

HB

534




LEGISLATIVE BUDGET & AUDIT COMMITTEE
REPRESENTATIVE RALPH SAMUELS, CHAIR

Memorandum

Date: March 15, 2004

To: Representative Lesil McGuire
Chair, House Judiciary Committee

From: Representative Ralph Samuels 

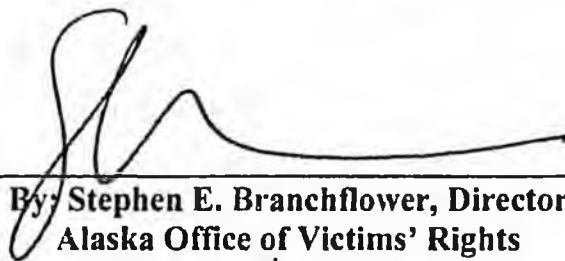
RE: Hearing for House Bill 534

Please schedule a hearing for HB 534 at your earliest convenience. This legislation simply extends the sunset date of the Office of Victims' Rights to 2010.



**FIRST ANNUAL REPORT
OF THE ALASKA OFFICE OF VICTIMS' RIGHTS**

JULY 1, 2003



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TABLE OF CONTENTS

Introduction	4
I. Overview of the Alaska Office of Victims' Rights	5
• Advocacy On Behalf Of Crime Victims- Jurisdiction	5
• Investigation Of Complaints By Victims	5
• Obtaining Information From Criminal Justice Agencies	6
• Confidentiality of Information and Documents	7
• Publication Of OVR Findings Following An Investigation	7
• OVR And The Criminal Justice System	7
• The OVR Enjoys Broad Civil Immunity And Protection	7
• Hindering The OVR is A Crime	8
• Funding Of The OVR	8
II. OVR Professional Staff	9
III. Highlights Of The OVR's First Year Of Operation	10

• Creation Of The OVR Central Office	10
• Summary Of OVR Case Statistics For 2003	11
• OVR Community Training And Outreach	13
• Creation Of OVR Informational Brochure	15
• Office Of Victims' Rights Web Site	15
• Office of Victims'Rights Chart Of Victim Rights	16
IV. Significant Cases Handled By The OVR During FY 2002	16
• <u>Murtagh, et al v. State of Alaska and OVR</u>	16
• <u>State of Alaska v. Joshua Wade</u>	18
• The Patti Godfrey Case	18
V. 2003 Crime Victim Legislation Supported By OVR	20
• House Bill 68	21
• Senate Bill 41	21
• Senate Bill 45	22
VI. OVR Plans For FY 2004	23
VII. Conclusion	24

Welcome To The 2003 Annual Report Of The Alaska Office Of Victims' Rights- The Agency's First

As a result of the victims' rights movement seen in American jurisprudence over the last two decades, almost every American jurisdiction now has a body of laws that are intended to provide a means for crime victims to effectively participate in the criminal process, and to require that their concerns are addressed by police, prosecutors, defense counsel, and judges. The principal objectives of such laws have been twofold. First, to promote respect for and to protect victims' privacy and safety. Second, to foster administrative and judicial sensitivity to the difficulty experienced when victims are unexpectedly drawn into an often indifferent but always confusing criminal justice system often at the very time they are trying to cope with injury and personal loss.¹

In Alaska, those purposes were served in 1984 by passage of AS 12.61.010-.900 captioned "Rights of Victims, Protection of Victims and Witnesses." Ten years later in 1994, Alaska joined a majority of states when voters overwhelmingly approved passage of a Victims' Rights Amendment to our Constitution. The rights guaranteed in Article I Section 24 are similar to those of thirty other states that have enshrined victims' rights in their Constitutions.²

More recently, in 2001 the Alaska Legislature promulgated an Act that created a new agency called the Alaska Office of Victims' Rights (OVR). OVR's purpose is to help victims of crime obtain the rights they are guaranteed under the Alaska constitution and statutes with regard to their contacts with criminal justice agencies in this state as well as to advance and protect these statutory and constitutional victim rights.

In a press release on February 20, 2001, announcing the OVR legislation Senate President Rick Halford, the chief architect of the OVR law said, "In 1994 voters approved an amendment to Alaska's Constitution that guarantees victims' rights, but simply passing an amendment is not enough." He then added "It is difficult for the victim of a violent crime to wade through our judicial system, which is full of technicalities and legal jargon. Many feel victimized twice - first by the criminal, then by the system. This office would ensure that victims' rights are protected."

The OVR was created in the nature of an Inspector General's office within the legislative, rather than the executive branch, as a way of avoiding conflicts within state government. It was also to ensure that the Director and his staff

¹ The Alaska Legislature has enacted 42 distinct rights to protect crime victims. Alaska's Constitution contains 7 specific crime victim guarantees.

² An amendment to the United States Constitution providing for victims' rights has also been proposed. See S.J. Res. 3 106th Cong. (1999).

would have the necessary independence to investigate criminal justice agencies and make appropriate recommendations. The law, which may be found in Alaska statute (AS) 24.65.010-.250, went into effect on July 1, 2002.

The public has responded enthusiastically to this innovation. Over the last 12 months, OVR's clients have sought a variety of services including information, education, investigation, in-court advocacy and support. In providing these needed services we have focused on facilitating a cooperative relationship between criminal justice agencies, the courts and the victims of crime who are our clients.

Alaska statute 24.65.170 requires the Director to publish an annual report regarding the OVR's activities and to notify the Legislature that the report is available. This is the OVR's first annual report.

I. Overview of the Alaska Office of Victims' Rights

1. Advocacy On Behalf Of Crime Victims-Jurisdiction

To accomplish the goal of assisting crime victims and of giving force to their Constitutional and statutory rights in Alaska, the OVR was empowered by the Alaska Legislature to advocate in state court in all felony offenses, all class A misdemeanors involving domestic violence and all misdemeanors involving crimes against the person. A felony offense is a crime where the possible sentence upon conviction is one or more years in jail and a substantial fine depending on the class of felony. Class A misdemeanors are those crimes punishable by up to one year in jail and up to a \$5,000 fine.

Additionally, OVR lawyers are permitted to address the sentencing judge on the victims' behalf when requested to do so by the victim and when the victim chooses not to personally make their victim impact statement to the judge.

2. Investigation Of Complaints By Victims

Crime victims may file a written complaint with the OVR that they have been denied any of the rights established by Article 1 Section 24 of Alaska's Constitution or the laws of this state. The OVR is empowered to investigate such complaints and take appropriate action on their behalf regarding their contacts with criminal justice agencies. In conducting an investigation the OVR may:

- (1) Make inquiries and obtain information considered necessary from justice agencies;
- (2) Hold private hearings; and

- (3) Notwithstanding other provisions of law, have access at all times to records of justice agencies, including court records of criminal prosecutions and juvenile adjudications, necessary to ensure that the rights of crime victims are not being denied; with regard to court and prosecution records, the Victims' Advocate is entitled to obtain access to every record that any criminal defendant is entitled to access or receive. (AS 24.65.120).

Some examples of information and records available to the OVR are police reports, witness statements, lab reports, photos, taped statements, grand jury proceedings and exhibits, officers notes, scene diagrams, dispatch records, autopsy reports, pre-sentence reports, access to all physical evidence, and more. All information and/or records obtained during any investigation, including information and records subpoenaed by the OVR, are deemed confidential.

3. Obtaining Information From Criminal Justice Agencies

A subpoena is a legal order requiring a person to appear at a specified time and place in order to provide documents, an object, or to answer questions under oath. It is a serious crime for a person to knowingly tell a lie when testifying. The Director of the OVR is authorized by law to issue subpoenas to any person for any records or any object if he reasonably believes such items may provide information relating to a matter under investigation. He may also require the appearance of any person to give sworn testimony if he reasonably believes that person may have such information.

If a person refuses to comply with a subpoena issued by the Director, he may file a motion with the superior court requesting a judge to issue a court order directing obedience to the subpoena. If the person persists in not complying, the person may be held in contempt of court by the judge and could be fined or jailed until the subpoena is complied with.

The law identifies certain persons who may not be subpoenaed by the Director and they are:

1. A justice, judge, magistrate or law clerk or a person acting under their direction;
2. A member of a grand or trial jury;
3. The person accused or convicted of the crime that is the basis for the investigation;
4. A victim counselor concerning a matter made confidential by statute;

5. A criminal justice agency concerning records that lead to the disclosure of a confidential police informant.

4. Information And Records Obtained By The OVR Is Confidential

The OVR is required by law to keep secret all matters and information, as well as the identities of all complainants or witnesses coming before the OVR, except insofar as disclosures of such information may be necessary to enable the OVR to carry out its duties and to support its recommendations. However, the OVR may not disclose a confidential record obtained from a court of justice agency.

5. Publication Of OVR Findings Following An Investigation

Within a reasonable time after an investigation is completed, and after the OVR reports their opinion and recommendations to a justice agency, the Director of the OVR may present the opinion and recommendations to the Governor, the Legislature, a Grand Jury, the public, or any of these. The C /R must include with the opinion any reply made by the justice agency. Written consent from the complainant to release the OVR's report must be obtained prior to release of the report.

6. OVR May Not Interfere With The Criminal Justice System

The OVR is required by law to ensure that their exercise of discretion does not interfere with any ongoing criminal investigation by a police agency or any criminal proceeding by the prosecutor's office. Additionally, the Director must make sure OVR employees do not make public statements that lawyers are prohibited from making by the Alaska Rules of Professional Conduct. Finally, the OVR may not prevent or discourage a victim from providing evidence, testifying or cooperating in a criminal investigation or criminal proceeding.

7. The OVR Has Very Broad Civil Immunity And Protection

The OVR Act provides that a proceeding or decision made by the Director of the OVR or his staff may be reviewed in superior court *only* to determine if it is contrary to the provisions of the statutes that created the OVR. It also provides that the conclusions, thought processes, discussions, records, reports and recommendations of or information collected by the Director or his staff is not admissible in a civil or criminal proceeding, and is not subject to questioning or disclosure by subpoena or discovery. Additionally, a civil lawsuit may not be brought against the Director of the OVR, nor a member of his staff, for anything

they do or say, or that they fail to do or say, in the performance of OVR's duties or responsibilities.

8. It's A Crime To Hinder Or Fail To Comply With OVR's Requests

Alaska law provides "A person who knowingly hinders the lawful actions of the Victims' Advocate or the staff of the Victims' Advocate, or who knowingly refuses to comply with their lawful demands, is guilty of a misdemeanor and upon conviction may be punished by a fine of not more than \$1000." A misdemeanor is a crime.

9. Funding Of The OVR

Many Alaskans mistakenly believe the OVR is funded from the State treasury but this is not so. The OVR is actually funded by money from convicts' forfeited permanent fund dividend checks. Alaska statute 43.23.005 is the law that determines a person's eligibility to receive a permanent fund dividend. A person is disqualified from receiving a PFD if during the dividend year they have either (1) been convicted of a felony, (2) spent time in jail for a felony conviction, or (3) jailed for their third misdemeanor conviction during the dividend year if they have ever been convicted of a felony at any time.

In dividend year 2002, 5276 persons lost their PFD checks by operation of this law, which is an amount that totaled slightly more than \$8 Million dollars. Those funds are placed into an account that (either in whole or in part) funds the OVR, the Violent Crimes Compensation Fund, the Department of Corrections, and the Council on Domestic Violence and Sexual Assault. It also funds grants to various non-profit victims' rights organizations for services to Alaskan victims of crime. The 23rd Legislature fully funded the OVR's FY 2004 budget request of \$512,300.

II. OVR Professional Staff

The Victims' Advocate

In a joint meeting of the Alaska House and Senate on May 13, 2002, the Alaska Legislature unanimously confirmed the appointment of longtime Anchorage prosecutor Stephen Branchflower to become Alaska's first Victims' Advocate and Director of the Office of Victims' Rights. Mr. Branchflower had served as a state prosecutor in Anchorage for 28 years prior to this appointment. He was nominated by a bipartisan legislative Victims' Advocate selection committee. His term of office is five years and he may be reappointed but may not serve for more than three terms. The Legislature, by a concurrent resolution adopted by a roll call vote of two-thirds of the members of each house entered in the journal, may remove or suspend him from office, but only for neglect of duty, misconduct, or disability.

The Associate Victims' Advocate

The OVR staff is small but very experienced, professional, and capable. The OVR's Associate Victims' Rights Advocate is Tamara E. de Lucia who obtained her BA in political science and philosophy from Binghamton University in New York in 1995. She earned a Juris Doctor degree and a Certificate in Environmental and Natural Resources law from Northwestern School of Law at Lewis and Clark College in Portland in 1998. Throughout her law school career she was employed with the Oregon state department of justice as an intern. She served as a law clerk to the Anchorage District Court for a year in 1998 and then as a law clerk to Judge David Mannheim of the Alaska Court of Appeals in 1999. In 2000 she was selected to be an assistant municipal prosecutor with the Municipality of Anchorage Prosecutors Office where she served for two years before joining the OVR in August 2002. As a prosecutor she was responsible for a heavy caseload consisting exclusively of domestic violence cases, which she screened and tried before juries. She also provided extensive training to police and other prosecutors regarding DV issues and DUI detection and prosecution.

Ms. de Lucia was recently elected to serve as the chairperson of the Anchorage Domestic Violence Caucus. The DV Caucus is an organization comprised of law enforcement officers, prosecutors, magistrates, shelter coordinators, non-profit program managers, state and municipal representatives, tribal members and private citizens who gather together to advance the end of domestic violence, sexual assault and child abuse. The Caucus acts as a coordinating body to ensure that community efforts are properly directed and not duplicated; as well as a venue for information dissemination and program introduction. The Caucus meets monthly to discuss matters of import to the domestic violence prevention community.

The OVR Investigator

William Gaither, a highly decorated retired police officer, is the OVR's Investigator. He started his police career with the Anchorage Police Department in March 1974 as a rookie street officer and retired as a lieutenant in June 1996. During his 22-year career he served as field training officer, sergeant in the burglary, theft, drug and homicide units. He also commanded a K-9 unit, the APD Explorer Unit, the APD Reserve Police Officer Unit and was a senior officer on the Crisis Intervention and Response Team before retiring as a Shift Commander. He then accepted a position as a campus police officer at the University of Alaska Anchorage where he served for 5 years. He was selected to become the OVR's Investigator in August 2002 from a field of more than 50 applicants.

III. Highlights Of The OVR's First Year Of Operation

On July 1, 2002, the effective date of the Act creating the OVR, the agency did not exist. There were no offices, computers, office equipment, supplies or employees to staff the newly created organization. The OVR existed only on paper as a legal entity. However, much has been accomplished over the last 12 months to implement the Legislative intent embodied in the OVR enabling statutes.

1. Creation Of The OVR Central Office

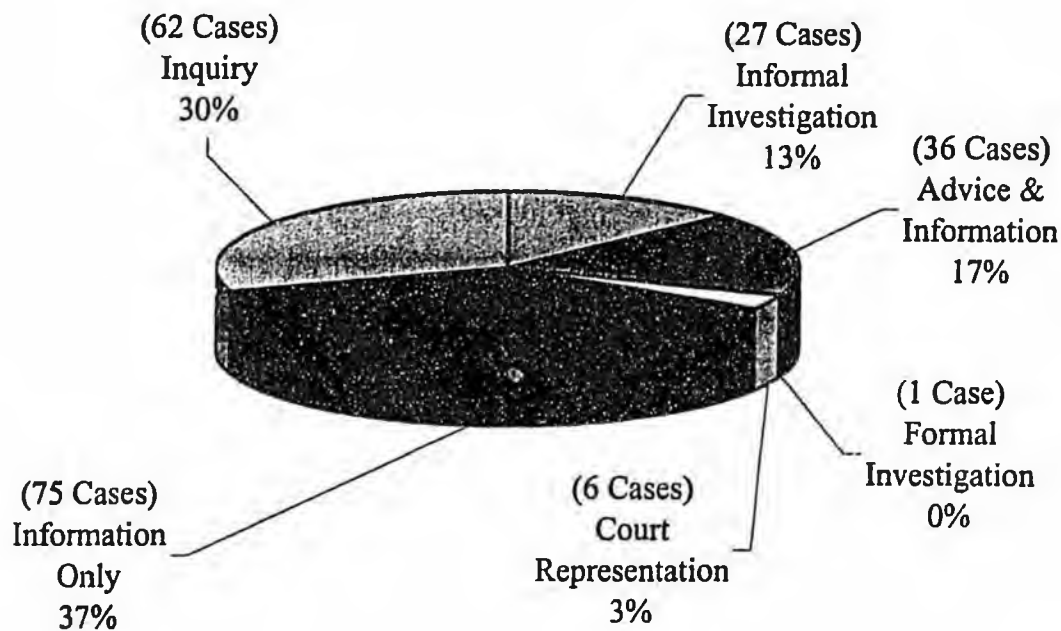
Thanks to the able assistance of the Executive Director of the Legislative Affairs Agency Pamela Varni, and her capable staff and employees, computer, data processing, and teleconference facilities have been made available in order to manage the OVR and to carry out the purposes of AS 24.65.

The OVR has been staffed with experienced and committed professional and support employees who are in the exempt service under AS 39.25.110. A long-term lease has been entered for a suite of professional offices located at 1007 West 3rd Avenue in downtown Anchorage. The office is located near key law enforcement agencies such as the Anchorage District Attorney's office, the Office of Special Prosecutions and Appeals, the Alaska Law Library, the Alaska Supreme Court and Court of Appeals, and the Nesbett Courthouse all of which are within easy walking distance for victims and law enforcement personnel alike. All the necessary office furniture, office equipment and machines have been acquired and are in place.

2. Summary Of OVR Case Statistics For 2002- 2003

Complete office systems and case processing forms have been created where none existed before in order to manage the flow of information and paperwork generated by the large number of complaints from victims. The following is a summary of the kinds of cases processed by the OVR during the 12-month period between July 1, 2002 and July 1, 2003:

OVR Opened 207 Cases Between July 1, 2002 And July 1, 2003 As Follows:



Case Classifications:

- **Information Only:**

Finally, during the current reporting period, 75 clients contacted the OVR for information or advice. After obtaining the information or advice, the clients decided not to file a complaint with the Office of Victims' Rights regarding their case.

- **Advice and Information:**

36 crime victims sought information or advice and after speaking with OVR staff, filed formal written documents with the office. These cases were easily resolved and involved minimal document collection and preparation. These cases primarily involved individuals who needed information as to how the judicial system operates and wished to have a third party look over their case to determine whether the case proceeded as other cases in similar situations.

- **Inquiry:**

During the current reporting period 62 crime victims came to OVR with particular problems or concerns regarding active criminal cases. These clients filed formal written requests with OVR and their cases required OVR to seek documentary evidence from the justice agency involved. In addition, these cases required more time from OVR staff and created a longer-term cooperative relationship between OVR, the client and the justice agency.

- **Informal Investigation:**

27 crime victims came to OVR with significant problems or concerns regarding active criminal cases during the current reporting period. These clients filed formal written requests with OVR and their cases required OVR to seek documentary evidence from justice agencies. These cases were significant in terms of the documents collected and reviewed, the time commitment required from OVR staff and the level of inquiry into justice agency affairs. These cases did not result in the publication of a formal report pursuant to AS 24.65.160.

- **Formal Investigation:**

During the first 12 months of operation the OVR opened one formal investigation, which involved significant problems regarding an active criminal investigation. Patti Godfrey filed a formal written request with the OVR and the case required OVR to seek documentary evidence from the police agency in question. This case was significant in terms of the documents collected and reviewed, the time commitment required from OVR staff and the level of inquiry into the operation of the justice agency's affairs. The case did result in the publication of a formal report pursuant to AS 24.65.160 that is available at the OVR website: <http://www.officeofvictimsrights.legis.state.ak.us>. The Godfrey case is discussed in greater detail in part IV of this report.

- **Court Representation:**

Six clients came to OVR with significant problems or concerns regarding active in-court criminal cases. In addition to requesting documentary evidence from judicial agencies, these cases gave rise to OVR presence in the courtroom and argument before the court on behalf of the victim and their interests.

3. OVR Community Training And Outreach

Perhaps the greatest challenge facing the newly formed OVR during the first 12 months of its existence has been to educate criminal justice agencies, the courts, victims' support organizations and the public that our agency is available as a resource to them. To meet this challenge, the OVR director and staff have undertaken an aggressive educational campaign to explain their functioning and inform prospective clients how to obtain the assistance they are entitled to under the OVR Act. The following is a summary of that community training:

1. July 30, 2002- Anchorage Area Wide Victim's Support Organization Meeting With Approximately 40 Representative From Various Victim's Support Organizations;
2. August 7, 2002- Training At The Anchorage Police Department For Command Officers;
3. August 22, 2002- Guest Appearance On The Herb Shandlin Radio Talk Show, 750 KFQD;
4. August 27, 2002- Bar-Bench Presentation To Judges, Defense Attorneys, And Probation Officers;
5. September 23, 2002- Anchorage Daily News Editorial Board Presentation For Editors And Reporters And The ADN Publisher;
6. September 27, 2002, - Statewide Probation-Parole Officers Training;
7. September 30, 2002, - Alaska State Trooper B Detachment In Palmer/Wasilla Police Dept./Assistant District Attorney Training;
8. October 1, 2002, - One Hour Guest Appearance On Live International Internet Radio Talk Show Hosted By The Voice Of America At [Http://Voiceamerica.Com/](http://Voiceamerica.Com/);
9. October 11, 2002, - Presentation About The OVR At The Eagle River Star Newspaper;
10. October 15, 2002, - Lecture To Approximately 150 State Prosecutors And Lawyers From The Attorney General's Office At The Annual DA's Conference In Girdwood, AK.
11. October 21, 2002, - Presentation To Approximately 30 Tribal Representatives From Bush Alaska At The Forum On Domestic Violence Sponsored By The Office Of The Governor, Alaska State Troopers, And

Alaska Native Women's Coalition On Domestic Violence And Sexual Assault At The Captain Cook Hotel In Anchorage;

12. October 22, 2002, - Presentation To AST Colonel Randy Crawford And Approximately 20 AST Senior Commanders From Throughout Alaska At The Hotel Captain Cook In Anchorage;
13. November 13, 2002, - Presentation To DHHS Division Of Juvenile Justice, Approximately 30 Intake And Juvenile Probation Officers, At The Frontier Building In Anchorage;
14. November 14, 2002, - Alaska Native Women's Sexual Assault Committee, Approximately 10 Representatives From Eight Victim Support Organizations;
15. December 1, 2002, - Guest Appearance On KSKA FM Radio Talk Show;
16. December 2, 2002, - TV Appearance On The Norma Goodman Show;
17. December 5, 2002, - Continuing Legal Education To Approximately 15 Assistant United States Attorneys At The US Attorney's Office In Anchorage;
18. February 5, 2003, - Continuing Legal Education To Approximately 15 Senior Alaska. Fish And Wildlife Officers From Various Locations Around Alaska;
19. February 19, 2003, - Presentation To The Anchorage Women's Aid In Crisis (AWAIC) Organization;
20. February 26, 2003, - Presentation To The Board Of Directors Of Standing Together Against Rape (S.T.A.R.);
21. March 27, 2003, - Presentation To The Staff Of The Medical Examiner's Office;
22. April 2, 2003, Presentation To The Board Members And Staff Of The Alaska Violent Crimes Compensation Board:
23. Featured Guest Speaker On "Consider This" Television Show On KAKM, Channel 7, Discussing The OVR. The Show Was Taped On April 7, 2003 To Be Broadcast In Anchorage On April 23 And Statewide On April 25, 2003;

24. April 15, 2003, - Continuing Legal Education At The Fifth Annual Network On Domestic Violence And Sexual Assault (ANDVSA) Conference;
25. May 13, 2003, - Advocate Training For Alaska Women's Resource Center (AWRC);
26. May 13 And 15, 2003, - Presentation About The OVR To Attendees At The 2003 Alaska Peace Officer Association Annual Crime Conference;
27. May 23, 2003, - Presentation To Visiting Russian Dignitaries From Khabarovsk, Russia Through The University Of Alaska Anchorage American Russian Center- Community Connections Program (Sponsored By The U.S. Department Of State's Bureau Of Educational And Cultural Affairs);
28. June 20-21, 2003, - Presentation At The Second Annual Crime Victim Law And Litigation Conference At The National Crime Victim Law Institute At Lewis And Clark Law School, Portland, Oregon.
29. The OVR Director also addressed members of the Twenty-Third Alaska Legislature and their staff during their staff orientation January 18, 2003.

4. Creation Of OVR Informational Brochure

During its first year of operation the OVR has also designed and printed 5000 copies of a two-fold, color brochure called "Spotlight On Crime Victims." The brochure highlights and explains such topics as "What are my rights?" "Who does the OVR help?" "What can I expect?" as well as other matters including confidentiality issues. In January 2003, several thousand copies of the brochure were distributed statewide to dozens of law enforcement agencies along with a cover letter explaining the purpose of the OVR and providing contact information to rural police agencies.

5. Office Of Victims' Rights Web Site

The OVR has statewide jurisdiction and oversight over criminal justice agencies. In an effort to serve crime victims throughout the state, the OVR worked cooperatively with the Alaska Legislative Information Office during FY 2003 towards the joint development of an OVR website. The website was developed by Lori Yorba, and may be accessed at <http://www.officeofvictimsrights.legis.state.ak.us/> It was designed to provide the user with easy access to information about the Alaska OVR, the various statutory and constitutional rights of crime victims, information on current investigations, information regarding other helpful links and how to file a complaint with the OVR. The OVR website complaint form is currently being programmed to allow

for online submission. The OVR also has a dedicated e-mail address, which can be accessed directly from the web page, as well as information about how to contact the OVR including its toll free 800-telephone number. A copy of this annual report will be posted on the OVR website for viewing by the public.

6. OVR Chart Of Statutory And Constitutional Victim Rights

Crime victims in this state are entitled to approximately 50 separate constitutional and statutory rights. However, prior to the creation of the OVR, these rights were difficult for victims to learn about or find because they were scattered throughout the statutes. One of the first priorities of the OVR was to construct a chart that gathered all crime victims' rights in this state into one document in order to provide victims, law enforcement agencies and the public with a central repository of this key information. That chart may now be found on the OVR web page at the following URL address <http://www.officeofvictimsrights.legis.state.ak.us/ovrlisting.htm>

IV. Significant Cases Handled By The OVR During Its First Year Of Operation

A. John M. Murtagh, et al v. State of Alaska, and the Office of Victims' Rights, 3AN-97-649 Civil

Some five and a half years before the OVR was created, four Anchorage criminal defense attorneys, John M. Murtagh, James H. McComas, Cynthia L. Strout, and Sidney K. Billingslea and private investigator Harry D. Taylor, filed suit in Anchorage Superior Court challenging four subsections of Alaska's Victims Right Act: AS 12.61.120(c)(2), (c)(3); AS 12.61.120(d) and AS 12.61.125. In their January 23, 1997, complaint, the plaintiffs moved for a declaratory judgment seeking a ruling that these statutes were unconstitutional because, they claimed, these laws interfered with a criminal defendant's right to investigate the charges against them and to prepare a defense. The Superior Court entered a partial judgment on the plaintiff's claims and the case was appealed to the Alaska Supreme Court. The matter was remanded to the Superior Court on November 4, 2002 for further determination. The OVR filed a motion with the Superior Court to intervene as a matter of right in March 2003, which was granted, and the OVR is now a named defendant in the suit.

- *Why This Lawsuit Threatens Victims' Rights*

The challenged provisions of AS 12.61.125 greatly limit criminal defense contacts with crime victims in order to safeguard their constitutionally protected privacy rights under Article I Section 22 as well as their right to be treated with dignity, respect and fairness as required by Article I Section 24 of Alaska's Constitution. Neither a defendant accused of a sexual offense, the defendant's counsel, an investigator, or other person acting on behalf of the defendant, may contact the victim of the offense or a witness to the offense if the victim or witness has informed the defendant or the defendant's counsel in writing or in person that the victim or witness does not wish to be contacted by the defense. Also, the defense may not obtain a statement from the victim of the offense or a witness to the offense, unless, (if the statement is taken as a recording), the recording is taken in compliance with AS 12.61.120. If the statement is not taken as a recording, written authorization must first be obtained from the victim or witness and it must state that the victim or witness is aware that there is no legal requirement that the victim or witness speak to the defense. Statements obtained from a victim or witness in violation of AS 12.61.120 or 12.61.125 are presumed inadmissible.

To overcome the presumption of inadmissibility, the defendant is required to prove by clear and convincing evidence that (1) the statement is reliable; (2) similar evidence is unavailable from any other source; and (3) failure to introduce the statement would substantially undermine the reliability of the fact-finding process and result in manifest injustice. AS 12.61.127. Violation of these restrictions by an attorney or an agent of the attorney is considered so serious that "...the court shall refer the violation to the Disciplinary Board of the Alaska Bar Association as a grievance." AS 12.61.125(c).

- *Why The Office of Victims' Rights Sought To Become A Party*

The Attorney General is responsible for representing the state in all civil actions in which the state is a party as in this case. The Office of the Attorney General then, has the mandate to advocate on behalf of the state's interests and to defend state law from challenge. Here however, the constitutional and statutory rights of a particularly vulnerable class of citizens, crime victims, could be gravely impacted by this action if the plaintiffs prevail. When this suit was filed in 1997, the OVR was not yet in existence. With the case now on remand from the Supreme Court, the opportunity was presented for this office to intervene and the opportunity has been seized. This is proper because the OVR has the specific legislative mandate to advocate on behalf of the very citizens whose rights could be directly impacted as a result of this action. OVR is the voice for that class of citizens and advocates solely on behalf of crime victims' statutory and constitutional victims' rights. Further, OVR represents the legislative branch of government – the same body that enacted and passed the contested laws. It is anticipated that a final opinion by the Alaska Supreme Court will not be rendered for at least 24 months.

B. State of Alaska v. Joshua Wade, 3AN-S00-8436 CR

In October 2000 Joshua Wade was indicted by an Anchorage grand jury for the murder, robbery, and sexual assault of D.B. His case went to trial in the spring of 2003 in Anchorage before the Honorable Michael L. Wolverton, judge of the Superior Court. Prior to the commencement of his trial, Wade's defense lawyers were successful in persuading Judge Wolverton to admit evidence before Wade's jury that another suspect, Gregory Poindexter, may have committed the crimes against D.B. rather than Wade. At the time of Wade's trial, Poindexter was in prison having been convicted earlier of a number of sexual assaults of other women, including M.F. and E.K. In part, the court granted the request because of the similarities in the manner of the commission of the crimes against M.F. and E.K. and D.B. In an attempt to raise doubt about Wade's complicity, his lawyers subpoenaed M.F. and E.K., two of Poindexter's sexual assault victims. Both victims then sought assistance from the OVR.

The OVR filed a motion to quash their subpoenas advancing a number of different legal arguments in support of the motion. Chief amongst them was that, since M.F. and E.K. had no involvement with Wade, to require them to become re-victimized by reliving Gregory Poindexter's crimes through their compelled testimony in open court for the purpose of attempting to raise doubt about Wade's guilt, violated their constitutional right to be treated with dignity, respect, and fairness as guaranteed by Article I, section 24 of the state's constitution, as well as their right to privacy under Article I Section 22 of that document. Following argument, Judge Wolverton granted OVR's motion and quashed M.F. and E.K.'s subpoenas.

C. The Patti Godfrey Case- OVR's First Formal Investigation

The OVR has the statutory authority to conduct investigations of complaints from crime victims that they have been denied the rights they are guaranteed under Alaska's constitution and laws of this state. Within a reasonable time after an investigation is completed, and after the OVR reports their opinion and recommendations to a criminal justice agency, Alaska statute 24.65.160 authorizes the OVR to present their investigative findings, opinions and recommendations to the governor, the legislature, a grand jury, the public, or any of these.

- *Investigation Of The Anchorage Police Department*

Patti Godfrey filed a written complaint with the OVR regarding the response by the Anchorage Police Department (APD) to her home on August 3, 2002 after her husband Glen Godfrey was murdered, and she was shot several times and seriously wounded by Karen Brand who then committed suicide. At

issue was the delay in providing immediate medical assistance to Ms. Godfrey as required by law. The dispatch log showed arriving officers made contact with her at 1:18 am after she called 911 at 12:29 am, some 49 minutes earlier. Crime victims have a right to immediate medical assistance as provided in Alaska statute (AS) 12.61.010(a)(7).

The second basis for her complaint related to the unauthorized release of confidential information about her home address and telephone number, as well as her daughter's home telephone number, in the 911 tape and transcript released by APD to the media at an APD press conference on August 22, 2002. Both Patti Godfrey and her daughter are considered "victims" as that term is defined in AS 12.55.185(16). AS 12.61.110 provides for confidentiality regarding the location of a crime victim's residence address and telephone numbers. Whenever a report, paper, picture, photograph, court file, or other document that is in the custody or possession of a public officer or employee relates to a crime and contains the residence or business address or telephone number of a victim or witness, that public officer or employee may not make it available for public inspection unless the residence and business addresses and telephone numbers of all victims and witnesses have been deleted. Here, neither the written transcript of the 911-dispatch tape nor the audiotapes were edited to remove this confidential information prior to release to the public as required by law.

- *Information Reviewed By The OVR*

AS 24.65.120 provides that during an investigation, the OVR is authorized to "make inquires and obtain information considered necessary; hold private hearings; and notwithstanding other provisions of law, have access at all times to records of justice agencies..." necessary to protect victims' rights. AS 24.65.130 authorizes the OVR to subpoena documents and objects, and to command the appearance of persons who may have relevant information about a matter under investigation to give sworn testimony.

In accordance with these laws the OVR subpoenaed records from the APD as well as the Municipal Office of Management and Budget. Additionally, records, data, and information were subpoenaed from Resource Data Inc. (RDI), an Anchorage computer software applications developer that had contracted with the APD to improve the accuracy of the E-911 database. Altogether, approximately 4,105 documents were subpoenaed and reviewed during this investigation. The OVR also heard sworn testimony from APD Chief of Police Walt Monegan and Deputy Chief Mark Mew. The Municipal legal department cooperated with OVR subpoenas and requests for information.

The OVR interviewed numerous private individuals who have relevant information about the facts of the Godfrey incident, as well as the inner workings of the APD dispatch unit. Individuals interviewed included the Godfrey's neighbors, members of the public and other witnesses as well as representatives

from Alaska Communications Systems (ACS) and the Matanuska Telephone Association (MTA). Finally, the OVR considered information within the public domain.

- *OVR Findings*

The OVR published its 36-page report on November 26, 2002. The OVR found that the release of confidential information by the APD violated the Godfrey family's right of confidentiality and that the delayed response to her home violated Patti Godfrey's right to immediate medical assistance as required by AS 12.61.010(2)(7). The investigation also disclosed that the delayed emergency response was not an isolated event and in the weeks following the Godfrey case, several cases came to light that involved similar errors. The delayed response was determined by the OVR to be attributable to an error in APD's database that prevented the system from verifying the Godfrey address as a valid address. Instead the computer database suggested an address that did not exist. The OVR report concluded by making numerous recommendations to improve the efficiency of Anchorage's E-911 system.

Prior to the tragic events of August 3, 2003, and the delay in locating the Godfrey residence, the Municipality of Anchorage was aware of problems cited in the OVR's report and engaged in making a number of improvements to the city's emergency response system. However, it appears the unusual facts of the Godfrey incident brought the E-911's shortcomings into immediate community focus and underscored the need for immediate action.

On December 6, 2002, Mayor George Wuerch announced the creation of an E-911 oversight task force to study the city's existing E-911 shortcomings and to make recommendations for improving the system and related personnel issues discussed in the OVR's final written report. The complete text of that report is available on line at http://www.officeofvictimsrights.legis.state.ak.us/investigations/OVR_Final_Godfrey_Report.pdf

V. 2003 CRIME VICTIM LEGISLATION SUPPORTED BY OVR

Three important pieces of legislation were actively supported by the OVR during the recently concluded twenty-third session of the Alaska Legislature. The enactment of all three Bills into law has significantly advanced the interests and well being of crime victims throughout Alaska.

House Bill 68

In its written response to the OVR's report in the Patti Godfrey case mentioned above, the Municipality of Anchorage stated in part:

"It is doubtful the OVR has the jurisdiction to investigate or make findings regarding the Anchorage Metropolitan Police Department ("APD"). OVR's authorizing statute specifically defines "justice agencies" as belonging to the "executive or judicial branches of state government". The Municipality of Anchorage and its departments are not part of the executive or judicial branches of state government and so are outside the OVR's jurisdiction." (At page 2).

Overlooked by the Municipality in asserting this claim was AS 24.65.120, which states "The Victims' Advocate may investigate complaints from crime victims that they have been denied the rights they are guaranteed under the constitution and laws of this state." In any event, the matter has now been rendered moot by passage of HB 68 on February 12, 2003. HB 68 amended the definition of "justice agencies" in AS 24.65.250 to now include all municipalities within the state. This legislation was sought, and supported by the OVR in response to the Municipality's assertion that it lacked statutory authority to investigate the Anchorage Police Department. HB was introduced by House Representative Ralph Samuels (R) Anchorage and passed both houses of the 23rd Alaska Legislature unanimously. The bill was signed by Governor Frank Murkowski on April 11, 2003, and becomes effective on July 10, 2003.

Senate Bill 41

Medicaid is a federal-state financed health care program for indigent patients. Medicaid costs in Alaska have escalated an average of 15% a year over the last 5 years with the FY 2004 budget approaching \$1 Billion. One reason for the rapid escalation of such health care costs is due to theft by unscrupulous Medicaid providers who can cheat Alaska's Medicaid program through fraudulent or inflated billings. When limited money earmarked for sick and needy patients is diverted from the Medicaid program due to theft, the public is victimized because the suffering of those patients is unnecessarily prolonged and critical medical services are curtailed due to lack of funds.

Unfortunately, investigating and prosecuting such thefts can be very difficult. Unlike most "regular" crimes, there is no "crime scene" in a health care case nor is there any physical evidence to send to a crime lab for analysis. There are seldom any witnesses to crimes of dishonesty generally, and health care crimes are in a league of their own in terms of specialization. Those who commit such crimes are intelligent, well educated and able to afford the best criminal defense. Health care practitioners work in specialized areas of medicine and are usually no match for most police officers or prosecutors. Often, such crimes depend on a

showing by prosecutors through expert testimony that medical services were not provided in accordance with complex Medicaid rules and Regulations. This requirement raises thorny issues regarding medical necessity and the quality of care provided by a practitioner to their patients, something juries find difficult to understand in the absence of clear, specialized criminal laws. That is why in Alaska there exists a specially trained prosecution office known as the Medicaid Fraud Control Unit.

However, until recently, it was difficult even for such specialists to investigate and prosecute health care crimes because Alaska was the only state that had no specific health care criminal theft laws in its criminal code. As a result, prosecutors had no choice but to use non-specific, generic criminal statutes to prosecute health care professionals who operate in a highly technical field and are able to mount expensive and well-financed (and often successful) defenses. SB 41 has changed all that. For the first time in this state, prosecutors and Medicaid Investigators now have statutes that are specific to health care crimes.

SB 41 also now requires the Commissioner of Health and Social Services to undertake annual statewide audits of Medicaid providers and to commence administrative procedures to recoup overpayments identified in the audits. SB 41 was passed by the legislature on May 21, 2003 and was signed into law by Governor Murkowski on June 11, 2003. SB 41 was introduced by Senator Lyda Green (R) of Wasilla.

Senate Bill 45

Another Bill sponsored By Senator Green was SB 45, which concerns the work of the Legislative Budget and Audit Committee of the Alaska legislature.

AS 24.20.201(a)(3) states that the Legislative Budget and Audit Committee has the power to "require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information." Unfortunately, this well-intentioned statute has been unenforceable because there are no penalties to be had against anyone who hinders or undermines the work of the Committee.

SB 45 will fix this by amending the criminal code to establish AS 11.56.870, a new statute captioned "Hindering the Legislative and Audit Committee." AS 11.56.870 will now make it a violation punishable with a fine up to \$5000 for any person who obstructs the work of that committee. SB 45 also amends Alaska's Whistleblower Act found in AS 39.90 to protect any state employee who reports interference or any failure to cooperate with an audit or other matter within the authority of the Legislative Budget and Audit Committee. As state revenue continues to decrease, the Legislative Budget and Audit Committee's work will likely increase and become more important. This statute

will advance their important work. SB 41 was passed by the legislature on May 21, 2003 and was signed into law by Governor Murkowski on June 11, 2003.

VI. OVR PLANS FOR FY 2004

A. OVR Regulations To Be Implemented During FY 2004

Alaska statute 24.65.090 requires the OVR to promulgate regulations adopted under AS 44.62 of the Administrative Procedure Act. Over the last several weeks, the director and his staff have been in the process of drafting regulations as authorized by this statute. The regulations will establish procedures for advocacy on behalf of crime victims, receiving and processing complaints from crime victims, conducting investigations of justice agencies, reporting findings and ensuring that confidential information obtained by the OVR in the course of advocacy on behalf of a crime victim, or in the course of an investigation, will not be improperly disclosed. The regulations will also establish procedures so that advocacy and investigations on behalf of crime victims in felony cases take priority over advocacy and investigations on behalf of crime victims in misdemeanor cases. It is anticipated that the regulations will become effective prior to September 1.

B. Development Of An OVR Case Management System

The Office of Victims' Rights Case Management System, called OVRcms, is a unique application that has been custom designed specifically for the work of the OVR. The program's ability to streamline data entry for new contacts and cases, as well as to produce ad hoc reports on command, make it a very useful tool for OVR caseworkers. Another unique feature is the program's ability to track relationships amongst contacts and cases which can produce patterns otherwise unforeseen e.g. whether a contact in the system is a victim in more than one open case or whether the facts of one case are related to another. The case management system will further benefit the Office of Victims' Rights by continually monitoring case status, deadlines, and any other important flags it is tasked with while retaining the ability to notify the correct caseworker through reminder e-mails and pop-ups. The application is also able to send an OVR client a group of forms or information sheets from the document database on the fly with little effort. The principal benefit to the OVR from this application is its ability to have data at the touch of a button and to be able to share it amongst other office staff instantly. OVRcms is currently in it's final programming stages and version 1 should be available within a few weeks. Changes and improvements will be added to the application as needed.

C. Statewide Survey Of Criminal Justice Agencies

The OVR is charged with the legal duty to ensure that crime victims are granted the rights guaranteed them under the constitution and laws of the state with regard to their contacts with justice agencies throughout Alaska. In furtherance of that responsibility the Victims' Advocate plans to contact all law enforcement agencies throughout the state during FY 2004 to inquire about, and request copies of, their policies and directives related to providing services to crime victims. The materials will be evaluated with the goal of drafting suggested model policies for law enforcement agencies.

D. OVR Plans To Recruit Another Attorney During FY 2004

As the public continues to learn about the services available to crime victims, and as the OVR's caseload continues to expand, it is presently envisioned that there will arise a need for an additional attorney position within the agency during FY 2004, bringing the total legal staff to three lawyers. It is anticipated that one primary responsibility of the attorney will be to focus efforts on education of victims and justice agencies in major cities and communities throughout Alaska.

E. Drafting Of An OVR Policies and Procedures Manual

It is the intent of the Victims' Advocate to commence preparation of an OVR Internal Policies and Procedures Manual for the Office of Victims' Rights during FY 2004. In accordance with AS 24.65.200, the manual will be confidential and for internal use by OVR staff.

VII. CONCLUSION

The Alaska Legislature created the Alaska Office of Victims' Rights in 2002 to help victims of crime obtain the rights that they are guaranteed under Article I Section 24 of the Alaska Constitution and numerous state statutes with regard to their contacts with criminal justice agencies in this state. The Office of Victims' Rights is also charged with the advancement and protection of those statutory and constitutional victim rights and is the only such agency of its kind. OVR's director and staff have undertaken outreach and education efforts statewide to make the public aware of the new and innovative office. The public has responded enthusiastically to this much-needed legislation and support for the agency throughout the community has been tremendous.

Since the establishment of the office on July 1, 2002, more than 200 crime victims have sought a variety of services including information, education, investigation, in-court advocacy and support. In providing these needed services the OVR staff has focused on facilitating a cooperative relationship between criminal justice agencies, the courts and the victims of crime who are our clients. OVR has established a user-friendly, educational web site that includes a complete listing of all the rights guaranteed to crime victims in the state. In addition, OVR has undertaken representation of victims both in- court and behind the scenes; for many victims the advocacy, support and advice they received from OVR attorneys has proven invaluable to resolving their cases in a way that preserves their dignity, respect and legal rights.

The OVR has plans to further its efforts on behalf of crime victims during the next twelve months. OVR will continue to discharge its statutory duty to assist crime victims and also plans to promulgate regulations; implement a case management system; survey criminal justice agencies throughout the state and assess their policies and directives related to crime victim rights; and hire another OVR staff attorney. OVR will continue its education and outreach program and will further develop the agency's ability to investigate complaints from crime victims and effectively advocate on their behalf in ongoing criminal cases and juvenile adjudications.

The dedication and commitment of the OVR staff has made the past year a fruitful one for crime victims. The future is bright and FY 2004 promises to be another successful year for the Office of Victims' Rights and the clients it serves.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 534
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
 Title "An Act extending the termination date of BRU Legislative Council
the office of victims' rights." Component: Council and Subcommittees
 Sponsor House Rules by Request-Legis Budg & Audit
 Requestor House Judiciary Committee Component No. 783

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Legislature's budget currently includes funding for the Office of Victims' Rights. If this legislation passes, the funding for the Office of Victims' Rights will continue to be included in the Legislature's budget. There is zero additional fiscal impact to the Legislature.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
 Division Administrative Services Date/Time 3/19/04 3:57 PM
 Approved by: Pamela Varni, Executive Director Date 3/19/2004
 Agency Legislative Affairs Agency