

HOUSE CS FOR CS FOR SENATE BILL NO. 219(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/10/98

Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

1 testimony or make an unsworn oral presentation during the hearing. **When requested**
 2 **by the victim of a felony or a class A misdemeanor, if the class A misdemeanor**
 3 **is a crime involving domestic violence or a crime against a person under**
 4 **AS 11.41, when the victim does not submit a statement, give testimony, or make**
 5 **an oral presentation, the victims' advocate may submit a written statement or**
 6 **make an unsworn oral presentation at the sentencing hearing on behalf of the**
 7 **victim.**

8 * **Sec. 3.** AS 18.67.130(c) is amended to read:

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

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

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

19 * **Sec. 4.** AS 18.67.130 is amended by adding a new subsection to read:

20 (e) The dollar amounts in (c) of this section change, as provided in this
 21 subsection, according to and to the extent of increases in the Consumer Price Index for
 22 all Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau
 23 of Labor Statistics, United States Department of Labor (the index). The index for
 24 January of 1996 is the reference base index. The dollar amounts increase on October 1
 25 of each even-numbered year if the percentage of change, calculated to the nearest
 26 whole percentage point, between the index for January of that year and the most recent
 27 index used to change the exemption amount, is one percent or more. If the index is
 28 revised, the percentage of increase is calculated on the basis of the revised index. If
 29 a revision of the index changes the reference base index, a revised reference base
 30 index is determined by multiplying the reference base index applicable by the rebasing
 31 factor furnished by the United States Bureau of Labor Statistics. If the index is

1 superseded, the index referred to in this section is the one represented by the Bureau
 2 of Labor Statistics as reflecting most accurately changes in the purchasing power of
 3 the dollar for Alaska consumers. The board shall adopt a regulation announcing

4 (1) on or before June 30 of each year in which dollar amounts are to
 5 increase, the increases in dollar amounts required by this subsection; and

6 (2) promptly after the changes occur, changes in the index required by
 7 this subsection, including, if applicable, the numerical equivalent of the reference base
 8 index under a revised reference base index and the designation or title of any index
 9 superseding the index.

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

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

15 * **Sec. 6.** AS 24 is amended by adding a new chapter to read:

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

17 **Sec. 24.65.010. Office of victims' rights.** There is created in the legislative
 18 branch of the state the office of victims' rights. The victims' advocate is the director
 19 of the office of victims' rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 24.65.060. Compensation.** The victims' advocate is entitled to receive
31 an annual salary equal to Step A, Range 26, on the salary schedule set out in

1 AS 39.27.011(a) for Juneau.

2 **Sec. 24.65.070. Staff and delegation.** (a) The victims' advocate shall appoint
3 a person to serve as acting victims' advocate in the absence of the victims' advocate.
4 The victims' advocate shall also appoint assistants and clerical personnel necessary to
5 carry out the provisions of this chapter. The victims' advocate may enter into personal
6 services and other contracts the victims' advocate finds necessary to carry out the
7 provisions of this chapter.

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

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

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

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

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

1 committees of the legislature.

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

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

13 **Sec. 24.65.100. Jurisdiction; duties.** (a) The victims' advocate has
14 jurisdiction to advocate on behalf of crime victims of felony offenses or class A
15 misdemeanors, if the class A misdemeanor is a crime involving domestic violence or
16 a crime against a person under AS 11.41, in the courts of the state and to investigate
17 the complaints of crime victims of felony offenses or class A misdemeanors, if the
18 class A misdemeanor is a crime involving domestic violence or a crime against a
19 person under AS 11.41, that they have been denied their rights under the constitution
20 and the laws of the state. The victims' advocate may not investigate or challenge a
21 decision rendered by a judicial officer or jury. In this subsection, "crime involving
22 domestic violence" has the meaning given in AS 18.66.990.

23 (b) The victims' advocate shall exercise

24 (1) the jurisdiction granted under this section in a manner that does not
25 interfere with a criminal investigation or with a criminal prosecution;

26 (2) reasonable care to prevent crime victims and employees of the
27 office of victims' rights from making extrajudicial statements that the victims'
28 advocate is prohibited from making under the Alaska Rules of Professional Conduct.

29 **Sec. 24.65.110. Advocacy on behalf of crime victims; records.** (a) The
30 victims' advocate shall assist crime victims in obtaining the rights crime victims are
31 guaranteed under the constitution and laws of the state with regard to the contacts

1 crime victims have with the justice agencies of the state.

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

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

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

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

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

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

17 (2) hold private hearings; and

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

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

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

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

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

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

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

14 (1) a justice, judge, magistrate, or a person acting under the direction
15 of a justice, judge, or magistrate, concerning a judicial action or nonaction taken by,
16 or under the direction of, the justice, judge, or magistrate;

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

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

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

28 **Sec. 24.65.150. Procedure after investigation.** (a) The victims' advocate shall
29 report the advocate's opinion and recommendations to a justice agency if the victims'
30 advocate finds, after investigation under AS 24.65.120, that the agency has denied a
31 crime victim rights the crime victim is guaranteed under the constitution and laws of

1 this state.

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

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

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

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

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

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

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

29 **Sec. 24.65.210. Penalty.** A person who knowingly hinders the lawful actions
30 of the victims' advocate or the staff of the victims' advocate, or who knowingly refuses
31 to comply with their lawful demands, is guilty of a misdemeanor and upon conviction

1 may be punished by a fine of not more than \$1,000. In this section, "knowingly" has
2 the meaning given in AS 11.81.900.

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

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

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

13 * **Sec. 7.** AS 39.27.022(d) is amended to read:

14 (d) This section applies to employees of the legislature only if the committee
15 responsible for adopting employment policies concerning the employee adopts a
16 written policy that the section applies. This section applies to the employees of the
17 office of the ombudsman only if the ombudsman adopts a policy that the section
18 applies. **This section applies to the employees of the office of victims' rights only**
19 **if the victims' advocate adopts a policy that the section applies.**

20 * **Sec. 8.** AS 43.23.005(d) is amended to read:

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

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

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

28 (A) felony; or

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

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

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

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

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

11 (3) Department of Corrections for incarceration and probation
 12 programs; or

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

14 * **Sec. 10.** AS 44.62.040(c) is amended to read:

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

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

29 **Sec. 44.62.215. Record of public comment.** In the drafting, review, or other
 30 preparation of a proposed regulation, amendment, or order of repeal, an agency, other
 31 than a board or commission, **the office of victims' rights,** and the office of the

1 ombudsman, shall keep a record of its use or rejection of factual or other substantive
2 information that is submitted in writing as public comment and that is relevant to the
3 accuracy, coverage, or other aspect of the proposed regulatory action.

4 * **Sec. 12.** AS 44.66.050(c) is amended to read:

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

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

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

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

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

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

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

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

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

31 (9) the extent to which statutory, regulatory, budgeting, or other

1 changes are necessary to enable the agency, board, or commission to better serve the
2 interests of the public and to comply with the factors enumerated in this subsection.

3 * **Sec. 13.** AS 44.99.240(2) is amended to read:

4 (2) "state agency" means

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

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

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

14 * **Sec. 14.** AS 24.65.110 and 24.65.120, added by sec. 6 of this Act, have the effect of
15 amending Rule 16, Alaska Rules of Criminal Procedure, and Rule 9, Alaska Delinquency
16 Rules, by allowing the victims' advocate a right of access to information in criminal
17 prosecutions and juvenile adjudications that is equal to that available to criminal defendants
18 or juveniles when the advocate is engaging in advocacy or that is unlimited when the advocate
19 is engaging in investigations concerning victims' rights.

20 * **Sec. 15.** AS 24.65.200, added by sec. 6 of this Act, amends Rule 501, Alaska Rules of
21 Evidence, by creating a new privilege from being compelled to testify in a court.