

HB

397



Representative Nancy Dahlstrom
Representative Lesil McGuire

Representative Ralph Samuels
Representative Bill Stoltze

MEMORANDUM

To: Senator Ralph Seekins, Chair,
Senate Judiciary Committee

From: Representative Lesil McGuire, Chair *LM*
House Judiciary Committee

Date: February 25, 2004

Re: Request for Hearing, CSHB 397 (JUD): Defense Contacts With
Victims & Witnesses

I respectfully request that CSHB 397 (JUD): Defense Contacts With Victims & Witnesses, be scheduled for a hearing in the Senate Judiciary Committee. I have attached the following for your information:

1. Sponsor Statement
2. CSHB 397 (JUD)
3. Sectional Analysis
4. HB 397
5. Correspondence from the Office of Victims' Rights
6. Letter of Support
7. Applicable Statutes
8. Zero Fiscal Notes

If you have any questions please feel free to contact me personally, or my staff, Vanessa Tondini, at 4990.



Representative Nancy Dahlstrom
Representative Lesil McGuire

Representative Ralph Samuels
Representative Bill Stoltze

CSHB 397 (JUD)

“An Act relating to defense contacts with and recordings of statements of victims and witnesses of sexual offenses.”

“The Brooke Act”

Sponsor Statement

Victims and witnesses to crime are unfortunately placed at risk of harassment, intimidation, and unwarranted invasions of privacy when their lives are unwillingly thrust into the legal system. These potential harms increase when a victim or witness is a minor and also when the crime they have been involved in is a sexual offense.

HB 397, also known as the Brooke Act, would require criminal defense attorneys and investigators to first obtain the consent of a minor's parent or guardian prior to conducting a tape-recorded interview with a minor sexual assault victim or witness. When a criminal defense attorney or defense investigator speaks to a minor victim or witness, and the interview is not recorded, written authorization must first be obtained from the parent or guardian of the victim or witness. However, if the statement *is* recorded, there is no present requirement in the law that the minor's parent or guardian be consulted to decide whether the minor should waive his or her rights not to speak with defense representatives. This loophole in the law leaves juvenile victims vulnerable and parents in the dark. Current law already embodies an important provision that does not allow a defendant who is the parent or guardian of a minor sexual assault victim or witness to provide the authorization required by this bill.

HB 397 will help parents and guardians of minors to learn what is going on in their lives and empower them to make smart decisions about what is in their best interests, not the best interests of criminal attorneys or their clients.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 13, 2004

SUBJECT: Sectional Summary - CSHB 397(JUD)
(Work Order No. 23-LS1510I)

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: Gerald P. Luckhaupt *Jerry*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Provides a short title.

Section 2. Amends AS 12.61.125(a), provides that the defendant accused of a sexual offense, or the defendant's attorney or investigator or other person working on behalf of the defendant, may not obtain a recorded statement from the victim or a witness unless written authorization is first obtained from the victim or witness or the parent of the victim or witness if a minor.

GPL:med
04-185.med

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 397(JUD)
 (H) Publish Date: 2/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to defense contacts.... BRU Legal and Advocacy Services
 Component Office of Public Advocacy
 Sponsor Representatives McGuire, Samuels, C Samuels & McGuire
 Requester (H) Judiciary Component No. 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill could impact the operations of the Office of Public Advocacy in that it may result in increased investigation costs.

Prepared by: Josh Fink, Director Phone 907-269-3501
 Division: Office of Public Advocacy Date/Time 2-9-04 9:00 a.m.
 Approved by: Mike Miller, Commissioner Date 2/9/2004
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 397(JUD)
 (H) Publish Date: 2/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to defense BRU Legal and Advocacy Services
contacts... Component Public Defender Agency
 Sponsor Representatives McGuire, Samuels
 Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill could impact the operations of the Public Defender Agency in that it may result in increased investigation costs.

Prepared by: Anda K. Wilson, Deputy Director Phone (907)-334-4416
 Division: Public Defender Agency Date/Time 2/9/04 9:00 a.m.
 Approved by: Mike Miller, Commissioner Date _____
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 397(JUD)
 (H) Publish Date: 2/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to defense contacts with and RDU: Criminal
recrodings of statements of victims or witnesses..." Component: Criminal Justice Litigation
 Sponsor: Representative McGuire, Samuels, Dahlstrom, Stolze
 Requester: House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 12.61 by adding a new act to be known as the Brooke Act. The amendments add further protection for minor crime victims or witnesses by requiring that a parent or guardian act as a point of contact with the minor, and consent before a defendant or person acting on behalf of a defendant may contact or make a recorded statement from a minor victim or witness of a crime for which the defendant may be charged. The bill also adds the requirement that the parent or guardian of a minor victim or witness be informed of certain victim's rights. The bill also allows a parent or guardian of a minor victim or witness to obtain a transcript of any recorded statement made by a minor victim or witness.

Passage of this legislation will have no foreseeable fiscal impact on The Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division: Administrative Services Date/Time 1/26/04 9:31 AM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/26/2004
 Agency: Department of Law



STATE OF ALASKA
OFFICE OF VICTIMS' RIGHTS

Representative Lesil McGuire, Chair
House Judiciary Committee
716 W. 4th Avenue Ste 430
Anchorage, AK 99501-2133

December 10, 2003

Re: Proposed amendment to AS 12.61.120(d)

Dear Representative McGuire:

I am writing to ask for your help to close a loophole that was unintentionally created in 1996 when the legislature enacted AS 12.61.120 to protect victims and witnesses from criminal defense attorneys and their investigators. Since then, this oversight has hurt sexual assault and other victims as well as the prosecutors who have pursued their cases in court. I personally witnessed this when prosecuting cases and was reminded of it recently when it happened again to [redacted] here in Anchorage. My office now represents [redacted]. The District Attorney's office is prosecuting her assailant and the case is in the pre-indictment stage at this time.¹

16-year-old [redacted] was sexually assaulted at a party in May. Her assailant was a friend and fellow classmate in a Junior ROTC class. He was a graduating senior and is being prosecuted as an adult. There were witnesses at the party and at the time of his arrest he made incriminating admissions to the police so the chances of securing a conviction for sexual assault looked promising. Or at least that was the case until November 2003 when AS 12.61.120(d) helped the defense undermine and weaken the evidence against [redacted]'s attacker.

Re: Proposed amendment to AS 12.61.120(d)

In November, as the defense was beginning the investigative phase of their case, an investigator from the Alaska Public Defender's Agency called [redacted] at home and spoke with her directly. The defense investigator, [redacted] followed the letter of the law found in AS 12.61.120 and .125. He clearly informed [redacted] that he worked for the defendant and told her that she need not speak with him and that if she decided to speak with him she could have a third party like the DA or her parents present, pursuant to AS 12.61.120. He then asked if she would speak to him about the case.

As is the case with many 16 year old girls [redacted] was a naïve and vulnerable high schooler. Following the sexual assault she was very traumatized and confused and even felt concern for her classmate, a person it turned out she didn't really know after all. She was afraid that her former friend, although he had deeply hurt her, was also agonizing over what he had done to her. She wanted to hear from him that he was sorry for his crime. She also wanted to know that he was coping with the situation just as she was trying to do.

Sixteen-year old girls who have been raped do not understand the legal ramifications of speaking with a defense legal team and how that almost always undermines the prosecutor's ability to hold a criminal accountable for his crime. Nonetheless, she agreed to speak with the defense investigator. She drove herself down to the public defender's office and engaged in a two and a half hour recorded interview with the defense investigator and a paralegal that witnessed her interview. Even though she was a minor, [redacted]'s parents had not been contacted. They had no idea that she had been called by the defense or had agreed to speak to them. Had they known, her parents would not have permitted the interview.

[redacted] was led to believe by [redacted] that she would be able to learn about case developments during the meeting. She was expecting a two-way discussion. Instead she was subjected to hostile questioning without the knowledge of the District Attorney or consent of her parents. Whenever she asked questions, [redacted] claimed to know nothing about the case and refused to give [redacted] any information. As a juvenile, [redacted] was not competent to understand the implications of such a meeting with a skilled and very experienced adversary such as [redacted]. It is certain that what [redacted] told the defense during the meeting will have grave consequences with regard to the strength of the prosecution's case against her assailant. Indeed, the very purpose of the meeting was not to learn details from [redacted] about the crime since under the very liberal Alaska Criminal Rules of discovery the defense had already obtained a complete copy of all the police reports [redacted]'s police statement, witness statements and the like. Instead, it was to trick [redacted] into making arguably inconsistent statements about the crime –

Re: Proposed amendment to AS 12.61.120(d)

statements that will be used by defense counsel at trial to impeach her and undermine her credibility before the jury. Even if the case is ultimately settled without a trial through a plea-bargain, the defense will now have more leverage to obtain a more lenient sentence since the state's case has been prejudiced.

This case came to our attention when _____'s parents finally learned from _____ what had occurred. They were expecting to file a complaint against the Public Defender Agency for grave violations of their daughter's victim rights. Unfortunately, given the loophole that exists in AS 12.61.120(d), we had to inform her parents that the conduct of the investigator was not prohibited under present law. But the law needs to be changed. The legislature should act to close this loophole and prevent such an unfair result from ever happening again to other victims and witnesses, as it surely will. Here's the specific problem with 12.61.120.

AS 12.61.120 deals with situations where a defense representative wishes to obtain information or a statement from a victim or witness. It provides in pertinent part that:

(c) If a defendant or a person acting on behalf of a defendant contacts the victim of an offense with which the defendant is or could be charged, the person shall clearly inform the victim

(1) of the person's identity and specific association with the defendant;

(2) that the victim does not have to talk to the person unless the victim wishes; and

(3) that the victim may have a prosecuting attorney or other person present during an interview.

(d) If a defendant or a person acting on behalf of a defendant wishes to make a recording of statements of the victim of an offense with which the defendant is or could be charged in this or another jurisdiction, or of a witness, the person shall, before recording begins, obtain the consent of the victim or witness, to record the statement by clearly informing the victim or witness (1) of the information set out in (c) of this section, (2) that the statement will be recorded if the victim or witness consents, and (3) that the victim or witness may obtain a transcript or other copy of the recorded statement upon request. When recording begins, the person making

the recording shall indicate in the recording that the victim or witness has been informed as required by this subsection, and the victim or witness shall state in the recording that consent of the victim or witness to the recording has been given.

Section (d), the section at issue, provides for a waiver of a victim or witnesses' right to avoid speaking to defense representatives. However, because of its careless language, section (d) allows even a *minor* victim or witness to consent to speaking with a defense representative without a requirement that the minor's parent or guardian be made aware of the defenses' effort to obtain the minor's statement. This must have been an oversight when the legislature drafted this section because in almost all other areas where minor's rights are implicated, a juvenile is not deemed competent to waive important rights without guidance from a responsible adult.

Even though it is sufficient, the logic of first checking with a minor's parent or guardian before signing away valuable rights alone does not provide the sole basis for my request that AS 12.61.120(d) be amended. More compelling support for my opinion that this statutory loophole was unintended by the legislature, and that section (d) needs to be quickly amended, can be found in AS 12.61.125, the section that immediately follows AS 12.61.120.

Unlike AS 12.61.120, which deals with defense efforts to obtain information or statements from victims and witnesses, AS 12.61.125 is a law that governs defense contacts with sexual assault victims and witnesses. In this law, the legislature *did require* the parent or guardian of a minor victim or witness to invoke rights on their behalf.

AS 12.61.125 provides in pertinent part:

(a) The defendant accused of a sexual offense, the defendant's counsel, or an investigator or other person acting on behalf of the defendant, may not

(1) notwithstanding AS 12.61.120, contact the victim of the offense or a witness to the offense **if the victim or witness, or the parent or guardian of the victim or witness if the victim or witness is a minor**, has informed the defendant or the defendant's counsel in writing or in person that the victim or witness does not wish to be contacted by the defense; a victim or witness who has not informed the defendant or the defendant's counsel in writing or in person that

Re: Proposed amendment to AS 12.61.120(d)

the victim does not wish to be contacted by the defense is entitled to rights as provided in AS 12.61.120;

(2) obtain a statement from the victim of the offense or a witness to the offense, unless,

(A) if the statement is taken as a recording, the recording is taken in compliance with AS 12.61.120; or

(B) if the statement is not taken as a recording, **written authorization is first obtained from the victim or witness, or from the parent or guardian of the victim or witness if the victim or witness is a minor**; the written authorization must state that the victim or witness is aware that there is no legal requirement that the victim or witness talk to the defense; a victim or witness making a statement under this subparagraph remains entitled to rights as provided in AS 12.61.120.

(b) A defendant who is the parent or guardian of a minor victim or witness may not provide the authorization required under (a) of the section. [Emphasis added].

In sum, where a victim or witness is a minor and wishes to have no contact with the defense, the parent or guardian of that individual must inform the defense agent in writing or in person that the victim does not wish to be contacted by the defense. Where a victim or witness is a minor, and a statement is taken *but not recorded*, written authorization must first be obtained from the parent or guardian of the victim or witness. However, pursuant to AS 12.61.120, if the statement is recorded as it was here, the victim or witness may waive his or her rights not to speak with defense representatives and *no consent or authorization* from the parent or guardian is required. This inconsistency leaves juvenile victims vulnerable to exploitation by the defense in the same way that B.A. was manipulated. It is well known that the best form of impeachment is found in the prior recorded statements of witnesses. Consequently, many contacts with minor victims are recorded such as occurred in this case and unless AS 12.61.120(d) is amended such abuses will continue.

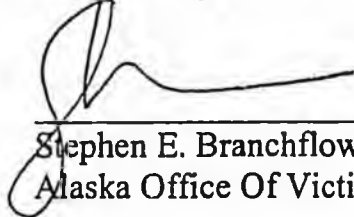
This problem can be cured by adding the simple phrase "or the parent or guardian of the victim or witness if the victim or witness is a minor" to AS 12.61.120(d) as the legislature has already done in AS 12.61.120. Such a technical amendment will mean that many future child victims may be spared the trauma

December 10, 2003

and exploitation suffered by She has been deeply hurt by the rape and the subsequent events. Thanks to this loophole, I expect it can only get worse for her. But in the long run, it would materially advance her healing, and would be a great comfort to her family, to know that no future victims will be similarly misled and taken advantage of.

She and her parents have sought assistance from the OVR, and we in turn now seek your support for the proposed change to AS 12.61.125 that will bring it in line with the intent and spirit of the chapter. For your convenience I have attached a proposed amendment.

Respectfully,



Stephen E. Branchflower, Director
Alaska Office Of Victims' Rights

Cc: Representative Dahlstrom
Rex Shattuck

Representative Samuels
Sara Nielson

Representative Stoltze
Kelly Huber

Vanessa Tondini

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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February 10, 2004

Representative Lesil McGuire
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representative McGuire,

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for co-introducing HB 397, an act relating to defense contacts with and recording of statements of victims or witnesses; and amending Rule 16, Alaska Rules of Criminal Procedure.

This proposed legislation will better protect a minor witness or victim of a crime by consent first having to be obtained by a parent or guardian by a person acting on behalf of the defendant

We thank you for addressing this issue.

Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Leo J. Brandlen
State President

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Article 2. Victim and Witness Information Confidentiality.

Section

- 100. Declaration of purpose
- 110. Confidentiality of victim and witness addresses and telephone numbers
- 120. Disclosure to defense; contacts with victims and witnesses
- 125. Victims and witnesses of sexual offenses

Section

- 127. Inadmissibility of statements taken in violation of AS 12.61.120 or 12.61.125
- 130. Disclosure during court proceedings
- 140. Disclosure of victim's name
- 150. Public and media access

Sec. 12.61.100. Declaration of purpose. The purpose of AS 12.61.100 — 12.61.150 is to protect victims of and witnesses to crime from risk of harassment, intimidation, and unwarranted invasion of privacy by prohibiting the unnecessary disclosure of their addresses and telephone numbers. (§ 13 ch 57 SLA 1991)

Sec. 12.61.110. Confidentiality of victim and witness addresses and telephone numbers. The residence and business addresses and telephone numbers of a victim of a crime or witness to a crime are confidential. A report, paper, picture, photograph, court file, or other document that relates to a crime and contains the residence or business address or telephone number of a victim or witness, and that is in the custody or possession of a public officer or employee, may not be made available for public inspection unless the residence and business addresses and telephone numbers of all victims and witnesses have been deleted. (§ 13 ch 57 SLA 1991)

Sec. 12.61.120. Disclosure to defense; contacts with victims and witnesses.

(a) The prosecution in a criminal case may not be required to furnish to the defendant personally the address or telephone number of a victim or witness absent a showing of good cause as determined by the court. Except as provided in (b) of this section, good cause exists when the defendant is proceeding without counsel. When a defendant is represented by counsel, the address and telephone number of a victim or witness may be disclosed to the defendant's counsel, but the court shall order the defendant's counsel to not disclose the information to the defendant.

(b) If the defendant is proceeding without counsel in a case involving a charged violation of AS 11.41, AS 11.46.300 — 11.46.330, AS 11.56.740, 11.56.807, 11.56.810, AS 11.61.190 — 11.61.210, or a crime involving domestic violence and the court finds that the defendant may pose a continuing threat to the victim or witness to the offense charged, the court shall protect the address and telephone number of the victim or witness by providing the information only to a person specified by the court or by imposing other restrictions that the court considers necessary. When an address or telephone number is released to a person specified by the court under this subsection, that person, who shall be ordered not to disclose the information to the defendant, shall contact the victim or witness on behalf of the defendant, and the defendant shall meet or speak with the victim or witness only in the presence of that person.

(c) If a defendant or a person acting on behalf of a defendant contacts the victim of an offense with which the defendant is or could be charged, the person shall clearly inform the victim

- (1) of the person's identity and specific association with the defendant;
- (2) that the victim does not have to talk to the person unless the victim wishes; and
- (3) that the victim may have a prosecuting attorney or other person present during an interview.

(d) If a defendant or a person acting on behalf of a defendant wishes to make a recording of statements of the victim of an offense with which the defendant is or could be charged in this or another jurisdiction, or of a witness, the person shall, before recording begins, obtain the consent of the victim or witness to record the statement by clearly informing the victim or witness (1) of the information set out in (c) of this section,

next page?

(2) that the statement will be recorded if the victim or witness consents, and (3) that the victim or witness may obtain a transcript or other copy of the recorded statement upon request. When recording begins, the person making the recording shall indicate in the recording that the victim or witness has been informed as required by this subsection, and the victim or witness shall state in the recording that consent of the victim or witness to the recording has been given.

(e) If a victim or witness requests a transcript or other copy of a recorded statement taken under (d) of this section, the defense shall prepare the transcript or other copy and provide it to the person whose statement was recorded.

(f) In this section, "recording" means capturing a statement of a person, whether by magnetic tape or other electronic or electromagnetic means. (§ 13 ch 57 SLA 1991; am § 29 ch 79 SLA 1992; am §§ 17 — 19 ch 64 SLA 1996; am § 19 ch 92 SLA 2002)

Revisor's notes. — In 1991, "AS 11.56.740" was substituted for "AS 11.61.120(a)(6)" to reconcile § 13, ch. 57, SLA 1991, and §§ 1 and 2, ch. 64, SLA 1991. Section 1, ch. 64, SLA 1991 added AS 11.56.740 and § 2, ch. 64, SLA 1991 deleted AS 11.61.120(a)(6).

Cross references. — For effect of this section on Alaska Rule of Criminal Procedure 16, see § 26, ch. 57, SLA 1991 in the Temporary and Special Acts.

Effect of amendments. — The 1992 amendment,

effective September 14, 1992, made section reference substitutions in the first sentence in subsection (b).

The 1996 amendment, effective July 1, 1996, in subsection (b), in the first sentence, inserted ", or a crime involving domestic violence" and made section reference substitutions; rewrote the introductory language of subsection (c); and added subsections (d)-(f).

The 2002 amendment, effective June 28, 2002, inserted a section reference in subsection (b).

Sec. 12.61.125. Victims and witnesses of sexual offenses. (a) The defendant accused of a sexual offense, the defendant's counsel, or an investigator or other person acting on behalf of the defendant, may not

(1) notwithstanding AS 12.61.120, contact the victim of the offense or a witness to the offense if the victim or witness, or the parent or guardian of the victim or witness if the victim or witness is a minor, has informed the defendant or the defendant's counsel in writing or in person that the victim or witness does not wish to be contacted by the defense; a victim or witness who has not informed the defendant or the defendant's counsel in writing or in person that the victim does not wish to be contacted by the defense is entitled to rights as provided in AS 12.61.120;

(2) obtain a statement from the victim of the offense or a witness to the offense, unless,

(A) if the statement is taken as a recording, the recording is taken in compliance with AS 12.61.120; or

(B) if the statement is not taken as a recording, written authorization is first obtained from the victim or witness, or from the parent or guardian of the victim or witness if the victim or witness is a minor; the written authorization must state that the victim or witness is aware that there is no legal requirement that the victim or witness talk to the defense; a victim or witness making a statement under this subparagraph remains entitled to rights as provided in AS 12.61.120.

(b) A defendant who is the parent or guardian of a minor victim or witness may not provide the authorization required under (a) of the section.

(c) If an attorney, or a person acting on behalf of the defendant for an attorney, violates this section, the court shall refer the violation to the Disciplinary Board of the Alaska Bar Association as a grievance.

(d) In this section,

(1) "recording" has the meaning given in AS 12.61.120;

(2) "sexual offense" means a violation of AS 11.41.410 — 11.41.470. (§ 20 ch 64 SLA 1996)

Effective dates. — Section 83, ch. 64, SLA 1996, makes this section effective July 1, 1996.