

CONFERENCE CS FOR SENATE BILL NO. 4

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE CONFERENCE COMMITTEE

Offered: 5/3/00

Sponsor(s): SENATORS HALFORD, Donley, Green, Leman, Taylor, Wilken, Tim Kelly, Lincoln, Ellis, Parnell, Mackie, Miller, Pete Kelly, Ward

REPRESENTATIVES Porter, Masek, Harris, Dyson, Kemplen, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to victims' rights; relating to establishing an office of victims'
2 rights; relating to compensation of victims of violent crimes; relating to eligibility
3 for a permanent fund dividend for persons convicted of and incarcerated for
4 certain offenses; relating to notice of appropriations concerning victims' rights;
5 amending Rule 16, Alaska Rules of Criminal Procedure, Rule 9, Alaska
6 Delinquency Rules, and Rule 501, Alaska Rules of Evidence; and providing for
7 an effective date."

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

9 * **Section 1.** The uncoded law of the State of Alaska is amended by adding a new
10 section to read:

11 SHORT TITLE. This Act may be known as the Crime Victims' Rights and Advocacy
12 Act of 2000.

13 * **Sec. 2.** AS 12.55.023(b) is amended to read:

(b) A victim may submit to the sentencing court a written statement that the victim believes is relevant to the sentencing decision [,] and may give sworn testimony or make an unsworn oral presentation to the court at the sentencing hearing. If there are numerous victims, the court may reasonably limit the number of victims who may give sworn testimony or make an unsworn oral presentation during the hearing. **When requested by the victim of a felony or a class A misdemeanor, if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41, when the victim does not submit a statement, give testimony, or make an oral presentation, the victims' advocate appointed under AS 12.61.200 may submit a written statement or make an unsworn oral presentation at the sentencing hearing on behalf of the victim.**

* **Sec. 3.** AS 12.55.023(b) is amended to read:

(b) A victim may submit to the sentencing court a written statement that the victim believes is relevant to the sentencing decision [,] and may give sworn testimony or make an unsworn oral presentation to the court at the sentencing hearing. If there are numerous victims, the court may [REASONABLY] limit the number of victims who may give sworn testimony or make an unsworn oral presentation during the hearing. [WHEN REQUESTED BY THE VICTIM OF A FELONY OR A CLASS A MISDEMEANOR, IF THE CLASS A MISDEMEANOR IS A CRIME INVOLVING DOMESTIC VIOLENCE OR A CRIME AGAINST A PERSON UNDER AS 11.41, WHEN THE VICTIM DOES NOT SUBMIT A STATEMENT, GIVE TESTIMONY, OR MAKE AN ORAL PRESENTATION, THE VICTIMS' ADVOCATE APPOINTED UNDER AS 12.61.200 MAY SUBMIT A WRITTEN STATEMENT OR MAKE AN UNSWORN ORAL PRESENTATION AT THE SENTENCING HEARING ON BEHALF OF THE VICTIM.]

* **Sec. 4.** AS 12.61 is amended by adding new sections to read:

Article 2A. Office of Victims' Rights.

Sec. 12.61.200. Office of victims' rights established; duties. (a) The office of victims' rights is established in the Department of Law. The office shall be directed by the victims' advocate. The victims' advocate shall be appointed by the attorney general. The attorney general may not appoint a person as victims' advocate unless

the person meets the qualifications provided in (e) of this section. The victims' advocate is in the partially exempt service under AS 39.25.120. The office may employ assistant victims' advocates and clerical staff that the victims' advocate determines are needed to perform the duties set out in this section. Assistant victims' advocates and clerical staff employed by the office are in the classified service under AS 39.25.100. The victims' advocate shall, to the maximum extent practicable, conduct the duties and work of the office by entering into personal services and other contracts the victims' advocate finds necessary to carry out the provisions of this chapter.

(b) The office of victims' rights shall, as provided in AS 12.61.200 - 12.61.300,

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

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

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

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

(c) Each state agency shall cooperate with the office of victims' rights when the office is performing the duties imposed under AS 12.61.200 - 12.61.300.

(d) The office shall administer grants to nonprofit victims' rights organizations in the amounts and to the recipients designated in the appropriation for the grant.

(e) A person may not serve as victims' advocate

(1) unless the person has been a resident of the state for the three years immediately preceding the person's appointment;

(2) unless the person has been engaged in the active practice of law for the three years immediately preceding the person's appointment;

(3) unless the person has significant experience in criminal law;

(4) unless the person is an attorney licensed to practice law in this state;

(5) within one year of the last day on which the person served as a member of the legislature;

(6) while the person is a candidate for or holds another national, state, or municipal office; the victims' advocate may not become a candidate for national, state, or municipal office until one year has elapsed from the date the victims' advocate vacates the office of victims' advocate;

(7) while the person is engaged in another occupation for which the person receives compensation;

(8) unless the person is at least 21 years of age and is a qualified voter.

Sec. 12.61.210. Procedure; fees. (a) The victims' advocate shall, by regulations adopted under AS 44.62 (Administrative Procedure Act), establish procedures for advocacy on behalf of crime victims, receiving and processing complaints, conducting investigations, reporting findings, and ensuring that confidential information obtained by the victims' advocate in the course of advocacy on behalf of a crime victim or in the course of an investigation will not be improperly disclosed. The victims' advocate may establish procedures so that advocacy and investigations on behalf of crime victims in felony cases take a priority over advocacy and investigations on behalf of crime victims in misdemeanor cases.

(b) The office of victims' rights may not charge fees for the submission or investigation of complaints.

Sec. 12.61.220. Jurisdiction; duties. (a) The victims' advocate has jurisdiction to advocate on behalf of crime victims of felony offenses or class A misdemeanors, if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41, in the courts of the state and to investigate the complaints of crime victims of felony offenses or class A misdemeanors, if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41, that they have been denied their rights under the constitution and the laws of the state. In this subsection, "crime involving domestic violence" has the meaning given in AS 18.66.990.

(b) The office shall administer grants to nonprofit victims' rights organizations, in the amounts and to the recipients designated in the appropriation for the grant.

(c) The victims' advocate shall exercise reasonable care to

(1) ensure that the victims' advocate's exercise of jurisdiction granted

under this section does not interfere with an ongoing criminal investigation or with a criminal prosecution;

(2) prevent employees of the office of victims' rights from making extrajudicial statements that the victims' advocate is prohibited from making under the Alaska Rules of Professional Conduct.

(d) The victims' advocate may not advise, counsel, or advocate on behalf of a victim in a way that would

(1) prevent or discourage a victim from cooperating in a criminal investigation;

(2) encourage a victim to withhold evidence in a criminal investigation; or

(3) prevent or discourage a victim from testifying in a criminal proceeding.

Sec. 12.61.230. Advocacy on behalf of crime victims; records. (a) The victims' advocate shall assist crime victims in obtaining the rights crime victims are guaranteed under the constitution and laws of the state with regard to the contacts crime victims have with the justice agencies of the state.

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

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

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

Sec. 12.61.240. Investigations. (a) The victims' advocate may investigate complaints from crime victims that they have been denied the rights they are guaranteed under the constitution and laws of this state.

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

1 (1) make inquiries and obtain information considered necessary;
 2 (2) hold private hearings; and
 3 (3) notwithstanding other provisions of law, have access at all times to
 4 records of justice agencies, including court records of criminal prosecutions and
 5 juvenile adjudications, necessary to ensure that the rights of crime victims are not
 6 being denied; with regard to court and prosecution records, the victims' advocate is
 7 entitled to obtain access to every record that the defendant is entitled to access or
 8 receive.

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

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

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

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

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

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

29 (1) a justice, judge, magistrate, or a law clerk acting under the direction
 30 of a justice, judge, or magistrate, concerning a judicial action or nonaction taken by,
 31 or under the direction of, the justice, judge, or magistrate;

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

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

9 (4) the person accused or convicted of committing the crime that is the
10 basis for the complaint, and investigation under AS 12.61.240, concerning a denial of
11 rights.

12 (g) Before giving an opinion or recommendation that is critical of a justice
13 agency or person as a result of an investigation under this section, the victims'
14 advocate shall consult with that agency or person. The victims' advocate may make
15 a preliminary opinion or recommendation available to the agency or person for review,
16 but the preliminary opinion or recommendation is confidential and may not be
17 disclosed to the public by the agency or person.

18 (h) The victims' advocate shall report the advocate's opinion and
19 recommendations to a justice agency if the victims' advocate finds, after investigation
20 under this section, that the agency has denied a crime victim rights the crime victim
21 is guaranteed under the constitution and laws of this state.

22 (i) The victims' advocate may request the justice agency to notify the victims'
23 advocate, within a specified time, of any action taken on the recommendations.

24 (j) The report provided under (h) of this section is confidential and may not
25 be disclosed to the public by the justice agency. The victims' advocate may disclose
26 the report under (k) of this section only after providing notice that the investigation has
27 been concluded to the agency and after receiving the written approval of the
28 complainant to release the report.

29 (k) Except as provided in (j) of this section, within a reasonable amount of
30 time after the victims' advocate reports the advocate's opinion and recommendations
31 to a justice agency, the victims' advocate may present the opinion and

1 recommendations to the governor, the attorney general, the legislature, a grand jury,
2 the public, or any of these. The victims' advocate shall include with the opinion any
3 reply made by the agency.

4 **Sec. 12.61.250. Annual report.** The victims' advocate shall make available
5 to the public an annual report of the victims' advocate's activities under AS 12.61.200
6 - 12.61.300 and notify the legislature that the report is available.

7 **Sec. 12.61.260. Judicial review.** A proceeding or decision of the victims'
8 advocate may be reviewed in superior court only to determine if it is contrary to the
9 provisions of AS 12.61.200 - 12.61.300.

10 **Sec. 12.61.270. Immunity of the victims' advocate.** A civil action may not
11 be brought against the victims' advocate or a member of the victims' advocate's staff
12 for anything done, said, or omitted in performing the victims' advocate's duties or
13 responsibilities under AS 12.61.200 - 12.61.300.

14 **Sec. 12.61.280. Victims' advocate's privilege not to testify or produce**
15 **documents or other evidence.** The victims' advocate and the staff of the victims'
16 advocate may not be compelled to testify or produce documents or other evidence in
17 a court regarding matters coming to their attention in the exercise or purported exercise
18 of their official duties except as may be necessary to enforce the provisions of
19 AS 12.61.200 - 12.61.300.

20 **Sec. 12.61.290. Penalty.** A person who knowingly hinders the lawful actions
21 of the victims' advocate or the staff of the victims' advocate, or who knowingly refuses
22 to comply with their lawful demands, is guilty of a misdemeanor and upon conviction
23 may be punished by a fine of not more than \$1,000. In this section, "knowingly" has
24 the meaning given in AS 11.81.900.

25 **Sec. 12.61.300. Definitions.** In AS 12.61.200 - 12.61.300,

26 (1) "justice agency" means a department, office, institution, corporation,
27 authority, organization, commission, committee, council, court, or board in the
28 executive or judicial branches of the state government that is, in any manner, involved
29 with or responsible for the apprehension, prosecution, incarceration, or supervision of
30 criminal or juvenile offenders; it also includes an officer, employee, or member of an
31 agency acting or purporting to act in the exercise of official duties, including the

governor and lieutenant governor, when acting with regard to executive clemency, judges, and magistrates;

(2) "victim" has the meaning given in AS 12.55.185.

* **Sec. 5.** AS 18.67.130(c) is amended to read:

(c) Compensation may not be awarded under this chapter in an amount in excess of \$30,000 [\$25,000] per victim per incident. However, in the case of the death of

(1) a victim who has more than one dependent eligible for compensation, the total compensation that may be awarded as a result of that death may not exceed \$50,000; the [\$40,000. THE] board may prorate the total awarded among those dependents according to relative need; or

(2) two or more victims in the same incident who jointly have a dependent eligible for compensation, the total compensation that may be awarded as a result of those deaths may not exceed \$50,000.

* **Sec. 6.** AS 39.25.120(c) is amended by adding a new paragraph to read:

(20) the victims' advocate established under AS 12.61.200.

* **Sec. 7.** AS 43.23.005(d) is amended to read:

(d) Notwithstanding the provisions of (a) - (c) of this section, an individual is not eligible for a permanent fund dividend for a dividend year when

(1) during the qualifying year, the individual was sentenced as a result of conviction in this state of a felony;

(2) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a

(A) felony; or

(B) misdemeanor if the individual has been convicted of

(i) a prior felony as defined in AS 11.81.900; or

(ii) two or more prior **misdemeanors** [CRIMES] as defined in AS 11.81.900.

* **Sec. 8.** AS 43.23.028 is amended to read:

Sec. 43.23.028. Public notice. (a) By October 1 of each year, the commissioner shall give public notice of the value of each permanent fund dividend

for that year and notice of the information required to be disclosed under (3) of this subsection. In addition, the stub attached to each individual dividend check and direct deposit advice must

(1) disclose the amount of each dividend attributable to income earned by the permanent fund from deposits to that fund required under art. IX, sec. 15, Constitution of the State of Alaska;

(2) disclose the amount of each dividend attributable to income earned by the permanent fund from appropriations to that fund and from amounts added to that fund to offset the effects of inflation;

(3) disclose the amount by which each dividend has been reduced due to each appropriation from the dividend fund, including amounts to pay the costs of administering the dividend program and the hold harmless provisions of AS 43.23.075;

(4) include a statement that an individual is not eligible for a dividend when

(A) during the qualifying year, the individual was convicted of a felony;

(B) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction of a

(i) felony; or

(ii) misdemeanor if the individual has been convicted of **a prior felony or** two or more prior **misdemeanors** [CRIMES];

(5) include a statement that the legislative purpose for making individuals listed under (4) of this subsection ineligible is to

(A) obtain reimbursement for some of the costs imposed on the state criminal justice system related to incarceration or probation of those individuals;

(B) provide funds for **services for and** payments to crime victims and for grants for the operation of domestic violence and sexual assault programs;

(6) disclose the total amount that would have been paid during the previous fiscal year to individuals who were ineligible to receive dividends under

AS 43.23.005(d) if they had been eligible;

(7) disclose the total amount appropriated for the current fiscal year under (b) of this section for each of the funds and agencies listed in (b) of this section.

(b) To the extent that amounts appropriated for a fiscal year do not exceed the total amount that would have been paid during the previous fiscal year to individuals who were ineligible to receive dividends under AS 43.23.005(d) if they had been eligible, the notice requirements of (a)(3) of this section do not apply to appropriations from the dividend fund to [THE]

(1) the crime victim compensation fund established under AS 18.67.162 for payments to crime victims;

(2) the council on domestic violence and sexual assault established under AS 18.66.010 for grants for the operation of domestic violence and sexual assault programs; [OR]

(3) the Department of Corrections for incarceration and probation programs;

(4) the office of victims' rights; or

(5) the office of victims' rights for grants to nonprofit victims'

rights organizations.

* Sec. 9. AS 43.23.028(b) is amended to read:

(b) To the extent that amounts appropriated for a fiscal year do not exceed the total amount that would have been paid during the previous fiscal year to individuals who were ineligible to receive dividends under AS 43.23.005(d) if they had been eligible, the notice requirements of (a)(3) of this section do not apply to appropriations from the dividend fund to the

(1) [THE] crime victim compensation fund established under AS 18.67.162 for payments to crime victims;

(2) [THE] council on domestic violence and sexual assault established under AS 18.66.010 for grants for the operation of domestic violence and sexual assault programs; or

(3) [THE] Department of Corrections for incarceration and probation programs [;

1 (4) THE OFFICE OF VICTIMS' RIGHTS; OR

2 (5) THE OFFICE OF VICTIMS' RIGHTS FOR GRANTS TO
3 NONPROFIT VICTIMS' RIGHTS ORGANIZATIONS].

4 * **Sec. 10.** AS 12.61.200, 12.61.210, 12.61.220, 12.61.230, 12.61.240, 12.61.250, 12.61.260,
5 12.61.270, 12.61.280, 12.61.290, 12.61.300; and AS 39.25.120(c)(20) are repealed.

6 * **Sec. 11.** Sections 12 and 13 of this Act are repealed.

7 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 INDIRECT COURT RULE CHANGE. AS 12.61.230 and 12.61.240, added by sec. 4
10 of this Act, have the effect of amending Rule 16, Alaska Rules of Criminal Procedure, and
11 Rule 9, Alaska Delinquency Rules, by allowing the victims' advocate a right of access to
12 information in criminal prosecutions and juvenile adjudications that is equal to that available
13 to criminal defendants or juveniles when the advocate is engaging in advocacy or that is
14 unlimited when the advocate is engaging in investigations concerning victims' rights.

15 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section
16 to read:

17 INDIRECT COURT RULE CHANGE. AS 12.61.280, added by sec. 4 of this Act,
18 amends Rule 501, Alaska Rules of Evidence, by creating a new privilege from being
19 compelled to testify or produce documents or other evidence in a court.

20 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section
21 to read:

22 DIRECTION TO ATTORNEY GENERAL. Notwithstanding the effective date of secs.
23 1 - 2, 4 - 6, 12, and 13 of this Act, to the extent that there are appropriations for the purpose,
24 the attorney general may purchase supplies and equipment, obtain office space, and employ
25 clerical staff so that the office of victims' rights, created in sec. 4 of this Act, is able to begin
26 work on July 1, 2002.

27 * **Sec. 15.** Sections 7, 8, and 14 of this Act take effect immediately under AS 01.10.070(c).

28 * **Sec. 16.** Sections 1 - 2, 4 - 6, 12, and 13 of this Act take effect July 1, 2002.

29 * **Sec. 17.** Sections 3 and 9 - 11 of this Act take effect June 30, 2006.