

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8346 SENATE JUDICIARY

HJR

36

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Cs
BILL NO. HJR 36 (HE.S)

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: A Resolution urging the federal Department of Health and Human Services to repeal the "100-hour rule" BRU: Assistance Payments
 Component: AFDC
 Sponsor: Brice, et al
 Requestor: _____ COMPONENT SERIAL NO. 0220

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING:

(Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year (FY94) impact: NONE

ANALYSIS: (Attach a separate page if necessary)

HJR 36 calls for repeal of the federal AFDC "100-hour rule" for AFDC Unemployed Parent families. This resolution has no direct fiscal impact on AFDC program costs. Neither the effective date of any change in federal policy that might result from this resolution nor the impact of an alternate federal definition of unemployment can be predicted.

Prepared by: Jan L. Hansen, Director
 Division: Division of Public Assistance
 Approved by Commissioner: Margaret R. Lowe
 Agency: Department of Health & Social Services

Phone: 465-2680
 Date: 1/18/94
 Date: 1-18-94

PREPARER TO PROVIDE ALL
For further distri

OR'S LEGISLATIVE OFFICE
Legislative Office



Representative Tom Brice

ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
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907-456-7423
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State Capitol
Juneau, AK 99801-1182
907-465-3466

REPRESENTATIVE TOM BRICE Sponsor Statement for HJR 36

The federal Department of Health and Human Services has developed and implemented regulations relating to the Aid to Families with Dependent Children Unemployed Parent Program that set out the number of hours a grant recipient can work and maintain eligibility for the program. That threshold is set at 100 hours per month. If a job that exceeds 100 hours per month is accepted by the unemployed parent, that family becomes ineligible for AFDC and Medicaid even if employment earnings are less than the amount of the AFDC grant.

This rule in effect encourages dependency on the AFDC program and discourages people who want to work from accepting full time employment. Many low income families do not accept jobs because those jobs will not support the family or have no health benefits. Therefore, many families stay on the AFDC program in order to meet basic living needs. In addition to the issue of fostering dependency, it means that the state is incurring increased costs to the program.

Repealing the 100 hour rule will allow those families to accept employment that exceeds 100 hours per month that may partially support them and reduce the amount of aid they receive. This will promote self sufficiency and save state dollars at the same time.

Additionally, President Clinton's federal welfare reform working group has been meeting to formulate recommendations that will be forwarded to the administration for inclusion in a welfare reform package later this year. Preliminary indications suggest that the repeal of the 100 hour rule will be one of those recommendations. It is important that we add our voice of support for this element of welfare reform.

In order to seriously consider responsible welfare reform, we must encourage the development of laws and regulations that help rather than hinder families to become more self sufficient.



POSITION PAPER
STATE OF ALASKA & DEPARTMENT OF HEALTH & SOCIAL SERVICES

POSITION PAPER

HOUSE JOINT RESOLUTION No. 36

A Resolution urging the federal Department of Health and Human Services to repeal the "100-hour rule" relating to employment of certain persons receiving AFDC and to replace it with a regulation that will serve as an incentive for AFDC recipients to accept part-time employment.

Discussion:

HJR 36 calls for repeal of the AFDC "100-hour rule" for AFDC Unemployed Parent families. The Department of Health and Social Services supports this resolution. We have found that the 100-hour rule, rather than promoting self-sufficiency, contributes to AFDC dependency for all of the reasons stated in HJR 36. Both the Department and Governor Hickel have recently issued position papers calling for repeal of the 100-hour rule along with enactment of other federal welfare reform measures.

Federal statute requires the Department of Health and Human Services to establish a regulatory definition of unemployment for purposes of determining eligibility for two-parent AFDC families where the parents do not have enough income to support themselves and their children. The 100-hour rule provides that AFDC eligibility does not exist for such a family if the parent with the most substantial earnings history is working 100 hours or more per month, regardless of the amount of earnings.

This regulation, while designed to draw a clear line of distinction between the unemployed and the underemployed, actually has the result of discouraging AFDC parents from accepting full-time, low-paid jobs that, while they would not produce enough earnings to support the family at the AFDC standard of need, would reduce the amount of their AFDC benefits and could eventually lead to self-sufficiency. Such jobs are often the only jobs available to AFDC parents, and we want to encourage them to accept any employment that is available to them. The 100-hour rule is inimical to the Department's goal of encouraging work and supporting the self-sufficiency of welfare recipients.

Position Paper
HJR 36
Page 2

Proposed Amendments:

Page 2, lines 9 and 10 of the bill request that the regulation be revised to "encourage AFDC recipients to accept part-time employment." That is essentially what the existing rule already does, and the crux of the problem. We propose that this language be changed to "encourage AFDC recipients to accept employment regardless of the number of hours worked, remaining eligible for AFDC benefits so long as the amount of their income does not exceed the state's standard of need."

To be consistent with this change in text, it is also necessary to strike the word "part-time" from the bill title.

Recommendation:

The Department of Health and Social Services supports HJR 36 and recommends that it be adopted with the proposed amendments.

Jan L. Hansen

Jan L. Hansen, Director
Division of Public Assistance
Department of Health and
Social Services

4/2/93

Date

Theodore A. Mala, MD, MPH
Commissioner
Department of Health and
Social Services

4/2/93

Date

Figure 1 shows the average caseload growth of AFDC in Alaska from 1987 through 1992. Table 3 shows that AFDC-UP makes up about the same percent of AFDC costs for Alaska, Washington, Oregon and California.

Are people coming to Alaska to collect welfare?

Two studies say no.

Two recent surveys have been conducted by the Alaska Department of Health and Social Services/Division of Public Assistance. The first is an anonymous questionnaire given to new applicants for AFDC to find out if AFDC applicants are coming to Alaska to collect benefits.

This survey shows that being with family, previous residence in Alaska and work are the primary reasons new applicants give for coming to Alaska. Figure 2 gives the results of the field survey.

The second confidential questionnaire was given to over 1,000 clients through the AFDC Self-Sufficiency Project in July, 1992. The primary reasons given for coming to Alaska were that recipients used to live here, that their families live in Alaska, that the quality of life in Alaska is better than in other places, and that work is abundant in the state. Figure 3 shows the results for both rural and urban clients.

Does Alaska pay too much to welfare clients?

That depends on who you ask. Ask a typical client, mother with two children, who is trying to pay rent and expenses on \$950 a month, and surely the answer will be no. Ask a government employee whose job provides the security of a reasonable wage, excellent medical coverage, and a pension plan. The answer may well be yes.

In the reality which continues to emerge from the Self-Sufficiency Project study is not that welfare pays too much. Rather, it is that low paid jobs simply do not pay enough for a family to live on. And this situation is exacerbated by the lack of medical coverage.

Alaska pays about 79% of the federally determined poverty level to a typical AFDC family of three. Approximately 50% of the funds for grants to recipients and for administration of the

program is paid by the federal government. About 60% of these recipients also receive food stamp assistance, and about a third of AFDC families receive housing assistance.

Figure 4 compares the federal poverty level for Alaska with AFDC grants in the state in 1993. Figure 5 compares maximum AFDC benefits for a family of three in the ten states which pay the highest AFDC grants. Table 4 gives the American Chamber of Commerce Research Association (ACCRA) Cost of Living Index.

Does welfare discourage work?

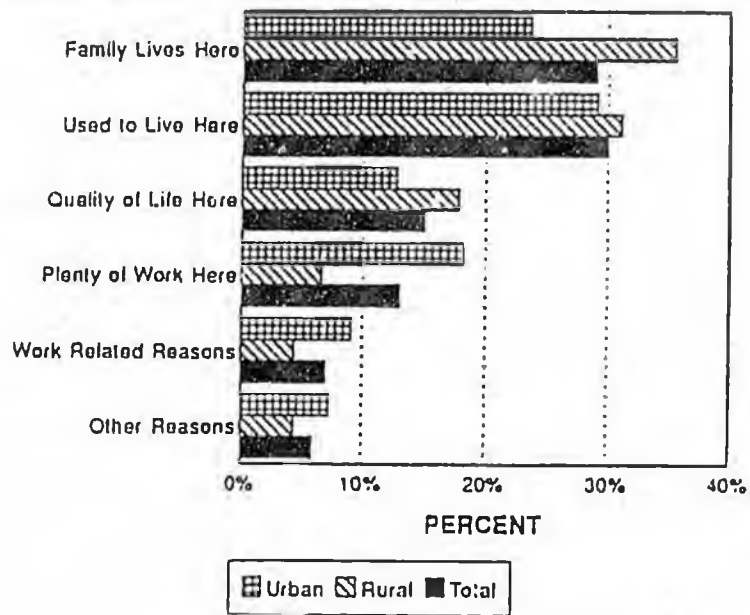
In some ways it does.

Some federal regulations are an albatross around the state's neck because they discourage work. These regulations are:

- ✓ The 100-hour rule. This rule limits an unemployed parent in a two parent (UP) household to 100 hours of work a month in order to remain eligible for AFDC. If the parent starts working full time, he or she becomes ineligible for AFDC and Medicaid even if she or he earns less than the AFDC grant.

Figure 3

**Primary Reason for Moving to Alaska
Client Survey/Self-Sufficiency Project**



1992.

Division of Public Assistance Self-Sufficiency

HJR

43

Alaska State Legislature

Representative Brian S. Porter



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DISTRICT 20

SPONSOR STATEMENT

HJR 43 RIGHTS OF CRIME VICTIMS

The Alaska Constitution establishes the right of due process, "No person shall be deprived of *life, liberty, or property, without due process of law.*" Historically, the due process clause was interpreted in the context of criminal law to protect the offenders, not the victims. The due process clause, and other Alaska constitutional provisions presently provide offenders with volumes of protection. Yet, victims are afforded no constitutional protection. For victims, this amendment will provide rights of notice and participation at all critical stages of a criminal case, including post-arrest release hearings, pretrial motions, trial and sentencing.

The purpose of a victim's rights amendment to the Alaska Constitution is to provide the *basic right of due process* (the right to proper notification and the opportunity to be heard) to victims of crime throughout criminal justice proceedings. The history of our nation teaches us that constitutions and not the mere protection of changing statutes or the courts discretion, are needed to protect the basic rights of the people. Basic rights, such as due process for victims, needs to be in our basic law, the Alaska Constitution.

The victim's rights amendment does not deny any existing constitutional right to defendants, but simply *establishes due process rights for the victims.* Currently, specific rights are afforded to victims by statute. However, these specific statutory rights do not afford the victim *the right to proper notification and the opportunity to be heard throughout the criminal justice process.* Without this restoration of fundamental rights, the balance of the judicial system remains tilted. This amendment will restore the criminal justice system to its original purpose: to serve and protect the law abiding, to be fair, and to seek justice. At this time, victims are powerless without a right to be notified of all proceedings and a right to be heard throughout the criminal justice process. Victims have no constitutional rights and no constitutional standing. To date, fourteen (14) states recognizing the lack of due process rights afforded to victims, amended their constitutions to provide these *fundamental rights* to victims of crime.

Crime makes victims of us all. Yet, victims of crime have no constitutional right to justice or due process, no right to respect or fair treatment as their case proceeds, no right to either be heard or informed at all the critical stages throughout the criminal

page 2 of 2
Sponsor Statement
HJR 43 Rights Of Crime Victims

justice process. Victims have no constitutional rights at all. It is time to return to a system that is about protecting innocence and order - about perserving liberty.

I would appreciate favorable consideration of this needed resolution.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHJR43 (IUD)

Revision Date: _____ Dept. Affected: Public Safety
 Title: Relating to Penal Administration BRU: Alaska State Troopers
and the Rights of Crime Victims' Component: Detachments
 Sponsor: Representative Porter
 Requestor: Representative Porter COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 94) impact: \$0.00 _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Fiscal Notes

Prepared By: Francis C. Allan Phone: 269-5891

Division: Alaska State Troopers Date: 11/10/93

FISCAL NOTE

STATE OF ALASKA

BIL. NO. HJR 43

1994 LEGISLATIVE SESSION

Revision Date: _____
 Title: Amendment to the Constitution RE:
 Penal Administration
 Sponsor: Reps. Porter, Phillips & Barnes
 Requestor: _____

Department Affected: Office of the Governor
 BRU: Division of Elections
 Component: General and Primary Elections
 COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS.	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY94) impact: 0

ANALYSIS: (Attach a separate page if necessary.) *This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be 53.4.

Prepared by: Joseph L. Swanson, Director Phone: 465-4611
 Division: Division of Elections Date: 1/11/94

Approved by Commissioner: Lt. Governor John B. Coghill
 Agency: Office of the Lt. Governor Date: 1/11/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HJR 43

ANALYSIS:

This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58., and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be 53.4.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

MEMORANDUM

March 17, 1994

SUBJECT: CSHJR 43(FIN) and CSSSSJR 2(STA)
(Work Order No. 8-LS1056\I and 18-LS0164\R)

TO: Senator Loren Leman
Attn: Portia Babcock

FROM: Jerry Luckhaupt *JLB*
Legislative Counsel

You have asked various questions concerning the above-referenced bill.

Question 1: Is there a single subject problem with CSSSSJR 2 (STA)?

In response to your question, I do not see any problem with CSSSSJR 2(STA) vis-a-vis the single subject requirement concerning bills that is contained in the constitution. Article II, § 13 of the Alaska Constitution provides that "[e]very bill shall be confined to one subject" Since art. XIII, § 1 of the Alaska Constitution does not refer to a bill being used to amend the constitution it is debatable whether the single subject requirement applies to constitutional amendments.^{1/} In my view at least (and the view historically taken by this office), the single subject requirement does not apply to constitutional amendments under art. XIII, § 1. In any event, even if the single subject requirement is applied to this resolution, I believe that the resolution is confined to a single subject, that being "crime". In this regard, the Alaska Supreme Court has held that what constitutes one subject should be broadly construed so as to allow the legislature to embrace in one act all matters properly connected with one general subject. North Slope Borough v. SOHIO Petroleum Company, 585 P.2d 534 (Alaska 1978); Gellert v. State, 522 P.2d 1120 (Alaska 1974). To that end, the Alaska courts have upheld such broad general single subjects as "land," see State v. First National Bank of Anchorage, 660 P.2d 406 (Alaska 1982), and "criminal law," see Galbraith v. State, 693 P.2d 880 (Alaska App. 1985). Considering the wide latitude the courts have afforded the legislature in this regard,

^{1/} For an example of the difference between bills and constitutional amendment proposals, bills are subject to veto by the governor under art. II, § 15, while constitutional amendment proposals under art. XIII, § 1 are not.

I have no reason to doubt that sections 1 and 2 can survive together and that there is but one single subject.

Question 2: What, from CSSSSJR 2(STA) can be put into CSHJR 43(FIN) without changing the title of the resolution?

Sections 2 and 3 of CSSSSJR 2(STA) can be rolled into CSHJR 43(FIN) without any trouble (if I understand that you would like to replace all of CSHJR 43). Of section 1 of CSSSSJR 2(STA), I believe that only the additions of ", the rights of victims of crime, and restitution" may be added to the bases provided in the second sentence of section 1.^{2/} All of the other changes made to art. I, sec. 12 in section 1 of the resolution cannot be made without a change in the title to CSHJR 43(FIN).

Question 3: If all of CSSSSJR 2(STA) is rolled into CSHJR 43(FIN) what would need to be done?

As stated in response to Question 1, Uniform Rule 49(a)(5) provides that joint resolutions shall be treated in all respects as bills. Uniform Rule 41(b) provides an amendment in the second house to the title of a bill is not in order unless the title change is merely clerical or technical. Uniform Rule 54 allows the rules, including Rule 41(b) to be suspended by a concurrent resolution approved by a two-thirds vote of each house. It is my opinion that rolling all of CSSSSJR 2(STA) into CSHJR 43(FIN) would necessitate a substantive change to the title. So to comply with the Uniform Rules you would need a title change resolution. Of course the legislature could always ignore the Uniform Rules. Such an action would probably not be fatal to the resolution if it passed and was subsequently challenged. Bear in mind also that unlike a bill, there is no constitutional requirement that the contents of a resolution proposing amendments to the constitution be reflected in its title.

Generally, the courts will not consider questions regarding the procedure of the legislature because of separation of powers considerations. (Malone v. Meekins, 650 P.2d 351 (Alaska 1982); Aboud v. League of Women Voters of Alaska, 743 P.2d 333 (Alaska 1987)) Only failure to comply with constitutional requirements regarding the enactment of legislation will cause a court to invalidate the legislation. Even the Uniform Rules themselves recognize the principal that violations of the rules can be waived by the body through failure to object. (Uniform Rule 54)

When a rule is cooperatively disregarded by both legislative bodies, it is, as a practical matter suspended despite the failure to take formal action suspending the rule. Mason's Manual provides in Section 24

^{2/} This change would necessitate the removal of the words "and upon" in that sentence following "reformation."

Sec. 24. Failure of a House of the Legislature to Conform to Its Rules
Does not Invalidate Its Acts.

1. Violation of rules of procedure adopted by a house of the legislature for its own convenience and not required by the constitution will not impair the validity of a statute.
2. A legislative body having the right to do an act must be allowed to select the means of accomplishing such act within reasonable bounds.
3. A rule is virtually repealed for the occasion when it is disregarded by those who have power to control it; and the act of breaking it is at least a suspension of it. The body at its preceding meetings does not have the power to bind its successors or to put shackles on it that might be cast off only in a particular way.
4. Under a constitutional provision declaring that each house of the legislature shall determine the rules of its own proceedings, the fact that a house acted in violation of its own rules or in violation of parliamentary law in a matter clearly within its power does not make its action subject to review by the courts.

The Aboud case, involved violation of the Open Meeting Statute, not a Uniform Rule. The court still held that violation of committee procedures, even of procedures set out in statute rather than rule, does not invalidate the resulting legislation.

Rule 54 provides to each house of the legislature a method of enforcing a Uniform Rule that has been violated by the other house:

If either house violates a uniform rule a question of order may be raised in the other house. If it is decided by the other house that the Uniform Rules have been violated, the bill involved in that violation shall be returned to its house of origin without further action.

8-LS1056L
Luckhaupt
4/29/94

SENATE CS FOR CS FOR HOUSE JOINT RESOLUTION NO. 43(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PORTER, Phillips, Barnes, Bunde, Green, Sitton, Nordlund
SENATORS Donley, Leman

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to the
2 rights of victims of crimes and to criminal administration.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article I, sec. 12, Constitution of the State of Alaska, is amended to read:

5 SECTION 12. CRIMINAL ADMINISTRATION [EXCESSIVE
6 PUNISHMENT]. Excessive bail shall not be required, nor excessive fines imposed,
7 nor cruel and unusual punishments inflicted. Criminal [PENAL] administration shall
8 be based [ON THE PRINCIPLE OF REFORMATION AND] upon the following in
9 the order provided: the need for protecting the public, community condemnation
10 of the offender, the rights of victims of crimes, restitution from the offender, and
11 the principle of reformation.

12 * Sec. 2. Article I, Constitution of the State of Alaska, is amended by adding a new section
13 to read:

14 SECTION 24. RIGHTS OF CRIME VICTIMS. Crime victims, as defined by
15 law, shall have the following rights as provided by law: the right to be reasonably
16 protected from the accused through the imposition of appropriate bail or conditions of

1 release by the court: the right to confer with the prosecution; the right to be treated
2 with dignity, respect, and fairness during all phases of the criminal and juvenile justice
3 process; the right to timely disposition of the case following the arrest of the accused;
4 the right to obtain information about and be allowed to be present at all criminal or
5 juvenile proceedings where the accused has the right to be present; the right to be
6 allowed to be heard, upon request, at sentencing, before or after conviction or juvenile
7 adjudication, and at any proceeding where the accused's release from custody is
8 considered; the right to restitution from the accused; and the right to be informed, upon
9 request, of the accused's escape or release from custody before or after conviction or
10 juvenile adjudication.

11 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of
12 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
13 State of Alaska, and the election laws of the state.

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

HJR 43 RIGHTS OF CRIME VICTIMS

RIGHTS

1. RIGHT to be reasonably protected from the accused.
2. RIGHT to confer with the prosecution
3. RIGHT to be treated with dignity, respect and fairness
4. RIGHT to timely disposition
5. RIGHT to restitution from the accused
6. RIGHT to be informed of and present at all criminal or juvenile proceedings
7. RIGHT to be heard, upon request, at sentencing and accused release from custody is considered
8. RIGHT to be informed, upon request, of the accused escape or release from custody

CURRENT LAW

1. AS 12.61.101
2. AS 12.61.101 (by request)
3. AS 12.61.100
4. no current law
5. AS 18.67.080.
6. AS 12.61.010
7. AS12.61.101, AS12.55.023, AS 33.16.120
8. AS 33.16.120 (partially)

(b) The notice given under (a)(2) of this section must inform the victim that the statement, sworn testimony, or unsworn oral presentation of the victim may contain any relevant information including

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

(2) an explanation of the extent of economic loss or property damage suffered by the victim;

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

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

(c) The state and the prosecuting attorney may not be held liable in damages for any failure to comply with the requirements of this section. (§ 9 ch 59 SLA 1989; am §§ 11, 12 ch 57 SLA 1991)

Effect of amendments. — The 1991 amendment, effective September 15, 1991, in subparagraph (a)(2)(B) and in subsection (b), inserted references to sworn testi-

mony or unsworn oral presentation, and, in subparagraph (a)(2)(B), inserted "of the victim's right" and deleted "or oral" following "present a written."

Article 2. Victim and Witness Information Confidentiality.

Section

- 100. Declaration of purpose
- 110. Confidentiality of victim and witness addresses and telephone numbers
- 120. Disclosure to defense

Section

- 130. Disclosure during court proceedings
- 140. Disclosure of victim's name
- 150. Public and media access

Sec. 12.61.100. Declaration of purpose. The purpose of AS 12.61.100 — 12.61.150 is to protect victims of and witnesses to crime from risk of harassment, intimidation, and unwarranted invasion of privacy by prohibiting the unnecessary disclosure of their addresses and telephone numbers. (§ 13 ch 57 SLA 1991)

Effective dates. — Section 13, ch. 57, SLA 1991, which enacted this section, took effect on September 15, 1991.

Sec. 12.61.110. Confidentiality of victim and witness addresses and telephone numbers. The residence and business addresses and telephone numbers of a victim of a crime or witness to a crime are confidential. A report, paper, picture, photograph, court file, or other document that relates to a crime and contains the residence or business address or telephone number of a victim or witness, and that is in the custody or possession of a public officer or employee, may not be made available for public inspection unless the residence and business addresses and telephone numbers of all victims and witnesses have been deleted. (§ 13 ch 57 SLA 1991)

Effective dates. — Section 13, ch. 57, SLA 1991, which enacted this section, took effect on September 15, 1991.

Sec. 12.61.120. Disclosure to defense. (a) The prosecution in a criminal case may not be required to furnish to the defendant personally the address or telephone number of a victim or witness absent a showing of good cause as determined by the court. Except as provided in (b) of this section, good cause exists when the defendant is proceeding without counsel. When a defendant is represented by counsel, the address and telephone number of a victim or witness may be disclosed to the defendant's counsel, but the court shall order the defendant's counsel to not disclose the information to the defendant.

(b) If the defendant is proceeding without counsel in a case involving a charged violation of AS 11.41, AS 11.46.300 — 11.46.330, AS 11.56.740, AS 11.56.810 or 11.61.190 — 11.61.210 and the court finds that the defendant may pose a continuing threat to the victim or witness to the offense charged, the court shall protect the address and telephone number of the victim or witness by providing the information only to a person specified by the court or by imposing other restrictions that the court considers necessary. When an address or telephone number is released to a person specified by the court under this subsection, that person, who shall be ordered not to disclose the information to the defendant, shall contact the victim or witness on behalf of the defendant, and the defendant shall meet or speak with the victim or witness only in the presence of that person.

(c) If a person representing the defendant, including the defendant's attorney or a person specified by the court under (b) of this section, contacts the victim of an offense with which the defendant is charged, the person shall clearly inform the victim

(1) of the person's identity and specific association with the defendant;

(2) that the victim does not have to talk to the person unless the victim wishes; and

(3) that the victim may have a prosecuting attorney or other person present during an interview. (§ 13 ch 57 SLA 1991; am § 29 ch 79 SLA 1992)

Revisor's notes. — In 1991, "AS 11.56.740" was substituted for "AS 11.61.120(a)(6)" to reconcile § 13, ch. 57, SLA 1991, and §§ 1 and 2, ch. 64, SLA 1991. Section 1, ch. 64, SLA 1991 added AS 11.56.740 and § 2, ch. 64, SLA 1991 deleted AS 11.61.120(a)(6).

Cross references. — For effect of this section on Alaska Rule of Criminal Proce-

dures 16, see § 26, ch. 57, SLA 1991 in the Temporary and Special Acts.

Effect of amendments. — The 1992 amendment, effective September 14, 1992, made section reference substitutions in the first sentence in subsection (b).

Effective dates. — Section 13, ch. 57, SLA 1991, which enacted this section, took effect on September 15, 1991.

Sec. 12.61.130. Disclosure during court proceedings.

(a) During a trial or hearing related to a criminal prosecution, the residence and business addresses and telephone numbers of a victim of or witness to the charged offense may not be disclosed in open court, and a victim or witness may not be required to provide the addresses or telephone numbers in response to questioning, unless the court determines that the information is necessary and relevant to the facts of the case. The burden to establish the need and relevance for disclosure is on the party seeking disclosure. Before ordering disclosure, the court shall take appropriate measures to minimize the risk of personal harm to the victim or witness that would result from the disclosure.

(b) The address or telephone number of a victim of or witness to a charged offense may not be placed in the court file or court documents relating to that offense except when

- (1) the address is used to identify the place of the crime; or
- (2) the address or telephone number is contained in a transcript of a court proceeding and disclosure of the address or telephone number was ordered under (a) of this section. (§ 13 ch 57 SLA 1991)

Effective dates. — Section 13, ch. 57, SLA 1991, which enacted this section, took effect on September 15, 1991.

Sec. 12.61.140. Disclosure of victim's name. (a) The portion of the records of a court or law enforcement agency that contains the name of the victim of an offense under AS 11.41.300(a)(1)(C) or 11.41.410 — 11.41.460

- (1) shall be withheld from public inspection, except with the consent of the court in which the case is or would be prosecuted; and
- (2) is not a public record under AS 09.25.110 — 09.25.125.

(b) In all written court records open to public inspection, the name of the victim of an offense under AS 11.41.300(a)(1)(C) or 11.41.410 — 11.41.460 may not appear. Instead, the victim's initials shall be used. However, a sealed record containing the victim's name shall be kept by the court in order to ensure that a defendant is not charged twice for the same offense. (§ 13 ch 57 SLA 1991)

Effective dates. — Section 13, ch. 57, SLA 1991, which enacted this section, took effect on September 15, 1991.

Sec. 12.61.150. Public and media access. This article may not be construed to require the court to exclude the public from any stage of the criminal proceeding or to interfere with the right of news media to report information lawfully obtained. (§ 13 ch 57 SLA 1991)

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criminal incident if the questioning does not hinder the administration of medical assistance;

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

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

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

(b) Law enforcement agencies, prosecutors, and the courts shall make every reasonable effort to ensure that victims of crimes have the rights set out in (a) of this section. However, a failure to ensure these rights does not give rise to a separate cause of action against law enforcement agencies, other agencies of the state, or a political subdivision of the state. (§ 4 ch 154 SLA 1984; am § 8 ch 59 SLA 1989)

Cross references. — For right of victims to comment on parole of prisoner, see AS 33.16.120.

Effect of amendments. — The 1989 amendment, in subsection (a), deleted "victim" before "compensation" in para-

graph (4), inserted "except as authorized by AS 12.61.017" in paragraph (5), and added paragraphs (7)-(9); and, in subsection (b), deleted two references to "victims' employers."

Sec. 12.61.015. Duties of prosecuting attorney. (a) If a victim of a felony or a domestic violence assault requests, the prosecuting attorney shall make a reasonable effort to

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

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

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

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

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

(D) of the time and place of the sentencing proceeding;

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

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

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

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Sec. 12.60.230. Reward for information leading to conviction of certain persons. A reward of \$200 shall be paid to any person not a peace officer who lodges information that leads to the arrest and conviction of any person or persons maliciously breaking into and entering any cache, cabin, house, or warehouse, whether occupied or unoccupied, located outside the boundaries of an incorporated town in the state. (§ 9.23 ch 34 SLA 1962)

Sec. 12.60.240. Payment of reward. The Department of Revenue shall pay all claims for rewards upon certificate by a judge or clerk of the superior court, showing that the claimant has lodged information that resulted in an arrest and conviction under the provisions of AS 12.60.230. (§ 9.24 ch 34 SLA 1962; am § 31 ch 8 SLA 1971)

Chapter 61. Rights of Victims.

Section	Section
10. Rights of crime victims	commission of a crime
15. Duties of prosecuting attorney	30. Designation of representative
17. Interference by victim's employer	900. Definitions
20. Money received as the result of the	

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

(1) the right to be informed by the appropriate law enforcement agency or the prosecuting attorney of the date of trial and the date of sentencing of the case in which the victim is involved;

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

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

(4) the right to be informed of the procedure to be followed to apply for and receive any compensation under AS 18.67;

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

(6) the right to obtain access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having medical assistance administered; however, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the

Chapter 50. Witnesses.

Article 2. Witness Immunity.

Sec. 12.50.101. Immunity of witnesses.

NOTES TO DECISIONS

Constitutionality. — This section violates the Alaska Constitution's privilege against self-incrimination. *State v. Gonzalez*, Ct. App. Op. No. 1204 (File No. A-4063), P.2d (1992).

Cited in *O'Leary v. Superior Court*, 816 P.2d 163 (Alaska 1991).

Chapter 55. Sentencing and Probation.

Section

- 23. Participation by victim in sentencing
- ~~25. Sentencing procedures~~
- 35. Fines
- 45. Restitution
- 51. Enforcement of fines and restitution
- 55. Community work
- 98. Modification of sentence
- 125. Sentences of imprisonment for felonies

Section

- 135. Sentences of imprisonment for misdemeanors
- 155. Factors in aggravation and mitigation
- 165. Extraordinary circumstances
- 175. Three-judge sentencing panel
- 185. Definitions

Sec. 12.55.005. Declaration of purpose.

NOTES TO DECISIONS

Reasonable uniformity in sentences required. — The principle of reasonable sentencing uniformity requires a sentencing judge who decides that an offender deserves a sentence which is significantly different from sentences previously given to similarly situated offenders to expressly find some legitimate basis for the difference — some basis related to "legally relevant sentencing criteria." That basis should be spelled out on the sentencing record, so that the defendant and a reviewing court can understand the reasons for the disparity. *Ross v. State*, Ct. App. Op. No. 1230 (File No. A-2476), P.2d (1992).

The "clearly mistaken" test implies a

permissible range of reasonable sentences which a reviewing court, after an independent review of the record, will not modify. This "range of reasonableness" should be determined not by imposition of an artificial ceiling which limits a large class of offenses to the lower end of the sentencing spectrum, but, rather, by an examination of the particular facts of the individual case in light of the total range of sentences authorized by the legislature for the particular offense. *State v. Wentz*, 805 P.2d 962 (Alaska Ct. App. 1991).

Quoted in *Williams v. State*, 809 P.2d 931 (Alaska Ct. App. 1991).

Cited in *Williams v. State*, 800 P.2d 955 (Alaska Ct. App. 1990).

Sec. 12.55.015. Authorized sentences.

NOTES TO DECISIONS

Power to suspend sentence. — While courts do not have the inherent power to suspend execution of a sentence, the legislature has given this power to the trial courts. *Curtis v. State*, 831 P.2d 359 (Alaska Ct. App. 1992).

When a statute of general application grants sentencing courts the power to sus-

pend all or part of a sentence, that statute will govern unless the legislature specifically provides otherwise. *Curtis v. State*, 831 P.2d 359 (Alaska Ct. App. 1992).

Quoted in *State v. Wagner*, Ct. App. Op. No. 1229 (File No. A-3932), P.2d (1992).

Sec. 12.55.023. Participation by victim in sentencing. (a) If a victim requests, the prosecuting attorney shall provide the victim, before the sentencing hearing, with a copy of the following portions of the presentence report:

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

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

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

(4) the sentence recommendation of the Department of Corrections.

(b) A victim may submit to the sentencing court a written statement that the victim believes is relevant to the sentencing decision, and may give sworn testimony or make an unsworn oral presentation to the court at the sentencing hearing. If there are numerous victims, the court may limit the number of victims who may give sworn testimony or make an unsworn oral presentation during the hearing. (§ 4 ch 59 SLA 1989; am § 6 ch 57 SLA 1991)

Effect of amendments. — The 1991 amendment, effective September 15, 1991, in subsection (b), added ", and may give sworn testimony or make an unsworn oral

presentation to the court at the sentencing hearing" to the end of the first sentence and added the second sentence.

Sec. 12.55.025. Sentencing procedures. (a) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report that includes the following:

(1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;

(2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;

(3) a clear statement of the terms of the sentence imposed;

(4) any recommendations as to the place of confinement or the manner of treatment; and

(5) in the case of a conviction for a felony offense, information assessing

NOTES TO DECISIONS

Trial court did not abuse its discretion in ordering counts charging defendant with sexually abusing his daughter to be dismissed in the interest of justice after the state refused to grant use immu-

nity to a critical witness whose proposed testimony was deemed to be of crucial exculpatory value. *State v. Echols*, Ct. App. Op. No. 1043 (File No. A-2818), P.2d (1990).

Chapter 55. Sentencing and Probation.

Section

- 05. Declaration of purpose
- 15. Authorized sentences
- 22. Victim impact statement
- 23. Participation by victim in sentencing
- 25. Sentencing procedures
- 35. Fines
- 45. Restitution
- 51. Enforcement of fines and restitution
- 55. Community work
- 80. Suspension of sentence and probation
- 85. Suspending imposition of sentence
- 86. Imprisonment as a condition of suspended imposition of sentence
- 88. Modification of sentence
- 90. Granting of probation
- 100. Conditions of probation
- 102. Alcohol related offenses

Section

- 110. Notice and grounds for revocation of suspension
- 115. Fixing eligibility for discretionary parole at sentencing
- 120. Appeal of sentence
- 125. Sentences of imprisonment for felonies
- 135. Sentences of imprisonment for misdemeanors
- 145. Prior convictions
- 147. Fingerprints at time of sentencing
- 155. Factors in aggravation and mitigation
- 165. Extraordinary circumstances
- 175. Three-judge sentencing panel
- 180. Designation of representative
- 185. Definitions

Cross references. — For applicability of ch. 166 SLA 1978 to offenses committed before or after January 1, 1980, see § 23, ch. 166, SLA 1978 in the Temporary and Special Acts.

Legislative history reports. — For report on ch. 166, SLA 1978 (HB 661), see 1978 Senate Journal Supplement No. 47 (June 12, 1978).

NOTES TO DECISIONS

Constitutionality of presumptive sentencing provisions. — The presumptive sentencing provisions, AS 12.55.125 — 12.55.175, do not conflict with Alaska Const., art. I, § 12 because the legislature has the authority to reasonably restrict judicial discretion in order to accomplish the goal of eliminating unjustified sentencing disparity. *Nell v. State*, 642 P.2d 1361 (Alaska Ct. App. 1982).

The presumptive sentencing provisions contained in AS 12.55.125 — 12.55.175 are not an unconstitutional violation of the separation of powers doctrine or of

Alaska Const., art. IV, § 1 as a legislative infringement on the power of the judiciary to sentence on the basis of the particular facts of the case and the nature of a particular offender because although the presumptive sentencing statutes do limit the discretion of a judge in imposing a sentence, they do not foreclose sentences of less than the presumptive sentence or the possibility of placing a person on probation. *Nell v. State*, 642 P.2d 1361 (Alaska Ct. App. 1982).

Applied in *Hornaday v. Rowland*, 674 P.2d 1333 (Alaska 1983).

Collateral references. — 21 Am. Jur. 2d, Criminal Law, §§ 567 to 579, 588 to 631; 21A Am. Jur. 2d, Criminal Law, §§ 1051 to 1058.

Sec. 12.55.005. Declaration of purpose. The purpose of this chapter is to provide the means for determining the appropriate sentence to be imposed upon conviction of an offense. The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute as provided in this chapter. In imposing sentence, the court shall consider

- (1) the seriousness of the defendant's present offense in relation to other offenses;
- (2) the prior criminal history of the defendant and the likelihood of rehabilitation;
- (3) the need to confine the defendant to prevent further harm to the public;
- (4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order;
- (5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct; and
- (6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms. (§ 12 ch 166 SLA 1978)

NOTES TO DECISIONS

* Chaney criteria incorporated in section. — The criteria of State v. Chaney, 477 P.2d 441 (Alaska 1970) have essentially been incorporated into the criminal code as this section. Nell v. State, 642 P.2d 1361 (Alaska 1982); Schneck v. State, 729 P.2d 1310 (Alaska Ct. App. 1987).

Legislative intent reflected. — The presumptive sentencing provisions contained in AS 12.55.125 and 12.55.155 reflect the legislature's intent to assure predictability and uniformity in sentencing by the use of fixed and relatively inflexible sentences, statutorily prescribed, for persons convicted of second or subsequent felony offenses. Juneoy v. State, 641 P.2d 823 (Alaska Ct. App. 1982), modified on other grounds and aff'd on rehearing, 665 P.2d 30 (Alaska Ct. App. 1983).

The comprehensive and highly regimented provisions of the presumptive sentencing statute were enacted to assure that sentencing would become a predict-

able process and that disparity in sentencing between similarly situated offenders would be eliminated. Lacquement v. State, 644 P.2d 856 (Alaska Ct. App. 1982).

Criteria enumerated in this section must be given primary significance in the sentencing of first offenders under the Alaska Revised Criminal Code. Kimbrell v. State, 647 P.2d 618 (Alaska Ct. App. 1982).

Adjustment of presumptive sentence. — When applied to the adjustment of a presumptive sentence, the State v. Chaney, 477 P.2d 441 (Alaska 1970), analysis, as stated in AS 12.55.005, should not be broadened into a consideration of all circumstances of the offense, as if the sentence were being imposed anew, without regard for the presumptive term. Instead, consideration of the Chaney criteria should focus specifically on the aggravating and mitigating conduct in the particular case. The presump-

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tive term should remain as the starting point of the analysis, and the Chaney criteria should be employed for the limited purpose of determining the extent to which the totality of the aggravating and mitigating factors will justify deviation from the presumptive term. *Juneby v. State*, 641 P.2d 823 (Alaska Ct. App. 1982), modified on other grounds and aff'd on rehearing, 665 P.2d 30 (Alaska Ct. App. 1983).

Nature of offense is relevant factor in sentencing. — Throughout the supreme court's review of sentences, the degree of physical or psychological violence involved in the offense has been an important factor. *Kelly v. State*, 622 P.2d 432 (Alaska 1981).

In attempting to eliminate consideration of the nature of the offense from its consideration of relevant factors at sentencing, the superior court was clearly mistaken and the sentences in the case had to be reversed. *Kelly v. State*, 622 P.2d 432 (Alaska 1981).

Tailoring the sentence to fit the crime committed in the specific case is a central tenet of the sentencing provisions contained in the Revised Alaska Criminal Code. *Maal v. State*, 670 P.2d 708 (Alaska Ct. App. 1983).

Sentencing of "worst offender." — A "worst offender" designation, standing alone, permits imposition of the maximum term for the single most serious offense. The designation does not, however, automatically permit consecutive sentences exceeding the maximum for the single most serious crime. In order to impose such a sentence, the court must actually find, as a matter of fact, that the defendant will continue to pose a danger to the community during the extended term and that his continued isolation is actually necessary. Such a finding does not necessarily justify pyramiding consecutive maximum sentences; rather, such a finding permits only an incrementally more severe sentence based on the actual need for protection of the public under the totality of the circumstances of the prosecution's case. *Hancock v. State*, 741 P.2d 1210 (Alaska Ct. App. 1987).

Sentencing for extended term for deterrence and rehabilitation. — In or-

der to make the determination that a defendant requires a period in excess of 15 years for deterrence and rehabilitation, it is imperative that the trial court compare his background, experience, and offenses with those of others sentenced to extended terms, disregarding eligibility for parole. *Hancock v. State*, 741 P.2d 1210 (Alaska Ct. App. 1987).

Emphasis on isolation in sentencing. — Based on the trial judge's discretion under the Chaney criteria and the defendant's status as a repeat offender and a worst offender in his class, the original sentence of seven years' imprisonment, with five and one-half years suspended, for 14 fish and game violations was reinstated; the sentencing judge specifically emphasized the Chaney factor of isolation based on the defendant's extensive record of flagrant fish and game violations. *Statv v. Graybill*, 695 P.2d 725 (Alaska 1985).

Applied in *Hartley v. State*, 653 P.2d 1052 (Alaska Ct. App. 1982); *Peetook v. State*, 655 P.2d 1308 (Alaska Ct. App. 1982); *Weston v. State*, 656 P.2d 1186 (Alaska Ct. App. 1982); *Tazruk v. State*, 655 P.2d 785 (Alaska Ct. App. 1982); *Graybill v. State*, 672 P.2d 138 (Alaska Ct. App. 1983); *Clemans v. State*, 680 P.2d 1179 (Alaska Ct. App. 1984); *State v. Andrews*, 707 P.2d 900 (Alaska Ct. App. 1985).

Quoted in *Kelly v. State*, 663 P.2d 967 (Alaska Ct. App. 1983); *Hancock v. State*, 706 P.2d 1164 (Alaska Ct. App. 1985); *Aveoganna v. State*, 757 P.2d 75 (Alaska Ct. App. 1988).

Stated in *Erhart v. State*, 656 P.2d 1199 (Alaska Ct. App. 1982); *State v. Rastopsoff*, 659 P.2d 630 (Alaska Ct. App. 1983).

Cited in *Nukapigak v. State*, 645 P.2d 215 (Alaska Ct. App. 1982); *Howard v. State*, 664 P.2d 603 (Alaska Ct. App. 1983); *Martin v. State*, 664 P.2d 612 (Alaska Ct. App. 1983); *Heathcock v. State*, 670 P.2d 1155 (Alaska Ct. App. 1983); *Pickens v. State*, 675 P.2d 665 (Alaska Ct. App. 1984); *Crouse v. State*, 736 P.2d 783 (Alaska Ct. App. 1987); *Kirby v. State*, 748 P.2d 757 (Alaska Ct. App. 1987); *State v. Ambrose*, 756 P.2d 639 (Alaska Ct. App. 1988).

Sec. 12.55.010. Imprisonment on judgment for payment of fine. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 12.55.035(a).]

Sec. 12.55.015. Authorized sentences. (a) Except as limited by AS 12.55.125 — 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a fine when authorized by law and as provided in AS 12.55.035;

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation, if the program is made available to the defendant by the Department of Corrections.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of the present offense and the defendant's prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty.

(d) [Repealed, § 1 ch 188 SLA 1990.]

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(e) If the defendant is ordered to serve a definite term of imprisonment, the court may recommend that the defendant serve all or part of the term in a correctional restitution center.

(f) In this section "deadly weapon" has the meaning given in AS 11.81.900. (§ 12 ch 166 SLA 1978; am § 37 ch 102 SLA 1980; am § 3 ch 45 SLA 1982; am § 3 ch 72 SLA 1985; am §§ 2, 3 ch 169 SLA 1988; am §§ 1, 12 ch 188 SLA 1990)

Cross references. — For offenses relating to controlled substances, see AS 11.71.010 — 11.71.080.

Effect of amendments. — The 1988 amendment, in subsection (a), added paragraph (9) and made minor word changes; and added subsection (f).

The 1990 amendment, effective June 23, 1990, added paragraph (a)(10) and repealed subsection (d), which provided au-

thority to order certain defendants to participate in a program for treatment of drug abusers.

Legislative history reports. — For report on ch. 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, (May 29, 1980) or 1980 House Journal Supplement, No. 79, (May 29, 1980).

NOTES TO DECISIONS

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of government. Therefore, the superior court lacks jurisdiction to review its own sentence, after it has entered a judgment on the matter, more than 60 days after it has imposed sentence. *Davenport v. State*, 543 P.2d 1204 (Alaska 1975); *Szeratica v. State*, 572 P.2d 63 (Alaska 1977).

Trial court exceeded scope of sentencing powers by ordering defendant to attend a sexual offender rehabilitation program while incarcerated, where the order was set out as a separate provision of the written judgment and not as a condition of probation, and any failure to abide by the order could not have served as a predicate for a finding of criminal contempt. *Benboe v. State*, 738 P.2d 356 (Alaska Ct. App. 1987).

Test to be used in determining whether multiple offenses can be pun-

ished separately. — See *State v. Occhipinti*, 562 P.2d 348 (Alaska 1977).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. *State v. Occhipinti*, 562 P.2d 348 (Alaska 1977).

Applied in *Austin v. State*, 627 P.2d 657 (Alaska Ct. App. 1981).

Quoted in *Leuch v. State*, 633 P.2d 1006 (Alaska 1981); *Hancock v. State*, 706 P.2d 1164 (Alaska Ct. App. 1985).

Stated in *Kimbrell v. State*, 647 P.2d 618 (Alaska Ct. App. 1982); *Erhart v. State*, 656 P.2d 1199 (Alaska Ct. App. 1982).

Cited in *Whittlesey v. State*, 626 P.2d 1066 (Alaska 1980); *Juneby v. State*, 641 P.2d 823 (Alaska Ct. App. 1982); *Lacquement v. State*, 644 P.2d 856 (Alaska Ct. App. 1982); *Schnecker v. State*, 739 P.2d 1310 (Alaska Ct. App. 1987); *State v. Ambrose*, 758 P.2d 639 (Alaska Ct. App. 1988).

Collateral references. — Permissibility of sentence to a fine only, under statu-

tory provision for imprisonment or imprisonment and fine. 35 ALR4th 192.

Sec. 12.55.020. Enforcing judgment to pay money. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 12.55.025(f), AS 12.55.035(a), (d) and AS 12.55.051.]

Sec. 12.55.022. Victim impact statement. As part of the presentence report prepared on each felony offender, the probation officer shall prepare a victim impact statement reporting the following information:

- (1) the financial, emotional, and medical effects of the offense on the victim;
- (2) the need of the victim for restitution; and
- (3) any other information required by the court. (§ 1 ch 154 SLA 1984)

Cross references. — For effect of this section on Cr. R. 32(d)(2), see § 12. ch. 154. SLA 1984 in the Temporary and Special Acts.

Sec. 12.55.023. Participation by victim in sentencing. (a) If a victim requests, the prosecuting attorney shall provide the victim, before the sentencing hearing, with a copy of the following portions of the presentence report:

- (1) the summary of the offense prepared by the Department of Corrections;
 - (2) the defendant's version of the offense;
 - (3) all statements and summaries of statements of the victim; and
 - (4) the sentence recommendation of the Department of Corrections.
- (b) A victim may submit to the sentencing court a written statement that the victim believes is relevant to the sentencing decision. (§ 4 ch 59 SLA 1989)

Sec. 12.55.025. Sentencing procedures. (a) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report that includes the following:

- (1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;
- (2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;
- (3) a clear statement of the terms of the sentence imposed;
- (4) any recommendations as to the place of confinement or the manner of treatment; and
- (5) in the case of a conviction for a felony offense, information assessing

(A) the financial, emotional, and medical effects of the offense on the victim;

(B) the need of the victim for restitution; and

(C) any other information required by the court.

(b) The sentencing report required under (a) of this section shall be furnished within 30 days after imposition of sentence to the Department of Law, the defendant, the Department of Corrections, the state Board of Parole if the defendant will be eligible for parole, and to the Alcoholic Beverage Control Board if the defendant is to be sentenced for a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(c) Except as provided in (d) and (e) of this section, when a defendant is sentenced to imprisonment, the term of confinement commences on the date of imposition of sentence. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which sentence was imposed. A defendant may not receive credit for more than the actual time spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after the defendant has been sentenced may not be credited toward service of the sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Corrections shall designate the facility in which the defendant shall be detained pending appeal or admission to bail.

(e) Except as provided in (g) and (h) of this section, if the defendant has been convicted of two or more crimes, sentences of imprisonment shall run consecutively. If the defendant is imprisoned upon a previous judgment of conviction for a crime, the judgment shall provide that the imprisonment commences at the expiration of the term imposed by the previous judgment.

(f) A sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action. Nothing in this section limits the authority of the court to otherwise enforce payment of a fine or restitution.

(g) If the defendant has been convicted of two or more crimes before the judgment on either has been entered, any sentences of imprisonment may run concurrently if

- (1) the crimes violate similar societal interests;
- (2) the crimes are part of a single, continuous criminal episode;
- (3) there was not a substantial change in the objective of the criminal episode, including a change in the parties to the crime, the property or type of property right offended, or the persons offended;

victim is officially considered and to comment, in writing or in person, on the proposed action of the board. Copies of any written comments shall be provided to the prisoner and the prisoner's attorney before action by the board.

(d) The board shall consider the comments presented under (c) of this section in deciding whether to release the prisoner on parole.

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

(f) Upon request of the victim, if a prisoner is released under AS 33.16.010(c), the board shall make every reasonable effort to notify the victim before the prisoner's release date. Notification under this subsection must include the expected date of the prisoner's release, the geographic area in which the prisoner is required to reside, and other pertinent information concerning the prisoner's conditions of parole that may affect the victim. (§ 2 ch 88 SLA 1985; am §§ 12 — 15 ch 59 SLA 1989)

Effect of amendments. — The 1989 amendment, effective August 28, 1989, rewrote subsections (a), (b), and (e); and in subsection (c), substituted the language beginning "to attend meetings" and end-

ing "in writing or in person" for "to comment in writing" in the first sentence and "any written" for "the" in the second sentence.

Sec. 33.16.150. Conditions of parole. (a) As a condition of parole, a prisoner released on discretionary or mandatory parole shall refrain from conduct punishable by imprisonment under state or federal law or municipal ordinance.

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

- (1) meet family obligations;
- (2) pursue employment, education, counseling, or training;
- (3) remain within stated geographic limits unless written permission to depart from the stated limits is granted the parolee;
- (4) report upon release to the parole officer assigned to the parolee;
- (5) report as required to the parole officer assigned to the parolee;
- (6) reside at a stated place and notify the board of any change in place of residence;
- (7) not possess or control firearms or other dangerous weapons;
- (8) refrain from possessing or consuming alcoholic beverages;
- (9) submit to reasonable searches and seizures by a parole officer, or a peace officer acting under the direction of a parole officer;

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(3) the prisoner's institutional conduct history while incarcerated;
(4) recommendations made by the staff of the correctional facilities in which the prisoner was incarcerated;

(5) reports of prior crimes, juvenile histories, and previous experiences of the prisoner on parole or probation;

(6) physical, mental, and psychiatric examinations of the prisoner;

(7) information submitted by the prisoner, the sentencing court, the victim of the crime, the prosecutor, or other persons having knowledge of the prisoner or the crime;

(8) information concerning an unjustified disparity in the sentence imposed on a prisoner in relation to other sentences imposed under similar circumstances; and

(9) other relevant information that may be reasonably available.

(b) The board shall provide information available under (a)(3) and (a)(6) of this section when requesting comments on the discretionary parole of a prisoner from the sentencing court. (§ 2 ch 88 SLA 1985)

Sec. 33.16.120. Right of victim to comment on parole of prisoner. (a) Upon request of the victim, notice of a hearing to review or consider discretionary parole for a state prisoner who is convicted of a crime against a person shall be sent to the victim of the crime at least 30 days before the scheduled hearing.

(b) It is the responsibility of the victim to keep the board apprised of the victim's most current mailing address. The board shall send the notice required under (a) of this section to the last known address of the victim. The address of the victim may not be disclosed to the prisoner or the prisoner's attorney.

(c) The victim has a right to comment in writing on the proposed action of the board. Copies of the comments shall be provided to the prisoner and the prisoner's attorney before action by the board.

(d) The board shall consider the comments presented under (c) of this section in deciding whether to release the prisoner on parole.

(e) Upon request of the victim, if the board decides to release on parole a prisoner who is convicted of a crime against a person, the board shall make every reasonable effort to notify the victim before the prisoner's release date. Notification under this subsection must include the expected date of the prisoner's release, the geographic area in which the prisoner is required to reside, and other pertinent information concerning the prisoner's conditions of parole that may affect the victim.

(f) Upon request of the victim, if a prisoner is released under AS 33.16.010(c), the board shall make every reasonable effort to notify the victim before the prisoner's release date. Notification under this subsection must include the expected date of the prisoner's release, the geographic area in which the prisoner is required to reside, and

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release date, the board may rescind or revise the previously granted parole release date. In reconsidering the release date, set out in AS 33.16.130(b) and (c) shall be followed.

(c) Except as provided in (d) of this section, a prisoner released on discretionary parole until the prisoner has served one-fourth of the period of confinement imposed, one-half of the period of confinement imposed under AS 12.55.115 at sentencing, or any minimum term set under AS 12.55.115 at sentencing, whichever is greater.

(d) A prisoner who is sentenced for a term under (b), (c), or (i) may not be released on discretionary parole until the prisoner has served the mandatory minimum term set under AS 12.55.125(a), (b), (c), or (i), at least one-third of the period of confinement imposed, or any minimum term set under AS 12.55.115 at sentencing, whichever is greater. (§ 2 ch 88 SLA 1985; am § 3 ch 77 SLA 1987)

Effect of amendments. — The 1987 amendment in subsection (d) substituted "(b), (c), or (i)" for "or (b)" in two places.

NOTES TO DECISIONS

Restricting parole eligibility. — Twenty-year parole restriction, applied to the entire period of a twenty-year sentence, was clearly mistaken, since such an implied distrust of the parole board's ability to do its job was unwarranted in the absence of express findings, supported by specific evidence, establishing a need to restrict parole eligibility. *Newell v. State*, 771 P.2d 873 (Alaska Ct. App. 1989).

Applied in *Ridgely v. State*, 739 P.2d 1299 (Alaska Ct. App. 1987).

Quoted in *Merry v. State*, 752 P.2d 475 (Alaska Ct. App. 1988).

Cited in *Barrett v. State*, 772 P.2d 559 (Alaska Ct. App. 1989); *Charles v. State*, 730 P.2d 377 (Alaska Ct. App. 1989); *Weitz v. State*, 794 P.2d 952 (Alaska Ct. App. 1990).

Sec. 33.16.120. Rights of certain victims in connection with parole. (a) If the victim of a crime against a person or arson in the first degree requests notice of a scheduled hearing to review or consider discretionary parole for a prisoner convicted of that crime, the board shall send notice of the hearing to the victim at least 30 days before the hearing. The notice must be accompanied by a copy of the prisoner's application for parole submitted under AS 33.16.130(a). However, the copy of the application sent to the victim may not include the prisoner's proposed residence and employment addresses.

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

(c) The victim has a right to attend meetings of the parole board in which the status of the prisoner convicted of the crime against that

Effect of amendments. — The 1991 amendment, effective September 16, 1991, in paragraph (3), added "or is in or has

been in a dating, courtship, or engagement relationship with the defendant."

Chapter 67. Violent Crimes Compensation Board.

Section	Section
10. Purpose	110. Nature of the compensation
20. Violent Crimes Compensation Board	120. Emergency compensation
30. Application for compensation	130. Limitations on awarding compensation
40. Action on application; hearing	140. Recovery from offender
50. Attorney fees	150. False claim
60. Regulations	160. Survival and abatement
70. Standards for compensation	162. Crime victim compensation fund
80. Awarding compensation	170. Reports
90. Recovery from collateral source	175. Duty to display information
101. Incidents and offenses to which this chapter applies	180. Definitions

Opinions of attorney general. — The commissioner of the Department of Public Safety has statutory authority to enter into a reciprocal agreement with the Commonwealth of Kentucky for compensation

to innocent victims of violent crimes. September 24, 1980 Op. Att'y Gen.

Collateral references. — 21 Am. Jur. 2d, Criminal Law, §§ 570 — 576, 589, 590.

Sec. 18.67.010. Purpose. It is the purpose of this chapter to facilitate and permit the payment of compensation to innocent persons injured, to dependents of persons killed, and to certain other persons who by virtue of their relationship to the victim of a crime incur actual and reasonable expense as a result of certain serious crimes or in attempts to prevent the commission of crime or to apprehend suspected criminals. (§ 1 ch 203 SLA 1972; am § 1 ch 132 SLA 1975)

Sec. 18.67.020. Violent Crimes Compensation Board. (a) There is the Violent Crimes Compensation Board in the Department of Public Safety composed of three members to be appointed by the governor. One of the members shall be designated as chairman by the governor. At least one member must be a medical or osteopathic physician licensed to practice in this state and one member must be an attorney licensed to practice in this state.

(b) Members of the board serve staggered terms of three years. All vacancies, except through the expiration of term, shall be filled for the unexpired term only.

(c) Each member of the board is eligible for reappointment and serves at the pleasure of the governor.

(d) Each member of the board is eligible for reappointment and any member of the board may be removed by the governor for inefficiency, neglect of duty or malfeasance in office after due notice and hearing.

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(e) Members of the board receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards.

(f) The board may appoint one or more hearing officers, who must be licensed to practice law in the state, to conduct hearings and take testimony in proceedings under this chapter, but final determinations of any matter shall be only by the board. A hearing officer acting under this section shall report findings of fact and conclusions of law to the board, together with the reasons for the findings and conclusions. The board shall act only after consideration of the report and other evidence that it considers appropriate.

(g) The board may appoint and fix the duties of personnel necessary for carrying out its functions under this chapter. (§ 1 ch 203 SLA 1972; am § 2 ch 132 SLA 1975; am § 1 ch 87 SLA 1978; am § 38 ch 37 SLA 1986)

Sec. 18.67.030. Application for compensation. (a) A person who may be eligible for compensation under this chapter may make application to the board. In a case in which the person entitled to make application is a minor, the application may be made on the person's behalf by a parent or guardian. In a case in which the person entitled to make application is mentally incompetent, the application may be made on the person's behalf by a parent, guardian, or other individual authorized to administer the person's estate.

(b) In order to be eligible for compensation under this chapter, the applicant shall, before a hearing on an application under this chapter, submit reports, if reasonably available, from all physicians or surgeons who have treated or examined the victim in relation to the injury for which compensation is claimed at the time of or subsequent to the victim's injury or death. If, in the opinion of the board, reports on the previous medical history of the victim, a report on the examination of the injured victim, or a report on the cause of death of the victim by an impartial medical expert would be of material aid to its determination, the board shall order the reports and examination. (§ 1 ch 203 SLA 1972)

Opinions of attorney general. — As a way not specifically addressed in the general rule, an extension for application chapter and is thereby unable to file. June for compensation is only permissible 17, 1982 Op. Att'y Gen. where the claimant is legally disabled in a

Sec. 18.67.040. Action on application; hearings. (a) Upon application made under the provisions of this chapter, the board shall consider the application and rule on it. The board may, upon its own motion, order a hearing, specifying the time and place it is to be held; if a hearing is ordered, the board shall give notice to the applicant. If, after consideration without a hearing, the decision is unfavorable to the applicant, in whole or in part, the board shall furnish the appli-

cant a written statement of the reason for the ruling. If, within 30 days after receipt of this statement, the applicant requests a hearing on the application, the board shall specify a time and place for a hearing and shall give notice to the applicant. If no request for a hearing is made within the specified time, the decision of the board is final.

(b) For the purpose of carrying out the provisions of this chapter, the board or its hearing officer may hold the hearings, sit and act at the times and places, and take the testimony that the board or the hearing officer considers advisable. The board or its hearing officer may administer oaths or affirmations to witnesses. The board has full powers of subpoena and compulsion of attendance of witnesses and production of documents, but no subpoena shall be issued except under the signature of a member of the board. Application to a court for aid in enforcing the subpoena may be made in the name of the board only by a board member. Subpoenas are served by any person designated by the board.

(c) The applicant and any other person having a substantial interest in a proceeding may appear and be heard, produce evidence and cross-examine witnesses in person or by an attorney. The board or its hearing officer also may hear other persons who in the judgment of the board or the hearing officer may have relevant evidence to submit.

(d) Admissibility of evidence is governed by the Administrative Procedure Act (AS 44.62).

(e) If a person has been convicted of an offense with respect to an act on which a claim under this chapter is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or a proceeding with regard to it is pending.

(f) Orders and decisions of the board shall be final. (§ 1 ch 203 SLA 1972; am § 3 ch 132 SLA 1975)

Sec. 18.67.050. Attorney fees. The board may, as part of an order entered under this chapter, determine and allow reasonable attorney fees, which may not exceed 25 per cent of the first \$1,000 amount awarded as compensation, 15 per cent of the next \$9,000 amount awarded as compensation, and 7.5 per cent of the amount awarded as compensation over \$10,000 under AS 18.67.070, to be paid in addition to the amount of the compensation, to the attorney representing the applicant. An attorney may not ask for, contract for, charge, demand, collect, or receive a larger sum than the amount allowed by the board in the award of attorney fees. An attorney who violates this section shall forfeit any fee awarded and shall repay the state the fee awarded under this section. (§ 1 ch 203 SLA 1972; am § 4 ch 132 SLA 1975)

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Sec. 18.67.060. Regulations. In the performance of its functions, the board is authorized to make, rescind, and amend regulations prescribing the procedures to be followed in the filing of applications and in proceedings under this chapter, and relating to other matters the board considers appropriate. (§ 1 ch 203 SLA 1972)

Sec. 18.67.070. Standards for compensation. For the purpose of determining the amount of compensation payable under this chapter, the board shall, insofar as practicable, formulate standards for uniform application of this chapter and take into consideration rates and amounts of compensation payable for injuries and death under other laws of the state and of the United States and the availability of funds appropriated for the purposes of this chapter. (§ 1 ch 203 SLA 1972)

Sec. 18.67.080. Awarding compensation. (a) In a case in which a person is injured or killed by an incident specified in AS 18.67.101(1), or by the act of any other person that is within the description of offenses listed in AS 18.67.101(2), the board may order the payment of compensation in accordance with the provisions of this chapter:

- (1) to or for the benefit of the injured person;
- (2) in the case of personal injury or death of the victim, to a person responsible or who had been responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury or death;
- (3) in the case of death of the victim, to or for the benefit of one or more of the dependents of the victim; or
- (4) to the provider of a service under AS 18.67.110(b).

(b) For the purposes of this chapter, a person is considered to have intended an act notwithstanding that by reason of age, insanity, drunkenness, or otherwise, the person was legally incapable of forming a criminal intent.

(c) In determining whether to make an order under this section, the board shall consider all circumstances determined to be relevant, including provocation, consent, or any other behavior of the victim that directly or indirectly contributed to the victim's injury or death, the prior case or social history, if any, of the victim, the victim's need for financial aid, and any other relevant matters.

(d) An order may be made under this section whether or not a person is prosecuted or convicted of an offense arising out of the act that caused the injury or death involved in the application. Upon application made by an appropriate prosecuting authority, the board may suspend proceedings under this chapter for a period it considers appropriate on the ground that a prosecution for an offense arising out of the act that caused the injury or death involved in the application has been commenced or is imminent. (§ 1 ch 203 SLA 1972; am § 5 ch 132 SLA 1975; am § 3 ch 35 SLA 1979; am § 1 ch 96 SLA 1983)

Sec. 18.67.090. Recovery from collateral source. (a) Up to the maximum set in AS 18.67.130(c), the board may award compensation for losses and expenses allowable under AS 18.67.110 for which the applicant is not compensated by the offender or a person on behalf of the offender, or by the United States, a state, or any of its subdivisions or agencies, or a private source or emergency awards under AS 18.67.120, for injury or death compensable under this chapter.

(b) If compensation is awarded under this chapter and the person receiving it also receives a collateral sum under (a) of this section that has not been deducted from it, the board may require that the person refund either the amount of the collateral sum or the amount of compensation paid to the person under this chapter, whichever is less.

(c) Notwithstanding the provisions of (a) and (b) of this section, in the case of the death of a victim, the value of a life insurance policy may not be considered a collateral sum that may be deducted under this section. (§ 1 ch 203 SLA 1972; am § 6 ch 132 SLA 1975)

Revisor's notes. — Enacted as AS 18.67.085. Renumbered in 1972.

Sec. 18.67.100. Incidents and offenses to which AS 18.67.010 — 18.67.180 apply. [Repealed, § 6 ch 35 SLA 1979. For current law, see AS 18.67.101.]

Sec. 18.67.101. Incidents and offenses to which this chapter applies. The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death that resulted from

(1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or

(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses:

- (A) murder in any degree;
- (B) manslaughter;
- (C) criminally negligent homicide;
- (D) assault in any degree;
- (E) kidnapping;
- (F) sexual assault in any degree;
- (G) sexual abuse of a minor;
- (H) robbery in any degree;
- (I) threats to do bodily harm; or

(J) driving while intoxicated or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is intoxicated. (§ 2 ch 35 SLA 1979; am § 2 ch 96 SLA 1983; am § 40 ch 14 SLA 1987; am § 1 ch 22 SLA 1989)

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Effect of amendments. — The 1987 amendment deleted "contributing to the delinquency of a minor under AS 11.51.130(a)(4)" following "robbery in any degree" in paragraph (2).
The 1989 amendment, effective August

6, 1989, inserted the subparagraph designations "(A) — (J)" in paragraph (2); substituted "any degree" for "the first or second degree" in present subparagraph (2)(D); and made related punctuation changes.

Sec. 18.67.110. Nature of the compensation. (a) The board may order the payment of compensation under this chapter for

- (1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;
- (2) loss of earning power as a result of total or partial incapacity of the victim, and reasonable expenses of job retraining of or similar employment-oriented rehabilitative services for the victim;
- (3) pecuniary loss to the dependents of the deceased victim; and
- (4) any other loss resulting from the personal injury or death of the victim that the board determines to be reasonable.

(b) The board may order that compensation under (a) of this section for a service provided as a result of the personal injury or death of the victim be paid directly to the provider of the service. (§ 1 ch 203 SLA 1972; am § 7 ch 132 SLA 1975; am § 3 ch 96 SLA 1983)

Revisor's notes. — Enacted as AS 18.67.100. Renumbered in 1972.

Sec. 18.67.120. Emergency compensation. If it appears to the board, prior to taking action on an application, that the claim is one for which compensation is probable, and undue hardship will result to the applicant if immediate payment is not made, the board may make an emergency award of compensation to the applicant pending a final decision in the case. However,

- (1) the amount of the emergency compensation may not exceed \$1,500;
- (2) the amount of the emergency compensation shall be deducted from the final compensation made to the applicant;
- (3) the excess of the amount of the emergency compensation over the final amount shall be repaid by the applicant to the board. (§ 1 ch 203 SLA 1972; am § 8 ch 132 SLA 1975)

Revisor's notes. — Enacted as AS 18.67.105. Renumbered in 1972.

Opinions of attorney general. — The Violent Crimes Compensation Board is authorized by statute to recover, receive,

and collect receipts; however, under the Alaska Constitution, art. 1, § 7, all receipts must revert to the general fund. September 25, 1980 Op. Att'y Gen.

Sec. 18.67.130. Limitations on awarding compensation. (a) No order for the payment of compensation may be made under AS 18.67.080 unless

(1) the application has been made within two years after the date of the personal injury or death;

(2) the personal injury or death was the result of an incident or offense listed in AS 18.67.101 that had been reported to the police within five days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within five days of the time when a report could reasonably have been made; and

(3) in the discretion of the board, the applicant has cooperated with law enforcement and prosecution officials to further prosecution of the offender if appropriate and to avoid further injury by the offender to the applicant and injury to persons in the care of the applicant who are exposed to possible injury by the offender.

(b) Compensation may not be awarded if the victim

(1) *[Repealed, § 8 ch 96 SLA 1983.]*

(2) *[Repealed, § 8 ch 96 SLA 1983.]*

(3) violated a penal law of the state, which violation caused or contributed to the victim's injuries or death; or

(4) is injured as a result of the operation of a motor vehicle, boat, or airplane unless the vehicle was used by the offender while intoxicated or as a weapon in deliberate attempt to injure or kill the victim.

(c) Compensation may not be awarded under this chapter in an amount in excess of \$25,000 per victim per incident. However, in the case of the death of a victim who has more than one dependent eligible for compensation, the total compensation that may be awarded as a result of that death may not exceed \$40,000. The board may prorate the total awarded among those dependents according to relative need.

(d) Orders for payment of compensation under this chapter may be made only as to injuries or death resulting from incidents or offenses occurring on and after July 1, 1971. (§ 1 ch 203 SLA 1972; am §§ 9, 10 ch 132 SLA 1975; am § 4 ch 35 SLA 1979; am §§ 4 — 6, 8 ch 96 SLA 1983)

Revisor's notes. — Enacted as AS 18.67.110. Renumbered in 1972.

Opinions of attorney general. — As a general rule, an extension for application for compensation is only permissible where the claimant is legally disabled in a way not specifically addressed in the chapter and is thereby unable to file. June 17, 1982 Op. Att'y Gen.

The Violent Crimes Compensation Board has the implied power to waive the time limitations contained in (a)(1) where a law enforcement agency in the state has failed to advise a victim of her right to file for compensation. June 17, 1982 Op. Att'y Gen.

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Sec. 18.67.140. Recovery from offender. When an order for the payment of compensation for personal injury or death is made under this chapter, the board, upon payment of the amount of the order, is subrogated to the cause of action of the applicant against the person responsible for the injury or death and is entitled to bring an action against the person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the order is recovered and collected in the action, the board shall pay the balance to the applicant. (§ 1 ch 203 SLA 1972)

Revisor's notes. — Enacted as AS 18.67.120. Renumbered in 1972.

Opinions of attorney general. — The Violent Crimes Compensation Board is authorized by statute to recover, receive, and collect receipts; however, under the Alaska Constitution, art. 1, § 7, all receipts must revert to the general fund. September 25, 1980 Op. Att'y Gen.

The Violent Crimes Compensation

Board has no right to obtain reimbursement for funds paid to a victim injured on the job from the victim's employer, where the employer has failed to obtain worker's compensation insurance and is now bankrupt. This section limits any subrogation claims to situations in which subrogation is sought against the person who committed the crime. September 11, 1984 Op. Att'y Gen.

Sec. 18.67.150. False claim. A person who knowingly makes a false claim under this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$500, or by imprisonment for not more than one year, or by both, and shall forfeit any benefit received and shall repay the state for payment of compensation made under this chapter. (§ 1 ch 203 SLA 1972)

Revisor's notes. — Enacted as AS 18.67.122. Renumbered in 1972.

Opinions of attorney general. — The Violent Crimes Compensation Board is authorized by statute to recover, receive,

and collect receipts; however, under the Alaska Constitution, art. 1, § 7, all receipts must revert to the general fund. September 25, 1980 Op. Att'y Gen.

Sec. 18.67.160. Survival and abatement. The rights to compensation created under this chapter are personal and do not survive the death of a victim or dependent entitled to them, except that if the death occurs after an application for compensation has been filed with the Violent Crimes Compensation Board, the proceeding does not abate, but may be continued by the legal representative of the decedent's estate. (§ 1 ch 203 SLA 1972)

Revisor's notes. — Enacted as AS 18.67.124. Renumbered in 1972.

Sec. 18.67.162. Crime victim compensation fund. There is created a crime victim compensation fund which shall be administered by the Violent Crimes Compensation Board. The fund consists of money appropriated to it by the legislature. The fund shall be administered in accordance with the provisions of this chapter. Money distributed

from the fund shall be in addition to other sources of compensation provided in this chapter. (§ 7 ch 96 SLA 1983)

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NOTES TO DECISIONS

Cited in State v. Anthony, 810 P.2d 155 (1991).

Sec. 18.67.165. Distribution of money received as a result of the commission of crime. [Repealed, § 11 ch 154 SLA 1984. For current law see AS 12.61.020.]

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Sec. 18.67.170. Reports. The board shall prepare and transmit to the governor and legislature annually a report of its activities under this chapter including a brief description of the facts in each case and the amount of compensation awarded. (§ 1 ch 203 SLA 1972; am § 1 ch 1 SLA 1977)

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Revisor's notes. — Enacted as AS 18.67.130. Renumbered in 1972.

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Sec. 18.67.175. Duty to display information. (a) Every hospital licensed by this state shall display prominently in its emergency room, main entrance, and business office posters notifying the public of the existence and general provisions of this chapter. The board may set standards for the location of this display and shall provide posters and general information regarding the provisions of this chapter to each hospital and to each physician licensed to practice medicine in the state.

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(b) Every law enforcement agency in the state shall inform victims of violent crimes, or their surviving dependents, of the provisions of this chapter and shall provide application forms to the victims, or their dependents, who desire to seek compensation under this chapter. The board shall provide application forms, all other documents and general information that law enforcement agencies may require to comply with this subsection. (§ 11 ch 132 SLA 1975)

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Opinions of attorney general. — The Violent Crimes Compensation Board has the implied power to waive the time limitations contained in 18.67.130 (a)(1) where a law enforcement agency in the state has failed to advise a victim of her right to file for compensation. June 17, 1982 Op. Att'y Gen.

Sec. 18.67.180. Definitions. In this chapter

(1) "board" means the Violent Crimes Compensation Board;

(2) "dependent" means a relative of a deceased victim, who was dependent upon the victim's income or services at the time of the victim's death; children of a victim born after a victim's death are included;



LAWS OF ALASKA

1989

Source

CSHB 36(Fin) am

Chapter No.

39

AN ACT

Relating to crimes, the rights, entitlements, and services that are due to victims of crime, and to service of process on prisoners; redefining the term 'crime against a person'; and amending Rules 32 and 35 of the Alaska Rules of Criminal Procedure.

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

THE ACT FOLLOWS ON PAGE 1, LINE 12

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor May 30, 1989
Actual Effective Date August 28, 1989

AN ACT

Relating to crimes, the rights, entitlements, and services that are due to victims of crime, and to service of process on prisoners; redefining the term 'crime against a person'; and amending Rules 12 and 15 of the Alaska Rules of Criminal Procedure.

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

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

Sec. 09.05 050. SERVICE OF PROCESS ON STATE PRISONERS. (a) In a civil action to which a person committed to the custody of the commissioner of corrections is a party or witness, service of process shall be made by delivering a copy of the summons and the complaint or pleading, together with a form for affidavit of proof of service, to the shift supervisor of the correctional facility in which the person is housed. The shift supervisor shall

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

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

(b) A party requesting service of process under this section may locate a person committed to the custody of the commissioner of corrections by contacting the chief classification officer of the

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

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

(b) A party requesting service of process under this section may locate a person committed to the custody of the commissioner of corrections by contacting the chief classification officer of the

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

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

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

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

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

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

(4) the offender petitions for discharge under AS 12.47.092(f).

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

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

(d) If more than one person who qualifies as a victim under AS 12.55.105 desires notice, the commissioner of health and social services shall designate one person for purposes of receiving any

notice required and exercising the rights granted by this section.

(e) In this section

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

(2) "victim" has the meaning given in AS 12.55.105.

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

Sec. 12.55.071. PARTICIPATION BY VICTIM IN SENTENCING. (a) If a victim requests, the prosecuting attorney shall provide the victim, before the sentencing hearing, with a copy of the following portions of the presentence report:

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

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

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

(4) the sentence recommendation of the Department of Corrections.

(b) A victim may submit to the sentencing court a written statement that the victim believes is relevant to the sentencing decision.

* Sec. 5. AS 12.55.080 is amended by adding new subsections to read:

(d) A victim has the right to comment in writing to the court on a motion to modify or reduce a sentence filed by the person who perpetrated the offense against the victim.

(e) If a motion is filed to modify or reduce a sentence by a defendant who perpetrated a crime against a person or group in the first degree, the court shall, if feasible, send a copy of the motion to the Department of Corrections sufficiently in advance of any scheduled hearing or hearing deadline to enable the department to notify the victims of that crime. If that victim has earlier requested to be notified, the Department of Corrections shall send the victim a

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copy of the motion and inform the person of that person's right under this section, the deadline for receipt of written comments, the hearing date, and the court's address.

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

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

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

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

Sec. 12.55.122. DESIGNATION OF REPRESENTATIVE. If more than one person is qualified as a victim under AS 12.55.185 desires notice under AS 12.55.088, the prosecuting attorney shall designate one person to represent all victims for purposes of receiving the notice required and exercising the rights granted under this chapter.

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

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

(1) "crime against a person" has the meaning given in AS 11.06.001;

(2) "dangerous instrument" has the meaning given in AS 11.01.900;

(3) "firearm" has the meaning given in AS 11.01.900;

(4) "first felony conviction" means that the defendant has

not been previously convicted of a felony;

(5) "judicial officer" has the meaning given in AS 11.56.900;

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

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

(8) "serious physical injury" has the meaning given in AS 11.01.900;

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

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

(11) "victim" means

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

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

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

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

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

(1) a person living in a spousal relationship with the decedent before the decedent died;

(11) an adult child, parent, brother, sister, grandparent or grandchild of the decedent; or

(14) any other interested person, as may be designated by a person having authority in law to do so.

Sec. 9. AS 12.61.010 is amended to read:

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

(1) the right to be informed by the appropriate law enforcement agency or the prosecuting attorney of the date of trial and the date of sentencing of the case in which the victim is involved;

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

(3) the right to receive protection from harassment and threats of harassment out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the protection available;

(4) the right to be informed of the procedure to be followed to apply for and receive any [VICTIM] compensation under AS 18.65.

(5) at the request of the prosecution or a law enforcement agency, the right to cooperate with the criminal justice process without loss of pay and other employee benefits except as authorized by AS 12.61.012 and without interference in any form by the employer of the victim of crime; (AND)

(6) the right to obtain access to immediate medical assistance and not to be detained for an unreasonable length of time by a

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

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

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

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

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

Sec. 9. AS 12.61.010 is amended by adding new section to read:

Sec. 12.61.012. RIGHTS OF PROSECUTORS' EMPLOYERS. (a) If a victim of a felony or a domestic violence assault requests, the prosecuting attorney shall make a reasonable effort to:

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

(2) in a manner reasonably calculated to give prompt actual

and to notify the victim

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

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

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

(D) of the time and place of the sentencing proceeding;

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

(2) The notice given under (1)(2) of this section must inform the victim that the statement of the victim may contain any relevant information including:

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

(b) an explanation of the extent of economic loss or property damage suffered by the victim;

(c) an opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for economic damage; and

(d) the recommendation of the victim for an appropriate sentence.

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

Sec. 12.61.012 INTERFERENCE BY VICTIM'S EMPLOYER. (a) An employer may not penalize or threaten to penalize a victim because the victim is subpoenaed or requested by the prosecuting attorney to attend a court proceeding for the purpose of giving testimony. In this section, "penalize" means to take action affecting the employment status, wages, and benefits payable to the victim, including:

(1) demotion or suspension;

(2) dismissal from employment; and

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

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

(c) A victim who suffers a pecuniary loss as a result of an employer's act prohibited by this section may bring a civil action to recover actual damages and punitive damages not more than the actual damages sustained.

* Sec. 10 AS 11.61 to be amended by adding a new section to read:

Sec. 12.61.010 DESIGNATION OF REPRESENTATIVE. If more than one person who qualifies as a victim under AS 12.55.001 makes a request under this chapter, the prosecuting attorney shall designate one person for purposes of receiving the notice required and exercising the rights granted under this chapter.

* Sec. 11 AS 11.61 to be amended by adding a new section to read:

Sec. 12.61.900 OFFENSES UNDER THIS CHAPTER.

(1) "domestic violence" means an assault under AS 11.61.200, 11.61.300, or 11.61.400, or 11.51.500 constituting a domestic violence offense under AS 12.55.001.

(2) "victim" has the same meaning as in AS 12.55.001.

* Sec. 12. AS 33.16.120(a) is repealed and re enacted to read:

(a) If the victim of a crime against a person or animal to the first degree requests notice of a scheduled hearing to review or consider discretionary parole for a prisoner convicted of that crime, the board shall send notice of the hearing to the victim at least 30 days before the hearing. The notice must be accompanied by a copy of the prisoner's application for parole submitted under AS 33.16.110(a). However, the copy of the application sent to the victim may not include the prisoner's proposed residence and employment addresses.

* Sec. 13. AS 33.16.120(b) is repealed and re enacted to read:

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

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

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

* Sec. 15. AS 33.16.120(e) is repealed and re enacted to read:

(e) If the victim requests, the board shall make every reasonable effort to notify the victim as soon as practicable by writing of its decision to grant or deny discretionary parole for a prisoner under AS 33.16.010(c). The notice under this subsection must include the expected date of the prisoner's release, the parole application to which the prisoner is required to reside, and other pertinent

information concerning the prisoner's conditions of parole that may affect the victim.

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

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

- (1) meet family obligations;
- (2) pursue employment, education, counseling, or training;
- (3) remain within stated geographic limits unless written permission to depart from the stated limits is granted the parolee;
- (4) report upon release to the parole officer assigned to the parolee;
- (5) report as required to the parole officer assigned to the parolee;
- (6) reside at a stated place and notify the board of any change in place of residence;
- (7) not possess or carry a firearm or other dangerous weapons;
- (8) refrain from possessing or consuming alcoholic beverages;
- (9) submit to reasonable searches and seizures by a parole officer, or a peace officer acting under the direction of a parole officer;
- (10) submit to appropriate medical, mental health, or controlled substance or alcohol examination, treatment, or counseling;
- (11) submit to periodic examinations designed to detect the use of alcohol or controlled substance;
- (12) make no violation ordered by the court. (10) A VICTIM OF THE PRISONER's crime may request a schedule established by the board;

(11) refrain from opening, maintaining, or using a checking account or charge account;

(12) refrain from entering into a contract other than a prenuptial contract or a marriage contract;

(13) refrain from operating a motor vehicle;

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

(15) refrain from participating in any other activity or associating with any other person that the board determines is reasonably likely to diminish the rehabilitative goals of parole, or that may endanger the public.

* Sec. 12. AS 33.16 is amended by adding a new section to read:

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

* Sec. 19. 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. When the report or investigation is submitted, the board shall also transmit to the governor the comments it has received under (b) of this section.

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

(b) If requested by the victim of a crime against a person or person in the first degree, the board shall send notice of an

application for executive clemency submitted by the state prisoner who was convicted of that crime. The victim may request to testify to the board on the application for executive clemency.

(c) If the victim declines notice under (b) of this section, the victim shall maintain a current, valid mailing address on file with the board. The board shall send the notice required under this section to the victim's last known address. The victim's address may not be disclosed to the applicant for executive clemency, or the applicant's attorney.

(d) In this section,

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

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

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

Sec. 33.30.011. COMMISSIONER TO NOTIFY VICTIMS. (a) The commissioner shall notify the victim if the offender

(1) escapes from custody;

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

(3) is released on an early release program.

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

(c) A victim who has requested notice under (b) of this section shall maintain a current, valid mailing address on file with the commissioner. The commissioner shall send the notice from the department required by this section to the victim's last known address. The victim's address may not be disclosed to the offender or the offender's attorney.

(d) The state is not to be held liable in damages for the failure

will be followed pursuant to Rule 11. In the event the attorney 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. 27. Rule 32, Alaska Rules of Criminal Procedure, is amended to add the new paragraphs to read:

(g) WRITTEN STATEMENT SUBMITTED BY VICTIM OR VICTIM'S REPRESENTATIVE. If a written statement is prepared and submitted by the victim of a felony offense or a domestic violence assault under AS 12.55.031, the trial court

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

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

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

(2) may take the content of the written statement into consideration in any other circumstance that the court believes is necessary

(h) to (g) of this rule.

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

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

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

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

(1) When an individual convicted of a crime against a

person or person in the first degree files a motion to modify or reduce a sentence, the court shall, if feasible, send a copy of the motion to the Department of Corrections sufficiently in advance of any scheduled hearing or briefing deadline to enable the department to notify the victim, as directed by AS 12.55.088(e)

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

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

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

(d) In this rule,

(1) "crime against a person" has the meaning given in AS 11.30.901;

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

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

of the commissioner to comply with the requirements of this section.

* Sec. 21. AS 11.30.111(f) is repealed and recodified to read:

(f) If the commissioner considers a prisoner convicted of a crime against a person or arson in the first degree for a prerelease furlough and the victim has requested notice under AS 11.30.091, the commissioner shall send notice of intent to consider the prisoner for a prerelease furlough to the victim. The victim may comment in writing on the commissioner's intent to release the prisoner on prerelease furlough status. The commissioner shall consider the victim's comments before making a final decision to release a prisoner on a prerelease furlough. The commissioner shall make a reasonable effort to notify the victim of an intent to release the prisoner on a prerelease furlough. The notice must contain the expected date of the prisoner's release, the geographic area in which the prisoner will reside, and other pertinent information concerning the prisoner's release that may affect the victim.

* Sec. 22. AS 11.30 is amended by adding a new section to read:

Sec. 11.10.292. DESIGNATION OF REPRESENTATIVE. If more than one person who qualifies as a victim under AS 12.55.185 requests notice under this chapter, the commissioner shall designate one person for purposes of receiving the notice required and of exercising the rights granted by this chapter.

* Sec. 23. AS 11.10.901(6) is amended to read:

(6) "crime against a person" means a crime as set out in AS 11.41, EXCEPT CUSTODIAL INTERFERENCE UNDER AS 11.41.320 AND 11.41.330; or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime as set out in AS 11.41, EXCEPT CUSTODIAL INTERFERENCE UNDER AS 11.41.320 AND 11.41.330.

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

Sec. 47.10.072. ACCESS TO HEARING BY VICTIM. (a) If a crime was committed by a minor who is scheduled for a hearing under AS 47.10.07, the victim may request from the court permission to attend the hearing. If the victim requests, the department shall provide technical assistance to the victim in preparing a written submission to the court requesting access to the hearing. The department shall make reasonable efforts to inform victims of the availability of this assistance.

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

(c) In this section, "victim" has the meaning given in AS 12.55.185.

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

* Sec. 26. Rule 32(d)(1), Alaska Rules of Criminal Procedure, is amended to read:

(1) PRESENTENCE HEARING. The probation service shall make a 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. The report shall not be submitted to the court or its content disclosed to any one except counsel unless the defendant has tendered a plea of guilty or nolo contendere or has been found guilty. If the crime for which the person is to be sentenced is a felony, the contents shall be disclosed to counsel for the parties before the time of the hearing on the aggravator and mitigator factors and sentencing. The court may utilize the report in determining if a bifurcated sentence recommendation

Legislative Research Agency

Alaska State Legislature



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Phone: (907) 465-3991
Fax: (907) 463-3351

September 16, 1993


Received

SEP 16 1993

BRIAN PORTER

MEMORANDUM

TO: Representative Brian Porter

FROM: Paula d. Scavera 
Legislative Analyst

RE: **Constitutional Rights for Victims of Crime**
Research Request 94.039

Your office requested copies of constitutional provisions from states that have constitutional rights for crime victims. Attached you will find copies of pertinent constitutional provisions from California, Colorado, Florida, Illinois, Kansas, Michigan, Missouri, New Jersey, New Mexico, Rhode Island, Texas and Washington.

These "Victims Bill of Rights" became constitutional amendments through various political methods. California's began as a statewide initiative measure, which became Proposition 8, was voted on by the people and became effective June 9, 1992. Other constitutional amendments such as Missouri's, started out as a Senate Joint Resolution, which was ratified by the electorate. New Mexico's constitutional amendment is still a proposed amendment which will be submitted to the people for their approval or rejection at the next general election in 1994.

We hope this information is useful to you. If you need further assistance, please contact this office.

Attachments

**CONSTITUTIONAL
PROVISIONS
FROM OTHER STATES**

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.

RAYMOND E. PLUMMER
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1922-1990
LENN K. BRUBAKER
1917-1992

HAND-DELIVERED

October 22, 1993

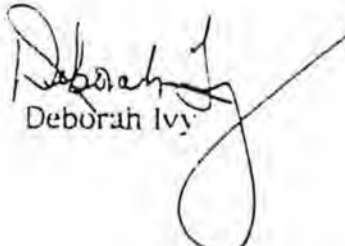
Ms. Daniella Loper
Legislative Assistant to
Rep. Brian Porter
716 W. 4th Ave. Suite 640

Dear Ms. Loper:

Enclosed for your review in connection with your work regarding the proposed constitutional amendment being sponsored by Representatives Porter, Barnes, and Phillips, is a copy of the implementing legislation relating to Arizona's victims rights constitutional amendment. Attorney Linda Akers of Crimestrike kindly provided this information to me earlier today.

Reviewing these statutes should serve to assist you and the sponsors of the Resolution in understanding how one other state (Arizona) implemented its victims rights constitutional amendment. I think reviewing the enclosed statutes will assist in responding to questions which will foreseeably be presented to you and/or the sponsors concerning actual implementation of the proposed constitutional amendment (e.g., the enclosed Arizona statutes specifically address which department or division of government has the responsibility of keeping the victim informed throughout the criminal proceedings). During the process of getting the Resolution passed to amend the Alaska Constitution, I foresee questions being presented by legislators concerning the actual implementation of a victim's constitutional rights. I think if the major questions can be answered satisfactorily by referring to specifics of other states implementation as an example, I believe legislators will generally be more inclined to vote in favor of the Resolution. A review of the enclosed statutes should provide you with a guide and a fairly good working knowledge of how a victim's constitutional rights have been implemented in another state's criminal justice system. I found the language of the implementing statutes to be clear and concise and the length succinct - which helps in quickly gaining an understanding of the overall scheme of implementing victims' constitutional rights in a state criminal justice system.

Sincerely,


Deborah Ivy

cc Sharon Nahorney
Janice Lienhart

Constitutional Provisions of:

California

Colorado

Florida

Illinois

Kansas

Michigan

Missouri

New Jersey

New Mexico

Rhode Island

Texas and Washington

Art. 2 § 1

CONSTITUTION

§ 1. Fundamental principles: recurrence to

Law Review Commentaries

Double security of federalism: Protecting individual liberty under the Arizona Constitution. Stanley G. Feldman and David L. Abney, 20 Ariz.State L.J. 115 (1988).

Role of the supreme court in the adjudication of constitutional rights. Ariz.State L.J. 2 (1984), p. 253.

Fundamental rights and judicial review. 25 Ariz.L.Rev. 5 (1984); 25 Ariz.L.Rev. 237 (1984).

Library References

Constitutional Law § 12 et seq., 44 et seq.
 C.J.S. Constitutional Law §§ 17 et seq., 36 et seq.

§ 2. Political power: purpose of government

Library References

Constitutional Law § 1.
 C.J.S. Constitutional Law § 2 et seq.

Notes of Decisions

1. In general

State constitutional amendment, which permitted victims of crime to refuse interviews with defendants was procedural, rather than substantive, even though amendment deprived defendants of method of discovery, since amendment did not affect defendant's right to confront and cross-examine witnesses at trial, and thus application of amendment to pending cases did not impair any substantive or vested rights of defendants. State v. Warner (App.1990) 168 Ariz. 251, 312 P.2d 1079, review denied.

The power to grant franchises resides in the state and a city in granting a franchise acts as an agent for the state. City of Mesa v. San River Project Agr. Imp. and Power Dist. (1962) 92 Ariz. 91, 373 P.2d 722, appeal dismissed 353 U.S. 1018, 372 U.S. 704, 10 L.Ed.2d 124.

§ 2.1. Victims' Bill of Rights

Section 2.1. (A) To preserve and protect victims' rights to justice and due process, victim of crime has a right:

- ✓ 1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
- ✓ 2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
- ✓ 3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
- ✓ 4. To be heard at any proceeding involving a post-arrest release decision, a negotiate plea, and sentencing.
5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
- ✓ 6. To confer with the prosecution, after the crime against the victim has been charged before trial or before any disposition of the case and to be informed of the disposition.
7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.

10. To receive prompt restitution from the perpetrator of the criminal act that caused the victim's loss or injury.

9. To be heard at any proceeding when any restriction upon release from confinement being considered.

11. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

12. To have all rules governing criminal procedure and the admissibility of evidence in criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.

13. To be informed of victims' constitutional rights.

But a victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

2. "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.

3) The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

4) The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislature or retained by victims. (Amended by Proposition 134 approved election Nov. 6, 1990, eff. Nov. 25, 1990.)

Historical Notes

Proposition 134, based on an initiative measure proposing an amendment of Article 2 of the Arizona Constitution by the addition of § 2.1, providing for a victims' Bill of Rights, was approved by the electors at the November 6, 1990 general election, as proclaimed by the governor on November 25, 1990.

Laws 1991, Ch. 209, § 2, effective January 1, 1991, provides:

Sec. 2. Legislative intent

The legislature recognizes that many innocent persons suffer economic loss and personal injury or death as a result of criminal acts. It is the intent of the legislature of this state to:

1. Enact laws that define, implement, preserve and protect the rights guaranteed to crime victims by article II, § 2.1, Constitution of Arizona.

2. Ensure that article II, § 2.1, Constitution of Arizona, is fairly and fairly implemented and that all crime victims are provided with basic rights of respect, protection, participation and hearing of their ordeals.

3. Ensure at all stages of the criminal justice process that the duties established by article II, § 2.1, Constitution of Arizona, are fairly accomplished among all law enforcement agencies, prosecution agencies, courts and corrections agencies in this state.

4. Ensure that employees of this state and its political subdivisions who engage in the detection, investigation, prosecution and adjudication of crime use reasonable efforts to see that crime victims are accorded the rights established by article II, § 2.1, Constitution of Arizona.

Laws 1991, 4th S.S., Ch. 1, § 3, eff. Dec. 4, 1991, provides:

Sec. 3. Liability under victims' bill of rights

From October 15, 1992 this state, a political subdivision, agency, board or committee of this state or an employee or agent of this state or a political subdivision of this state is not liable for a violation of the victims' bill of rights pursuant to article II, § 2.1, Constitution of Arizona, title 13, chapter 40, Arizona Revised Statutes or court rule.

Cross References

Victims Rights Implementation Act, see § 13-401 et seq.

Law Review Commentaries

Arizona criminal procedure after the victims' Bill of Rights Amendment: Implications of a victim's absolute right to refuse a defendant's

discovery request. Thomas B. Dixon, 33 Ariz.St. 221, 231 (1991).

Notes of Decisions

In general
Victim 2

1. In general

Trial judge could not order that dual juries be empaneled in first-degree murder case in which state had requested imposition of death penalty, in the absence of approved guidelines or trial court's obtaining approval from Supreme Court. *Healund v. Superior Court In and For Maricopa County*, 1992, 332 P.2d 219.

State constitutional provision which affords victims right to speedy trial or disposition does not provide crime victims with any substantive right to have dual juries empaneled; it does not make any reference to procedures by which right to speedy trial or disposition is to be enforced. *Healund v. Superior Court In and For Maricopa County*, 1992, 332 P.2d 219.

Victim's bill of rights does not give crime victim right to refuse to testify at accused's criminal trial. *S.A. v. Superior Court, In and For County of Maricopa*, 1992, 331 P.2d 1297.

Victims Bill of Rights applied to case filed before effective date of the Bill of Rights. *Knapp v. Martone* (1992) 170 Ariz. 237, 323 P.2d 655.

Trial courts must follow and apply plain language of Victims Bill of Rights, rather than

making ad hoc exceptions. *Knapp v. Martone* (1992) 170 Ariz. 237, 323 P.2d 655.

Although trial court orders which required victims of crime to be interviewed by defendant may have been valid when entered, legal basis for order was supplanted and no longer existed when constitutional amendment which provided victims right to refuse interviews became effective and, thus, orders were no longer valid. *State v. Warner* (App.1990) 168 Ariz. 261, 312 P.2d 1079, review denied.

Victims who presently asserted right to preclude any interview with defendants after effective date of amended state constitutional article granting such right did not present issue of retroactivity in special action to enforce right, since amendment was not invoked for refusal to be interviewed prior to amendment's effective date. *State v. Warner* (App.1990) 168 Ariz. 261, 312 P.2d 1079, review denied.

2. Victim

Mother of two children alleged to have been murdered was "victim" under Victims' Bill of Rights and thus could properly refuse request of defendant, her husband, to depose her, even though defendant was charged with murder and as an accessory, and mother was unnamed and uncharged coconspirator; mother was not an "accused." *Knapp v. Martone* (1992) 170 Ariz. 237, 323 P.2d 655.

§ 4. Due process of law

Law Review Commentaries

Fundamental rights and judicial review. 26 *Ariz.L.Rev.* 5 (1984); 26 *Ariz.L.Rev.* 237 (1984).

Role of the supreme court in the adjudication of constitutional rights. *Ariz.State L.J.* 2, 1984, p. 283.

Library References

Constitutional Law ¶251 et seq., 255.
C.J.S. Constitutional Law §§ 704 et seq., 377.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

United States Supreme Court

Abortion

Minors, two-parent notification requirement, delay period. see *Hodgson v. Minnesota*, 1990, 110 S.Ct. 2926, 497 U.S. 417, 111 L.Ed.2d 344.

Parental notification by minors and physicians, judicial bypass procedures, complaint forms, time limits, and confidentiality. see *Ohio v. Akron Center for Repro-*

ductive Health, 1990, 110 S.Ct. 2972, 497 U.S. 502, 111 L.Ed.2d 405, on remand 911 F.2d 731, 733.

Unmarried natural father's right to prevent. see *Dob v. Smith*, 1988, 108 S.Ct. 2136, 486 U.S. 1308, 100 L.Ed.2d 909.

Use of public employees and facilities. see *Webster v. Reproductive Health Services*,

... is not a bar to consideration of a capital defendant's claim that the death penalty is disproportionate to his culpability under the facts of the

case. *People v. Bean* (1985) 46 Cal. 3d 919, 251 Cal. Rptr. 467, 750 P.2d 996.

§ 28. Victims' Bill of Rights

(a) The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern. The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.

(b) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

(c) Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

(d) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(e) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.

A person may be released on his or her own recognizance in the court's

discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter. When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(f) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(g) As used in this article, the term "serious felony" is any crime defined in Penal Code, Section 1192.7(c).

Adopted June 3, 1982.

Collateral References:

Witkin & Epstein, Criminal Law (2d ed) §§ 7, 8, 1253, 1525, 1453, 1474, 1487, 1492, 1497, 1509, 1526, 1527, 1777, 1997, 2241, 2521, 2557, 2835.

Witkin Evidence (3d ed) §§ 299, 1962, 8, 326, 624, 1213, 1791, 1911, 1968.

Cal Jur 3d (Rev) Constitutional Law § 10, Criminal Law §§ 51, 54, 2040, 2215, 2582, 3131, 3167, 3247, Delinquent and Dependent Children § 156.

Modern Cal Discovery (4th ed) §§ 18.3, 22.10.

Cal Trial Handbook 2d (BW, 1987) § 11.0, 14.14, 19.19, 28.13, 28.36.

Preservation of material evidence in California: does *People v. Hitch* survive *California v. Trombetta*. 13 *Hast Const LQ* 147.

The "Safe Schools" provision of the California Constitution: Can a nebulous constitutional right be a vehicle for change (right to safe schools under the "Victims' Bill of Rights"? 14 *Hast Const LQ* 789.

Admissibility of expert testimony in child sexual abuse cases in California: Retire *Kelly-Frye* and return to a traditional analysis. 22 *Loyola U of LA LR* 1103.

Warrant requirement for bugged informants under the California right to privacy. 14 *Pacific LJ* 1057.

Victims' rights symposium. 23 *Pacific LJ* 815.

Enhancing sentences with prior felony convictions: The limits of "without limitation." 23 *Pacific LJ* 1051.

Truth in evidence and the privilege clause — a compromised relationship. 23 *Pacific LJ* 1061.

Proposition 8 and the exclusionary rule: Towards a new balance of defendant and victim rights. 23 *Pacific LJ* 1101.

Proposition 8: California Law after *In re Lance W.* and *People v. Castro*. 12 *Pep L R* 1059.

Proposition 8 (the "Victims' Bill of Rights") and the California Supreme Court: Interpretation run riot? 60 *SCLR* 539.

Restricting Gang Clothing in Public Schools: Does A Dress Code Violate A Student's Right of Free Expression? 64 *SCLR* 1321.

Proposition 8: It may go beyond the Fourth Amendment. 19 *Southwestern U LR* 57.

The wrongs of victim's rights. 37 *Stan LR* 937.

Dilution of Fourth Amendment rights on public high-school campuses. 21 *USF LR* 555.

Symposium: Proposition 8 comes of age. 13 *Western St LR* 1.

NOTES OF DECISIONS

The provisions of a statewide initiative measure, known as The Victims' Bill of Rights, were reasonably germane to each other and thus satisfied the requirement that initiative measures embrace a single subject (Cal. Const., art. II, § 8, subd. (d)). Each of the measure's several facets, which dealt with matters such as restitution, safe schools, bail, and prior convictions, shared the common concern of promoting the rights of actual or potential crime victims, and it was this goal that united all of the measure's provisions in advancing its common pur-

pose. *Brosnahan v Brown* (1982) 32 Cal 3d 236, 186 Cal Rptr 30, 651 P2d 274.

An initiative measure known as The Victims' Bill of Rights did not constitute a revision of the state Constitution, rather than a mere amendment thereof, so as to require its adoption pursuant to a constitutional convention or legislative submission to the people. The measure's qualitative changes, which amounted to repealing one constitutional section and adding another, were not so extensive

ARTICLE II

Bill of Rights

Section 16a. Rights of crime victims. Any person who is a victim of a criminal act, or such person's designee, legal guardian, or surviving immediate family members if such person is deceased, shall have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice process. All terminology, including the term "critical stages", shall be defined by the general assembly.

As enacted November 3, 1991 — Effective upon proclamation of the Governor. (See Laws 1991, p. 233.)

Section 30b. No Protected Status Based on Homosexual, Lesbian or Bisexual Orientation. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.

Enacted by the people November 3, 1992 — Effective upon proclamation of the Governor.

Editor's note: Although this section was numbered as section 30 as it appeared on the ballot, for ease of location it has been numbered as section 30b.

ARTICLE VII

Suffrage and Elections

Section 7. General election. The general election shall be held on such day as may be prescribed by law.

As amended November 3, 1992 — Effective upon proclamation of the Governor. (See Laws 1992, p. 2316.)

ARTICLE IX

Education

Section 1. Supervision of schools - board of education. (1) The general supervision of the public schools of the state shall be vested in a board of

SECTION 9. Due process.—No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.

SECTION 10. Prohibited laws.—No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

SECTION 11. Imprisonment for debt.—No person shall be imprisoned for debt, except in cases of fraud.

SECTION 12. Searches and seizures.—The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

History.—Am. H.J.R. 31—H. 1982; adopted 1982.

SECTION 13. Habeas corpus.—The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.

SECTION 14. Pretrial release and detention.—Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

History.—Am. H.J.R. 43—H. 1982; adopted 1982.

SECTION 15. Prosecution for crime; offenses committed by children.—

(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.

(b) When authorized by law a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Any

child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.

SECTION 16. Rights of accused and of victims.—

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation against him, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties he will be tried. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

(b) Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

History.—Am. S.J.R. 15—S. 1987; adopted 1988.

SECTION 17. Excessive punishments.—Excessive fines, cruel or unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden.

SECTION 18. Administrative penalties.—No administrative agency shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.

SECTION 19. Costs.—No person charged with crime shall be compelled to pay costs before a judgment of conviction has become final.

SECTION 20. Treason.—Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort, and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on confession in open court.

SECTION 21. Access to courts.—The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

SECTION 22. Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

SECTION 23. Right of privacy.—Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to

§ 8.1. Crime Victim's Rights

(a) Crime victims, as defined by law, shall have the following rights as provided by law:

- (1) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
- (2) The right to notification of court proceedings.
- (3) The right to communicate with the prosecution.
- (4) The right to make a statement to the court at sentencing.
- (5) The right to information about the conviction, sentence, imprisonment, and release of the accused.
- (6) The right to timely disposition of the case following the arrest of the accused.
- (7) The right to be reasonably protected from the accused throughout the criminal justice process.
- (8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.
- (9) The right to have present at all court proceedings, subject to the rules of evidence, an advocate or other support person of the victim's choice.
- (10) The right to restitution.

(b) The General Assembly may provide by law for the enforcement of this Section.

(c) The General Assembly may provide for an assessment against convicted defendants to pay for crime victims' rights.

(d) Nothing in this Section or in any law enacted under this Section shall be construed as creating a basis for vacating a conviction or a ground for appellate relief in any criminal case.

Adopted general election Nov. 3, 1992, eff. Nov. 3, 1992.

Historical Notes

Schedule:

The schedule contained in the 1992 amendment provides:

This Amendment takes effect upon its approval by the electors of this State.

§ 9. Bail and Habeas Corpus

All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.

Legis. Reference Library

Lotteries; Indian gaming regulating act. 91-119, 92-1.

CASE ANNOTATIONS

1. Amendment to Art. 11, § 1 of Kansas Constitution as self-executing relative to assessment and taxation of property noted. Colorado Interstate Gas Co. v. Board of Morton County Comm'rs, 247 K. 654, 659, 302 P.2d 584 (1990).

§ 6.

CASE ANNOTATIONS

30. Spouse obligated to pay other spouse's necessities, including medical services. St. Francis Regional Med. Center, Inc v. Bowles, 16 K.A.2d 374, 375, 378, 523 P.2d 226 (1992).

§ 9.

Law Review and Bar Journal References:

"Exemption Laws in Kansas: Recent Amendments and Bankruptcy Estate Planning," Mark A. Andersen, 38 K.L.R. 143, 149 (1989).

"Divorce Law: Lis Pendens, Judgment Liens, Homestead Exemptions, and Bankruptcy," John C. Peck, Shala M. Bannister and W. Thomas Gilman, 60 J.K.B.A. No. 2, 25, 30 (1991).

CASE ANNOTATIONS

186. Proceeds from involuntary transfer of homestead pursuant to divorce exempt where debtor intended to invest in another homestead. In re Daniels, 65 B.R. 703, 706 (1986).

187. Sales tax lien held as attaching to real property which is subject to constitutional claim of homestead exemption. Homestead Land Title Co. v. United States, 249 K. 569, 319 P.2d 660 (1991).

188. No forfeiture of homestead upon drug conviction unless consent of both husband and wife. City of Garden City v. Lot Nine, Block Three, 16 K.A.2d 174, 319 P.2d 1250 (1991).

189. Homestead, establishment, occupancy, intent; debtor claimed 160 acres. In re Snook, 134 B.R. 424 (1991).

§ 10.

Attorney General's Opinions:

City election to permit or prohibit sale of liquor by the drink; city's authority to prevent licensure thereof. 91-91.

CASE ANNOTATIONS

25. Amendment to Art. 11, § 1 of Kansas Constitution as self-executing relative to assessment and taxation of property noted. Colorado Interstate Gas Co. v. Board of Morton County Comm'rs, 247 K. 654, 659, 302 P.2d 584 (1990).

§ 12.

Attorney General's Opinions:

Membership or nonmembership in labor organizations. 38-121.

Membership or nonmembership in labor organizations; representation fee; employer and employee relations; rights of employees. 92-42.

§ 15. Victims' rights. (a) Victims of crime, as defined by law, shall be entitled to certain basic rights, including the right to be informed of and to be present at public hearings, as defined by law, of the criminal justice process, and to be heard at sentencing or at any other time deemed appropriate by the court, to the extent that these rights do not interfere with the constitutional or statutory rights of the accused.

(b) Nothing in this section shall be construed as creating a cause of action for money damages against the state, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The legislature may provide for other remedies to ensure adequate enforcement of this section.

(c) Nothing in this section shall be construed to authorize a court to set aside or to void a finding of guilty or not guilty or an acceptance of a plea of guilty or to set aside any sentence imposed or any other final disposition in any criminal case.

History: L. 1992, ch. 343, § 1; Nov. 3, 1992.

List of Amendments and Proposed Amendments to the Kansas Constitution

YEAR	SUBJECT	ART.	SEC.
1990.	A proposition to revise article 6 of the constitution of the state of Kansas, relating to education. L. 1990, ch. 371; H.C.R. 5010; rejected Nov. 6, 1990: For 245,132; Against 377,625	6	1-7
1992.	A proposition to amend section 1 of article 11 of the constitution of the state of Kansas, relating to the taxation of property. L. 1992, ch. 342; H.C.R. 5007; adopted Nov. 3, 1992: For 473,415; Against 421,313 (Unofficial count)	11	1
1992.	A proposition to amend article 15 of the constitution of the state of Kansas by adding a new section thereto, prescribing certain rights for victims of crime. L. 1992, ch. 343; S.C.R. 1634; adopted Nov. 3, 1992: For 775,346; Against 145,374 (Unofficial count)	15	15

MICHIGAN CONSTITUTION

Crawford (1955) 383 N.W.2d 172, 147 Mich. 244.

V. RIGHT TO APPEAL

Waiver of right to appeal

Sentencing issues not first presented to the court are considered waived for appeal. *Rodriguez* (1991) 480 N.W.2d 237, 192 Mich. App. 1.

Defendants did not waive their right to appeal suppression issue by pleading guilty. If guilty pleas were accepted in understanding defendant's right to appeal suppression not waived; defendants were entitled to trial on the merits or to have their pleas set aside. *People v. Reid* (1984) 362 N.W.2d 655, 152 Mich. App. 326.

Sentencing, right to appeal

Defendant was entitled to appeal as of right sentencing where his first sentence was based on appeal and his resentencing was based on original conviction and resulted in less sentence than originally imposed; it was error for court's decision to grant or deny defendant's motion for resentencing, that was based on appeal. *People v. Martinez* (1992) 485 N.W.2d 14, 193 Mich. App. 377.

Guilty plea, right to appeal

Trial court can accept plea of guilty upon defendant's waiver of right to appeal. Court must determine if waiver is voluntary and intelligent; furthermore, court must determine whether agreement in waiver of right to appeal, defendant's understanding as well as conviction and; if so, whether defendant understands and agrees; to determine if waiver meets such requirements, court must consider all relevant facts and circumstances surrounding waiver, including: nature of agreement and age, experience, background of defendant. *People v. Rodriguez* (1991) 480 N.W.2d 237, 192 Mich. App. 1.

Waiver of pleading guilty, defendant waives review of all nonjurisdictional defects on appeal. *People v. Rodriguez* (1991) 480 N.W.2d 237, 192 Mich. App. 1.

Defendant may voluntarily and knowingly waive constitutional right to appeal guilty plea and sentence while reserving right to appeal and right to appointed counsel, when indigent, in exchange for sentencing concessions. *People v. Rodriguez* (1991) 480 N.W.2d 237, 192 Mich. App. 1.

Defendant's waiver of his right to appeal in sentencing does not preclude him from obtaining review of his sentence or conviction when warranted. *People v. Rodriguez* (1991) 480 N.W.2d 237, 192 Mich. App. 1.

MICHIGAN CONSTITUTION

Art. 2, § 1

Note 18

§ 24. Rights of crime victims: enforcement: assessment against convicted defendants

Sec. 24. (1) Crime victims, as defined by law, shall have the following rights, as provided by law:

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

The right to timely disposition of the case following arrest of the accused.

The right to be reasonably protected from the accused throughout the criminal justice process.

The right to notification of court proceedings.

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

The right to confer with the prosecution.

The right to make a statement to the court at sentencing.

The right to restitution.

The right to information about the conviction, sentence, imprisonment, and release of the accused.

(2) The legislature may provide by law for the enforcement of this section:

(3) The legislature may provide for an assessment against convicted defendants to pay for crime victims' rights.

Enactment ratified Nov. 3, 1988. Eff. Dec. 24, 1988.

Historical Notes

The 1988 enactment was proposed by 1988 and approved by the electors as Proposal B at House Joint Resolution P, and was submitted to the November 3, 1988, general election.

ARTICLE II

Elections

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

§ 1. Qualifications of electors: residence

Notes of Decisions

Primary elections 18:

18. Primary elections

Requirement that person declare party preference before voting in closed presidential primary did not violate State Constitution; closed primary system was not prohibited by constitution-

al requirement that all individuals who meet citizenship, residency, and age requirements be allowed to vote. *Ferency v. Secretary of State* (1991) 476 N.W.2d 417, 190 Mich. App. 398, appeal denied 482 N.W.2d 768, vacated in part on other grounds 486 N.W.2d 664.

Primaries are basically party functions so that there is legitimate state interest in restricting

WESTLAW 10 15 93

Citation	Rank(R)	Page(P)	Database	Mode
MO CONST Art. I, s 32	R 1 OF 1		STAT-ALL	TERM
V.A.M.S. CONST. Art. I, s 32				

VERNON'S ANNOTATED MISSOURI STATUTES
 CONSTITUTION OF 1945
 ARTICLE I. BILL OF RIGHTS
 COPR. (c) WEST 1993 No Claim to Orig. Govt. Works
 Current through amendments approved 11-3-92

s 32. (Crime VICTIMS' RIGHTS)

< Section head was editorially supplied >

Section 32. 1. Crime victims, as defined by law, shall have the following rights, as defined by law:

(1) The right to be present at all criminal justice proceedings at which the defendant has such right, including juvenile proceedings where the offense would have been a felony if committed by an adult;

(2) Upon request of the victim, the right to be informed of and heard at guilty pleas, bail hearings, sentencing, probation revocation hearings, and parole hearings, unless in the determination of the court the interests of justice require otherwise;

(3) The right to be informed of trials and preliminary hearings;

(4) The right to restitution, which shall be enforceable in the same manner as any other civil cause of action, or as otherwise provided by law;

(5) The right to the speedy disposition and appellate review of their cases, provided that nothing in this subdivision shall prevent the defendant from having sufficient time to prepare his defense;

(6) The right to reasonable protection from the defendant or any person acting on behalf of the defendant;

(7) The right to information concerning the escape of an accused from custody or confinement, the defendant's release and scheduling of the defendant's release from incarceration; and

(8) The right to information about how the criminal justice system works, the rights and the availability of services, and upon request of the victim the right to information about the crime.

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of pupils into area by bus, expense of such transportation could not be said to have resulted from state's taking of part of school property and was not item of damage to remaining land and building. State by State Highway Com'r v. Board of Ed. of City of Elizabeth, 116 N.J.Super. 305, 282 A.2d 71 (L.1971).

52.5. Burden of proof

Burden of demonstrating that a taking has occurred lies on the party alleging that state action is unconstitutional, and proof must be by clear and convincing evidence. Master of Egg Harbor Associates (Bayshore Centre), 94 N.J. 358, 464 A.2d 1115 (1983).

54. — Expert witnesses

A court will not permit an expert to testify to the value of vacant land, for condemnation purposes, based on projected income which could be earned from operation of building which might be erected thereon; such a valuation is too speculative. State by Com'r of Transp. v. F & J Partnership, 250 N.J.Super. 19, 393 A.2d 352 (A.D.1991).

55. Leasehold interests

Determination of just compensation allows all interests, including the leasehold, to be compensated, but New Jersey follows the unit rule which means that although a tenant may participate in the condemnation hearing, he is not entitled to have his tenancy separately and specifically evaluated in the condemnation award; actual apportionment of the condemnation award will take place at a separate and later proceeding. State v. Whitehead Bros. Co., Inc., 210 N.J.Super. 359, 509 A.2d 332 (L.1986).

59. Cable installations

Finding by Board of Public Utilities that damage from taking needed for installation of cable television service is nominal, thus warranting presumption that \$1,000 satisfies just compensation requirements, was supported by expert's testimony

21. Saving clause.

Notes of Decisions

Elections. 2

2. Elections

In view of fact that state has a legitimate interest in preventing "raiding" or crossover voting in a primary election N.J.S.A. 19:23-45 of

22. Rights of victims of crimes

A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered in accordance with law or the Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the Legislature. For the purposes of this paragraph, "victim of a crime" means: a) a person who has

at rule-making hearing that in cases he had examined cable had been installed without damage to property owners. NYT Cable TV v. Hockensood: At Mansfield, Inc., 214 N.J.Super. 148, 318 A.2d 748 (A.D.1986) affirmed 111 N.J. 21, 543 A.2d 10.

60. Private ownership, public use

Anticipated private ownership of shopping center to be built on land being condemned by Housing and Mortgage Finance Agency did not violate federal or state constitutional limits on power of eminent domain where condemnation was intended to serve public purpose of providing supplies and services for residents of publicly financed housing projects in the area. New Jersey Housing and Mortgage Finance Agency v. Moore, 215 N.J.Super. 318, 321 A.2d 1307 (A.D.1987) certification denied 107 N.J. 532, 327 A.2d 460.

61. Utility easements

Even though utility was granted general easement over private property without specification of course over which its lines were to be placed, once it placed lines and fixed easement's location, grant was essentially the same as if fixed in original grant and general or specific nature of original grant was not cooperative of utility's claim against township alleging a "taking" by forced relocation of lines. Sussex Rural Elec. Co-op. v. Wantage Tp., 217 N.J.Super. 481, 526 A.2d 259 (A.D.1987).

Forced relocation of preexisting utility transmission facilities necessitated by township's road construction project amounted to a compensable taking, and utility was entitled to recover costs of relocation, since utility's interest associated public's interest in roads in question, even though utility may have placed its lines specifically to accommodate subdivision developments of which the roads were a crucial part. Sussex Rural Elec. Co-op. v. Wantage Tp., 217 N.J.Super. 481, 526 A.2d 259 (A.D.1987).

primary elections law requiring those across who is not affiliated with a political party by virtue of a previous declaration or previous primary participation and who is not excused as a newly registered voter must file declaration for party on or before 30th day preceding primary election is not unconstitutional. Friedland v. State, 149 N.J.Super. 483, 374 A.2d 60 (L.1977).

Last additions in text indicated by underline; deletions by strike

Sec. 22. [Alien landownership.]

Until otherwise provided by law no alien, ineligible to citizenship under the laws of the United States, or corporation, copartnership or association, a majority of the stock or interest in which is owned or held by such aliens, shall acquire title, leasehold or other interest in or to real estate in New Mexico. (As amended September 20, 1921.)

Cross-references. — As to statutory authority for aliens to acquire or hold real estate by deed, will, inheritance or otherwise, see 45-2-112 NMSA 1978.

The 1921 amendment, which was proposed by J. R. No. 9 (Laws 1921) and adopted at the special election held on September 20, 1921, with a vote of 25,921 for and 18,342 against, amended this section, which formerly provided that no distinction should be made by law between resident aliens and citizens in regard to the ownership or descent of property.

Constitutionality of alien land laws is open to certain doubts. 1963-64 Op. Att'y Gen. No. 63-120.

Legislation enacted prior to amendment not "otherwise provided". — This section, as amended in 1921, is broad enough to prohibit the acquiring of any interest whatever in real estate by an alien ineligible to citizenship, and no legislation enacted prior to 1921 could be construed as a provision of law such as contemplated by the words "until otherwise provided by law." 1929-30 Op. Att'y Gen. 11.

Prohibition suspended. — Because 45-2-112 NMSA 1978 was enacted subsequent to the 1921 amendment to this section, it operates to suspend the

prohibition against ownership of real property in New Mexico by persons other than United States citizens. 1981 Op. Att'y Gen. No. 31-5.

Phrase "eligible to citizenship" means a person belonging to a class which is eligible and who is capable of becoming a citizen upon due compliance with naturalization laws. 1963-64 Op. Att'y Gen. No. 63-120.

Law reviews. — For article, "The Perils of Intestate Succession in New Mexico and Related Will Problems," see 7 Nat. Resources J. 555 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3A Am. Jur. 2d Aliens and Citizens §§ 2003, 2005.

Escheat for alienage of owner, or kindred of owner, who dies intestate. 23 A.L.R. 1227; 79 A.L.R. 1364.

Escheat of property of alien corporation. 23 A.L.R. 1247; 79 A.L.R. 1364.

Escheat as affecting contract for sale or lease to alien. 23 A.L.R. 1250; 79 A.L.R. 1366.

State regulation of landownership by alien corporation. 21 A.L.R. 4th 1329.

3 C.J.S. Aliens §§ 16, 17.

Sec. 23. [Reserved rights.]

The enumeration in this constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people.

Comparable provisions. — Idaho Const., art. I, § 21.

Iowa Const., art. I, § 25.

Montana Const., art. II, § 34.

Utah Const., art. I, § 25.

Wyoming Const., art. I, § 36.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 16 Am. Jur. 2d Constitutional Law §§ 7, 280.

16 C.J.S. Constitutional Law §§ 53, 58; 16A C.J.S. Constitutional Law § 445.

Sec. 24. (Proposed) [Victim's rights.]

A. A victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child or that victim's representative shall have the following rights as provided by law:

(1) the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;

(2) the right to timely disposition of the case;

(3) the right to be reasonably protected from the accused throughout the criminal justice process;

(4) the right to notification of court proceedings;

(5) the right to attend all public court proceedings the accused has the right to attend;

(6) the right to confer with the prosecution;

(7) the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused;

(8) the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury;

9) the right to information about the conviction, sentencing, imprisonment, escape or release of the accused;

10) the right to have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause; and

11) the right to promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property.

B. A person accused or convicted of a crime against a victim shall have no standing to object to any failure by any person to comply with the provisions of Subsection A of Section 24 of Article 2 of the constitution of New Mexico.

C. The provisions of this amendment shall not take effect until the legislature enacts laws to implement this amendment.

Compiler's notes. — Section 2 of S.J.R. No. 4 (Laws 1992) provides that this proposed amendment shall be submitted to the people for their approval or

rejection at the next general election or at any special election prior to that date which may be called for that purpose.

ARTICLE III

Distribution of Powers

Sec.

1. Separation of departments; establishment of workers compensation body.

Section 1. [Separation of departments; establishment of workers' compensation body.]

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted. Nothing in this section, or elsewhere in this constitution, shall prevent the legislature from establishing, by statute, a body with statewide jurisdiction other than the courts of this state for the determination of rights and liabilities between persons when those rights and liabilities arise from transactions or occurrences involving personal injury sustained in the course of employment by an employee. The statute shall provide for the type and organization of the body, the mode of appointment or election of its members and such other matters as the legislature may deem necessary or proper. (As amended November 4, 1986.)

- I. General Consideration.
- II. Legislative Delegation of Power.
- III. Legislation Affecting Judiciary.
 - A. Legislation Validly Affecting Courts.
 - B. Legislation Improperly Concerning Powers on Courts.
 - C. Improper Interference with Judiciary by Legislature.
- IV. Judicial Review over Legislative Affairs.
- V. Powers of Executive Department.

I. GENERAL CONSIDERATION.

Cross-references. — As to the workers' compensation division, see 52-5-1 NMSA 1978.

The 1986 amendment, which was proposed by S.J.R. No. 7 (Laws 1986) and adopted at the general election held on November 4, 1986, by a vote of 173,989 for and 92,419 against, added the last two sentences.

State constitutions are not grants of power to the legislative, executive or judiciary branches, but are limitations on the powers of each, and no branch of the state may add to, nor detract from, its clear mandate. State ex rel. Hovey Concrete Prods. Co. v. Mechem, 63 N.M. 250, 316 P.2d 1069 (1957), overruled on other grounds, Wylie Corp. v. Mowrer, 104 N.M. 731, 726 P.2d 1381 (1986).

Each of three departments of government is

Section 22. Right to bear arms. — The right of the people to keep and bear arms shall not be infringed.

Cross References. Federal guaranty of right to bear arms. U.S. Const., Amend. II. Comparative Provisions. Bearing arms: Conn. 1865 Const., art. First, § 15. Mass. Const. § 151.

NOTES TO DECISIONS

1. Licensing Requirements.

Constitutional guarantee of the right to keep and bear arms is not infringed by state licensing requirements in § 11-47-6 which prohibit unlicensed carrying of a pistol or re-

volver on one's person except in his home, his place of business, or upon land possessed by him. State v. Storms, 112 R.I. 121, 308 A.2d 463 (1973).

Section 23. Rights of victims of crime. — A victim of crime shall, as a matter of right, be treated by agents of the state with dignity, respect and sensitivity during all phases of the criminal justice process. Such person shall be entitled to receive, from the perpetrator of the crime, financial compensation for any injury or loss caused by the perpetrator of the crime, and shall receive such other compensation as the state may provide. Before sentencing, a victim shall have the right to address the court regarding the impact which the perpetrator's conduct has had upon the victim.

Section 24. Rights not enumerated — State rights not dependent on federal rights. — The enumeration of the foregoing rights shall not be construed to impair or deny others retained by the people. The rights guaranteed by this Constitution are not dependent on those guaranteed by the Constitution of the United States.

Cross References. Federal guaranties as to rights retained by people. U.S. Const., Amend. 9, 10.

NOTES TO DECISIONS

ANALYSIS

- 1. "Justifiable assault."
2. Right to resist arrest.
3. Unreasonable seizures.
4. Self-defense.
5. Law affecting particular city.
6. Local self-government.

1. "Justifiable Assault." This section does not secure to husband the right to commit the "justifiable" assault upon the wife. Berberian v. Berberian, 109 R.I. 273, 234 A.2d 72 (1971).

2. Right to Resist Arrest. Any rights reserved to an individual by the state constitution were subject to the general assembly's police power, and the abolition of the right to resist an unlawful arrest was a

proper exercise of that power. State v. Ramsdell, 109 R.I. 320, 285 A.2d 399 (1971).

3. Unreasonable Seizures. By constitutionally providing against unreasonable seizures, the people have inferentially recognized the necessity for reasonable regulations in this regard. Kavanagh v. Stenhouse, 93 R.I. 252, 174 A.2d 560 (1961), appeal dismissed, 368 U.S. 516, 82 S. Ct. 329, 7 L. Ed. 2d 521 (1962).

4. Self-Defense. No right of self-defense is assured by the provision that the enumeration of rights in the declaration of rights shall not be construed to impair or deny others retained by the people. State v. Storms, 112 R.I. 121, 308 A.2d 463 (1973).

Vertical text on the left margin: ... of ... means ... whether ... defendant ... use. Perry ... as a ... on by the ... no further ... ed to ... the ... were true. ... were sub- ... statements ... Journal ... of ... State ... 1959 ... nces — ... ceable ... to those ... nces, or ... No law ... of assem- ... 14 ... Pawtucket ... A.2d 124

school district alleging deprivation of their constitutional statutory rights by school district in refusing to allow hearing before board of trustees in which they could complain of superintendent's denial of their employee grievances; school district and superintendent submitted detailed

affidavit of superintendent's copies of relevant correspondence and board policies, including board's "open forum." Corpus Christi Independent School Dist. v. Padilla (App. 13 Dist. 1986) 709 S.W.2d 700.

§ 28. Suspension of laws

Notes of Decisions

5. Administrative bodies

Regulations under which State Parks and Wildlife Commission regulated sports and commercial activities involving redfish and speckled sea trout did not violate Const. Art. 1, § 28

providing that no power of suspending laws in the state could be exercised except by the legislature. Baggett v. State (App. 9 Dist. 1984) 673 S.W.2d 908, appeal after remand 691 S.W.2d 777, 779 affirmed, reversed on other grounds 722 S.W.2d 700.

§ 29. Provisions of Bill of Rights excepted from powers of government: to forever remain inviolate

Notes of Decisions

3. Remedies and procedure

O'Hair v. Hill (C.A. 1981) 641 F.2d 307 (Main Volume) rehearing granted 652 F.2d 423, on rehearing 675 F.2d 660.

§ 30. Rights of crime victims

Sec. 30. (a) A crime victim has the following rights:

- (1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and
- (2) the right to be reasonably protected from the accused throughout the criminal justice process.

(b) On the request of a crime victim, the crime victim has the following rights:

- (1) the right to notification of court proceedings;
- (2) the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;
- (3) the right to confer with a representative of the prosecutor's office;
- (4) the right to restitution; and
- (5) the right to information about the conviction, sentence, imprisonment, and release of the accused.

(c) The legislature may enact laws to define the term "victim" and to enforce these and other rights of crime victims.

(d) The state, through its prosecuting attorney, has the right to enforce the rights of crime victims.

(e) The legislature may enact laws to provide that a judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this section. The failure or inability of any person to provide a right or service enumerated in this section may not be used by a defendant in a criminal case as a ground for appeal or post-conviction writ of habeas corpus. A victim or guardian or legal representative of a victim has standing to enforce the rights enumerated in this section but does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

Adopted Nov. 7, 1989.

Historical Notes

This section was adopted at the Nov. 7, 1989 election, as proposed by Acts 1989, 71st Leg., H.J.R. 19, § 1.

ARTICLE II

THE POWERS OF GOVERNMENT

§ 1. Division of powers; three separate departments; exercise of power properly attached to other departments

Law Review Commentaries

Ad hoc rulemaking in Texas: The scope of judicial review. Ron Beal, 42 Baylor L.Rev. 459 (July/Aug. 1990).

Five commandments of Texas speedy trial: A post-Meshell analysis. Cari S. Lomitz, 54 Tex. B.J. 220 (1991).

Judicial review of agency law decisions on scope of agency authority. Hume, Cofer, 42 Baylor L.Rev. 255 (1990).

Legal profession at stake: Why the sun should not set on the State Bar of Texas. Dan R. Price, 33 Tex.B.J. 1197 (1990).

Notes of Decisions

Bail bonds, scope of limitations of judicial powers 172.5
Parole 9

9. Parole

Instruction given pursuant to mandate in Code of Criminal Procedure regarding parole law and good conduct time did not violate defendant's right to due course of law or separation of powers doctrine. Marks v. State (App. 11 Dist. 1991) 315 S.W.2d 317, affirmed 330 S.W.2d 113.

I. IN GENERAL

5. Dual office holding

School board trustee was not prohibited from simultaneously holding offices of justice of peace and school board trustee where nothing in functions as justice of peace interfered with or would interfere with functions as member of board. Turner v. Trinity Independent School Dist. Bd. of Trustees (App. 14 Dist. 1983) 700 S.W.2d 1.

A county commissioner is not barred by this section or Art. 16, § 40, or by the common law doctrine of incompatibility from serving on the Texas Sesquicentennial Commission. Op. Atty. Gen. 1984, No. JM-141.

One person is not prohibited from concurrently holding offices of constable and school trustee by article II, section 1 of the Texas Constitution, article XVI, section 40 of the Texas Constitution, or the common law doctrine of incompatibility. Op. Atty. Gen. 1986, No. JM-519.

6. Infringement of powers

Separation of powers provision of State Constitution is violated when one branch of government assumes a power that is more "properly attached" to another branch or when one branch of government unduly interferes with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers. Armadillo Bail Bonds v. State (Cr. App. 1990) 802 S.W.2d 237, rehearing on petition for discretionary review denied.

II. LEGISLATIVE POWERS

67. Courts and judges, legislative powers

Valid, final judgment of court may not be modified by legislature; once actions have passed into judgment power of legislature to disturb rights created thereby ceases. Williams v. State (Cr. App. 1986) 707 S.W.2d 40.

68. Fines and penalties, legislative powers

Anguiano v. Jim Walter Homes, Inc. (Civ. App. 1978) 561 S.W.2d 249 (Main Volume) ref. n.r.e.

Fixing of penalties for crime is legislative function; what constitutes adequate penalty is matter of legislative judgment and discretion, and courts will not interfere therewith unless penalty prescribed is outside of constitutional invitations. Muse v. State (App. 10 Dist. 1991) 315 S.W.2d 769.

73. — Necessity of standards and guidelines, delegation of legislative powers

State ex rel. Grimes County Taxpayers Ass'n v. Texas Municipal Power Agency (Civ. App. 1978) 565 S.W.2d 258 (Main Volume) error dismissed.

78. — Judiciary, delegation of legislative powers

Extent of legislature's power to confer upon district court authority to review administrative action is limited by separation-of-powers principle found in Constitution. Spring Independent

Note 6

v. Neslund (1988) 50 Wash.App. 531, 749 P.2d 725.

v. Blaker (1992) 118 Wash.2d 133, 821 P.2d 482.

7. Involuntary commitment

City's immediate revocation of concealed weapons permit pursuant to state firearms statute after learning of involuntary commitment order did not violate any liberty or property interest which holder may have had in permit. *Morris*

Compelling state interest in safety of public justified reasonable restrictions on right to concealed weapons permits to persons who had been involuntarily committed for treatment of mental disorder pursuant to statute. *Morris v. Blaker* (1992) 118 Wash.2d 133, 821 P.2d 482.

§ 30. Rights Reserved

Notes of Decisions

Executions 4

4. Executions

Journalist failed to establish right to attend execution absent proof that at-

tendance at execution was "fundamental, inalienable right under the laws of God and nature" protected under State Constitution. *Halquist v. Department of Corrections* (1989) 113 Wash.2d 818, 783 P.2d 1065.

§ 35. [Rights of Crime Victims]

Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel.

Adopted by Amendment 34 (Laws 1989, S.J.R. No. 3200, approved Nov. 7, 1989); eff. Dec. 7, 1989.

ARTICLE II—LEGISLATIVE DEPARTMENT

§ 1. Legislative Powers, Where Vested

Notes of Decisions

V. INITIATIVE AND REFERENDUM

281. In general, initiative and referendum

Authority of judiciary over initiative or referendum process is limited to areas in which there is express statutory or constitutional law making question judicial. *Schrempp v. Munro* (1991) 116 Wash.2d 929, 809 P.2d 1381.

Legislation concerning initiative or referendum process may be enacted only

to facilitate its operation. *Schrempp v. Munro* (1991) 116 Wash.2d 929, 809 P.2d 1381.

287. — Declaration of emergency, exceptions, initiative and referendum

Legislation enacted on emergency basis goes into effect immediately and is exempt from People's constitutional power to reject legislation by referen-