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COMMITTEE REPORT

HOUSE

(7)

FURTHER:

4/11/83

Date: May 24, 1983

Mr. Speaker:

The Committee on JUDICIARY has had HB 345

An Act relating to a victim's rights in the sentencing and parole hearings and furlough determinations of a person convicted of a felony; and making changes in sentencing procedures.

under consideration and reports it back as follows:

- do pass do not pass
 do pass with attached amendments(s)
 replace with CS for HB 345 (100) same title
 new title
and recommends _____
 AND attaches a "Letter of Intent" New Fiscal Note
 reports it back without recommendation Zero Fiscal Note Attached
 referred to the _____ Committee

**MEMBERS SIGNING
DO PASS**

[Signature]
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**MEMBERS HAVING
OTHER RECOMMENDATIONS:**

[Signature] - No Rec
[Signature] - No Rec
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CHAIRMAN

DEPARTMENT OF LAW

Proposed Amendment: *HB 345*

On Page 3, line 19 add a new sentence to read:

However, a failure to provide such rights does not give rise to a separate cause of action against law enforcement agencies, or other agencies of the state, or a political subdivision of the state.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 345 (JUD)
Title: "An act relating to
victims rights."

Sponsor: Judiciary Committee
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: _____
Administration of Justice
BRU, Program or Subprogram(s) Affected:
Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan *F.C.A.* *MCK* Phone: 260-5601
Division: Alaska State Troopers Date: 01/30/84

Approved by Commissioner: Robert J. Sundberg *RJS* Date: 2-3-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

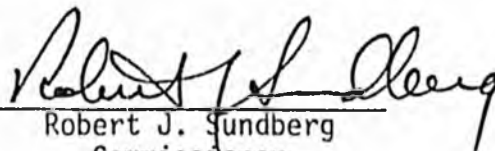
DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CSHB 345 (JUD)

Neutral

January 30, 1984

CSHB 345 (JUD) - "An Act relating to victim's rights; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure."

AS 12.61.010 will force additional administrative efforts to assure that victims are notified of trials and dates of sentencing.


Robert J. Sundberg
Commissioner

PART VII. JUDGMENT

Rule 32. Sentence and Judgment.

(a) **Sentence.** Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter bail as provided in Rule 41(a), Alaska Rules of Criminal Procedure. Before imposing sentence the court shall afford the defendant an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment. If the defendant is being sentenced following a plea of guilty or nolo contendere the court shall question the defendant to ascertain that he understood the meaning of his plea, and that it was freely and voluntarily entered.

(b) **Judgment—Execution.**

(1) **Execution.** The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. At the time of imposition of sentence, the judge or magistrate shall make a statement on the record explaining his reasons for imposition of the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge or magistrate and entered by the clerk. When the judgment has been entered, the clerk shall forthwith deliver to a peace officer a certified copy of the judgment for execution. The peace officer shall note on the copy of the judgment the date of its delivery to him. When the judgment has been executed, the peace officer shall promptly return the copy to the clerk with his proceedings endorsed thereon.

(2) **Conviction of a Corporation.** If a corporation is convicted of any criminal offense the court may give judgment thereon and shall cause such judgment to be enforced in the same manner as a judgment in a civil action, or as otherwise provided by law.

(c) **Pre-Sentence Investigation.**

(1) **When Made.** The probation service shall make a pre-

sentence investigation and report before the court imposes sentence or grants probation. 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. The court may utilize the report in determining if a bargained sentence recommendation will be followed pursuant to Rule 11. In the event the attorneys for the parties request the preparation of a pre-sentence report to aid them in plea bargaining the court may order such report to be made prior to the time stated in this rule.

(2) *Report.* The report of the pre-sentence investigation shall contain any prior criminal conviction including a finding of delinquency of the defendant and such information about his characteristics, his financial condition, and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court. No record of arrest or other police contacts shall be included in the report. The report shall be made available to the state's attorney and to the defendant's attorney in all cases and to the defendant unless the court enters on the record findings of reasons why the report would prove detrimental to the rehabilitation of the defendant or safety of the public. Unless otherwise ordered, further disclosure of the report shall be limited to the reviewing court on appeal and to the agencies having charge of the defendant's rehabilitation.

(d) *Sentencing Referrals to Three-Judge Panel.*

(1) If the trial court finds that extraordinary circumstances exist under AS 12.55.165, the case shall be transferred forthwith to a three-judge sentencing panel of the superior court. All pertinent files, records and transcripts shall be transmitted to the sentencing panel by the clerk of the court within 30 days of the date of the order transferring the case.

(2) Three judges of the superior court shall be appointed by the chief justice to be the regular members of the sentencing panel. Two other judges of the superior court shall be appointed by the chief justice as first and second alternate mem-

bers of the sentencing panel. At least one of the three regular members and one of the two alternate members of the sentencing panel shall reside outside of Anchorage. The term of appointment of the regular and alternate members of the sentencing panel shall be two years, except that the first three regular members appointed shall serve staggered terms of one, two, and three years. The chief justice may appoint additional alternate members of the sentencing panel to serve on a case-by-case basis in the event of the disability or disqualification of more than two judges.

(3) The chief justice shall appoint one of the three regular members to be administrative head of the sentencing panel and his or her office shall serve as the administrative repository for all papers and documents pertaining to cases submitted to the sentencing panel.

(4) Both the prosecuting attorney and the defendant may exercise in a timely fashion a challenge for cause, or a peremptory challenge if not previously exercised, to one judge of the sentencing panel in accordance with AS 22.20.022 and Rule 25(d)(1), Alaska Rules of Criminal Procedure. In the event that a judge on the sentencing panel is the same judge who made the finding under subsection (1) of this rule, that judge shall be automatically disqualified.

(5) The sentencing panel shall either sentence the defendant or remand the case to the court within 60 days from the date that the case was transmitted to the sentencing panel. The sentencing panel shall provide a written statement of its findings and conclusions in support of any order remanding a case to the trial court.

(6) If the sentencing panel elects to take testimony or sentence the defendant under AS 12.55.175(b) or (c), both the prosecution and the defendant shall have the right to be present in court during the proceedings. The defendant shall have the right to address the sentencing panel personally before sentence is imposed. The proceedings shall be held in a location best suited to the convenience of the parties and the court as determined by the sentencing panel.

(7) If the three-judge sentencing panel imposes sentence on the defendant, any further sentencing proceedings, includ-

ing proceedings relating to sentence modification, shall occur before the same three-judge panel, who shall be considered the sentencing court. If at the time further proceedings are requested any of the three judges is no longer available, one or more alternate members shall sit in the same fashion as provided for in AS 12.55.175(a).

(8) The right to bail of a convicted defendant is neither conferred nor enlarged by this rule.

(e) Transcript of Sentencing Proceeding. A transcript of any sentencing proceeding at which the defendant is committed to serve in excess of 6 months on one or more charges shall be prepared and furnished to the state attorney, defendant, and the Alaska Parole Board. (Amended by Supreme Court Order 157 effective February 15, 1973; by Amendment No. 5 to Supreme Court Order 157 effective July 1, 1974; by Supreme Court Order 330 effective January 1, 1979; by Supreme Court Order 418 effective August 1, 1980; and by Supreme Court Order 436 effective October 21, 1980)

(a) CROSS REFERENCES: AS 12.55.010; Crim. Form 38

(d) CROSS REFERENCES: Crim. Forms 39, 40

**Rule 32.1 Appeal From Conviction of Sentence—
Notification of Right to Appeal.**

A person convicted of a crime after trial shall be advised by the judge or magistrate:

(a) That he has the right to appeal from the judgment of conviction within 30 days (or 15 days in appeals from the district court made under Rule 217, Alaska Rules of Appellate Procedure) from entry of the judgment of conviction by filing a notice of appeal with the clerk of court.

(b) That in accordance with Appellate Rule 215, the defendant may appeal the sentence on the ground that it is excessive, that upon such appeal the court may reduce or increase the sentence, and that by appealing the sentence, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has twice been placed in jeopardy for the same offense.

(c) That if he wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent him on the appeal. (Added by Supreme Court Order 157 effective February 15, 1974; amended by Supreme Court Order 218 effective January 15, 1976; and by Supreme Court Order 536 effective October 1, 1982)

Rule 32.2 Sentence Appeal.

(Added by Supreme Court Order 157 effective February 15, 1973. Rescinded by Supreme Court Order 218 effective January 15, 1976)

AMENDMENT

#1

Offered in the Judiciary Committee

By Clocksin

TO: HB 345

Page 1, line ¹⁴~~27~~ - page 2, line ~~8~~4-7
_{inserted} _{replace}

Delete all material and insert "(5) in the case of a conviction for a felony offense, verified information stated in a nonargumentative style assessing the financial, social, psychological, and medical impact upon and cost to any person who was the victim of the offense committed by the defendant. The report shall also include a statement of any need of the victim for restitution and and such other information as may be required by the court."

AMENDMENT

#2

Offered in the Judiciary Committee

By CLOCKSIN

TO: HB 345

Page 2, line 11 - page 3, line 6

Delete all material and insert:

Sec.3. AS 12 is amended by adding a new chapter to read:

CHAPTER 61. RIGHTS OF VICTIMS AND WITNESSES

Sec. 12.61.010. RIGHTS OF VICTIMS AND WITNESSES. . (a)

Victims and witnesses of crimes have the following rights:

(1) the right to be informed by the appropriate law enforcement agency or the prosecuting attorney of the final disposition of the case in which the victim or witness is involved;

(2) the right to be notified that a court proceeding to which the victim or witness has been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(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 level of protection available;

(4) the right to be informed of the procedure to be followed to apply for and receive any witness fees or victim compensation to which the person may be entitled;

(5) the right to have any stolen or other personal property expeditiously returned by the law enforcement agency unless it is unlawful to return the property;

(6) the right to cooperate with the criminal justice process without loss of pay and other employee benefits and without interference in any form by the employer of the victim or witness of crime; and

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

(b) Law enforcement agencies, prosecutors, and the courts shall make a reasonable effort to assure that victims and witnesses of crimes have the rights set out in (a) of this section.

(c) The family members of a homicide victim shall be afforded all of the rights established under (a)(1) - (7) of this section. For purposes of this subsection, "family members" include a spouse, child, brother, sister, parent, or legal guardian.

AMENDMENT

#5

Offered in the Judiciary Committee

TO: HB 345

Page 3, lines 7-12

Delete all material and insert:

Sec. 4. AS 12.55.185 is amended by adding a new paragraph to read:

(11) "victim" means the victim of the offense or, in the case in which the victim has died, the term includes a spouse, parent, child, brother, sister or legal guardian of the victim.

Page 3, lines 15-17

Delete "the evidence presented and opinions expressed by the victim or the victim's immediate family in accordance with AS 33.15.065," and insert "comments received from the victim as defined by AS 12.55.185(11),".

all pertinent information that will enable the board to make a determination.

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

Sec. 33.15.065 RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRISONER.

upon request of the victim

(a) Notice of a hearing to review or consider the parole eligibility or the setting of a parole date for a prisoner in a state prison who is convicted of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, shall be sent to the victim of the crime ~~where~~, ~~to the victim's immediate family~~ as defined in AS 12.55.185(11), at least 30 days prior to the scheduled hearing, unless the victim ~~or the victim's family~~ has indicated that ~~they don't~~ *he or she does not* wish to be notified.

(b) It shall be the responsibility of the victim ~~or the victim's immediate family~~ *upon?* *- his or her* to keep the board apprised of ~~their~~ most current mailing address. If the Board has not been kept apprised of the most current mailing address, notice required under (a) of this section shall be sent to the last known address of the victim ~~or the victim's immediate family~~. The address of the victim ~~or the victim's immediate family~~ shall in no circumstances be disclosed to the prisoner or the prisoner's attorney.

(c) The victim, ~~or the victim's immediate family~~, has a right to comment in writing on the proposed action of the board. *Copies of those comments shall be provided to the defendant's attorney.* ~~Copies to the~~
(d) The board, in deciding whether to release the prisoner on parole shall consider the comments presented under (c) of this section.

(e) If the board decides to release a prisoner who is convicted of a crime against a person as set out in (a) of this section on parole, notification of that decision shall be sent to the victim, ~~or the victim's immediate family~~, prior to the prisoner's release date. Notification under this subsection shall include the expected date of the prisoner's release, the geographic area in which the prisoner is required to reside, and any other pertinent information concerning the prisoner's conditions of parole that may impact the victim. The board shall make every reasonable effort to notify the victim, ~~or the victim's immediate family~~ of the pending parole of the prisoner unless ~~they have~~ *he or she* ~~indicated that they~~ *does not* ~~wish to be notified.~~ *the victim has*

*Sec. 7. AS 33.30.250 is amended by adding a new subsection to read:

(h) In the case of a prisoner convicted of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, notice of the commissioner's

... the prisoner for release under (a) of this section ^{if requested} shall be sent to the victim, ~~or the victim's immediate family~~ as defined in AS 12.55.185 (11). The victim, ~~or the victim's immediate family~~ may comment in writing on the intent of the commissioner to release the prisoner in work furlough status. The commissioner shall consider the comments of the victim, ~~or the victim's immediate family~~ prior to making a final decision to release a prisoner under (a) of this section. The victim, ~~or the victim's immediate family~~ shall keep the commissioner apprised of the person's current mailing address. The commissioner shall make every reasonable effort to notify the victim, ~~or the victim's immediate family~~ of an intent to consider a release of a prisoner under (a) of this section, unless the victim ~~or the victim's family~~ has indicated that ^{he or she does not} they ~~don't~~ wish to be notified. The notice shall contain the expected date of the prisoner's release and the geographic area in which the prisoner will reside.

*Sec. 8. AS 33.30.260 is amended by adding a new subsection to read:

(b) In the case of a prisoner convicted of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, notice of the commissioner's intent to consider the prisoner for release under (a) of this section shall be sent ^{if requested} to the victim, ~~or the victim's immediate~~

~~family~~ as defined in AS 12.55.185(11). The victim ~~or the~~
~~victim's immediate family~~ may comment in writing on the intent
of the commissioner to release the prisoner in rehabilitation
furlough status. The commissioner shall consider the comments
of the victim ~~or the victim's immediate family~~ prior to making
a final decision to release a prisoner under (a) of this section.
The victim ~~or the victim's immediate family~~ shall keep the
commissioner apprised of the person's current mailing address.
The commissioner shall make every reasonable effort to notify
the victim ~~or the victim's immediate family~~ of an intent to
release a prisoner under (a) of this section, unless the victim
~~or the victim's immediate family~~ has indicated that ^{he/she does not} they can't
wish to be notified. The notice shall contain the expected
date of the prisoner's release and the geographic area in which
the prisoner will reside.

*Sec. 9. The effect of Section 1 of this act is to amend
Rule 32(d)(2) of the Alaska Rules of Criminal Procedure by adding
a requirement for a Victim Impact Statement as part of a court
ordered Presentence Report.

POSITION PAPER

House Bill No. 345

"An Act relating to a victim's rights in the sentencing and parole hearings and furlough determinations of a person convicted of a felony; and making changes in sentencing procedures."

Section 1. AS 12.55.025 (a) amended to require that victim's or the immediate family of victim's evidence and opinions be included as part of the presentence report.

Section 2. AS 12.55.155 (c) is amended by adding "(27) the defendant's conduct caused substantial physical, emotional, or financial harm to the victim or, if the victim has died as a result of the defendant's conduct, to the victim's immediate family." as an aggravating circumstance under presumptive sentencing procedure.

Section 3. AS 12.55.155 (f) is amended to require the defendant to provide written notice to the victim or immediate family of the victim if the defendant seeks to establish a factor in mitigation in proceedings. This notice must be filed ten days prior to the date set for imposition of sentence. The victim or victim's immediate family may appear personally or by counsel at aggravation or mitigation proceedings and sentencing proceedings.

Section 4. AS 12.55.155 (h) adds a definition of "immediate family" which includes a spouse, child, parent, brother, sister, parent-in-law, brother-in-law, or sister-in-law.

Section 5. AS 33.15.060 (a) is amended to require the parole board to consider evidence presented and opinions expressed by the victim or the victim's immediate family in parole determinations.

Section 6. AS 33.15 is amended by adding a new section, AS 33.15.065, which requires the parole board to send notification of hearing to review or consider parole eligibility or the setting of a parole date to the victim or the victim's immediate family 30 days before the hearing. It is the responsibility of the victim or the victim's immediate family to keep the board informed of the person's current address.

Section 7. AS 33.30.250 (g) is amended by adding a new paragraph which would prohibit a prisoner from being placed on furlough status if the victim or the victim's immediate family submits a written statement outlining the objections and supporting evidence to the Commissioner.

Section 8. AS 33.30.250 (g) is amended by adding a new section which requires the commissioner to notify the victim or victim's immediate family of intention to release the prisoner on work furlough unless the Commissioner receives a written statement outlining the objections and supporting evidence, if any, advocated by the victim or

POSITION PAPER
House Bill No. 345
Page 2

the victim's immediate family.

Section 9. AS 33.30.260 is amended by giving the victim or victim's immediate family the right to object to rehabilitation furlough under the conditions and procedures set out in AS 33.30.250 (h).

Summary

The Department supports the concept of evidence and statements of the victim being included in sentencing, parole hearings, and furlough determinations. However, the bill, as written (Sections 7, 8, and 9), give victims or immediate family of victims the authority to prohibit prisoners from being granted furlough by objecting in writing to the Commissioner. The Department opposes to this authority being placed with victims because, constitutionally, the Department is charged with the responsibility of reformation of offenders. Furlough is an intricate part of the reformation process. Because of ineligibility or lack of program space, all prisoners do not participate in furlough programs. However, those prisoners referred to in section 7, 8, and 9 would be determined furlough eligible prior to contacting the victim or the victim's immediate family. The victim or the victim's immediate family could by objecting in writing prohibit the prisoner's participation in the furlough program whether or not the objections have merit.

It should be noted that furlough determinations are based on factual information regarding the prisoner's suitability for furlough release. The Department does not oppose including opinions, evidence and facts being presented by the victim or victim's immediate family as part of the furlough determination process, but placing the authority to veto furlough participation with the victim or the victim's immediate family is not acceptable. The Department recommends the language in sections 7, 8, and 9 be changed to indicate the victim's right to provide statements and evidence to the Commissioner to be used in the consideration of furlough determination.

Recommended by: *Roger V. Endell*
for Roger V. Endell Director
Division of Adult Corrections

Date: May 2, 1983

Approved by: *Robert London Smith*
Robert London Smith, Ph.D.
Commissioner

Date: 5/4/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: House Bill No. 345
Title: Act relating to a victim's rights
Sponsor: Rep. Flood
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected:
Adult Confinement/Probation Community-
Based Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		*	*	*	*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the impact of this bill has not been identified by sponsor.

*See Analysis.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
Division: Adult Corrections Date: April 28, 1983
Approved by Commissioner: Robert London Smith, M.D. *Robert London Smith, M.D.* Date: 5/4/83
Department: Health & Social Services

Distribution:

Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS

A. Assumptions

1. Sections 1, 2, and 3

These sections set up a legal process by which victims or their survivors can present testimony which will have bearing on mitigating/aggravating factors and sentencing. It is the opinion of this writer that this procedure will result in longer sentences for some persons convicted of felony offenses. It is believed that sentencing judges will be persuaded to give longer terms of incarceration as a direct result of such testimony. This opinion is subjective and there is no way to measure to ultimate impact on the State's inmate population.

2. Section 4

No effect.

3. Sections 5 and 6.

This section requires the Parole Board to consider "evidence presented and opinions expressed by the victim or the victim's immediate family . . ." The provisions of this section could result in some parole candidates not receiving parole based on the testimony presented by the victim. Again, there is no way to measure the potential impact on the inmate population.

4. Sections 7, 8, and 9.

These three sections will directly affect the number of persons who are released on either work or rehabilitation furloughs. Sections 7 and 9 will allow for a victim to automatically bar a prisoner from the work or rehabilitation furlough programs by submitting a written objection. It is assumed that a significant number of victims would submit a statement of objection to furlough release for the inmate.

It is assumed that approximately 300 felons are released each year into the furlough programs. Based on the above, it is assumed that 25% of the eligible candidates will be prevented from entering the furlough programs due to victim objections. Thus, 75 prisoners will be required to serve out the remaining sentence period in a state correctional center. The typical furlougher has 120 days of residual incarceration at the time entering the furlough program. Therefore, there will be 75 times 120 days or 9000 person days (24.7 person years) of added jail time generated by these provisions of House Bill No. 345.

Since there is currently a waiting list of persons eligible for entering the furlough program, it would not be accurate to indicate the need for the additional 25 beds. Enactment of this bill would, however, reduce by 25 the number of community beds which could be used as an alternative to incarceration in a state correctional center.

B. Program Summary

An estimate for additional operating costs cannot be made without more quantifiable data.

C. Economic Impact

Passage of this bill should have little impact on the State's economy.

D. Impact on Local Governments

This bill should have no fiscal impact on local governments.



Alaska State Legislature

House of Representatives

April 6, 1983

Peuch V
State Capitol
Juneau, Alaska 99801

Official Business

MEMORANDUM

TO: Representative Joe Flood

FROM: Mark K. Johnson *MKJ*
Staff Counsel

SUBJECT: Proposed Victim's Legislation

Attached is a draft of legislation that would establish certain basic rights for the victims of felonies at the sentencing phase of a criminal trial as well as during hearings for parole and furlough.

The legislation is modeled after provisions of Arizona law that were adopted by that state's legislature in 1982. Similar language was added to California law through the initiative process in June of 1982.

Section 1 of the legislation would provide that in sentencing individuals for felonies, the presently required pre-sentence report would also include "evidence and opinions expressed by the victim...concerning the physical, emotional, or financial harm caused the victim" as a result of the defendant's conduct.

Section 2 of the proposed legislation would establish an additional aggravating factor to be considered by the court in passing sentence upon a person convicted of a felony. This aggravating factor relates to the harm caused the victim as a result of the crime.

Section 3 would provide that the victim of a felony shall be notified at least 10 days before the sentencing of the defendant and that at this phase of the proceedings the victim would have the right to appear and participate. At that time, the victim, appearing personally or through counsel, may present evidence or opinions concerning the harm suffered by the victim or his immediate family as a result of the crime. The court would be required to consider this testimony in sentencing the offender.

Section 4 would define "immediate family", as used in the first three sections of the bill relating to sentencing.

Section 5 would require the Parole Board to consider the evidence and opinions offered by the victim at the sentencing hearing during the parole process.

Section 6 extends to the victim of the crime the right to receive notice of a parole hearing for an offender, the right to appear and present evidence and opinions at that hearing, and provides that the Parole Board shall consider

those statements in their deliberation on the decision to grant parole.

Section 7 would add the harm caused to the victim to a list of relevant considerations to be used by the Commissioner of Health & Social Services in determining whether an offender should be released on furlough.

Section 8 extends the notice and testimonial rights mentioned in sections 3 and 6 of the bill to the victim of a felony in a furlough determination to be made by the Commissioner of Health & Social Services.

Section 9 grants the victim of a felony the right to object to the granting of a furlough by the commissioner.

In each of the new provisions, if the victim has died as a result of the defendant's conduct, the victim's immediate family shall have the rights granted to the victim.

While far broader legislation on the subject of victim's rights is certainly possible, the provisions of this legislation are some strong and positive efforts to afford greater consideration to the victims of crimes. A copy of a Newsweek article on this subject is attached.



Photos by Ron Medvesek—Arizona Daily Star

Marietta Durkin (left), her mother on couch: A grieving family fights back

Giving Victims a Say in Court

The marriage of Tiberiu and Norma Nistor had dissolved long before Norma fired seven shots into her husband, pausing once to reload. He had come home to collect his books; Norma shot him before he could leave. Then she called a friend who remembers Norma saying, "I killed him. He deserved it." For the Tucson, Ariz., police, the murder was an open-and-shut case. But when it reached the Pima County prosecutor's office, other factors came into play—Norma's agitated emotional state and a history of domestic violence. Exercising his discretion, an assistant county attorney struck a deal with Norma's lawyers that allowed her to plead "no contest" to the homicide charge and receive a prison term of no more than seven years.

When this news reached Tiberiu's relatives in Pennsylvania, they were furious. "Our initial reaction was utter disbelief," recalls Robert Durkin, Tiberiu's brother-in-law. But the prosecutors, who now admit they made a mistake, were trapped: they could not legally disown a completed plea bargain. Durkin's remaining card was Arizona's new victims' rights law, which gives crime victims, or their families, independent standing to appear before a sentencing judge. In the first test of the law, Durkin and his wife, Marietta, Tiberiu's sister, demanded a hearing to overturn the deal. Over the objections of both Norma's lawyer and the prosecutor, Durkin's attorney argued that accepting a no-contest plea—which did not even automatically bar Norma from inheriting Tiberiu's \$345,000 in life insurance—amounted to a miscarriage of justice. Four weeks later, Judge William Drake agreed; a murder trial will probably begin this spring. Says Durkin: "We feel vindicated."

Durkin's vindication may recalibrate the scales of justice. Until recently, the crime-victims' movement has concentrated on obtaining compensation for victims and encouraging private lawsuits against criminals. Now victims are lobbying legislatures to give them a voice in the criminal courts. Already, Connecticut and California have joined Arizona in granting victims the right to have their say—what lawyers call "the right of allocution." At least nine other states and Congress have directed trial judges to consider written "victim impact statements" before sentencing guilty defendants. And President Reagan's Task Force on Victims of Crime has gone further, calling for a constitutional amendment to give victims the right "to be present and be heard at all critical stages of judicial proceedings."

Competing Interests These proposals represent a fundamental shift in the conventional courtroom calculus. Prosecutors serve the state, defense lawyers worry only about their clients and judges try to mete out justice. The victim, unless called as a witness, plays no role in the process. Until recently, the assumption was that the prosecutor represented the victim's interest. But as Yale law Prof. Abraham Goldstein points out, often that is not the case. "To the prosecutor, the victim is one among many competing interests," he says, among them unclogging court dockets. "We can't leave the victim to the prosecutor's discretion anymore," says Lois Haight Herrington, head of the Vic-

tim's Task Force and a former prosecutor.

Giving a victim a say may also serve as good therapy. "If they don't have an opportunity to express their pent-up anger, they carry it with them for the rest of their lives," says John M. Bailey, chief prosecutor in Hartford County, Conn.

But proposals granting victims the right to speak are more controversial than they seem. Some defense lawyers fear that an emotional appeal by a flesh-and-blood victim may improperly sway a judge as well as cause further court congestion. A more practical issue is when the victim should be heard. If he waits until a sentencing hearing, it may be too late to affect the outcome: many plea bargains are really "sentence bargains" that the judge has tacitly agreed to in advance—before the victim gets his day in court.

Including victims in the system may also place extra burdens on them. "The victim may be on the spot, feeling like a failure if he doesn't get a triple-digit sentence out of the judge," says University of Chicago law Prof. Franklin Zimring. And, says Harvard law Prof. Alan Dershowitz, the proposals may only lead to more unequal justice, "returning us to the day when each victim's life was worth a different amount." He argues that judges will become more concerned with "attractive" victims, while the law should demand that all victims be treated equally. Dershowitz prefers a system that would encourage victims to bring civil suits against their assailants. That is what the parents of Ronnie Joan Garland, a Yale student murdered by her college boyfriend, did. They recently won a \$30,000 judgment against Richard Herrin, who killed her.

Modest Expectations Expanding the rights of victims in courts seems likely in the short run, if only because legislators, who are powerless to stem high crime rates, can at least do something by taking up the victims' cause. But as with other reforms in criminal justice, modest expectations are in order. Experiments indicate that few victims actually appear in court to advise judges of their views, except in homicide cases where surviving relatives often closely track a case. Philadelphia Judge Lois Forer, author of "Criminals and Victims," says that while she routinely invites victims to sentencing hearings, they seldom choose to speak; in Connecticut, court officials estimate that victims appear at no more than 3 percent of the sentencing hearings.

And when they do come to court, victims are often more interested in alternative sentences that involve restitution; they seldom demand pure vengeance. That's a comforting thought, and may be the best reason for allowing victims to join the cacophony in the criminal courts.

ARIC PRESS with RON LABRECQUE in Tucson and bureau reports

Nistor: No deal



STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW PRETRIAL INTERVENTION PROGRAM

POUCH KT
JUNEAU, ALASKA 99811
PHONE: (907) 465-3678

April 29, 1983

The Honorable Charles Bussell
Chairman, House Judiciary Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Attached is a proposed committee substitute for H.B. 345. After conferring with your committee's counsel, Joseph Brewer, I prepared my amendments in this form rather than as amendments. I have discussed this proposed committee substitute with Ms. Forsythe, of the Court system, with Mr. Trivette of the Parole Board, and with Ms. Amy Webb of the Division of Adult Corrections. It was my intent to strengthen the provisions of the bill while retaining the prime sponsor's original intent, clear up possible legal problems, and produce a final bill that would have a zero fiscal note. All the parties consulted agree that this has been accomplished.

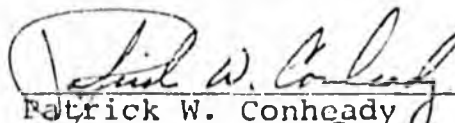
You may have questions regarding this proposed substitute, as you or your fellow committee members may likewise have further questions regarding my testimony on this bill. Unfortunately, I will be out of town from April 30 through May 6. If my presence is required for further hearing on this matter, I will be available on the afternoon of May 6.

I trust this proposed committee substitute is in agreement with your committee's desire on this legislation. If I can be of further assistance, do not hesitate to contact me.

Sincerely,

NORMAN C. GORUSCH
ATTORNEY GENERAL

By:



Patrick W. Conheady
Assistant Attorney General
Chief, Pretrial Services

Attachment

PWC/ks

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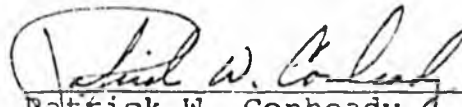
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MARK K. JOHNSON

House of Representatives

May 4, 1983

The Honorable Charlie Bussell
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Chairman Bussell:

I have carefully reviewed the proposed committee substitute for HB 345 that has been prepared by the Department of Law. I would appreciate it if you and the committee would consider the following comments on this proposed substitute.

First of all, I would like to indicate that I do not believe that the changes made to the legislation by the department are necessarily hostile to my original intentions in introducing this measure. In many instances the changes improve upon the provisions of the original bill and make it more workable under Alaska law. It is important to keep in mind that the provisions of the original bill were borrowed from other jurisdictions, primarily Arizona and California, and accordingly may require some changes in order to conform them to Alaska law.

Section 1 of the departments proposal would add to the presentence report the requirement that a "victim impact statement" be prepared by the probation officer. This material would then be considered by the court in making a sentencing decision. By and large, this new provision is consistent with my original intention but raises two major problems:

(a) The process set up by the department through sections 1, 2, and 3 of the proposed substitute would not allow the victim, or the victim's family the right to appear personally, or through counsel, at the sentencing hearing. Thus, the sentencing hearing would continue to be a setting in which only the court, the prosecutor, and the defendant would be parties to the discussions. Quite frankly, while I would prefer that the right to appear continue to be a part of the legislation, I don't know which of the procedures is a better one. I would therefore urge that the committee very carefully consider and discuss this situation before taking action.

(b) The addition of the "victim impact statement", would raise the issue of the need for a change in court rules. See section 9 of the proposed substitute. As you know, under the state constitution, a change in court rules requires a

two-thirds vote in both bodies to be effective. The problem with changes in court rules is that too often the determination of whether or not such a change will occur or is necessary is made by a legal draftsman and not the legislature. If such a determination is to be made in this case, it should be made by the committee on the basis of a careful analysis of the proposal that it has before it, and not by a draftsman. Furthermore, I believe that it is relevant to understand that I am interested in placing provisions such as those contained in the original bill in the statutes during this legislative session. To intentionally amend the measure to require that it be approved by a two-thirds majority in the legislature does not appear to contribute to this goal. Once again, I would urge the committee to carefully consider the effect of this proposed change before acting.

Section 2 of the proposed substitute deletes from section 1 of the original bill the language: "...and other factors relating to the crime, the defendant, disposition of the defendant upon sentencing,...". While I am not aware of the department's motivation in deleting this language, it would appear that the change is intended to remove terms which do not have a specific meaning under Alaska law and might render this section ambiguous. I do not oppose this change.

Section 3 of the proposed substitute conforms the new aggravating factor used in determinate sentencing to the amendments suggested above. One issue that should be considered by the committee is whether the deletion of the reference to physical harm to the victim is an appropriate change. While my first reaction is that this reference should not be dropped, the department may be able to offer some rationale for this change.

In essentially dropping section 3 of the original bill, the department also deletes the requirement that notice of the sentencing hearing be served on the victim or the victim's family. Absent a good explanation by the department for this change, I would oppose this change.

Section 4 of the proposed substitute re-defines "immediate family" to exclude in-laws and include guardians. I do not oppose this change.

The remaining sections of the proposed departmental substitute would basically remove from the bill a victim's right to appear at and object to parole and furlough proceedings and determinations. I have discussed this proposed change with the department and am inclined to agree with them that to give a victim, or his immediate family, the right to object to these determinations may pose significant due process problems. In my view, once an individual has served a period of incarceration, circumstances have changed to an extent that the rights of the victim or the victim's family may be appropriately weighed against those of the offender. Granting to the victim, or the victim's immediate family, the right to comment on a pending release and requiring the decision-maker to consider those comments in reaching a decision seems to be an appropriate way to balance these interests. Given the possibility of due process objections, I would endorse these proposed changes.

In closing, I would like to make clear to the committee that I believe that this legislation should be given expedited consideration during this session of the legislature. While the committee should take a tough stance in those instances where the proposed departmental substitute would undermine the intentions of the legislation, it should accommodate the suggestions of the department in those instances where it does not harm the intention of the legislation. The important goal, in my mind, is to give victims of crimes and their immediate families some sort of meaningful impact on sentencing, parole and furlough decisions this year. I hope the committee will work with the department, the court system and myself in achieving this goal.

Thank you for the opportunity to comment on the proposed departmental substitute.

Sincerely,

Joe Flood