

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 979

Amending Criminal Rules 32 and
35 as provided by Ch. 59, §§26-
28, SLA 1989.

IT IS ORDERED:

1. As provided by ch. 59, §26, SLA 1989, Criminal Rule 32(d)(1) is amended to provide:

(1) When Made. The probation service ~~shall~~ make a presentence investigation and report before the court imposes sentence or grants probation. The presentence investigation and report shall be completed and made available to the court. The report shall not be submitted to the court or its contents disclosed to any one except counsel unless the defendant has tendered a plea of guilty or nolo contendere or has been found guilty. If the crime for which the person is to be sentenced is a felony, the contents shall be disclosed to counsel for the parties before the time of the hearing on the aggravator and mitigator factors and sentencing. The court may utilize the report in determining if a bargained sentence recommendation will be followed pursuant to Rule 11. In the event the attorneys for the parties request the preparation of a presentence report to aid them in plea bargaining the court may order such report to be made prior to the time stated in this rule.

2. As provided by ch. 59, §27, SLA 1989, Criminal Rule 32 is amended to add new paragraphs (g) and (h):

(g) Written Statement Submitted by Victim or Victim's Representative. If a written statement is prepared and submitted by the victim of a felony offense or a domestic violence assault under AS 12.55.023, the trial court:

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

(A) when preparing those elements of the sentencing report required by

AS 12.55.025 that relate to the effect of the offense on the victim;

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

(2) may take the content of the written statement into consideration in any other circumstances that the court believes necessary.

(h) In (g) of this rule,

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

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

3. A "note" is added after Criminal Rule 32 to provide:

Paragraphs (g) and (h) were added by ch. 59, §27, SLA 1989. Subparagraph (d)(1) was amended by ch. 59 §26, SLA 1989.

4. As provided by ch. 59, §28, SLA 1989, Criminal Rule 35 is amended to add new paragraphs (c) and (d):

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

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

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

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

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

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

(d) In this rule,

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

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

5. A note is added following Criminal Rule 35 to provide:

Paragraphs (c) and (d) of Criminal Rule 35 were added by ch. 59, §28, SLA 1989.

DATED: June 29, 1989

EFFECTIVE DATE: August 28, 1989

Chief Justice Matthews

Justice Rabinowitz

Justice Burke

Justice Compton

Justice Moore