

CS FOR SENATE BILL NO. 135(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/13/12

Referred: Finance

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; and amending Rule 45, Alaska Rules of Criminal Procedure."**

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

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

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

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

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

10 (B) the adjudication of a minor as provided under
11 AS 47.12.110;

12 (2) the right to be notified by the appropriate law enforcement agency
13 or the prosecuting attorney of **any request for a continuance that may substantially**
14 **delay the prosecution and of** the date of trial, sentencing, including a proceeding

1 before a three-judge panel under AS 12.55.175, an appeal, and any hearing in which
2 the defendant's release from custody is considered;

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

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

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

10 (6) at the request of the prosecution or a law enforcement agency, the
11 right to cooperate with the criminal justice process without loss of pay and other
12 employee benefits except as authorized by AS 12.61.017 and without interference in
13 any form by the employer of the victim of crime;

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

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

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

25 (10) the right to be informed by the prosecuting attorney, at any time
26 after the defendant's conviction, about the complete record of the defendant's
27 convictions;

28 (11) the right to notice under AS 12.47.095 concerning the status of the
29 defendant found not guilty by reason of insanity;

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

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

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

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

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

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

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

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

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

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

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

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

1 sentencing hearing to present a written statement and to give sworn testimony
2 or an unsworn oral presentation;

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

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

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

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

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

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

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

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

16 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

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

20 (2) The period of delay resulting from an adjournment or continuance
21 granted at the timely request or with the consent of the defendant and the defendant's
22 counsel. The court shall grant such a continuance only if it is satisfied that the
23 postponement is in the interest of justice, taking into account the public interest in the
24 prompt disposition of criminal offenses, **and after consideration of the interests of**
25 **the crime victim, if known, as provided in (h) of this rule.** A defendant without
26 counsel shall not be deemed to have consented to a continuance unless the defendant
27 has been advised by the court of the right to a speedy trial under this rule and of the
28 effect of consent.

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

31 DIRECT COURT RULE AMENDMENT. Rule 45, Alaska Rules of Criminal

1 Procedure, is amended by adding a new subsection to read:

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