

1 IN THE HOUSE

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2

HOUSE BILL NO. 36

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to victims of crime, claims by
7 victims of crime arising from criminal conduct, and
8 service of process on prisoners; and amending Rules
9 32(d)(1) and 35 of the Alaska Rules of Criminal
10 Procedure."

11

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

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

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

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Sec. 09.05.050. SERVICE OF PROCESS ON PRISONERS. (a) In a

16

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

23

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

26

(c) The commissioner of corrections shall make an affidavit
27 showing that service of the summons on the defendant has been made as
28 provided in (b) of this section. The affiant shall attach to the
29 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 (e) The state may not be held liable in damages for the commis-
6 sioner's failure to comply with the requirements of this section.

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

8 (a) Notwithstanding other provisions of this chapter,

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

11 (A) child support;

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

15 (C) state or local taxes; [AND]

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

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

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

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

25 (3) a creditor may make a levy against exempt property of
26 any kind to enforce a claim arising from criminal conduct of the
27 debtor that results in a felony conviction except that the debtor is
28 entitled to an exemption in property

29 (A) not to exceed an aggregate value of \$1,500 chosen

1 by the individual from the following categories of property:

2 (i) household goods and wearing apparel rea-
3 sonably necessary for one household;

4 (ii) books and musical instruments, if reasonably
5 held for the personal use of the debtor or a dependent of
6 the debtor; and

7 (iii) family portraits and heirlooms of particular
8 sentimental value to the debtor; and

9 (B) not to exceed an aggregate value of \$1,400 of the
10 debtor's implements, professional books, and tools of the trade.

11 * Sec. 4. AS 09.38.075(a) is amended to read:

12 (a) Unless a creditor is seeking collection of a claim enforce-
13 able against exempt property under AS 09.38.065(a)(1) and (2) [AS 09.-
14 38.065], the creditor may obtain a levy on an individual's property of
15 a kind listed in AS 09.38.020 only by complying with this section.
16 Before levy, the creditor shall file with the court out of which the
17 process issues

18 (1) an affidavit stating that the creditor has reason to
19 believe the individual has property of a kind listed in AS 09.38.020
20 that is not exempt, identifying the property, setting out facts con-
21 stituting the basis for believing the property is not exempt; and

22 (2) a request for an order by the court notifying the
23 individual

24 (A) of the creditor's claim of a right to levy on the
25 property identified as nonexempt,

26 (B) of the individual's right to contest the credi-
27 tor's claim of a right to levy by filing with the clerk of the
28 court, on or before a date fixed by the court, but not exceeding
29 15 days after the issuance of the order, a written objection to

1 the proposed levy and a statement of the grounds for the objec-
2 tion and of the right to describe the property in lieu of setting
3 its value,

4 (C) of the possible consequences of failure to respond
5 to the notice as provided in (c) of this section, and

6 (D) of the information required by AS 09.38.085(a).

7 * Sec. 5. AS 09.38.080(a) is amended to read:

8 (a) Except in a proceeding under AS 09.38.065(a)(1) and (2)
9 [AS 09.38.065], a creditor shall comply with this section in obtaining
10 a levy on property of an individual. In a proceeding to levy on
11 personal property of a kind listed in AS 09.38.020, a creditor shall
12 comply with this section and AS 09.38.075.

13 * Sec. 6. AS 12.47 is amended by adding a new section to read:

14 Sec. 12.47.095. NOTICE TO VICTIMS. (a) If an offender has been
15 committed to the custody of the commissioner of health and social
16 services under AS 12.47.090, the victim of the offense is entitled to
17 notice of a pending change in the status of the offender. The commis-
18 sioner of health and social services shall give notice as required by
19 this section if

20 (1) the offender has been continued in commitment following
21 expiration of the maximum term of imprisonment under AS 12.47.090(f)
22 and the commissioner petitions for release of the offender;

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

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

27 (4) the offender petitions for discharge under AS 12.47.-
28 092(f).

29 (b) If the victim has died, is a minor, or is incapacitated, the

1 commissioner of health and social services shall give notice, when
2 required by (a) of this section, to the victim's spouse, parent,
3 child, brother, sister, aunt, uncle, parent-in-law, brother-in-law,
4 sister-in-law, or legal guardian.

5 (c) The commissioner of health and social services is required
6 to give notice of a change in the status of an offender under this
7 section only if the victim or a person entitled to notice under (b) of
8 this section has requested notice of the change.

9 (d) An individual who has requested notice under (c) of this
10 section shall maintain a current, valid mailing address on file with
11 the commissioner of health and social services. The address of record
12 is the address for all communication of notice required by this sec-
13 tion. Mail that is transmitted by the commissioner to the address of
14 record satisfies the legal requirements with respect to notice under
15 this section.

16 * Sec. 7. AS 12.55.022 is amended by adding new subsections to read:

17 (b) The victim has the right to submit or make a written or oral
18 statement to the probation officer for use by that officer in prepar-
19 ing a presentence investigation report concerning a felony offender.
20 The probation officer shall inform the victim of that right.

21 (c) If the victim requests, the victim's written statement
22 submitted under (b) of this section must be included in the presen-
23 tence investigation report.

24 * Sec. 8. AS 12.55.088 is amended by adding new subsections to read:

25 (d) When an individual convicted of a crime against a person
26 files a motion to modify a sentence, the court shall, if feasible
27 given the time constraints and circumstances of the motion, send a
28 copy of the motion to the Department of Corrections sufficiently in
29 advance of any scheduled hearing so as to enable the department to

1 notify the victim of the crime of the right to comment in writing as
2 set out in (e) of this section. When an individual convicted of a
3 crime against a person files a motion to reduce a sentence, the court
4 shall send a copy of the motion to the Department of Corrections
5 sufficiently in advance of any scheduled hearing so as to enable the
6 department to notify the victim of the crime of the right to comment
7 in writing as set out in (e) of this section.

8 (e) Upon request of the victim, in the case of an individual
9 convicted of a crime against a person, the Department of Corrections
10 shall send to the victim a copy of a motion to modify or reduce a
11 sentence upon receipt from the court. The Department of Corrections
12 shall also notify the victim of the right to comment in writing to the
13 court on the motion to modify or reduce a sentence.

14 (f) The court shall provide copies of the victim's comments to
15 the person filing the motion to reduce or modify a sentence, or to the
16 person's attorney.

17 (g) The court shall consider the victim's comments when rele-
18 vant, and any response offered by the person filing the motion, in
19 deciding whether to reduce or modify a sentence.

20 (h) It is the responsibility of the victim to keep the Depart-
21 ment of Corrections apprised of the victim's current mailing address.
22 The address of the victim may not be disclosed to the person filing
23 the motion under (d) of this section or the person's attorney.

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

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

1 guardian [OF THE VICTIM].

2 * Sec. 10. AS 12.55.185 is amended by adding a new paragraph to read:

3 (12) "crime against a person" has the meaning given in
4 AS 33.30.901.

5 * Sec. 11. 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 dates of all
9 criminal proceedings involving the defendant relating to the case in
10 which the victim is involved;

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

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

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

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

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

1 administration of medical assistance;

2 (7) the right to make a written or oral statement for use
3 in preparation of the presentence report of a felony offender, and to
4 appear personally at the felony offender's sentencing hearing to
5 present a written or oral statement; and

6 (8) the right to obtain from the prosecuting attorney at
7 any time after the defendant's conviction a copy of the record of all
8 the defendant's convictions.

9 * Sec. 12. AS 12.61 is amended by adding new sections to read:

10 Sec. 12.61.015. DUTIES OF PROSECUTING ATTORNEY. (a) If the
11 victim of a crime that is a felony requests, the prosecuting attorney
12 shall

13 (1) confer with the victim about the victim's testimony
14 before the selection of the jury and the trial of the defendant;

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

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

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

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

25 (D) of the time and place of the sentencing proceed-
26 ing;

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

29 (b) The notice given under (a)(2) of this section shall inform

1 the victim that the victim's statement may contain any relevant infor-
2 mation including

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

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

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

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

12 Sec. 12.61.017. INTERFERENCE BY VICTIM'S EMPLOYER. (a) An
13 employer may not discipline or threaten to discipline the victim of a
14 crime because the victim is subpoenaed or requested by the prosecuting
15 attorney to attend a court proceeding for the purpose of giving testi-
16 mony.

17 (b) In (a) of this section, "discipline" means action affecting
18 the employment status of and wages and benefits payable to the victim,
19 including the victim's

20 (1) demotion or suspension;

21 (2) dismissal from employment; or

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

25 (c) A person who violates (a) of this section and against whom
26 the attorney general has filed a civil complaint is punishable by a
27 civil fine of \$10,000.

28 (d) A victim who suffers an ascertainable loss as a result of an
29 employer's act declared unlawful by this section may bring a

1 civil action to recover actual damages and punitive damages of three
2 times the actual damages sustained.

3 * Sec. 13. AS 33.16.120(c) is amended to read:

4 (c) The victim has a right to attend meetings of the parole
5 board and to comment, in writing or in person, on the proposed action
6 of the parole board. Copies of any written [THE] comments shall be
7 provided to the prisoner and the prisoner's attorney before action by
8 the board. Notwithstanding AS 33.16.900(10), if the victim has died,
9 is a minor, or is incapacitated, the victim's spouse, parent, child,
10 brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-
11 in-law, or legal guardian may not exercise the right provided under
12 this subsection.

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

14 (e) Upon request of the victim, [IF THE BOARD DECIDES TO RELEASE
15 ON PAROLE A PRISONER WHO IS CONVICTED OF A CRIME AGAINST A PERSON,]
16 the board shall make every reasonable effort to notify the victim of
17 its decision to grant or deny discretionary parole as soon as prac-
18 ticable [BEFORE THE PRISONER'S RELEASE DATE]. Notification under this
19 subsection must include the expected date of the prisoner's release,
20 the geographic area in which the prisoner is required to reside, and
21 other pertinent information concerning the prisoner's conditions of
22 parole that may affect the victim.

23 * Sec. 15. AS 33.16.180 is amended by adding new subsections to read:

24 (b) The commissioner shall provide to the victim of a crime the
25 address of a prisoner who has been released on discretionary or manda-
26 tory parole if

27 (1) the victim requests the residence address in writing;

28 and

29 (2) the commissioner is satisfied that the victim has filed

1 a civil action and that having the residence address is necessary in
2 order for the victim to serve process in that civil action on the
3 parolee.

4 (c) When required by (b) of this section, the commissioner shall
5 furnish the address at which the parolee is directed to reside under
6 AS 33.16.150(b)(6) or, if that place of residence has changed, the
7 change in the place of the parolee's residence.

8 * Sec. 16. AS 33.20.080 is amended to read:

9 Sec. 33.20.080. BOARD OF PAROLE TO INVESTIGATE APPLICATIONS FOR
10 EXECUTIVE CLEMENCY. The governor may refer applications for executive
11 clemency to the board of parole. The board shall investigate each
12 case and submit to the governor a report of the investigation, to-
13 gether with all other information the board has regarding the appli-
14 cant, including comments submitted under (b) of this section.

15 * Sec. 17. AS 33.20.080 is amended by adding new subsections to read:

16 (b) Upon request of the victim, in the case of an individual
17 convicted of a crime against a person, the board shall send notice of
18 an application for executive clemency from the individual to the
19 victim. The victim may comment in writing to the board on the appli-
20 cation for executive clemency.

21 (c) It is the responsibility of the victim to keep the board
22 apprised of the victim's current mailing address.

23 (d) In this section, "crime against a person" has the meaning
24 given in AS 33.30.901.

25 * Sec. 18. AS 33.30 is amended by adding a new section to read:

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

28 (1) escapes from custody;

29 (2) is released to the community on a furlough;

1 (3) is released to a correctional restitution center; or
2 (4) is released on an early release program.

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

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

11 (d) An individual who has requested notice under (c) of this
12 section shall maintain a current, valid mailing address on file with
13 the commissioner. The address of record is the address for all commu-
14 nication of notice from the department required by this section. Mail
15 that is transmitted by the commissioner to the address of record
16 satisfies the legal requirements with respect to notice under this
17 section.

18 * Sec. 19. AS 44.41.020 is amended by adding a new subsection to read:

19 (c) To ensure that victims of crimes receive information about
20 the entitlements and services that are provided to victims of crimes
21 by law, the Department of Public Safety shall establish and maintain a
22 victim assistance program. The victim assistance program shall con-
23 sist of a victim assistance supervisor, who is an employee of the
24 department, and volunteers. The victim assistance supervisor shall

25 (1) manage the victim assistance program;

26 (2) recruit volunteers and train them to provide informa-
27 tion and assistance to victims of crime; and

28 (3) provide direction to and make periodic evaluations of
29 the volunteers.

1 * Sec. 20. AS 47.10 is amended by adding a new section to read:

2 Sec. 47.10.072. VICTIM'S ACCESS TO HEARING. The victim of a
3 crime committed by a minor who is scheduled for a hearing under
4 AS 47.10.070 may request from the court permission to attend the
5 hearing. If the victim requests, the Department of Health and Social
6 Services shall assist the victim in preparing a written submission to
7 the court requesting access to the hearing. The Department of Health
8 and Social Services shall make reasonable efforts to inform victims of
9 the availability of this assistance. In this section, "victim" has
10 the meaning given in AS 12.55.185(11).

11 * Sec. 21. Rule 32(d)(1), Alaska Rules of Criminal Procedure, is amend-
12 ed to read:

13 (1) WHEN MADE. The probation service shall make a presen-
14 tence investigation and report before the court imposes sentence or
15 grants probation. The presentence investigation and report shall be
16 completed and made available to the court. The contents of the report
17 shall not be [SUBMITTED TO THE COURT OR ITS CONTENTS] disclosed to any
18 one except counsel unless the defendant has tendered a plea of guilty
19 or nolo contendere or has been found guilty. If the crime for which
20 the person is to be sentenced is a felony, the contents shall be
21 disclosed to counsel for the parties before the time of the aggravator
22 and mitigator hearing and sentencing. The court may utilize the
23 report in determining if a bargained sentence recommendation will be
24 followed pursuant to Rule 11. In the event the attorneys for the
25 parties request the preparation of a presentence report to aid them in
26 plea bargaining the court may order such report to be made prior to
27 the time stated in this rule.

28 * Sec. 22. Rule 35, Alaska Rules of Criminal Procedure, is amended by
29 adding new subsections to read:

1 (c) When an individual convicted of a crime against a person
2 files a motion to modify a sentence under this rule, the court shall,
3 if feasible given the time constraints and circumstances of the mo-
4 tion, send a copy of the motion to the Department of Corrections
5 sufficiently in advance of any scheduled hearing so as to enable the
6 department to notify the victim of the crime of the right to comment
7 in writing, as required by AS 12.55.088(d) and set out in (d) of this
8 rule. When an individual convicted of a crime against a person files
9 a motion to reduce a sentence under this rule, the court shall send a
10 copy of the motion to the Department of Corrections sufficiently in
11 advance of any scheduled hearing so as to enable the department to
12 notify the victim of the crime of the right to comment in writing, as
13 required by AS 12.55.088(d) and set out in (d) of this rule.

14 (d) Upon request of the victim, in the case of an individual
15 convicted of a crime against a person, the Department of Corrections
16 shall send to the victim a copy of a motion to modify or reduce a
17 sentence upon receipt from the court. The Department of Corrections
18 shall also notify the victim of the right to comment in writing to the
19 court on the motion to modify or reduce a sentence.

20 (e) The court shall provide copies of the victim's comments to
21 the person filing the motion to reduce or modify a sentence, or to the
22 person's attorney.

23 (f) The court shall consider the victim's comments when rele-
24 vant, and any response offered by the person filing the motion, in
25 deciding whether to reduce or modify a sentence.

26 (g) It is the responsibility of the victim to keep the Depart-
27 ment of Corrections apprised of the victim's current mailing address.
28 The address of the victim may not be disclosed to the person filing
29 the motion or the person's attorney.

1 (h) In this rule, "crime against a person" means

2 (1) a crime as set out in AS 11.41, except custodial inter-
3 ference under AS 11.41.320 and 11.41.330; or

4 (2) a crime against a person in this or another jurisdic-
5 tion having elements substantially identical to those of a crime as
6 set out in AS 11.41, except custodial interference under AS 11.41.320
7 and 11.41.330.

8 * Sec. 23. APPLICABILITY. The provisions of this Act prescribing the
9 rights of victims of crimes in the course of criminal, civil, and adminis-
10 trative proceedings apply to proceedings against defendants initiated on or
11 after the effective date of this Act.