

# COMMITTEE REPORT

## SENATE

FURTHER:

3/15/84

Date 5/14/84

Mr. President

The Committee on FINANCE considered CSHB 345 (Jud)

victim's rights; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt SCS for CSHB 345 (Fin)
- new title
- same title and recommends Do Pass w/ S. Jud. Letter of Intent
- and attached a "LETTER OF INTENT"
- reports it back without recommendation
- recommends referral to \_\_\_\_\_

NEW FISCAL NOTE  
- Dept. Corrections 3/19/84  
- Note Dept. of Law accompanied bill into committee 4/25/84  
Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

[Signature]  
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Chairman

Chairman recommendation

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: March 19, 1984

REQUEST:

Bill/Resolution No.: SCS CSHB 345 (Jud)  
 Title: "An Act relating to victims' rights...."  
 Sponsor: Judiciary Committee  
 Requestor: Senate Finance  
 Date of Request: March 19, 1984

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Northern, Southcentral & Southeastern Regional Corrections, Admin. & Support

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 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
800 MISCELLANEOUS						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL						

\* See Analysis

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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 the sponsor.

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Roger C. Lange *Roger C. Lange*  
 Division: Administrative Services

Phone: 465-3376  
 Date: March 19, 1984

Approved by Commissioner: *Bob V...*  
 Department: DEPARTMENT OF CORRECTIONS

Date: March 21, 1984

Distribution:

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

## ANALYSIS

### A. Assumptions

#### 1. Section 1

There may be some impact on Probation/Parole staff with increased requirements in content of the pre-sentence reports. It is difficult to measure the impact as some of the information required is currently included in the pre-sentence reports.

#### 2. Section 2

No impact on the Department of Corrections; the requirements are for the court to include information addressed in Section 1 of the bill.

#### 3. Section 3

No impact. This section adds a definition of "victim."

#### 4. Section 4

No impact. This new chapter specifies the rights available to victims of crimes.

#### 5. Sections 5, 6, 8 and 9.

These sections have the potential of causing an inmate to serve a longer period of incarceration than present policy dictates, as the victim or surviving family of a victim may provide comment to either the parole board or Commissioner when parole or furlough/work release are being considered. It is not possible to estimate the fiscal impact, however, with the given data, but is considered to be minimal.

#### 6. Section 7 and 10

No impact. These sections add the definitions of "crime against a person" and "victim" as referenced in the statute.

#### 7. Section 11

No impact on the Department of Corrections.

9. Summary

If Senate Committee Substitute for Committee Substitute for House Bill No. 345 (Judiciary) is enacted, there will be some impact on the Department of Corrections, both in inmate census and on probation officer staff preparing pre-sentence reports for the courts. It is assumed that the impact will be minimal.

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.

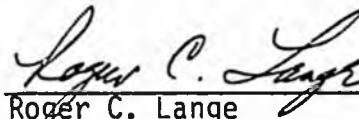
DEPARTMENT OF CORRECTIONS  
Pouch T  
Juneau, Alaska 99811

POSITION PAPER  
SCS CS House Bill No. 345 (Judiciary)

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

The Department of Corrections supports the concept of evidence and statements of the victim being included for consideration in sentencing, parole hearings and furlough determinations. The Senate Committee substitute has text changes in several of the sections which appear to clarify the intent of the legislation without changing the level of either the victim's or offender's rights as established in the previous committee substitute. The victim, or their family, will be able to present comments for consideration by the sentencing judge, parole board and/or commissioner. The final determination of the felony offender's status can then be made taking all known facts into consideration.

Prepared by:



Roger C. Lange  
Internal Management Administrator

Date:

March 20, 1984

Approved by:



Roger N. Endell  
Commissioner  
Department of Corrections

Date:

March 21, 1984

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

(Page 1 of 2)

I. REQUEST

Bill/Resolution No.: HB 345  
 Title: "Victim's rights in sentencing..."  
 Sponsor: Representative Flood  
 Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law  
 Program Category Affected: Adm. of Justice  
 BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues  
 Division: Administrative Services Division

Phone: 465-3672  
 Date: April 25, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General  
 Department: Department of Law

Date: April 25, 1983

Distribution:

Original to Legislative Finance  
 Copy to Office of Management and Budget (for Legislature introduced bills)  
 Copy to Department (for Governor introduced bills)

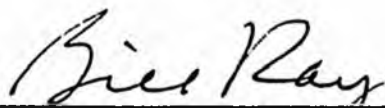
HB 345 (Page 2 of 2)  
Fiscal Note  
Analysis

This bill provides an opportunity for the victim of a felony offense to present evidence and express opinions at sentencing and parole hearings and furlough determinations of the person convicted of the felony. Except in unusual circumstances, the Department of Law is not normally represented at parole hearings or furlough determinations. On the other hand, the department is routinely represented at sentencing hearings. Whether the Department of Law makes an unusual appearance at a parole hearing or furlough determination, or a routine appearance at a sentencing hearing, this bill imposes no additional responsibilities upon the Department of Law. In addition, the appearance of a victim is voluntary; therefore, no significant fiscal impact is anticipated for the Department of Law as a result of this bill.

Senate Judiciary Committee  
Letter of Intent

SCS CSHB 345 (Judiciary)

It is the intent of the Senate Judiciary Committee that the court system provide written transcripts of the sentencing proceedings for all offenders who are parole eligible, or who have been convicted of unclassified or Class A felonies, and for other offenders when a transcript is requested by the Department of Corrections or the Alcohol Beverage Control Board. In preparing transcripts on unclassified or Class A felony offenders, the court system should prepare these transcripts as soon as possible in order to allow the Department of Corrections to make prompt and informed classification decisions.



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Senator Bill Ray, Chairman  
Senate Judiciary Committee

Offered: 3/15/84  
Referred: Finance

Original sponsors: Flood, Clocksin,  
Grussendorf, et al

1 IN THE HOUSE

BY THE <sup>Finance</sup>JUDICIARY COMMITTEE

2

SENATE CS FOR CS FOR HOUSE BILL NO. 345 (<sup>Finance</sup>Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to victims' rights; and amending  
7 Rule 32(d)(2) of the Alaska Rules of Criminal Proce-  
8 dure."

9

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

10

\* Section 1. AS 12.55 is amended by adding a new section to read:

11

Sec. 12.55.022. VICTIM IMPACT STATEMENT. As part of the presen-

12

tence report prepared on each felony offender, the probation officer  
13 shall prepare a victim impact statement reporting the following infor-  
14 mation:

15

(1) the financial, emotional, and medical effects of the  
16 offense on the victim;

17

(2) the need of the victim for restitution; and

18

(3) any other information required by the court.

19

\* Sec. 2. AS 12.55.025(a) is amended to read:

20

(a) When imposing a sentence for conviction of a felony offense

21

or a sentence of imprisonment exceeding 90 days or upon a conviction

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of a violation of AS 04, a regulation adopted under AS 04, or an

23

ordinance adopted in conformity with AS 04.21.010, the court shall

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prepare, as a part of the record, a sentencing report which includes

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the following:

26

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

28

(2) findings on material issues of fact and on factual

29

questions required to be determined as a prerequisite to the selection

1 of the sentence imposed;

2 (3) a clear statement of the terms of the sentence imposed;

3 [AND]

4 (4) any recommendations as to the place of confinement or  
5 the manner of treatment; and

6 (5) in the case of a conviction for a felony offense,  
7 information assessing

8 (A) the financial, emotional, and medical effects of  
9 the offense on the victim;

10 (B) the need of the victim for restitution; and

11 (C) any other information required by the court.

12 \* Sec. 3. AS 12.55.185 is amended by adding a new paragraph to read:

13 (11) "victim" means the victim of the offense or, if the  
14 victim has died, is a minor, or is incapacitated the term includes a  
15 spouse, parent, child, brother, sister or legal guardian of the vic-  
16 tim.

17 \* Sec. 4. AS 12 is amended by adding a new chapter to read:

18 CHAPTER 61. RIGHTS OF VICTIMS.

19 Sec. 12.61.010. RIGHTS OF VICTIMS. (a) Victims of crimes have  
20 the following rights:

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

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

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

1 available;

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

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

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

15 (b) Victims' employers, law enforcement agencies, prosecutors,  
16 and the courts shall make every reasonable effort to ensure that  
17 victims of crimes have the rights set out in (a) of this section.  
18 However, a failure to ensure these rights does not give rise to a  
19 separate cause of action against victims' employers, law enforcement  
20 agencies, other agencies of the state, or a political subdivision of  
21 the state. *Add - Amendment*



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

23 (a) In considering a prisoner, the board shall consider the  
24 presentence report made to the sentencing court, comments received  
25 from the victim under AS 33.15.065, the recommendations by the sen-  
26 tencing court and the prosecuting attorney, the report from the proper  
27 officers of the institution where the prisoner is incarcerated, the  
28 record of the prisoner and all pertinent information that will enable  
29 the board to make a determination.

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

2 Sec. 33.15.065. RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRIS-  
3 ONER. (a) Upon request of the victim, notice of a hearing to review  
4 or consider the parole eligibility or the setting of a parole date for  
5 a prisoner in a state prison who is convicted of a crime against a  
6 person shall be sent to the victim of the crime at least 30 days  
7 before the scheduled hearing.

8 (b) It shall be the responsibility of the victim to keep the  
9 board apprised of the victim's most current mailing address. If the  
10 board has not been kept apprised of the victim's most current mailing  
11 address, the board shall send the notice required under (a) of this  
12 section to the last known address of the victim. The address of the  
13 victim may not be disclosed to the prisoner or the prisoner's attor-  
14 ney.

15 (c) The victim has a right to comment in writing on the proposed  
16 action of the board. Copies of the comments shall be provided to the  
17 prisoner and the prisoner's attorney.

18 (d) The board shall consider the comments presented under (c) of  
19 this section in deciding whether to release the prisoner on parole.

20 (e) Upon request of the victim, if the board decides to release  
21 on parole a prisoner who is convicted of a crime against a person, the  
22 board shall make every reasonable effort to notify the victim before  
23 the prisoner's release date. Notification under this subsection shall  
24 include the expected date of the prisoner's release, the geographic  
25 area in which the prisoner is required to reside, and other pertinent  
26 information concerning the prisoner's conditions of parole that may  
27 affect the victim.

28 (f) Upon request of the victim, if a prisoner is released under  
29 AS 33.20.040(a), the board shall make every reasonable effort to

1 notify the victim before the prisoner's release date. Notification  
2 under this subsection shall include the expected date of the prison-  
3 er's release, the geographic area in which the prisoner is required to  
4 reside, and other pertinent information concerning the prisoner's  
5 conditions of parole that may affect the victim.

6 \* Sec. 7. AS 33.15.260 is amended by adding new paragraphs to read:

7 (5) "crime against a person" has the meaning given in  
8 AS 33.30.900;

9 (6) "victim" has the meaning given in AS 12.55.185.

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

11 (h) Upon request of the victim, in the case of a prisoner con-  
12 victed of a crime against a person, notice of the commissioner's  
13 intent to consider the prisoner for release under (a) of this section  
14 shall be sent to the victim. The victim may comment in writing on the  
15 intent of the commissioner to release the prisoner on work furlough  
16 status. The commissioner shall consider the comments of the victim  
17 before making a final decision to release a prisoner under (a) of this  
18 section. The victim shall keep the commissioner apprised of the  
19 victim's current mailing address. If the victim requests to be noti-  
20 fied, the commissioner shall make every reasonable effort to notify  
21 the victim of an intent to consider a release of a prisoner under (a)  
22 of this section. The notice shall contain the expected date of the  
23 prisoner's release and the geographic area in which the prisoner will  
24 reside and other pertinent information concerning the prisoner's  
25 release that may affect the victim.

26 \* Sec. 9. AS 33.30.260 is amended by adding a new subsection to read:

27 (b) In the case of a prisoner convicted of a crime against a  
28 person, notice of the commissioner's intent to consider the prisoner  
29 for release under (a) of this section shall be sent upon request to

1 the victim. The victim may comment in writing on the intent of the  
2 commissioner to release the prisoner in rehabilitation furlough sta-  
3 tus. The commissioner shall consider the comments of the victim  
4 before making a final decision to release a prisoner under (a) of this  
5 section. The victim shall keep the commissioner apprised of the  
6 victim's current mailing address. If the victim requests to be noti-  
7 fied, the commissioner shall make every reasonable effort to notify  
8 the victim of an intent to release a prisoner under (a) of this sec-  
9 tion. The notice shall contain the expected date of the prisoner's  
10 release and the geographic area in which the prisoner will reside and  
11 other pertinent information concerning the prisoner's release that may  
12 affect the victim.

13 \* Sec. 10. AS 33.30.900 is amended by adding new paragraphs to read:

14 (8) "crime against a person" means a crime as set out in  
15 AS 11.41, except custodial interference under AS 11.41.320 and 11.41.-  
16 330; or a crime against a person in this or another jurisdiction  
17 having elements substantially identical to those of a crime as set out  
18 in AS 11.41, except custodial interference under AS 11.41.320 and 11.-  
19 41.330;

20 (9) "victim" has the meaning given in AS 12.55.185.

21 \* Sec. 11. The effect of sec. 1 of this Act is to amend Rule 32(d)(2)  
22 of the Alaska Rules of Criminal Procedure by adding a requirement for a  
23 Victim Impact Statement as part of a court ordered presentence report.

5/14/84  
SFC

A M E N D M E N T

Offered in the SENATE

By Josephson

To: SCS CSHB 345(Judiciary)

Page 3, following line 21, insert the following new section to read:

"Sec. 12.61.020. MONEY RECEIVED AS THE RESULT OF THE COMMISSION OF A CRIME. (a) Every person contracting with an offender with respect to the reenactment of the offender's crime by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of the offender's thoughts, feelings, opinions or emotions regarding the crime, shall pay to the state any money that would otherwise be owing to the offender.

(b) A claim by a victim arising out of an order of restitution under AS 12.55.045, or a judgment in a civil action against an offender for damages resulting from a crime is a superior claim for money that would otherwise be paid to the state under (a) of this section.

(c) Notwithstanding other statutory limitations, a civil action by a victim against an offender for damages resulting from the commission of the crime, must be commenced within 10 years of the date of the crime, or the date of the discovery of the perpetrator of the crime if the perpetrator is unknown on the date of the commission of the crime.

(d) For the purposes of this section, if the offender has not been convicted, proof of the commission of a crime must be established by a preponderance of the evidence.

(e) In this section

(1) "offender" means a person who has committed a crime in this state, whether or not the person has been convicted of the crime, or that person's representative or assignee;

(2) "victim" has the meaning given in AS 12.55.185."

Page 6, following line 20, insert a new bill section to read:

\* Sec. 11. AS 18.67.165 is repealed.

Renumber remaining section accordingly.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

*Copies provided  
to Co. Chairman  
& Sen. Thompson  
his date  
5/14/84*

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

MEMORANDUM

May 14, 1984

SUBJECT: Royalties from commission of crime  
(CSHB 345 (Finance))

TO: Senator Don Bennett  
Chairman, Senate Finance Committee

FROM: Keith B. Levy *KEB*  
Legislative Counsel

Enclosed is a final draft of CSHB 345 (Fin) including an amendment providing that any royalties from publications that are due to an individual who has committed a crime are to be paid to the state. The amendment applies to anyone that has committed a crime, whether or not the person is convicted, if the state can show by a preponderance of the evidence that the person committed the crime. There are a number of constitutional problems with this amendment. Due to time limitations, this memo only briefly summarizes these problems.

The first problem with the amendment pertains to the free speech clause of the First Amendment to the United States Constitution, and Art. I, sec. 5, of the Alaska State Constitution. Since the amendment takes all profit away from certain people for asserting their First Amendment rights, including people who have not been convicted of a crime, it places a serious burden on those rights. The courts are unlikely to uphold such a burden on free speech, particularly with respect to individuals who have not been convicted of a crime.

The second problem with the amendment relates to the provisions of the state and federal constitutions that prohibit the state from passing any law impairing the obligations of contracts. With respect to contracts entered into after the effective date of the amendment, it could be argued that the "contracts clause" doesn't apply, since the law predated the

Senator Don Bennett  
Page 2  
May 14, 1984

contract, and thus becomes a part of the terms of the contract. However, with respect to contracts entered into before the effective date of the amendment, there probably would be an impairment of contractual obligations.

A third problem relates to due process rights under the state and federal constitutions, which prohibit the state from taking property without due process of law, as well as just compensation. At least insofar as the amendment applies to persons who have not been convicted of a crime, it amounts to a taking without just compensation.

A fourth problem relates to the application of the amendment to persons that have already committed a crime. Both the state and federal constitutions prohibit the legislature from enacting an "ex post facto" law, which includes a law that increases the penalty for a crime over and above what the penalty was at the time the crime was committed. If the amendment is applied to a person who committed a crime before the effective date of the amendment, it will have the unconstitutional effect of increasing the penalty for the crime after the crime is committed.

Finally, the amendment may amount to a bill of attainder, which is prohibited by both the state and federal constitutions. A bill of attainder is a law that punishes identifiable individuals legislatively without the full protections of a criminal trial. Since the amendment may be used to take property from persons who have not been convicted of a crime on a showing "by a preponderance of the evidence" that the crime was committed, it punishes such persons without requiring the usual criminal standard, "beyond a reasonable doubt." As such, the amendment may amount to an unconstitutional bill of attainder.

In conclusion, there are a number of troubling constitutional problems with this amendment. While later research may prove some of these concerns unfounded, there is at least serious doubt as to the constitutionality of the amendment.

KBL:ojb  
J7/061

Original sponsors: Flood, Clocksin,  
Grussendorf, et al

IN THE HOUSE

BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 345 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to victims' rights; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure."

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

\* Section 1. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.022. VICTIM IMPACT STATEMENT. As part of the presentence report prepared on each felony offender, the probation officer shall prepare a victim impact statement reporting the following information:

- (1) the financial, emotional, and medical effects of the offense on the victim;
- (2) the need of the victim for restitution; and
- (3) any other information required by the court.

\* Sec. 2. AS 12.55.025(a) is amended to read:

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

- (1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;
- (2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION PRETRIAL DIVERSION PROGRAM

May 10, 1984

The Honorable Joe Josephson  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Re: Distribution of money received  
as a result of the commission  
of a crime, AS 18.67.165  
Our file number: J-088-84

Dear Senator Josephson:

You have requested our review of AS 18.67.165 as to whether this statute would allow the interception of any proceeds that Robert Hansen might realize if he were to write a book about his criminal career. A cursory examination of this statute illustrated significant loopholes which would allow Hansen to profit significantly from any memoirs on his criminal career.

Briefly, some of the problem areas we have identified are:

- 1) payment of royalties to a victim necessarily requires a law suit by the victim;
- 2) if no victim sues the offender within five years, the offender receives all the money;
- 3) the offender must be "convicted of the crime" for a victim to recover. In the Hansen case, although there were 17 admitted victims, Hansen was only "convicted" of 4, therefore precluding recovery in the remaining 13 cases; and
- 4) this statute allows recovery only for the victim [see AS 18.67.180(5)], thus, in the case of murder where the victim is dead, recovery by the victim's estate would be questionable, and recovery by the victim's family would be altogether precluded.

5/14/84  
JFC

**BILL SHEFFIELD, GOVERNOR**

REPLY TO:

- POUCH KT  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3678
- 941 W 4th ST.  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 278-3508
- 733 7th AVE.  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-7713

The Honorable Joe Josephson  
Alaska State Senate  
File No. J-088-84

May 10, 1984  
Page 2

As you can see, even a cursory review demonstrates a number of loopholes. If time were not of the essence in regards to your inquiry, I am certain that other problems with the existing law could be ascertained with a thorough analysis.

You have also requested our suggestions on corrective legislation that would fulfill your intentions in the Hansen matter. In this regard, I have attached a rough draft of possible legislation for your consideration. However, there is a practical consideration that should be addressed if you decide to introduce such legislation.

The major concern that should be recognized is the matter of timing. If Hansen were to sign a contract with a publisher or other production organization prior to enactment of new legislation, the new legislation would most probably run afoul of the proscription in article 1, section 10 of the United States Constitution against laws impairing the obligation of contracts.

In closing, let me apologize for not providing lengthy, indepth analyses on this issue. However, in that the legislative session is quickly approaching an end, the normal level of analysis generally provided would certainly preclude any action on the measure this year. If you desire to go forward with this proposal, we will accomplish the requisite standard of review during the interim.

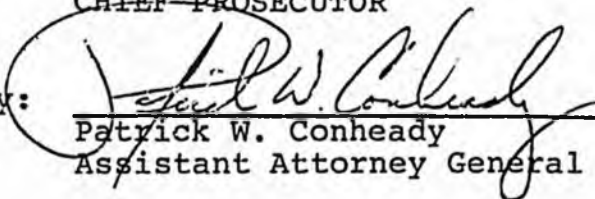
If I can be of further assistance in this matter, do not hesitate to contact me.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

DANIEL W. HICKEY  
CHIEF PROSECUTOR

By:

  
Patrick W. Conheady

Assistant Attorney General

Attachment

Offered: 5/26/83  
Referred: Rules

Original sponsors: Flood, Clocksin,  
Grussendorf, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 345 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to victim's rights; and amending  
7 Rule 32(d)(2) of the Alaska Rules of Criminal Proce-  
8 dure."

9

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

10

\* Section 1. AS 12.55 is amended by adding a new section to read:

11

Sec. 12.55.022. VICTIM IMPACT STATEMENT. As part of the presen-  
12 tence report prepared on each felony offender, the probation officer  
13 shall prepare a victim impact statement reporting in a  
14 nonargumentative style the following verified information:

15

(1) the financial, emotional, and medical impact of the  
16 offense on the victim;

17

(2) the need of the victim for restitution; and

18

(3) any other information required by the court.

19

\* Sec. 2. AS 12.55.025(a) is amended to read:

20

(a) When imposing a sentence for conviction of a felony offense  
21 or a sentence of imprisonment exceeding 90 days or upon a conviction  
22 of a violation of AS 04, a regulation adopted under AS 04, or an  
23 ordinance adopted in conformity with AS 04.21.010, the court, shall  
24 prepare, as a part of the record, a sentencing report which includes  
25 the following:

26

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

28

(2) findings on material issues of fact and on factual  
29 questions required to be determined as a prerequisite to the selection

1 of the sentence imposed;

2 (3) a clear statement of the terms of the sentence imposed;

3 [AND]

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

6 (5) in the case of a conviction for a felony offense,  
7 verified information assessing

8 (A) the financial, emotional, and medical impact of  
9 the offense on the victim;

10 (B) the need of the victim for restitution; and

11 (C) any other information required by the court.

12 \* Sec. 3. AS 12.55.185 is amended by adding a new paragraph to read:

13 (11) "victim" means the victim of the offense or, in the  
14 case in which the victim has died, is a minor, or is incapacitated to  
15 the extent that the victim is unable to take advantage of the victim's  
16 rights under this chapter, the term includes a spouse, parent, child,  
17 brother, sister or legal guardian of the victim.

18 \* Sec. 4. AS 12 is amended by adding a new chapter to read:

19 CHAPTER 61. RIGHTS OF VICTIMS.

20 Sec. 12.61.010. RIGHTS OF VICTIMS. (a) Victims of crimes have  
21 the following rights:

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

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

29 (3) the right to receive protection from harm and threats

1 of harm arising out of cooperation with law enforcement and prosecu-  
2 tion efforts, and to be provided with information as to the protection  
3 available;

4 (4) the right to be informed of the procedure to be fol-  
5 lowed to apply for and receive any victim compensation to which the  
6 person may be entitled;

7 (5) the right to cooperate with the criminal justice pro-  
8 cess without loss of pay and other employee benefits and without  
9 interference in any form by the employer of the victim of crime; and

10 (6) the right to access to immediate medical assistance and  
11 not to be detained for an unreasonable length of time by a law en-  
12 forcement agency before having medical assistance administered; how-  
13 ever, an employee of the law enforcement agency may, if necessary  
14 accompany the person to a medical facility to question the person  
15 about the criminal incident if the questioning does not hinder the  
16 administration of medical assistance.

17 (b) Law enforcement agencies, prosecutors, and the courts shall  
18 make every reasonable effort to assure that victims of crimes have the  
19 rights set out in (a) of this section. However, a failure to assure  
20 these rights does not give rise to a separate cause of action against  
21 law enforcement agencies, or other agencies of the state, or a  
22 political subdivision of the state.

23 \* Sec. 5. AS 18.66.060 is amended to read:

24 Sec. 18.66.060. QUALIFICATIONS. A local community entity is  
25 qualified to receive a grant or contract under this chapter if it  
26 agrees to provide services approved by the council to victims of  
27 domestic violence or sexual assault or their families or to perpetra-  
28 tors of domestic violence or sexual assault without regard to ability  
29 to pay. The local community entity may not condition provision of

1 services to a victim on the victim's cooperation with a prosecuting  
2 attorney in the filing of criminal charges.

3 \* Sec. 6. AS 33.15.060(a) is amended to read:

4 (a) In considering a prisoner, the board shall consider the  
5 presentence report made to the sentencing court, comments received  
6 from the victim under AS 33.15.065, the recommendations by the sen-  
7 tencing court and the prosecuting attorney, the report from the proper  
8 officers of the institution where the prisoner is incarcerated, the  
9 record of the prisoner and all pertinent information that will enable  
10 the board to make a determination.

11 \* Sec. 7. AS 33.15 is amended by adding a new section to read:

12 Sec. 33.15.065. RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRIS-  
13 ONER. (a) Upon request of the victim, as defined in AS 12.55.185-  
14 (11), notice of a hearing to review or consider the parole eligibility  
15 or the setting of a parole date for a prisoner in a state prison who  
16 is convicted of a crime against a person as defined in AS 33.30.900(8)  
17 shall be sent to the victim of the crime at least 30 days before the  
18 scheduled hearing.

19 (b) It shall be the responsibility of the victim to keep the  
20 board apprised of the person's most current mailing address. If the  
21 board has not been kept apprised of the person's most current mailing  
22 address, the board shall send the notice required under (a) of this  
23 section to the last known address of the victim. The address of the  
24 victim may not be disclosed to the prisoner or the prisoner's attor-  
25 ney.

26 (c) The victim has a right to comment in writing on the proposed  
27 action of the board. Copies of the comments shall be provided to the  
28 prisoner and the prisoner's attorney.

29 (d) The board shall consider the comments presented under (c) of

1 this section in deciding whether to release the prisoner on parole.

2 (e) Upon request of the victim, if the board decides to release  
3 on parole a prisoner who is convicted of a crime against a person as  
4 defined in AS 33.30.900(8), the board shall notify the victim before  
5 the prisoner's release date. Notification under this subsection shall  
6 include the expected date of the prisoner's release, the geographic  
7 area in which the prisoner is required to reside, and other pertinent  
8 information concerning the prisoner's conditions of parole that may  
9 impact the victim. The board shall make every reasonable effort to  
10 notify the victim of the pending parole of the prisoner unless the  
11 victim does not wish to be notified.

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

13 (h) Upon request of the victim, as defined in AS 12.55.185(11),  
14 in the case of a prisoner convicted of a crime against a person as  
15 defined in AS 33.30.900(8), notice of the commissioner's intent to  
16 consider the prisoner for release under (a) of this section shall be  
17 sent to the victim. The victim may comment in writing on the intent  
18 of the commissioner to release the prisoner on work furlough status.  
19 The commissioner shall consider the comments of the victim before  
20 making a final decision to release a prisoner under (a) of this sec-  
21 tion. The victim shall keep the commissioner apprised of the person's  
22 current mailing address. The commissioner shall make every reasonable  
23 effort to notify the victim of an intent to consider a release of a  
24 prisoner under (a) of this section, unless the victim does not wish to  
25 be notified. The notice shall contain the expected date of the pris-  
26 oner's release and the geographic area in which the prisoner will  
27 reside.

28 \* Sec. 9. AS 33.30.260 is amended by adding a new subsection to read:

29 (b) In the case of a prisoner convicted of a crime against a

1 person as defined in AS 33.30.900(8) notice of the commissioner's  
2 intent to consider the prisoner for release under (a) of this section  
3 shall be sent upon request to the victim as defined in AS 12.55.185-  
4 (11). The victim may comment in writing on the intent of the commis-  
5 sioner to release the prisoner in rehabilitation furlough status. The  
6 commissioner shall consider the comments of the victim before making a  
7 final decision to release a prisoner under (a) of this section. The  
8 victim shall keep the commissioner apprised of the person's current  
9 mailing address. The commissioner shall make every reasonable effort  
10 to notify the victim of an intent to release a prisoner under (a) of  
11 this section, unless the victim does not wish to be notified. The  
12 notice shall contain the expected date of the prisoner's release and  
13 the geographic area in which the prisoner will reside.

14 \* Sec. 10. AS 33.30.900 is amended by adding a new paragraph to read:

15 (8) "crime against a person" means a crime as set out in  
16 AS 11.41, except custodial interference under AS 11.41.320 and AS 11.-  
17 41.330, or a crime against a person in this or another jurisdiction  
18 having elements substantially identical to those of a crime as set out  
19 in AS 11.41, except custodial interference under AS 11.41.320 and  
20 AS 11.41.330.

21 \* Sec. 11. The effect of sec. 1 of this Act is to amend Rule 32(d)(2)  
22 of the Alaska Rules of Criminal Procedure by adding a requirement for a  
23 Victim Impact Statement as part of a court ordered presentence report.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

---

Senate CS for CS for House Bill 345

"An Act relating to victims' rights; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure"

It is very important to consider the effects of crimes upon victims and delineate victims' rights, so the Council on Domestic Violence and Sexual Assault supports CS for HB 345. This legislation will promote a consistent focus on victims' rights throughout the state. A victim impact statement should make the courts aware of the trauma caused by crimes and make them more sensitive to the problems encountered by victims. It should also assist courts in determining appropriate restitution to victims. Consideration of a victim's input will promote her/his safety and assist in empowering the victim. Victim input needs to be considered in many instances, particularly for parole and furlough of an offender who has committed a violent crime.

The delineation of victims' rights is very important. Often the victim feels overwhelmed or further victimized by the criminal justice system. Victims' needs should be considered. Of particular importance to the Council are the rights to protection from harm and threats arising out of cooperation with law enforcement and to access immediate medical assistance.



Jana Varrati  
Vice-Chair  
Council on Domestic Violence  
and Sexual Assault



Official Business

# Alaska State Legislature

## Senate

Pouch V  
State Capitol  
Juneau, Alaska 99811

TO: Members of the Senate Finance Committee  
FROM: Senator Joe P. Josephson  
DATE: May 4, 1985

RE: Senate CS for CS for HB 345 (Judiciary)  
An Act relating to victim's rights; and amending Rule  
32(d) (2) of the Alaska Rules of Criminal Procedure

The sponsors of this bill are Flood, Clocksin, Grussendorf, Abood, Hurlbert, Pestinger, Ward, Wendte, Hayes and Lacher. In addition, the attached sheet lists the many other sponsors of the bill.

The purpose of this bill is to establish and protect the rights of victims of violent crimes. In addition to providing a new chapter on the rights of victims, the bill requires that the probation officer shall prepare a victim impact statement and that the court shall prepare a sentencing report which also includes information about the victim. The bill also establishes that the victim shall have the right to comment on the parole of the prisoner.

Attached to the bill are fiscal notes (both are zero) from the Department of Law and the Department of Corrections; position papers from Department of Corrections, the Council on Domestic Violence and Sexual Assault, and the Alaska Network on Domestic Violence and Sexual Assault; and a letter of intent from the Senate Judiciary Committee.

Attachment

HOUSE ROLL CALL

19

SUBJECT:

345  
VICTIMS REGISTRATION

	Yea	Nay	Absent
ABOOD			
ADAMS			
BARNES			
BETTISWORTH			
BUSSELL			
CATO			
CLOCKSIN			
COWDERY			
DAVIS			
DUNCAN			
FLOOD			
FRITZ			
FULLER			
FURNACE			
GOLL			
GRUSSENDORE			
HERRMANN			
HURLBERT			
KOPONEN			
LACHER			
LARSON			
LINDAUER			
LISKA			
MALONE			
MARTIN			
MCBRIDE			
MILLER (D)			
MILLER (R)			
PESTINGER			
PHILLIPS			
RINGSTAD			
SHOLTZ			
SZYMANSKI			
TISCHER			
UEHLING			
VASKA			
WARD			
WENDTE			
ZHAROFF			
HAYES			

30 TOTAL

# COMMITTEE REPORT

## SENATE

FURTHER: FINANCE

2/7/84

Date March 14, 1984

Mr. President

The Committee on JUDICIARY considered CSHB 345(Jud)

victim's rights; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/~~or~~ adopt 5 CS for CSHB 345 (Jud)
- new title
- same title and recommends do pass
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

[Signature]  
[Signature]  
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1 Bice Ray  
Chairman  
DO PASS  
Chairman recommendation

C O R R E C T I O N

Discard HB 345  
and retain this corrected version.

Introduced: 4/11/83  
Referred: Judiciary

BY FLOOD, CLOCKSIN  
AND GRUSSENDORF

1 IN THE HOUSE

2 HOUSE BILL NO. 345

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (h) As used in this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 Sec. 33.30.260. REHABILITATION FURLOUGHS. The commissioner may

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