

1 IN THE HOUSE

BY FLOOD, CLOCKSIN
AND GRUSSENDORF

2

HOUSE BILL NO. 345

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to a victim's rights in the sentenc-
7 ing and parole hearings and furlough determinations
8 of a person convicted of a felony; and making changes
9 in sentencing procedures."

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

11 * Section 1. AS 12.55.025(a) is amended to read:

12 (a) When imposing a sentence for conviction of a felony offense
13 or a sentence of imprisonment exceeding 90 days or upon a conviction
14 of a violation of AS 04, a regulation adopted under AS 04, or an
15 ordinance adopted in conformity with AS 04.21.010, the court, shall
16 prepare, as a part of the record, a sentencing report which includes
17 the following:

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

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

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

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

27 (5) in the case of a conviction for a felony offense,
28 evidence and opinions expressed by the victim or, if the victim has
29 died as a result of the defendant's conduct, the victim's immediate

1 family, as provided for in AS 12.55.155 concerning the physical,
2 emotional, or financial harm caused the victim or the victim's immedi-
3 ate family and other factors relating to the crime, the defendant,
4 disposition of the defendant upon sentencing, and the need for resti-
5 tution.

6 * Sec. 2. AS 12.55.155(c) is amended by adding a new paragraph to read:

7 (27) the defendant's conduct caused substantial physical,
8 emotional, or financial harm to the victim or, if the victim has died
9 as a result of the defendant's conduct, to the victim's immediate
10 family.

11 * Sec. 3. AS 12.55.155(f) is amended to read:

12 (f) If the state seeks to establish a factor in aggravation at
13 sentencing or if the defendant seeks to establish a factor in mitiga-
14 tion at sentencing, written notice must be served on the opposing
15 party and filed with the court not later than 10 days before the date
16 set for imposition of sentence. If the defendant is convicted of a
17 felony, written notice must also be served within that time by the
18 defendant upon the victim of the defendant or, if the victim has died
19 as a result of the defendant's conduct, the victim's immediate family,
20 indicating that the victim or the victim's immediate family has a
21 right to appear and participate. The victim of a felony or, if the
22 victim has died as a result of the defendant's conduct, the victim's
23 immediate family may appear personally or by counsel at aggravation or
24 mitigation proceedings and sentencing proceedings to present evidence
25 and express opinions concerning the physical, emotional, or financial
26 harm caused to the victim or the victim's immediate family and other
27 factors relating to the crime, the defendant, disposition of the
28 defendant after sentencing, and the need for restitution. The court
29 in imposing sentence shall consider the evidence and opinions

1 presented by the victim or the victim's immediate family at aggra-
2 vation or mitigation proceedings and sentencing proceedings and in the
3 presentence report. Factors in aggravation and factors in mitigation
4 must be established by clear and convincing evidence before the court
5 sitting without a jury. All findings must be set out with specifi-
6 city.

7 * Sec. 4. AS 12.55.155(h) is amended to read:

8 (h) As used in this section,

9 (1) "immediate family" includes a spouse, child, parent,
10 brother, sister, parent-in-law, brother-in-law, or sister-in-law; and

11 (2) "serious provocation" has the meaning ascribed to it in
12 AS 11.41.115(f).

13 * Sec. 5. AS 33.15.060(a) is amended to read:

14 (a) In considering a prisoner, the board shall consider the
15 presentence report made to the sentencing court, the evidence pre-
16 sented and opinions expressed by the victim or the victim's immediate
17 family in accordance with AS 33.15.065, the recommendations by the
18 sentencing court and the prosecuting attorney, the report from the
19 proper officers of the institution where the prisoner is incarcerated,
20 the record of the prisoner and all pertinent information that will
21 enable the board to make a determination.

22 * Sec. 6. AS 33.15 is amended by adding a new section to read:

23 Sec. 33.15.065. RIGHT OF VICTIM OF PRISONER OR VICTIM'S IMMEDI-
24 ATE FAMILY TO TESTIFY REGARDING PAROLE OF PRISONER. (a) Upon re-
25 quest, notice of a hearing to review or consider the parole eligi-
26 bility or the setting of a parole date for a prisoner in a state
27 prison who is convicted of a felony shall be sent by the board at
28 least 30 days before the hearing to the victim of the crime or, if the
29 victim has died as a result of the prisoner's conduct, to the victim's

1 immediate family as defined in AS 12.55.155(h). The requesting person
2 shall keep the board apprised of the person's current mailing address.

3 (b) The victim or, if the victim has died as a result of the
4 prisoner's conduct, the victim's immediate family has the right to
5 appear, personally or by counsel, at the hearing and to adequately and
6 reasonably express the person's opinion concerning the crime and the
7 prisoner.

8 (c) The board, in deciding whether to release the prisoner on
9 parole, shall consider the statements presented under (b) of this
10 section.

11 * Sec. 7. AS 33.30.250(g) is amended by adding a new paragraph to read:

12 (8) in the case of a prisoner convicted of a felony, if the
13 victim of the prisoner or, if the victim has died as a result of the
14 prisoner's conduct, the victim's immediate family as defined in
15 AS 12.55.155(h) submits written objections in accordance with (h) of
16 this section.

17 * Sec. 8. AS 33.30.250 is amended by adding a new subsection to read:

18 (h) In the case of a prisoner convicted of a felony, the commis-
19 sioner shall notify the victim of the prisoner or, if the victim has
20 died as a result of the prisoner's conduct, the victim's immediate
21 family as defined in AS 12.55.155(h) of the commissioner's intention
22 to release the prisoner in a work furlough status unless the commis-
23 sioner receives a written statement outlining the objections and
24 supporting evidence, if any, advocated by the victim or the victim's
25 immediate family. The victim or the victim's immediate family shall
26 keep the commissioner apprised of the current mailing address to which
27 notice is to be sent under this subsection.

28 * Sec. 9. AS 33.30.260 is amended to read:

29 Sec. 33.30.260. REHABILITATION FURLOUGHS. The commissioner may

1 authorize a prisoner to participate in educational, training, medical,
2 psychiatric, or other rehabilitation programs approved by the commis-
3 sioner. In the case of a prisoner convicted of a felony, the victim
4 of the prisoner or, if the victim has died as a result of the
5 prisoner's conduct, the victim's immediate family as defined in
6 AS 12.55.155(h) has the right to object to the furlough and the com-
7 missioner shall use the procedure set out in AS 33.30.250(h) before
8 granting a furlough under this section. When the prisoner is not
9 participating in a rehabilitation program, the prisoner shall be
10 confined in the jail unless the commissioner directs otherwise. If
11 the prisoner violates the conditions established for the conduct or
12 custody of the prisoner, the commissioner may order the balance of the
13 prisoner's sentence to be spent in actual confinement. The wilful
14 failure of a prisoner to return to the place of confinement not later
15 than the expiration of any period during which the prisoner is autho-
16 rized to be away from the place of confinement under this section, is
17 an unlawful evasion under AS 11.30.093.