

CS FOR SENATE BILL NO. 219(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/23/98

Referred: Rules

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to establishing an office of victims' rights; relating to eligibility
2 for a permanent fund dividend for persons convicted of and incarcerated for
3 certain offenses; and amending Rule 16, Alaska Rules of Criminal Procedure, Rule
4 9, Alaska Delinquency Rules, and Rule 501, Alaska Rules of Evidence."

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

6 * **Section 1.** SHORT TITLE. This Act may be known as the Crime Victims' Rights and
7 Advocacy Act of 1998.

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

9 (b) A victim may submit to the sentencing court a written statement that the
10 victim believes is relevant to the sentencing decision [,] and may give sworn testimony
11 or make an unsworn oral presentation to the court at the sentencing hearing. If there
12 are numerous victims, the court may limit the number of victims who may give sworn
13 testimony or make an unsworn oral presentation during the hearing. **When requested**
14 **by the victim of a felony or a class A misdemeanor, if the class A misdemeanor**

1 is a crime involving domestic violence or a crime against a person under
 2 AS 11.41, when the victim does not submit a statement, give testimony, or make
 3 an oral presentation, the victims' advocate may submit a written statement or
 4 make an unsworn oral presentation at the sentencing hearing on behalf of the
 5 victim.

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

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

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

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

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

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

22 (b) The victims' advocate selection committee shall examine persons to serve
 23 as victims' advocate regarding their qualifications and ability and shall place the name
 24 of the person selected in nomination. The appointment is effective if the nomination
 25 is approved by a roll call vote of two-thirds of the members of the legislature in joint
 26 session. The vote on the appointment shall be entered in the journals of both houses.

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

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

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

- 1 (3) unless the person has significant experience in criminal law;
- 2 (4) unless the person is an attorney licensed to practice law in this
3 state;
- 4 (5) within one year of the last day on which the person served as a
5 member of the legislature;
- 6 (6) while the person is a candidate for or holds another national, state,
7 or municipal office; the victims' advocate may not become a candidate for national,
8 state, or municipal office until one year has elapsed from the date the victims' advocate
9 vacates the office of victims' advocate;
- 10 (7) while the person is engaged in another occupation for which the
11 person receives compensation;
- 12 (8) unless the person is at least 21 years of age and is a qualified voter.

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

16 (b) If the term of a victims' advocate expires without the appointment of a
17 successor under this chapter, the incumbent victims' advocate may continue in office
18 until a successor is appointed. If the victims' advocate dies, resigns, becomes
19 ineligible to serve, or is removed or suspended from office, the person appointed as
20 acting victims' advocate under AS 24.65.070(a) serves until a new victims' advocate
21 is appointed for a full term.

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

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

29 **Sec. 24.65.070. Staff and delegation.** (a) The victims' advocate shall appoint
30 a person to serve as acting victims' advocate in the absence of the victims' advocate.
31 The victims' advocate shall also appoint assistants and clerical personnel necessary to

1 carry out the provisions of this chapter. The victims' advocate may enter into personal
2 services and other contracts the victims' advocate finds necessary to carry out the
3 provisions of this chapter.

4 (b) The victims' advocate may delegate to the assistants any of the victims'
5 advocate's duties except those specified in AS 24.65.150 and 24.65.160; however,
6 during the victims' advocate's absence from the principal business offices, the victims'
7 advocate may delegate the duties specified in AS 24.65.150 and 24.65.160 to the
8 acting victims' advocate for the duration of the absence. The duties specified in
9 AS 24.65.150 and 24.65.160 shall be performed by the acting victims' advocate when
10 serving under AS 24.65.040(b).

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

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

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

23 (c) The victims' advocate shall submit a budget for each fiscal year to the
24 Alaska Legislative Council and the council shall annually submit an estimated budget
25 to the governor for information purposes in the preparation of the executive budget.
26 After reviewing and approving, with or without modifications, the budget submitted
27 by the victims' advocate, the council shall submit the approved budget to the finance
28 committees of the legislature.

29 **Sec. 24.65.090. Procedure.** (a) The victims' advocate shall, by regulations
30 adopted under AS 44.62 (Administrative Procedure Act), establish procedures for
31 advocacy on behalf of crime victims, receiving and processing complaints, conducting

1 investigations, reporting findings, and ensuring that confidential information obtained
2 by the victims' advocate in the course of advocacy on behalf of a crime victim or in
3 the course of an investigation will not be improperly disclosed. The victims' advocate
4 may establish procedures so that advocacy and investigations on behalf of crime
5 victims in felony cases take a priority over advocacy and investigations on behalf of
6 crime victims in misdemeanor cases.

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

9 **Sec. 24.65.100. Jurisdiction.** The victims' advocate has jurisdiction to
10 advocate on behalf of crime victims of felony offenses or class A misdemeanors, if the
11 class A misdemeanor is a crime involving domestic violence or a crime against a
12 person under AS 11.41, in the courts of the state and to investigate the complaints of
13 crime victims of felony offenses or class A misdemeanors, if the class A misdemeanor
14 is a crime involving domestic violence or a crime against a person under AS 11.41,
15 that they have been denied their rights under the constitution and the laws of the state.
16 In this section, "crime involving domestic violence" has the meaning given in
17 AS 18.66.990.

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

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

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

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

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

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

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

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

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

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

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

31 (1) a justice, judge, or magistrate concerning a judicial action or

1 nonaction taken by the justice, judge, or magistrate;

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

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

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

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

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

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

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

31 **Sec. 24.65.170. Annual report.** The victims' advocate shall submit to the

1 public an annual report of the victims' advocate's activities under this chapter and
 2 notify the legislature that the report is available.

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

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

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

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

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

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

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

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

30 (d) This section applies to employees of the legislature only if the committee
 31 responsible for adopting employment policies concerning the employee adopts a

1 written policy that the section applies. This section applies to the employees of the
 2 office of the ombudsman only if the ombudsman adopts a policy that the section
 3 applies. **This section applies to the employees of the office of victims' rights only**
 4 **if the victims' advocate adopts a policy that the section applies.**

5 * **Sec. 6.** AS 43.23.005(d) is amended to read:

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

8 (1) during the calendar year immediately preceding that dividend year,
 9 the individual was sentenced as a result of conviction in this state of a felony;

10 (2) during all or part of **either of the two** calendar **years** [YEAR]
 11 immediately preceding that dividend year, the individual was incarcerated as a result
 12 of the conviction in this state of a

13 (A) felony; or

14 (B) misdemeanor if the individual has been convicted of two or
 15 more prior crimes as defined in AS 11.81.900.

16 * **Sec. 7.** AS 43.23.028(b) is amended to read:

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

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

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

27 (3) Department of Corrections for incarceration and probation
 28 programs; **or**

29 **(4) office of victims' rights.**

30 * **Sec. 8.** AS 44.62.040(c) is amended to read:

31 (c) Before submitting the regulations and orders of repeal to the lieutenant

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

13 * **Sec. 9.** AS 44.62.215 is amended to read:

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

20 * **Sec. 10.** AS 44.66.050(c) is amended to read:

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

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

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

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

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

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

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

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

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

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

19 * **Sec. 11.** AS 44.99.240(2) is amended to read:

20 (2) "state agency" means

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

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

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

30 * **Sec. 12.** AS 24.65.110 and 24.65.120, added by sec. 4 of this Act, have the effect of
 31 amending Rule 16, Alaska Rules of Criminal Procedure, and Rule 9, Alaska Delinquency

1 Rules, by allowing the victims' advocate a right of access to information in criminal
2 prosecutions and juvenile adjudications that is equal to that available to criminal defendants
3 or juveniles when the advocate is engaging in advocacy or that is unlimited when the advocate
4 is engaging in investigations concerning victims' rights.

5 * **Sec. 13.** AS 24.65.200, added by sec. 4 of this Act, amends Rule 501, Alaska Rules of
6 Evidence, by creating a new privilege from being compelled to testify in a court.