

27-LS0966/I
Gardner
4/11/12

HOUSE CS FOR CS FOR SENATE BILL NO. 135(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

**Sponsor(s): SENATORS FRENCH, Dyson, Wielechowski, Coghill, Olson, Kookesh, Giessel, Meyer, Ellis,
Menard, Paskvan, Egan, McGuire, Stedman, Thomas, Stevens**

REPRESENTATIVE Petersen

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the rights of crime victims; relating to the duties of prosecuting**
2 **attorneys; relating to the victims' advocate and to the term of office of the victims'**
3 **advocate; relating to the appointment of counsel for persons accused of crimes;**
4 **amending Rules 39.1 and 45, Alaska Rules of Criminal Procedure; and providing for an**
5 **effective date."**

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

7 *** Section 1.** AS 12.61.010(a) is amended to read:

8 (a) Victims of crimes have the following rights:

9 (1) the right to be present during any proceeding in

10 (A) the prosecution and sentencing of a defendant if the
11 defendant has the right to be present, including being present during testimony
12 even if the victim is likely to be called as a witness;

13 (B) the adjudication of a minor as provided under
14 AS 47.12.110;

(2) the right to be notified by the appropriate law enforcement agency or the prosecuting attorney of **any request for a continuance that may substantially delay the prosecution and of** the date of trial, sentencing, including a proceeding before a three-judge panel under AS 12.55.175, an appeal, and any hearing in which the defendant's release from custody is considered;

(3) 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;

(4) 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;

(5) the right to be notified of the procedure to be followed to apply for and receive any compensation under AS 18.67;

(6) 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 except as authorized by AS 12.61.017 and without interference in any form by the employer of the victim of crime;

(7) 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;

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

(9) the right to appear personally at the defendant's sentencing hearing to present a written statement and to give sworn testimony or an unsworn oral presentation;

(10) 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;

(11) the right to notice under AS 12.47.095 concerning the status of the

defendant found not guilty by reason of insanity;

(12) the right to notice under AS 33.16.087 of a hearing concerning special medical parole of the defendant;

(13) the right to notice under AS 33.16.120 of a hearing to consider or review discretionary parole of the defendant;

(14) the right to notice under AS 33.30.013 of the release or escape of the defendant; and

(15) the right to be notified orally and in writing of and receive information about the office of victims' rights from the law enforcement officer initially investigating the crime and from the prosecuting attorney assigned to the offense; at a minimum, the information provided must include the address, telephone number, and Internet address of the office of victims' rights; this paragraph

(A) applies only to victims of felonies and to victims of class A misdemeanors if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41; if the victim is an unemancipated minor, the law enforcement officer and the prosecuting attorney shall also provide the notice required by this paragraph to the parent or guardian of the minor;

(B) is satisfied if, at the time of initial contact with the crime victim, the investigating officer and prosecuting attorney each give each crime victim a brochure or other written material prepared by the office of victims' rights and provided to law enforcement agencies for that purpose.

*** Sec. 2.** AS 12.61.015(a) is amended to read:

(a) If a victim of a felony or a crime involving domestic violence requests, the prosecuting attorney shall make a reasonable effort to

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

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

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

(B) of the victim's right in a case that is a felony to make a written or oral statement for use in preparation of the defendant's presentence report, and of the victim's right to appear personally at the defendant's sentencing hearing to present a written statement and to give sworn testimony or an unsworn oral presentation;

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

(D) of the time and place of the sentencing proceeding;

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

(4) confer with the victim of a crime involving domestic violence concerning a proposed plea agreement before entering into an agreement;

(5) inform the victim of a pending motion that may substantially delay the prosecution and inform the court of the victim's position on the motion; in this paragraph, a "substantial delay" is

(A) for a misdemeanor, a delay of one month or longer;

(B) for a felony, a delay of two months or longer; and

(C) for an appeal, a delay of six months or longer.

* **Sec. 3.** AS 18.85.120(b) is amended to read:

(b) In determining whether a person is indigent and in determining the extent of the person's inability to pay, the court shall consider such factors as income, property owned, outstanding obligations, and the number and ages of dependents. Release on bail does not preclude a finding that a person is indigent. In each case, the person, subject to the penalties for perjury, shall certify under oath, and in writing or by other record, material factors relative to the person's **financial resources and** ability to pay that the court prescribes.

* **Sec. 4.** AS 24.65.040 is amended to read:

Sec. 24.65.040. Term of office. (a) The term of office of the victims' advocate is five years. A victims' advocate may be reappointed but may not serve for more than three terms. **To be eligible for reappointment at the conclusion of each five-year term of service, a victims' advocate seeking reappointment must submit to the**

victims' advocate selection committee an application for reappointment.

(b) If the term of a victims' advocate expires without the appointment of a successor under this chapter **or** [, THE INCUMBENT VICTIMS' ADVOCATE MAY CONTINUE IN OFFICE UNTIL A SUCCESSOR IS APPOINTED. IF] the victims' advocate dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the person appointed as acting victims' advocate under AS 24.65.070(a) serves until a new victims' advocate is appointed for a full term.

* **Sec. 5.** AS 24.65.060 is amended to read:

Sec. 24.65.060. Compensation. The victims' advocate is entitled to receive an annual salary **of** [EQUAL TO STEP A,] Range 26 [,] on the salary schedule set out in AS 39.27.011(a) for Juneau.

* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 39.1(e), Alaska Rules of Criminal Procedure, is amended to read:

(e) **Determining Eligibility.** The court or its designee shall determine whether a defendant is eligible for court-appointed counsel by placing the defendant under oath and asking about the defendant's financial status, or by requiring the defendant to complete a signed sworn financial statement, **subject to penalties for perjury**. A defendant who requests appointed counsel must execute a general waiver authorizing the release of financial information to the court as required by AS 18.85.120.

* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 45(d)(2), Alaska Rules of Criminal Procedure, is amended to read:

(2) The period of delay resulting from an adjournment or continuance granted at the timely request or with the consent of the defendant and the defendant's counsel. The court shall grant such a continuance only if it is satisfied that the postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal offenses, **and after consideration of the interests of the crime victim, if known, as provided in (h) of this rule**. A defendant without

1 counsel shall not be deemed to have consented to a continuance unless the defendant
2 has been advised by the court of the right to a speedy trial under this rule and of the
3 effect of consent.

4 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 DIRECT COURT RULE AMENDMENT. Rule 45, Alaska Rules of Criminal
7 Procedure, is amended by adding a new subsection to read:

8 (h) **Victim's Interest in Ruling on Motion to Continue.** Before ruling on a
9 motion for a continuance in a case involving a victim, as defined in AS 12.55.185, the
10 court shall consider the victim's position, if known, on the motion to continue and the
11 effect of a continuance on the victim.

12 * **Sec. 9.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).