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Source

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Chapter No.

154

AN ACT

Relating to victims' rights; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure.

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

THE ACT FOLLOWS ON PAGE 1, LINE 10

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: July 5, 1984
Actual Effective Date: October 3, 1984

AN ACT

Relating to victims' rights; and amending Rule 32(d)(2)
of the Alaska Rules of Criminal Procedure.

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

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

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

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

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

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

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1 of the sentence imposed;

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

3 [AND]

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

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

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

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

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

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

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

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

18 CHAPTER 61. RIGHTS OF VICTIMS.

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

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

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

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

1 available;

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

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

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

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

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

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

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

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

14 (e) In this section

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

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

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

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

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

28 Sec. 33.15.065. RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRIS-
29 ONER. (a) Upon request of the victim, notice of a hearing to review

1 or consider the parole eligibility or the setting of a parole date for
2 a prisoner in a state prison who is convicted of a crime against a
3 person shall be sent to the victim of the crime at least 30 days
4 before the scheduled hearing.

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

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

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

17 (e) Upon request of the victim, if the board decides to release
18 on parole a prisoner who is convicted of a crime against a person, the
19 board shall make every reasonable effort to notify the victim before
20 the prisoner's release date. Notification under this subsection shall
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 (f) Upon request of the victim, if a prisoner is released under
26 AS 33.20.040(a), the board shall make every reasonable effort to
27 notify the victim before the prisoner's release date. Notification
28 under this subsection shall include the expected date of the prison-
29 er's release, the geographic area in which the prisoner is required to

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1 reside, and other pertinent information concerning the prisoner's
2 conditions of parole that may affect the victim.

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

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

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

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

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

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

24 (b) In the case of a prisoner convicted of a crime against a
25 person, notice of the commissioner's intent to consider the prisoner
26 for release under (a) of this section shall be sent upon request to
27 the victim. The victim may comment in writing on the intent of the
28 commissioner to release the prisoner in rehabilitation furlough sta-
29 tus. The commissioner shall consider the comments of the victim

before making a final decision to release a prisoner under (a) of this section. The victim shall keep the commissioner apprised of the victim's current mailing address. If the victim requests to be notified, the commissioner shall make every reasonable effort to notify the victim of an intent to release a prisoner under (a) of this section. The notice shall contain the expected date of the prisoner's release and the geographic area in which the prisoner will reside and other pertinent information concerning the prisoner's release that may affect the victim.

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

(8) "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;

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

* Sec. 11. AS 18.67.165 is repealed. If AS 12.61.020, added by sec. 4 of this Act, is held invalid by a final decision of an appellate court of the state or the United States, AS 18.67.165 is revived.

* Sec. 12. The effect of sec. 1 of this Act is to amend Rule 32(d)(2) of the Alaska Rules of Criminal Procedure by adding a requirement for a Victim Impact Statement as part of a court ordered presentence report.

* Sec. 13. If a provision of this Act or the application of a provision of this Act to a particular person or circumstance is held invalid, the remainder of this Act and its application to other persons or circumstances shall not be affected.