

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5730 HOUSE JUDICIARY 134

1 (c) The victim may comment on motions made under this rule as
2 follows.

3 (1) When an individual convicted of a crime against a
4 person or arson in the first degree files a motion to modify or reduce
5 a sentence, the court shall, if feasible, send a copy of the motion to
6 the Department of Corrections sufficiently in advance of any scheduled
7 hearing or briefing deadline to enable the department to notify the
8 victim, as directed by AS 12.55.088(e).

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

12 (3) The court shall consider the comments of the victim
13 when relevant, and any response offered by the prosecuting attorney or
14 the person filing the motion, in deciding whether to reduce or modify
15 a sentence.

16 (4) If more than one person who qualifies as a victim under
17 paragraph (d)(2) of this rule requests the opportunity to exercise
18 rights under this paragraph, the court shall allow the person des-
19 ignated under AS 12.55.172 to exercise those rights, or if a person
20 has not been designated under AS 12.55.172, the court shall designate
21 one person for purposes of exercising rights under this paragraph.

22 (d) In this rule,

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

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

26 * Sec. 30. APPLICABILITY. The provisions of this Act prescribing the
27 rights of a crime victim and of a crime victim's relative or survivor
28 during the course of criminal, civil, and administrative proceedings apply
29 to proceedings against defendants initiated on or after the effective date

of this Act.

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6-0188P ✓
Chenoweth
2/7/89

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

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 36 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

11 * Section 1. AS 09.05 is amended by adding a new section to read:

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

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

21 (2) promptly complete the affidavit of proof of service on
22 the form provided and return it to the party requesting service of
23 process.

24 (b) A party requesting service of process under this section may
25 locate a person committed to the custody of the commissioner of cor-
26 rections by contacting the chief classification officer of the Depart-
27 ment of Corrections during that officer's regular hours of work.

28 * Sec. 2. AS 12.47 is amended by adding a new section to read:

29 Sec. 12.47.095. NOTICE TO VICTIMS. (a) If an offender has been

1 committed to the custody of the commissioner of health and social
2 services under AS 12.47.090, the victim of that crime is entitled to
3 notice of a pending change in the status of the offender. The commis-
4 sioner of health and social services shall give notice as required by
5 this section if

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

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

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

13 (4) the offender petitions for discharge under AS 12.47.-
14 092(f).

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

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

24 (d) If more than one person who qualifies as a victim under
25 AS 12.55.185 desires notice, the commissioner of health and social
26 services shall designate one person for purposes of receiving any
27 notice required and exercising the rights granted by this section.

28 (e) In this section

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

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

2 * Sec. 3. AS 12.55 is amended by adding a new section to read:

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

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

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

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

11 (4) the sentence recommendation of the Department of Cor-
12 rections.

13 (b) A victim may submit to the sentencing court a written state-
14 ment that the victim believes is relevant to the sentencing decision.

15 * Sec. 4. AS 12.55.088 is amended by adding new subsections to read:

16 (d) A victim has the right to comment in writing to the court on
17 a motion to modify or reduce a sentence filed by the person who perpe-
18 trated the offense against the victim.

19 (e) If a motion is filed to modify or reduce a sentence by a
20 defendant who perpetrated a crime against a person, the court shall,
21 if feasible, send a copy of the motion to the Department of Correc-
22 tions sufficiently in advance of any scheduled hearing or briefing
23 deadline to enable the department to notify the victim of that crime.
24 If that victim has earlier requested to be notified, the Department of
25 Corrections shall send the victim a copy of the motion and inform the
26 person of that person's rights under this section, the deadline for
27 receipt of written comments, the hearing date, and the court's ad-
28 dress.

29 (f) The court shall provide copies of the victim's comments to

1 the prosecuting attorney, the person filing the motion to reduce or
2 modify a sentence, and that person's attorney.

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

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

12 * Sec. 5. AS 12.55 is amended by adding a new section to read:

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

18 * Sec. 6. AS 12.55.185 is repealed and reenacted to read:

19 Sec. 12.55.185. DEFINITIONS. In this chapter, unless the con-
20 text requires otherwise,

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

23 (2) "dangerous instrument" has the meaning given in AS 11.-
24 81.900;

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

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

28 (5) "judicial officer" has the meaning given in AS 11.56.-
29 900;

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

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

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

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

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

15 (11) "victim" means

16 (A) a person against whom an offense has been perpe-
17 trated;

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

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

23 (ii) a parent, adult child, guardian, or custodian
24 of the person;

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

27 (i) a person living in a spousal relationship
28 with the deceased before the deceased died;

29 (ii) an adult child, parent, brother, sister,

1 grandparent or grandchild of the deceased; or

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

4 * Sec. 7. AS 12.61.010 is amended to read:

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

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

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

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

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

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

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

1 about the criminal incident if the questioning does not hinder the
2 administration of medical assistance;

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

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

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

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

19 * Sec. 8. AS 12.61 is amended by adding new sections to read:

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

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

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

28 (A) of the victim's right in a case that is a felony
29 to make a written or oral statement for use in preparation of the

1 defendant's presentence report, and to appear personally at the
2 defendant's sentencing hearing to present a written or oral
3 statement;

4 (B) of the address and telephone number of the office
5 that will prepare the presentence report; and

6 (C) of the time and place of the sentencing proceed-
7 ing;

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

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

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

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

17 (3) an opinion of the need for and extent of restitution
18 and whether the victim has applied for or received compensation for
19 loss or damage; and

20 (4) the recommendation of the victim for an appropriate
21 sentence.

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

25 Sec. 12.61.017. INTERFERENCE BY VICTIM'S EMPLOYER. (a) An
26 employer may not penalize or threaten to penalize a victim because the
27 victim is subpoenaed or requested by the prosecuting attorney to
28 attend a court proceeding for the purpose of giving testimony. In
29 this section, "penalize" means to take action affecting the employment

1 status, wages, and benefits payable to the victim, including:

2 (1) demotion or suspension;

3 (2) dismissal from employment; and

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

7 (b) A person who violates (a) of this section is guilty of a
8 violation.

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

13 * Sec. 9. AS 12.61 is amended by adding a new section to read:

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

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

20 Sec. 12.61.900. DEFINITIONS. In this chapter

21 (1) "domestic violence assault" means an assault under
22 AS 11.41.200 - 11.41.230 or 11.41.410 - 11.41.425 constituting a
23 domestic violence offense under AS 25.35.060;

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

25 * Sec. 11. AS 33.16.120(a) is repealed and reenacted to read:

26 (a) If the victim of a crime against a person requests notice of
27 a scheduled hearing to review or consider discretionary parole for a
28 prisoner convicted of that crime, the board shall send notice of the
29 hearing to the victim at least 30 days before the hearing. The notice

1 must be accompanied by a copy of the prisoner's application for parole
2 submitted under AS 33.16.130(a). However, the copy of the application
3 sent to the victim may not include the prisoner's proposed residence
4 and employment addresses.

5 * Sec. 12. AS 33.16.120(b) is repealed and reenacted to read:

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

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

12 (c) The victim has a right to attend meetings of the parole
13 board in which parole of the prisoner convicted of the crime against
14 that victim is considered and to comment, in writing or in person, on
15 the proposed action of the board. Copies of any written [THE] com-
16 ments shall be provided to the prisoner and the prisoner's attorney
17 before action by the board.

18 * Sec. 14. AS 33.16.120(e) is repealed and reenacted to read:

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

27 * Sec. 15. AS 33.16.150(b) is amended to read:

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

- 1 (1) meet family obligations;
- 2 (2) pursue employment, education, counseling, or training;
- 3 (3) remain within stated geographic limits unless written
4 permission to depart from the stated limits is granted the parolee;
- 5 (4) report upon release to the parole officer assigned to
6 the parolee;
- 7 (5) report as required to the parole officer assigned to
8 the parolee;
- 9 (6) reside at a stated place and notify the board of any
10 change in place of residence;
- 11 (7) not possess or control firearms or other dangerous
12 weapons;
- 13 (8) refrain from possessing or consuming alcoholic beverages;
14
- 15 (9) submit to reasonable searches and seizures by a parole
16 officer, or a peace officer acting under the direction of a parole
17 officer;
- 18 (10) submit to appropriate medical, mental health, or controlled
19 substance or alcohol examination, treatment, or counseling;
- 20 (11) submit to periodic examinations designed to detect the
21 use of alcohol or controlled substances;
- 22 (12) make restitution ordered by the court [TO A VICTIM OF
23 THE PRISONER'S CRIME.] according to a schedule established by the
24 board;
- 25 (13) refrain from opening, maintaining, or using a checking
26 account or charge account;
- 27 (14) refrain from entering into a contract other than a
28 prenuptial contract or a marriage contract;
- 29 (15) refrain from operating a motor vehicle;

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

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

7 * Sec. 16. AS 33.16 is amended by adding a new section to read:

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

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

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

22 * Sec. 18. AS 33.20.080 is amended by adding new subsections to read:

23 (b) If requested by the victim of a crime against a person, the
24 board shall send notice of an application for executive clemency
25 submitted by the state prisoner who was convicted of that crime. The
26 victim may comment in writing to the board on the application for
27 executive clemency.

28 (c) If the victim desires notice under (b) of this section, the
29 victim shall maintain a current, valid mailing address on file with

1 the board. The board shall send the notice required under this sec-
2 tion to the victim's last known address. The victim's address may not
3 be disclosed to the applicant for executive clemency or the appli-
4 cant's attorney.

5 (d) In this section,

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

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

9 * Sec. 19. AS 33.30 is amended by adding a new section to read:

10 Sec. 33.30.013. COMMISSIONER TO NOTIFY VICTIMS. (a) The com-
11 missioner shall notify the victim if the offender

12 (1) escapes from custody;

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

14 (3) is released on an early release program.

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

18 (c) A victim who has requested notice under (b) of this section
19 shall maintain a current, valid mailing address on file with the
20 commissioner. The commissioner shall send the notice from the depart-
21 ment required by this section to the victim's last known address. The
22 victim's address may not be disclosed to the offender or the offend-
23 er's attorney.

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

26 * Sec. 20. AS 33.30.111(f) is repealed and reenacted to read:

27 (f) If the commissioner considers a prisoner convicted of a
28 crime against a person for a prerelease furlough and the victim has
29 requested notice under AS 33.30.013, the commissioner shall send

1 notice of intent to consider the prisoner for a prerelease furlough to
2 the victim. The victim may comment in writing on the commissioner's
3 intent to release the prisoner on prerelease furlough status. The
4 commissioner shall consider the victim's comments before making a
5 final decision to release a prisoner on a prerelease furlough. The
6 commissioner shall make a reasonable effort to notify the victim of an
7 intent to release the prisoner on a prerelease furlough. The notice
8 must contain the expected date of the prisoner's release, the geo-
9 graphic area in which the prisoner will reside, and other pertinent
10 information concerning the prisoner's release that may affect the
11 victim.

12 * Sec. 21. AS 33.30 is amended by adding a new section to read:

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

18 * Sec. 22. AS 44.23.020(b) is amended by adding a new paragraph to
19 read:

20 (9) establish and maintain an assistance program to ensure
21 that crime victims receive information about the rights, entitlements,
22 and services that are provided by law.

23 * Sec. 23. AS 47.10 is amended by adding a new section to read:

24 Sec. 47.10.072. ACCESS TO HEARING BY VICTIM. (a) If a crime
25 was committed by a minor who is scheduled for a hearing under AS 47.-
26 10.070, the victim may request from the court permission to attend the
27 hearing. If the victim requests, the department shall provide techni-
28 cal assistance to the victim in preparing a written submission to the
29 court requesting access to the hearing. The department shall make

1 reasonable efforts to inform victims of the availability of this
2 assistance.

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

7 (c) In this section, "victim" has the meaning given in AS 12.-
8 55.185.

9 * Sec. 24. AS 12.61.020(e)(2) is repealed.

10 * Sec. 25. Rule 32(d)(1), Alaska Rules of Criminal Procedure, is amend-
11 ed to read:

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

26 * Sec. 26. Rule 32, Alaska Rules of Criminal Procedure, is amended by
27 adding new paragraphs to read:

28 (g) WRITTEN STATEMENT SUBMITTED BY VICTIM OR VICTIM'S REPRESENTATIVE.
29 If a written statement is prepared and submitted by the

1 victim of a felony offense or a domestic violence assault under
2 AS 12.55.023, the trial court

3 (1) shall take the content of the written statement into
4 consideration

5 (A) when preparing those elements of the sentencing
6 report required by AS 12.55.025 that relate to the effect of the
7 offense on the victim;

8 (B) when considering the need for restitution under
9 AS 12.55.045; and

10 (2) may take the content of the written statement into
11 consideration in any other circumstance that the court believes neces-
12 sary.

13 (h) In (g) of this rule,

14 (1) "domestic violence assault" has the meaning given in
15 AS 12.61.900;

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

17 * Sec. 27. Rule 35, Alaska Rules of Criminal Procedure, is amended by
18 adding new paragraphs to read:

19 (c) The victim may comment on motions made under this rule as
20 follows:

21 (1) When an individual convicted of a crime against a
22 person files a motion to modify or reduce a sentence, the court shall,
23 if feasible, send a copy of the motion to the Department of Correc-
24 tions sufficiently in advance of any scheduled hearing or briefing
25 deadline to enable the department to notify the victim, as directed by
26 AS 12.55.088(e).

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

1 (3) The court shall consider the comments of the victim
2 when relevant, and any response offered by the prosecuting attorney or
3 the person filing the motion, in deciding whether to reduce or modify
4 a sentence.

5 (4) If more than one person who qualifies as a victim under
6 paragraph (d)(2) of this rule requests the opportunity to exercise
7 rights under this paragraph, the court shall allow the person
8 designated under AS 12.55.172 to exercise those rights, or if a person
9 has not been designated under AS 12.55.172, the court shall designate
10 one person for purposes of exercising rights under this paragraph.

11 (d) In this rule,

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

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

15 * Sec. 28. APPLICABILITY. The provisions of this Act prescribing the
16 rights of a crime victim and of a crime victim's relative or survivor
17 during the course of criminal, civil, and administrative proceedings apply
18 to proceedings against defendants initiated on or after the effective date
19 of this Act.
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Chenoweth

A M E N D M E N T #8

OFFERED IN THE HOUSE

BY GRUENBERG

TO: CSHB 36() "P" version 2/7/89

Page 3, line 20, after "person":

Insert ", arson, ~~burglary~~ in the first degree"

Page 9, line 27, after "person":

Insert ", arson, ~~burglary~~ in the first degree"

Page 12, line 24, after "person":

Insert ", arson, ~~burglary~~ in the first degree"

Page 13, line 29, after "person":

Insert ", arson, ~~burglary~~ in the first degree"

Page 16, line 23, after "person":

Insert ", arson, ~~burglary~~ in the first degree"

2/9/89

6-0188Pd
Chenoweth

A M E N D M E N T

*William
penning wife
Lynn Max*

OFFERED IN THE HOUSE

BY GOLL AND GRUENBERG

TO: CS:HB 36() "P" version 2/7/89

Page 1, line 8, after "on":

Insert "and answers made by"

Page 1, line 8, after "prisoners":

Insert "in civil actions"

Page 1, line 8, after "amending":

Insert "Rule 12 of the Alaska Rules of Civil Procedure and"

*I am very willing
to support if the
equity can be
demonstrated.
But not as a
favor to Dave*

Page 15, following line 10:

Insert a new bill section to read:

"* Sec. 25. Rule 12(a), Alaska Rules of Civil Procedure, is amended to read:

(a) WHEN PRESENTED. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, unless otherwise directed when service of process is made pursuant to Rule 4(e). A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The

W/HO?
IS
THIS

state or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 40 days after the service upon the attorney general of the pleading in which the claim is asserted. [A non-governmental party shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim within 40 days after service upon an officer or agency of the state appointed, authorized or designated as agent to receive service for such party pursuant to statute.] A person committed to the custody of the commissioner of corrections shall serve an answer to the complaint or cross-claim, or a reply to a counterclaim, within 40 days after service of process by the shift supervisor on the person under AS 09.05.050. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement."

Renumber following bill sections accordingly.

STATE OF ALASKA
THE LEGISLATURE

POUCH 1 STATE CAPITOL
JUNEAU ALASKA 99801
907-586-3000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1989

SUBJECT: CSHB 36 () "G" version
TO: Representative Peter Goll, Co-Chair
House Judiciary Committee
FROM: Jack Chenoweth
Legislative Counsel

NEW DRAFT COMMITTEE SUBSTITUTE:

This draft, modifying Friday's version "M", is designated version "G".

The first change asked that "convicted of a crime against a person" be deleted from page 3, line 17, and I have done that. However, as revised, it occurred to me that, taken literally, the subsection imposed no limitation on the victim's exercise of the right to comment in writing as against any convicted defendant. So I opted to insert additional language to limit that right to comment to a motion filed by "the person who perpetrated the offense against the victim." While I appreciate that this limitation is implicit, to guard against zealous and quarrelsome letter writers, I thought it better to make the limitation one that is explicit.

Another requested change involved an amendment to limit the newly-established right of a victim to make a personal appearance at the sentencing proceedings to crimes that involved felonies and domestic violence assaults. As the suggested phrasing was given to me, I opted to separate that right out into a separate paragraph--paragraph (8) of AS 12.61.010(a), added by bill section 7--and renumbered the existing paragraph (8) as a new paragraph (9). Separated from the right given in paragraph (7), the separated provisions read more clearly.

Representative Peter Goll
Page 2
February 6, 1989

Please note the handling of the definition of "domestic violence assaults" added as new material in this version in bill section 10. A simple cross-reference to AS 25.35.060 was insufficient. To provide a greater measure of certainty as to what assaults were intended than AS 25.35.060 would provide standing alone, the definition fairly required that I specify the assault crimes in AS 11.41 and couple that with reference to AS 25.35.060. Note that one of the assaults picked up in the first spanned reference is a misdemeanor.

In all other respects, I tried to follow the specific language changes suggested.

THE AMENDMENTS:

The three amendments requested are to this version, version "G".

The changes requested in the second and third amendments necessitated an amendment in the bill's title.

JC:gc
WKG6/093

Enclosure

*Amendments
to follow*

#7

A M E N D M E N T

OFFERED IN THE HOUSE

BY GRUENBERG

TO: CSHB 36() "G" version

Page 1, line 6, after "relating to":

Insert "crimes,"

Page 1, line 9, after "prisoners;":

Insert "redefining the term "crime against a person";"

Page 14, following line 15:

Insert a new bill section to read:

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

(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];"

Renumber the following sections accordingly.

① }
② }

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

IN THE HOUSE

CS FOR HOUSE BILL NO. 36 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the rights, entitlements, and services that are due to victims of crime and their relatives and survivors, and to service of process on prisoners; and amending Rules 32 and 35 of the Alaska Rules of Criminal Procedure."

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

* Section 1. AS 09.05 is amended by adding a new section to read:

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

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

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

(b) A party requesting service of process under this section may locate a person committed to the custody of the commissioner of corrections by contacting the chief classification officer of the Department of Corrections during that officer's regular hours of work.

* Sec. 2. AS 12.47 is amended by adding a new section to read:

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

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

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

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

14 (4) the offender petitions for discharge under AS 12.47.-
15 092(f).

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

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

25 (d) If more than one person who qualifies as a victim under
26 AS 12.55.185 desires notice, the commissioner of health and social
27 services shall designate one person for purposes of receiving any
28 notice required and exercising the rights granted by this section.

29 (e) In this section "victim" has the meaning given in

1 AS 12.55.185.

2 * Sec. 3. AS 12.55 is amended by adding a new section to read:

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

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

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

9 (3) all statements, and summaries of statements, of the
10 victim; and

11 (4) the sentence recommendation of the Department of Cor-
12 rections.

13 (b) A victim may submit to the sentencing court a written state-
14 ment that the victim believes is relevant to the sentencing decision.

15 * Sec. 4. AS 12.55.088 is amended by adding new subsections to read:

16 (d) A victim has the right to comment in writing to the court on
17 a motion to modify or reduce a sentence filed by the person who perpe-
18 trated the offense against the victim.

19 (e) If a motion is filed to modify or reduce a sentence by a
20 defendant who perpetrated a crime against a person, the court shall,
21 if feasible, send a copy of the motion to the Department of Correc-
22 tions sufficiently in advance of any scheduled hearing or briefing
23 deadline to enable the department to notify the victim of that crime.
24 If that victim has earlier requested to be notified, the Department of
25 Corrections shall send the victim a copy of the motion and inform the
26 person of that person's rights under this section, the deadline for
27 receipt of written comments, the hearing date, and the court's ad-
28 dress.

29 (f) The court shall provide copies of the victim's comments to

1 the prosecuting attorney, the person filing the motion to reduce or
2 modify a sentence, and the person's attorney.

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

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

11 * Sec. 5. AS 12.55 is amended by adding a new section to read:

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

17 * Sec. 6. AS 12.55.185 is repealed and reenacted to read:

18 Sec. 12.55.185. DEFINITIONS. In this chapter, unless the con-
19 text requires otherwise,

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

22 (2) "dangerous instrument" has the meaning given in AS 11.-
23 81.900;

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

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

27 (5) "judicial officer" has the meaning given in AS 11.56.-
28 900;

29 (6) "pecuniary gain" means the amount of money or value of

1 property at the time of commission of the offense derived by the
2 defendant from the commission of the offense, less the amount of money
3 or value of property returned to the victim of the offense or seized
4 by or surrendered to lawful authority before sentence is imposed;

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

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

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

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

14 (11) "victim" means

15 (A) a person against whom an offense has been perpe-
16 trated;

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

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

22 (ii) a parent, guardian, or custodian of the
23 person;

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

26 (i) a person living in a spousal relationship
27 with the deceased before the deceased died;

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

(iii) any other interested person.

* Sec. 7. AS 12.61.010 is amended to read:

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

(1) the right to be informed by the appropriate law enforcement agency or the prosecuting attorney of the date of trial and the date of sentencing of the case in which the victim is involved;

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

(3) the right to receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the protection available;

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

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

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

(7) the right to make a written or oral statement for use

1 in preparation of the presentence report of a felony defendant;

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

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

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

16 * Sec. 8. AS 12.61 is amended by adding new sections to read:

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

20 (1) confer with the person against whom the offense has
21 been perpetrated about that person's testimony before the defendant's
22 trial;

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

25 (A) of the defendant's conviction and the crimes of
26 which the defendant was convicted;

27 (B) of the victim's right in a case that is a felony
28 to make a written or oral statement for use in preparation of the
29 defendant's presentence report, and to appear personally at the

1 defendant's sentencing hearing to present a written or oral
2 statement;

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

5 (D) of the time and place of the sentencing proceed-
6 ing;

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

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

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

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

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

19 (4) the recommendation of the victim for an appropriate
20 sentence.

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

24 Sec. 12.61.017. INTERFERENCE BY VICTIM'S EMPLOYER. (a) An
25 employer may not penalize or threaten to penalize a victim because the
26 victim is subpoenaed or requested by the prosecuting attorney to
27 attend a court proceeding for the purpose of giving testimony. In
28 this section, "penalize" means to take action affecting the employment
29 status, wages, and benefits payable to the victim, including:

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

6 (b) A person who violates (a) of this section is guilty of a
7 violation.

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

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

13 Sec. 12.61.030. DESIGNATION OF REPRESENTATIVE. If more than one
14 person who qualifies as a victim under AS 12.55.185 makes a request
15 under this chapter, the prosecuting attorney shall designate one
16 person for purposes of receiving the notice required and exercising
17 the rights granted under this chapter.

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

19 Sec. 12.61.900. DEFINITIONS. In this chapter

20 (1) "domestic violence assault" means an assault under
21 AS 11.41.200 - 11.41.230 or 11.41.410 - 11.41.425 constituting a
22 domestic violence offense under AS 25.35.060;

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

24 * Sec. 11. AS 33.16.120(a) is repealed and reenacted to read:

25 (a) If the victim requests notice of a scheduled hearing to
26 review or consider discretionary parole for a prisoner convicted of a
27 crime against a person, the board shall send notice of the hearing to
28 the victim at least 30 days before the hearing. The notice must be
29 accompanied by a copy of the prisoner's application for parole

1 submitted under AS 33.16.130(a). However, the copy of the application
2 sent to the victim may not include the prisoner's proposed residence
3 and employment addresses.

4 * Sec. 12. AS 33.16.120(b) is repealed and reenacted to read:

5 (b) If a victim requests notice under this section, the victim
6 shall maintain a current, valid mailing address on file with the
7 board. The board shall send the notice required by this section to
8 the last known address of the victim. The victim's address may not be
9 disclosed to the prisoner or the prisoner's attorney.

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

11 (c) The victim has a right to attend meetings of the parole
12 board and to comment, in writing or in person, on the proposed action
13 of the board. Copies of any written [THE] comments shall be provided
14 to the prisoner and the prisoner's attorney before action by the
15 board.

16 * Sec. 14. AS 33.16.120(e) is repealed and reenacted to read:

17 (e) If a victim requests, the board shall make every reasonable
18 effort to notify the victim as soon as practicable in writing of its
19 decision to grant or deny discretionary parole or to release the
20 prisoner under AS 33.16.010(c). The notice under this subsection must
21 include the expected date of the prisoner's release, the geographic
22 area in which the prisoner is required to reside, and other pertinent
23 information concerning the prisoner's conditions of parole that may
24 affect the victim.

25 * Sec. 15. AS 33.16.150(b) is amended to read:

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

28 (1) meet family obligations;

29 (2) pursue employment, education, counseling, or training;

1 (3) remain within stated geographic limits unless written
2 permission to depart from the stated limits is granted the parolee;

3 (4) report upon release to the parole officer assigned to
4 the parolee;

5 (5) report as required to the parole officer assigned to
6 the parolee;

7 (6) reside at a stated place and notify the board of any
8 change in place of residence;

9 (7) not possess or control firearms or other dangerous
10 weapons;

11 (8) refrain from possessing or consuming alcoholic bever-
12 ages;

13 (9) submit to reasonable searches and seizures by a parole
14 officer, or a peace officer acting under the direction of a parole
15 officer;

16 (10) submit to appropriate medical, mental health, or con-
17 trolled substance or alcohol examination, treatment, or counseling;

18 (11) submit to periodic examinations designed to detect the
19 use of alcohol or controlled substances;

20 (12) make restitution ordered by the court [TO A VICTIM OF
21 THE PRISONER'S CRIME,] according to a schedule established by the
22 board;

23 (13) refrain from opening, maintaining, or using a checking
24 account or charge account;

25 (14) refrain from entering into a contract other than a
26 prenuptial contract or a marriage contract;

27 (15) refrain from operating a motor vehicle;

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

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

5 * Sec. 16. AS 33.16 is amended by adding a new section to read:

6 Sec. 33.16.260. DESIGNATION OF REPRESENTATIVE. If more than one
7 person who qualifies as a victim under AS 12.55.185 requests notice
8 under this chapter, the commissioner shall designate one person for
9 purposes of receiving the notice required and exercising the rights
10 granted by this chapter.

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

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

20 * Sec. 18. AS 33.20.080 is amended by adding new subsections to read:

21 (b) If requested by the victim, the board shall send notice of
22 an application for executive clemency submitted by a state prisoner
23 convicted of a crime against a person to the victim. The victim may
24 comment in writing to the board on the application for executive
25 clemency.

26 (c) If a victim desires notice under (b) of this section, the
27 victim shall maintain a current, valid mailing address on file with
28 the board. The board shall send the notice required under this sec-
29 tion to the victim's last known address. The victim's address may not

1 be disclosed to the applicant for executive clemency or the appli-
2 cant's attorney.

3 (d) In this section,

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

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

7 * Sec. 19. AS 33.30 is amended by adding a new section to read:

8 Sec. 33.30.013. COMMISSIONER TO NOTIFY VICTIMS. (a) The com-
9 missioner shall notify the victim if the offender

10 (1) escapes from custody;

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

12 (3) is released on an early release program.

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

16 (c) A victim who has requested notice under (b) of this section
17 shall maintain a current, valid mailing address on file with the
18 commissioner. The commissioner shall send the notice from the depart-
19 ment required by this section to the victim's last known address. The
20 victim's address may not be disclosed to the offender or the offend-
21 er's attorney.

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

24 * Sec. 20. AS 33.30.111(f) is repealed and reenacted to read:

25 (f) If the commissioner considers a prisoner convicted of a
26 crime against a person for a prerelease furlough and the victim has
27 requested notice under AS 33.30.013, the commissioner shall send
28 notice of intent to consider the prisoner for a prerelease furlough to
29 the victim. The victim may comment in writing on the commissioner's

1 intent to release the prisoner on prerelease furlough status. The
 2 commissioner shall consider the victim's comments before making a
 3 final decision to release a prisoner on a prerelease furlough. The
 4 commissioner shall make a reasonable effort to notify the victim of an
 5 intent to release the prisoner on a prerelease furlough. The notice
 6 must contain the expected date of the prisoner's release, the geo-
 7 graphic area in which the prisoner will reside, and other pertinent
 8 information concerning the prisoner's release that may affect the
 9 victim.

10 * Sec. 21. AS 33.30 is amended by adding a new section to read:

11 Sec. 33.30.292. DESIGNATION OF REPRESENTATIVE. If more than one
 12 person who qualifies as a victim under AS 12.55.185 requests notice
 13 under this chapter, the commissioner shall designate one person for
 14 purposes of receiving the notice required and of exercising the rights
 15 granted by this chapter.

16 * Sec. 22. AS 44.23.020(b) is amended by adding a new paragraph to
 17 read:

18 (9) establish and maintain an assistance program to ensure
 19 that crime victims receive information about the rights, entitlements,
 20 and services that are provided by law.

21 * Sec. 23. AS 47.10 is amended by adding a new section to read:

22 Sec. 47.10.072. ACCESS TO HEARING BY VICTIM. (a) If a crime
 23 was committed by a minor who is scheduled for a hearing under AS 47.-
 24 10.070, the victim may request from the court permission to attend the
 25 hearing. If the victim requests, the department shall provide techni-
 26 cal assistance to the victim in preparing a written submission to the
 27 court requesting access to the hearing. The department shall make
 28 reasonable efforts to inform victims of the availability of this
 29 assistance.

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

5 (c) In this section, "victim" has the meaning given in AS 12.-
6 55.185.

7 * Sec. 24. AS 12.61.020(e)(2) is repealed.

8 * Sec. 25. Rule 32(d)(1), Alaska Rules of Criminal Procedure, is amend-
9 ed to read:

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

24 * Sec. 26. Rule 32, Alaska Rules of Criminal Procedure, is amended by
25 adding new paragraphs to read:

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

1 (1) shall take the content of the written statement into
2 consideration

3 (A) when preparing those elements of the sentencing
4 report required by AS 12.55.025 that relate to the effect of the
5 offense on the victim;

6 (B) when considering the need for restitution under
7 AS 12.55.045; and

8 (2) may take the content of the written statement into
9 consideration in any other circumstance that the court believes neces-
10 sary.

11 (h) In (g) of this rule,

12 (1) "domestic violence assault" has the meaning given in
13 AS 12.61.900;

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

15 * Sec. 27. Rule 35, Alaska Rules of Criminal Procedure, is amended by
16 adding new paragraphs to read:

17 (c) The victim may comment on motions made under this rule as
18 follows:

19 (1) When an individual convicted of a crime against a
20 person files a motion to modify or reduce a sentence, the court shall,
21 if feasible, send a copy of the motion to the Department of Correc-
22 tions sufficiently in advance of any scheduled hearing or briefing
23 deadline to enable the department to notify the victim, as directed by
24 AS 12.55.088(e).

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

28 (3) The court shall consider the comments of the victim
29 when relevant, and any response offered by the prosecuting attorney or

1 the person filing the motion, in deciding whether to reduce or modify
2 a sentence.

3 (4) If more than one person who qualifies as a victim under
4 subparagraph (5) of this paragraph (c) requests the opportunity to
5 exercise rights under this paragraph, the court shall allow the person
6 designated under AS 12.55.172 to exercise those rights, or if a person
7 has not been designated under AS 12.55.172, the court shall designate
8 one person for purposes of exercising rights under this paragraph.

9 (d) In this rule,

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

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

13 * Sec. 28. APPLICABILITY. The provisions of this Act prescribing the
14 rights of a crime victim and of a crime victim's relative or survivor
15 during the course of criminal, civil, and administrative proceedings apply
16 to proceedings against defendants initiated on or after the effective date
17 of this Act.

6-0188J
Chenoweth
2/2/89

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

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 36 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights, entitlements, and
7 services that are due to victims of crime and their
8 representatives, relatives, and survivors, and to
9 service of process on prisoners; and amending Rules
10 32 and 35 of the Alaska Rules of Criminal Procedure."

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

12 * Section 1. AS 09.05 is amended by adding a new section to read:

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

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

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

25 (b) A party requesting service of process under this section may
26 locate a person committed to the custody of the commissioner of cor-
27 rections by contacting the chief classification officer of the Depart-
28 ment of Corrections during that officer's regular hours of work.

29 * Sec. 2. AS 12.47 is amended by adding a new section to read:

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

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

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

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

14 (4) the offender petitions for discharge under AS 12.47.-
15 092(f).

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

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

25 (d) If more than one person who qualifies as a victim under
26 AS 12.55.185(11) desires notice, the commissioner of health and social
27 services shall designate one person for purposes of receiving any
28 notice required and exercising the rights granted by this section.

29 (e) In this section "victim" has the meaning given in

AS 12.55.185.

1
2 * Sec. 3. AS 12.55 is amended by adding a new section to read:

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

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

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

9 (3) all statements, and summaries of statements, of the
10 victim; and

11 (4) the sentence recommendation of the Department of Cor-
12 rections.

13 (b) A victim may submit to the sentencing court a written state-
14 ment that the victim believes is relevant to the sentencing decision.

15 * Sec. 4. AS 12.55.088 is amended by adding new subsections to read:

16 (d) A victim has the right to comment in writing to the court on
17 a motion to modify or reduce a sentence. If a motion is filed, the
18 court shall, if feasible, send a copy of the motion to the Department
19 of Corrections sufficiently in advance of any scheduled hearing or
20 briefing deadline to enable the department to notify the victim. If
21 the victim has earlier requested to be notified, the Department of
22 Corrections shall send the victim a copy of the motion and inform the
23 person of that person's rights under this section, the deadline for
24 receipt of written comments, the hearing date, and the court's ad-
25 dress.

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

29 (f) In deciding whether to reduce or modify a sentence, the

1 court shall consider the victim's comments, when relevant, and any
2 response by the prosecuting attorney and the person filing the motion.

3 (g) If a victim desires notice under this section, the victim
4 shall maintain a current, valid mailing address on file with the
5 commissioner of corrections. The commissioner shall send the notice
6 to the victim's last known address. The victim's address may not be
7 disclosed to the offender or the offender's attorney.

8 * Sec. 5. AS 12.55 is amended by adding a new section to read:

9 Sec. 12.55.172. DESIGNATION OF REPRESENTATIVE. If more than one
10 person who qualifies as a victim under AS 12.55.185(11) desires notice
11 under AS 12.55.088, the prosecuting attorney shall designate one
12 person to represent all victims for purposes of receiving the notice
13 required and exercising the rights granted under this chapter.

14 * Sec. 6. AS 12.55.185(11) is repealed and reenacted to read:

15 (11) "victim" means

16 (A) a person against whom an offense has been perpe-
17 trated;

18 (B) the personal representative of the person speci-
19 fied in (A) of this paragraph, if the person has designated a
20 personal representative by a written instrument;

21 (C) the following, if the person specified in (A) of
22 this paragraph is a minor, incompetent, or incapacitated:

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

25 (ii) a parent of the person, if (i) of this sub-
26 paragraph does not apply;

27 (iii) a guardian of the person, if (i) and (ii) of
28 this subparagraph do not apply;

29 (iv) a custodian of the person, if (i), (ii), and (iii) of

1 this subparagraph do not apply;

2 (D) the following, if the person specified in (A) of
3 this paragraph is dead:

4 (i) a person living in a spousal relationship
5 with the deceased immediately before the deceased died;

6 (ii) an adult child of the deceased, if (i) of
7 this subparagraph does not apply;

8 (iii) a parent of the deceased, if (i) and (ii) of
9 this subparagraph do not apply;

10 (iv) a brother or sister of the deceased, if (i) -
11 (iii) of this subparagraph do not apply;

12 (v) a grandparent of the deceased, if (i) - (iv)
13 of this subparagraph do not apply; or

14 (vi) any other interested person, if (i) - (v) of
15 this subparagraph do not apply.

16 * Sec. 7. AS 12.61.010 is amended to read:

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

19 (1) the right to be informed by the appropriate law en-
20 forcement agency or the prosecuting attorney of the dates of all
21 criminal proceedings involving the defendant relating to [DATE OF
22 TRIAL AND THE DATE OF SENTENCING OF] the case in which the victim is
23 involved;

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

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

available;

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

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

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

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

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

(b) Law [VICTIMS' EMPLOYERS, LAW] enforcement agencies, prosecutors, and the courts shall make every reasonable effort to ensure that victims of crimes have the rights set out in (a) of this section. However, a failure to ensure these rights does not give rise to a separate cause of action against anyone [VICTIMS' EMPLOYERS, LAW ENFORCEMENT AGENCIES, OTHER AGENCIES OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE].

1 * Sec. 8. AS 12.61 is amended by adding new sections to read:

2 Sec. 12.61.015. DUTIES OF PROSECUTING ATTORNEY. (a) If a
3 victim requests, the prosecuting attorney shall make a reasonable
4 effort to

5 (1) confer with the person against whom the offense has
6 been perpetrated about that person's testimony before the defendant's
7 trial;

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

10 (A) of the defendant's conviction;

11 (B) of the victim's right to make a written or oral
12 statement for use in preparation of the defendant's felony pre-
13 sentence report, and to appear personally at the defendant's
14 sentencing hearing to present a written or oral statement;

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

17 (D) of the time and place of the sentencing proceed-
18 ing;

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

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

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

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

28 (3) an opinion of the need for and extent of restitution
29 and whether the victim has applied for or received compensation for

1 loss or damage; and

2 (4) the recommendation of the victim for an appropriate
3 sentence.

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

7 Sec. 12.61.017. INTERFERENCE BY VICTIM'S EMPLOYER. (a) An
8 employer may not penalize or threaten to penalize a victim because the
9 victim is subpoenaed or requested by the prosecuting attorney to
10 attend a court proceeding for the purpose of giving testimony. In
11 this section, "penalize" means to take action affecting the employment
12 status, wages, and benefits payable to the victim, including:

13 (1) demotion or suspension;

14 (2) dismissal from employment; and

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

18 (b) A victim who suffers a pecuniary loss as a result of an
19 employer's act prohibited by this section may bring a civil action to
20 recover actual damages and punitive damages of three times the actual
21 damages sustained.

22 * Sec. 9. AS 12.61 is amended by adding a new section to read:

23 Sec. 12.61.030. DESIGNATION OF REPRESENTATIVE. If more than one
24 person who qualifies as a victim under AS 12.55.185(11) makes a
25 request under this chapter, the prosecuting attorney shall designate
26 one person for purposes of receiving the notice required and exercis-
27 ing the rights granted under this chapter.

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

29 Sec. 12.61.900. DEFINITIONS. In this chapter "victim" has the

1 meaning given in AS 12.55.185.

2 * Sec. 11. AS 33.16.120(a) is repealed and reenacted to read:

3 (a) If the victim requests notice of a scheduled hearing to
4 review or consider discretionary parole for a prisoner, the board
5 shall send notice of the hearing to the victim at least 30 days before
6 the hearing. The notice must be accompanied by a copy of the prison-
7 er's application for parole submitted under AS 33.16.130(a). However,
8 the copy of the application sent to the victim may not include the
9 prisoner's proposed residence and employment addresses.

10 * Sec. 12. AS 33.16.120(b) is repealed and reenacted to read:

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

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

17 (c) The victim has a right to attend meetings of the parole
18 board and to comment, in writing or in person, on the proposed action
19 of the board. Copies of any written [THE] comments shall be provided
20 to the prisoner and the prisoner's attorney before action by the
21 board.

22 * Sec. 14. AS 33.16.120(e) is repealed and reenacted to read:

23 (e) If a victim requests, the board shall make every reasonable
24 effort to notify the victim as soon as practicable in writing of its
25 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.

1
2 * Sec. 15. AS 33.16.150(b) is amended to read:

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

5 (1) meet family obligations;

6 (2) pursue employment, education, counseling, or training;

7 (3) remain within stated geographic limits unless written
8 permission to depart from the stated limits is granted the parolee;

9 (4) report upon release to the parole officer assigned to
10 the parolee;

11 (5) report as required to the parole officer assigned to
12 the parolee;

13 (6) reside at a stated place and notify the board of any
14 change in place of residence;

15 (7) not possess or control firearms or other dangerous
16 weapons;

17 (8) refrain from possessing or consuming alcoholic beverages;
18

19 (9) submit to reasonable searches and seizures by a parole
20 officer, or a peace officer acting under the direction of a parole
21 officer;

22 (10) submit to appropriate medical, mental health, or controlled
23 substance or alcohol examination, treatment, or counseling;

24 (11) submit to periodic examinations designed to detect the
25 use of alcohol or controlled substances;

26 (12) make restitution ordered by the court [TO A VICTIM OF
27 THE PRISONER'S CRIME,] according to a schedule established by the
28 board;

29 (13) refrain from opening, maintaining, or using a checking

account or charge account;

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

(15) refrain from operating a motor vehicle;

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

(17) refrain from participating in any other activity or associating with any other person that the board determines is reasonably likely to diminish the rehabilitative goals of parole, or that may endanger the public.

* Sec. 16. AS 33.16 is amended by adding a new section to read:

Sec. 33.16.260. DESIGNATION OF REPRESENTATIVE. If more than one person who qualifies as a victim under AS 12.55.185(11) requests notice under this chapter, the commissioner shall designate one person for purposes of receiving the notice required and exercising the rights granted by this chapter.

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

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

* Sec. 18. AS 33.20.080 is amended by adding new subsections to read:

(b) If requested by the victim, the board shall send notice of an application for executive clemency submitted by a state prisoner to the victim. The victim may comment in writing to the board on the

1 application for executive clemency.

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

8 (d) In this section, "victim" has the meaning given in AS 12.-
9 55.185.

10 * Sec. 19. AS 33.30 is amended by adding a new section to read:

11 Sec. 33.30.013. COMMISSIONER TO NOTIFY VICTIMS. (a) The com-
12 missioner shall notify the victim if the offender

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

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

19 (c) A victim who has requested notice under (b) of this section
20 shall maintain a current, valid mailing address on file with the
21 commissioner. The commissioner shall send the notice from the depart-
22 ment required by this section to the victim's last known address. The
23 victim's address may not be disclosed to the offender or the offend-
24 er's attorney.

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

27 * Sec. 20. AS 33.30.111(f) is repealed and reenacted to read:

28 (f) If the commissioner considers a prisoner for a prerelease
29 furlough and the victim has requested notice under AS 33.30.013, the

1 commissioner shall send notice of intent to consider the prisoner for
2 a prerelease furlough to the victim. The victim may comment in writ-
3 ing on the commissioner's intent to release the prisoner on prerelease
4 furlough status. The commissioner shall consider the victim's com-
5 ments before making a final decision to release a prisoner on a pre-
6 release furlough. The commissioner shall make a reasonable effort to
7 notify the victim of an intent to release the prisoner on a prerelease
8 furlough. The notice must contain the expected date of the prisoner's
9 release, the geographic area in which the prisoner will reside, and
10 other pertinent information concerning the prisoner's release that may
11 affect the victim.

12 * Sec. 21. AS 33.30 is amended by adding a new section to read:

13 Sec. 33.30.292. DESIGNATION OF REPRESENTATIVE. If more than one
14 person who qualifies as a victim under AS 12.55.185(11) requests
15 notice under this chapter, the commissioner shall designate one person
16 for purposes of receiving the notice required and of exercising the
17 rights granted by this chapter.

18 * Sec. 22. AS 44.23.020(b) is amended by adding a new paragraph to
19 read:

20 (9) establish and maintain an assistance program to ensure
21 that crime victims receive information about the rights, entitlements,
22 and services that are provided by law.

23 * Sec. 23. AS 47.10 is amended by adding a new section to read:

24 Sec. 47.10.072. ACCESS TO HEARING BY VICTIM. (a) If a crime
25 was committed by a minor who is scheduled for a hearing under AS 47.-
26 10.070, the victim may request from the court permission to attend the
27 hearing. If the victim requests, the Department of Health and Social
28 Services shall provide technical assistance to the victim in preparing
29 a written submission to the court requesting access to the hearing.

1 The Department of Health and Social Services shall make reasonable
2 efforts to inform victims of the availability of this assistance.

3 (b) If more than one person who qualifies as a victim under
4 AS 12.55.185(11) makes a request, the commissioner of health and
5 social services shall designate one person for purposes of receiving
6 the notice and exercising the rights granted by this section.

7 (c) In this section, "victim" has the meaning given in AS 12.-
8 55.185.

9 * Sec. 24. Rule 32(d)(1), Alaska Rules of Criminal Procedure, is amend-
10 ed to read:

11 (1) WHEN MADE. The probation service shall make a presen-
12 tence investigation and report before the court imposes sentence or
13 grants probation. If [THE REPORT SHALL NOT BE DISCLOSED TO ANY ONE
14 EXCEPT COUNSEL UNLESS THE DEFENDANT HAS TENDERED A PLEA OF GUILTY OR
15 NOLO CONTENDERE OR HAS BEEN FOUND GUILTY. THE COURT MAY UTILIZE THE
16 REPORT IN DETERMINING IF A BARGAINED SENTENCE RECOMMENDATION WILL BE
17 FOLLOWED PURSUANT TO RULE 11. IN THE EVENT] the attorneys for the
18 parties request the preparation of a presentence report to aid them in
19 [PLEA] bargaining, the court may order such report to be made prior to
20 the time stated in this rule.

21 * Sec. 25. Rule 32, Alaska Rules of Criminal Procedure, is amended by
22 adding a new paragraph to read:

23 (g) WRITTEN STATEMENT SUBMITTED BY VICTIM. If a written state-
24 ment is prepared and submitted under AS 12.55.023(b), and the offense
25 for which the defendant is being sentenced is a felony, the trial
26 court shall take the contents of the written statement into considera-
27 tion.

28 * Sec. 26. Rule 35, Alaska Rules of Criminal Procedure, is amended by
29 adding a new paragraph to read:

1 (c) The victim may comment on motions made under this rule as
2 follows:

3 (1) When an individual convicted of a crime files a motion
4 to modify or reduce a sentence, the court shall, if feasible, send a
5 copy of the motion to the Department of Corrections sufficiently in
6 advance of any scheduled hearing or briefing deadline to enable the
7 department to notify the victim, as directed by AS 12.55.088(d).

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

11 (3) The court shall consider the comments of the victim
12 when relevant, and any response offered by the prosecuting attorney or
13 the person filing the motion, in deciding whether to reduce or modify
14 a sentence.

15 (4) If more than one person who qualifies as a victim under
16 subparagraph (5) of this paragraph (c) requests the opportunity to
17 exercise rights under this paragraph, the court shall allow the person
18 designated under AS 12.55.172 to exercise those rights, or if a person
19 has not been designated under AS 12.55.172, the court shall designate
20 one person for purposes of exercising rights under this paragraph.

21 (5) In this rule, "victim" means

22 (A) a person against whom an offense has been perpe-
23 trated;

24 (B) the personal representative of the person speci-
25 fied in (A) of this paragraph, if the person has designated a
26 personal representative by a written instrument;

27 (C) the following, if the person specified in (A) of
28 this paragraph is a minor, incompetent, or incapacitated:

29 (i) an individual living in a spousal

relationship to the person specified in (A) of this paragraph;

(ii) a parent of the person, if (i) of this subparagraph does not apply;

(iii) a guardian of the person, if (i) and (ii) of this subparagraph do not apply;

(iv) a custodian of the person, if (i) - (iii) of this subparagraph do not apply;

(D) the following, if the person specified in (A) of the paragraph is dead:

(i) a person living in a spousal relationship with the deceased immediately before the deceased died;

(ii) an adult child of the deceased, if (i) of this subparagraph does not apply;

(iii) a parent of the deceased, if (i) and (ii) of this subparagraph do not apply;

(iv) a brother or sister of the deceased, if (i) - (iii) of this subparagraph do not apply;

(v) a grandparent of the deceased, if (i) - (iv) of this subparagraph do not apply; or

(vi) any other interested person, if (i) - (v) of this subparagraph do not apply.

* Sec. 27. APPLICABILITY. The provisions of this Act prescribing the rights of a crime victim and of a crime victim's representative, relative, or survivor during the course of criminal, civil, and administrative proceedings apply to proceedings against defendants initiated on or after the effective date of this Act.

#1

A M E N D M E N T

OFFERED IN THE HOUSE

BY DONLEY

TO: CSHB 36()

Page 1, following line 11:

Insert a new bill section to read:

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

Renumber the following bill sections accordingly.

#2

A M E N D M E N T

OFFERED IN THE HOUSE

BY DONLEY

TO: CSHB 36()

Page 1, line 8, after "survivors,"

Insert "to levies by victims of crime and their representatives, relations, and survivors to enforce claims arising from criminal conduct,"

Page 1, following line 29:

Insert new bill sections to read:

** Sec. 2. AS 09.38.065(a) is amended to read:

(a) Notwithstanding other provisions of this chapter,

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

(A) child support;

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

(C) state or local taxes; [AND]

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

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

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

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

(3) a creditor may make a levy against exempt property of any kind to enforce a claim arising from criminal conduct of the debtor that results in a felony conviction, which levy is subordinate to a levy against exempt property to enforce a claim for child support, except that the debtor is entitled to an exemption in property

(A) not to exceed an aggregate value of \$3,000 chosen by the individual from the following categories of property:

(i) household goods and wearing apparel reasonably necessary for one household;

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

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

(B) not to exceed an aggregate value of \$1,800 of the debtor's implements, professional books, and tools of the trade.

* Sec. 3. AS 09.38.075(a) is amended to read:

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

(1) an affidavit stating that the creditor has reason to

believe the individual has property of a kind listed in AS 09.38.020 that is not exempt, identifying the property, setting out facts constituting the basis for believing the property is not exempt; and

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

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

(B) of the individual's right to contest the creditor's claim of a right to levy by filing with the clerk of the court, on or before a date fixed by the court, but not exceeding 15 days after the issuance of the order, a written objection to the proposed levy and a statement of the grounds for the objection and of the right to describe the property in lieu of setting its value,

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

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

* Sec. 4. AS 09.38.080(a) is amended to read:

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

Renumber the following bill sections accordingly.

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: CSHB 36

#1

Page 15, line 4:

Following "sentence," delete "the court" and insert "the prosecuting attorney"

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: CSHB 36

#2

Page 15, Line 20:

Following ""victim"" delete all material through page 16
line 22 and insert "has the meaning given in
AS.12.55.185(11)."

PROPOSED AMENDMENT

By Rep. Terry Martin

To: HB 36 - Victims of Crime

Offered in House Judiciary Committee

On Page 6, line 25, following the word "person", insert

"including a prenatal child"

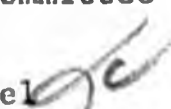
STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1989

SUBJECT: CSHB 36 () version "M"
TO: Representative Peter Goll, Co-Chair
House Judiciary Committee
FROM: Jack Chenoweth
Legislative Counsel 

This version "M" makes the following changes to yesterday's version "D":

(1) the key term "victim" appearing in AS 12.55.185(11) is redefined;

(2) a change is made in AS 12.61.010(b), in bill section 7, to omit "victims' employers" from the bar of a cause of action against parties withholding rights granted by AS 12.61.010(a); victims' employers may be sued civilly under AS 12.61.017(c), another provision of this bill;

(3) in AS 12.61.015(a)(2)(A), language directing the prosecuting attorney to notify the victim is amended to add the requirement that the notice include not only information of "the defendant's conviction" but also "the crimes of which the defendant was convicted";

(4) in AS 12.61.017, relating to interference by the victim's employer, the violation provision is restored;

(5) the first court rule change, bill section 24 in the "D" draft and bill section 25 in this one, restores the language of the original bill;

(6) the second court rule change, bill section 25 in the "D" draft and bill section 26 in this one, restores the language of the original bill, with the addition of language authorizing the court to make use of the report in circumstances other than those specifically mentioned in the rule;

Representative Peter Goll, Co-Chair
Page 2
February 3, 1989

(7) the term "victim" is redefined in the last court rule change, to parallel the definition in AS 12.55.185(11).

In addition, I have had to do the following:

-- delete reference to victims' "representatives" from the bill title;

-- provide a definition of "crime against a person" for AS 12.55, necessitating a reformatting of bill section 6;

-- provide a definition of "crime against a person" for AS 33.20, now part of bill section 18;

-- provide a definition of "crime against a person" for the third court rule change (bill section 27); and

-- repeal AS 12.61.020(e)(2) in a new bill section 24: this is an existing definition of the term "victim" applicable by its terms only to that section (i.e. AS 12.61.020); because the term "victim" is used in other sections in that chapter, we've provided a definition of it that is applicable to the chapter in AS 12.61.900 (bill section 10), so the existing definition is unnecessary.

JC:gc
WKG6/085

Enclosure

cc: Representative Max F. Gruenberg, Jr., Co-Chair
House Judiciary Committee
Representative Dave Donley
Laurie Otto, Asst. Atty. General

6-0188M
Chenoweth
2/3/89

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

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 36 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights, entitlements, and
7 services that are due to victims of crime and their
8 relatives and survivors, and to service of process on
9 prisoners; and amending Rules 32 and 35 of the Alaska
10 Rules of Criminal Procedure."

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

12 * Section 1. AS 09.05 is amended by adding a new section to read:

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

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

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

25 (b) A party requesting service of process under this section may
26 locate a person committed to the custody of the commissioner of cor-
27 rections by contacting the chief classification officer of the Depart-
28 ment of Corrections during that officer's regular hours of work.

29 * Sec. 2. AS 12.47 is amended by adding a new section to read:

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

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

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

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

14 (4) the offender petitions for discharge under AS 12.47.-
15 092(f).

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

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

25 (d) If more than one person who qualifies as a victim under
26 AS 12.55.185 desires notice, the commissioner of health and social
27 services shall designate one person for purposes of receiving any
28 notice required and exercising the rights granted by this section.

29 (e) In this section "victim" has the meaning given in

1 AS 12.55.185.

2 * Sec. 3. AS 12.55 is amended by adding a new section to read:

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

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

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

9 (3) all statements, and summaries of statements, of the
10 victim; and

11 (4) the sentence recommendation of the Department of Cor-
12 rections.

13 (b) A victim may submit to the sentencing court a written state-
14 ment that the victim believes is relevant to the sentencing decision.

15 * Sec. 4. AS 12.55.088 is amended by adding new subsections to read:

16 (d) A victim has the right to comment in writing to the court on
17 a motion to modify or reduce a sentence filed by a person convicted of
18 a crime against a person. If a motion is filed, the court shall, if
19 feasible, send a copy of the motion to the Department of Corrections
20 sufficiently in advance of any scheduled hearing or briefing deadline
21 to enable the department to notify the victim. If the victim has
22 earlier requested to be notified, the Department of Corrections shall
23 send the victim a copy of the motion and inform the person of that
24 person's rights under this section, the deadline for receipt of writ-
25 ten comments, the hearing date, and the court's address.

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

29 (f) In deciding whether to reduce or modify a sentence, the

1 court shall consider the victim's comments, when relevant, and any
2 response by the prosecuting attorney and the person filing the motion.

3 (g) If a victim desires notice under this section, the victim
4 shall maintain a current, valid mailing address on file with the
5 commissioner of corrections. The commissioner shall send the notice
6 to the victim's last known address. The victim's address may not be
7 disclosed to the offender or the offender's attorney.

8 * Sec. 5. AS 12.55 is amended by adding a new section to read:

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

14 * Sec. 6. AS 12.55.185 is repealed and reenacted to read:

15 Sec. 12.55.185. DEFINITIONS. In this chapter, unless the con-
16 text requires otherwise,

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

19 (2) "dangerous instrument" has the meaning given in AS 11.-
20 81.900;

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

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

24 (5) "judicial officer" has the meaning given in AS 11.56.-
25 900;

26 (6) "pecuniary gain" means the amount of money or value of
27 property at the time of commission of the offense derived by the
28 defendant from the commission of the offense, less the amount of money
29 or value of property returned to the victim of the offense or seized

1 by or surrendered to lawful authority before sentence is imposed;

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

4 (8) "serious physical injury" has the meaning given in
5 AS 11.81.900;

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

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

11 (11) "victim" means

12 (A) a person against whom an offense has been pepe-
13 trated;

14 (B) one of the following, not the perpetrator, if the
15 person specified in (A) of this paragraph is a minor, incompe-
16 cent, or incapacitated:

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

19 (ii) a parent, guardian, or custodian of the
20 person;

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

23 (i) a person living in a spousal relationship
24 with the deceased before the deceased died;

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

27 (iii) any other interested person.

28 * Sec. 7. AS 12.61.010 is amended to read:

29 Sec. 12.61.010. RIGHTS OF CRIME VICTIMS. (a) Victims of crimes

1 have the following rights:

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

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

8 (3) the right to receive protection from harm and threats
9 of harm arising out of cooperation with law enforcement and prosecu-
10 tion efforts, and to be provided with information as to the protection
11 available;

12 (4) the right to be informed of the procedure to be fol-
13 lowed to apply for and receive any [VICTIM] compensation under AS 18.-
14 67;

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

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

26 (7) the right to make a written or oral statement for use
27 in preparation of the presentence report of a felony defendant, and to
28 appear personally at that defendant's sentencing hearing to present a
29 written or oral statement; and

1 (8) the right to be informed by the prosecuting attorney,
2 at any time after the defendant's conviction, about the complete
3 record of the defendant's convictions.

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

11 * Sec. 8. AS 12.61 is amended by adding new sections to read:

12 Sec. 12.61.015. DUTIES OF PROSECUTING ATTORNEY. (a) If a
13 victim of a felony requests, the prosecuting attorney shall make a
14 reasonable effort to

15 (1) confer with the person against whom the offense has
16 been perpetrated about that person's testimony before the defendant's
17 trial;

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

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

22 (B) of the victim's right to make a written or oral
23 statement for use in preparation of the defendant's felony pre-
24 sentence report, and to appear personally at the defendant's
25 sentencing hearing to present a written or oral statement;

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

28 (D) of the time and place of the sentencing proceed-
29 ing;

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

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

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

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

10 (3) an opinion of the need for and extent of restitution
11 and whether the victim has applied for or received compensation for
12 loss or damage; and

13 (4) the recommendation of the victim for an appropriate
14 sentence.

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

18 Sec. 12.61.017. INTERFERENCE BY VICTIM'S EMPLOYER. (a) An
19 employer may not penalize or threaten to penalize a victim because the
20 victim is subpoenaed or requested by the prosecuting attorney to
21 attend a court proceeding for the purpose of giving testimony. In
22 this section, "penalize" means to take action affecting the employment
23 status, wages, and benefits payable to the victim, including:

24 (1) demotion or suspension;

25 (2) dismissal from employment; and

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

29 (b) A person who violates (a) of this section is guilty of a

1 violation.

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

6 * Sec. 9. AS 12.61 is amended by adding a new section to read:

7 Sec. 12.61.030. DESIGNATION OF REPRESENTATIVE. If more than one
8 person who qualifies as a victim under AS 12.55.185 makes a request
9 under this chapter, the prosecuting attorney shall designate one
10 person for purposes of receiving the notice required and exercising
11 the rights granted under this chapter.

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

13 Sec. 12.61.900. DEFINITIONS. In this chapter "victim" has the
14 meaning given in AS 12.55.185.

15 * Sec. 11. AS 33.16.120(a) is repealed and reenacted to read:

16 (a) If the victim requests notice of a scheduled hearing to
17 review or consider discretionary parole for a prisoner convicted of a
18 crime against a person, the board shall send notice of the hearing to
19 the victim at least 30 days before the hearing. The notice must be
20 accompanied by a copy of the prisoner's application for parole submit-
21 ted under AS 33.16.130(a). However, the copy of the application sent
22 to the victim may not include the prisoner's proposed residence and
23 employment addresses.

24 * Sec. 12. AS 33.16.120(b) is repealed and reenacted to read:

25 (b) If a victim requests notice under this section, the victim
26 shall maintain a current, valid mailing address on file with the
27 board. The board shall send the notice required by this section to
28 the last known address of the victim. The victim's address may not be
29 disclosed to the prisoner or the prisoner's attorney.

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

2 (c) The victim has a right to attend meetings of the parole
3 board and to comment, in writing or in person, on the proposed action
4 of the board. Copies of any written [THE] comments shall be provided
5 to the prisoner and the prisoner's attorney before action by the
6 board.

7 * Sec. 14. AS 33.16.120(e) is repealed and reenacted to read:

8 (e) If a victim requests, the board shall make every reasonable
9 effort to notify the victim as soon as practicable in writing of its
10 decision to grant or deny discretionary parole or to release the
11 prisoner under AS 33.16.010(c). The notice under this subsection must
12 include the expected date of the prisoner's release, the geographic
13 area in which the prisoner is required to reside, and other pertinent
14 information concerning the prisoner's conditions of parole that may
15 affect the victim.

16 * Sec. 15. AS 33.16.150(b) is amended to read:

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

19 (1) meet family obligations;

20 (2) pursue employment, education, counseling, or training;

21 (3) remain within stated geographic limits unless written
22 permission to depart from the stated limits is granted the parolee;

23 (4) report upon release to the parole officer assigned to
24 the parolee;

25 (5) report as required to the parole officer assigned to
26 the parolee;

27 (6) reside at a stated place and notify the board of any
28 change in place of residence;

29 (7) not possess or control firearms or other dangerous

1 weapons;

2 (8) refrain from possessing or consuming alcoholic bever-
3 ages;

4 (9) submit to reasonable searches and seizures by a parole
5 officer, or a peace officer acting under the direction of a parole
6 officer;

7 (10) submit to appropriate medical, mental health, or con-
8 trolled substance or alcohol examination, treatment, or counseling;

9 (11) submit to periodic examinations designed to detect the
10 use of alcohol or controlled substances;

11 (12) make restitution ordered by the court [TO A VICTIM OF
12 THE PRISONER'S CRIME,] according to a schedule established by the
13 board;

14 (13) refrain from opening, maintaining, or using a checking
15 account or charge account;

16 (14) refrain from entering into a contract other than a
17 prenuptial contract or a marriage contract;

18 (15) refrain from operating a motor vehicle;

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

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

25 * Sec. 16. AS 33.16 is amended by adding a new section to read:

26 Sec. 33.16.260. DESIGNATION OF REPRESENTATIVE. If more than one
27 person who qualifies as a victim under AS 12.55.185 requests notice
28 under this chapter, the commissioner shall designate one person for
29 purposes of receiving the notice required and exercising the rights

1 rights granted by this chapter.

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

3 Sec. 33.20.080. BOARD OF PAROLE TO INVESTIGATE APPLICATIONS FOR
4 EXECUTIVE CLEMENCY. The governor may refer applications for executive
5 clemency to the board of parole. The board shall investigate each
6 case and submit to the governor a report of the investigation, to-
7 gether with all other information the board has regarding the appli-
8 cant. When the report or investigation is submitted, the board shall
9 also transmit to the governor the comments it has received under (b)
10 of this section.

11 * Sec. 18. AS 33.20.080 is amended by adding new subsections to read:

12 (b) If requested by the victim, the board shall send notice of
13 an application for executive clemency submitted by a state prisoner
14 convicted of a crime against a person to the victim. The victim may
15 comment in writing to the board on the application for executive
16 clemency.

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

23 (d) In this section,

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

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

27 * Sec. 19. AS 33.30 is amended by adding a new section to read:

28 Sec. 33.30.013. COMMISSIONER TO NOTIFY VICTIMS. (a) The com-
29 missioner shall notify the victim if the offender

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

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

7 (c) A victim who has requested notice under (b) of this section
8 shall maintain a current, valid mailing address on file with the
9 commissioner. The commissioner shall send the notice from the depart-
10 ment required by this section to the victim's last known address. The
11 victim's address may not be disclosed to the offender or the offend-
12 er's attorney.

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

15 * Sec. 20. AS 33.30.111(f) is repealed and reenacted to read:

16 (f) If the commissioner considers a prisoner convicted of a
17 crime against a person for a prerelease furlough and the victim has
18 requested notice under AS 33.30.013, the commissioner shall send
19 notice of intent to consider the prisoner for a prerelease furlough to
20 the victim. The victim may comment in writing on the commissioner's
21 intent to release the prisoner on prerelease furlough status. The
22 commissioner shall consider the victim's comments before making a
23 final decision to release a prisoner on a prerelease furlough. The
24 commissioner shall make a reasonable effort to notify the victim of an
25 intent to release the prisoner on a prerelease furlough. The notice
26 must contain the expected date of the prisoner's release, the geo-
27 graphic area in which the prisoner will reside, and other pertinent
28 information concerning the prisoner's release that may affect the
29 victim.

1 * Sec. 21. AS 33.30 is amended by adding a new section to read:

2 Sec. 33.30.292. DESIGNATION OF REPRESENTATIVE. If more than one
3 person who qualifies as a victim under AS 12.55.185 requests notice
4 under this chapter, the commissioner shall designate one person for
5 purposes of receiving the notice required and of exercising the rights
6 granted by this chapter.

7 * Sec. 22. AS 44.23.020(b) is amended by adding a new paragraph to
8 read:

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

12 * Sec. 23. AS 47.10 is amended by adding a new section to read:

13 Sec. 47.10.072. ACCESS TO HEARING BY VICTIM. (a) If a crime
14 was committed by a minor who is scheduled for a hearing under AS 47.-
15 10.070, the victim may request from the court permission to attend the
16 hearing. If the victim requests, the department shall provide techni-
17 cal assistance to the victim in preparing a written submission to the
18 court requesting access to the hearing. The department shall make
19 reasonable efforts to inform victims of the availability of this
20 assistance.

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

25 (c) In this section, "victim" has the meaning given in AS 12.-
26 55.185.

27 * Sec. 24. AS 12.61.020(e)(2) is repealed.

28 * Sec. 25. Rule 32(d)(1), Alaska Rules of Criminal Procedure, is amend-
29 ed to read:

1 (1) WHEN MADE. The probation service shall make a presentence
2 investigation and report before the court imposes sentence or
3 grants probation. The presentence investigation and report shall be
4 completed and made available to the court. The report shall not be
5 disclosed to any one except counsel unless the defendant has tendered
6 a plea of guilty or nolo contendere or has been found guilty. If the
7 crime for which the person is to be sentenced is a felony, the con-
8 tents shall be disclosed to counsel for the parties before the time of
9 the hearing on the aggravator and mitigator factors and sentencing.
10 The court may utilize the report in determining if a bargained sen-
11 tence recommendation will be followed pursuant to Rule 11. In the
12 event the attorneys for the parties request the preparation of a
13 presentence report to aid them in plea bargaining the court may order
14 such report to be made prior to the time stated in this rule.

15 * Sec. 26. Rule 32, Alaska Rules of Criminal Procedure, is amended by
16 adding a new paragraph to read:

17 (g) WRITTEN STATEMENT SUBMITTED BY VICTIM OR VICTIM'S SURVIVOR.
18 If a written statement is prepared and submitted by the victim of a
19 felony offense or by the survivor of the victim of a felony offense
20 under AS 12.55.023, the trial court

21 (1) shall take the content of the written statement into
22 consideration

23 (A) when preparing those elements of the sentencing
24 report required by AS 12.55.025 that relate to the effect of the
25 felony offense on the victim or the victim's survivors;

26 (B) when considering the need for restitution under
27 AS 12.55.045; and

28 (2) may take the content of the written statement into
29 consideration in any other circumstance that the court believes

1 necessary.

2 * Sec. 27. Rule 35, Alaska Rules of Criminal Procedure, is amended by
3 adding new paragraphs to read:

4 (c) The victim may comment on motions made under this rule as
5 follows:

6 (1) When an individual convicted of a crime against a
7 person files a motion to modify or reduce a sentence, the court shall,
8 if feasible, send a copy of the motion to the Department of Correc-
9 tions sufficiently in advance of any scheduled hearing or briefing
10 deadline to enable the department to notify the victim, as directed by
11 AS 12.55.088(d).

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

15 (3) The court shall consider the comments of the victim
16 when relevant, and any response offered by the prosecuting attorney or
17 the person filing the motion, in deciding whether to reduce or modify
18 a sentence.

19 (4) If more than one person who qualifies as a victim under
20 subparagraph (5) of this paragraph (c) requests the opportunity to
21 exercise rights under this paragraph, the court shall allow the person
22 designated under AS 12.55.172 to exercise those rights, or if a person
23 has not been designated under AS 12.55.172, the court shall designate
24 one person for purposes of exercising rights under this paragraph.

25 (d) In this rule,

26 (1) "crime against a person" means

27 (A) a crime as set out in AS 11.41, except custodial
28 interference under AS 11.41.320 and 11.41.330; or

29 (B) a crime against a person in this or another

1 jurisdiction having elements substantially identical to those of
2 a crime as set out in AS 11.41, except custodial interference
3 under AS 11.41.320 and 11.41.330;

4 (2) "victim" means

5 (A) a person against whom an offense has been perpe-
6 trated;

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

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

12 (ii) a parent, guardian, or custodian of the
13 person;

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

16 (i) a person living in a spousal relationship
17 with the deceased before the deceased died;

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

20 (iii) any other interested person.

21 * Sec. 28. APPLICABILITY. The provisions of this Act prescribing the
22 rights of a crime victim and of a crime victim's relative or survivor
23 during the course of criminal, civil, and administrative proceedings apply
24 to proceedings against defendants initiated on or after the effective date
25 of this Act.
26
27
28
29

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

IN THE HOUSE

CS FOR HOUSE BILL NO. 36 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the rights, entitlements, and services that are due to victims of crime and their representatives, relatives, and survivors, and to service of process on prisoners; and amending Rules 32 and 35 of the Alaska Rules of Criminal Procedure."

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

* Section 1. AS 09.05 is amended by adding a new section to read:

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

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

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

(b) A party requesting service of process under this section may locate a person committed to the custody of the commissioner of corrections by contacting the chief classification officer of the Department of Corrections during that officer's regular hours of work.

* Sec. 2. AS 12.47 is amended by adding a new section to read: