

CS FOR SENATE BILL NO. 219(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 1/30/98
Referred: Finance

Sponsor(s): SENATORS HALFORD, Green, Donley, Taylor, Leman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to establishing an office of crime victims' rights; and amending
2 Rule 16, Alaska Rules of Criminal Procedure, Rule 9, Alaska Delinquency Rules,
3 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 of a felony or a class A misdemeanor, if the class A misdemeanor
14 is a crime involving domestic violence or a crime against a person under

1 AS 11.41, when the victim does not submit a statement, give testimony, or make
 2 an oral presentation, the victims' advocate may submit a written statement or
 3 make an unsworn oral presentation at the sentencing hearing on behalf of the
 4 victim.

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

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

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

11 **Chapter 65. Office of Victims' Rights.**

12 **Sec. 24.65.010. Office of victims' rights.** There is created in the legislative
 13 branch of the state the office of victims' rights. The victims' advocate is the director
 14 of the office of victims' rights.

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

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

1 (c) The appointment of the victims' advocate becomes effective if, while the
 2 legislature is in session, the governor neither approves nor vetoes it within 15 days,
 3 Sundays excepted, after its delivery to the governor. If the legislature is not in session
 4 and the governor neither approves nor vetoes the appointment within 20 days, Sundays
 5 excepted, after its delivery to the governor, the appointment becomes effective.

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

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

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

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

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

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

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

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

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

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

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

1 **Sec. 24.65.050. Removal.** The legislature, by a concurrent resolution adopted
2 by a roll call vote of two-thirds of the members in each house entered in the journal,
3 may remove or suspend the victims' advocate from office, but only for neglect of duty,
4 misconduct, or disability.

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

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

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

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

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

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

31 (c) The victims' advocate shall submit a budget for each fiscal year to the

1 Alaska Legislative Council and the council shall annually submit an estimated budget
2 to the governor for information purposes in the preparation of the executive budget.
3 After reviewing and approving, with or without modifications, the budget submitted
4 by the victims' advocate, the council shall submit the approved budget to the finance
5 committees of the legislature.

6 **Sec. 24.65.090. Procedure.** (a) The victims' advocate shall, by regulations
7 adopted under AS 44.62 (Administrative Procedure Act), establish procedures for
8 advocacy on behalf of crime victims, receiving and processing complaints, conducting
9 investigations, reporting findings, and ensuring that confidential information obtained
10 by the victims' advocate in the course of advocacy on behalf of a crime victim or in
11 the course of an investigation will not be improperly disclosed. The victims' advocate
12 may establish procedures so that advocacy and investigations on behalf of crime
13 victims in felony cases take a priority over advocacy and investigations on behalf of
14 crime victims in misdemeanor cases.

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

17 **Sec. 24.65.100. Jurisdiction.** The victims' advocate has jurisdiction to
18 advocate on behalf of crime victims of felony offenses or class A misdemeanors, if the
19 class A misdemeanor is a crime involving domestic violence or a crime against a
20 person under AS 11.41, in the courts of the state and to investigate the complaints of
21 crime victims of felony offenses or class A misdemeanors, if the class A misdemeanor
22 is a crime involving domestic violence or a crime against a person under AS 11.41,
23 that they have been denied their rights under the constitution and the laws of the state.
24 In this section, "crime involving domestic violence" has the meaning given in
25 AS 18.66.990.

26 **Sec. 24.65.110. Advocacy on behalf of crime victims.** (a) The victims'
27 advocate shall assist crime victims in obtaining the rights crime victims are guaranteed
28 under the constitution and laws of the state with regard to the contacts crime victims
29 have with the justice agencies of the state.

30 (b) Notwithstanding another provision of law, the victims' advocate may make
31 the statement a crime victim is authorized to make in a court of the state when

1 requested by the crime victim and when the crime victim does not personally make a
2 statement.

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

6 **Sec. 24.65.120. Investigations.** (a) The victims' advocate may investigate
7 complaints from crime victims that they have been denied the rights they are
8 guaranteed under the constitution and laws of this state.

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

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

11 (2) hold private hearings; and

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

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

23 **Sec. 24.65.130. Powers.** (a) Subject to the privileges that witnesses have in
24 the courts of this state, the victims' advocate may compel by subpoena, at a specified
25 time and place, the

26 (1) appearance and sworn testimony of a person who the victims'
27 advocate reasonably believes may be able to give information relating to a matter
28 under investigation under AS 24.65.120; and

29 (2) production by a person of a record or object that the victims'
30 advocate reasonably believes may relate to the matter under investigation under
31 AS 24.65.120.

1 (b) If a person refuses to comply with a subpoena issued under (a) of this
 2 section, the superior court may, on application of the victims' advocate, compel
 3 obedience by proceedings for contempt in the same manner as in the case of
 4 disobedience to the requirements of a subpoena issued by the court or refusal to testify
 5 in the court.

6 (c) This section does not authorize the victims' advocate to issue a subpoena
 7 to

8 (1) a justice, judge, or magistrate concerning a judicial action or
 9 nonaction taken by the justice, judge, or magistrate;

10 (2) a member of a jury concerning a matter that was considered by the
 11 jury; or

12 (3) the person accused or convicted of committing the crime that is the
 13 basis for the complaint, and investigation under AS 24.65.120, concerning a denial of
 14 rights.

15 **Sec. 24.65.140. Consultation.** Before giving an opinion or recommendation
 16 that is critical of a justice agency or person as a result of an investigation under
 17 AS 24.65.120, the victims' advocate shall consult with that agency or person. The
 18 victims' advocate may make a preliminary opinion or recommendation available to the
 19 agency or person for review, but the preliminary opinion or recommendation is
 20 confidential and may not be disclosed to the public by the agency or person.

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

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

28 (c) The report provided under (a) of this section is confidential and may not
 29 be disclosed to the public by the justice agency. The victims' advocate may disclose
 30 the report under AS 24.65.160 only after providing notice that the investigation has
 31 been concluded to the agency and after receiving the written approval of the

1 complainant to release the report.

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

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

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

14 **Sec. 24.65.190. Immunity of the victims' advocate.** A civil action may not
15 be brought against the victims' advocate or a member of the victims' advocate's staff
16 for anything done, said, or omitted in performing the victims' advocate's duties or
17 responsibilities under this chapter.

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

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

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

28 (1) "justice agency" means a department, office, institution, corporation,
29 authority, organization, commission, committee, council, court, or board in the
30 executive or judicial branches of the state government that is, in any manner, involved
31 with or responsible for the apprehension, prosecution, incarceration, or supervision of

1 criminal or juvenile offenders; it also includes an officer, employee, or member of an
 2 agency acting or purporting to act in the exercise of official duties, including the
 3 governor and lieutenant governor, when acting with regard to executive clemency,
 4 judges, and magistrates;

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

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

7 (d) This section applies to employees of the legislature only if the committee
 8 responsible for adopting employment policies concerning the employee adopts a
 9 written policy that the section applies. This section applies to the employees of the
 10 office of the ombudsman only if the ombudsman adopts a policy that the section
 11 applies. **This section applies to the employees of the office of victims' rights only**
 12 **if the victims' advocate adopts a policy that the section applies.**

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

14 (c) Before submitting the regulations and orders of repeal to the lieutenant
 15 governor under (a) of this section, every state agency that by statute possesses
 16 regulation making authority, except boards and commissions, **the office of victims'**
 17 **rights,** and the office of the ombudsman, shall submit to the governor for review a
 18 copy of every regulation or order of repeal adopted by the agency, except regulations
 19 and orders of repeal identified in (a)(1) - (2) of this section. The governor may review
 20 the regulations and orders of repeal received under this subsection. The governor may
 21 return the regulations and orders of repeal to the adopting agency before they are
 22 submitted to the lieutenant governor for filing under (a) of this section [,] (1) if they
 23 are inconsistent with the faithful execution of the laws, or (2) to enable the adopting
 24 agency to respond to specific issues raised by the Administrative Regulation Review
 25 Committee. The governor may not delegate the governor's review authority under this
 26 subsection to a person other than the lieutenant governor.

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

28 **Sec. 44.62.215. Record of public comment.** In the drafting, review, or other
 29 preparation of a proposed regulation, amendment, or order of repeal, an agency, other
 30 than a board or commission, **the office of victims' rights,** and the office of the
 31 ombudsman, shall keep a record of its use or rejection of factual or other substantive

1 information that is submitted in writing as public comment and that is relevant to the
2 accuracy, coverage, or other aspect of the proposed regulatory action.

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

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

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

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

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

15 (4) the extent to which the board, commission, or agency has
16 encouraged interested persons to report to it concerning the effect of its regulations and
17 decisions on the effectiveness of service, economy of service, and availability of
18 service that it has provided;

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

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

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

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

30 (9) the extent to which statutory, regulatory, budgeting, or other
31 changes are necessary to enable the agency, board, or commission to better serve the

1 interests of the public and to comply with the factors enumerated in this subsection.

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

3 (2) "state agency" means

4 (A) a department, institution, board, commission, division,
5 authority, public corporation, or other administrative unit of the executive
6 branch, including the University of Alaska and the Alaska Railroad
7 Corporation;

8 (B) a committee, division, or administrative unit of the
9 legislative branch, including the Alaska Legislative Council, the leadership of
10 each house, the office of victims' rights, and the office of the ombudsman;

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

13 * **Sec. 10.** AS 24.65.110 and 24.65.120, added by sec. 4 of this Act, have the effect of
14 amending Rule 16, Alaska Rules of Criminal Procedure, and Rule 9, Alaska Delinquency
15 Rules, by allowing the victims' advocate a right of access to information in criminal
16 prosecutions and juvenile adjudications that is equal to that available to criminal defendants
17 or juveniles when the advocate is engaging in advocacy or that is unlimited when the advocate
18 is engaging in investigations concerning victims' rights.

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