime committed by a minor to request permission to attend a hearing relating to the crime and receive assistance in the writing of that request from the Dept. of Health and Social Services.

These are only some of the rights that HB 296 will give victims. Compared to other states such as California, Massachusetts, New Jersey, Michigan, Connecticut, Colorado, Florida and Arkansas, when it comes to victim's rights, Alaska is far behind. We need your help and support to pass House Bill 296.

Please send Public Opinions Messages or Letters to your senators and representatives and to the House Judiciary Committee which is now considering this bill.

For more information in Anchorage call 561-7529
in Juneau call 465-3892

We need to get this bill moving. It has a long way to go before it becomes law. We need your help.

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

BOARD OF PAROLE

STEVE COWPER, GOVERNOR

ALASKA BOARD OF PAROLE
P.O. BOX T
JUNEAU, ALASKA 99811-2000
PHONE: (907) 465-3384

November 18, 1987

Honorable Johnny Ellis
Honorable Nillo E. Koponen
Co-Chairmen
Health, Education & Social Services Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Chairmen Ellis and Koponen:

The staff of several Representatives have requested the Parole Board to comment on House Bill 296. Since the bill has substantial impact on many segments of the criminal justice system, and others are expected to testify on the bill, we will confine our comments to those sections of the bill that pertain directly to the parole process. Members and/or staff of the Board will be available at the hearing on November 20 to answer questions if they arise.

On page 4, lines 1-4, the definition of victim is expanded significantly. Since the definition applies to the parole process under AS 33.16, this section will have an impact on the Board. Absent some way of limiting testimony, having more than one relative of the victim testify at a parole hearing could draw a hearing out to many hours or even more than one day. Currently, we usually conduct up to 10 to 12 parole hearings a day. The financial impact could reach into the many thousands of dollars quickly.

On page 5, lines 1-5, the victim would have the right to obtain the presentence report and other reports that may be used in preparation for that report. There is no prohibition in this bill on redisclosure and even if there was, it would probably be very difficult to enforce. Currently, the presentence report and attachments provide the Board with a lot of relevant background information on which to make good parole decisions. Many community sources are helpful in preparing these reports. Many citizens will not cooperate if they thought their comments would be used by persons outside the criminal justice system. The same is true of defendants, their families and friends. Also, much of the criminal justice system information contained in the presentence report might be eliminated from the report if this bill passes, since many state and federal laws prohibit the redisclosure of those records to non-criminal justice people. If we don't get comprehensive presentence reports and attachments, our ability to make the most rational release decisions will be severely compromised. Frequently, there is information in the presentence about victims of uncharged crimes. Many of these victims are children. They or their families would not want their names or information regarding circumstances of the crimes released to the public.

Honorable Johnny Ellis
Honorable Nillo E. Koponen
November 18, 1987
Page Two

Lines 19-20 on page 6 allow victims to attend parole hearings. We have a number of concerns with this section. First, the bill does not define what is intended by "attend meetings". Do you intend the victims/relatives to be present before the Board just to make a statement? Do you intend the victims/relatives to sit through the entire hearing but leave before the Board begins deliberations? Do you expect the victims/relatives to sit through the deliberations? Clearly this section is in conflict with AS 44.62.310(d)(3), which states Board hearings, like jury deliberations, are closed. Having any person who could be aligned for or against parole would be a violation of the intent of the Alaska Supreme Court, In the Matter of Robson, 575 P.2d 771 (Alaska 1978). Whatever the Legislature decides to do, this section needs to be clear on your specific intent.

The Board does not oppose having victims come to Parole Board hearings. However, the decision to allow victim attendance at hearings is expected to have a substantial impact on the cost of operating the system, on the victim, and on the ability of the Board to get the best possible information to make good parole decisions. This impact must be carefully reviewed to see if the costs to the public and the actual advantages to the victim outweigh the disadvantages.

First, let us talk about the issues impacting the victim. In Alaska, many victims are friends or family of the defendant. Many of the cases we hear involve sexual assault by a friend or family member. A lot of these victims are children. Oftentimes, there is a tremendous amount of pressure from friends or family for the victim to minimize the impact of the crime or even recant. We sometimes get letters from victims that are put in this situation now, but at least they don't have to face the defendant in person. Sometimes during the very frank and pointed questioning of Board members and staff, the names of victims of other uncharged crimes are discussed. Clearly, these folks would not like their names known to the public or their family members and this is quite possible if the victim/relative of the current crime decides to speak after leaving the hearing.

Another very important issue with victims attending hearings and speaking against defendants is possible retribution. Most defendants now show little animosity toward their victims when we discuss issues at parole hearings. However, we believe the likelihood of retribution would increase significantly if the victim were to testify against a defendant at a parole hearing. Reading a letter written by the victim is much less likely to provoke a defendant than if the victim is sitting across the table, eyeball to eyeball. We might be doing most victims more harm than good by allowing the personal appearance.

Second, let us talk about the possible impact of this section on the Board's ability to get the best possible information to make good parole decisions. The current Board hearings are closed and usually only the persons in attendance besides the Board are the prisoner and the parole officer that

Honorable Johnny Ellis
Honorable Nillo E. Koponen
November 18, 1987
Page Three

completed the preparole report required by statute. Prisoners get the clear message from many sources we expect to get all pertinent information when the prisoner applies for parole. Prisoners sometimes give us information damaging to their chances for parole because they think we might somehow find out about the negative information and rescind parole before they could be released from jail. In many cases, having one or more victims/victim's relatives in the room would have a chilling effect on a prisoner offering information. Not getting their pertinent information could in some cases even endanger other potential victims in the public. Even though some prisoners committed very serious crimes, some are embarrassed about the circumstances of their crimes and would be unwilling to discuss the details in front of others. Prisoners are aware that Board members and parole officers understand in the confidentiality laws regarding the material in the files and would be liable for disclosure of information outside the hearing. Therefore, they are more willing to be frank with us, not worrying about public disclosure. If we do not get the best possible information, the Board might unknowingly release a prisoner who would pose a significant risk to the public.

Third, let us look at the increased costs of this section. Here are some of the areas of impact if victims come to parole hearings.

- a. Lengthen parole hearings, resulting in increased per diem and compensation for members and additional time for Corrections employees.
- b. Money for security staff to screen both prisoners and victims before they are allowed to come together in the hearing room.
- c. Money for security staff to be present for the protection of victims and in some cases the prisoners at parole hearings.
- d. Money to pay for representation of prisoners by counsel at parole hearings, most being represented by the Public Defender. Although rare now, with the more adversarial nature of hearings under this bill, we would expect a substantial increase in prisoners being represented by attorneys. Of course, this would also lengthen hearings.
- e. Money to pay for the increased costs of incarcerating some prisoners for longer periods of time. Some prisoners who would not pose a risk to the public and would likely be paroled now if they apply, would not apply under this bill if they had to face the victim face to face because of added embarrassment, and therefore would stay in jail.

If the committee members want the victim to be able to respond to such issues as the prisoner's comments to the Parole Board, let me suggest the following solution. We can send a copy of the prisoner's application for parole (without proposed residence or employer addresses) to the victim. Then the victim would have the information the prisoner gives the Board members regarding the crime, release plan, reasons why the prisoner thinks he/she should be granted parole, conditions to be imposed, etc. The victim could then forward their written comments to the Board.

Honorable Johnny Ellis
Honorable Nillo E. Koponen
November 18, 1987
Page Four


Another issue the Legislature has to deal with is equity. What impact would this section have in ensuring all prisoners and victims are treated similarly? First of all, many victims could not afford to travel outside of their areas of residence to testify at parole hearings. Prisoners are housed in over a dozen instate institutions scattered from Ketchikan to Nome as well as the Federal Bureau Prison facilities throughout the country. Many prisoners are not incarcerated in the same town where the victim lives. This means a victim with more money might have a more significant impact on a decision to grant or not grant parole than a victim without the money, even though the impact on the victims might be identical. This legislation would favor residents of our major cities. I expect you will begin to hear from indigent victims in a couple of years.

Lines 26-28 on page 6 would require the Board to notify a victim of a decision to grant or deny parole if the victim requested. We already notify interested victims of any decision to grant parole and so notifying victims on decisions to deny would not pose a problem. However, we strongly oppose the last sentence of this same section at lines 2-3 on page 7 that would have us notify the victims of the prisoner's residence address and the employer. This would greatly increase the likelihood of confrontations between the parolee and the victim---nobody would be served by that. Many parolees have a tough enough time getting reasonable employment now--having a victim/relative/friend contact the parolee's employer at work isn't going to do anybody any good. If a prisoner can not obtain and maintain lawful employment, his/her chances of returning "to a life of crime" are increased significantly. If for some reason the victim has a dispute with the parolee, contacts should be made through the court, Parole Board, or parole officer.

These same comments apply to line 11 on page 7, regarding mandatory parolees.

Thank you for the opportunity to comment on House Bill 296. We hope these issues can be resolved to everyone's satisfaction.

Very truly yours,



Alonzo B. Patterson, Jr.
Alaska Parole Board Chairman

BILL NO: HB 296

DATE: May 13, 1987

TITLE: An Act relating to victims of crime, claims arising from criminal conduct, and service of process on prisoners; amending Rule 12(d)(2) of the Alaska Rules of Children's Procedure; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure

CONTACT: Barbara Miklos
Executive Director
Council on Domestic
Violence & Sexual
Assault

DEPARTMENT OF
PUBLIC SAFETY

The Council on Domestic Violence and Sexual Assault supports HB 296, the "Victims Rights Bill", which addresses some of the recommendations of the President's Task Force on Victims of Crime. This task force was established by the federal government in 1982 in recognition of the problems crime victims face when encountering the criminal justice system. As the report of this task force stated:

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

The Council does not have sufficient expertise to comment upon legal issues raised in this legislation. We have comments on the following sections of the bill with which we have particular interest.

Section 4 of HB 296 adds the effect of a crime on the victim to the list of factors the court may consider in aggravation of a felony sentence; Section 5 requires written notice of the sentencing hearing be given to the victim. It is important for victims to receive written notice of the sentencing hearing so that they have the opportunity to present testimony or just to be present during the hearing if they wish. The victim's testimony regarding the effect of the crime on his or her life adds balancing information for the court by presenting the impact of the crime on the victim's physical, financial and psychological well-being. As the President's Task Force states, "a judge cannot evaluate the seriousness of a defendant's conduct without knowing how the crime has burdened the victim. A judge cannot reach an informed determination of the danger posed by a defendant without hearing from the person he has victimized".

The Council questions the amendments to the definition of victim in Section 6. We do not see the advantage of expanding the definition of victim when the victim has died, is a minor or is incapacitated.

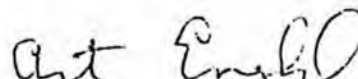
The term "victim" already includes spouse, parent, child, brother, sister and legal guardian. Adding aunt, uncle, parent-in-law, brother-in-law or sister-in-law does not seem necessary. We also wonder who would have precedence to be considered, and what would happen if different relatives have conflicting views of the situation.

The Council also has concerns about Section 7 which gives the victim access to presentence reports and to police reports. While in general the Council supports victims having access to information about the case, we think there can be a danger in a victim having access to police reports prior to a case going to trial because the information in the reports might improperly influence the victim's testimony or expose the victim to unnecessary attack on cross-examination. In addition, we think police reports should be protected as confidential information since they give the victim's name, address and other information which might need to be protected. Since the victim definition is expanded, there may be a number of other people who could have access to the police reports, and we think this is problematical. We do however, support the victim's right to make a written or oral statement for use in preparation of the defendant's presentence report and at sentencing. We would also like to suggest that a section be added in this section that the victim has the right to be informed by the Department of Corrections when the defendant has been released from jail on bail. This provision would be particularly important to battered women since they must take extra precautions such as returning to a shelter to protect themselves and their children when the batterer is released.

Section 9 gives victims the right to attend meetings of the parole board. Victims have a legitimate interest in parole hearings, not only because of their desire for the service of a just sentence, but also because of their legitimate fear of revictimization once the defendant is released.

Section 10 and Section 11 provides for the parole board to notify the victim, prior to release, of the prisoner's future geographic area and of the prisoner's residence address and employer, if known. We would recommend that "geographic area" be changed to "community" as this is a more specific term. Also, we do not see the need to release the prisoner's residence address and employer to the victim and can envision problems caused by releasing this information.

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



Art English
Commissioner

BILL NO: HB 296

DATE: 5/7/87

TITLE: "An Act relating to victims of crime..."

CONTACT: ^{BZ} Maj. Walter J. Gilmour
Acting Director
Alaska State Troopers

DEPARTMENT OF
PUBLIC SAFETY

This legislation amends several statutes affecting the rights of victims of crimes. The bill affects the roles of the Commissioner of the Department of Corrections and prosecutors in their dealing with prisoners and victims.

Passage of this proposed legislation will have no material effect upon the Department of Public Safety, either operationally or fiscally.

The Department of Public Safety is neutral on this legislation.


ARTHUR ENGLISH
Commissioner

POSTION NUMBER / PAPER

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 296

Publish Date: _____

REQUEST
Revision Date: _____
Title: "An Act relating to victims
of crimes..."
Sponsor: Rep. Donley, etc.
Requestor: House HESS

Agency Affected: Public Safety
BRU: Alaska State Troopers

Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

JFR
5/11/87

Prepared by: Francis C. Allan *G.C.A.*
Division: Alaska State Troopers

Phone: 269-5691

Date: 5/7/87

Approved by Commissioner: Arthur English *Y hno/ps*
Agency: Public Safety

Date: 5/11/87

Distribution (by preparer):

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

POSITION PAPER

HOUSE BILL NO. 296

For an Act entitled: "An act relating to victims of crime, claims arising from criminal conduct, and service of process on prisoners; amending Rule 12(d)(2) of the Alaska Rules of Children's Procedure; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure."

The Department supports the goals of protecting the rights of victims of crime, providing for appropriate participation of victims in court proceedings, and ensuring that victims are informed of the outcome of proceedings relating to perpetrators, including juveniles, who commit crimes. However, the Department opposes granting a blanket right to victims to attend otherwise confidential children's proceedings. The Department believes that the limited benefit from establishing such a right is not justified in light of the potential reduction in the system's effectiveness and the availability of other mechanisms for accomplishing the same goals without the potential adverse effects.

Section 13 of this bill would establish the right of a person (or related representative) to attend a children's proceeding under AS 47.10.070 if the person is the "victim of an offense that is the subject of the hearing...". This language implies that the victim may attend any child proceeding in which the offense is in any way a consideration. This would almost certainly include any adjudication, detention, and disposition hearing in delinquency cases but could include, under certain circumstances, parallel proceedings in child in need of aid cases. This provision would not provide victims with a role in these proceedings other than that of spectators nor would it oblige victims to maintain the confidentiality of information presented in these hearings.

Children's proceedings are closed to the public in order to promote the free discussion of sensitive psychological, social, and historical information concerning the child and the child's family which have relevance to the decision of the court concerning the child. Once the commission of an offense has been established (and in the vast majority of instances this occurs through admission of the youth rather than through trial) the focus of children's proceedings is not on the offense but on the causes of the child's behavior and on actions necessary to meet the needs of the child and prevent further offenses. Such actions may include assignment of custody to the state and temporary detention or long term secure treatment. In child in need of aid proceedings these actions could include termination of the parent child relationship. Though information about the offenses(s) may be presented, it is within the context of the purpose of the hearing and is not the subject of the hearing.

Victim involvement in the process may occur in a variety of ways. Victims may be called to testify at any of the children's proceeding hearings, may provide information and opinion for presentation to the court in the predisposition report, and may be allowed to attend a hearing as a spectator with permission of the court.

HB 296 could reduce the effectiveness of these proceedings by compromising the confidentiality of information presented and inhibiting the presentation of full and complete information. The attendance of victims, particularly without obliging them to maintain confidentiality, may reduce the willingness of juveniles and their families to reveal sensitive information despite its bearing on the court's decision. However, the bill would not provide a role for victims in these proceedings other than as a spectator, nor would it provide a greater opportunity for input than is already available.

The Department believes that mechanisms are available to provide appropriate and effective methods for victim involvement in delinquency proceedings and to ensure the provision of information to victims about the outcome of these proceedings without statutory change. However, because the Department supports the intent of HB 296 the Department will reexamine its administrative procedures to ensure:

1. that probation officer contact with victims occurs in juvenile cases;
2. that victims are informed about the juvenile process and encouraged to participate appropriately;
3. that information provided by victims is considered in the decision-making processes in juvenile proceedings;
4. that appropriate contact of victims with the court is facilitated;
5. that victims are informed of the outcome of juvenile proceedings.

Department Position

Because of its potential for reducing the effectiveness of juvenile proceedings without providing meaningful additional benefit to victims, the Department does not support HB 296. However, the Department could support HB 296 if section 13 were removed from the bill; thereby maintaining the confidentiality of children's proceedings.

RECOMMENDED:

Yvonne M. Chase
Yvonne M. Chase, Director
Division of Family and
Youth Services

DATE:

1/19/88

APPROVED:

Myra M. Munson
Myra M. Munson, Commissioner
Department of Health and
Social Services

DATE:

Jan 19, 1988

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to victims of crime...."
Sponsor: Donley
Requestor: House HESS

Dept. of Health & Soc. Svcs.
Agency Affected: Div. of Family & Youth Svcs.
BRU: Youth Services
Components: Probation Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Because this bill would not require additional activities by the agency, it would have no fiscal impact.

Prepared by: Yvonne M. Chase, ACSW, Director *JMC* Phone: 465-3170
Division: Family and Youth Services Date: _____

Approved by Commissioner: Myra M. Munson *Myra M. Munson* Date: Jan 19, 1988
Agency: Department of Health and Social Services

Distribution (by preparer):

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

5-02422

Chenoweth
4/18/88

Original sponsors: Donley, Collins,
Martin, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 296 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to victims of crime, claims by
7 victims of crime arising from criminal conduct, and
8 service of process on prisoners; and amending Rules
9 32(d)(1) and 35 of the Alaska Rules of Criminal
10 Procedure."

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

12 * Section 1. AS 12.61 is amended by adding a new section to read:

13 Sec. 12.61.100. SHORT TITLE. This chapter may be cited as the
14 "Alaska Crime Victim's Rights Act."

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

16 Sec. 09.05.050. SERVICE OF PROCESS ON PRISONERS. (a) In a
17 civil action against a person committed to the custody of the commis-
18 sioner of corrections under state law, the summons may be served on
19 the commissioner of corrections. Service of the summons is made by
20 registered mail or delivery of a copy of it to the commissioner of
21 corrections. The commissioner shall keep a record of each process
22 served under this section and the day and hour of service. This
23 service is sufficient service on the prisoner.

24 (b) The commissioner of corrections shall deliver a notice of
25 the service and a copy of the summons to the prisoner within 10 days
26 after the date of service.

27 (c) The commissioner of corrections shall make an affidavit
28 showing that service of the summons on the defendant has been made as
29 provided in (b) of this section. The affiant shall attach to the

1 affidavit a copy of the summons and shall file the affidavit and
2 attached papers with the court having jurisdiction of the cause.

3 (d) The court in which the action is pending may order an exten-
4 sion of time necessary to give the defendant reasonable opportunity to
5 defend the action.

6 (e) The state may not be held liable in damages for the commis-
7 sioner's failure to comply with the requirements of this section.

8 * Sec. 3. AS 09.38.065(a) is amended to read:

9 (a) Notwithstanding other provisions of this chapter,

10 (1) a creditor may make a levy against exempt property of
11 any kind to enforce a claim for

12 (A) child support;

13 (B) unpaid earnings of up to one month's compensation
14 or the full-time equivalent of one month's compensation for
15 personal services of an employee; or

16 (C) state or local taxes; [AND]

17 (2) a creditor may make a levy against exempt property to
18 enforce a claim for

19 (A) the purchase price of the property or a loan made
20 for the express purpose of enabling an individual to purchase the
21 property and used for that purpose;

22 (B) labor or materials furnished to make, repair,
23 improve, preserve, store, or transport the property; and

24 (C) a special assessment imposed to defray costs of a
25 public improvement benefiting the property; and

26 (3) a creditor may make a levy against exempt property of
27 any kind to enforce a claim arising from criminal conduct of the
28 debtor resulting in a felony conviction except that the debtor is
29 entitled to an exemption in property

1 (A) not to exceed an aggregate value of \$1,500 chosen
2 by the individual from the following categories of property:

3 (i) household goods and wearing apparel rea-
4 sonably necessary for one household;

5 (ii) books and musical instruments, if reasonably
6 held for the personal use of the debtor or a dependent of
7 the debtor; and

8 (iii) family portraits and heirlooms of particular
9 sentimental value to the debtor; and

10 (B) not to exceed an aggregate value of \$1,400 of the
11 debtor's implements, professional books, and tools of the trade.

12 * Sec. 4. AS 12.47 is amended by adding a new section to read:

13 Sec. 12.47.095. NOTICE TO VICTIMS. (a) If an offender has been
14 committed to the custody of the commissioner of health and social
15 services under AS 12.47.090, the victim of the offense is entitled to
16 notice of a pending change in the status of the offender. The commis-
17 sioner of health and social services shall give notice as required by
18 this section if

19 (1) the offender has been continued in commitment following
20 expiration of the maximum term of imprisonment under AS 12.47.090(f)
21 and the commissioner petitions for release of the offender;

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

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

26 (4) the offender petitions for discharge under AS 12.47.-
27 092(f).

28 (b) If the victim has died, is a minor, or is incapacitated, the
29 commissioner of health and social services shall give notice, when

1 required by (a) of this section, to the victim's spouse, parent,
2 child, brother, sister, aunt, uncle, parent-in-law, brother-in-law,
3 sister-in-law, or legal guardian.

4 (c) The commissioner of health and social services is required
5 to give notice of a change in the status of an offender under this
6 section only if the victim or a person entitled to notice under (b) of
7 this section has requested notice of the change.

8 (d) A victim, or a person who is entitled to notice under (b) of
9 this section, shall maintain a current, valid mailing address on file
10 with the commissioner of health and social services. The address of
11 record is the address for all communication of notice required by this
12 section. Mail that is transmitted by the commissioner to the address
13 of record satisfies the legal requirements with respect to notice
14 under this section.

15 * Sec. 5. AS 12.55.022 is amended by adding new subsections to read:

16 (b) The victim has the right to submit or make a written or oral
17 statement to the probation officer for use by that officer in prepar-
18 ing a presentence investigation report concerning ~~the~~ ^{an} felony offender.
19 The probation officer shall inform the victim of that right.

20 (c) If the victim requests, the victim's written statement
21 submitted under (b) of this section must be included in the presen-
22 tence investigation report.

23 * Sec. 6. AS 12.55.088 is amended by adding new subsections to read:

24 (d) When an individual convicted of a crime against a person
25 files a motion to modify a sentence, the court shall, if feasible
26 given the time constraints and circumstances of the motion, send a
27 copy of the motion to the Department of Corrections sufficiently in
28 advance of any scheduled hearing so as to enable the department to
29 notify the victim of the crime of the right to comment in writing as

1 set out in (e) of this section. When an individual convicted of a
2 crime against a person files a motion to reduce a sentence, the court
3 shall send a copy of the motion to the Department of Corrections
4 sufficiently in advance of any scheduled hearing so as to enable the
5 department to notify the victim of the crime of the right to comment
6 in writing as set out in (e) of this section.

7 (e) Upon request of the victim, in the case of an individual
8 convicted of a crime against a person, the Department of Corrections
9 shall send to the victim a copy of a motion to modify or reduce a
10 sentence upon receipt from the court. The Department of Corrections
11 shall also notify the victim of the right to comment in writing to the
12 court on the motion to modify or reduce a sentence.

13 (f) The court shall provide copies of the victim's comments to
14 the person filing the motion to reduce or modify a sentence, or to the
15 person's attorney.

16 (g) The court shall consider the victim's comments when rele-
17 vant, and any response offered by the person filing the motion, in
18 deciding whether to reduce or modify a sentence.

19 (h) It is the responsibility of the victim to keep the Depart-
20 ment of Corrections apprised of the victim's current mailing address.
21 The address of the victim may not be disclosed to the person filing
22 the motion under (d) of this section or the person's attorney.

23 * Sec. 7. AS 12.55.185(11) is amended to read:

24 (11) "victim" means a natural person against whom the of-
25 fense has been perpetrated; [THE VICTIM OF THE OFFENSE OR,] if the
26 person [VICTIM] has died, is a minor, or is incapacitated, the term
27 includes the person's [A] spouse, parent, child, brother, sister,
28 aunt, uncle, parent-in-law, brother-in-law, sister-in-law, or legal
29 guardian [OF THE VICTIM].

1 * Sec. 8. AS 12.55.185 is amended by adding a new paragraph to read:

2 (12) "crime against a person" has the meaning given in
3 AS 33.30.901.

4 * Sec. 9. AS 12.61.010(a) is amended to read:

5 (a) Victims of crimes have the following rights:

6 (1) the right to be informed by the appropriate law en-
7 forcement agency or the prosecuting attorney of the dates of all
8 criminal proceedings involving the defendant relating to the case in
9 which the victim is involved;

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

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

17 (4) the right to be informed of the procedure to be fol-
18 lowed to apply for and receive any victim compensation under AS 18.67;

19 (5) at the request of the prosecution or a law enforcement
20 agency, the right to cooperate with the criminal justice process
21 without loss of pay and other employee benefits and without interfer-
22 ence in any form by the employer of the victim of crime; [AND]

23 (6) the right to obtain access to immediate medical assis-
24 tance and not to be detained for an unreasonable length of time by a
25 law enforcement agency before having medical assistance administered;
26 however, an employee of the law enforcement agency may, if necessary,
27 accompany the person to a medical facility to question the person
28 about the criminal incident if the questioning does not hinder the
29 administration of medical assistance;

1 (7) the right to make a written or oral statement for use
2 in preparation of the presentence report of a felony offender, and to
3 appear personally at the felony offender's sentencing hearing to
4 present a written or oral statement; and

5 (8) the right to obtain from the prosecuting attorney at
6 any time after the defendant's conviction a copy of the record of all
7 the defendant's convictions.

8 * Sec. 10. AS 12.61 is amended by adding new sections to read:

9 Sec. 12.61.015. DUTIES OF PROSECUTING ATTORNEY. (a) If the
10 victim of a crime that is a felony requests, the prosecuting attorney
11 shall

12 (1) confer with the victim about the victim's testimony
13 before the selection of the jury and the trial of the defendant;

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

16 (A) of the defendant's conviction and the crimes for
17 which the defendant was convicted;

18 (B) of the victim's right to make a written or oral
19 statement for use in preparation of the defendant's presentence
20 report, and to appear personally at the defendant's sentencing
21 hearing to present a written or oral statement;

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

24 (D) of the time and place of the sentencing proceed-
25 ing;

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

28 (b) The notice given under (a)(2) of this section shall inform
29 the victim that the victim's statement may contain any relevant

information including

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

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

5 (3) an opinion of the need for and extent of restitution
6 and whether the victim has applied for or received compensation for
7 loss or damage; and

8 (4) the victim's recommendation for an appropriate sen-
9 tence.

10 Sec. 12.61.017. INTERFERENCE BY VICTIM'S EMPLOYER. (a) An
11 employer may not discipline or threaten to discipline the victim of a
12 crime because the victim is subpoenaed or requested by the prosecuting
13 attorney to attend a court proceeding for the purpose of giving testi-
14 mony.

15 (b) In (a) of this section, "discipline" means action affecting
16 the employment status of and wages and benefits payable to the victim,
17 including

18 (1) the victim's demotion or suspension;

19 (2) the victim's dismissal from employment; or

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

23 (c) A person who violates (a) of this section is guilty of a
24 class B misdemeanor.

25 * Sec. 11. AS 33.16.120(c) is amended to read:

26 (c) The victim has a right to comment, in writing or in person,
27 on the proposed action of the parole board. Copies of any written
28 [THE] comments shall be provided to the prisoner and the prisoner's
29

1 attorney before action by the board. Notwithstanding AS 33.16.-
2 900(10), if the victim has died, is a minor, or is incapacitated, the
3 victim's spouse, parent, child, brother, sister, aunt, uncle, parent-
4 in-law, brother-in-law, sister-in-law, or legal guardian may not
5 exercise the right provided under this subsection.

6 * Sec. 12. AS 33.16.120(e) is amended to read:

7 (e) Upon request of the victim, [IF THE BOARD DECIDES TO RELEASE
8 ON PAROLE A PRISONER WHO IS CONVICTED OF A CRIME AGAINST A PERSON,]
9 the board shall make every reasonable effort to notify the victim of
10 its decision to grant or deny discretionary parole as soon as prac-
11 ticable [BEFORE THE PRISONER'S RELEASE DATE]. Notification under this
12 subsection must include the expected date of the prisoner's release,
13 the geographic area in which the prisoner is required to reside, and
14 other pertinent information concerning the prisoner's conditions of
15 parole that may affect the victim.

16 * Sec. 13. AS 33.16.180 is amended by adding new subsections to read:

17 (b) The commissioner shall provide to the victim of a crime the
18 address of a prisoner who has been released on discretionary or manda-
19 tory parole if

20 (1) the crime victim requests the residence address in
21 writing; and

22 (2) the commissioner is satisfied that the crime victim has
23 filed a civil action and that having the residence address is neces-
24 sary in order for the victim to serve process in that civil action on
25 the parolee.

26 (c) When required by (b) of this section, the commissioner shall
27 furnish the address at which the parolee is directed to reside under
28 AS 33.16.150(a)(6) or, if that place of residence has changed, the
29 change in the place of the parolee's residence.

* Sec. 14. AS 33.20.080 is amended to read:

Sec. 33.20.080. BOARD OF PAROLE TO INVESTIGATE APPLICATIONS FOR EXECUTIVE CLEMENCY. The governor may refer applications for executive clemency to the board of parole. The board shall investigate each case and submit to the governor a report of the investigation, together with all other information the board has regarding the applicant, including comments submitted under (b) of this section.

* Sec. 15. AS 33.20.080 is amended by adding new subsections to read:

(b) Upon request of the victim, in the case of an individual convicted of a crime against a person, the board shall send notice of an application for executive clemency from the individual to the victim. The victim may comment in writing to the board on the application for executive clemency.

(c) It is the responsibility of the victim to keep the board apprised of the victim's current mailing address.

(d) In this section, "crime against a person" has the meaning given in AS 33.30.901.

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

Sec. 33.30.013. COMMISSIONER TO NOTIFY VICTIMS. (a) The commissioner shall notify the victim of an offense if the offender

- (1) escapes from custody;
- (2) is released to the community on a furlough;
- (3) is released to a correctional restitution center; or
- (4) is released on an early release program.

(b) If the victim has died, is a minor, or is incapacitated, the commissioner shall give notice, when required by (a) of this section, to the victim's spouse, parent, child, brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, or legal guardian.

(c) The commissioner is required to give notice of a change in

1 the status of an offender under this section only if the victim or a
2 person entitled to notice under (b) of this section has requested
3 notice of the change.

4 (d) A victim, or a person who is entitled to notice under (b) of
5 this section, shall maintain a current, valid mailing address on file
6 with the commissioner. The address of record is the address for all
7 communication of notice from the department required by this section.
8 Mail that is transmitted by the commissioner to the address of record
9 satisfies the legal requirements with respect to notice under this
10 section.

11 * Sec. 17. AS 44.41.020 is amended by adding a new subsection to read:

12 (c) To ensure that victims of crimes receive information about
13 the entitlements and services that are provided to victims of crimes
14 by law, the Department of Public Safety shall establish and maintain a
15 victim assistance program. The victim assistance program shall con-
16 sist of a victim assistance supervisor, who is an employee of the
17 department, and volunteers. The victim assistance supervisor shall

18 (1) manage the victim assistance program;

19 (2) recruit volunteers and train them to provide informa-
20 tion and assistance to victims of crime; and

21 (3) provide direction to and make periodic evaluations of
22 the volunteers.

23 * Sec. 18. AS 47.10 is amended by adding a new section to read:

24 Sec. 47.10.072. VICTIM'S ACCESS TO HEARING. The victim of a
25 crime committed by a minor who is scheduled for a hearing under
26 AS 47.10.070 may request the court to attend the hearing. If the
27 victim requests, the Department of Health and Social Services shall
28 assist the victim in preparing a written submission to the court
29 requesting access to the hearing. The Department of Health and Social

Services shall make reasonable efforts to inform victims of the availability of this assistance. In this section, "victim" has the meaning given in AS 12.55.185(11).

* Sec. 19. Rule 32(d)(1), Alaska Rules of Criminal Procedure, is amended to read:

(1) WHEN MADE. The probation service shall make presentence investigation and report before the court imposes sentence or grants probation. The presentence investigation and report shall be completed and made available to the court and, if the crime for which the person is to be sentenced is a felony, to the attorneys for the parties before the time of the aggravator and mitigator hearing and sentencing. The report shall not be submitted to the court or its contents disclosed to any one except counsel unless the defendant has tendered a plea of guilty or nolo contendere or has been found guilty. The court may utilize the report in determining if a bargained sentence recommendation will be followed pursuant to Rule 11. In the event the attorneys for the parties request the preparation of a presentence report to aid them in plea bargaining the court may order such report to be made prior to the time stated in this rule.

* Sec. 20. Rule 35, Alaska Rules of Criminal Procedure, is amended by adding new subsections to read:

(c) When an individual convicted of a crime against a person files a motion to modify a sentence under this rule, the court shall, if feasible given the time constraints and circumstances of the motion, send a copy of the motion to the Department of Corrections sufficiently in advance of any scheduled hearing so as to enable the department to notify the victim of the crime of the right to comment in writing, as required by AS 12.55.088(e) and set out in (d) of this rule. When an individual convicted of a crime against a person files

1 a motion to reduce a sentence under this rule, the court shall send a
2 copy of the motion to the Department of Corrections sufficiently in
3 advance of any scheduled hearing so as to enable the department to
4 notify the victim of the crime of the right to comment in writing, as
5 required by AS 12.55.080(e) and set out in (d) of this rule.

6 (d) Upon request of the victim, in the case of an individual
7 convicted of a crime against a person, the Department of Corrections
8 shall send to the victim a copy of a motion to modify or reduce a
9 sentence upon receipt from the court. The Department of Corrections
10 shall also notify the victim of the right to comment in writing to the
11 court on the motion to modify or reduce a sentence.

12 (e) The court shall provide copies of the victim's comments to
13 the person filing the motion to reduce or modify a sentence, or to the
14 person's attorney.

15 (f) The court shall consider the victim's comments when rele-
16 vant, and any response offered by the person filing the motion, in
17 deciding whether to reduce or modify a sentence.

18 (g) It is the responsibility of the victim to keep the Depart-
19 ment of Corrections apprised of the victim's current mailing address.
20 The address of the victim may not be disclosed to the person filing
21 the motion or the person's attorney.

22 (h) In this rule, "crime against a person" means

23 (1) a crime as set out in AS 11.41, except custodial inter-
24 ference under AS 11.41.320 and 11.41.330; or

25 (2) a crime against a person in this or another jurisdic-
26 tion having elements substantially identical to those of a crime as
27 set out in AS 11.41, except custodial interference under AS 11.41.320
28 and 11.41.330.

29 * Sec. 21. APPLICABILITY. The provisions of this Act prescribing the

1 rights of victims of crimes in the course of criminal, civil, and adminis-
2 trative proceedings apply to proceedings against defendants initiated on or
3 after the effective date of this Act.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

FISCAL NOTE

REQUEST:

Revision Date: March 29, 1988
Title: "An Act relating to victims of crimes..."
Sponsor: Representative Donley
Requestor: _____

Agency Affected: Department of Law
BRU: Prosecution
Components: First, Second, Third and Fourth Judicial Districts

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		231.9	238.9	246.1	253.5	261.1
TRAVEL		-0-				
CONTRACTUAL		24.4	25.1	25.9	26.7	27.5
SUPPLIES		10.8	11.1	11.4	11.7	12.1
EQUIPMENT		51.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	318.1	275.1	283.4	291.9	300.7

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	318.1	275.1	283.4	291.9	300.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	4	4	4	4	4
PART-TIME		4	4	4	4	4
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues
Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 29, 1988
Richard I. Pegues
Approved by Commissioner: Grace Berg Schable, Atty. Gen. Date: March 29, 1988
Agency: Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 296 (Jud.)

The proposed sponsor substitute for HB 296 (Jud.), dated March 18, 1988, amends existing law to grant new rights to the victims of crimes. These expanded rights will have a considerable impact on the Department of Law, in three important respects.

First, Section 7 provides that victims of crimes have the right to be informed by the appropriate law enforcement agency or the prosecuting attorney of the dates of "all criminal proceedings" involving the defendant relating to the case in which the victim is involved. This section enumerates various rights to be granted to victims of crimes, including the right to be informed of all criminal proceedings. But, unlike Section 8 which covers the trial and sentencing of defendants, Section 7 does not explicitly assign affirmative duties to prosecuting attorneys to provide this information. Nonetheless, the prosecuting attorney would have the best access to this information, and it is likely that victims would expect that prosecuting attorneys provide this information.

There are a variety of proceedings covered by the Rules of Criminal Procedure that would be subject to Section 7. These proceedings include arraignment, bail and omnibus hearings, evidentiary hearings, arguments on pretrial motions, and pretrial conferences. Other proceedings subject to Section 7 include post trial hearings to hear arguments on motions to set aside verdicts, and proceedings to hear arguments on aggravation and mitigation factors to be used in sentencing. The scheduled dates for most of these hearings are often postponed and rescheduled on short notice. Current AS 12.61.010 requires that a victim has the right to be informed of the dates of trial and sentencing only.

Second, Section 8 of the bill requires that, upon the request of the victim of a crime, the prosecuting attorney shall: (1) confer with the victim about the victim's testimony before the selection of the jury and the trial of the defendant; (2) give prompt actual notice to the victim of the defendant's conviction and the crimes for which the defendant was convicted, including advising the victim of his or her right to make a written or oral statement for use in preparation of the defendant's presentence report, and including advising the victim of his or her right to appear personally at the defendant's sentencing hearing to present a written or oral statement, and advising of the address and telephone number of the office that will prepare the presentence report, and advising of the time and place of the sentencing proceeding.

Third, Section 8 would also require that the prosecuting attorney notify the victim in writing of the final disposition of the case within 30 days after final disposition of the case. It appears that notification of final disposition would be required at both the trial and appellate levels. Similarly, Section 7 grants the right to

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 296 (Jud.)

victims to obtain from the prosecuting attorney at any time after the defendant's conviction a copy of the record of all the defendant's convictions.

Currently, 18,000 new criminal matters are referred to the department's criminal division each year. It is estimated that of this number about 2,000 felony cases and as many as 5,000 misdemeanor cases prosecuted involve crimes having a victim. Many felony cases have multiple victims. Moreover, in cases where the victim has died, is a minor, or is incapacitated, the term victim includes a spouse, parent, child, brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, or legal guardian of the victim. Consequently, this bill has the potential for generating a substantial body of new work at all of the department's prosecution offices. Most of this required work would be handled by paralegals and legal secretaries, except for the requirement for prosecutors to confer with victims before the selection of the jury and the trial of the defendant.

The requirements of the bill, for literally thousands of notices, and numerous subsequent requests for assistance and further information, will place an enormous burden on a reduced prosecution support staff that simply cannot be borne without additional staff resources. This is particularly true in smaller offices where, in FY 1989, clerical support will be very thin. And it is also an important consideration in the state's two largest prosecution offices, because of their overwhelming caseloads.

It will therefore be necessary to add part-time clerical assistance at Ketchikan, Kotzebue, Sitka, and Kodiak. A full-time paralegal and a full-time legal secretary would be added in Anchorage, and a full-time paralegal and a full-time legal secretary would be added in Fairbanks, because of the large number of cases at these locations, including major felonies with multiple victims. All of these locations suffered support staff reductions in FY 1988.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 296 (Jud.)

Fiscal Summary - SSHB 296 (Jud.)

	<u>Pers. Svcs.</u>	<u>Contractual</u>	<u>Supplies</u>	<u>Equip.</u>	<u>Total</u>
Anchorage Paralegal Asst. II PFT	43.9	4.1	1.8	1.5	51.3
Anchorage Legal Secretary I PFT	32.1	4.1	1.8	8.0	46.0
Fairbanks Paralegal Asst. II PFT	49.9	4.1	1.8	1.5	57.3
Fairbanks Legal Secretary I PFT	35.6	4.1	1.8	8.0	49.5
Kodiak Legal Secretary I PPT	17.3	2.0	0.9	8.0	28.2
Ketchikan Legal Secretary I PPT	16.0	2.0	0.9	8.0	26.9
Kotzebue Legal Secretary I PPT	20.6	2.0	0.9	8.0	31.5
Sitka Legal Secretary I PPT	16.5	2.0	0.9	8.0	27.4
Total	231.9	24.4	10.8	51.0	318.1

Costs beyond FY 89 include a 3 percent annual inflation factor, less one-time costs.

Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU	
Time Status PFT	Staff Months 12	Location Fairbanks		Election District 19/20A/21	
Type of Expenditure		Justification			
Amount		<p>This full-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Paralegal Assistant class is recommended because of the major felony cases handled by the position.</p>			
1	2				3
Salary	37,356				
Benefits	12,580				
Premium Pay					
Other					
Total Personal Services					49,936
Travel					-
Contractual					4,100
Commodities					1,800
Equipment		1,500			
Other					
Total Cost		57,336			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	57,336			
GF Program Receipts	1005				
Other					

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Fourth Judicial District

Page 1 of 8
 Revised Date 5/29/88

FY 89

Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/13
Justification				
This full-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.				
Allocation to the Paralegal Assistant class is recommended because of the major felony cases handled by the position.				
Type of Expenditure		Amount		
1	2	3		
Salary	32,424			
Benefits	11,487			
Premium Pay				
Other				
Total Personal Services		43,911		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		1,500		
Other				
Total Cost		51,311		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		51,311		
GF Program Receipts 1005				
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 2 of 8
 Revised Date 3/29/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/'3
Justification				
<p>This full-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.</p>				
Type of Expenditure		Amount		
1	2	3		
Salary	22,716			
Benefits	9,334			
Premium Pay				
Other				
Total Personal Services		32,050		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		8,000		
Other				
Total Cost		45,950		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	45,950		
GF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 3 of 8
 Revised Date 3/29/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Fairbanks		Election District 19/20A/21
Type of Expenditure		Justification		
		This full-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.		
Amount		Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.		
1	2	3		
Salary	25,620			
Benefits	9,978			
Premium Pay				
Other				
Total Personal Services		35,598		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		8,000		
Other				
Total Cost		49,498		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	49,498		
GF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Fourth Judicial District

Page 4 of 8
 Revised Date 3/29/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PPT	Staff Months 12	Location Ketchikan		Election District 1
Justification				
This part-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.				
Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.				
Type of Expenditure		Amount		
1	2	3		
Salary	11,358			
Benefits	4,667			
Premium Pay				
Other				
Total Personal Services		16,025		
Travel		-0-		
Contractual		2,000		
Commodities		900		
Equipment		8,000		
Other				
Total Cost		26,925		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	26,925		
GF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component First Judicial District

Page 5 of 8
 Revised Date 3/29/86

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Org. Unit GGU
Time Status PPT	Staff Months 12	Location Kodiak		Election District 27
Justification				
<p>This part-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.</p>				
Type of Expenditure		Amount		
1	2	3		
Salary	12,432			
Benefits	4,905			
Premium Pay				
Other				
Total Personal Services		17,337		
Travel		--0--		
Contractual		2,000		
Commodities		900		
Equipment		8,000		
Other				
Total Cost		28,237		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	28,237		
GF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 6 of 8
 Revised Date 3/29/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU	
Time Status PPT	Staff Months 12	Location Kotzebue		Election District 22	
Type of Expenditure		Justification			
Amount		<p>This part-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.</p>			
1	2				3
Salary	15,108				
Benefits	5,498				
Premium Pay					
Other					
Total Personal Services					20,606
Travel					-0-
Contractual					2,000
Commodities					900
Equipment		8,000			
Other					
Total Cost		31,506			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	31,506			
GF Program Receipts	1005				
Other					

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Second Judicial District

Page 7 of 8
 Revised Date 3/29/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU	
Time Status PPT	Staff Months 12	Location Sitka		Election District 3	
Type of Expenditure		Justification			
Amount		<p>This part-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.</p>			
1	2				3
Salary	11,730				
Benefits	4,750				
Premium Pay					
Other					
Total Personal Services					16,480
Travel					-0-
Contractual					2,000
Commodities					900
Equipment		8,000			
Other					
Total Cost		27,380			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	27,380			
GF Program Receipts	1005				
Other					

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component First Judicial District

Page 8 of 8
 Revised Date 3/29/88

FY 89

FISCAL NOTE

REQUEST: _____

Revision Date: March 29, 1988
Title: "An Act relating to victims of crimes..."
Sponsor: Representative Donley
Requestor: _____

Agency Affected: Department of Law
BRU: Prosecution
Components: First, Second, Third and Fourth Judicial Districts

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		231.9	238.9	246.1	253.5	261.1
TRAVEL		-0-				
CONTRACTUAL		24.4	25.1	25.9	26.7	27.5
SUPPLIES		10.8	11.1	11.4	11.7	12.1
EQUIPMENT		51.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	318.1	275.1	283.4	291.9	300.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	318.1	275.1	283.4	291.9	300.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	4	4	4	4	4
PART-TIME		4	4	4	4	4
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 29, 1988
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: March 29, 1988
Agency: Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 296 (Jud.)

The proposed sponsor substitute for HB 296 (Jud.), dated March 18, 1988, amends existing law to grant new rights to the victims of crimes. These expanded rights will have a considerable impact on the Department of Law, in three important respects.

First, Section 7 provides that victims of crimes have the right to be informed by the appropriate law enforcement agency or the prosecuting attorney of the dates of "all criminal proceedings" involving the defendant relating to the case in which the victim is involved. This section enumerates various rights to be granted to victims of crimes, including the right to be informed of all criminal proceedings. But, unlike Section 8 which covers the trial and sentencing of defendants, Section 7 does not explicitly assign affirmative duties to prosecuting attorneys to provide this information. Nonetheless, the prosecuting attorney would have the best access to this information, and it is likely that victims would expect that prosecuting attorneys provide this information.

There are a variety of proceedings covered by the Rules of Criminal Procedure that would be subject to Section 7. These proceedings include arraignment, bail and omnibus hearings, evidentiary hearings, arguments on pretrial motions, and pretrial conferences. Other proceedings subject to Section 7 include post trial hearings to hear arguments on motions to set aside verdicts, and proceedings to hear arguments on aggravation and mitigation factors to be used in sentencing. The scheduled dates for most of these hearings are often postponed and rescheduled on short notice. Current AS 12.61.010 requires that a victim has the right to be informed of the dates of trial and sentencing only.

Second, Section 8 of the bill requires that, upon the request of the victim of a crime, the prosecuting attorney shall: (1) confer with the victim about the victim's testimony before the selection of the jury and the trial of the defendant; (2) give prompt actual notice to the victim of the defendant's conviction and the crimes for which the defendant was convicted, including advising the victim of his or her right to make a written or oral statement for use in preparation of the defendant's presentence report, and including advising the victim of his or her right to appear personally at the defendant's sentencing hearing to present a written or oral statement, and advising of the address and telephone number of the office that will prepare the presentence report, and advising of the time and place of the sentencing proceeding.

Third, Section 8 would also require that the prosecuting attorney notify the victim in writing of the final disposition of the case within 30 days after final disposition of the case. It appears that notification of final disposition would be required at both the trial and appellate levels. Similarly, Section 7 grants the right to

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 296 (Jud.)

victims to obtain from the prosecuting attorney at any time after the defendant's conviction a copy of the record of all the defendant's convictions.

Currently, 18,000 new criminal matters are referred to the department's criminal division each year. It is estimated that of this number about 2,000 felony cases and as many as 5,000 misdemeanor cases prosecuted involve crimes having a victim. Many felony cases have multiple victims. Moreover, in cases where the victim has died, is a minor, or is incapacitated, the term victim includes a spouse, parent, child, brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, or legal guardian of the victim. Consequently, this bill has the potential for generating a substantial body of new work at all of the department's prosecution offices. Most of this required work would be handled by paralegals and legal secretaries, except for the requirement for prosecutors to confer with victims before the selection of the jury and the trial of the defendant.

The requirements of the bill, for literally thousands of notices, and numerous subsequent requests for assistance and further information, will place an enormous burden on a reduced prosecution support staff that simply cannot be borne without additional staff resources. This is particularly true in smaller offices where, in FY 1989, clerical support will be very thin. And it is also an important consideration in the state's two largest prosecution offices, because of their overwhelming caseloads.

It will therefore be necessary to add part-time clerical assistance at Ketchikan, Kotzebue, Sitka, and Kodiak. A full-time paralegal and a full-time legal secretary would be added in Anchorage, and a full-time paralegal and a full-time legal secretary would be added in Fairbanks, because of the large number of cases at these locations, including major felonies with multiple victims. All of these locations suffered support staff reductions in FY 1988.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 296 (Jud.)

Fiscal Summary - SSHB 296 (Jud.)

	<u>Pers. Svcs.</u>	<u>Contractual</u>	<u>Supplies</u>	<u>Equip.</u>	<u>Total</u>
Anchorage Paralegal Asst. II PFT	43.9	4.1	1.8	1.5	51.3
Anchorage Legal Secretary I PFT	32.1	4.1	1.8	8.0	46.0
Fairbanks Paralegal Asst. II PFT	49.9	4.1	1.8	1.5	57.3
Fairbanks Legal Secretary I PFT	35.6	4.1	1.8	8.0	49.5
Kodiak Legal Secretary I PPT	17.3	2.0	0.9	8.0	28.2
Ketchikan Legal Secretary I PPT	16.0	2.0	0.9	8.0	26.9
Kotzebue Legal Secretary I PPT	20.6	2.0	0.9	8.0	31.5
Sitka Legal Secretary I PPT	16.5	2.0	0.9	8.0	27.4
Total	<u>231.9</u>	<u>24.4</u>	<u>10.8</u>	<u>51.0</u>	<u>318.1</u>

Costs beyond FY 89 include a 3 percent annual inflation factor, less one-time costs.

Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Fairbanks		Election District 19/20A/21
Type of Expenditure		Justification		
1	2	3		
Salary	37,356	<p>This full-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Paralegal Assistant class is recommended because of the major felony cases handled by the position.</p>		
Benefits	12,580			
Premium Pay				
Other				
Total Personal Services	49,936			
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		1,500		
Other				
Total Cost		57,336		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	57,336		
GF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Fourth Judicial District

Page 1 of 8
 Revised Date 3/29/88

FY 89

Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/13
Type of Expenditure		Justification		
		This full-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.		
Amount		Allocation to the Paralegal Assistant class is recommended because of the major felony cases handled by the position.		
1	2	3		
Salary	32,424			
Benefits	11,487			
Premium Pay				
Other				
Total Personal Services		43,911		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		1,500		
Other				
Total Cost		51,311		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	51,311		
GF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

FY 89

Page 2 of 8
 Revised Date 3/29/88

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/13
Type of Expenditure		Justification		
1	2	3		
Salary	22,716	This full-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.		
Benefits	9,334			
Premium Pay				
Other				
Total Personal Services		32,050	Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.	
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		8,000		
Other				
Total Cost		45,950		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	45,950		
GF Program Receipts	1005			
Other				

Request For
New Position

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

FY 89

Page 3 of 8
 Revised Date 3/29/88

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Org. Unit GGU
Time Status PFT	Staff Months 12	Location Fairbanks		Election District 19/20A/21
Justification				
Type of Expenditure			Amount	
1	2	3		
Salary	25,620			
Benefits	9,978			
Premium Pay				
Other				
Total Personal Services		35,598		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		8,000		
Other				
Total Cost		49,498		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	49,498		
GF Program Receipts	1005			
Other				
<p>This full-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.</p>				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Fourth Judicial District

Page 4 of 8
 Revised Date 3/29/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PPT	Staff Months 12	Location Ketchikan		Election District 1
Justification				
Type of Expenditure			Amount	
1.	2	3		
Salary	11,358			
Benefits	4,667			
Premium Pay				
Other				
Total Personal Services		16,025		
Travel		-0-		
Contractual		2,000		
Commodities		900		
Equipment		8,000		
Other				
Total Cost		26,925		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	26,925		
GF Program Receipts	1005			
Other				

This part-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.

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

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component First Judicial District

Page 5 of 8
 Revised Date 3/29/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PPT	Staff Months 12	Location Kodiak		Election District 27
Justification				
This part-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.				
Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.				
Type of Expenditure		Amount		
1	2	3		
Salary	12,432			
Benefits	4,905			
Premium Pay				
Other				
Total Personal Services		17,337		
Travel		-0-		
Contractual		2,000		
Commodities		900		
Equipment		8,000		
Other				
Total Cost		28,237		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	28,237		
GF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Department of Law
 DRU Prosecution
 Component Third Judicial District

Page 6 of 8
 Revised Date 3/29/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PPT	Staff Months 12	Location Kotzebue	Election District 22	
Type of Expenditure		Justification		
		This part-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.		
		Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.		
Amount				
1	2	3		
Salary	15,108			
Benefits	5,498			
Premium Pay				
Other				
Total Personal Services		20,606		
Travel		-0-		
Contractual		2,000		
Commodities		900		
Equipment		8,000		
Other				
Total Cost		31,506		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	31,506		
GF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Second Judicial District

Page 7 of 8
 Revised Date 3/29/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PPT	Staff Months 12	Location Sitka		Election District 3
Type of Expenditure		Justification		
	Amount	<p>This part-time position is needed to provide for the victim notification and liaison requirements of SSHB 296. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.</p>		
Salary	11,730			
Benefits	4,750			
Premium Pay				
Other				
Total Personal Services	16,480			
Travel	-0-			
Contractual	2,000			
Commodities	900			
Equipment	8,000			
Other				
Total Cost	27,380			
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004	27,380			
GF Program Receipts 1005				
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component First Judicial District

Page 8 of 8
 Revised Date 3/29/88

FY 89

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: HB 296
Publish Date:

REQUEST: _____

Revision Date: 1-6-88
Title: An act relating to victims
of crimes...
Sponsor: Donley, Collins, Martin...
Requestor: Rep. Donley

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

#						
EXPENDITURES/REVENUES: (Thousands of Dollars)						
	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
Personal Services	40.8	40.8	40.8	40.8	40.8
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	40.8	40.8	40.8	40.8	40.8
CAPITAL
REVENUE

FUNDING: (Thousands of Dollars)						
General Funds	0.0	40.8	40.8	40.8	40.8	40.8
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	40.8	40.8	40.8	40.8	40.8

POSITIONS:						
Full-time	. . . .	1.0	1.0	1.0	1.0	1.0
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: *Jan Strandberg* General Counsel Phone: 264-8228
Division: Alaska Court System Date: 1-6-88
Approved by: *Stephanie Cole, for* Arthur H. Snowden, II, Administrative Director Date: 1-6-88
Agency: ALASKA COURT SYSTEM

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

FISCAL ANALYSIS: HB 296

This bill will permit victims to appear and participate in sentencing proceedings. Based upon information provided by the deputy presiding judge for the Anchorage trial court criminal division, one-fifth of the time of a judge assigned to a criminal caseload is occupied by sentencing. It is anticipated that victim participation will extend the length of the proceeding. Given the volume of criminal cases in courts statewide, it is estimated that the equivalent of one additional judge will be required to handle the additional hearing time. Services of a retired judge appointed to serve pro tem are the least costly way of providing additional judicial resources.