

**CS FOR SENATE BILL NO. 4(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/27/99

Referred: Rules

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

**A BILL**

**FOR AN ACT ENTITLED**

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

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

9 \* **Section 1.** SHORT TITLE. This Act may be known as the Crime Victims' Rights and  
10 Advocacy Act of 1999.

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

12 (b) A victim may submit to the sentencing court a written statement that the  
13 victim believes is relevant to the sentencing decision [,] and may give sworn testimony

1 or make an unsworn oral presentation to the court at the sentencing hearing. If there  
 2 are numerous victims, the court may reasonably limit the number of victims who may  
 3 give sworn testimony or make an unsworn oral presentation during the hearing. When  
 4 requested by the victim of a felony or a class A misdemeanor, if the class A  
 5 misdemeanor is a crime involving domestic violence or a crime against a person  
 6 under AS 11.41, when the victim does not submit a statement, give testimony, or  
 7 make an oral presentation, the victims' advocate appointed under AS 12.61.200  
 8 may submit a written statement or make an unsworn oral presentation at the  
 9 sentencing hearing on behalf of the victim.

10 \* **Sec. 3.** AS 12.61 is amended by adding new sections to read:

11 **Article 2A. Office of Victims' Rights.**

12 **Sec. 12.61.200. Office of victims' rights established; duties.** (a) The office  
 13 of victims' rights is established in the Department of Public Safety. The office shall  
 14 be directed by the victims' advocate. The victims' advocate shall be appointed by the  
 15 commissioner of public safety. The commissioner may not appoint a person as  
 16 victims' advocate unless the person meets the qualifications provided in (e) of this  
 17 section. The victims' advocate is in the partially exempt service under AS 39.25.120.  
 18 The office may employ assistant victims' advocates and clerical staff that the victims'  
 19 advocate determines are needed to perform the duties set out in this section. Assistant  
 20 victims' advocates and clerical staff employed by the office are in the classified service  
 21 under AS 39.25.100.

22 (b) The office of victims' rights shall, as provided in AS 12.61.200 -  
 23 12.61.300,

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

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

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

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

31 (c) Each state agency shall cooperate with the office of victims' rights when

1 the office is performing the duties imposed under AS 12.61.200 - 12.61.300.

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

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

5 (1) unless the person has been a resident of the state for the three 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 three 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. 12.61.210. Procedure; fees.** (a) The victims' advocate shall, by  
22 regulations adopted under AS 44.62 (Administrative Procedure Act), establish  
23 procedures for advocacy on behalf of crime victims, receiving and processing  
24 complaints, conducting investigations, reporting findings, and ensuring that confidential  
25 information obtained by the victims' advocate in the course of advocacy on behalf of  
26 a crime victim or in the course of an investigation will not be improperly disclosed.  
27 The victims' advocate may establish procedures so that advocacy and investigations on  
28 behalf of crime victims in felony cases take a priority over advocacy and investigations  
29 on behalf of crime victims in misdemeanor cases.

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

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

10           (b) The victims' advocate shall exercise reasonable care to

11                   (1) ensure that the victims' advocate's exercise of jurisdiction granted  
12 under this section does not interfere with an ongoing criminal investigation or with a  
13 criminal prosecution;

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

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

19                   (1) prevent or discourage a victim from cooperating with law  
20 enforcement authorities in a criminal investigation;

21                   (2) encourage a victim to withhold evidence from law enforcement  
22 authorities in a criminal investigation; or

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

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

29           (b) The victims' advocate may make the statement a crime victim is authorized  
30 to make under art. I, sec. 24, Constitution of the State of Alaska, and AS 12.55.023,  
31 in a court of the state when requested by the crime victim and when the crime victim

1 does not personally make a statement.

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

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

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

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

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

13 (2) hold private hearings; and

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

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

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

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

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

1 section.

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

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

9 (1) a justice, judge, magistrate, or a law clerk acting under the direction  
10 of a justice, judge, or magistrate, concerning a judicial action or nonaction taken by,  
11 or under the direction of, the justice, judge, or magistrate;

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

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

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

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

29 (h) The victims' advocate shall report the advocate's opinion and  
30 recommendations to a justice agency if the victims' advocate finds, after investigation  
31 under this section, that the agency has denied a crime victim rights the crime victim

1 is guaranteed under the constitution and laws of this state.

2 (i) 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 (j) The report provided under (h) 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 (k) of this section 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 (k) Except as provided in (j) of this section, within a reasonable amount of  
10 time after the victims' advocate reports the advocate's opinion and recommendations  
11 to a justice agency, the victims' advocate may present the opinion and  
12 recommendations to the governor, the attorney general, the legislature, a grand jury,  
13 the public, or any of these. The victims' advocate shall include with the opinion any  
14 reply made by the agency.

15 **Sec. 12.61.250. Annual report.** The victims' advocate shall submit to the  
16 public an annual report of the victims' advocate's activities under AS 12.61.200 -  
17 12.61.300 and notify the legislature that the report is available.

18 **Sec. 12.61.260. 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 AS 12.61.200 - 12.61.300.

21 **Sec. 12.61.270. 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 AS 12.61.200 - 12.61.300.

25 **Sec. 12.61.280. Victims' advocate's privilege not to testify or produce**  
26 **documents or other evidence.** The victims' advocate and the staff of the victims'  
27 advocate may not be compelled to testify or produce documents or other evidence in  
28 a court regarding matters coming to their attention in the exercise or purported exercise  
29 of their official duties except as may be necessary to enforce the provisions of  
30 AS 12.61.200 - 12.61.300.

31 **Sec. 12.61.290. Penalty.** A person who knowingly hinders the lawful actions

1 of the victims' advocate or the staff of the victims' advocate, or who knowingly refuses  
 2 to comply with their lawful demands, is guilty of a misdemeanor and upon conviction  
 3 may be punished by a fine of not more than \$1,000. In this section, "knowingly" has  
 4 the meaning given in AS 11.81.900.

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

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

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

15 \* **Sec. 4.** AS 18.67.130(c) is amended to read:

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

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

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

26 \* **Sec. 5.** AS 18.67.130 is amended by adding a new subsection to read:

27 (e) The dollar amounts in (c) of this section change, as provided in this  
 28 subsection, according to and to the extent of increases in the Consumer Price Index for  
 29 all Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau  
 30 of Labor Statistics, United States Department of Labor (the index). The index for  
 31 January of 1996 is the reference base index. The dollar amounts increase on October 1

1 of each even-numbered year if the percentage of change, calculated to the nearest  
 2 whole percentage point, between the index for January of that year and the most recent  
 3 index used to change the exemption amount, is one percent or more. If the index is  
 4 revised, the percentage of increase is calculated on the basis of the revised index. If  
 5 a revision of the index changes the reference base index, a revised reference base  
 6 index is determined by multiplying the reference base index applicable by the rebasing  
 7 factor furnished by the United States Bureau of Labor Statistics. If the index is  
 8 superseded, the index referred to in this section is the one represented by the Bureau  
 9 of Labor Statistics as reflecting most accurately changes in the purchasing power of  
 10 the dollar for Alaska consumers. The board shall adopt a regulation announcing

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

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

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

18 (25) the victims' advocate established under AS 12.61.200.

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

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

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

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

26 (A) felony; or

27 (B) misdemeanor if the individual has been convicted of

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

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

31 \* **Sec. 8.** AS 43.23.028(b) is amended to read:

1           **Sec. 43.23.028. Public notice.** (a) By October 1 of each year, the  
 2 commissioner shall give public notice of the value of each permanent fund dividend  
 3 for that year and notice of the information required to be disclosed under (3) of this  
 4 subsection. In addition, the stub attached to each individual dividend check and direct  
 5 deposit advice must

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

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

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

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

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

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

21                                       (i) felony; or

22                                       (ii) misdemeanor if the individual has been convicted of

23                                       **a prior felony or** two or more prior **misdemeanors** [CRIMES];

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

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

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

1 (6) disclose the total amount that would have been paid during the  
2 previous fiscal year to individuals who were ineligible to receive dividends under  
3 AS 43.23.005(d) if they had been eligible;

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

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

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

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

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

18 (4) the office of victims' rights; or

19 (5) the office of victims' rights for grants to nonprofit victims'  
20 rights organizations.

21 \* **Sec. 9.** AS 12.61.230 and 12.61.240, added by sec. 3 of this Act, have the effect of  
22 amending Rule 16, Alaska Rules of Criminal Procedure, and Rule 9, Alaska Delinquency  
23 Rules, by allowing the victims' advocate a right of access to information in criminal  
24 prosecutions and juvenile adjudications that is equal to that available to criminal defendants  
25 or juveniles when the advocate is engaging in advocacy or that is unlimited when the advocate  
26 is engaging in investigations concerning victims' rights.

27 \* **Sec. 10.** AS 12.61.280, added by sec. 3 of this Act, amends Rule 501, Alaska Rules of  
28 Evidence, by creating a new privilege from being compelled to testify or produce documents  
29 or other evidence in a court.

30 \* **Sec. 11.** Notwithstanding the effective date of secs. 1 - 6 and 9 - 10 of this Act, to the  
31 extent that there are appropriations for the purpose, the commissioner of public safety may

1 purchase supplies and equipment, obtain office space, and employ clerical staff so that the  
2 office of victims' rights, created in sec. 3 of this Act, is able to begin work on July 1, 2001.

3 \* **Sec. 12.** Sections 7, 8, and 11 of this Act take effect immediately under AS 01.10.070(c).

4 \* **Sec. 13.** Sections 1 - 6 and 9 - 10 take effect July 1, 2001.