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1 IN THE HOUSE
2
3 CS FOR HOUSE BILL NO. 296 (HESS)
4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 FIFTEENTH LEGISLATURE - SECOND SESSION
6 A BILL
7 For an Act entitled: "An Act relating to victims of crime, claims arising
8 from criminal conduct, and service of process on
9 prisoners; and amending Rule 32(d)(2) of the Alaska
10 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
affidavit a copy of the summons and shall file the affidavit and

1 attached papers with the court having jurisdiction of the cause.

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

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

6 (a) Notwithstanding other provisions of this chapter,

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

9 (A) child support;

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

13 (C) state or local taxes; and

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

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

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

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

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

27 (A) implements, professional books, and tools of the
28 trade chosen by the debtor, not to exceed an aggregate value of
29 \$750;

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

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

5 Sec. 12.47.095. NOTICE TO VICTIMS. (a) If an offender has been
6 committed to the custody of the commissioner of health and social
7 services under AS 12.47.090, the victim of the offense is entitled to
8 notice of a pending change in the status of the offender. The notice
9 required by this section shall be given

10 (1) by the commissioner of health and social services

11 (A) if the offender has been continued in commitment
12 following expiration of the maximum term of imprisonment under
13 AS 12.47.090(f) and the commissioner petitions for release of the
14 offender; or

15 (B) if the court is to consider modification of an
16 order of conditional release for the offender under AS 12.47.-
17 092(e);

18 (2) by the attorney general, or the prosecutor, as applica-
19 ble,

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

22 (B) if the offender petitions for discharge under
23 AS 12.47.092(f).

24 (b) If the victim has died, is a minor, or is incapacitated, the
25 commissioner of health and social services, the attorney general, or
26 the prosecutor shall give notice, when required by (a) of this sec-
27 tion, to the victim's spouse, parent, child, brother, sister, aunt,
28 uncle, parent-in-law, brother-in-law, sister-in-law, or legal guar-
29 dian.

1 (c) A state officer is required to give notice of a change in
2 the status of an offender under this section only if the victim or a
3 person entitled to notice under (b) of this section has requested
4 notice of the change.

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

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

15 (27) the defendant's conduct caused substantial physical,
16 emotional, or financial harm to the victim or, if the victim has died
17 as a result of the defendant's conduct, to the victim's immediate
18 family.

19 * Sec. 6. AS 12.55.155(f) is amended to read:

20 (f) If the state seeks to establish a factor in aggravation at
21 sentencing or if the defendant seeks to establish a factor in mitiga-
22 tion at sentencing, written notice must be served on the opposing
23 party and filed with the court not later than 10 days before the date
24 set for imposition of sentence. Written notice shall also be served
25 within that time by the prosecutor upon the victim of the defendant
26 indicating that the victim has a right to appear and participate. The
27 victim may appear personally or by counsel at aggravation or mitiga-
28 tion proceedings and sentencing proceedings to present evidence and
29 express opinions concerning the physical, emotional, or financial harm

1 caused to the victim and other factors relating to the crime, the
2 defendant, disposition of the defendant after sentencing, and the need
3 for restitution. The court in imposing sentence shall consider the
4 evidence and opinions presented by the victim at aggravation or miti-
5 gation proceedings and sentencing proceedings and in the presentence
6 report. Factors in aggravation and factors in mitigation must be
7 established by clear and convincing evidence before the court sitting
8 without a jury. All findings must be set out with specificity.

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

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

16 * Sec. 8. AS 12.61.010(a) is amended to read:

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

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

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

24 (3) the right to receive protection from harm and threats
25 of harm arising out of cooperation with law enforcement and prosecu-
26 tion efforts, and to be provided with information as to the protection
27 available;

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

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

5 (6) the right to obtain access to immediate medical assis-
6 tance and not to be detained for an unreasonable length of time by a
7 law enforcement agency before having medical assistance administered;
8 however, an employee of the law enforcement agency may, if necessary,
9 accompany the person to a medical facility to question the person
10 about the criminal incident if the questioning does not hinder the
11 administration of medical assistance;

12 (7) the right to make a written or oral statement for use
13 in preparation of the defendant's presentence report, and to appear
14 personally or by counsel at the defendant's sentencing hearing to
15 present a written or oral statement;

16 (8) the right to appear personally or by counsel to make a
17 written or oral statement to a court for consideration by the court if
18 the offender files a motion for a modification or reduction of sen-
19 tence;

20 (9) the right to make a written statement to the governor
21 for consideration by the governor if

22 (A) the governor considers a pardon, commutation of
23 sentence, reprieve, or suspension or remission of a fine or
24 forfeiture for the offender under AS 33.20.070; or

25 (B) the offender applies to the governor for clemency
26 under AS 33.20.080; and

27 (10) the right to obtain, without a motion, at any time
28 after the defendant's conviction, access to

29 (A) police reports from the appropriate law

1 enforcement agency related to the case in which the victim was
2 involved;

3 (F) presentence reports from the court or the person
4 responsible for preparing presentence reports related to the case
5 in which the victim was involved; access under this subparagraph
6 may be requested orally or in writing from the court in which
7 sentence of the defendant was entered; the request may be made at
8 any time after the defendant's conviction; after a request made
9 under this subparagraph, the victim is entitled to access unless
10 the court determines or the person responsible for preparing the
11 presentence report shows, by a preponderance of the evidence,
12 that access to the report would prove detrimental to the re-
13 habilitation of the defendant or to the safety of the public.

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

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

17 (1) confer with the victim before the selection of the jury
18 and the trial of the defendant;

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

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

23 (B) of the victim's right to make a written or oral
24 statement for use in preparation of the defendant's presentence
25 report, and to appear personally or by counsel at the defendant's
26 sentencing hearing to present a written or oral statement;

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

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

3 (E) of the time and place of the sentencing proceed-
4 ing;

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

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

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

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

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

17 (4) the victim's recommendation for an appropriate sen-
18 tence.

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

24 * Sec. 10. AS 33.16.120(c) is amended to read:

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

1 AS 33.16.900(10), if the victim has died, is a minor, or is incapac-
2 itated, the victim's spouse, parent, child, brother, sister, aunt,
3 uncle, parent-in-law, brother-in-law, sister-in-law, or legal guardian
4 may not exercise the right provided under this subsection.

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

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

15 * Sec. 12. AS 33.16.120(f) is amended to read:

16 (f) Upon request of the victim, if a prisoner is released under
17 AS 33.16.010(c), the board shall make every reasonable effort to
18 notify the victim before the prisoner's release date. Notification
19 under this subsection must include the expected date of the prisoner's
20 release, the geographic area in which the prisoner is required to
21 reside, the prisoner's residence address, and other pertinent informa-
22 tion concerning the prisoner's conditions of parole that may affect
23 the victim.

24 * Sec. 13. AS 33.30 is amended by adding a new section to read:

25 Sec. 33.30.013. COMMISSIONER TO NOTIFY VICTIMS. (a) The com-
26 missioner shall notify the victim of an offense if the offender

- 27 (1) escapes from custody;
28 (2) is released to the community on a furlough;
29 (3) is released to a correctional restitution center;

1 (4) is released on an early release program; or
2 (5) who was found guilty but mentally ill under AS 12.47.-
3 050(a) is named in a petition filed by the commissioner under AS 12.-
4 47.050(e) for a screening investigation to determine the need for
5 further treatment.

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

10 (c) The commissioner is required to give notice of a change in
11 the status of an offender under this section only if the victim or a
12 person entitled to notice under (b) of this section has requested
13 notice of the change.

14 (d) A victim, or a person who is entitled to notice under (b) of
15 this section, shall maintain a current, valid mailing address on file
16 with the commissioner. The address of record is the address for all
17 communication of notice from the department required by this section.
18 Mail that is transmitted by the commissioner to the address of record
19 satisfies the legal requirements with respect to notice under this
20 section.

21 * Sec. 14. AS 47.10 is amended by adding a new section to read:

22 Sec. 47.10.072. VICTIM'S ACCESS TO HEARING. The victim of a
23 crime committed by a minor who is scheduled for a hearing under
24 AS 47.10.070 may request the court to attend the hearing. If the
25 victim requests, the Department of Health and Social Services shall
26 assist the victim in preparing a written submission to the court
27 requesting access to the hearing. The Department of Health and Social
28 Services shall make reasonable efforts to inform victims of the
29 availability of this assistance. In this section, "victim" has

1 the meaning given in AS 12.55.185(11).

2 * Sec. 15. AS 12.61.010(a), as amended by sec. 8 of this Act, has the
3 effect of amending Alaska Rule of Criminal Procedure 32(d)(2) by making
4 presentence reports available to victims of crime without a court order.