



LAWS OF ALASKA

1989

Source

Chapter No.

CSHB 36(Fin) am

59

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TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.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 32 and 35 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 pleadings, 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 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

Chapter 59

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(f) 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 12.55.185 desires notice, the commissioner of health and social services shall designate one person for purposes of receiving any

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

2 (e) In this section

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

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

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

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

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

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

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

5 (4) the sentence recommendation of the Department of Cor-
6 rections.

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

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

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

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

Chapter 59

1 copy of the motion and inform the person of that person's rights under
2 this section, the deadline for receipt of written comments, the hear-
3 ing date, and the court's address.

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

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

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

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

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

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

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

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

26 (2) "dangerous instrument" has the meaning given in AS 11.-
27 81.900;

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

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

not been previously convicted of a felony;

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

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

(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 11.81.900;

(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:

Chapter 59

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

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

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

* Sec. 8. 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 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 [VICTIM] 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; [AND]

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

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

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

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

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

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

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

Sec. 12.61.015. DUTIES OF PROSECUTING ATTORNEY. (a) If a
victim of a felony or a domestic violence assault requests, the prosec-
cuting 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

Chapter 59

1 notice, notify the victim

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

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

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

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

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

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

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

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

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

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

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

Sec. 12.61.017. 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 of three times the actual damages sustained.

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

Sec. 12.61.030. DESIGNATION OF REPRESENTATIVE. If more than one person who qualifies as a victim under AS 12.55.185 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 12.61 is amended by adding a new section to read:

Sec. 12.61.900. DEFINITIONS. In this chapter

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

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

Chapter 59

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

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

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

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

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

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

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

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

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

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

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

6 (1) meet family obligations;

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

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

0 (4) report upon release to the parole officer assigned to
1 the parolee;

2 (5) report as required to the parole officer assigned to
3 the parolee;

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

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

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

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

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

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

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

Chapter 59

1 (13) refrain from opening, maintaining, or using a checking
2 account or charge account;

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

5 (15) refrain from operating a motor vehicle;

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

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

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

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

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

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

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

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

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

(c) If the victim desires 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. 33.30.013. 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 a 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 may not be held liable in damages for the failure

Chapter 59

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

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

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

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

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

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

24 (6) "crime against a person" means a crime as set out in
25 AS 11.41, [EXCEPT CUSTODIAL INTERFERENCE UNDER AS 11.41.320 AND 11.-
26 41.330;] or a crime against a person in this or another jurisdiction
27 having elements substantially identical to those of a crime as set out
28 in AS 11.41 [, EXCEPT CUSTODIAL INTERFERENCE UNDER AS 11.41.320 AND
29 11.41.330];
H

* 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.-10.070, 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) WHEN MADE. 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 contents 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 bargained sentence recommendation

Chapter 59

1 will be followed pursuant to Rule 11. In the event the attorneys for
2 the parties request the preparation of a presentence report to aid
3 them in plea bargaining the court may order such report to be made
4 prior to the time stated in this rule.

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

7 (g) WRITTEN STATEMENT SUBMITTED BY VICTIM OR VICTIM'S REPRESENTATIVE. If a written statement is prepared and submitted by the
8 victim of a felony offense or a domestic violence assault under
9 AS 12.55.023, the trial court
10

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

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

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

18 (2) may take the content of the written statement into
19 consideration in any other circumstance that the court believes necessary.
20

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

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

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

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

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

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

person or arson 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 33.30.901;

(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.