

BY DONLEY, COLLINS, MARTIN,
GRUENBERG, KOPONEN, DAVIDSON,
ULMER, SUND, MENARD, ZAWACKI,
PHILLIPS AND BOUCHER

1 IN THE HOUSE

2 HOUSE BILL NO. 296

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

7 (a) Notwithstanding other provisions of this chapter,

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

10 (A) child support;

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

14 (C) state or local taxes; and

15 (2) a creditor may make a levy against exempt property to
16 enforce a claim for

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

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

22 (C) a special assessment imposed to defray costs of a
23 public improvement benefiting the property;

24 (3) a creditor may make a levy against exempt property to
25 enforce a claim arising from criminal conduct of the debtor resulting
26 in a felony or misdemeanor conviction except that the following items
27 of property remain exempt within the specified value limitations:

28 (A) implements, professional books, and tools of the
29 trade chosen by the debtor, not to exceed an aggregate value of

1 \$750;

2 (B) household goods and wearing apparel chosen by the
3 debtor and reasonably necessary for one household, not to exceed
4 an aggregate value of \$250.

5 * Sec. 4. AS 12.55.155(c) is amended by adding a new paragraph to read:

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

10 * Sec. 5. AS 12.55.155(f) is amended to read:

11 (f) If the state seeks to establish a factor in aggravation at
12 sentencing or if the defendant seeks to establish a factor in mitiga-
13 tion at sentencing, written notice must be served on the opposing
14 party and filed with the court not later than 10 days before the date
15 set for imposition of sentence. Written notice shall also be served
16 within that time by the prosecutor upon the victim of the defendant
17 indicating that the victim has a right to appear and participate. The
18 victim may appear personally or by counsel at aggravation or mitiga-
19 tion proceedings and sentencing proceedings to present evidence and
20 express opinions concerning the physical, emotional, or financial harm
21 caused to the victim and other factors relating to the crime, the
22 defendant, disposition of the defendant after sentencing, and the need
23 for restitution. The court in imposing sentence shall consider the
24 evidence and opinions presented by the victim at aggravation or miti-
25 gation proceedings and sentencing proceedings and in the presentence
26 report. Factors in aggravation and factors in mitigation must be
27 established by clear and convincing evidence before the court sitting
28 without a jury. All findings must be set out with specificity.

29 * Sec. 6. AS 12.55.185(11) is amended to read:

1 (11) "victim" means the victim of the offense or, if the
2 victim has died, is a minor, or is incapacitated the term includes a
3 spouse, parent, child, brother, sister, aunt, uncle, parent-in-law,
4 brother-in-law, sister-in-law, or legal guardian of the victim.

5 * Sec. 7. AS 12.61.010(a) is amended to read:

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

7 (1) the right to be informed by the appropriate law en-
8 forcement agency or the prosecuting attorney of the date of trial and
9 the date of sentencing of the case in which the victim is involved;

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

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

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

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

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

1 (7) the right to obtain, without a motion, access to pre-
2 sentence reports from the court or the person responsible for pre-
3 paring presentence reports, and police reports from the appropriate
4 law enforcement agency, related to the case in which the victim was
5 involved; and

6 (8) the right to make a written or oral statement for use
7 in preparation of the defendant's presentence report and at sentenc-
8 ing.

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

10 Sec. 12.61.015. DUTIES OF PROSECUTING ATTORNEY. (a) Upon the
11 request of the victim of a crime, the prosecuting attorney shall

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

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

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

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

21 (C) that the presentence report and any statement by
22 the victim will be made available to the defendant unless exempt-
23 ed from disclosure by the court;

24 (D) of the address and telephone number of the office
25 that will prepare the presentence report; and

26 (E) of the time and place of the sentencing proceed-
27 ing;

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

1 (b) The notice given under (a)(2) of this section shall inform
2 the victim that the victim's statement may contain any relevant infor-
3 mation including

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

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

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

11 (4) the victim's recommendation for an appropriate sen-
12 tence.

13 Sec. 12.61.017. INTERFERENCE BY VICTIM'S EMPLOYER. An employer
14 of a victim of crime who disciplines or discharges or threatens to
15 discipline or discharge the victim because the victim is subpoenaed or
16 requested by the prosecuting attorney to attend a court proceeding for
17 the purpose of giving testimony is guilty of a class B misdemeanor.

18 * Sec. 9. AS 33.16.120(c) is amended to read:

19 (c) The victim has a right to attend meetings of the parole
20 board and to comment in writing or in person on the proposed action of
21 the board. Copies of the comments shall be provided to the prisoner
22 and the prisoner's attorney before action by the board.

23 * Sec. 10. AS 33.16.120(e) is amended to read:

24 (e) Upon request of the victim, [IF THE BOARD DECIDES TO RELEASE
25 ON PAROLE A PRISONER WHO IS CONVICTED OF A CRIME AGAINST A PERSON,]
26 the board shall make every reasonable effort to notify the victim of
27 its decision to grant or deny discretionary parole as soon as prac-
28 ticable [BEFORE THE PRISONER'S RELEASE DATE]. Notification under this
29 subsection must include the expected date of the prisoner's release,

1 the geographic area in which the prisoner is required to reside, the
2 prisoner's residence address and employer, if known, and other
3 pertinent information concerning the prisoner's conditions of parole
4 that may affect the victim.

5 * Sec. 11. AS 33.16.120(f) is amended to read:

6 (f) Upon request of the victim, if a prisoner is released under
7 AS 33.16.010(c), the board shall make every reasonable effort to
8 notify the victim before the prisoner's release date. Notification
9 under this subsection must include the expected date of the prisoner's
10 release, the geographic area in which the prisoner is required to
11 reside, the prisoner's residence address and employer, if known, and
12 other pertinent information concerning the prisoner's conditions of
13 parole that may affect the victim.

14 * Sec. 12. AS 33.30.011 is amended to read:

15 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

16 (1) establish, maintain, operate, and control correctional
17 facilities suitable for the custody, care, and discipline of persons
18 charged or convicted of offenses against the state or held under
19 authority of state law;

20 (2) classify prisoners;

21 (3) for persons committed to the custody of the commission-
22 er, established programs, including furlough programs that are rea-
23 sonably calculated to

24 (A) protect the public;

25 (B) maintain health;

26 (C) create or improve occupational skills;

27 (D) enhance educational qualifications;

28 (E) support court-ordered restitution; and

29 (F) otherwise provide for the rehabilitation and

1 reformation of prisoners, facilitating their reintegration into
2 society;

3 (4) provide necessary medical services for prisoners in
4 correctional facilities or who are committed by a court to the custody
5 of the commissioner, including examinations for communicable and
6 infectious diseases; [AND]

7 (5) provide necessary psychological or psychiatric treat-
8 ment if a physician or other health care provider, exercising ordinary
9 skill and care at the time of observation, concludes that

10 (A) a prisoner exhibits symptoms of a serious disease
11 or injury that is curable or may be substantially alleviated; and

12 (B) the potential for harm to the prisoner by reason
13 of delay or denial of care is substantial; and

14 (6) notify the victim of an offense if the offender escapes
15 from custody or is released to the community on a furlough, to a
16 correctional restitution center, or other early release program; if
17 the victim has died, is a minor, or is incapacitated, the commissioner
18 shall give this notice to the victim's spouse, parent, child, brother,
19 sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, or
20 legal guardian.

21 * Sec. 13. AS 47.10.070 is amended to read:

22 Sec. 47.10.070. HEARINGS. The court may conduct the hearing in
23 an informal manner in the courtroom or in chambers. A hearing may be
24 held before a young adult advisory panel in accordance with AS 47.10.-
25 075. The court shall give notice of the hearing to the department and
26 it may send a representative to the hearing. The court shall also
27 transmit a copy of the petition to the department. The representative
28 of the department may also be heard at the hearing. The public shall
29 be excluded from the hearing, except that the victim of an offense

1 that is the subject of the hearing may attend the hearing. If the
2 victim has died, is a minor, or is incapacitated, the victim's spouse,
3 parent, child, brother, sister, aunt, uncle, parent-in-law, brother-
4 in-law, sister-in-law, or legal guardian, may attend the hearing. The
5 [BUT THE] court, in its discretion, may permit other individuals to
6 attend a hearing, if their attendance is compatible with the best
7 interests of the minor. Nothing in this section may be applied in
8 such a way as to deny a child's rights to a public trial and to a
9 trial by jury.

10 * Sec. 14. AS 12.61.010(a), as amended by sec. 7 of this Act, has the
11 effect of amending Alaska Rule of Criminal Procedure 32(d)(2) by making
12 presentence reports available to victims of crime without a court order.

13 * Sec. 15. AS 47.10.070, as amended by sec. 13 of this Act, has the
14 effect of amending Rule 12(d)(2) of the Alaska Rules of Children's Proce-
15 dure by giving the victim of an offense committed by a minor, or certain
16 members of the victim's family or the victim's legal guardian, the right to
17 attend a hearing involving that minor.