

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5729 HOUSE JUDICIARY

Sec. 33.30.280. Credit for labor while imprisoned [Repealed, § 6 ch 53 SLA 1982.]

Sec. 33.30.281. Crime against sentenced prisoner. A person who commits a crime against a sentenced prisoner is punishable as if the prisoner was not sentenced and incarcerated. (§ 6 ch 88 SLA 1986)

Secs. 33.30.282 — 33.30.290. [Repealed, § 12 ch 88 SLA 1986.]

Sec. 33.30.291. Treaties. If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of prisoners sentenced to serve a term of incarceration to the country where they are citizens or nationals, the commissioner may, on behalf of the state and subject to the terms of the treaty, consent to the transfer or exchange of prisoners and take any other action necessary to initiate the participation of the state in the treaty. (§ 6 ch 88 SLA 1986)

Sec. 33.30.300 — 33.30.900. [Repealed, § 12 ch 88 SLA 1986.]

Sec. 33.30.901. Definitions. In this chapter, unless the context requires otherwise,

- (1) "center" means a correctional restitution center;
- (2) "commissioner" means the commissioner of the Department of Corrections;
- (3) "community service" means work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public services, lands, forests, parks, roads, highways, facilities, or education; community service may not confer a private benefit on a person except as may be incidental to the public benefit;
- (4) "correctional facility" or "facility" means a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners; a "state correctional facility" means a correctional facility owned or run by the state;
- (5) "court" means the supreme court, the court of appeals, the superior court, the district or magistrate court, or a justice or judge of a court;
- (6) "crime against a person" means a crime as set out in AS 11.41, except custodial interference under AS 11.41.320 and 11.41.330; or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime as set out in AS 11.41, except custodial interference under AS 11.41.320 and 11.41.330;
- (7) "department" means the Department of Corrections;

Ag 11.41 includes:

1. Homicide
2. Assault & Reckless Endangerment
3. Kidnapping
4. Sexual Offenses
5. Robbery, Extortion, and Coercion

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 2, 1989

SUBJECT: CSHB 36 ()

TO: Representative Max F. Gruenberg, Jr.
Co-Chair, House Judiciary Committee

FROM: Jack Chenoweth
Legislative Counsel

This draft

- (1) revises bill section 1 to incorporate a service of process approach based on the Department of Corrections' draft regulations;
- (2) incorporates, in its bill sections 6 and 26, the Michigan approach to determine priorities among victims and their representatives, relations, and survivors;
- (3) eliminates references to "survivor" (except in the bill title) where it appeared in the previous version;
- (4) makes miscellaneous changes identified by the working group.

Please review bill section 6 (the companion section 26 is similarly structured). I identified a priority system that gave first priority to the actual victim [AS 12.55.185(11)(A)], followed by reference to his/her appointed personal representative [sec. 185(11)(B)], to a person designated if the victim is a minor, incapacitated, or incompetent [sec. 185(11)(C)], and to a series of relations if the victim is deceased [sec. 185(11)(D)]. As the working group agreed, rather than refer to the victim's "spouse," the reference is to the "individual living in a spousal relationship," a term offered without definition. This system is not precisely the order of the Michigan statute, but it seemed to better fit the tenor of the conversation around the table. The committee may want to make adjustments.

Representative Max F. Gruenberg, Jr.
Page 2
February 2, 1989

The conclusion reached in my January 25 memo remains valid: Because Rule 4(d)(11) of the Rules of Civil Procedure contemplates service of summons on an officer or agency of the state for a non-governmental defendant directly into state statute, I included the service of summons requirement directly into state law rather than as addition to a court rule. Since a court rule is not changed or affected, a reference to a court rule change is not necessary with respect to bill section 1.

I am sending a copy of the bill draft and this memorandum to Representative Donley, together with the amendments he requested during yesterday's work session on the bill draft.

JC:gc
W6/076

Enclosure

cc: Representative Donley (with amendments)

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

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January 30, 1989

RECEIVED

(56)

The Honorable Max Gruenburg
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

During the hearing on HB36, relating to the rights of crime victims, Janice Lienhart of Anchorage raised a question about the return of evidence in criminal cases. You asked the Department of Law for an explanation of current procedures relating to the return of evidence.

Each case referred to the Department of Law by a police agency must be accompanied by a "Criminal Case Intake and Disposition" form. When a case is concluded, the completed form is returned to the agency from which it was originally received. As part of the process of closing a file, the assigned prosecutor indicates on the form whether evidence may be returned. Authority to return evidence is routinely given in all cases that do not go to trial. Where there has been a trial, permission to return evidence that is necessary for a possible retrial is not routinely given, although property that does not have evidentiary value will be returned.

Thus, if a person contacts a district attorney's office and asks for the return of evidence, in most cases the person will be referred to the appropriate police agency. In the past, paralegals provided assistance to people seeking the return of evidence. However, as a result of reductions in criminal division funding, the division has lost several paralegal positions and is no longer able to provide the level of service to victims and witnesses that they deserve.

As mentioned during the hearing, AS 12.80.050 allows photographs of property to be introduced in evidence "to the same extent as if the property had been introduced as evidence." Although this statute provides some authority for the return of property seized as evidence prior to trial, the Department of Law believes that the statute can only be used in unusual cases. The problems presented by the statute are:

(1) Where value is an issue, failure to preserve the actual property has been held to violate a defendant's right to due process of law. Hatfield v. State, 663 P.2d 987 (Alaska App. 1983).

(2) To the extent that AS 12.80.050 conflicts with Rule 901 of the Alaska Rules of Evidence, the rule controls, as the legislation in which the statute was contained did not receive the required 2/3 vote in the legislature.

(3) To obtain criminal convictions, it is important to provide the trier of fact with the best available evidence. In the vast majority of cases, physical evidence is more persuasive to a jury than photographic evidence. Use of photographic evidence, rather than the actual object, may leave jurors with the impression that the state does not take the case seriously enough to keep the actual evidence.

(4) Physical evidence stored by police agencies is maintained by a staff of evidence custodians whose job it is to make sure evidence is not lost. Photographic evidence has a greater risk of being misplaced, at the potential cost of the case, due to the fact that such evidence is maintained in district attorney's offices, which do not have adequate staffing to institute acceptable evidence preservation and chain of custody procedures. See e.g. Dely v. State, Memorandum Opinion and Judgment No. 1116 (Alaska App. March 19, 1986).

I have asked the Anchorage district attorney's office to review the case Ms. Lienhart is concerned about and determine if any evidence is being held that can be returned. If you have any further questions about evidence collection procedures, or about the evidence in Ms. Lienhart's case, please do not hesitate to let me know.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 

Laurie H. Otto
Assistant Attorney General

LHO:me-83

cc: ✓ Representative Peter Goll
Bob Evans
Dwayne McConnell

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNIAU ALASKA 99811
907 465 3800

MEMORANDUM

January 19, 1989

SUBJECT: Exemptions distinction in AS 09.38.065(a)

TO: Representative Peter Goll, Co-Chair
House Judiciary Committee
ATTN: Hayden Kaden

FROM: Jack Chenoweth
Legislative Counsel

In conjunction with committee consideration of HB 36 and the draft CS for HB 36, you have asked about the significance of the distinction made in AS 09.38.065(a)(1) and (2). The section is entitled Claims Enforceable against Exempt Property. Subsection (a)(1) authorizes a creditor to "make a levy against exempt property of any kind" to enforce certain specified claims, while subsection (a)(2) authorizes a creditor to "make a levy against exempt property" to enforce other designated claims, omitting the "of any kind" clause as a modifier of "exempt property." */ The Alaska provision is a near-verbatim (in subsection (a)(1)(A), Alaska law substitutes "child support" for "alimony, support, or maintenance") adoption of the comparable provision, section 10 of the Uniform Exemptions Act, recommended by the National Conference of Commissioners on Uniform State Laws.

The distinction is, in my judgment, real, not erroneous, and essential in that it tracks the distinction as to the scope of the claims that may be presented against exempt property that is listed in (a)(1) versus property listed in (a)(2).

*/ Exempt property under Alaska law includes, generally, the homestead exemption (AS 09.38.010); other specified property that is exempt without limitation (AS 09.38.015); certain unmaturing life insurance and annuity contracts (AS 09.38.025); certain personal property subject to a value limitation (AS 09.38.020); and certain earnings and liquid assets (AS 09.38.030).

Representative Peter Goll

Page 2

January 19, 1989

Subsection (a)(1) is more broadly applicable in this sense: the levy against the exempt property may be made for a range of permissible claims. Claims against exempt property authorized by subsection (a)(2) are necessarily "property-related" or "property-limited": the levy against a piece or parcel of exempt property that is authorized may be made only to enforce claims against, in each paragraph, "the property" that is the subject of the respective claim. So, for example, under AS 09.38.065(a)(2)(A), there may be levied a claim against property for the purchase price of that exempt property or for a loan made to enable a purchaser to purchase and use that exempt property. By implication, a purchase price- or loan-related claim against exempt property may not be filed against a different piece or parcel of property--may not, in the words of (a)(1), be made "against property of any kind." The same analysis applies to claims for labor and material furnished ((a)(2)(B)) and claims based on special assessments ((a)(2)(C)).

I trust this clarifies the essential distinction.

As you've noted, the newly-added material in AS 09.38.065(a) --new paragraph (a)(3)--treats the property identified in it in the manner comparable to (a)(1), as "exempt property of any kind."

JBC:kb
wkk1/051

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JULIAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 18, 1989

SUBJECT: Sectional analysis of draft CSHB 36 ()
(relating to victim's rights, 1/18/89
version)

TO: Representative Dave Donley

FROM: Jack Chenoweth
Legislative Counsel

The following is an analysis of draft CSHB 36 (),
legislation adding to the rights of crime victims and their
survivors.

A significant feature of this draft is the change in the
handling of the definition of the term "victim," limiting
use of that term to mean the person against whom the offense
has been perpetrated, and the introduction and use of the
term "victim's survivor" (or a variant of that term) to
extend the rights and benefits provided to a victim, in the
event of the victim's death, to a set of specified relations
or the victim's legal guardian. The definitions of the
terms "victim" and "victim's survivor" appear in
AS 12.55.185(11) and (12), at pages 9 and 10 of the draft.
Many of the changes appearing in this draft are made to
accommodate that change.

The extension of the enumerated rights to victim's survivors
in the event of the crime victim's death potentially opens
exercise of the claim of rights to a sizable number of
persons, a potentially difficult problem. In those
instances, a collateral change made throughout the bill,
applicable to programs identified in the bill, authorizes a
designated executive official or other entity to appoint one
of the class of victim's survivors to represent all for
purposes of receiving notice and claiming rights,
entitlements, and services under the legislation. The
measure also imposes specific requirements on a victim or
victim's survivor who wants to receive notice of possible
action so that the victim or victim's survivor may exercise

January 18, 1989

the right, and provides safeguards against release of the address of the victim or survivor to the offender or someone representing or associating with the offender.

The amendments made by this bill substantively amend and extend the rights of a victim (and, in most cases, authorize a comparable exercise of those rights by or for a victim's survivor)

- as a creditor of the offender for claims arising out of the offender's criminal conduct (bill sections 2 - 4);

- as respects an offender who is mentally ill or insane (bill section 5);

- relating to an offender's sentencing and postconviction proceedings (bill sections 6 - 13);

- given under the existing AS 12.61 (bill sections 14 - 19);

- in proceedings of the state Parole Board (bill sections 20 - 30) involving award of parole and applications for executive clemency;

- in other activities involving the offender's assignment of custody to the Department of Corrections, including situations such as escape, placement in a community furlough program, and early release (bill sections 31 - 35); and

- as to access to proceedings if the offender was a minor (bill section 37).

One other provision, bill section 36, assigns the Department of Law a new responsibility, to develop and implement a program to assist victims and survivors to an understanding and full exercise of the rights, entitlements, and services provided to crime victims and their survivors by law.

Four concluding sections, bill sections 39 - 42, make necessary and related court rule changes and indicate how these provisions shall be applied.

*

Bill section 1 provides a short title for the act.

Taken together, bill sections 2 - 4 address the rights of a creditor arising out of criminal conduct that constitutes a felony against the property of the person convicted.

Bill section 2 makes the substantive change. It amends

January 18, 1989

AS 09.38.065(a) to permit a creditor to levy against property that would otherwise be exempt from execution in order to enforce a claim arising from criminal conduct that resulted in a felony conviction. The amendment also details specific property of the defendant that is exempt from the execution.

Bill sections 3 and 4 make technical changes in two related provisions, AS 09.38.075(a) and 09.38.080(a). Since the proposed amended material in AS 09.38.065(a) specifies certain property that is exempt from execution based on value, these changes are necessary so that a party that claims against that property has a means by which to assert that claim.

*

Bill section 5 adds a new section, AS 12.47.095, that places additional duties on the commissioner of health and social services for offenders who are determined to be guilty but mentally ill or, alternatively, who are found to be not guilty by reason of insanity. The section enumerates instances in which the commissioner must communicate to the victim, or to the victim's survivor, a change in the status of the offender. The section places a burden on the victim to request a notice of the offender's change of status and to act only if the victim has maintained a current, valid mailing address on file with the commissioner. In the event of the victim's death, the section authorizes the commissioner to designate one of the survivors to receive notice and to exercise the rights granted on behalf of all. The section provides definitions of "victim" and "victim's survivor" cross-referenced to AS 12.55.185.

*

AS 12.55, part of the Code of Criminal Procedure, generally addresses the subject of sentencing and postconviction proceedings. Bill sections 6 - 13 amend pertinent provisions of these criminal sentencing provisions.

Bill section 6 affirms the right of a victim to make a statement to a probation officer who is preparing a presentence report concerning a felony offender. The provision amends and expands existing law to direct inclusion in that statement of the impact of the offense on

the victim's survivors and the need of those survivors for restitution.

Bill section 7 enumerates the rights of a victim or victim's survivor in the sentencing process. If the victim or survivor requests, the prosecuting attorney is to provide specified information from the presentence report to the person making the request. It authorizes the victim or survivor to submit to the court a written statement that the writer believes would be "relevant to the sentencing decision."

Bill sections 8 - 10 extend to a victim's survivor rights and benefits that are currently given to victims. The section amendments cover, respectively, the court's preparation of its sentencing report analysis, the court ordering of defendant's payment of restitution for the crime committed, and the enforcement of restitution orders.

Bill section 11 adds to the rights of a victim of a violent crime (i.e. a "crime against a person," that is, a person convicted under AS 11.41) to comment in certain postconviction proceedings. The postconviction proceedings addressed in this provision involve motions to modify or reduce sentence. If an offender files a motion to modify sentence and time permits, or if an offender files a motion to reduce sentence, the Department of Corrections is directed to provide notice to the victim or the victim's survivors so that the victim or survivor may submit written comments (AS 12.55.088(d)). If the crime victim or victim's survivors request, the person making the request may receive from the department a copy of the motion that changes the sentence, and is entitled to submit written comment regarding the motion (AS 12.55.088(e)). The comments are to be provided to the offender or the offerder's attorney (AS 12.55.088(f)) and are to be considered by the court in conjunction with disposition of the motion (AS 12.55.-088(g)). The responsibility to maintain a current address with the commissioner of corrections in order to receive notice under this section rests with the victim or survivor, and that address may not be disclosed (AS 12.55.088(h)).

Bill section 12 adds a section containing a requirement that, among a number of victim's survivors who may be eligible to receive notice that is required to be provided under AS 12.55, the commissioner is to designate one to represent all.

Bill section 13 incorporates a definition of the term "crime against a person," a term that is used in the preceding bill section, revises the definition of the term "victim," and adds the term "victim's survivor," which it defines. (The definitions of the terms "victim" and "victim's survivor" are particularly critical as they are used not only in the sentencing provisions (AS 12.55), but are cross-referenced in other victim's rights-related provisions of state law.)

*

AS 12.61 collects and reports the rights of crime victims and their survivors. Bill sections 14 - 19 clarify and extend those rights.

Bill section 14 expands existing rights enumerated in AS 12.61.010(a) to a victim's survivors, and adds to the list of enumerated rights the right to make a statement in conjunction with preparation of a presentencing report for a felony offender and, in conjunction with an offender's sentencing, the right to obtain from the prosecutor, after conviction, a copy of the offender's criminal record. A related change made in subsection (b) of AS 12.61.010 by the bill section deletes "victim's employers" from the scope of the chapters coverage and extends the obligation of fair dealing to the victim's survivors.

Bill section 15 adds to the list of duties of the prosecuting attorney with respect to the victim of a crime that is a felony and the victim's survivors when the person so requests. The provisions added include the duty to

- (1) confer with the victim or survivor about testimony before jury selection and trial;
- (2) notify the victim or survivor of
 - the defendant's conviction and the crimes for which convicted;
 - the rights to make a statement for use in conjunction with preparation of the presentence report, and to appear personally at a sentencing hearing and to make a statement at the time of sentencing;
 - the address and telephone number of the office that will prepare the presentencing report; and
 - the time and place of the sentencing hearing;
- (3) notify the victim or survivor in writing of the final disposition of the case within 30 days.

Subsection (b) of AS 12.61.015 directs the prosecutor's office to advise the victim or victim's survivor that the content of the material that may be presented in conjunction with the presentence statement or sentencing statement is limited, and describes the nature of what the victim or victim's survivor may address in those statements.

AS 12.61.015(c) precludes imposition of liability in damages for a prosecuting attorney's failure to comply with the requirements of the section. AS 12.61.015(d) extends the same protection to any person who fails "to make a reasonable effort to comply with [the provisions of] this section."

AS 12.61.017, another provision of bill section 13 makes it a violation for an employer of a crime victim to "discipline" or to threaten to discipline the victim who is subpoenaed or who is requested by the prosecution to attend a court proceeding for the purpose of providing testimony. The provision defines the term "discipline." The penalty for a violation may not exceed a fine of \$300. However, another provision allows the victim to recover for interference by the employer actual damages and punitive damages (treble damages).

Existing AS 12.61.020 addresses the disposition of money earned by an offender from the commission of the crime. The amendments made in bill sections 16 and 17 extend to victim's survivors the rights now given to victims under AS 12.61.020.

Bill section 18 adds a section containing a requirement that, among a number of victim's survivors who may be eligible to receive notice and exercise rights granted under AS 12.61, the prosecuting attorney is to designate one to represent all.

Bill section 19 adds to AS 12.61 cross-referenced definitions of the terms "victim" and "victim's survivor" that are to be applicable to the chapter, and the provision for a short title for the chapter.

Representative Dave Donley

Page 7

January 18, 1989

Bill sections 20 - 30 are applicable to a victim's rights as they relate to the proceedings and certain operational responsibilities of the state's Parole Board.

Bill section 20 extends responsibilities of the board by directing it to take into account the statements and other information that have been provided by victim's survivors in considering discretionary parole applications.

The requirements that the victim or victim's survivor who wants to receive notice of board deliberation with respect to the status of the offender are set out in bill section 21 and 22; the latter imposes the requirements of maintenance of a current address and non-disclosure of that address to the prisoner or the prisoner's attorney.

Bill section 23 amends AS 33.16.120(c) to give victims the rights of attendance at meetings of the Parole Board and of comment, in writing or personally at the meeting, relative to proposed action that the Parole Board is considering concerning the offender, and to give the victim's survivor comparable rights that may be exercised only in writing, not in person. The amendment to the subsection adds a provision denying the exercise of the right by the parent or other representative of a victim who is a minor, an incompetent, or who is incapacitated.

Bill section 24 amends existing law to provide that the Parole Board must "make every reasonable effort" to notify the victim not only of its decision to grant discretionary parole, but also if it decides to deny discretionary parole. The section also specifies the information about the prospective parolee that is to be disclosed to the victim or victim's survivor.

Bill section 25 imposes comparable requirements with respect to release under mandatory parole.

Bill section 26 makes a technical amendment with reference to restitution. Since, elsewhere, the court is obliged to consider imposing a restitution obligation to the victim's survivors (in substitution for the victim), a reference to "restitution . . . to a victim of a crime" is deleted as too narrow a statement of the scope of the restitution obligation that may be imposed.

Bill section 27 adds a section containing a requirement that, among a number of victim's survivors who may be eligible to receive notice and exercise rights granted under AS 33.16, the commissioner of corrections is to designate one to represent all.

Bill section 28 adds the definition of the term "victim's survivor," with a cross-reference of the term to AS 12.55.185.

Bill sections 29 and 30 assign certain additional responsibilities to the Parole Board when the governor refers to that board applications for executive clemency. The board is to give the victim of a "crime against a person" notice of an application for clemency and opportunity to submit written comment to the board as it considers the executive clemency request. The requirement is to be met only if the victim maintains a current mailing address and so requests, coupled with non-disclosure of address language. Additional essential definitions are included.

*

The responsibility of the Department of Corrections to a victim or victim's survivor is addressed in bill sections 31 - 35.

Bill section 31 adds a new section, AS 33.30.013, that requires the commissioner of corrections to notify the victim or the victim's survivor if the offender escapes, is released on furlough, or is released on an early release program. The requirement is to be met only if the victim or survivor entitled to notice maintains a current valid mailing address on file with the commissioner. The section details how the commissioner is to give that notice and adds nondisclosure of address language. Finally, the section adds a provision that excuses the state from liability in damages for the commissioner's failure to comply with the requirements of AS 33.30.013.

Bill section 32 revises existing law governing notice to victims of the possible release of a prisoner convicted of a crime against a person on a prerelease furlough. Again, the requirement of notice is to be met as to a victim or victim's survivor who satisfies the requirements of AS 33.30.013. The victim or victim's survivor may comment on the prospective furlough; the commissioner is to consider

the comments received before making a final decision. If furlough is granted, the commissioner is to "make every reasonable effort to notify . . . of an intent to release." The subsection indicates the information that is then to be shared with the victim or victim's survivor.

Bill section 33 amends the correctional restitution center by recognizing that a court may order restitution payable to a victim or victim's survivor.

Bill section 34 adds a provision directing that, among a number of victim's survivors, the commissioner of corrections is to choose one to represent all.

Bill section 35 adds a definition of "victim's survivor," applicable in AS 33.30.

*

Bill section 36 adds a new program component in the Department of Law. Under the material added by that section, the department shall establish and maintain a victim assistance program to establish and operate a victim assistance program for the benefit of victims and others.

*

The last substantive change, made in bill section 37, authorizes the victim of an offense by a minor to request permission from the court to attend any hearing scheduled for the minor under AS 47.10.070. The section also directs the Department of Health and Social Services to assist a victim in preparing a written statement for submission and consideration at that proceeding, and directs that department to "make reasonable efforts to inform victims of the availability of this assistance."

*

The repeal made in bill section 38 deletes an unnecessarily limiting reference to "victim" in AS 12.61.020. A substitute definition applicable to the entire chapter is offered by bill section 19.

*

Bill sections 39 - 41 directly amend pertinent court rules of criminal procedure.

The change made by bill section 39 when a presentence investigation shall be completed and the report made available to the parties and their counsel; the change abets exercise of the crime victim's right to comment in conjunction with preparation of the presentence report.

Bill section 40 adds a new provision that directs the trial court to consider the written statement submitted by a victim or survivor under AS 12.55.023 as the court prepares the sentencing report and considers claims for restitution.

The court rule additions made by bill section 41 parallel the changes set out in bill section 11 covering postconviction relief for a victim of a crime against a person.

*

Bill section 42, an uncodified provision, directs that the amendments and additions made by this bill are to apply "to proceedings against defendants initiated on or after the effective date of the Act." The bill does not itself specify an effective date, so it becomes effective 90 days after signature, becoming law without signature, or by override of any imposed veto.

JC:gc
WKG5/110

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
SOUTH ALASKA 99501
907 465 2800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 17, 1989

SUBJECT: Sectional analysis of draft CSHB 36 ()
(relating to victim's rights)

TO: Representative Dave Donley

FROM: Jack Chenoweth
Legislative Counsel

The following is an analysis of draft CSHB 36 (), legislation adding to the rights of crime victims and their survivors. This version is based on the Department of Law draft.

A significant feature of this draft is the change in the handling of the definition of the term "victim," limiting use of that term to mean the person against whom the offense has been perpetrated, and the introduction and use of the term "victim's survivor" (or a variant of that term) to extend the rights and benefits provided to a victim, in the event of the victim's death, to a set of specified relations or the victim's legal guardian. The definitions of the terms "victim" and "victim's survivor" appear in AS 12.55.185(11) and (12), at page 9 of the draft. Many of the changes appearing in this draft are made to accommodate that change.

The extension of the enumerated rights to victim's survivors in the event of the crime victim's death potentially opens exercise of the claim of rights to a sizable number of persons, a potentially difficult problem. In those instances, a collateral change made throughout the bill, applicable to programs identified in the bill, authorizes a designated executive official or other entity to appoint one of the class of victim's survivors to represent all for purposes of receiving notice and claiming rights, entitlements, and services under the legislation. The measure also imposes specific requirements on a victim or victim's survivor who wants to receive notice of possible action so that the victim or victim's survivor may exercise

January 17, 1989

the right, and provides safeguards against release of the address of the victim or survivor to the offender or someone representing or associating with the offender.

The amendments made by this bill substantively amend and extend the rights of a victim (and, in most cases, authorize a comparable exercise of those rights by or for a victim's survivor)

- as a creditor of the offender for claim arising out of the offender's criminal conduct (bill sections 1 - 3);

- as respects an offender who is mentally ill or insane (bill section 4);

- relating to an offender's sentencing and postconviction proceedings (bill sections 5 - 11);

- given under the existing "Crime Victim's Rights Act," (AS 12.61) (bill sections 12 - 16), with one part of section 16 also adding a short title for that chapter;

- in proceedings of the state Parole Board (bill sections 17 - 25) involving award of parole and applications for executive clemency;

- in other activities involving the offender's assignment of custody to the Department of Corrections, including situations such as escape, placement in a community furlough program, and early release (bill sections 26 - 30); and

- as to access to proceedings if the offender was a minor (bill section 32).

One other provision, bill section 31, assigns the Department of Law a new responsibility, to develop and implement a program to assist victims and survivors to an understanding and full exercise of the rights, entitlements, and services provided to crime victims and their survivors by law.

The four concluding sections, bill sections 34 - 37, make necessary and related court rule changes and indicate how these provisions shall be applied.

*

Taken together, bill sections 1 - 3 address the rights of a creditor arising out of criminal conduct that constitutes a felony against the property of the person convicted.

Bill section 1 makes the substantive change. It amends AS 09.38.065(a) to permit a creditor to levy against property that would otherwise be exempt from execution in order to enforce a claim arising from criminal conduct that resulted in a felony conviction. The amendment also details specific property of the defendant that is exempt from the execution.

Bill sections 2 and 3 make technical changes in two related provisions, AS 09.38.075(a) and 09.38.080(a). Since the proposed amended material in AS 09.38.065(a) specifies certain property that is exempt from execution based on value, these changes are necessary so that a party that claims against that property has a means by which to assert that claim.

*

Bill section 4 adds a new section, AS 12.47.095, that places additional duties on the commissioner of health and social services for offenders who are determined to be guilty but mentally ill or, alternatively, who are found to be not guilty by reason of insanity. The section enumerates instances in which the commissioner must communicate to the victim, or to the victim's survivor, a change in the status of the offender. The section places a burden on the victim to request a notice of the offender's change of status and to act only if the victim has maintained a current, valid mailing address on file with the commissioner. In the event of the victim's death, the section authorizes the commissioner to designate one of the survivors to receive notice and to exercise the rights granted on behalf of all. The section provides definitions of "victim" and "victim's survivor" cross-referenced to AS 12.55.185.

*

AS 12.55, part of the Code of Criminal Procedure, generally addresses the subject of sentencing and postconviction proceedings. Bill sections 5 - 11 amend pertinent provisions of these criminal sentencing provisions.

Bill section 5 affirms the right of a victim to make a statement to a probation officer who is preparing a presentence report concerning a felony offender. The provision amends and expands existing law to direct inclusion in that statement of the impact of the offense on

the victim's survivors and the need of those survivors for restitution.

Bill section 6 enumerates the rights of a victim or victim's survivor in the sentencing process. If the victim or survivor requests, the prosecuting attorney is to provide specified information from the presentence report to the person making the request. It authorizes the victim or survivor to submit to the court a written statement that the writer believes would be "relevant to the sentencing decision."

Bill sections 7 - 9 extend to a victim's survivor rights and benefits that are currently given to victims. The section amendments cover, respectively, the court's preparation of its sentencing report analysis, the court ordering of defendant's payment of restitution for the crime committed, and the enforcement of restitution orders.

Bill section 10 adds to the rights of a victim of a violent crime (i.e. a "crime against a person," that is, a person convicted under AS 11.41) to comment in certain postconviction proceedings. The postconviction proceedings addressed in this provision involve motions to modify or reduce sentence. If an offender files a motion to modify sentence and time permits, or if an offender files a motion to reduce sentence, the Department of Corrections is directed to provide notice to the victim or the victim's survivors so that the victim or survivor may submit written comments (AS 12.55.088(d)). If the crime victim or victim's survivors request, the person making the request may receive from the department a copy of the motion that changes the sentence, and is entitled to submit written comment regarding the motion (AS 12.55.088(e)). The comments are to be provided to the offender or the offender's attorney (AS 12.55.088(f)) and are to be considered by the court in conjunction with disposition of the motion (AS 12.55.-088(g)). The responsibility to maintain a current address with the commissioner of corrections in order to receive notice under this section rests with the victim or survivor, and that address may not be disclosed (AS 12.55.088(h)). Among a number of victim's survivors, the commissioner is to designate one to represent all (AS 12.55.088(i)).

Bill section 11 incorporates a definition of the term "crime against a person," a term that is used in the preceding bill section, and adds the term "victim's survivor," which it

defines. (The definitions of the terms "victim" and "victim's survivor" are particularly critical as they are used not only in the sentencing provisions (AS 12.55), but are cross-referenced in other victim's rights-related provisions of state law.)

*

AS 12.61 collects and reports the rights of crime victims and their survivors. Bill sections 12 - 16 clarify and extend those rights, while one related addition, made by bill section 17, would add a short title to AS 12.61, specifically identifying the chapter as the "Alaska Crime Victim's and Survivor's Rights Act."

Bill section 12 expands existing rights enumerated in AS 12.61.010(a) to a victim's survivors, and adds to the list of enumerated rights the right to make a statement in conjunction with preparation of a presentencing report for a felony offender and, in conjunction with an offender's sentencing, the right to obtain from the prosecutor, after conviction, a copy of the offender's criminal record. A related change made in subsection (b) of AS 12.61.010 by the bill section deletes "victim's employers" from the scope of the chapters coverage and extends the obligation of fair dealing to the victim's survivors.

Bill section 13 adds to the list of duties of the prosecuting attorney with respect to the victim of a crime that is a felony and the victim's survivors when the person so requests. The provisions added include the duty to

- (1) confer with the victim or survivor about testimony before jury selection and trial;
- (2) notify the victim or survivor of
 - the defendant's conviction and the crimes for which convicted;
 - the rights to make a statement for use in conjunction with preparation of the presentence report, and to appear personally at a sentencing hearing and to make a statement at the time of sentencing;
 - the address and telephone number of the office that will prepare the presentencing report; and
 - the time and place of the sentencing hearing;
- (3) notify the victim or survivor in writing of the final disposition of the case within 30 days.

Subsection (b) of AS 12.61.015 directs the prosecutor's office to advise the victim or victim's survivor that the content of the material that may be presented in conjunction with the presentence statement or sentencing statement is limited, and describes the nature of what the victim or victim's survivor may address in those statements.

AS 12.61.015(c) precludes imposition of liability in damages for a prosecuting attorney's failure to comply with the requirements of the section. AS 12.61.015(d) extends the same protection to any person who fails "to make a reasonable effort to comply with [the provisions of] this section."

AS 12.61.017, another provision of bill section 13 makes it a violation for an employer of a crime victim to "discipline" or to threaten to discipline the victim who is subpoenaed or who is requested by the prosecution to attend a court proceeding for the purpose of providing testimony. The provision defines the term "discipline." The penalty for a violation may not exceed a fine of \$300. However, another provision allows the victim to recover for interference by the employer actual damages and punitive damages (treble damages).

Existing AS 12.61.020 addresses the disposition of money earned by an offender from the commission of the crime. The amendments made in bill sections 14 and 15 extend to victim's survivors the rights now given to victims under AS 12.61.020.

Bill section 16 adds to AS 12.61 cross-referenced definitions of the terms "victim" and "victim's survivor" that are to be applicable to the chapter, and the provision for a short title for the chapter.

*

Bill sections 17 - 25 are applicable to a victim's rights as they relate to the proceedings of the state's Parole Board.

Bill section 17 extends responsibilities of the board by directing it to take into account the statements and other information that have been provided by victim's survivors in considering discretionary parole applications.

January 17, 1989

The requirements that the victim or victim's survivor who wants to receive notice of board deliberation with respect to the status of the offender are set out in bill section 18 and 19; the latter imposes the requirements of maintenance of a current address and non-disclosure of that address to the prisoner or the prisoner's attorney.

Bill section 20 amends AS 33.16.120(c) to give victims and survivors the rights of attendance at meetings of the Parole Board and of comment, in writing or personally at the meeting, relative to proposed action that the Parole Board is considering concerning the offender.

Bill section 21 amends existing law to provide that the Parole Board must "make every reasonable effort" to notify the victim not only of its decision to grant discretionary parole, but also if it decides to deny discretionary parole. The section also specifies the information about the prospective parolee that is to be disclosed to the victim or victim's survivor.

Bill section 22 imposes comparable requirements with respect to release under mandatory parole.

Bill section 23 makes a technical amendment with reference to restitution. Since, elsewhere, the court is obliged to consider imposing a restitution obligation to the victim's survivors (in substitution for the victim), a reference to "restitution . . . to a victim of a crime" is deleted as too narrow a statement of the scope of the restitution obligation that may be imposed.

Bill section 24 adds the definition of the term "victim's survivor."

Bill sections 25 and 26 assign certain additional responsibilities to the Parole Board when the governor refers to that board applications for executive clemency. The board is to give the victim of a "crime against a person" notice of an application for clemency and opportunity to submit written comment to the board as it considers the executive clemency request. The requirement is to be met only if the victim maintains a current mailing address and so requests, coupled with non-disclosure of address language. Additional essential definitions are included.

The responsibility of the Department of Corrections to a victim or victim's survivor is addressed in bill sections 27 - 30.

Bill section 27 adds a new section, AS 33.30.013, that requires the commissioner of corrections to notify the victim or the victim's survivor if the offender escapes, is released on furlough, or is released on an early release program. The requirement is to be met only if the victim or survivor entitled to notice maintains a current valid mailing address on file with the commissioner. The section also details how the commissioner is to give that notice and adds nondisclosure of address language.

Bill section 28 revises existing law governing notice to victims of the possible release of a prisoner convicted of a crime against a person on a prerelease furlough. Again, the requirement of notice is to be met as to a victim or victim's survivor who satisfies the requirements of AS 33.30.013. The victim or victim's survivor may comment on the prospective furlough; the commissioner is to consider the comments received before making a final decision. If furlough is granted, the commissioner is to "make every reasonable effort to notify . . . of an intent to release." The subsection indicates the information that is then to be shared with the victim or victim's survivor. Among a number of victim's survivors, the commissioner has a duty to choose one to represent all and to deal with the individual chosen.

Bill section 29 amends the correctional restitution center by recognizing that a court may order restitution payable to a victim or victim's survivor.

Bill section 30 adds a definition of "victim's survivor," applicable in AS 33.30.

Bill section 31 adds a new program component in the Department of Law. Under the material added by that section, the department shall establish and maintain a victim assistance program--a paid supervisor and any volunteers--to manage the victim assistance program and to recruit, train, and evaluate the efforts of the volunteers under this program.

The last substantive change, made in bill section 32, authorizes the victim of an offense by a minor to request permission from the court to attend any hearing scheduled for the minor under AS 47.10.070. The section also directs the

Department of Health and Social Services to assist a victim in preparing a written statement for submission and consideration at that proceeding, and directs that department to "make reasonable efforts to inform victims of the availability of this assistance."

*

The repeal made in bill section 33 deletes an unnecessarily limiting reference to "victim" in AS 12.61.020. A substitute definition applicable to the entire chapter is offered by bill section 16.

*

Bill sections 34 - 36 directly amend pertinent court rules of criminal procedure.

The change made by bill section 34 when a presentence investigation shall be completed and the report made available to the parties and their counsel; the change abets exercise of the crime victim's right to comment in conjunction with preparation of the presentence report.

Bill section 35 adds a new provision that directs the trial court to consider the written statement submitted by a victim or survivor under AS 12.55.023 as the court prepares the sentencing report and considers claims for restitution.

The court rule additions made by bill section 36 parallel the changes set out in bill section--covering postconviction relief for a victim of a crime against a person.

*

Bill section 37, an uncodified provision, directs that the amendments and additions made by this bill are to apply "to proceedings against defendants initiated on or after the effective date of the Act." The bill does not itself specify an effective date, so it becomes effective 90 days after signature, becoming law without signature, or by override of any imposed veto.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO

X CRIMINAL DIVISION CENTRAL OFFICE
P O BOX KC
JUNEAU, ALASKA 99811-0310
PHONE (907) 465-3428

January 17, 1989

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE SUITE 305
ANCHORAGE, ALASKA 99501-5993
PHONE (907) 279-7424

The Honorable Dave Donley
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

Thank you for the opportunity to review the January 17, 1989 work draft of CSHB36. I have comments, as noted below. There are a number of problems with the latest work draft.

1. Bill title: The change is fine.
2. Handling of short title: The only reason I put this in Section 1 is that it was in Section 1 of the final work draft of the bill drafted by the Legislative Affairs Agency last session. The change is fine.
3. Duplicate provisions in draft: This typing error was noted in my letter to you dated January 15, 1989. The change is fine.
4. Of the choice of "survivor," "victim's survivor," and the like: The change is may be fine, but see the comment under 7 below.
- 5. Deletion of reference to "other interested person": I don't have any problem leaving this out, but it means that the rights of persons living in spousal relationships, yet who are unmarried are unprotected.
6. Handling of the "address of record" provision: The change is fine.
- *7. Handling of "commissioner designation of a single survivor" with the definition section: I don't have any philosophical problems with this approach, but it requires carefully going through the bill and setting forth, in every statute in which the term survivor is used, who designates the survivor. See, for example, the instances cited on page 16 and 18 of the problems that can be presented by this approach.
8. Handling of the "upon request of the victim..." language: The change is fine.
9. Impact statements/participation in sentencing: The change is

fine. In response to the question posed relating to whether the items listed appear in every presentence report, the answer is yes, this information is always included. No additional duties are being imposed on anyone, other than requiring the prosecutor to turn the information over to the victim.

10. Further change with reference to parole board: The change made is NOT okay, and does not reflect your agreement with the administration, as noted below on comment for page 15.

11. Other changes of note: (a) Minors/incapacitated persons: this is not a problem if the agreed upon definition of victim is used. It is a problem because the Legislative Affairs drafter deviated from the agreed-upon definition of victim. (b) A "no liability for lack of notice" provision should be added, as noted by the drafter.

PROBLEMS WITH 1/17/89 WOR. AFT

✓ On page 8, the following underlined language needs to be returned to (f) and added to (g):

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

(g) In deciding whether to reduce or modify a sentence, the court shall consider the comments of the victim or the victim's survivor, when relevant, and any response offered by the prosecuting attorney or the person filing motion.

✓ On page 9, the definition of "victim" has been changed to mean natural person against whom an offense has been perpetrated. This is a change to which the Department of Law objects strongly, as has been discussed with you at length. If this change were adopted, non-profit and profit entities would not be able to recover restitution after being victimized. The definition contained in the agreed to draft should be used, i.e. "'victim' means the victim of the offense or the representative of the victim;"

✓ On page 15, both the victim and the victim's survivor are given right to attend parole hearings. This is not the agreement; only victims were to have been given the right to attend parole hearings. The reference to victim's survivor needs to be deleted.

✓ On page 16, since the portion of the definition of survivor has been deleted, a subsection must be added to AS 33.16.120 that is similar to that set out on page 8, subsection (i), however, in this context the commissioner of corrections should designate one survivor.

✓ On page 18, since the portion of the definition of survivor has been deleted, a subsection must be added to Section 26 that is similar to that set out on page 8, subsection (i), however, in this

context the commissioner of corrections should designate one survivor.

On page 19, line 14, "furlough" is misspelled as "fourlough."

On page 22, line 15 and line 20, notification should also be given to the victim's ^{survivor} -- not just the victim.

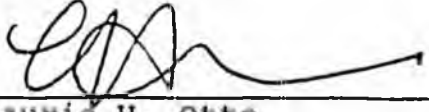
On page 22, the following underlined language should be added to Rule 35(c)(1): The court shall consider the comments of the victim or victim's survivor when relevant, and any response offered by the prosecuting attorney or the person filing the motion, in deciding whether to reduce or modify a sentence.

On page 23, I have no problem with setting out the definition in full, but the court rules attorney, William Cotton requested we not do so. In his letter, Mr. Cotton stated: "My recommendation would be to consider defining these terms by cross-referencing the relevant statute. I see no need to repeat the definition in the rules." I followed his advice, since I felt the court rules attorney was in the best position to make stylistic drafting decisions for court rules.

Please feel free to have the drafter contact me directly to discuss these comments.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Laurie H. Otto
Assistant Attorney General

cc: Bob Evans

Regina C. Soltis

P.O. Box 46

Healy, Alaska 99743

(907)683-2651

January 16, 1989

Rep. Peter Goll, Cochair
Rep. Max F. Gruenberg, Cochair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Rep. Max F. Gruenberg and Rep. Peter Goll;

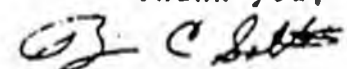
I have just become aware of House Bill 36 which addresses a cause which I am very interested in - Victim's Rights.

It is because of my own first-hand experience as a victim of a crime in the State of Alaska, that I have become aware of the great need for this bill. My own case would not have gone to trial had I not written letters to "keep the fires burning". That shouldn't have been necessary. The more familiar I become with the whole Alaska judicial system, the more I realize that the victims of crimes have become insignificant in the proceedings.

I will be following the progress of this bill closely. I have in the past few weeks, spoken to representatives from the Alaska chapter of NOW, the Women's Commission and WICCA about this very subject.

I feel that this bill is an important first step in giving the victims the representation and the dignity they deserve. I urge your committee to speed this bill along its way.

Thank you;



Regina C. Soltis



Alaska State Legislature

RECEIVED FEB - 9 1989

REPRESENTATIVE DICK SHULTZ

Member
Finance Committee

PO Box V
Juneau, Alaska 99801
(907) 465-4040
Home: PO Box 487
Tok, Alaska 99780

MEMORANDUM

TO: Representative Peter Goll
 Representative Max Gruenberg
 Co-Chairs, House Judiciary Committee

FROM: Representative Dick Shultz *DSS*

DATE: February 6, 1989

RE: HB 36

Attached is a letter dated February 3, 1989 from Ms. Regina Soltis of Healy, Alaska concerning House Bill 36 (Victim's Rights).

I thought it appropriate to share her concerns with you as you deliberate this piece of legislation in committee.

a:hb36

File in Alaska Members packets

Rep. Mike Miller
Rep. Richard Shultz
Sen. Jack Coghill
P.O. Box V
Juneau, Alaska 99811

Regina C. Soltis
P.O. Box 46
Healy, Ak. 99743
(907)683-2651
February 3, 1989

Gentlemen:

At January 17's teleconference, I spoke to you regarding HB36 Alaska Crime Victim's Rights Act. After expressing my support for this bill, and my concerns in areas where I feel the bill is lacking, you asked me to send a letter listing these concerns.

THE VICTIM'S RIGHTS NEED TO BE PROTECTED THROUGHOUT THE ENTIRE JUDICIAL PROCESS:

After my own experience as a victim of a crime in Alaska, I see that the victim is an insignificant part of our judicial system. Just as the rights of the defendant are protected from the time that a charge is filed against him, the rights of the victim need to be protected from the time that charges are filed. This bill primarily addresses the rights of victims beginning with the trial.

THE DISTRICT ATTORNEY'S OFFICE SHOULD BE REQUIRED TO SPEAK WITH THE VICTIM BEFORE ANY SIGNIFICANT DECISION ABOUT THE DISPOSITION OF THE CASE IS MADE:

It appears to be common practice that charges are reduced or dismissed without the District Attorney's Office ever contacting the victim. Background information not appearing on the police report may give the information needed to make a wise decision. In my own case, the Fairbanks District Attorney's Office almost dismissed the charge of Fourth Degree Assault, a misdemeanor, against my assailant who had been abusing me for months. I found out about the impending dismissal indirectly since notice to the victim is not required of the District Attorney's Office. I began to write letters, the case was brought to trial, and the perpetrator was found guilty.

I would like to see this bill changed to require the District Attorney's Office to contact the victim and discuss the case before a crime can be reduced or dismissed.

Also in my own case, I did not speak to the Assistant District Attorney about the particulars of the case until after jury selection. This was too late, due to rules of discovery to give the D.A. any supporting evidence that might have been used in the trial. I had witnesses and letters from the defendant which were, fortunately, used successfully as rebuttal evidence.

HB36 should be changed to require that the District Attorney's Office speak to the victim at least once before the trial about the case, and in time to use any evidence that the victim may have.

VICTIM'S RIGHTS SHOULD BE GRANTED TO ALL VICTIMS OF CRIMES AGAINST A PERSON,
FELONY OR MISDEMEANOR:

Many of these rights are needed to protect a victim from a criminal who might cause the victim further harm.

The most obvious misdemeanor case would be when the defendant is initially charged with a felony, and then pleads to a lesser crime which is a misdemeanor. In other cases, however, felonies are committed, but can't be proven, and so a misdemeanor is charged. This victim needs just as much protection and help, often more, since the perpetrator will be on the streets sooner.

In cases of felonies or misdemeanors which are not crimes against a person, it should be up to the discretion of the judge to grant these rights after he or she is presented with the victim's statement by the District Attorney.

VICTIM'S RIGHTS SHOULD BE GRANTED EQUALLY TO ALL VICTIMS IN THE STATE OF
ALASKA:

Although it seems that this should be a "given", it may help to re-examine this bill to ensure that the rights are equally granted. The victims assistance program to be maintained by the Department of Public Safety and the notices required of the District Attorney's Office as described in this bill will go a long way towards this end.

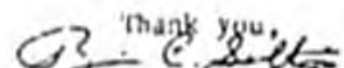
The degree of the victim's familiarity with the judicial system should not be a factor in granting these rights. In my own case, when the trial was postponed for six months, I assumed that this was routine. I had no idea that the defendant had his "prosecution diverted", and I didn't know what that meant when I did become aware of it three months later. Luckily, I had people around me who are familiar with the judicial process. I began writing letters asking why this was decided without ever discussing the case with me. The defendant was brought to trial because of my actions.

The victim should not have to stumble upon the facts of the proceedings, nor should they have to take the initiative in contacting the people who will be determining the disposition of their case.

Many victims live in villages and rarely visit our larger cities or deal directly with government agencies. Such people can be easily intimidated by official procedures and may not be able to take the steps that I did to ensure that their case goes to trial.

Rural victims should receive the same rights as those who live in urban areas. I am familiar with only the Fourth Judicial District where cases do not appear to be prosecuted to the same degree in the rural areas. This bill should ensure that the District Attorney's Office weighs each case on its own merits and not according to travel distance or inconvenience involved.

I would like to thank all of you for your interest in this area and for the opportunity to present my thoughts. I will be attending Tuesday's telephone conference.

Thank you,

Regina C. Soltis

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

March 1, 1989

MEMORANDUM

TO: All Members
House Finance Committee

FROM: Rep. Max Gruenberg, Co-chair
Rep. Peter Goll, Co-chair
House Judiciary Committee

RE: Alaska Crime Victim's Rights Act

(30)
CSHB 26 (Jud), Alaska Crime Victim's Rights Act, is before the House Finance Committee on Wednesday, March 1. This bill was in House Judiciary and underwent a number of changes based upon consensus among the Administration, the Judiciary Committee and the sponsor. The finished product is a bill with which we were all satisfied, and which will contribute to the rights of crime victims.

Under current law, the judicial and correctional system cannot allow for adequate participation by the victim of the crime. The victim's participation is important. This bill will allow full participation in the process, while recognizing the due process and fiscal needs of all parties.

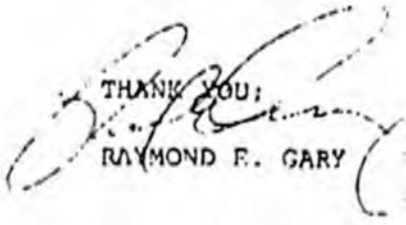
The Administration and all the state departments affected were actively involved throughout the work on this legislation, and they do support the new committee substitute. I would ask that you give this delicately balanced legislation your support.

RAYMOND E. GARY
P.O. BOX 46
III.ALY, ALASKA
99743

REP. GOLL, CHAIRMAN
HOUSE JUDICIARY COMMITTEE
ALASKA STATE LEGISLATURE
P.O. BOX V
JUNEAU, ALASKA 99811

REP. GOLL;

I HAVE LONG BEEN CONCERNED WITH THE TREATMENT THE VICTIM RECEIVES FROM THE CRIMINAL JUSTICE SYSTEM. I FEEL THAT HOUSE BILL 76 WILL BE A VERY GOOD FIRST STEP TOWARD SEEING THAT THE VICTIM RECEIVES SOME CONSIDERATION FROM THE CRIMINAL JUSTICE SYSTEM. I WOULD URGE YOUR COMMITTEE TO PASS THIS BILL.

THANK YOU;

RAYMOND E. GARY

Handwritten
reply after
Tomman's hearing

Per your request to Laurie

USE OF "SURVIVOR" IN CSHB36 (Jud)

Otto!

Section 1: Not used
Section 2: Not used
Section 3: Not used
Section 4: Not used
Section 5: Page 3, line 25
Page 4, line 8
Page 4, line 9
Page 4, line 13
Page 4, line 17
Page 4, line 19
Page 4, line 21
Page 4, line 23
Page 4, lines 24-5

ASB36
File Victims
Rights
Bill
my file

1
Gives survivor right to not be of a pending change in the status of an offender who is committed to custody of DHSS (guilty but mentally ill or not guilty by reason of insanity).

A survivor would have this right if the victim is dead, either as a result of the crime or from any other cause. Since there may be multiple survivors, the commissioner of DHSS is required to designate one survivor to represent all survivors, and that survivor is the only person who will receive the required notice.

Section 6: Page 4, line 28
Page 5, line 3
Page 5, line 4

1
Requires the probation officer to include an impact statement in the presentence report that considers the financial, emotional, and medical effects of the offense on the survivors, and the need of the survivors for restitution.

The impact on all survivors must be considered in the presentence report, and the need of all survivors for restitution. The evaluation of a need for restitution is made at the time of sentencing; constitutional double jeopardy considerations preclude a court for ordering additional restitution after the date sentence is imposed.

A limitation on the ability to recover restitution is imposed by AS 12.55.100(a)(2) which states that a defendant may be required "to make restitution or reparation to aggrieved parties for actual damages or loss caused by the crime for which conviction was had." In addition, under AS 12.55.045(a), in imposing

restitution, the sentencing court must consider the financial resources of the defendant and the nature of the burden its payment will impose. "This statute has been strictly construed to require the trial courts to make thorough inquiries into the defendant's ability to pay restitution." Karr v. State, 686 P.2d 1192, 1196-97 (Alaska 1984).

Finally, the court is limited in its ability to order restitution for future damages. In Holtzheimer v. State, ___ P.2d ___, Op. No. 892 (Alaska App., January 6, 1989), the court reversed an order of restitution to pay for "future costs of rehabilitation," stating that, "The order for unliquidated future expenses is problematic. In our view, where the sentencing court determines that an award of restitution for anticipated future expenses is appropriate, the court must at a minimum require that the expenses be firmly established by the evidence. Here, no evidence was presented to support the award of any specific amount for future restitution or rehabilitation expenses. —Under the circumstances, we conclude that the sentencing court's restitution award must be vacated."

Section 7: Page 5, line 9
 Page 5, line 10
 Page 5, line 16
 Page 5, line 20

Gives survivor the right to participate in sentencing and to receive a copy of portions of the presentence report.

A survivor would have this right if the victim is dead, either as a result of the crime or from any other cause. Since there may be multiple survivors, the prosecuting attorney is required to designate one survivor to represent all survivors, and that survivor is the only person who will be sent a copy of the presentence report.

AMENDMENT NEEDED: As currently drafted, only one survivor would have the right to submit relevant written statements to the sentencing court. The section should be amended to allow all survivors to submit relevant written statements to the court.

Section 8: Page 6, line 11
 Page 6, line 12

When imposing sentence, the court is required to make a sentencing report that includes an assessment of the financial, emotional, and medical effects of the offense on the survivors, and the need of the survivors for restitution.

The impact on all survivors must be considered by the court, and the need of all survivors for restitution. A limitation on the ability to recover restitution is imposed by statutes and court decisions which have held that restitution awards must be based on a finding of actual damages. See discussion under Section 6 above.

Section 9: Page 6, line 18
Page 6, line 20
Page 6, lines 27-8
Page 7, line 1

Allows the court to order a defendant to pay restitution to all survivors, and states that public policy favors requiring criminal to compensate survivors for damages and injuries.

The court may order a defendant to pay restitution to all survivors. The evaluation of a need for restitution is made at the time of sentencing; constitutional double jeopardy considerations preclude a court from ordering additional restitution after the date sentence is imposed. A limitation on the ability to recover restitution is imposed by statutes and court decisions which have held that restitution awards must be based on a finding of actual damages.—~~See discussion under Section 6 above.~~

AMENDMENT NEEDED: As currently drafted, in paragraph (2) reference is made to "survivor." The section should be amended to say "survivors" since the financial burden placed on all survivors should be considered by the court in evaluating whether to order restitution.

Section 10: Page 7, lines 10-11

Provides for enforcement procedures for restitution awards, and clarifies that the procedures are not intended to limit the authority of the court to enforce such awards to survivors.

The clarifying language applies to all survivors, since all are entitled to restitution.

Section 11: Page 7, line 18
Page 7, line 24
Page 7, line 27
Page 7, line 29
Page 8, line 1
Page 8, line 4
Page 8, line 6
Page 8, lines 10-11
Page 8, line 13
Page 8, line 14
Page 8, line 17

Gives survivor right to notice of a motion to modify or reduce sentence filed by an offender.

A survivor would have this right if the victim is dead, either as a result of the crime or from any other cause. Since there may be multiple survivors, the prosecuting attorney is required to designate one survivor to represent all survivors, and that survivor is the only person who will receive the required notice.

AMENDMENT NEEDED: As currently drafted, only one

survivor would have the right to submit relevant written statements to the court, or to have comments considered by the court. The section should be amended to allow all survivors to submit relevant written statements and have these statements considered.

Section 12: Page 8, line 22
Page 8, line 23
Page 8, line 24
Page 8, line 25

Allows the prosecuting attorney to designate one survivor to represent all survivors for purposes of receiving notice and exercising rights set out in sections 6 - 11.

Section 13: Page 9, line 28

Sets out a definition of survivor as "spouse, parent, child, brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, grandparent, or legal guardian of a victim who is dead."

Section 14: Page 10, lines 5-6
Page 10, line 10
Page 11, line 12

Grants survivors the right to be informed of the dates of all criminal proceedings relating to the case in which the survivor is involved, the right to be notified that a court proceeding to which the survivors have been subpoenaed will not occur as scheduled, the right to receive protection from threats of harm, the right to be informed of the procedure to apply for violent crime compensation, the right to cooperate with the criminal justice process without loss of pay, the right to obtain immediate medical assistance and to not be detained for an unreasonable length of time by a law enforcement agency, the right to participate at sentencing and the right to be informed of the defendant's record of convictions. A survivor would have these rights if the victim is dead, either as a result of the crime or from any other cause.

AMENDMENT NEEDED: Although it is appropriate for the victim to be notified of each and every criminal proceeding involved in a case, this right should not be extended to survivors. Each separate case involves numerous separate hearings and proceedings, of which the victim should be entitled to know. However, it is too costly to extend this right to survivors.

Section 15: Page 11, line 19
Page 11, line 25
Page 11, line 28
Page 12, line 8
Page 12, lines 12-13
Page 12, line 16

Page 12, line 18
Page 12, line 20
Page 12, lines 22-3

Requires the prosecuting attorney to make a
effort to notify one survivor of the defendant's
and the crimes for which the defendant was convicted,
in which the survivors may participate in sentencing,
of the office that will prepare the presentence report,
and place of the sentencing, and the final disposition.
would have this right if the victim is dead, either as
of the crime or from any other cause.

5: Page 13, line 20

Gives a survivor making a claim against assets of
based on an order of restitution, superior rights to
for recovery of money from a defendant.

This section would only apply in situations where
was ordered restitution be paid to a particular survivor,
a survivor would have these rights if the victim is
ner as a result of the crime or from any other cause.

7: Page 13, line 27

Allows a survivor ten years to institute a civil
damages resulting from the commission of a crime. A
would have these rights if the victim is dead, either as
of the crime or from any other cause.

3: Page 14, line 4
Page 14, line 5
Page 14, line 6
Page 14, line 7
Page 14, line 8

Allows the prosecuting attorney to designate one
to represent all survivors for purposes of receiving
and exercising rights set out in sections 14 - 17.

9: Page 14, line 12

By reference to AS 12.55.185, sets out a definition
vor as "spouse, parent, child, brother, sister, aunt,
parent-in-law, brother-in-law, sister-in-law, grandparent,
guardian of a victim who is dead."

20: Page 14, line 21
Page 15, line 3

Requires the parole board to consider preparole
that include written comments submitted by one survivor

related to recommended sentence, or to specific information about the crime. The comments of a survivor would be included if the victim is dead, either as a result of the crime or from any other cause.

AMENDMENT NEEDED: As currently drafted, only one survivor would have the right to submit written statements to the parole board, or to have comments considered by the board. The section should be amended to allow all survivors to submit relevant written statements and have these statements considered.

Section 21: Page 15, line 14
Page 15, line 15
Page 15, line 17

Requires the parole board to give notice of parole hearings to one survivor. The notice would be sent to the survivor if the victim is dead, either as a result of the crime or from any other cause.

Section 22: Page 15, line 23
Page 15, line 24
Page 15, line 27
Page 15, line 28

Requires the survivor to maintain a current address with the parole board if notice of parole hearings is desired.

Section 23: Page 16, line 4

Allows one survivor to submit written comments to the parole board on the issue of whether a prisoner should be granted parole. A survivor would have this rights if the victim is dead, either as a result of the crime or from any other cause.

AMENDMENT NEEDED: As currently drafted, only one survivor would have the right to submit written statements to the board. The section should be amended to allow all survivors to submit written statements.

Section 24: Page 16, line 12
Page 16, line 14
Page 16, line 19

Requires the parole board, if requested to do so, to notify the survivor of a decision to grant or deny discretionary parole. A survivor would receive notification if the victim is dead, either as a result of the crime or from any other cause.

Section 25: Page 16, line 21
Page 16, line 23
Page 16, line 28

Requires the parole board, if requested to do so, to notify the survivor before the prisoner is released from custody. A survivor would be notified if the victim is dead, either as a result of the crime or from any other cause.

Section 26: Not used.

Section 27: Page 18, line 10
Page 18, line 11
Page 18, line 12
Page 18, line 13
Page 18, line 14

Allows the commissioner of corrections to designate one survivor to represent all survivors for purposes of receiving notice and exercising rights set out in sections 21 - 25.

Section 28: Page 18, line 17

By reference to AS 12.55.185, sets out a definition of survivor as "spouse, parent, child, brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, grandparent, or legal guardian of a victim who is dead."

Section 29: Not used.

Section 30: Page 18, line 29
Page 19, line 3
Page 19, line 6
Page 19, line 7
Page 19, line 10
Page 19, line 11
Page 19, line 17

Requires the parole board, if requested to do so, to send notice of an application for executive clemency to one survivor. A survivor requesting notice would be informed if the victim is dead, either as a result of the crime or from any other cause.

AMENDMENT NEEDED: As currently drafted, only the victim would have the right to submit written statements to the board on the application for executive clemency; this section should be amended to allow all survivors to submit relevant written statements and have these statements considered.

Section 31: Page 19, line 21
Page 19, line 28
Page 19, line 29
Page 20, line 4
Page 20, line 5

Requires the commissioner of corrections to notify

one survivor if an offender escapes from custody, is released on furlough, or is released on an early release program. A survivor who has requested notification would be informed if the victim is dead, either as a result of the crime or from any other cause.

Section 32: Page 20, lines 11-12
Page 20, line 14
Page 20, line 15
Page 20, line 18
Page 20, line 20
Page 20, line 25

Requires the commissioner of corrections to notify one survivor that a prisoner is being considered for release on furlough, and of the intent to release a prisoner on furlough. A survivor who has requested notification would be informed if the victim is dead, either as a result of the crime or from any other cause.

Section 33: Page 21, line 3

Sets out that one of the purposes of community restitution centers is to provide a means of paying restitution to survivors. See discussion in Section 6 of restitution.

Section 34: Page 21, line 5
Page 21, line 6
Page 21, line 7
Page 21, line 8
Page 21, line 9

Allows the commissioner of corrections to designate one survivor to represent all survivors for purposes of receiving notice and exercising rights set out in sections 29 - 33.

Section 35: Page 21, line 11

By reference to AS 12.55.185, sets out a definition of survivor as "spouse, parent, child, brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, grandparent, or legal guardian of a victim who is dead."

Section 36: Page 21, line 18

Requires the department of law to establish a program to notify survivors of the rights, entitlements, and services that are provided to survivors by law.

Section 37: Page 21, line 20
Page 21, line 22
Page 21, line 24
Page 21, line 25

Page 21, line 29

Page 22, line 2

Requires the department of health and social services to assist survivors in preparing applications to the court to attend hearings held under Title 47. A survivor would have the right to assistance if the victim is dead, either as a result of the crime or from any other cause.

Section 38: Not used.

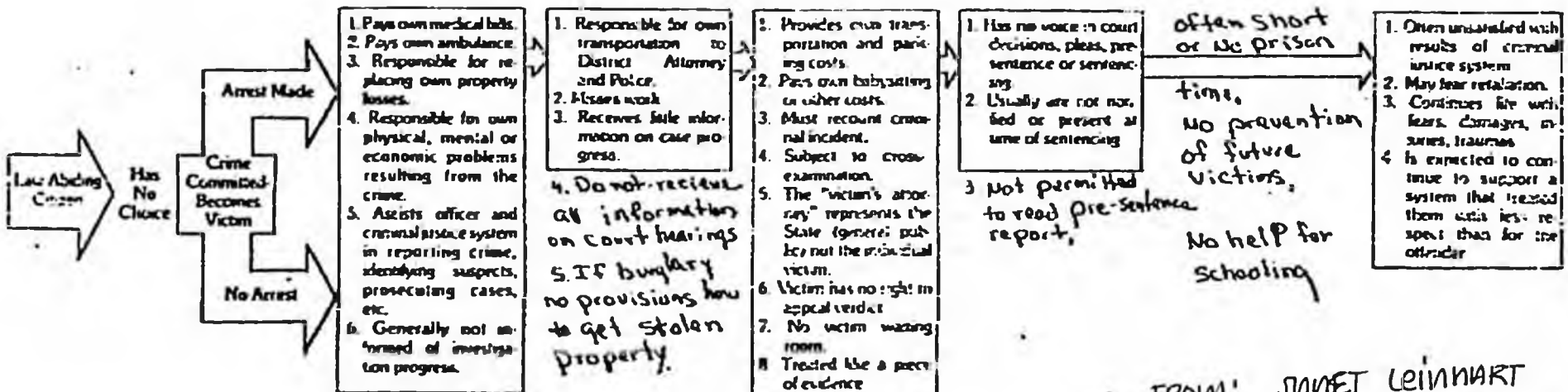
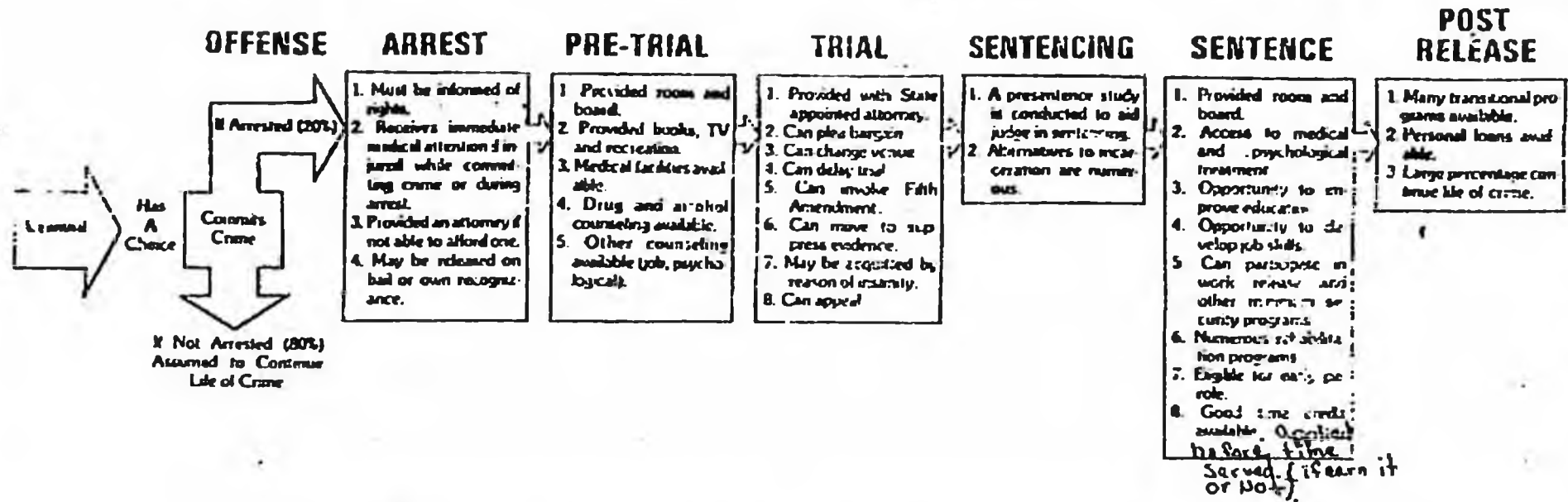
Section 39: Not used.

Section 40: See section 7.

Section 41: See section 11.

Section 42: Not used.

THE CRIMINAL INJUSTICE SYSTEM



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**National Institute
of Justice**

Research in Brief

August 1987

Victim Appearances at Sentencing Under California's Victims' Bill of Rights

Edwin Villmoare and Virginia V. Neto

Should the victim of a crime be given the right to initiate or intervene in a criminal prosecution? According to Professor Abraham S. Goldstein of Yale Law School:

[T]he victim deserves a voice in our criminal justice system, not only in hearings on the amount of restitution to be paid him but also on the offenses to be used as the basis for such restitution.... [T]he victim should have a right to participate in hearings before the court on dismissals, guilty pleas, and sentences....

1 "Defining the Role of the Victim in Criminal Prosecution," 52 *Mississippi Law Journal* 515, 518 (1982).

The December 1982 Report of the President's Task Force on Victims of Crime encouraged victim participation but recommended a more limited approach:

Judges should allow for, and give appropriate weight to, input at sentencing for victims of violent crime.... [E]very victim must be allowed to speak at the time of sentencing. The victim, no less than the defendant, comes to court seeking justice.... Defendants speak and are spoken for often at great length, before sentence is imposed. It is outrageous that the system should contend it is too busy to hear from the victim.

By the time the Task Force report was published, the voters of California had already enacted legislation giving victims the right to allocation at felony sentencing hearings, i.e., the right to speak. Proposition 8, California's Victims' Bill of Rights, includes Penal Code Section 1191.1, which specifies the following:

The victim of any crime, or the next of kin of the victim if the victim has died, has the right to attend all sentencing proceedings under this chapter and shall be given adequate notice by the probation officer of all sentencing proceedings concerning the person who committed the crime.

From the Director

The past decade has seen a dramatic rekindling of public concern for the needs of the victims of crime, a concern richly supported by continuing research into the questions of what those needs are and how they can best be met.

When California voters in 1982 enacted Proposition 8, called the Victims' Bill of Rights, that new law included a provision that the victim or the victim's surviving kin would be permitted to address the court before any felony sentencing.

The National Institute of Justice then sponsored research by the McGeorge School of Law at the University of the

Pacific to study the implementation of this "right to allocation." If we learned how allocation worked in the early days of its implementation in California, other States considering victim legislation would benefit from the California experience.

This *Research in Brief* gives the results of that investigation. Although few victims availed themselves of this right and some judges were skeptical of its value, an overwhelming four-fifths of the victims and two-thirds of the prosecuting attorneys thought the victim's right to allocation was a proper and necessary contribution to justice.

Like other National Institute research into victim problems, this study's findings again stress the victim's need and

desire to know what is going on in the case against his or her criminal assailant, and how important it is for the victim to be a full partner with the criminal justice system from the very start of that case. Thus the study recommends that procedures for notifying victims of the progress of a case and their allocation right be improved, and that victim participation in the case be encouraged at an earlier stage than sentencing. Thoughtful legislative draftsmanship, supported by sound research and experience, can continue to ease the traumas of the victims of crime and hasten achievement of our ideals of justice.

James K. Stewart
Director
National Institute of Justice

The victim or next of kin has the right to appear, personally or by counsel, at the sentencing proceeding and to reasonably express his or her views concerning the crime, the person responsible, and the need for restitution. The court in imposing sentence shall consider the statements of victims and next of kin made pursuant to this section and shall state on the record its conclusion concerning whether the person would pose a threat to public safety if granted probation.

To study California's implementation of the new right to allocution at felony sentencing, the National Institute of Justice sponsored an exploratory study by the Center for Research, McGeorge School of Law, University of the Pacific. This *Research in Brief* highlights the study's findings.

Major findings

Effects. In California, victim appearances seem to have had little effect on the criminal justice system or on sentencing. The vast majority of victims surveyed for this project did not use the allocution right. In fact, in less than 3 percent of the cases did the victim appear. The possible impact of the victim allocution right is severely limited by the high percentage of cases plea bargained, by California's determinate sentencing law, and by victims' lack of awareness of the right.

Victim desire for information. In general, victims are more interested in information about their cases than they are in the right to participate. Some victims, in fact, exercised the allocution right at sentencing primarily to find out what was going on in their cases.

However, 80 percent of the victims interviewed indicated existence of the right was important. Many victims showed limited understanding of the criminal justice system and had trouble ascertaining what stage a case had reached or why a particular action had been taken.

Points of view or opinions expressed in this publication are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The Assistant Attorney General, Office of Justice Programs, coordinates the criminal and juvenile justice activities of the following program Offices and Bureaus: National Institute of Justice, Bureau of Justice Statistics, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.

Ice problems. Form letters sent by probation departments are an inadequate means of communicating the existence of the allocution right. More personal and direct communication is required if victims are to learn about and understand the right.

Victim impact statements. Victim impact statements included in the presentence reports prepared by the local probation departments provide many victims with a satisfactory opportunity to express their views. An informal interview with a sympathetic probation officer is often preferable to a recitation in open court.

Scope and methods

The project had two major objectives: to study the implementation of the allocution right by State and local agencies, and to assess the extent of victims' awareness of the right and their use and reaction to it.

Agency survey. In the fall of 1982, the project surveyed agencies statewide to learn about the activities and attitudes of officials related to the allocution right. Questionnaires were sent to probation departments, district attorneys, and Superior Court presiding judges in all of California's 58 counties and to all 35 victim-witness programs operating in mid-1983.

The questionnaires covered four major issues:

- victim notification of the allocution right,
- assistance to victims by the criminal justice system in the exercise of the right,
- the extent of victim appearances, and
- perceptions by officials of the new right and its implementation.

Forms were returned by 33 probation departments (57 percent), 25 district attorneys (43 percent), 33 Superior Courts (57 percent), and 22 victim-witness programs (63 percent). According to the survey results, 3 percent or fewer of felony crime victims make statements at sentencing hearings.

Case surveys. To assess victim response statewide, the project sought to identify and interview two groups of victims: Those who exercised the right and those who were entitled to

it but not. There were major obstacles in locating victims: County agencies did not maintain systematic data, such as victim names and addresses, and many district attorneys and police tended to "protect" victims and inhibit researchers' access to them.

To overcome these difficulties, the project surveyed victims in three cooperating counties with computerized recordkeeping systems: Alameda, Fresno, and Sacramento. The computerized systems enabled project staff to review large numbers of files and extract victim data that were otherwise inaccessible or unavailable.

At the project's request, the district attorney's offices and the Superior Court clerks in each of the three counties generated a list of felony cases resulting in conviction and sentencing for a year and a half that overlapped to some extent the statewide agency survey.

There was a total of 1,293 cases generated by the 3 counties that contained the information needed to identify and contact victims. The data included the names and addresses of the victims. Next of kin were identified primarily by searching district attorney and coroner files. The felonies were principally burglary, robbery, assault, rape, child molestation, kidnapping, and homicide. Burglary was included to compare responses to property and personal injury crimes.

The project analysis identified 59 cases in which victims (or next of kin) made statements at sentencing. The percentage of victims identified as exercising their allocution right in the case surveys compared to the total number of sentencings in the three counties is similar to the 3 percent appearance finding of the statewide agency survey.

Victim interviews. Project staff succeeded in locating and interviewing 171 victims. The district attorneys' case survey accounted for 147 of the 171 victims, and the sentencing orders sent by the Superior Court clerks accounted for the remaining 24.

Each of the 171 victims was interviewed by telephone. The interviewers asked about details of the crime and characteristics of the victim; the source and degree of the victim's knowledge of the appearance right; and the de-

gree, kind and circumstances of victim participation. The effects of participation and nonparticipation on the victims were part of the interview.

Interviews were conducted with both victims who appeared at sentencing (29 of 171 victims) and those who did not. Their responses were then compared. Besides the 29 victims who actually appeared at sentencing, only 47 of the remaining 142 indicated they knew of the allocation right. (It should be noted that the 171 victims interviewed were not necessarily typical victims. Hence, their responses may not be representative.)

Legal framework

The victim's opportunity to exercise the allocation right is constrained by legal factors. Penal Code Section 1191.1 confines the right to allocation to felony sentencing in Superior Court. There is no right to allocation in Municipal Court, where almost all misdemeanor cases are tried. California operates under a determinate sentencing law that limits sentencing choices. Further, in cases involving a plea, the sentencing judge considers only the crimes that the defendant pleads to.

Thus, the only real opportunity for the victim to affect the sentence by allocation is in a case that reaches Superior Court, and only to the extent permitted by determinate sentencing and plea bargaining. In instances where crimes are not charged, or charged but later dismissed or dropped, victims have no allocation right.

It should be noted that allocation is not a victim's only way to communicate with the sentencing judge. Since the 1920's, presentence reports prepared by probation departments have included victim impact statements. These statements became mandatory in 1978. Victims may also write the court directly.

Agency implementation

Probation departments. Nearly all departments appeared to be sending notification announcements to victims of the allocation right as required by the Code. The departments reported only a minimal increase in their workloads.

Notification almost always consisted of form letters. Contents of the notice were not uniform among the probation departments due to the vagueness of Section 1191.1, the lack of central administrative or legislative guidelines, and the need to implement notification procedures quickly.

Despite differences in the style of notification letters, victim appearance rates at sentencing did not differ noticeably from one county to another. Some form letters were less personal than the letters and phone calls used to solicit victim impact statements.

Probation departments reported difficulty in locating some victims because of incorrect names or addresses provided by other law enforcement agencies. No followup notices were sent. Eighty-five of 149 victims (57 percent) who responded to the question in the victim survey about the notice did not remember receiving one.

Superior Court. In the statewide agency survey, some judges expressed concern about possible lack of due process in the allocation process. The statute does not address the procedures under which victims are to be heard. Consequently, judges' practices differ

Of the judges responding, nearly half indicated they allow cross-examination of the victim by the defense. One-fifth of the judges also require the victim to speak under oath, especially when facts of the case or details of the crime are discussed. Some judges accept comments from victims without an oath unless facts of the case or details of the crime are raised. Two-fifths of the district attorneys said that, in their experience, victims spoke under oath. No systematic records of the procedures used in victim allocation are maintained.

District attorneys. District attorneys, who have the most contact with victims after an arrest and often consider themselves victim advocates, were not mandated to inform or assist victims regarding allocation. Nevertheless, according to the victim interviews, the district attorney was the most common source of information on the allocation right.

Victim-witness programs. While less than one-third of the victims interviewed remembered any contact with a victim-witness program, over half of the victims knew about the victim-

witness program. Relatively few victims recalled learning about the right to allocation from victim-witness programs.

Victims and allocation

Despite the great amount of publicity about the Victims' Bill of Rights, mandatory notification of victims, and victims' contact with various agency personnel, only 44 percent of the 171 victims interviewed were aware of the right to appear at sentencing. (What the actual level of knowledge was among all victims in the three counties can only be estimated, but it probably was much lower, considering that the 171 victims interviewed were a more economically stable and highly educated sample than is typical of felony victims.)

Approximately half of the victims who were aware of the right first learned about it from district attorneys, 21 percent from the probation officer, 15 percent from victim-witness programs, and 10 percent from other criminal justice personnel such as police. Only a few mentioned the Victims' Bill of Rights as their source of information.

Although probation departments in California are legally responsible for notifying victims of their allocation right, the sequence of events in criminal proceedings may account for the higher proportion of victims who recalled being informed of the right by district attorneys' offices. When someone is charged with a crime, the victim may begin a series of meetings, phone calls, and correspondence with the district attorney. Not until there has been a conviction does probation prepare a presentence report and send notification of the right to allocation and the schedule of the sentencing hearing.

Reasons for not exercising the right.

Of the 47 victims interviewed who knew of the right but did not exercise it, 43 explained their reasons for not doing so. Thirty-seven percent were satisfied with the criminal justice system's response. This was especially true in burglaries. Some of these victims were satisfied by district attorney's assurances that the criminal would receive the maximum sentence possible. Thirty percent believed that their appearance before the judge would make no difference.

For 28 percent the reasons for not appearing were more personal: they were either too upset, afraid of retaliation, or confused. One victim, who was also a witness in the case, thought that being barred from the courtroom during the trial precluded her involvement at the sentencing hearing.

Some were discouraged by a district attorney or probation officer, only to regret later that they had not expressed their views. (In the statewide agency survey, some officials indicated concern that an oral statement might be counterproductive, fearing, for example, that a victim might become hysterical.) For another 5 percent, an appearance was considered too costly in lost wages, child care, or travel expenses.

Victims often presented themselves to project interviewers in a passive mode, explaining that "no one told me I should," or "they don't seem to care," or "I was busy."

Reasons for exercising the right. Of the victims interviewed who made a written or oral statement, 34 percent said their primary reason was a desire to express their feelings to the judge, 32 percent to perform their "duty," and 26 percent to achieve a sense of justice or to influence the sentence.

One victim of a terrifying armed robbery wanted to show the criminals that the victims could make life miserable for them. Another man, whose brother was unable to care for himself after a severe assault, said, "I needed to say something because my brother is unable to speak for himself."

Several victims who knew their attackers personally asked the court to provide psychological help for the offenders, usually for the good of the offenders as well as the safety of others. A man assaulted by a friend advocated probation and restitution because he knew the high costs of incarceration and the undesirable conditions in prison.

Bound up with victims' reasons for making a statement at sentencing were the results they sought: 56 percent sought a long or maximum sentence; 15 percent emotional relief; 12 percent financial restitution; and 17 percent a variety of other objectives, including a light sentence.

Content of victims' statements. Of all the points raised in victims' statements, the most common (made by 47 percent of victims interviewed) was that the perpetrator should be punished or locked up. Twenty-five percent stressed one or more of the following: the effects of the crime, qualities of the criminal (usually highly negative ones), good qualities of the victim, or details of the crime. A few mentioned the need to protect society; others suggested alternative sentences, such as probation and restitution.

Nearly half the persons preparing statements received some help, most frequently from family members or friends, sometimes from a victim support group such as Mothers Against Drunk Drivers, and occasionally from a private attorney or the district attorney.

Was Section 1191.1 necessary or effective?

Victims' perspectives. The victims interviewed indicated that making a statement at sentencing had two main potential effects—an emotional effect on the victim and a perceived effect on the sentence. Over half the appearing victims (54 percent) reported they felt different after making their statement to the judge. Of these, 59 percent expressed positive feelings of satisfaction or relief, 25 percent felt angry, fearful or helpless, and 10 percent felt dissatisfied.

Less than half (45 percent) of those victims who spoke at sentencing felt their participation affected the sentence. Even those who felt they had an effect were inclined to view the sentence as too lenient. In fact, they held this view in the same proportion as persons who had no involvement in sentencing at all. Most discouraged were those who made statements but felt they were not heeded: 82 percent of these victims thought the sentence was too light. Victims who spoke at sentencing were often the victims of serious crimes, yet as a group they reported a higher frequency of probation sentences in their cases than those who did not appear. (It should be noted that victims seeking restitution in California are forced to request a sentence that excludes a prison term. Direct restitution to the victim is available only when probation is granted.)

Its infrequent use of the allocution right and mixed reactions to it. Over 80 percent of all victims interviewed indicated that the existence of the right was important. Victims also expressed a strong desire for more information about the right and the progress and dispositions of their cases.

Officials' perspective. Two-thirds of the judges saw no need for the allocution right. An equally large majority of district attorneys thought it was needed. Judges pointed out that the presentence report provides all the necessary information. One judge wrote:

Any review of the impact of victim's statements should not fail to take into account the rules of court sentencing criteria. By the time that the victim comes to court, a well-prepared probation report having been reviewed by a well-prepared judge leaves little room for modification of an intended decision. A victim's emotional appeal to the court cannot carry more weight in place of the facts and criteria.

When asked whether the right was "effective," 81 percent of probation officers answered "minimally or not at all" (often because of the role of victim impact statements) compared with 69 percent of judges and 48 percent of prosecutors; less than 2 percent indicated that the right had been very successful. Sixty-six percent of district attorneys, compared with 40 percent of judges, thought that victim appearances increased the amount (as opposed to the frequency) of restitution awarded.

Judges indicated that, while the actual appearances had little overall impact on the sentences, they believed the right had benefits:

- It does allow victims to air their grievances or "get it off their chest." To this extent they may feel the system is paying more attention to them.
- Prop. 8 has been a real significant step toward victim recognition and awareness. It is as important as a public statement as it is as a court tool.

Prosecutors wrote:

- Judges are constrained by law, logic, and justice. In a majority of cases nothing the victim says is really going to impact.
- Members of the judiciary who were responsive to victims' rights before, continue to be so, and others who place defendant's rights paramount... also continue.

Conclusion

Allocation at sentencing will be a modest right wherever it is established because plea bargaining effectively resolves the vast majority of all sentences before the victim can have a say. In fact, since plea bargaining may result in the dismissal of criminal charges, plea bargaining deprives some victims of the right to allocution altogether. If the intent behind the

allocation right is to give victims an opportunity to comment on and influence the sentences for the crimes committed against them, victim participation must exist at earlier stages in the prosecution of cases. This is particularly true within a determinate sentencing system.

There is no doubt that victims deserve much greater attention and assistance than they have received in the past or are currently receiving. Victim participation in the prosecution of crimes raises complex legal and social issues. If victim participation is to be more than symbolic, additional resources will have to be invested in the criminal justice system and a number of existing procedures changed. Victims' rights cannot be grafted onto the existing system without generally remaining simply cosmetic, nor can they be made potent without creating profound changes throughout the entire system.

The question remains as to whether society is prepared to embark upon a process so potentially complex, expensive, and unpredictable.

Edwin Villmoare served as project director and Virginia V. Neto as project coordinator for Victim Appearances at Sentencing Hearings Under the California Victims' Bill of Rights. The full report of this study, prepared under a grant to the McGeorge School of Law, University of the Pacific, can be purchased from the Superintendent of Documents, U.S. Government Printing Office (stock number 027-000-02171-01), and is available in free microfiche (NCJ 104915) from the National Institute of Justice/NCJRS (phone 800-851-3420 or, from Maryland, Alaska, and the Metropolitan Washington, D.C., area, 301-251-5500).

Previous studies

Recent literature on victims has focused on the importance of victim involvement and satisfaction with the criminal justice system. For some victims, appearing at sentencing hearings is the culmination of a series of actions after the crime. Their participation may stem from satisfaction or displeasure with prior criminal justice contacts. Similarly, their appearance at sentencing may leave them with positive or negative feelings about the system.

A study of victim involvement in communities near Toronto (Hagen, 1982) analyzed various activities—contact with police and prosecutor, knowledge of the case outcome—in terms of their relationship to victims' attitudes toward the disposition. The findings indicated that victims who attend court are more likely to reduce their demands for severe sentences, suggesting a link

between involvement and acceptance of case disposition.

A survey conducted of New York victims by Lou Harris and Associates (Bucuvalas, 1984) reported that overall victim satisfaction with the police and the district attorney is enhanced if the victim receives victim services. Victim-witness agencies, however, have continued to be concerned about the lack of witness cooperation. In evaluating this "persistent phenomenon," Davis (1983) suggested that victims might be more cooperative if they were given a chance to have their opinions heard in court.

A National Institute of Justice study, *The Criminal Justice Response to Victim Harm* (Forst and Hemon, 1984), found that victims expressed more satisfaction with the system if they had knowledge of the case outcome and if they felt they had influenced the disposition of the case. In general, victims

placed more emphasis on being informed than on participating in the process. The same study reported that judges consider the presentence investigation report useful information about victim harm; however, much of the presentence investigation report is based on information obtained from second-hand sources, not from the victim. Thus, even from the judicial perspective, it may not be a true alternative to the right of allocution at sentencing.

An NIJ experiment, *Structured Plea Negotiation* (Clark et al. 1984) called for victim participation in plea bargaining. Evaluation of the research indicated that most victims tended to be satisfied with their attendance, but believed their presence, statement, or both at the plea negotiation conference had no impact on case disposition. These findings echo the results reported (Heinz and Kerstetter 1980) on a similar experiment in Dade County, Florida, in 1977.

Sec. 33.30.280. Credit for labor while imprisoned. [Repealed, § 6 ch 53 SLA 1982.]

Sec. 33.30.281. Crime against sentenced prisoner. A person who commits a crime against a sentenced prisoner is punishable as if the prisoner was not sentenced and incarcerated. (§ 6 ch 88 SLA 1986)

Secs. 33.30.282 — 33.30.290. [Repealed, § 12 ch 88 SLA 1986.]

Sec. 33.30.291. Treaties. If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of prisoners sentenced to serve a term of incarceration to the country where they are citizens or nationals, the commissioner may, on behalf of the state and subject to the terms of the treaty, consent to the transfer or exchange of prisoners and take any other action necessary to initiate the participation of the state in the treaty. (§ 6 ch 88 SLA 1986)

Secs. 33.30.300 — 33.30.900. [Repealed, § 12 ch 88 SLA 1986.]

Sec. 33.30.901. Definitions. In this chapter, unless the context requires otherwise,

(1) "center" means a correctional restitution center;

(2) "commissioner" means the commissioner of the Department of Corrections;

(3) "community service" means work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public services, lands, forests, parks, roads, highways, facilities, or education; community service may not confer a private benefit on a person except as may be incidental to the public benefit;

(4) "correctional facility" or "facility" means a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners; a "state correctional facility" means a correctional facility owned or run by the state;

(5) "court" means the supreme court, the court of appeals, the superior court, the district or magistrate court, or a justice or judge of a court;

(6) "crime against a person" means a crime as set out in AS 11.41, except custodial interference under AS 11.41.320 and 11.41.330; or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime as set out in AS 11.41, except custodial interference under AS 11.41.320 and 11.41.330;

(7) "department" means the Department of Corrections;

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Article 2. Burglary and Criminal Trespass.

Section

- 300 Burglary in the first degree
- 310 Burglary in the second degree
- 320 Criminal trespass in the first degree
- 330 Criminal trespass in the second degree

Section

- 340 Defense: Emergency use of premises
- 350 Definition

Collateral references. — 13 Am Jur 2d, Burglary, § 1 et seq.; 75 Am Jur 2d, Trespass, § 1 et seq.

12A C.J.S., Burglary, § 1 et seq.; 87 C.J.S., Trespass, § 1 et seq.

Conviction or acquittal of larceny as bar to prosecution for burglary, 19 ALR 626.

Opening closed but unlocked door as breaking which will sustain charge of burglary or breaking and entering, 23 ALR 112.

Burglary without breaking, 23 ALR 288.

Vacancy or nonoccupancy of building as affecting its character as a "dwelling" as regards burglary, 85 ALR 428.

Construction and application of statute relating to burglars' tools, 103 ALR 1313.

May participant in burglary be convicted of receiving or concealing the stolen property, 136 ALR 1087.

Outbuilding or the like as part of "dwelling house," 43 ALR2d 831.

Gambling or lottery paraphernalia as subject of larceny, burglary, or robbery, 51 ALR2d 1396.

Building or house defined for purpose of burglary statutes, 78 ALR2d 778.

Motor vehicle, burglary or breaking and entering of, 79 ALR2d 285.

Sufficiency of showing that burglary was committed at night, 82 ALR2d 643.

Maintainability of burglary charge, where entry into building is made with consent, 93 ALR2d 531.

Provisions of burglary or theft policy as to "visible marks" or "visible evidence," 99 ALR2d 129.

Provisions of burglary or theft policy requiring losses evidenced by "physical damage to premises," 22 ALR3d 1305.

Validity, construction and application of statutes relating to burglars' tools, 33 ALR3d 798.

Breaking and entering of inner door of building as burglary, 43 ALR3d 1147.

Criminal prosecution based upon breaking into or taking money or goods from vending machine or other coin operated machine, 45 ALR3d 1286.

What amounts to "exclusive" possession of stolen goods to support inference of burglary or other felonious taking, 51 ALR3d 727.

Entry through partly opened door or window as burglary, 70 ALR3d 881.

Coercion, compulsion, or duress as defense to charge of robbery, larceny, or related crime, 1 ALK4th 481.

Sec. 11.46.300. Burglary in the first degree. (a) A person commits the crime of burglary in the first degree if the person violates AS 11.46.310 and

- (1) the building is a dwelling; or
- (2) in effecting entry or while in the building or immediate flight from the building, the person
 - (A) is armed with a firearm;
 - (B) causes or attempts to cause physical injury to a person; or
 - (C) uses or threatens to use a dangerous instrument.

(b) Burglary in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.81.900.
Effect of amendments. — The 1982 amendment added paragraph (3) to subsection (a).

Article 3. Arson, Criminal Mischief, and Related Offenses.

Section	Section
400. Arson in the first degree	482. Criminal mischief in the second degree
410. Arson in the second degree	484. Criminal mischief in the third degree
430. Criminally negligent burning	486. Criminal mischief in the fourth degree
450. Failure to control or report a dangerous fire	490. Definitions
480. Criminal mischief in the first degree	

Collateral references. — 5 Am. Jur. 2d, Arson and Related Offenses, § 1 et seq.; 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

6A C.J.S., Arson, § 1 et seq.; 54 C.J.S., Malicious Mischief, § 1 et seq.

Burning as element of offense of arson, 1 ALR 1163.

Evidence of other offenses in prosecution for arson, 3 ALR 1544; 22 ALR 1016; 27 ALR 357; 63 ALR 602.

Criminal responsibility of one cooperating in offense of arson which he is incapable of committing personally, 5 ALR 783; 74 ALR 1110; 131 ALR 1322.

Ownership of property as affecting criminal liability for burning thereof, 17 ALR 1168.

Intent as essential element of crime of burning property to defraud insurer, 17 ALR 1180.

Ratification or sanction by owner of property or interest therein as affecting criminal liability of person burning same, 54 ALR 1236.

Death resulting from arson as within contemplation of statute which makes homicide in perpetration of felony murder in first degree, 57 ALR 414.

Sufficiency of evidence on issue of negligence in action for spread of fire purposely and lawfully kindled, 24 ALR2d 241.

Vacancy or nonoccupancy of building as affecting its character as "dwelling" as regards arson, 11 ALR2d 1430.

Burning of building by mortgagor as burning property of another so as to constitute arson, 76 ALR2d 524.

Single act affecting multiple victims as constituting multiple assaults or homicides, 8 ALR4th 960.

Sec. 11.46.400. Arson in the first degree. (a) A person commits the crime of arson in the first degree if the person intentionally damages any property by starting a fire or causing an explosion and by that act recklessly places another person in danger of serious physical injury. For purposes of this section, "another person" includes but is not limited to fire and police service personnel or other public employees who respond to emergencies, regardless of rank, functions, or duties being performed.

(b) Arson in the first degree is a class A felony. (AS 4 ch 166 SLA 1978; am § 1 ch 39 SLA 1983)

Effect of amendments. — The 1983 amendment removed a personal pronoun in the first sentence and added the second sentence.

Legislative history reports. — For Senate letter of intent relating to ch 39, SLA 1983, see 1983 Senate Journal, pp 106 and 171; for House letter of intent on that Act, see 1983 House Journal, p 1250. See also 1983 House Journal, p 1699.

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NOTES TO DECISIONS

For cases construing former first degree arson statute, see *Salinas v. United States*, 277 F.2d 914 (9th Cir. 1960); *Rank v. State*, Sup. Ct. Op. No. 92 (File No. 167), 373 P.2d 734 (1962), overruled on another point in *Shafer v. State*, Sup. Ct. Op. No. 563 (File No. 1034), 456 P.2d 466 (1969); *Stumbaugh v. State*, Sup. Ct. Op. No. 1919 (File No. 3937), 599 P.2d 166 (1979); *Williams v. State*, Sup.

Ct. Op. No. 2147 (File No. 3901), 614 P.2d 1384 (1980).

Sentences upheld. See *Faulkenberry v. State*, Ct. App. Op. No. 116 (File Nos. 6234, 6235), 649 P.2d 951 (1982).

Cited in *Williams v. State*, Sup. Ct. Op. No. 2147 (File No. 3901), 614 P.2d 1384 (1980); *Putnam v. State*, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980).

Sec. 11.46.410. Arson in the second degree. (a) A person commits the crime of arson in the second degree if the person intentionally damages a building by starting a fire or causing an explosion.

(b) In a prosecution under this section, it is an affirmative defense

(1) that no person other than the defendant had a possessory, proprietary, or security interest in the building or that all persons having such an interest consented to the defendant's conduct; and

(2) that the sole intent of the defendant was to damage or destroy the building for a lawful purpose.

(c) Arson in the second degree is a class B felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

For cases construing former second degree arson statute, see *Salinas v. United States*, 277 F.2d 914 (9th Cir. 1960); *Tarnev v. State*, Sup. Ct. Op. No. 911

(File No. 1486), 512 P.2d 923 (1973); *Jacynth v. State*, Sup. Ct. Op. No. 1829 (File No. 3507), 593 P.2d 263 (1979).

Sec. 11.46.430. Criminally negligent burning. (a) A person commits the crime of criminally negligent burning if with criminal negligence the person damages property of another by fire or explosion.

(b) Criminally negligent burning is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.450. Failure to control or report a dangerous fire.

(a) A person commits the crime of failure to control or report a dangerous fire if the person knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when the person can do so without substantial personal risk, or to give a prompt fire alarm if

(1) the person knows that the person is under an official, contractual, or other legal duty to prevent or combat the fire; or

(2) the fire was started by the person, with the person's consent, or on property in the person's custody or control.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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Mail Stop 3100
(907) 465-3991

January 12, 1989

MEMORANDUM

TO: Representative Dave Donley

ATTN: Michael Ward

FROM: Maria Gladziszewski *MG*
Legislative Analyst

RE: Open Parole Board Meetings in Other States
Research Request 89.122 (Revised)

You requested that we pose several specific questions to people associated with open parole board meetings in other states. I contacted representatives from the parole boards of nine states that have open or partially open parole board meetings.¹

In general, the persons with whom I spoke were satisfied with their systems of parole hearings and support the concept of giving victims an opportunity to speak before parole boards. In all nine states, however, victims do not often choose to participate. Most parole hearings are held in prisons, and victims often do not want to go into the prisons to face the inmate. Several persons with whom I spoke suggested holding an additional meeting outside prisons, or allowing victims to speak in a room without the inmate present. Answers to your specific questions are summarized below.

Who is allowed to attend and participate in open parole board hearings?

The parole boards of Nebraska, North Dakota, Oklahoma and Tennessee operate under open meeting laws. Florida and Nevada have statutes that require parole board meetings to be open to the public, and Massachusetts has open parole hearings for those serving life sentences after convictions of first or second degree murder. In general, attendance is unrestricted, although the spokesperson from Oklahoma mentioned the size of the room as a limitation. In Arkansas and Rhode Island, separate meetings for those protesting parole (victims, sheriffs, district attorneys) are conducted outside prisons.

¹ Florida, Massachusetts, Nebraska, Nevada, and Tennessee have full-time parole boards. The parole boards of Arkansas, Oklahoma and Rhode Island meet once a month, and the parole board of North Dakota meets six times a year.

Representative Donley
January 12, 1989
Page 2

The number of people allowed to speak during the meeting was sometimes limited. In Florida, prior approval is required. Only five family members can speak on an inmate's behalf in North Dakota and Arkansas; in Oklahoma, only two protestors and two supporters can speak. There were no formal restrictions in other states, although some representatives said that the board could limit the numbers if they so desire.

Who actually attends the open parole board meetings?

Representatives from most states contacted reported that few (two to four) people attend a parole hearing for any specific inmate and that most of those attending are supporters of the inmate (i.e., family, friends, employers). Debbie Miller, Executive Director of the Tennessee parole board, said that those that attend are "mostly just anxious families...[who] view it as an extra visiting day." Representatives also report that, more often than not, no one but the inmate appears for the hearing.

Of the 200 cases before the Florida Parole Commission in Tallahassee on January 11, 1989, 70 cases had visitors attending; of those 70 cases with visitors, in only four cases were victims or victims' families scheduled to speak. Since enacting victim notification legislation on July 1, 1987, North Dakota has had only four cases (of approximately 550 cases in the last year and a half) in which victims testified. The spokesperson from Tennessee estimated that only the inmate testifies in 75 percent of their cases and that victims or victims' families appear in only five percent of cases. Protestors are scheduled to speak at seven of the 400 cases to be heard this month in Arkansas. The spokesperson from Nevada estimated that victims speak in less than five percent of the hearings in that state.

Are victims notified?

All of the states contacted report that they notify victims if at some point the victim had notified the prison that the victim was interested in knowing when the inmate would be up for parole. Arkansas, Florida, North Dakota, Rhode Island, and Tennessee have laws requiring victim notification.

Are open parole hearings beneficial to victims and their families?

Representatives from all of the states contacted responded favorably when asked if open hearings were beneficial to victims and their families. Several also mentioned, however, the importance of victim assistance programs prior to sentencing.

Don LaFratta, Director of Special Operations for the Massachusetts parole board, was a reluctant supporter of open parole board meetings. He said that they are beneficial to victims and their families but stressed that states should put their money "on the front end rather than the rear end of victims services." He noted that victims could use representatives at the courthouse

Representative Donley
January 12, 1989
Page 3

to usher them through what was about to happen (what happens in court, how everything works, methods for victims to be reimbursed for medical expenses, etc.)

Are there any problems with the system? Do you feel open meetings are an extra burden on taxpayers for more security?

The only fiscal burden mentioned was that of locating victims in states with mandatory notification laws. Representatives from North Dakota, Rhode Island, and Massachusetts spoke of costs incurred for additional personnel needed to locate victims.

States did not report providing extra prison security on parole board hearing days; the spokesperson from Nevada mentioned that they would inform visitors to come early when many people were expected to attend a meeting so that they could all be cleared by existing security personnel. Arkansas conducts their protesters meeting in the break room at the administration building without any security.

What is the overall attitude towards open parole hearings?

Every state contacted reported positive attitudes toward open parole hearings. Some spokespeople mentioned that conducting open parole board meetings contributes to the public perception that all is "above board," and that openness "cuts down on suspicions that government operates in smoke-filled rooms or that something underhanded is going on."

Nearly all the persons with whom I spoke mentioned that victims and victims' families are often reluctant to face the inmate. Many also mentioned a reluctance on the part of victims to enter a prison. Arkansas and Rhode Island have attempted to increase victim participation by holding separate meetings for protestors outside of prisons. Florida conducts the entire meeting outside of the prison system without the inmate present. North Dakota holds separate meetings in the prison for victims and Nebraska will also hold separate victim meetings upon request.

James Marion, Director of the parole and probation department of North Dakota, sees open parole board meetings as positive not only because the victim has a chance to "vent feelings" about the inmate but also because they "force the victim to understand the criminal justice system." He also mentioned that open meetings 1) increase public awareness that inmates are eventually released and 2) help "develop good community-based strategies for offenders...[to] reintegrate these people back into society."

I hope this information is helpful. Please call me if you have additional questions.

HD 30

Victim Bill of Rights
Sample Statute
Michigan



STATE OF MICHIGAN
83RD LEGISLATURE
REGULAR SESSION OF 1985

Introduced by Reps. Van Regenmorter, Stabenow, Nash, Mathieu, Bartnik, Sparks, Hickner, Hoekman,
Willis Bullard, Ouwinga and Honigman

ENROLLED HOUSE BILL No. 4009

AN ACT to establish the rights of victims of crime; to provide for certain procedures; to establish certain immunities and duties; to limit convicted criminals from deriving profit under certain circumstances; to prohibit certain conduct of employers or employers' agents toward victims; and to provide for penalties and remedies.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "crime victim's rights act".

Sec. 2. (1) As used in this act:

(a) "Crime" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year, or an offense expressly designated by law to be a felony.

(b) "Defendant" means a person charged with or convicted of having committed a crime against a victim.

(c) "Final disposition" means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal, or imposition of sentence by the court.

(d) "Prisoner" means a person who has been convicted and sentenced to imprisonment for having committed a crime against a victim.

(e) "Victim", except for purposes of section 16, means any of the following:

(i) An individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime, except as provided in subparagraph (ii) or (iii)

(ii) The following relations of a deceased victim if the relation is not the defendant:

(A) The spouse.

(B) An adult child if subparagraph (A) does not apply.

(C) A parent if subparagraphs (A) and (B) do not apply.

(D) A sibling if subparagraphs (A) to (C) do not apply.

(E) A grandparent if subparagraphs (A) to (D) do not apply.

(iii) A parent, guardian, or custodian of a victim who is a minor or legally incapacitated person.

(2) If a victim as defined in subsection (1)(e)(i) is physically unable to exercise the privileges and rights under this act, the victim may designate by written instrument his or her spouse or an adult child, parent, sibling, or grandparent of the victim to act in place of the victim during the duration of the physical disability. During the physical disability, notices to be provided under this act to the victim shall continue to be sent only to the victim.

Sec. 3. Within 24 hours after the initial contact between the victim of a reported crime and the law enforcement agency having the responsibility for investigating that crime, that agency shall give to the victim the following information:

(a) The availability of emergency and medical services, if applicable.

(b) The availability of victim's compensation benefits and the address of the crime victims compensation board.

(c) The address and phone number of the prosecuting attorney whom the victim should contact to obtain information about victim's rights.

(d) The following statement:

"If within 6 months, you are not notified of an arrest in your case, you may call [the law enforcement agency's telephone number] for the status of the case."

Sec. 4. (1) The law enforcement agency having responsibility for investigating a reported crime shall promptly return to the victim property belonging to that victim which is taken in the course of the investigation, except as provided in subsections (2) to (4).

(2) The agency shall not return property which is contraband.

(3) The agency shall not return property if the ownership of the property is disputed until the dispute is resolved.

(4) The agency shall retain as evidence any weapon used in the commission of the crime and any other evidence if the prosecuting attorney certifies that there is a need to retain that evidence in lieu of a photograph or other means of memorializing its possession by the agency.

Sec. 5. (1) Not later than 24 hours after the arraignment of the defendant for a crime, the law enforcement agency having responsibility for investigating the crime shall give to the victim the phone number of the sheriff and notice that the victim may contact the sheriff to determine whether the defendant has been released from custody.

(2) Based upon the victim's affidavit asserting acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family, the prosecuting attorney may move that the bond or personal recognizance of a defendant be revoked.

Sec. 6. (1) Not later than 7 days after the arraignment of the defendant for a crime, but not less than 24 hours before a preliminary examination, the prosecuting attorney shall give to each victim a written notice of each of the following:

(a) A brief statement in plain English of the procedural steps in the processing of a criminal case.

(b) The rights and procedures under this act.

(c) Details and eligibility requirements under Act No. 223 of the Public Acts of 1976, being sections 18.351 to 18.368 of the Michigan Compiled Laws.

(d) Suggested procedures if the victim is subjected to threats or intimidation.

(e) The person to contact for further information.

(2) If requested by the victim, the prosecuting attorney shall give to the victim notice of any scheduled court proceedings and notice of any changes in that schedule.

(3) The prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of a crime, including the victim's views about dismissal, plea or sentence negotiations, and pretrial diversion programs.

(4) A victim who receives a notice under subsection (1) and who chooses to receive any other notice or notices under this act shall keep the following persons informed of the victim's current address and phone number:

(a) The prosecuting attorney, until sentence has been imposed or the case is disposed of, whichever occurs earlier.

(b) The department of corrections or the sheriff as directed by the prosecuting attorney if the defendant is imprisoned.

Sec. 7. The court shall provide a waiting area for the victim separate from the defendant, defendant's relatives, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victim's contact with defendant, defendant's relatives, and defense witnesses during court proceedings.

Sec. 8. (1) Based upon the victim's reasonable apprehension of acts or threats of physical violence or intimidation by the defendant or at defendant's direction against the victim or the victim's immediate family,

the prosecutor may move that the victim or any other witness not be compelled to testify at trial for purposes of identifying the victim as to the victim's address, place of employment, or other personal identification without the victim's consent. A hearing on the motion shall be in camera.

(2) The address of the victim shall not be in the court file or ordinary court documents unless contained in a transcript of the trial or it is used to identify the place of the crime. The phone number of the victim shall not be in the court file or ordinary court documents except as contained in a transcript of the trial.

Sec. 9. (1) As provided in subsection (2), a speedy trial may be scheduled for any case in which the victim is averred by the prosecuting attorney to be either of the following:

(a) A victim of child abuse, including sexual abuse or any other assaultive crime.

(b) A victim of criminal sexual conduct in the first, second, or third degree or of an assault with intent to commit criminal sexual conduct involving penetration or to commit criminal sexual conduct in the second degree.

(2) The chief judge, upon motion of the prosecuting attorney for a speedy trial for a case described in subsection (1), shall set a hearing date within 10 days of the date of the motion. Notice shall be made pursuant to the Michigan court rules. If the motion is granted, the trial shall not be scheduled earlier than 20 days from the date of the hearing.

Sec. 10. Upon request of the victim, the prosecuting attorney shall confer with the victim prior to the selection of the jury and prior to the trial of the defendant.

Sec. 11. The victim has the right to be present throughout the entire trial of the defendant, unless the victim is going to be called as a witness. If the victim is going to be called as a witness, the court may, for good cause shown, order the victim to be sequestered until the victim first testifies.

Sec. 12. An employer or the employer's agent, who threatens to discharge or discipline or who discharges, disciplines, or causes to be discharged from employment or to be disciplined a victim because that victim is subpoenaed or requested by the prosecuting attorney to attend court for the purpose of giving testimony, is guilty of a misdemeanor, and may be punished for contempt of court.

Sec. 13. (1) The prosecuting attorney, upon and in accordance with the request of the victim, shall give to the victim notice of the following:

(a) The defendant's conviction.

(b) The crimes for which the defendant was convicted.

(c) The victim's right to make a written or oral impact statement for use in the preparation of a presentence investigation report concerning the defendant.

(d) The address and telephone number of the probation office which is to prepare the presentence investigation report.

(e) That a presentence investigation report and any statement of the victim included in the report will be made available to the defendant unless exempted from disclosure by the court.

(f) The victim's right to make an impact statement at sentencing.

(g) The time and place of the sentencing proceeding.

(2) The notice given by the prosecuting attorney to the victim must be given by any means reasonably calculated to give prompt actual notice.

(3) A notice given under subsection (1) shall inform the victim that his or her impact statement may include but shall not be limited to the following:

(a) An explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim.

(b) An explanation of the extent of any economic loss or property damage suffered by the victim.

(c) An opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage.

(d) The victim's recommendation for an appropriate sentence.

Sec. 14. The victim has the right to submit or make a written or oral impact statement to the probation officer for use by that officer in preparing a presentence investigation report concerning the defendant pursuant to section 14 of chapter XI of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 771.14 of the Michigan Compiled Laws. A victim's written statement shall, upon the victim's request, be included in the presentence investigation report.

Sec. 15. The victim shall have the right to appear and make an oral impact statement at the sentencing of the defendant.

Sec. 16. (1) For purposes of this section only, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime; and for purposes of subsections (2), (4), (7), (9), (10), (11), and (15), "victim" includes a sole proprietorship, partnership, or corporation.

(2) The court, when sentencing a defendant convicted of a crime, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim or victim's estate of the defendant's course of conduct which gives rise to the conviction.

(3) If the court does not order restitution, or orders only partial restitution under this section, the court shall state on the record the reasons for that action.

(4) If a crime results in damage to or loss or destruction of property of a victim of the offense, the order of restitution may require that the defendant do either of the following:

(a) Return the property to the owner of the property or to a person designated by the owner.

(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraphs (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

(i) The value of the property on the date of the damage, loss, or destruction.

(ii) The value of the property on the date of sentencing.

(5) If a crime results in physical or psychological injury to a victim, the order of restitution may require that the defendant do 1 or more of the following, as applicable:

(a) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.

(b) Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.

(c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the offense.

(d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family which has been incurred as a result of the offense.

(6) If a crime resulting in bodily injury also results in the death of a victim, the order of restitution may require that the defendant pay an amount equal to the cost of actual funeral and related services.

(7) Instead of restitution under subsections (4) to (6), if the victim or victim's estate consents, the order of restitution may require that the defendant make restitution in services in lieu of money, or make restitution to a person designated by the victim or victim's estate if that person provided services to the victim as a result of the crime.

(8) If the court orders restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

(9) Any order of restitution shall be as fair as possible to the victim or victim's estate without unduly complicating or prolonging the sentencing process.

(10) The court shall not order restitution with respect to a loss for which the victim or victim's estate has received or is to receive compensation, including insurance, except that the court may, in the interest of justice, order restitution to the crime victims compensation board or to any person who has compensated the victim or victim's estate for such a loss to the extent that the crime victims compensation board or the person paid the compensation. An order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person under that order is made.

(11) Any amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victims compensation board made after an order of restitution under this section.

(12) " " not otherwise provided by the court under this subsection, restitution shall be made immediately. However, the court may require that the defendant make restitution under this section within a specified period or in specified installments. The end of the period or the last installment shall not be later than the following:

(a) The end of the period of probation, if probation is ordered.

(b) Two years after the end of imprisonment or discharge from parole, whichever occurs later, if the court does not order probation.

(c) Three years after the date of sentencing in any other case.

(13) If the defendant is placed on probation or paroled, any restitution ordered under this section shall be a condition of that probation or parole. The court may revoke probation and the parole board may revoke parole if

the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the court or parole board shall consider the defendant's employment status, earning ability, financial resources, and the willfulness of the defendant's failure to pay and any other special circumstances that may have a bearing on the defendant's ability to pay.

(14) A defendant who is required to pay restitution and who is not in wilful default of the payment of the restitution, at any time, may petition the sentencing judge or his or her successor for a cancellation of any unpaid portion of restitution. If it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the defendant or his or her immediate family, the court may cancel all or part of the amount due in restitution or modify the method of payment.

(15) An order of restitution may be enforced by the prosecuting attorney or a victim or victim's estate named in the order to receive the restitution in the same manner as a judgment in a civil action.

(16) Notwithstanding any other provision of this section, a defendant shall not be imprisoned, jailed, or incarcerated for a violation of parole or probation, or otherwise, for failure to pay restitution as ordered under this section unless the court determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so.

Sec. 17. (1) The court, in determining whether to order restitution under section 16 and the amount of that restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources and earning ability of the defendant, the financial needs of the defendant and the defendant's dependents, and such other factors as the court considers appropriate.

(2) The court may order the probation officer to obtain information pertaining to the factors set forth in subsection (1). The probation officer shall include the information collected in the presentence investigation report or in a separate report, as the court directs.

(3) The court shall disclose to both the defendant and the prosecuting attorney all portions of the presentence or other report pertaining to the matters described in subsection (1).

(4) Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the earning ability of the defendant and the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and the defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

Sec. 18. (1) A person convicted of a crime shall not derive any profit from the sale of his or her recollections, thoughts, and feelings with regard to the offense committed by that person until the victim receives any restitution or compensation ordered for him or her against the defendant and expenses of incarceration are recovered as provided in subsection (3) and until the escrow account created under subsection (2) is terminated under subsection (4).

(2) Upon the conviction of a defendant for a crime involving a victim, and after notice to any interested party, an attorney for the county in which the conviction occurred or the attorney general may petition the court in which the conviction occurred to order that defendant forfeit all or any part of proceeds received or to be received by the defendant, or the defendant's representatives or assigns, from contracts relating to the depiction of the crime or the defendant's recollections, thoughts, or feelings about the crime, in books, magazines, media entertainment, or live entertainment. The proceeds shall be held in escrow for a period of not more than 5 years.

(3) During the existence of the escrow account, proceeds in the account shall be distributed in the following priority for the following purposes:

(a) To satisfy an order of restitution entered under sections 16 and 17.

(b) To satisfy any civil judgment in favor of the victim against that defendant.

(c) To satisfy any reimbursement ordered under the prisoner reimbursement to the county act, Act No. 113 of the Public Acts of 1984, being sections 801.81 to 801.83 of the Michigan Compiled Laws, or ordered under the state correctional facility reimbursement act, Act No. 253 of the Public Acts of 1935, being sections 800.401 to 800.406 of the Michigan Compiled Laws.

(4) Fifty percent of the balance remaining in the escrow account at the end of the escrow period shall be payable to the defendant and the remaining 50% of the balance shall be payable to the state general fund for use of the crime victims compensation board to pay compensation claims.

Sec. 19. (1) Upon the written request of a victim of a crime, the sheriff or the department of corrections shall mail to the victim the following, as applicable, about a prisoner who has been sentenced to imprisonment under the jurisdiction of the sheriff or the department for commission of that crime:

(a) Within 30 days after the request, notice of the sheriff's calculation of the earliest release date of the prisoner, or the department's calculation of the earliest parole eligibility date of the prisoner, with all potential good time or disciplinary credits considered if the sentence of imprisonment exceeds 90 days. The victim may request 1-time only notice of the calculation described in this subdivision.

(b) Notice of the transfer or pending transfer of the prisoner to a minimum security facility and the address of that facility.

(c) Notice of the release or pending release of the prisoner in a community residential program, under extended furlough, or any other transfer of a prisoner to community status.

(d) Notice of any reduction in the minimum sentence resulting under the prison overcrowding emergency powers act, Act No. 519 of the Public Acts of 1980, being sections 800.71 to 800.79 of the Michigan Compiled Laws.

(e) Notice of the escape of the person accused, convicted, or imprisoned for committing a crime against the victim, as provided in section 20.

(f) Notice of the victim's right to address or submit a written statement for consideration by a parole board member or a member of any other panel having authority over the prisoner's release on parole, as provided in section 21.

(g) Notice of the decision of the parole board, or any other panel having authority over the prisoner's release on parole, after a parole review, as provided in section 21(3).

(h) Notice of the release of a prisoner 90 days before the date of the prisoner's discharge from prison where practical, unless the notice has been otherwise provided under this act.

(i) Notice of a public hearing pursuant to section 44 of Act No. 292 of the Public Acts of 1953, being sections 791.244 of the Michigan Compiled Laws, regarding a reprieve, commutation, or pardon of the prisoner's sentence by the governor.

(2) A victim's address and telephone number maintained by a sheriff or the department of corrections pursuant to a request for notice under subsection (1) shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 20. (1) As provided in subsection (2) or (3), a victim who requests notice of the escape and the prosecuting attorney who is prosecuting or has prosecuted the crime for which the person is detained or under sentence shall be given immediate notice of the escape of the person accused, convicted, or imprisoned for committing a crime against the victim. The notice shall be given by any means reasonably calculated to give prompt actual notice.

(2) If the escape occurs before the sentence is executed or before the defendant is delivered to the department of corrections, the chief law enforcement officer of the agency in charge of the person's detention shall give notice of the escape to the prosecuting attorney, who shall then give notice of the escape to a victim who requested notice.

(3) If the defendant is confined pursuant to a sentence, the notice shall be given by the chief administrator of the place in which the prisoner is confined.

Sec. 21. (1) A victim shall have the right to address or submit a written statement for consideration by a parole board member or a member of any other panel having authority over the prisoner's release on parole.

(2) Not less than 30 days before a review of the prisoner's release, a victim who has requested notice under section 19(2)(f) shall be given written notice by the department of corrections informing the victim of the pending review and of victims' rights under this section. The victim, at his or her own expense, may be represented by counsel at the review.

(3) A victim shall receive notice of the decision of the board or panel and, if applicable, notice of the date of the prisoner's release on parole. Notice shall be mailed within a reasonable time after the board or panel reaches its decision but not later than 14 days after the board or panel has reached its decision.

Sec. 22. Upon the request of a victim, the prosecuting attorney shall, within 30 days of the final disposition of the case, notify the victim in writing of the final disposition of the case.

Sec. 23. Nothing in this act shall be construed as creating a cause of action for money damages against the state, a county, a municipality or any of their agencies, or instrumentalities, or employees.

Sec. 24. The failure to provide a right, privilege, or notice to a victim under this act shall not be grounds for the defendant to seek to have the conviction or sentence set aside.

Sec. 25. (1) This act shall not take effect until the expiration of 90 days from its enactment into law.
(2) This act shall apply only to crimes committed on or after the effective date of this act.

Section 2. This act shall not take effect unless House Bill No. 4370 of the 83rd Legislature is enacted into law.
This act is ordered to take immediate effect.

David H. Evans

Clerk of the House of Representatives.

William C. Londer

Secretary of the Senate.

Approved

.....
Governor.



NOTES TO DECISIONS

This section is not grant of authority to court to determine title to property that is levied upon; it only deals with the circumstances under which property levied upon may be retained after a claim

of ownership or the right of possession by a third party. *Keltner v. Curtis*, Sup. Ct. Op. No. 2913 (File No. S-162), 695 P.2d 1076 (1985).

Sec. 09.35.160. Postponement of sale.

NOTES TO DECISIONS

This statute's requirements do not apply to nonjudicial deed of trust foreclosure proceedings. *Ostrow v. Higgins*,

Sup. Ct. Op. No. 3085 (File No. S-1004), 722 P.2d 936 (1986).

Sec. 09.35.180. Confirmation of sale or resale.

NOTES TO DECISIONS

II. Procedure.

II. PROCEDURE.

Civil Rule 60(b) motion not prohibited by subsection (d). — The court rejected the contention that they had judicially repealed subsection (d) of this section, which applies to "any other action or proceeding" and thus precludes collateral

but not direct attacks on orders of confirmation; since a Civil Rule 60(b) motion is a direct attack it is not prohibited by subsection (d) of this section. *Law Offices of Murphy L. Clark v. Altman*, Sup. Ct. Op. No. 2811 (File No. 6501), 680 P.2d 1125 (1984).

Sec. 09.35.250. Redemption by judgment debtor or successor.

NOTES TO DECISIONS

Quoted in *Law Offices of Murphy L. Clark v. Altman*, Sup. Ct. Op. No. 2811 (File No. 6501), 680 P.2d 1125 (1984).

Cited in *Moening v. Alaska Mut. Bank*, Sup. Ct. Op. No. 3274 (File No. S-1980), P.2d (1988).

Sec. 09.35.260. Conveyance of property.

NOTES TO DECISIONS

Quoted in *Law Offices of Murphy L. Clark v. Altman*, Sup. Ct. Op. No. 2811 (File No. 6501), 680 P.2d 1125 (1984).

purchaser, from the time of sale until a resale or a redemption, or a redemptioner, from the time of redemption until another redemption, is entitled to the possession of the property purchased or redeemed. Where the property is in the possession of a tenant, the purchaser or redemptioner is entitled to receive the rents of the property or the value of the use and occupation of the property. (§ 15.31 ch 101 SLA 1962)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Chapter 38. Alaska Exemptions Act.

Section

- 10. Homestead exemption
- 16. Property exempt without limitation
- 17. Exemption of retirement plan interests and payments
- 20. Exemptions of personal property subject to value limitations
- 25. Exemption of unmatured life insurance and annuity contracts

Section

- 30. Exemption of earnings and liquid assets
- 60. Increased exemption amount
- 55. Bankruptcy proceedings
- 115. Adjustment of dollar amounts

Sec. 09.38.010. Homestead exemption. (a) An individual is entitled to an exemption as a homestead of the individual's interest in property in this state used as the principal residence of the individual or the dependents of the individual, but the value of the homestead exemption may not exceed \$54,000.

(b) If property owned by the entirety or in common is used by one or more individual owners or their dependents as their principal residence, each owner is entitled to a homestead exemption of that owner's interest in the property as provided in (a) of this section. The aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed \$54,000. If there are multiple owners of property exempt as a homestead, the value of the exemption of each individual owner may not exceed the individual owner's pro rata portion of \$54,000.

(c) If property that includes a homestead is sold under an execution, the sale becomes effective upon confirmation by order of the court. The court shall enter the order of confirmation unless, within 60 days after the sale, the individual repurchases the property under this section or the court extends the time for confirmation upon the filing of a timely motion by a party in interest. The individual may repurchase property, including that individual's homestead, at a sale on execution before confirmation by paying into court the costs of the sale plus the lesser of either (1) the difference between the highest bid and the amount of the exemption in the property, or (2) the amount of the

right under this subsection, the clerk of the court shall first permit all amount determined to be exempt to the individual from the proceeds of sale and the balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

(d) Upon entry of the order of confirmation under (c) of this section and expiration of the time period for repurchase, the clerk may execute a deed to the property and when delivered it shall be sufficient to convey all title of the individual in the premises sold to the purchaser at the sale. (§ 2 ch 62 SLA 1982; am §§ 1, 2 ch 135 SLA 1988)

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Effect of amendments. — The 1988 amendment substituted "the individual"

for "that individual" twice in subsection (a) and once in the last sentence in subsection (b), and "\$54,000" for "\$27,000" in subsection (a) and in the last two sentences in subsection (b).

NOTES TO DECISIONS

Avoidance of judicial lien to extent of impairment of homestead exemption. — Section 522(f) of the Bankruptcy Code provides that ". . . the debtor may avoid the fixing of a [judicial] lien on . . . property to the extent that such lien impairs an exemption . . ." To determine whether there is such an impairment of a homestead exemption, the following steps are taken by the court: (1) all liens are ranked in order of priority (and equity, if any) to the extent of the value of the prop-

erty; (2) the gross amount of the homestead exemption is subtracted from the value of the property; and (3) from the remainder left, each lien is subtracted, one at a time, beginning with the most senior lien, until a judicial lien is reached. Then the judicial lien is subtracted. To the extent that all or any portion of the judicial lien exceeds the remainder derived in (2), above, it is voidable. In re Duncan, 43 Bankr. 833 (Bankr. D. Alaska 1984).

Sec. 09.38.015. Property exempt without limitation. (a) An individual is entitled to exemption of the following property:

- (1) a burial plot for the individual and the individual's family;
- (2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;
- (3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;
- (4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction;
- (5) benefits paid or payable as a longevity bonus under AS 47.45;
- (6) compensation or benefits paid or payable and exempt under federal law;
- (7) liquor licenses granted under AS 04;
- (8) limited entry permits granted under AS 16.43, except as provided in that chapter.

illness, amounts held in the teachers' or public employees retirement system, and child support collections made by the child support enforcement agency are exempt.

(c) Property of the state, a general law or home rule municipality, the Alaska State Building Authority, the Alaska Municipal Bond Bank Authority, or other state public corporation is exempt.

(d) Real property held by a cemetery association established under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres is exempt. (§ 2 ch 62 SLA 1982)

Cross references. — For the applicability of the exemptions from execution in income assignment orders for child support, see AS 09.65.132(g); for provisions exempting teachers' retirement salaries and certain other amounts from garnishment, execution or levy, see AS 14.25.200; for provisions exempting unemployment compensation benefits from levy to enforce collection of a debt, see AS 23.20.405(e); for provisions exempting workers' compensation benefits from levy to enforce the collection of a debt, see AS 23.30.160(b); for provisions exempting amounts held in the public employee pension fund and public employee retirement

benefits from levy to enforce the collection of a debt, see AS 39.35.505; for provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47.45.120(b); for applicability of the exemptions from execution in proceedings to enforce payment of child support, see AS 47.23.250.

Editor's notes. — This section is set out to reflect the change in the name of the former "Alaska State Housing Authority" to the "Alaska State Building Authority" made by § 1, ch. 103, SLA 1986. Implementation of this legislative action is made by the revisor of statutes under AS 01.05.031.

NOTES TO DECISIONS

Cited in Municipality of Anchorage v. Baugh Constr. & Eng'g Co., Sup. Ct. Op. No. 3083 (File Nos. S-699, S-831), P.2d (1986).

Sec. 09.38.017. Exemption of retirement plan interests and payments. (a) In addition to the exemption under AS 09.38.015(b), the following are exempt from a claim of an individual's creditor:

- (1) the interest of the individual in a retirement plan; and
- (2) the money or other assets payable to the individual from a retirement plan.

(b) The exemptions provided by (a) of this section do not apply to a contribution made by an individual to a retirement plan within 120 days before the individual files for bankruptcy.

(c) The exemptions provided by (a) of this section do not prevent the payment of benefits under a retirement plan to an alternate payee under a qualified domestic relations order. In this subsection, "qualified domestic relations order" has the meaning given in 26 U.S.C. 414(p).

(d) A retirement plan exempt from claims under (a) of this section is conclusively presumed to be a spendthrift trust under this section.

- (2) "individual" means an individual who is a participant in, a beneficiary of, or an alternate payee of a retirement plan;
- (3) "retirement plan" means a retirement plan that is qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 408, or 26 U.S.C. 409 (Internal Revenue Code). (§ 3 ch 135 SLA 1988)

Editor's notes. — Section 11, ch. 135, SLA 1988 provides that this section "does not apply to the assets of a bankruptcy estate in a proceeding filed under 11 U.S.C. (Bankruptcy) before September 6, 1988."

Sec. 09.38.020. Exemptions of personal property subject to value limitations. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$3,000 chosen by the individual from the following categories of property:

- (1) household goods and wearing apparel reasonably necessary for one household;
 - (2) if reasonably held for the personal use of the individual or a dependent, books and musical instruments; and
 - (3) family portraits and heirlooms of particular sentimental value to the individual.
- (b) An individual is entitled to exemption of jewelry, not exceeding \$1,000 in aggregate value, if held for the personal use of the individual or a dependent.
- (c) An individual is entitled to exemption, not exceeding \$2,800 in aggregate value, of implements, professional books, and tools of the trade.
- (d) An individual is entitled to the exemption of pets to the extent of a value not exceeding \$1,000.
- (e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$3,000 if the full value of the motor vehicle does not exceed \$20,000. (§ 2 ch 62 SLA 1982; am § 4 ch 135 SLA 1988)

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Effect of amendments. — The 1988 amendment substituted "\$3,000" for "\$1,500" in the introductory language of subsection (a) and in subsection (e), "\$1,000" for "\$500" in subsections (b) and (d), "\$2,800" for "\$1,400" in subsection (c), and "\$20,000" for "\$10,000" in subsection (e).

Sec. 09.38.025. Exemption of unmaturing life insurance and annuity contracts. (a) Except as provided in this section or AS 09.38.017, an individual is entitled to exemption of unmaturing life insurance and annuity contracts owned by the individual. If the contracts have accrued dividends and loan values available to the individual aggregating more than \$10,000, a creditor may obtain a court

amount of the accrued dividends and loan values in excess of \$10,000 or the amount of the creditor's claim, whichever is less.

(b) A judgment creditor or other claimant of an insurer may not levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. Deposits under AS 21.09.270 may be levied upon if provided in the order of the director of insurance, Department of Commerce and Economic Development, under which the deposit is made. (§ 2 ch 62 SLA 1982; am § 5 ch 135 SLA 1988)

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Effect of amendments. — The 1988 amendment, in subsection (a), inserted "or AS 09.38.017" in the first sentence and substituted "\$10,000" for "\$5,000" twice in the second sentence.

Sec. 09.38.030. Exemption of earnings and liquid assets.

(a) Except as provided in (b) and (c) of this section and AS 09.38.050, an individual debtor is entitled to an exemption of the individual debtor's weekly net earnings not to exceed \$350. The weekly net earnings of an individual are determined by subtracting from the weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an individual paid on a monthly basis are determined by subtracting from the monthly gross earnings of the individual all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an individual paid on a semi-monthly basis are determined by subtracting from the semi-monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 2.17.

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$1,400, except as provided in AS 09.38.050. The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

(c) A creditor may levy upon earnings exempt under (a) and (b) of this section if the creditor's claim is

- (1) enforceable against exempt property under AS 09.38.065(a)(1); or
 - (2) enforceable under an order of a court of bankruptcy under 11 U.S.C. 1301 — 1330 (Bankruptcy Reform Act of 1978).
- (d) If the individual debtor is a nonresident, the limitations on garnishment imposed under 15 U.S.C. 1673 apply.
- (e) The following property, unless exempt without limitation under AS 09.38.015 or 09.38.017, upon receipt by and while it is in the

cash, or other liquid assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;

(4) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service. (§ 2 ch 62 SLA 1982; am § 36 ch 6 SLA 1984; am §§ 6 — 8 ch 135 SLA 1988)

Effect of amendments. — The 1984 amendment changed the federal statutory reference in paragraph (2) of subsection (c).

The 1988 amendment substituted

"\$350" for "\$175" in the first sentence in subsection (a) and "\$1,400" for "\$700" in the first sentence in subsection (b), and inserted "or 09.38.017" in the introductory language of subsection (c).

Sec. 09.38.050. Increased exemption amount. (a) An individual debtor who is in possession of money that was obtained as payment for an injury or disability may request the court to order an increase in the exemption amounts under AS 09.38.030. The individual debtor shall submit affidavits or offer testimony in support of the request as required by the court. The court shall determine the exemption amount after consideration of the individual's responsibilities and all the present and anticipated property and income of the individual, including that which is exempt.

(b) The exemption amounts under AS 09.38.030 may be increased when the individual submits an affidavit, under penalty of perjury, stating that the individual's earnings alone support the individual's household; by so doing, the maximum part of the individual's aggregate disposable earnings for any week subject to execution may not exceed the amount by which the individual's disposable earnings for that week exceed \$550, or, if the individual is claiming an exemption for cash or other liquid assets under AS 09.38.030(b), a maximum amount of \$2,200 available in a month is exempt. (§ 2 ch 62 SLA 1982; am § 9 ch 135 SLA 1988)

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Effect of amendments. — The 1988

amendment substituted "\$550" for "\$275" and "\$2,200 available in a" for "\$1,100 available in any" in subsection (b).

09.38.015(a), 09.38.017, 09.38.020, 09.38.025 and 09.38.030 apply. (§ 2 ch 62 SLA 1982; am § 10 ch 135 SLA 1988)

Effect of amendments. — The 1988 amendment substituted "11 U.S.C. (Bankruptcy)" for "the Bankruptcy Act (11 U.S.C.)" and inserted "09.38.017."

Sec. 09.38.085. Claims enforceable against exempt property.

NOTES TO DECISIONS

Execution on limited entry permit. — Expressions of legislative intent in combination with the clear provisions of the 1982 Exemptions Act are persuasive evidence that the legislature meant what it said in permitting a parent with past due child support claims to execute against an otherwise exempt limited entry permit. *Anderson v. Anderson*, Sup. Ct. Op. No. 3172 (File No. S-1320), 736 P.2d 320 (1987).

Sec. 09.38.115. Adjustment of dollar amounts. (a) The dollar amounts in this chapter change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of the year in which this section becomes effective is the reference base index.

(b) The dollar amounts change on October 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for January of that year and the most recent index used to change the exemption amount, is 10 percent or more, but

(1) the portion of the percentage change in the index in excess of a multiple of 10 percent is disregarded and the dollar amounts change only in multiples of 10 percent of the amounts appearing in this chapter on August 26, 1982; and

(2) the dollar amounts do not change if the amounts required by this section are those currently in effect as a result of earlier application of this section.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The Department of Labor shall adopt a regulation announcing

6-0188R
Chenoweth
2/15/89

Original sponsors: Donley, Gruenberg,
Boucher, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 36 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes, the rights, entitlements,
7 and services that are due to victims of crime, and to
8 service of process on prisoners; redefining the term
9 'crime against a person'; and amending Rules 32 and
10 35 of the Alaska Rules of Criminal Procedure."

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

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

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

15 Sec. 09.05.050. SERVICE OF PROCESS ON STATE PRISONERS. (a) In
16 a civil action to which a person committed to the custody of the
17 commissioner of corrections is a party or witness, service of process
18 shall be made by delivering a copy of the summons and the complaint or
19 pleadings, together with a form for affidavit of proof of service, to
20 the shift supervisor of the correctional facility in which the person
21 is housed. The shift supervisor shall

22 (1) immediately hand deliver the summons and complaint or
23 pleadings to the person whose name appears on the summons; and

24 (2) promptly complete the affidavit of proof of service on
25 the form provided and return it to the party requesting service of
26 process.

27 (b) A party requesting service of process under this section may
28 locate a person committed to the custody of the commissioner of cor-
29 rections by contacting the chief classification officer of the

Department of Corrections during that officer's regular hours of work.

* Sec. 3. AS 12.47 is amended by adding a new section to read:

Sec. 12.47.095. NOTICE TO VICTIMS. (a) If an offender has been committed to the custody of the commissioner of health and social services under AS 12.47.090, the victim of that crime is entitled to notice of a pending change in the status of the offender. The commissioner of health and social services shall give notice as required by this section if

(1) the offender has been continued in commitment following expiration of the maximum term of imprisonment under AS 12.47.090(f) and the commissioner gives notice of release of the offender;

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

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

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

(b) If a victim desires notice under this section, the victim shall maintain a current, valid mailing address on file with the commissioner of health and social services. The commissioner shall send the notice required by this section to the victim's last known address. The victim's address may not be disclosed to the offender or offender's attorney.

(c) The commissioner of health and social services is required to give notice of a change in the status of an offender under this section to any victim who has requested notice.

(d) If more than one person who qualifies as a victim under AS 12.55.185 desires notice, the commissioner of health and social services shall designate one person for purposes of receiving any

notice required and exercising the rights granted by this section.

(e) In this section

(1) "offender" has the meaning given in AS 12.61.020;

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

* Sec. 4. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.023. PARTICIPATION BY VICTIM IN SENTENCING. (a) If a victim requests, the prosecuting attorney shall provide the victim with a copy of the following portions of the presentence report:

(1) the summary of the offense prepared by the Department of Corrections;

(2) the defendant's version of the offense;

(3) all statements and summaries of statements of the victim; and

(4) the sentence recommendation of the Department of Corrections.

(b) A victim may submit to the sentencing court a written statement that the victim believes is relevant to the sentencing decision.

* Sec. 5. AS 12.55.088 is amended by adding new subsections to read:

(d) A victim has the right to comment in writing to the court on a motion to modify or reduce a sentence filed by the person who perpetrated the offense against the victim.

(e) If a motion is filed to modify or reduce a sentence by a defendant who perpetrated a crime against a person or arson in the first degree, the court shall, if feasible, send a copy of the motion to the Department of Corrections sufficiently in advance of any scheduled hearing or briefing deadline to enable the department to notify the victim of that crime. If that victim has earlier requested to be notified, the Department of Corrections shall send the victim a copy of the motion and inform the person of that person's rights under

1 this section, the deadline for receipt of written comments, the hear-
2 ing date, and the court's address.

3 (f) The court shall provide copies of the victim's comments to
4 the prosecuting attorney, the person filing the motion to reduce or
5 modify a sentence, and that person's attorney.

6 (g) In deciding whether to modify or reduce a sentence, the
7 court shall consider the victim's comments, when relevant, and any
8 response by the prosecuting attorney and the person filing the motion.

9 (h) If a victim desires notice under this section, the victim
10 shall maintain a current, valid mailing address on file with the
11 commissioner of corrections. The commissioner shall send the notice
12 to the victim's last known address. The victim's address may not be
13 disclosed to the offender or to the offender's attorney.

14 * Sec. 6. AS 12.55 is amended by adding a new section to read:

15 Sec. 12.55.172. DESIGNATION OF REPRESENTATIVE. If more than one
16 person who qualifies as a victim under AS 12.55.185 desires notice
17 under AS 12.55.088, the prosecuting attorney shall designate one
18 person to represent all victims for purposes of receiving the notice
19 required and exercising the rights granted under this chapter.

20 * Sec. 7. AS 12.55.185 is repealed and reenacted to read:

21 Sec. 12.55.185. DEFINITIONS. In this chapter, unless the con-
22 text requires otherwise,

23 (1) "crime against a person" has the meaning given in
24 AS 33.30.901;

25 (2) "dangerous instrument" has the meaning given in AS 11.-
26 81.900;

27 (3) "firearm" has the meaning given in AS 11.81.900;

28 (4) "first felony conviction" means that the defendant has
29 not been previously convicted of a felony;

1 (5) "judicial officer" has the meaning given in AS 11.56.-
2 900;

3 (6) "pecuniary gain" means the amount of money or value of
4 property at the time of commission of the offense derived by the
5 defendant from the commission of the offense, less the amount of money
6 or value of property returned to the victim of the offense or seized
7 by or surrendered to lawful authority before sentence is imposed;

8 (7) "second felony conviction" means that the defendant
9 previously has been convicted of a felony;

10 (8) "serious physical injury" has the meaning given in
11 AS 11.81.900;

12 (9) "third felony conviction" means that the defendant has
13 been at least twice previously convicted of a felony;

14 (10) "unconditional discharge" means that a defendant is
15 released from all disability arising under a sentence, including
16 probation and parole;

17 (11) "victim" means

18 (A) a person against whom an offense has been perpe-
19 trated;

20 (B) one of the following, not the perpetrator, if the
21 person specified in (A) of this paragraph is a minor, incompe-
22 tent, or incapacitated:

23 (i) an individual living in a spousal relation-
24 ship with the person specified in (A) of this paragraph; or

25 (ii) a parent, adult child, guardian, or custodian
26 of the person;

27 (C) one of the following, not the perpetrator, if the
28 person specified in (A) of this paragraph is dead:

29 (i) a person living in a spousal relationship

1 with the deceased before the deceased died;

2 (ii) an adult child, parent, brother, sister,
3 grandparent or grandchild of the deceased; or

4 (iii) any other interested person, as may be des-
5 igned by a person having authority in law to do so.

6 * Sec. 8. AS 12.61.010 is amended to read:

7 Sec. 12.61.010. RIGHTS OF CRIME VICTIMS. (a) Victims of crimes
8 have the following rights:

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

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

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

19 (4) the right to be informed of the procedure to be fol-
20 lowed to apply for and receive any [VICTIM] compensation under AS 18.-
21 67;

22 (5) at the request of the prosecution or a law enforcement
23 agency, the right to cooperate with the criminal justice process
24 without loss of pay and other employee benefits except as authorized
25 by AS 12.61.017 and without interference in any form by the employer
26 of the victim of crime; [AND]

27 (6) the right to obtain access to immediate medical assis-
28 tance and not to be detained for an unreasonable length of time by a
29 law enforcement agency before having medical assistance administered;

1 however, an employee of the law enforcement agency may, if necessary,
2 accompany the person to a medical facility to question the person
3 about the criminal incident if the questioning does not hinder the
4 administration of medical assistance;

5 (7) the right to make a written or oral statement for use
6 in preparation of the presentence report of a felony defendant;

7 (8) if the crime for which the defendant was convicted was
8 a felony or a domestic violence assault, the right to appear person-
9 ally at the defendant's sentencing hearing to present a written or
10 oral statement; and

11 (9) the right to be informed by the prosecuting attorney,
12 at any time after the defendant's conviction, about the complete
13 record of the defendant's convictions.

14 (b) Law [VICTIMS' EMPLOYERS, LAW] enforcement agencies, prosecu-
15 tors, and the courts shall make every reasonable effort to ensure that
16 victims of crimes have the rights set out in (a) of this section.
17 However, a failure to ensure these rights does not give rise to a
18 separate cause of action against [VICTIMS' EMPLOYERS,] law enforcement
19 agencies, other agencies of the state, or a political subdivision of
20 the state.

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

22 Sec. 12.61.015. DUTIES OF PROSECUTING ATTORNEY. (a) If a
23 victim of a felony or a domestic violence assault requests, the pros-
24 ecuting attorney shall make a reasonable effort to

25 (1) confer with the person against whom the offense has
26 been perpetrated about that person's testimony before the defendant's
27 trial;

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

1 (A) of the defendant's conviction and the crimes of
2 which the defendant was convicted;

3 (B) of the victim's right in a case that is a felony
4 to make a written or oral statement for use in preparation of the
5 defendant's presentence report, and to appear personally at the
6 defendant's sentencing hearing to present a written or oral
7 statement;

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

10 (D) of the time and place of the sentencing proceed-
11 ing;

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

14 (b) The notice given under (a)(2) of this section must inform
15 the victim that the statement of the victim may contain any relevant
16 information including

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

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

21 (3) an opinion of the need for and extent of restitution
22 and whether the victim has applied for or received compensation for
23 loss or damage; and

24 (4) the recommendation of the victim for an appropriate
25 sentence.

26 (c) The state and the prosecuting attorney may not be held
27 liable in damages for any failure to comply with the requirements of
28 this section.

29 Sec. 12.61.017. INTERFERENCE BY VICTIM'S EMPLOYER. (a) An

1 employer may not penalize or threaten to penalize a victim because the
2 victim is subpoenaed or requested by the prosecuting attorney to
3 attend a court proceeding for the purpose of giving testimony. In
4 this section, "penalize" means to take action affecting the employment
5 status, wages, and benefits payable to the victim, including:

- 6 (1) demotion or suspension;
- 7 (2) dismissal from employment; and
- 8 (3) loss of pay or benefits, except pay and benefits that
9 are directly attributable to the victim's absence from employment to
10 attend the court proceeding.

11 (b) A person who violates (a) of this section is guilty of a
12 violation.

13 (c) A victim who suffers a pecuniary loss as a result of an
14 employer's act prohibited by this section may bring a civil action to
15 recover actual damages and punitive damages of three times the actual
16 damages sustained.

17 * Sec. 10. AS 12.61 is amended by adding a new section to read:

18 Sec. 12.61.030. DESIGNATION OF REPRESENTATIVE. If more than one
19 person who qualifies as a victim under AS 12.55.185 makes a request
20 under this chapter, the prosecuting attorney shall designate one
21 person for purposes of receiving the notice required and exercising
22 the rights granted under this chapter.

23 * Sec. 11. AS 12.61 is amended by adding a new section to read:

24 Sec. 12.61.900. DEFINITIONS. In this chapter
25 (1) "domestic violence assault" means an assault under
26 AS 11.41.200 - 11.41.230 or 11.41.410 - 11.41.425 constituting a
27 domestic violence offense under AS 25.35.060;

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

29 * Sec. 12. AS 33.16.120(a) is repealed and reenacted to read:

1 (a) If the victim of a crime against a person or arson in the
2 first degree requests notice of a scheduled hearing to review or con-
3 sider discretionary parole for a prisoner convicted of that crime, the
4 board shall send notice of the hearing to the victim at least 30 days
5 before the hearing. The notice must be accompanied by a copy of the
6 prisoner's application for parole submitted under AS 33.16.130(a).
7 However, the copy of the application sent to the victim may not
8 include the prisoner's proposed residence and employment addresses.

9 * Sec. 13. AS 33.16.120(b) is repealed and reenacted to read:

10 (b) A victim who requests notice under this section shall main-
11 tain a current, valid mailing address on file with the board. The
12 board shall send the notice required by this section to the last known
13 address of the victim. The victim's address may not be disclosed to
14 the prisoner or the prisoner's attorney.

15 * Sec. 14. AS 33.16.120(c) is amended to read:

16 (c) The victim has a right to attend meetings of the parole
17 board in which the status of the prisoner convicted of the crime
18 against that victim is officially considered and to comment, in writ-
19 ing or in person, on the proposed action of the board. Copies of any
20 written [THE] comments shall be provided to the prisoner and the
21 prisoner's attorney before action by the board.

22 * Sec. 15. AS 33.16.120(e) is repealed and reenacted to read:

23 (e) If the victim requests, the board shall make every reason-
24 able effort to notify the victim as soon as practicable in writing of
25 its decision to grant or deny discretionary parole or to release the
26 prisoner under AS 33.16.010(c). The notice under this subsection must
27 include the expected date of the prisoner's release, the geographic
28 area in which the prisoner is required to reside, and other pertinent
29 information concerning the prisoner's conditions of parole that may

affect the victim.

* Sec. 16. AS 33.16.150(b) is amended to read:

(b) The board may require as a condition of discretionary or mandatory parole that a prisoner released on parole

- (1) meet family obligations;
- (2) pursue employment, education, counseling, or training;
- (3) remain within stated geographic limits unless written permission to depart from the stated limits is granted the parolee;
- (4) report upon release to the parole officer assigned to the parolee;
- (5) report as required to the parole officer assigned to the parolee;
- (6) reside at a stated place and notify the board of any change in place of residence;
- (7) not possess or control firearms or other dangerous weapons;
- (8) refrain from possessing or consuming alcoholic beverages;
- (9) submit to reasonable searches and seizures by a parole officer, or a peace officer acting under the direction of a parole officer;
- (10) submit to appropriate medical, mental health, or controlled substance or alcohol examination, treatment, or counseling;
- (11) submit to periodic examinations designed to detect the use of alcohol or controlled substances;
- (12) make restitution ordered by the court [TO A VICTIM OF THE PRISONER'S CRIME,] according to a schedule established by the board;
- (13) refrain from opening, maintaining, or using a checking

account or charge account;

1
2 (14) refrain from entering into a contract other than a
3 prenuptial contract or a marriage contract;

4 (15) refrain from operating a motor vehicle;

5 (16) refrain from entering an establishment where alcoholic
6 beverages are served, sold, or otherwise dispensed;

7 (17) refrain from participating in any other activity or
8 associating with any other person that the board determines is rea-
9 sonably likely to diminish the rehabilitative goals of parole, or that
10 may endanger the public.

11 * Sec. 17. AS 33.16 is amended by adding a new section to read:

12 Sec. 33.16.260. DESIGNATION OF REPRESENTATIVE. If more than one
13 person who qualifies as a victim under AS 12.55.185 requests notice
14 under this chapter, the commissioner shall designate one person for
15 purposes of receiving the notice required and exercising the rights
16 granted by this chapter.

17 * Sec. 18. AS 33.20.080 is amended to read:

18 Sec. 33.20.080. BOARD OF PAROLE TO INVESTIGATE APPLICATIONS FOR
19 EXECUTIVE CLEMENCY. The governor may refer applications for executive
20 clemency to the board of parole. The board shall investigate each
21 case and submit to the governor a report of the investigation, to-
22 gether with all other information the board has regarding the appli-
23 cant. When the report or investigation is submitted, the board shall
24 also transmit to the governor the comments it has received under (b)
25 of this section.

26 * Sec. 19. AS 33.20.080 is amended by adding new subsections to read:

27 (b) If requested by the victim of a crime against a person or
28 arson in the first degree, the board shall send notice of an applica-
29 tion for executive clemency submitted by the state prisoner who was

convicted of that crime. The victim may comment in writing to the board on the application for executive clemency.

(c) If the victim desires notice under (b) of this section, the victim shall maintain a current, valid mailing address on file with the board. The board shall send the notice required under this section to the victim's last known address. The victim's address may not be disclosed to the applicant for executive clemency or the applicant's attorney.

(d) In this section,

(1) "crime against a person" has the meaning given in AS 33.30.901;

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

* Sec. 20. AS 33.30 is amended by adding a new section to read:

Sec. 33.30.013. COMMISSIONER TO NOTIFY VICTIMS. (a) The commissioner shall notify the victim if the offender

- (1) escapes from custody;
- (2) is released to the community on a furlough; or
- (3) is released on an early release program.

(b) The commissioner is required to give notice of a change in the status of an offender under this section only if the victim has requested notice of the change.

(c) A victim who has requested notice under (b) of this section shall maintain a current, valid mailing address on file with the commissioner. The commissioner shall send the notice from the department required by this section to the victim's last known address. The victim's address may not be disclosed to the offender or the offender's attorney.

(d) The state may not be held liable in damages for the failure of the commissioner to comply with the requirements of this section.

1 * Sec. 21. AS 33.30.111(f) is repealed and reenacted to read:

2 (f) If the commissioner considers a prisoner convicted of a
3 crime against a person or arson in the first degree for a prerelease
4 furlough and the victim has requested notice under AS 33.30.013, the
5 commissioner shall send notice of intent to consider the prisoner for
6 a prerelease furlough to the victim. The victim may comment in writ-
7 ing on the commissioner's intent to release the prisoner on prerelease
8 furlough status. The commissioner shall consider the victim's com-
9 ments before making a final decision to release a prisoner on a pre-
10 release furlough. The commissioner shall make a reasonable effort to
11 notify the victim of an intent to release the prisoner on a prerelease
12 furlough. The notice must contain the expected date of the prisoner's
13 release, the geographic area in which the prisoner will reside, and
14 other pertinent information concerning the prisoner's release that may
15 affect the victim.

16 * Sec. 22. AS 33.30 is amended by adding a new section to read:

17 Sec. 33.30.292. DESIGNATION OF REPRESENTATIVE. If more than one
18 person who qualifies as a victim under AS 12.55.185 requests notice
19 under this chapter, the commissioner shall designate one person for
20 purposes of receiving the notice required and of exercising the rights
21 granted by this chapter.

22 * Sec. 23. AS 33.30.901(6) is amended to read:

23 (6) "crime against a person" means a crime as set out in
24 AS 11.41, [EXCEPT CUSTODIAL INTERFERENCE UNDER AS 11.41.320 AND 11.-
25 41.330;] or a crime against a person in this or another jurisdiction
26 having elements substantially identical to those of a crime as set out
27 in AS 11.41 [, EXCEPT CUSTODIAL INTERFERENCE UNDER AS 11.41.320 AND
28 11.41.330];

29 * Sec. 24. AS 44.23.020(b) is amended by adding a new paragraph to

read:

1
2 (9) establish and maintain an assistance program to ensure
3 that crime victims receive information about the rights, entitlements,
4 and services that are provided by law.

5 * Sec. 25. AS 47.10 is amended by adding a new section to read:

6 Sec. 47.10.072. ACCESS TO HEARING BY VICTIM. (a) If a crime
7 was committed by a minor who is scheduled for a hearing under AS 47.-
8 10.070, the victim may request from the court permission to attend the
9 hearing. If the victim requests, the department shall provide techni-
10 cal assistance to the victim in preparing a written submission to the
11 court requesting access to the hearing. The department shall make
12 reasonable efforts to inform victims of the availability of this
13 assistance.

14 (b) If more than one person who qualifies as a victim under
15 AS 12.55.185 makes a request, the commissioner of health and social
16 services shall designate one person for purposes of receiving the
17 notice and exercising the rights granted by this section.

18 (c) In this section, "victim" has the meaning given in AS 12.-
19 55.185.

20 * Sec. 26. AS 12.61.020(e)(2) is repealed.

21 * Sec. 27. Rule 32(d)(1), Alaska Rules of Criminal Procedure, is amend-
22 ed to read:

23 (1) WHEN MADE. The probation service shall make a presen-
24 tence investigation and report before the court imposes sentence or
25 grants probation. The presentence investigation and report shall be
26 completed and made available to the court. The report shall not be
27 disclosed to any one except counsel unless the defendant has tendered
28 a plea of guilty or nolo contendere or has been found guilty. If the
29 crime for which the person is to be sentenced is a felony, the

1 contents shall be disclosed to counsel for the parties before the time
2 of the hearing on the aggravator and mitigator factors and sentencing.

3 The court may utilize the report in determining if a bargained sen-
4 tence recommendation will be followed pursuant to Rule 11. In the
5 event the attorneys for the parties request the preparation of a
6 presentence report to aid them in plea bargaining the court may order
7 such report to be made prior to the time stated in this rule.

8 * Sec. 28. Rule 32, Alaska Rules of Criminal Procedure, is amended by
9 adding new paragraphs to read:

10 (g) WRITTEN STATEMENT SUBMITTED BY VICTIM OR VICTIM'S REPRESENTATIVE.
11 If a written statement is prepared and submitted by the
12 victim of a felony offense or a domestic violence assault under
13 AS 12.55.023, the trial court

14 (1) shall take the content of the written statement into
15 consideration

16 (A) when preparing those elements of the sentencing
17 report required by AS 12.55.025 that relate to the effect of the
18 offense on the victim;

19 (B) when considering the need for restitution under
20 AS 12.55.045; and

21 (2) may take the content of the written statement into
22 consideration in any other circumstance that the court believes neces-
23 sary.

24 (h) In (g) of this rule,

25 (1) "domestic violence assault" has the meaning given in
26 AS 12.61.900;

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

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