

SENATE BILL NO. 219

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY SENATORS HALFORD, Green, Donley, Taylor, Leman

Introduced: 1/12/98

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to establishing an office of crime victims' advocacy; and
2 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.** SHORT TITLE. This Act may be known as the Crime Victims' Rights and
6 Advocacy Act of 1998.

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

8 (b) A victim may submit to the sentencing court a written statement that the
9 victim believes is relevant to the sentencing decision [,] and may give sworn testimony
10 or make an unsworn oral presentation to the court at the sentencing hearing. If there
11 are numerous victims, the court may limit the number of victims who may give sworn
12 testimony or make an unsworn oral presentation during the hearing. **When requested**
13 **by the victim in a felony case when the victim does not submit a statement, give**
14 **testimony, or make an oral presentation, the victims' advocate may submit a**

written statement or make an unsworn oral presentation at the sentencing hearing on behalf of the victim.

* **Sec. 3.** AS 24.60.990(a)(9) is amended to read:

(9) "legislative director" means the director of the legislative finance division, the legislative auditor, the director of the legislative **legal and** research agency, the ombudsman, **the victims' advocate**, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;

* **Sec. 4.** AS 24 is amended by adding a new chapter to read:

Chapter 65. Office of the Victims' Advocate.

Sec. 24.65.010. Office of the victims' advocate. There is created in the legislative branch of the state the office of the victims' advocate.

Sec. 24.65.020. Appointment of the victims' advocate. (a) A candidate for appointment as the victims' advocate shall be nominated by the victims' advocate selection committee composed of three members of the senate appointed by the president of the senate and three members of the house of representatives appointed by the speaker of the house. One member of the minority party caucus in each house shall be appointed to the selection committee.

(b) The victims' advocate selection committee shall examine persons to serve as victims' advocate regarding their qualifications and ability and shall place the name of the person selected in nomination. The appointment is effective if the nomination is approved by a roll call vote of two-thirds of the members of the legislature in joint session and approved by the governor. However, the governor may veto the appointment and return it, with a statement of objections, to the legislature. On receipt of a veto message, the legislature shall meet immediately in joint session and reconsider approval of the vetoed appointment. The vetoed appointment becomes effective by an affirmative vote of two-thirds of the membership of the legislature in joint session. The vote on the appointment and on reconsideration of a vetoed appointment shall be entered in the journals of both houses.

(c) The appointment of the victims' advocate becomes effective if, while the legislature is in session, the governor neither approves nor vetoes it within 15 days,

1 Sundays excepted, after its delivery to the governor. If the legislature is not in session
 2 and the governor neither approves nor vetoes the appointment within 20 days, Sundays
 3 excepted, after its delivery to the governor, the appointment becomes effective.

4 **Sec. 24.65.030. Qualifications.** A person may not serve as victims' advocate

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

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

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

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

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

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

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

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

21 **Sec. 24.65.040. Term of office.** (a) The term of office of the victims'
 22 advocate is five years. A victims' advocate may be reappointed but may not serve for
 23 more than three terms.

24 (b) If the term of a victims' advocate expires without the appointment of a
 25 successor under this chapter, the incumbent victims' advocate may continue in office
 26 until a successor is appointed. If the victims' advocate dies, resigns, becomes
 27 ineligible to serve, or is removed or suspended from office, the person appointed as
 28 acting victims' advocate under AS 24.65.070(a) serves until a new victims' advocate
 29 is appointed for a full term.

30 **Sec. 24.65.050. Removal.** The legislature, by a concurrent resolution adopted
 31 by a roll call vote of two-thirds of the members in each house entered in the journal,

1 may remove or suspend the victims' advocate from office, but only for neglect of duty,
2 misconduct, or disability.

3 **Sec. 24.65.060. Compensation.** The victims' advocate is entitled to receive
4 an annual salary equal to Step A, Range 26, on the salary schedule set out in
5 AS 39.27.011(a) for Juneau.

6 **Sec. 24.65.070. Staff and delegation.** (a) The victims' advocate shall appoint
7 a person to serve as acting victims' advocate in the absence of the victims' advocate.
8 The victims' advocate shall also appoint assistants and clerical personnel necessary to
9 carry out the provisions of this chapter.

10 (b) The victims' advocate may delegate to the assistants any of the victims'
11 advocate's duties except those specified in AS 24.65.150 and 24.65.160; however,
12 during the victims' advocate's absence from the principal business offices, the victims'
13 advocate may delegate the duties specified in AS 24.65.150 and 24.65.160 to the
14 acting victims' advocate for the duration of the absence. The duties specified in
15 AS 24.65.150 and 24.65.160 shall be performed by the acting victims' advocate when
16 serving under AS 24.65.040(b).

17 (c) The victims' advocate and the staff appointed by the victims' advocate are
18 in the exempt service under AS 39.25.110 and are not subject to the employment
19 policies under AS 24.10 or AS 24.20.

20 **Sec. 24.65.080. Office facilities and administration.** (a) Subject to
21 restrictions and limitations imposed by the executive director of the Legislative Affairs
22 Agency, the administrative facilities and services of the Legislative Affairs Agency,
23 including computer, data processing, and teleconference facilities, may be made
24 available to the victims' advocate to be used in the management of the office of the
25 victims' advocate and to carry out the purposes of this chapter.

26 (b) The salary and benefits of the victims' advocate and the permanent staff
27 of the victims' advocate shall be paid through the same procedures used for payment
28 of the salaries and benefits of other permanent legislative employees.

29 (c) The victims' advocate shall submit a budget for each fiscal year to the
30 Alaska Legislative Council and the council shall annually submit an estimated budget
31 to the governor for information purposes in the preparation of the executive budget.

1 After reviewing and approving, with or without modifications, the budget submitted
2 by the victims' advocate, the council shall submit the approved budget to the finance
3 committees of the legislature.

4 **Sec. 24.65.090. Procedure.** (a) The victims' advocate shall, by regulations
5 adopted under AS 44.62 (Administrative Procedure Act), establish procedures for
6 advocacy on behalf of crime victims, receiving and processing complaints, conducting
7 investigations, reporting findings, and ensuring that confidential information obtained
8 by the victims' advocate in the course of advocacy on behalf of a crime victim or in
9 the course of an investigation will not be improperly disclosed.

10 (b) The victims' advocate may not charge fees for the submission or
11 investigation of complaints.

12 **Sec. 24.65.100. Jurisdiction.** The victims' advocate has jurisdiction to
13 advocate on behalf of crime victims in felony cases in the courts of the state and to
14 investigate the complaints of crime victims in felony cases that they have been denied
15 their rights under the constitution and the laws of the state.

16 **Sec. 24.65.110. Advocacy on behalf of crime victims.** (a) The victims'
17 advocate shall assist crime victims in felony cases in obtaining the rights crime victims
18 are guaranteed under the constitution and laws of the state with regard to the contacts
19 crime victims have with the justice agencies of the state.

20 (b) Notwithstanding another provision of law, the victims' advocate may make
21 the statement a crime victim in a felony case is authorized to make in a court of the
22 state when requested by the crime victim and when the crime victim does not
23 personally make a statement.

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

27 **Sec. 24.65.120. Investigations.** (a) The victims' advocate may investigate
28 complaints from crime victims in felony cases that they have been denied the rights
29 they are guaranteed under the constitution and laws of this state.

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

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

1 (2) hold private hearings; and

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

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

13 **Sec. 24.65.130. Powers.** (a) Subject to the privileges that witnesses have in
14 the courts of this state, the victims' advocate may compel by subpoena, at a specified
15 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 AS 24.65.120; 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
21 AS 24.65.120.

22 (b) If a person refuses to comply with a subpoena issued under (a) 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 (c) This section does not authorize the victims' advocate to subpoena the
28 person accused or convicted of committing the crime that is the basis for the
29 complaint, and investigation under AS 24.65.120, concerning a denial of rights.

30 **Sec. 24.65.140. Consultation.** Before giving an opinion or recommendation
31 that is critical of a justice agency or person as a result of an investigation under

1 AS 24.65.120, the victims' advocate shall consult with that agency or person. The
2 victims' advocate may make a preliminary opinion or recommendation available to the
3 agency or person for review, but the preliminary opinion or recommendation is
4 confidential and may not be disclosed to the public by the agency or person.

5 **Sec. 24.65.150. Procedure after investigation.** (a) The victims' advocate shall
6 report the advocate's opinion and recommendations to a justice agency if the victims'
7 advocate finds, after investigation under AS 24.65.120, that the agency has denied a
8 crime victim rights the crime victim is guaranteed under the constitution and laws of
9 this state.

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

12 (c) The report provided under (a) of this section is confidential and may not
13 be disclosed to the public by the justice agency. The victims' advocate may disclose
14 the report under AS 24.65.160 only after providing notice that the investigation has
15 been concluded to the agency and after receiving the written approval of the
16 complainant to release the report.

17 **Sec. 24.65.160. Publication of recommendations.** Except as provided in
18 AS 24.65.150(c), within a reasonable amount of time after the victims' advocate reports
19 the advocate's opinion and recommendations to a justice agency, the victims' advocate
20 may present the opinion and recommendations to the governor, the legislature, a grand
21 jury, the public, or any of these. The victims' advocate shall include with the opinion
22 any reply made by the agency.

23 **Sec. 24.65.170. Annual report.** The victims' advocate shall submit to the
24 public an annual report of the victims' advocate's activities under this chapter and
25 notify the legislature that the report is available.

26 **Sec. 24.65.180. Judicial review.** A proceeding or decision of the victims'
27 advocate may be reviewed in superior court only to determine if it is contrary to the
28 provisions of this chapter.

29 **Sec. 24.65.190. Immunity of the victims' advocate.** A civil action may not
30 be brought against the victims' advocate or a member of the victims' advocate's staff
31 for anything done, said, or omitted in performing the victims' advocate's duties or

1 responsibilities under this chapter.

2 **Sec. 24.65.200. Victims' advocate's privilege not to testify.** The victims'
3 advocate and the staff of the victims' advocate may not testify in a court regarding
4 matters coming to their attention in the exercise or purported exercise of their official
5 duties except as may be necessary to enforce the provisions of this chapter.

6 **Sec. 24.65.210. Penalty.** A person who knowingly hinders the lawful actions
7 of the victims' advocate or the staff of the victims' advocate, or who knowingly refuses
8 to comply with their lawful demands, is guilty of a misdemeanor and upon conviction
9 may be punished by a fine of not more than \$1,000. In this section, "knowingly" has
10 the meaning given in AS 11.81.900.

11 **Sec. 24.65.250. Definitions.** In this chapter,

12 (1) "justice agency" means a department, office, institution, corporation,
13 authority, organization, commission, committee, council, court, or board in the
14 executive or judicial branches of the state government that is, in any manner, involved
15 with or responsible for the apprehension, prosecution, incarceration, or supervision of
16 criminal or juvenile offenders; it also includes an officer, employee, or member of an
17 agency acting or purporting to act in the exercise of official duties, including the
18 governor and lieutenant governor, when acting with regard to executive clemency,
19 judges, and magistrates;

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

21 * **Sec. 5.** AS 39.27.022(d) is amended to read:

22 (d) This section applies to employees of the legislature only if the committee
23 responsible for adopting employment policies concerning the employee adopts a
24 written policy that the section applies. This section applies to the employees of the
25 office of the ombudsman only if the ombudsman adopts a policy that the section
26 applies. **This section applies to the employees of the office of the victims' advocate**
27 **only if the victims' advocate adopts a policy that the section applies.**

28 * **Sec. 6.** AS 44.62.040(c) is amended to read:

29 (c) Before submitting the regulations and orders of repeal to the lieutenant
30 governor under (a) of this section, every state agency that by statute possesses
31 regulation making authority, except boards and commissions, **the office of the victims'**

1 **advocate**, and the office of the ombudsman, shall submit to the governor for review
 2 a copy of every regulation or order of repeal adopted by the agency, except regulations
 3 and orders of repeal identified in (a)(1) - (2) of this section. The governor may review
 4 the regulations and orders of repeal received under this subsection. The governor may
 5 return the regulations and orders of repeal to the adopting agency before they are
 6 submitted to the lieutenant governor for filing under (a) of this section [,] (1) if they
 7 are inconsistent with the faithful execution of the laws, or (2) to enable the adopting
 8 agency to respond to specific issues raised by the Administrative Regulation Review
 9 Committee. The governor may not delegate the governor's review authority under this
 10 subsection to a person other than the lieutenant governor.

11 * **Sec. 7.** AS 44.62.215 is amended to read:

12 **Sec. 44.62.215. Record of public comment.** In the drafting, review, or other
 13 preparation of a proposed regulation, amendment, or order of repeal, an agency, other
 14 than a board or commission, **the office of the victims' advocate**, and the office of the
 15 ombudsman, shall keep a record of its use or rejection of factual or other substantive
 16 information that is submitted in writing as public comment and that is relevant to the
 17 accuracy, coverage, or other aspect of the proposed regulatory action.

18 * **Sec. 8.** AS 44.66.050(c) is amended to read:

19 (c) A determination as to whether a board or commission or agency program
 20 has demonstrated a public need for its continued existence must take into consideration
 21 the following factors:

22 (1) the extent to which the board, commission, or program has operated
 23 in the public interest;

24 (2) the extent to which the operation of the board, commission, or
 25 agency program has been impeded or enhanced by existing statutes, procedures, and
 26 practices that it has adopted, and any other matter, including budgetary, resource, and
 27 personnel matters;

28 (3) the extent to which the board, commission, or agency has
 29 recommended statutory changes that are generally of benefit to the public interest;

30 (4) the extent to which the board, commission, or agency has
 31 encouraged interested persons to report to it concerning the effect of its regulations and

1 decisions on the effectiveness of service, economy of service, and availability of
2 service that it has provided;

3 (5) the extent to which the board, commission, or agency has
4 encouraged public participation in the making of its regulations and decisions;

5 (6) the efficiency with which public inquiries or complaints regarding
6 the activities of the board, commission, or agency filed with it, with the department
7 to which a board or commission is administratively assigned, or with the **office of the**
8 **victims' advocate or the** office of the ombudsman have been processed and resolved;

9 (7) the extent to which a board or commission that regulates entry into
10 an occupation or profession has presented qualified applicants to serve the public;

11 (8) the extent to which state personnel practices, including affirmative
12 action requirements, have been complied with by the board, commission, or agency to
13 its own activities and the area of activity or interest; and

14 (9) the extent to which statutory, regulatory, budgeting, or other
15 changes are necessary to enable the agency, board, or commission to better serve the
16 interests of the public and to comply with the factors enumerated in this subsection.

17 * **Sec. 9.** AS 44.99.240(2) is amended to read:

18 (2) "state agency" means

19 (A) a department, institution, board, commission, division,
20 authority, public corporation, or other administrative unit of the executive
21 branch, including the University of Alaska and the Alaska Railroad
22 Corporation;

23 (B) a committee, division, or administrative unit of the
24 legislative branch, including the Alaska Legislative Council, the leadership of
25 each house, **the office of the victims' advocate**, and the office of the
26 ombudsman;

27 (C) an administrative unit of the judicial branch, including the
28 Alaska Judicial Council and the Commission on Judicial Conduct.

29 * **Sec. 10.** AS 24.65.110 and 24.65.120, added by sec. 4 of this Act, have the effect of
30 amending Rule 16, Alaska Rules of Criminal Procedure, and Rule 9, Alaska Delinquency
31 Rules, by allowing the victims' advocate a right of access to information in criminal

1 prosecutions and juvenile adjudications that is equal to that available to criminal defendants
2 or juveniles when the advocate is engaging in advocacy or that is unlimited when the advocate
3 is engaging in investigations concerning victims' rights.

4 * **Sec. 11.** AS 24.65.200, added by sec. 4 of this Act, amends Rule 501, Alaska Rules of
5 Evidence, by creating a new privilege from being compelled to testify in a court.