

**HOUSE BILL NO. 172**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE CROFT

Introduced: 3/31/99

Referred: Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act establishing the office of victims' advocacy in the Department of Law;  
2 and amending Rule 16, Alaska Rules of Criminal Procedure, Rule 9, Alaska  
3 Delinquency Rules, and Rule 501, Alaska Rules of Evidence."

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

5 \* Section 1. AS 12.55.023(b) is amended to read:

6 (b) A victim may submit to the sentencing court a written statement that the  
7 victim believes is relevant to the sentencing decision [,] and may give sworn testimony  
8 or make an unsworn oral presentation to the court at the sentencing hearing. If there  
9 are numerous victims, the court may limit the number of victims who may give sworn  
10 testimony or make an unsworn oral presentation during the hearing. **When requested**  
11 **by the victim of a felony or a class A misdemeanor, if the class A misdemeanor**  
12 **is a crime involving domestic violence or a crime against a person under**  
13 **AS 11.41, when the victim does not submit a statement, give testimony, or make**  
14 **an oral presentation, the victims' advocate may submit a written statement or**

1       make an unsworn oral presentation at the sentencing hearing on behalf of the  
2       victim.

3       \* **Sec. 2.** AS 12.61 is amended by adding new sections to read:

4                       **Article 2A. Office of Victims' Advocacy.**

5               **Sec. 12.61.200. Office of victims' advocacy established; duties.** (a) The  
6       office of victims' advocacy is established in the Department of Law. The office shall  
7       be directed by the victims' advocate. The victims' advocate shall be appointed by the  
8       attorney general and shall be an attorney admitted to practice law in this state. The  
9       victims' advocate shall be in the partially exempt service under AS 39.25.120. The  
10      office may employ assistant victims' advocates and clerical staff that the attorney  
11      general determines are needed to perform the duties set out in this section. Assistant  
12      victims' advocates and clerical staff employed by the office are in the classified service  
13      under AS 39.25.100.

14              (b) The office of victims' advocacy shall

15                      (1) work to ensure that victims of crimes receive the rights to which  
16      they are entitled under the constitution and the laws of this state;

17                      (2) when directed by the attorney general, perform the duties required  
18      of the prosecuting attorney under AS 12.61.015;

19                      (3) act as a liaison between state agencies and victims of crimes;

20                      (4) advocate on behalf of crime victims in the courts of the state; and

21                      (5) investigate and report on complaints of victims of crimes that state  
22      agencies have not complied with the duties imposed on the agencies regarding victims  
23      of crimes.

24              (c) The victims' advocate may establish procedures so that advocacy and  
25      investigations on behalf of crime victims in felony cases take priority over advocacy  
26      and investigations on behalf of crime victims in misdemeanor cases.

27              (d) Each state agency shall cooperate with the office of victims' advocacy  
28      when the office is performing the duties imposed under this section.

29              (e) The state, the victims' advocate, and employees of the office of victims'  
30      advocacy may not be held liable for damages for any failure to comply with the  
31      requirements of this section.

1           **Sec. 12.61.210. Advocacy on behalf of crime victims; records.** (a) The  
2 victims' advocate shall assist crime victims in obtaining the rights crime victims are  
3 guaranteed under the constitution and laws of the state with regard to the contacts  
4 crime victims have with the justice agencies of the state.

5           (b) The victims' advocate may make the statement a crime victim is authorized  
6 to make under art. I, sec. 24, Constitution of the State of Alaska, and AS 12.55.023,  
7 in a court of the state when requested by the crime victim and when the crime victim  
8 does not personally make a statement.

9           (c) When advocating on behalf of a crime victim in an ongoing criminal case  
10 or juvenile adjudication, the victims' advocate is entitled to all information available  
11 to the parties to the case.

12           (d) Records obtained by the victims' advocate shall remain in the exclusive  
13 custody of the victims' advocate. The victims' advocate may not disclose confidential  
14 information to any person.

15           **Sec. 12.61.220. Investigations.** (a) The victims' advocate may investigate  
16 complaints from crime victims that they have been denied the rights they are  
17 guaranteed under the constitution and laws of this state.

18           (b) In an investigation, the victims' advocate may

19                   (1) make inquiries and obtain information considered necessary;

20                   (2) hold private hearings; and

21                   (3) notwithstanding other provisions of law, have access at all times to  
22 records of justice agencies, including court records of criminal prosecutions and  
23 juvenile adjudications, necessary to ensure that the rights of crime victims are not  
24 being denied.

25           (c) The victims' advocate shall maintain confidentiality with respect to all  
26 matters and the identities of the complainants or witnesses coming before the victims'  
27 advocate except insofar as disclosures may be necessary to enable the victims' advocate  
28 to carry out duties and to support recommendations. However, the victims' advocate  
29 may not disclose a confidential record obtained from a court or justice agency.

30           (d) Subject to the privileges that witnesses have in the courts of this state, the  
31 victims' advocate may compel by subpoena, at a specified time and place, the

1 (1) appearance and sworn testimony of a person who the victims'  
2 advocate reasonably believes may be able to give information relating to a matter  
3 under investigation under this section; and

4 (2) production by a person of a record or object that the victims'  
5 advocate reasonably believes may relate to the matter under investigation under this  
6 section.

7 (e) If a person refuses to comply with a subpoena issued under (d) of this  
8 section, the superior court may, on application of the victims' advocate, compel  
9 obedience by proceedings for contempt in the same manner as in the case of  
10 disobedience to the requirements of a subpoena issued by the court or refusal to testify  
11 in the court.

12 (f) This section does not authorize the victims' advocate to issue a subpoena  
13 to

14 (1) a justice, judge, magistrate, or a law clerk acting under the direction  
15 of a justice, judge, or magistrate, concerning a judicial action or nonaction taken by,  
16 or under the direction of, the justice, judge, or magistrate;

17 (2) a person acting under the direction of a justice, judge, or magistrate,  
18 other than a law clerk, concerning a judicial action or nonaction taken by, or under the  
19 direction of, a justice, judge, or magistrate except to establish the occurrence or  
20 nonoccurrence of the action or nonaction or the person's own actions or nonactions;  
21 this paragraph does not authorize the victims' advocate to inquire into the decision-  
22 making or thought process of the justice, judge, or magistrate;

23 (3) a member of a jury concerning a matter that was considered by the  
24 jury; or

25 (4) the person accused or convicted of committing the crime that is the  
26 basis for the complaint, and investigation under this section, concerning a denial of  
27 rights.

28 (g) Before giving an opinion or recommendation that is critical of a justice  
29 agency or person as a result of an investigation under this section, the victims'  
30 advocate shall consult with that agency or person. The victims' advocate may make  
31 a preliminary opinion or recommendation available to the agency or person for review,

1 but the preliminary opinion or recommendation is confidential and may not be  
2 disclosed to the public by the agency or person.

3 (h) The victims' advocate shall report the advocate's opinion and  
4 recommendations to the attorney general if the victims' advocate finds, after  
5 investigation under this section, that the agency has denied a crime victim rights the  
6 crime victim is guaranteed under the constitution and laws of this state.

7 (i) The victims' advocate may request the attorney general to notify the  
8 victims' advocate, within a specified time, of any action taken on the recommendations.

9 (j) The report provided under (h) of this section is confidential and may not  
10 be disclosed to the public by the attorney general. The victims' advocate may disclose  
11 the report under (k) of this section only after providing notice that the investigation has  
12 been concluded to the agency and after receiving the written approval of the  
13 complainant to release the report.

14 (k) Except as provided in (j) of this section, within a reasonable amount of  
15 time after the victims' advocate reports the advocate's opinion and recommendations  
16 to a justice agency, the victims' advocate may present the opinion and  
17 recommendations to the governor, the legislature, a grand jury, the public, or any of  
18 these. The victims' advocate shall include with the opinion any reply made by the  
19 agency.

20 **Sec. 12.61.230. Annual report.** The victims' advocate shall submit to the  
21 public an annual report of the victims' advocate's activities under AS 12.61.200 -  
22 12.61.290 and notify the legislature that the report is available.

23 **Sec. 12.61.240. Immunity of the victims' advocate.** A civil action may not  
24 be brought against the victims' advocate or a member of the victims' advocate's staff  
25 for anything done, said, or omitted in performing the victims' advocate's duties or  
26 responsibilities under AS 12.61.200 - 12.61.290.

27 **Sec. 12.61.250. Victims' advocate's privilege not to testify.** The victims'  
28 advocate and the staff of the victims' advocate may not testify in a court regarding  
29 matters coming to their attention in the exercise or purported exercise of their official  
30 duties except as may be necessary to enforce the provisions of AS 12.61.200 -  
31 12.61.290.

1           **Sec. 12.61.260. Penalty.** A person who knowingly hinders the lawful actions  
2 of the victims' advocate or the staff of the victims' advocate, or who knowingly refuses  
3 to comply with their lawful demands, is guilty of a misdemeanor and upon conviction  
4 may be punished by a fine of not more than \$1,000. In this section, "knowingly" has  
5 the meaning given in AS 11.81.900.

6           **Sec. 12.61.290. Definitions.** In AS 12.61.200 - 12.61.290, "justice agency"  
7 means a department, office, institution, corporation, authority, organization,  
8 commission, committee, council, court, or board in the executive or judicial branches  
9 of the state government that is, in any manner, involved with or responsible for the  
10 apprehension, prosecution, incarceration, or supervision of criminal or juvenile  
11 offenders; it also includes an officer, employee, or member of an agency acting or  
12 purporting to act in the exercise of official duties, including the governor and  
13 lieutenant governor, when acting with regard to executive clemency, judges, and  
14 magistrates;

15   \* **Sec. 3.** AS 39.25.120(c) is amended by adding a new paragraph to read:

16                           (25) the victims' advocate established under AS 12.61.200.

17   \* **Sec. 4.** AS 12.61.210 and 12.61.220, added by sec. 2 of this Act, have the effect of  
18 amending Rule 16, Alaska Rules of Criminal Procedure, and Rule 9, Alaska Delinquency  
19 Rules, by allowing the victims' advocate a right of access to information in criminal  
20 prosecutions and juvenile adjudications that is equal to that available to criminal defendants  
21 or juveniles when the advocate is engaging in advocacy or that is unlimited when the advocate  
22 is engaging in investigations concerning victims' rights.

23   \* **Sec. 5.** AS 12.61.250, added by sec. 2 of this Act, amends Rule 501, Alaska Rules of  
24 Evidence, by creating a new privilege from being compelled to testify in a court.