

Introduced: 1/11/82
Referred: Judiciary

1 IN THE HOUSE

BY ABOOD

2 HOUSE BILL NO. 627

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crime victims and witnesses; and
7 changing Rules 5(c), 5.1(g), 16(b), and 16(d), Rules of
8 Criminal Procedure."

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

10 * Section 1. PURPOSE. The purposes of this Act are to

11 (1) encourage victims and witnesses of crimes to perform their
12 civic and moral duty of fully and voluntarily cooperating with law enforce-
13 ment agencies and prosecutors in furthering the general effectiveness of the
14 criminal justice system of the state;

15 (2) ensure that all victims and witnesses of crime are treated
16 with dignity, respect, courtesy, and sensitivity; and

17 (3) ensure that the rights extended to victims and witnesses of
18 crime are honored and protected by law enforcement agencies, prosecutors, and
19 judges in a manner no less vigorous than the protections afforded criminal
20 defendants.

21 * Sec. 2. AS 12 is amended by adding a new chapter to read:

22 CHAPTER 61. RIGHTS OF VICTIMS AND WITNESSES.

23 Sec. 12.61.010. RIGHTS OF VICTIMS AND WITNESSES. (a) Victims and
24 witnesses of crimes have the following rights:

25 (1) the right to be informed by the appropriate law enforce-
26 ment agency or the prosecuting attorney of the final disposition of the
27 case in which the victim or witness is involved;

28 (2) the right to be notified that a court proceeding to which
29 the victim or witness has been subpoenaed will not occur as scheduled,

1 in order to save the person an unnecessary trip to court;

2 (3) the right to receive protection from harm and threats of
3 harm arising out of cooperation with law enforcement and prosecution
4 efforts, and to be provided with information as to the level of protec-
5 tion available;

6 (4) the right to be informed of the procedure to be followed
7 to apply for and receive any witness fees or victim compensation to
8 which the person may be entitled;

9 (5) the right to be provided, whenever practical, a secure
10 waiting area during court proceedings that does not require the victim
11 or witness to be in close proximity to a defendant and the family or
12 friends of a defendant;

13 (6) the right to have any stolen or other personal property
14 expeditiously returned by the law enforcement agency unless it is unlaw-
15 ful to return the property;

16 (7) the right to cooperate with the criminal justice process
17 without loss of pay and other employee benefits and without interference
18 in any form by the employer of the victim or witness of crime; and

19 (8) the right to access to immediate medical assistance and
20 not to be detained for an unreasonable length of time by a law enforce-
21 ment agency before having medical assistance administered; however, an
22 employee of the law enforcement agency may, if necessary, accompany the
23 person to a medical facility to question the person about the criminal
24 incident if the questioning does not hinder the administration of medical
25 assistance.

26 (b) Law enforcement agencies, prosecutors, and the courts shall
27 make a reasonable effort to assure that victims and witnesses of crimes
28 have the rights set out in (a) of this section.

29 (c) The family members of a homicide victim shall be afforded all

1 of the rights established under (a)(1) - (7) of this section. For
2 purposes of this subsection, "family members" include a spouse, child,
3 brother, sister, parent, or legal guardian.

4 Sec. 12.61.020. DUTY OF COURT RELATING TO VICTIMS OF DOMESTIC
5 VIOLENCE. (a) Because of the serious nature of domestic violence, the
6 court in adjudicating criminal offenses involving domestic violence may

7 (1) not dismiss a charge or delay disposition because of
8 pending divorce, dissolution of marriage, or other civil proceedings
9 involving a victim of domestic violence and the person accused of a
10 crime involving domestic violence;

11 (2) not dismiss a charge for failure of the victim to petition
12 for divorce or dissolution of marriage;

13 (3) not order the victim's location to be disclosed to any
14 person, other than the attorney of a criminal defendant, upon a showing
15 that there is a possibility of further violence; however, the court
16 shall order a criminal defense attorney not to disclose to his client
17 the victim's location; and

18 (4) identify by any reasonable means in the public records of
19 the court those criminal actions arising from acts of domestic violence.

20 (b) When a defendant charged with a crime involving domestic
21 violence is released from custody before trial on bail or personal
22 recognizance, the court authorizing the release may prohibit the defen-
23 dant from having any contact with the victim. Wilful violation of a
24 court order issued under this section is a class A misdemeanor. The
25 written order releasing the defendant must contain the court's directives
26 and bear the legend: "Violation of this order is a criminal offense
27 under AS 12.61.020." A certified copy of an order issued under this
28 section must be provided to the victim.

29 (c) At the time of the arraignment of the defendant the court

1 shall determine the necessity of imposing an order under (b) of this
2 section or other conditions of pretrial release according to the proce-
3 dures established by court rule for an arraignment. The decision of the
4 judge and findings of fact in support of the decision must be in writing.

5 * Sec. 3. AS 12.45 is amended by adding a new section to read:

6 Sec. 12.45.047. DISCOVERY OF CRISIS INTERVENTION SERVICE RECORDS.

7 (a) Records maintained by a crisis intervention service may not be made
8 available to a defense attorney as part of discovery in a sexual assault
9 case or attempted sexual assault case unless

10 (1) a written pretrial motion is made by the defendant to the
11 court stating that the defendant is requesting discovery of records of
12 the crisis intervention service;

13 (2) the written motion is accompanied by an affidavit setting
14 out specifically the reasons why the defendant is requesting discovery
15 of the records;

16 (3) the court reviews the records of the crisis intervention
17 service in camera to determine whether the records are relevant and
18 whether the probative value of the records is outweighed by the victim's
19 privacy interest in the confidentiality of the records, taking into
20 account the further trauma that may be inflicted upon the victim by the
21 disclosure of the records to the defendant; and

22 (4) the court enters an order stating whether the records or
23 a part of the records are discoverable and setting out the basis for the
24 court's findings.

25 (b) For the purposes of this section "crisis intervention service"
26 includes a public or private entity that provides counseling or other
27 assistance to the victim of a sexual assault, including the victim/
28 witness assistance program of the Department of Law.

29 * Sec. 4. AS 18.65.510(a) is amended to read:

1 (a) Each established police training program in the state shall
2 provide training that acquaints police officers with

3 (1) laws relating to substantive crimes and rules of criminal
4 procedure applicable in cases involving domestic violence;

5 (2) techniques for handling incidents of domestic violence
6 which promote the safety of the victim and the officer, [AND WHICH]
7 reduce the likelihood of recurrence, and protect the rights of the
8 victim;

9 (3) organizations in the state that offer aid or shelter to
10 victims of domestic violence;

11 (4) procedures applicable in the prosecution of cases involv-
12 ing domestic violence;

13 (5) orders that may be issued by a court under AS 09.55.600
14 and 09.55.610; [AND]

15 (6) the notification to be given to victims of domestic
16 violence under AS 18.65.520; and

17 (7) the rights of victims under AS 12.61.

18 * Sec. 5. AS 18.65.520(a) is amended to read:

19 (a) During the course of responding to an offense involving domes-
20 tic violence, a police officer shall orally or in writing inform the
21 victim of (1) the rights of crime victims under AS 12.61; and (2) the
22 services available to [THE VICTIM] and the rights of a [THE] victim
23 of domestic violence, substantially as follows:

24 As a victim of domestic violence you should be aware of the follow-
25 ing:

26 (1) In some places in Alaska there are organizations that
27 provide aid and shelter to victims of domestic violence. The nearest
28 such organization is located at _____.

29 (2) If you feel that there is a continuing danger to your

1 safety, please let me know and I will make all possible efforts to
2 insure your safety.

3 (3) Alaska law provides that you may file an application with
4 the nearest court for a court order protecting you and your children
5 from further harm. The forms to obtain the order are available at the
6 court. It is not necessary to have an attorney to obtain a court order
7 but one may be of help to you. If you cannot afford to hire an attorney,
8 you should contact the nearest Alaska Legal Services office which is
9 located at _____.

10 (4) Additionally, the victim/witness assistance program of
11 the Department of Law may be able to help you. The nearest district
12 attorney's office is located at _____.

13 * Sec. 6. AS 18.65 is amended by adding a new section to read:

14 Sec. 18.65.530. DUTY OF POLICE OFFICER AND LAW ENFORCEMENT AGENCY
15 IN RESPONDING TO COMPLAINT OF DOMESTIC VIOLENCE. (a) The primary duty
16 of a police officer, when responding to a complaint of domestic violence,
17 is to enforce the laws allegedly violated and to protect the victim of
18 the domestic violence.

19 (b) When a police officer responds to a complaint of domestic
20 violence and has probable cause to believe that a crime has been commit-
21 ted, the police officer may arrest the offender.

22 (c) In a case where the police officer has not made an arrest or
23 decided to initiate criminal proceedings, the police officer shall
24 notify the victim of the victim's right to initiate a criminal proceed-
25 ing.

26 (d) The police officer responding to a complaint of domestic
27 violence shall offer, arrange, or facilitate transportation for the
28 victim to a hospital for treatment of injuries or to a place of safety
29 or shelter.

1 (e) A police officer responding to a complaint of domestic violence
2 shall make a complete offense report including the officer's disposition
3 of the case.

4 (f) The law enforcement agency shall forward the offense report to
5 the appropriate prosecutor within 10 days of receiving the report if
6 there is probable cause to believe that an offense has been committed.

7 (g) The law enforcement agency shall make and maintain records of
8 all incidents of domestic violence reported to it.

9 * Sec. 7. AS 47.10.020(a) is amended to read:

10 (a) Whenever a person informs the court of the facts which bring a
11 minor within this chapter, the court shall appoint a competent person or
12 agency to make a preliminary inquiry and report for the information of
13 the court to determine whether the interests of the public or of the
14 minor require that further action be taken. Upon the receipt of the
15 report, the court may informally adjust or dispose of the matter without
16 a hearing, or it may authorize the person having knowledge of the facts
17 of the case to file with the court a petition setting out the facts.
18 Where the court informally adjusts or disposes of the matter, the minor
19 may not be detained or taken into the custody of the court, and the
20 matter shall be closed by the court upon adjustment or disposition.
21 The court shall disclose to the victim, if any, of the minor the manner
22 in which the court informally adjusted or disposed of the matter. The
23 parents, guardian, and other immediate family members of the victim are
24 also entitled to receive the same information from the court.

25 * Sec. 8. AS 47.10.080(a) is amended to read:

26 (a) The court, at the conclusion of the hearing, or thereafter as
27 the circumstances of the case may require, shall find and enter a judg-
28 ment that the minor is or is not a delinquent or a child in need of aid.
29 The court shall disclose the results of the hearing to the victim, if

1 any, of the minor. The parents, guardian, and other immediate family
2 members of the victim are also entitled to receive the same information
3 from the court.

4 * Sec. 9. AS 47.10.090 is amended by adding a new subsection to read:

5 (d) The provisions of this section prohibiting disclosure of
6 information relating to a minor do not apply to a disclosure to a victim
7 and his family under AS 47.10.020(a), AS 47.10.080(a), and AS 47.10.-
8 140(d).

9 * Sec. 10. AS 47.10.140(d) is amended to read:

10 (d) If the court finds that probable cause exists, it shall deter-
11 mine whether the minor should be detained pending the hearing on the
12 petition or released. It may either order the minor held in detention
13 or order him to be released to the custody of a suitable person pending
14 the hearing on the petition. If the court finds no probable cause, it
15 shall order the minor released and close the case. The court shall dis-
16 close the results of the hearing to the victim, if any, of the minor.
17 The parents, guardian, and other immediate family members of the victim
18 are also entitled to receive the same information from the court.

19 * Sec. 11. (a) AS 12.61.020, added by sec. 2 of this Act, has the effect
20 of changing

21 (1) Rule 16(b), Rules of Criminal Procedure, by restricting dis-
22 closure of the victim's location;

23 (2) Rule 5.1(g), Rules of Criminal Procedure, by providing further
24 guidelines to be followed by the court in determining whether or not the
25 defendant should be discharged; and

26 (3) Rule 5(c), Rules of Criminal Procedure, by adding the require-
27 ment that the court consider imposing upon the defendant conditions of release
28 on bail intended to protect the victim of a crime involving domestic violence.

29 (b) AS 12.45.047, added by sec. 3 of this Act, has the effect of chang-

1 ing Rule 16(b) and (d), Rules of Criminal Procedure, by requiring certain
2 procedures to be followed before the defendant may have access to the records
3 of a crisis intervention service as part of discovery in a sexual assault
4 case or attempted sexual assault case.

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