

SB

135

<TARGET><BILL>SB 135</BILL><SUBJECT>SB
135</SUBJECT><COMM>SFIN27</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 2/13/12

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered SENATE BILL NO. 135

SB 135-CONTINUANCES IN CRIMINAL TRIALS; VICTIMS

"An Act relating to the rights of crime victims; relating to the duties of prosecuting attorneys; and amending Rule 45, Alaska Rules of Criminal Procedure."

and recommends:

- be replaced with CS _____ (_____) Same Title New Title
- adopt previous CS SB 135 (JUD) Same Title New Title
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LW ^F
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
S.FIN/Law		✓		
ADM		✓		

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
COR			✓	3
ADM		✓		2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
	Thomas	✓			
	Elson	✓			
	Ellus			✓	
	Hoffman	✓			
CO-CHAIR:					
CO-CHAIR:					

FISCAL NOTE

STATE OF ALASKA cost # codes
 2012 LEGISLATIVE SESSION

Bill Version SB135
 Fiscal Note Number _____
 Publish Date _____

Identifier (file name) SB135-DOA-PDA-1-23-12 Dept. Affected Administration
 Title Continuances in Criminal Trials; Victims Appropriation Legal and Advocacy Services
 Allocation Public Defender Agency
 Sponsor Senator French
 Requester Senate Judiciary OMB Component Number 1631

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	****	****	****	****	****	****	****

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		****	****	****	****	****	****

POSITIONS

Full-time						
Part-time						
Temporary						

CHANGE IN REVENUES

--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Quinlan Steiner, Public Defender
 Division Public Defender Agency
 Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907 334-4414
 Date/Time 1/20/12 12:25 PM
 Date 1/23/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB135

Analysis

This bill amends AS 12.61.010(a) by requiring that the victim of a crime be notified of any request for a continuance or pending motions that may substantially delay the prosecution, and inform the court of the victim's position on these motions. This bill amends Rule 45 (d)(2) of the Alaska Rules of Criminal Procedure by adding language that requires the court to grant continuances only after consideration of the crime victim as provided in a new subsection (h) that his bill would also add to Rule 45. The new subsection (h) requires the court to consider the victim's position on motions to continue.

Courts currently consider the impact of delay on a victim's rights under the state constitution. The compulsory language in the amendment to Rule 45 may have the collateral effect of causing additional hearings and delay if the victim cannot be located. This will be impacted by how courts interpret "substantial delay."

Although this bill may increase hearings and delay, the Public Defender Agency cannot reliably predict whether this will, therefore the fiscal impact cannot be accurately determined.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

cost # codes

Bill Version

CSSB 135(JUD)

Fiscal Note Number

Publish Date

Identifier (file name)

CSSB 135(JUD)

Dept. Affected

Law

Title

Continuances in Criminal Trials; Victims

Appropriation

Criminal

Allocation

Criminal Justice Litigation

Sponsor

Senator French

Requester

Senate Finance Committee

OMB Component Number

2202

Expenditures/Revenues

(Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		***	***	***	***	***	***

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	------------	------------	------------	------------	------------	------------	------------

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

The previous fiscal note requested \$144.4 in General Funds for one new PFT position. The assumptions in the analysis are not sufficient to justify the need for an additional position.

Prepared by Darwin Peterson, Staff
 Division Senate Finance Committee
 Approved by Senator Hoffman, Co-Chair
Senator Stedman, Co-Chair

Phone 907-495-3873
 Date/Time 3/3/12 2:38PM
 Date 3/3/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSSB135(JUD)
Fiscal Note Number 2
(S) Publish Date 2/13/12

Identifier (file name) SB135-DOA-OPA-1-27-12 Dept. Affected Administration
Title Continuances in Criminal Trials; Victims Appropriation Legal and Advocacy Services
Allocation Office of Public Advocacy
Sponsor Senators French and Dyson
Requester Senate Judiciary OMB Component Number 43

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services	***	***	***	***	***	***	***	***
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	***	***	***	***	***	***	***	***

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		***	***	***	***	***	***	***

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version

Prepared by Richard Allen, Director
Division Office of Public Advocacy
Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907-269-3504
Date/Time 01/27/2012 9:15 a.m.
Date 1/27/2012

FISCAL NOTE #2

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSSB 135(JUD)

Analysis

This bill amends AS 12.61.010(a) by requiring that the victim of a crime be notified of any request for a continuance or pending motions that may substantially delay the prosecution, and inform the court of the victim's position on these motions. This bill amends Rule 45 (d)(2) of the Alaska Rules of Criminal Procedure by adding language that requires the court to grant continuances only after consideration of the crime victim as provided in a new subsection (h) that this bill would also add to Rule 45. The new subsection (h) requires the court to consider the victim's position on motions to continue.

Courts currently consider the impact of delay on a victim's rights under the state constitution. The Office of Public Advocacy believes that the victim's concerns are already considered by parties in trial cases as a result of constitutional requirements concerning crime victims. The compulsory language in the amendment to Rule 45 may have the collateral effect of causing additional hearings and delay if the victim cannot be located. This will be impacted by how the courts interpret "substantial delay."

Although this bill may increase hearings and delay, the Office of Public Advocacy (OPA) cannot reliably predict whether this will occur or what the fiscal impact will be. Therefore, the Agency submits an indeterminate fiscal note.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSSB 135(JUD)
 Fiscal Note Number 3
 (S) Publish Date 2/13/12

Identifier (file name) SB135-DOC-OC-02-09-12 Dept. Affected DOC
 Title "An Act relating to the rights of crime victims; relating to the duties of prosecuting attorneys..." Appropriation Administration and Support
 Allocation Office of the Commissioner
 Sponsor Senators French and Dyson
 Requester Senate Judiciary OMB Component Number 694

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required;
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

This is the original version of the bill.

Prepared by Leslie Houston, Director
 Division Department of Corrections - Administrative Services
 Approved by Joseph D. Schmidt, Commissioner
Department of Corrections

Phone 907-465-3339
 Date/Time 02/09/12 10:00AM
 Date 2/9/2012

FISCAL NOTE #3

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. CSSB 135(JUD)

Analysis

This legislation requires prosecutors and judges to consider a victim's right to a timely disposition of their case when deciding whether to allow continuances. This legislation also ensures the victims are notified of any requests or motions that could substantially delay prosecution of their case. Passage of this legislation poses no fiscal impact on DOC.

Alaska State Legislature



Senator Hollis French

SPONSOR STATEMENT

SB 135 – Continuances in Criminal Cases

Article I, section 24 of our constitution is entitled "Rights of Crime Victims." The amendment passed by an overwhelming majority when it was placed before Alaskan voters in 1994. Included in its eight specific provisions is the promise that crime victims will have "the right to timely disposition of the case following the arrest of the accused."

In the eighteen years since the amendment passed, the promise of a timely disposition of the case has often not been kept. Moreover, the breaches of that promise frequently occur in the most serious of cases. Delays in the trial of a case, known as continuances, can go on for years.

SB 135 requires prosecutors and judges to consider a victim's right to a timely disposition of their case when deciding whether to allow continuances. This legislation will also ensure that victims are notified of any requests or motions that could substantially delay speedy prosecution of their case.

Repeated delays prevent victims from reaching emotional, physical, and financial closure from the trauma that they suffered as a result of the crime perpetrated against them. Delays in prosecution can also affect the availability of witnesses, a victim's ability to recall important details, and it can create other impediments to a successful trial.

Currently, Alaska is one of 27 states with constitutional provisions to protect a victim's rights; however, there is no statute in place to implement it. With this important piece of legislation, Alaska will join 15 other states that have enacted a statutory provision recognizing this crucial right.

SB 135 will guarantee a victim's right to a timely resolution in the court system. I urge your support of this legislation.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

Summary of Changes SB 135, Version M

- Section 2, lines 12-15 – incorporates a definition of “substantially delay”
- Section 3, line 24 – removes the word “only”
- Section 3, line 25 – “if known” was added to provide for instances where the victim cannot be contacted or does not wish to participate
- Section 4, line 4 – “if known” was added again to account for the aforementioned circumstances

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

December 14, 2011

SUBJECT: Sectional Analysis of 27-LS0966\A

TO: Senator Hollis French
Attn: Lila Hobbs

FROM: Doug Gardner
Director

You requested a sectional analysis of the above referenced bill. Preliminarily, please note that a sectional analysis should not be considered an authoritative interpretation of a bill -- the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it relates to a particular set of circumstances, please advise.

Overview of the Bill

As an overview, the bill has the primary purpose of amending statute and court rule to provide a right to victims of crime defined by AS 12.55.185, to notice from the prosecuting attorney of any request for a continuance that will substantially delay trial. The bill also provides that the prosecuting attorney must inform the court of the victim's position on the motion. The bill requires that prior to ruling on the motion, the court must consider the victim's position on a motion to continue that may substantially delay the prosecution. The bill provides that the court must consider the effect such a continuance will have on the victim. With that overview, a brief sectional analysis follows.

Section one of the bill amends AS 12.61.010(a)(2), by adding a provision to the enumerated rights of crime victims providing that a victim has a right to be notified by the appropriate law enforcement agency, or the prosecuting attorney, of any request for a continuance that may substantially delay the prosecution

Section two of the bill amends AS 12.61.015(a), the duties of a prosecuting attorney, to include the duty to inform the victim, as defined in AS 12.55.185, of a pending motion that may substantially delay the prosecution, and inform the court of the victim's position on the motion.

Section three of the bill amends Criminal Rule 45(d)(2), which is the criminal rule that provides the court with the authority to grant a continuance in a criminal case. This section adds a provision that requires that a court, when considering a motion to grant a continuance, may do so only after considering the victim's interest in a ruling by the court

Senator Hollis French
December 14, 2011
Page 2

on the motion to continue. This section references the new section of Criminal Rule 45 added in section four of the bill.

Section four of the bill amends Criminal Rule 45, by adding a new section (h), entitled "Victim's Interest on Ruling on Motion to Continue." Section (h) provides that before ruling on a motion to continue in a case involving a victim of crime as defined in AS 12.55.185, that the court must consider the victim's position on the motion to continue, and the effect that a continuance will have on the victim.

DDG:ljw
11-458.ljw

NOTE: ○Automatic rights

●Rights triggered only by request from victim



State of Alaska Office of Victims' Rights
1007 West 3rd Avenue, Suite 205
Anchorage, Alaska 99501-1936
Phone: 907-272-2620
Fax: 907-272-2640
Toll Free in Alaska: 1-866-274-2620
<http://officeofvictimsrights.legis.state.ak.us>
Prepared August 2002
(updated November 2007)

General constitutional protections provided in Article I, section 24 of the Alaska constitution to all crime victims:

- Be treated with dignity, respect and fairness;
- Protection from accused through the imposition of appropriate bail or conditions of release by the court (including release on appeal) (see also AS 12.30.025(a); 12.30.027(a); 12.30.029(a); 12.30.040(a));
- Confer with the prosecution;
- Timely disposition of the case;
- Obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present;
- Be heard, upon request, at sentencing, before or after conviction and at any proceeding where the accused's release from custody is considered;
- Restitution from the accused;
- Be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.

Rights of crime victims upon initial police contact:

- Right to obtain access to immediate medical assistance AS 18.65.515(a)(3); AS 12.61.010(a)(7);

FOR A COMPLETE TEXT OF STATUTES CITED IN THIS DOCUMENT:
<http://www.legis.state.ak.us/FOLHOME.HTM>

NOTE: ○Automatic rights

●Rights triggered only by request from victim

- Transportation to safe house or shelter where the crime involves domestic violence AS 18.65.515(a)(1);
- Provide domestic violence victims with information about how to obtain a 72-hour protective order AS 18.65.520; AS 18.66.110; AS 18.66.100(c)(1) - (5),(8) - (12),(16);
- The right to be notified of the name, address, and telephone number of the Office of Victims' Rights upon initial contact with the police and prosecuting attorney. AS 12.61.010(15);
- The right of domestic violence victims to be notified by law enforcement of the rights and services available to them AS 18.65.520;
- Provide all victims with information about Violent Crimes Compensation Board assistance and make application forms available AS 18.67.175(b);
- Ability to participate, upon request, at the defendant's initial appearance before a magistrate when bail conditions are set, AS 12.30.010; AS 12.61.010(a);

Sexual assaults and domestic violence – medical concerns:

- Council on Domestic Violence and Sexual Assault is established within the Department of Public Safety. The council is to provide for planning and coordination of services, crisis intervention and prevention programs to victims of domestic violence, sexual assault or to their families AS 18.66.010;
- Sexual assault victims may not be charged for sexual assault exams AS 18.68.040;
- In a crime involving sexual assault where penetration is an element of an offense, a victim may petition the court to order that the defendant submit to a blood test for presence of HIV and other STDs. AS 18.15.300 – 18.15.310 The defendant need not be convicted, the court may order the testing as soon as the defendant is charged by complaint, indictment, presentment, or information filed with a magistrate or court, that alleges a sexual assault involving penetration. The court may not order such testing until seven days have passed since arrest nor after a disposition favorable to the defendant AS 18.15.300;

NOTE: ○Automatic rights

●Rights triggered only by request from victim

- If the results of a blood test conducted under AS 18.15.300 indicate exposure to or infection by HIV or other sexually transmitted diseases, the victim is entitled to free counseling, testing and referral to appropriate health care facilities and support services at the request of the victim AS 18.15.310(h);

Protective orders for crime victims:

- A victim of a crime involving domestic violence may file a petition for a protective order against a household member. A parent, guardian, or other representative may file a petition for a protective order on behalf of a minor AS 18.66.100;
- A certified copy of an unexpired protective order issued in another jurisdiction and filed with the clerk of court in any judicial district in this state, has the same effect and must be enforced in the same manner as a protective order issued by a court of this state AS 18.66.140;

Privacy rights of crime victims:

- Confidential communications between a sexual assault or domestic violence victim and the victim's counselor are privileged. AS 12.45.049; AS 18.66.200 – AS 18.66.250;
- In a crime involving kidnapping, sexual assault, sexual assault of a minor, or indecent exposure, the name of a victim is not public record and may not be used in court document; instead, the victim's initial will be used AS 12.61.140;
- The residence and business addresses and telephone numbers of a victim of a crime or witness to a crime are confidential AS 12.61.110; AS 12.61.120(a); AS 12.61.130(a);
- Victims are not required to speak with defense counsel and may request the presence of a prosecuting attorney or other person present during an interview AS 12.61.120(c) (victims of sexual assault and domestic violence; other victims have these rights but may not know they are being interviewed or electronically recorded);

NOTE: ○Automatic rights

●Rights triggered only by request from victim

- If a victim of sexual assault or domestic violence must first give oral permission to be interviewed by the defense;
- The interview may be electronically recorded (at the discretion of the defense investigator) and the defense will furnish a copy of any electronic recordings to the victim upon request. If the victim is a minor, the parent or guardian must provide written consent prior to the interview whether or not the interview is recorded. AS 12.61.120; AS 12.61.125;
- Applications to the Violent Crimes Compensation Board are confidential AS 18.67.030(c);

Bail review rights of crime victims:

- Notice of hearings where the accused's release is considered, the right to be present and to be heard Article I, sec 24; AS 12.61.010(a)(2);
- Court must consider the victim's comments in making the decision to release a defendant in domestic violence cases AS 12.30.027; in sexual assault cases AS 12.30.029(c)(2);
- Victim's safety should be specifically considered before releasing the accused in a stalking non-DV, AS 12.30.025; in domestic violence, AS 12.30.027(a); in sexual assault AS 12.30.029(a) This includes an order prohibiting the defendant from having contact with the victim;
- Notice of cancellation of a hearing or court proceeding at which the victim has been subpoenaed to testify AS 12.61.010(a)(3);
- Receive a copy of the conditions of release when a prisoner charged with a domestic violence offense is released from custody (from correctional facility AS 12.30.027(d)(1); by other arresting authority AS 12.30.027(d)(2));
- Victims should receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts and be provided with information regarding the protection available AS 12.61.010(a)(4);
- An automated phone service (VINE) is established to provide crime victims with notice when there is a change in the status of their offender, especially offender's

NOTE: ○ Automatic rights

● Rights triggered only by request from victim

- release or escape. Go to www.vinelink.com or call (800) 247-9763. The system also allows a caller to inquire about the latest status report for an offender AS 12.61.050;

Crime victims' rights at trial:

- Victims shall be notified of the date and time of trial and have a right to be present at all hearings and court proceedings where the defendant has a right to be present AS 12.61.010;
- If a victim of a felony or domestic violence crime requests, the prosecutor should confer with the victim regarding trial testimony AS 12.61.015;
- The prosecuting attorney may introduce the victim to the jury during jury selection or as part of an opening statement at trial. (Not a victim legal right, but victim may request of prosecuting attorney.)
- A victim cannot be compelled to submit to a psychiatric evaluation unless the victim's psychiatric or psychological condition is an element of the offense charged; or the victim suffers from a continuing psychological or psychiatric condition that resulted from the offense charged. AS 12.45.042;
- Evidence of past sexual conduct inadmissible absent a specific finding of relevance by the court AS 12.45.045(a);
- An employer may not penalize or threaten to penalize a victim because the victim is subpoenaed or requested by the prosecuting attorney to attend a court proceeding for the purpose of giving testimony AS 12.61.017;

Proceedings relating to psychiatric commitment of the accused:

- Notice shall be provided if an offender is committed to the custody of the Department of Health and Social Services; notice shall be given of any pending or actual change in status. AS 12.47.095 (1)-(5) *Victim may request notice by providing address information to DHSS* AS 12.47.095(b);

NOTE: ○Automatic rights

●Rights triggered only by request from victim

- Any victim given notice of a proposed change in commitment status of an offender has the right to submit a written statement, or to appear personally before the court. AS 12.47.095(e);
- Notice regarding a finding of not guilty by reason of insanity AS 12.61.010(a)(11);
- Notice upon request, of hearings relating to special medical parole AS 12.61.010(a)(12); AS 33.16.087 *Victim may request notice by providing address information to Parole Board.*

Sentencing:

- The court may not mitigate or reduce the punishment of the defendant based on the failure of the crime victim to appear or testify AS 12.55.151;
- Except for crimes involving domestic violence, a crime victim and offender may present the court with a negotiated/agreed upon sentence for the court's review. This agreed upon sentence may be imposed if both the victim and offender consent, the court determines that the victim has not been intimidated or coerced to make the agreement, and the sentence complies with the sentencing statutes (AS 12.55) and will accomplish the goals of restoration of the victim and community and rehabilitation of the offender. This procedure is commonly known as "civil compromise." This procedure may **not** be used if the offender is being sentenced for a crime involving domestic violence AS 12.55.011;
- The court must consider the safety and protection of the victim and any member of the victim's family before granting probation to an offender convicted of a crime involving domestic violence AS 12.55.101;
- In crimes of domestic violence, the prosecutor shall, upon request of the victim, confer with the victim about proposed plea agreements prior to acceptance AS 12.61.015(a)(4);
- As part of the pre-sentence report prepared for felony offenders, and as part of the predisposition report prepared for juvenile delinquency matters, the probation officer shall prepare a victim impact statement reporting any financial, emotional,

NOTE: ○Automatic rights

- Rights triggered only by request from victim

and medical effects of the offense on the victim; the need of the victim for restitution; and any other information required by the court AS 12.55.022; AS 47.12.130(a);

- For felony offenses, the prosecutor shall, upon request, provide the victim with the address and phone number of the office preparing the pre-sentence report AS 12.61.015(a)(2)(C);
- For felony offenses, prior to sentencing, the prosecutor shall, upon request, provide the victim with portions of the pre-sentence report outlining the summary of the offense prepared by DOC; the defendant's version of the offense; summaries of the victim's statements; and the sentence recommendation of the DOC AS 12.55.023(a)(1)-(4);
- In a felony sentencing, the victims may make a written or oral statement for use in preparation of the pre-sentence report AS 12.61.010(a)(8);
- A victim may appear personally at the defendant's sentencing hearing to present a written statement and to give sworn testimony or an unsworn oral presentation AS 12.61.010(9);
- If the victim declines to make a statement at sentencing, the victims' advocate may submit a written statement or oral presentation at the sentencing hearing on behalf of the victim AS 12.55.023(b);
- In a conviction for a felony offense, the court shall specifically make a finding regarding financial, emotional, and medical effects of the offense on the victim; the need of the victim for restitution AS 12.55.025(a)(5)(A)-(B);
- Victims may address the three-judge sentencing panel if the panel chooses to supplement the record AS 12.55.175(b)

Restitution rights of crime victims:

- When determining restitution, the judge must consider public policy that favors requiring criminals to compensate their victims for injuries and damages sustained AS 12.55.045(a)(1);

NOTE: ○Automatic rights

●Rights triggered only by request from victim

- When issuing an order of restitution, *the judge may not consider the defendant's ability to pay* AS 12.55.045(g);
- A restitution judgment is a civil judgment that remains enforceable and is not discharged when a conviction is set aside under AS 12.55.085 (SIS), AS 12.55.045(l);
- Restitution does not limit civil remedies AS 12.55.045(b);
- Restoration of the victim shall be specifically considered as part of the sentencing criteria AS 12.55.005(7);
- Information regarding violent crimes compensation and the procedure for applying for such aid under AS 18.67 should be given to the victim AS 12.61.010(a)(5); AS 18.67.175.

Post sentencing crime victims' rights:

- Prosecuting entity, if requested, shall notify the victim of a felony or domestic violence crime, in writing of the final disposition of the case within 30 days after final disposition of the case AS 12.61.015(a)(3);
- Prosecuting attorney or other appropriate law enforcement agency shall notify the crime victim if an appeal is filed AS 12.61.010(a)(2);
- Notification if the offender escapes from custody or is released to the community on a furlough, on an early release program, or for any other reason AS 12.61.010(a)(14); AS 33.30.013 *Automatic in domestic violence crimes; upon request in other crimes* AS 33.30.013(b) *Requires victim to keep address on file with DOC*;
- After conviction, the victim is entitled to be informed by the prosecutor about the defendant's complete conviction history AS 12.61.010(a)(10);
- Every person contracting with an offender with respect to the reenactment of the offender's crime by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of the offender's thoughts, feelings, opinions, or emotions regarding the crime, shall pay the victim's restitution claims first, the remainder of the monies go to the state AS 12.61.020;

NOTE: ○Automatic rights

●Rights triggered only by request from victim

Post sentencing – modifications:

- Victims are entitled to address the court presiding over a prisoner’s motion to modify or reduce their sentence AS 12.55.088(d) *Victim may request notice by providing address information to DOC* AS 12.55.088(h);
- Department of Corrections shall send the victim a copy of any motions to modify or reduce sentence and inform the person of that person's rights under this section, the deadline for receipt of written comments, the hearing date, and the court's address. AS 12.55.088(e) *Victims must maintain updated address information with DOC* AS 12.55.088(h);
- Notification of hearings to consider or review discretionary parole of the defendant AS 12.61.010(a)(13); AS 33.16.120 *Victim must maintain address information with DOC and Parole Board;*
- Before granting probation to a person convicted of a crime involving domestic violence, the court shall consider the safety and protection of the victim and any member of the victim's family AS 12.55.101(a) The court may also impose any other condition necessary to protect the victim and any members of the victim's family or to rehabilitate the defendant AS 12.55.101(a)(3);

Public Records-exception for crime victims:

Alaska statute 40.25.120(a), Alaska’s public records law, provides in pertinent part:

“Every person has a right to inspect a public record in the state, including public records in recorders’ offices, except

* * *

(6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information

(C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;”

THE ALASKA OFFICE OF VICTIMS' RIGHTS: A MODEL FOR AMERICA

STEPHEN E. BRANCHFLOWER*

In this Article, the director of the Alaska Office of Victims' Rights ("OVR") gives an overview of an agency that was created by the Alaska Legislature in 2001. OVR lawyers provide free legal services to victims of crime to help them protect their guaranteed constitutional and statutory rights with regard to their contacts with police, prosecutors, defense counsel, judges, and criminal justice agencies in the state. The attorneys also advance and protect those victims' rights in court when necessary and authorized by law. The author offers the OVR as a model for other states.

I. INTRODUCTION

No one plans to become a crime victim, yet, when crime strikes, victims are drawn immediately and unwillingly into an unfamiliar and bewildering criminal justice system. Victims soon learn first-hand that the system intended to help and protect them often cannot do so because it is overburdened with too many cases and inadequate resources; frequently it simply cannot help them meet even their most basic needs. For example, victims need to feel that police are responsive and willing to investigate their complaints in a timely and professional fashion. In addition, such victims also need police protection from defendants who are out of custody on bail, case information from and access to prosecutors, prompt court notification of hearings, meaningful participation in the trial process, and restitution ordered by judges. In sum, they need to have their statutory and constitutional rights implemented in a manner whereby the offender faces swift and certain justice by those in charge of the system.

Copyright © 2004 by Stephen E. Branchflower. This Article is also available on the Internet at <http://www.law.duke.edu/journals/alr>.

*The author retired in January 2002 following twenty-eight years of service as a major crimes prosecutor for the State of Alaska. He then became Alaska's first Victim Advocate when he was appointed and confirmed by the Alaska Legislature in May 2002 to direct the newly created Alaska Office of Victims' Rights. The author may be contacted at stephen_branchflower@legis.state.ak.us.

Instead of having these basic needs satisfied, crime victims too often face excessive delays in case resolution and hear unintelligible legal jargon from judges and prosecutors. They are expected to understand unfamiliar legal forms and attend repeated mandatory court hearings. This only compounds their confusion and frustration. The wake-up call is heard when victims finally realize the truth: victims, who should be at the center of our justice system, are often on the outside looking in. Too often, the system treats victims as uninvolved bystanders with little or no effective voice in the outcome of their cases. Too often, there is no one to advise, educate and help guide victims through the seemingly labyrinthine pre-trial hearings and trial phases of prosecutions. The answer must be that, just as we protect the rights of criminals, so too must we take equal care to protect the rights of victims. In Alaska, victims' calls for help have been answered.

In 2001, the Alaska Legislature created the Office of Victims' Rights ("OVR"), a unique publicly funded victims' rights law firm with wide-ranging investigative tools, powers, and privileges. The office has only one mandate: to advance and protect the rights of crime victims throughout Alaska. The OVR and its statutory resources were expressly tailored by lawmakers to accomplish this goal in order to return to a fair balance between crime victims' rights and the rights of criminal defendants. It is the first and only office of its kind anywhere. Since it was established, the OVR has become integrated into the state's criminal justice system and has earned a rightful place as a viable and effective agency. But, while Alaska has pioneered a modern approach to help its crime victims, this is an area of the law still developing in most states and much work remains to be done by victim support advocates to match Alaska's progress. To that end, this overview of the OVR model can serve as a blueprint to legislatures and victim advocates regarding how to establish such an agency.

II. VICTIMS' RIGHTS IN ALASKA

A grassroots victims' rights movement in modern American jurisprudence over the last two decades has produced a body of law in most jurisdictions intended to provide a means for crime victims to effectively participate in the criminal process, and to require that victims' concerns are addressed by police, prosecutors, defense counsel, and judges. The principal objectives of this movement have been twofold: (1) to promote respect for and to protect crime victims' privacy and safety; and (2) to foster administrative and judicial sensitivity to the difficulty experienced

by crime victims when they are unexpectedly drawn into an often indifferent, but always confusing criminal justice system.¹

In 1984, the Alaska Legislature attempted to achieve these goals by enacting Alaska Statutes sections 12.61.010 to 12.61.900, entitled "Rights of Victims, Protection of Victims and Witnesses." Ten years later, in 1994, Alaska voters overwhelmingly approved passage of a Victims' Rights Amendment to Alaska's Constitution.² The rights now guaranteed in article I, section 24 are similar to those of many other states that have enshrined victims' rights in their constitutions.³ Article I, section 24 vests crime victims with eight major rights:

Crime victims, as defined by law, shall have the following rights as provided by law: [(1)] the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; [(2)] the right to confer with the prosecution; [(3)] the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; [(4)] the right to timely disposition of the case following the arrest of the accused; [(5)] the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; [(6)] the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; [(7)] the right to restitution from the accused; and [(8)] the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.⁴

Of these rights, the most empowering for crime victims must be "the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process."⁵ Even though the terms "dignity," "respect," and "fairness" as used in article I, section 24 are not specifically defined in Alaska law and may be difficult to determine, such concepts have nonetheless gained widespread acceptance in American jurisprudence. Fifteen states, in addition to Alaska, have

1. The Alaska Legislature has recognized forty-two distinct rights to protect crime victims. See Alaska Office of Victims' Rights, *Listing of Your Rights*, available at <http://www.officeofvictimsrights.legis.state.ak.us/ovrlisting.htm> (last visited Oct. 25, 2004).

2. ALASKA CONST. art. I, § 24; Alaska Division of Elections, *1994 General Election Official Results Statewide Summary* (Nov. 8, 1994), available at <http://www.gov.state.ak.us/lsgov/elections/result94.htm#bal2> (evidencing that 86.6% of Alaskan voters supported the amendment) (last visited Sept. 3, 2004).

3. See, e.g., MICH. CONST. art. I, § 24. An amendment to the United States Constitution providing for victims' rights has also been proposed. S.J. Res. 3, 106th Cong. (1999).

4. ALASKA CONST. art. I, § 24.

5. See *id.*

passed constitutional amendments that use those same three words.⁶ Among those fifteen, eight state legislatures have also promulgated victims' rights statutes that expressly set forth one or more of the concepts of "dignity," "respect," and "fairness."⁷ Additionally, fourteen other states have specifically set forth one or more of these terms in their statutory victims' rights legislation.⁸ The federal statute, 42 U.S.C. § 10606(b), that grants legal rights of participation to crime victims also expressly spells out the important concepts of "dignity," "respect," and "fairness."⁹

Against this legal fabric and due to growing awareness and concern for the protection and advancement of victims' rights, the 22nd Alaska Legislature promulgated the "Crime Victims' Rights and Advocacy Act of 2001."¹⁰ The bill created a new agency called the Office of Victims' Rights. The OVR is an agency of the Alaska Legislature that provides free legal services to victims of crime to help ensure that their legal rights, guaranteed under the Alaska Constitution and statutes, are protected in their contacts with police, prosecutors, judges, and other criminal justice agencies. OVR also serves to advance and protect those victims' rights in court when necessary and authorized by law. This legislation continued the natural progression in the development of rights for crime victims in Alaska that began with the passage of the Victims' Rights Amendment in 1994.¹¹

6. See, e.g., ARIZ. CONST. art. II, § 2.1; IDAHO CONST. art. I, § 22; ILL. CONST. art. I, § 8.1; IND. CONST. art. I, § 13(b); LA. CONST. art. I, § 25; MICH. CONST. art. I, § 24; MISS. CONST. art. III, § 26A; N.J. CONST. art. I, § 22; N.M. CONST. art. II, § 24; OHIO CONST. art. I, § 10a; OKLA. CONST. art. II, § 34; S.C. CONST. art. I, § 24; TEX. CONST. art. I, § 30; UTAH CONST. art. I, § 28; VA. CONST. art. I, § 8-A.

7. See, e.g., IDAHO CODE § 19-5306 (Michie 2004); 725 ILL. COMP. STAT. ANN. 120/2 (West 2002); IND. CODE ANN. § 35-40-5-1 (West 2003 Supp.); MISS. CODE ANN. § 99-43-1 (2000); N.M. STAT. ANN. § 31-26-2 (Michie 2003); S.C. CODE ANN. § 16-3-1505 (Law Co-op. 2003); UTAH CODE ANN. § 77-37-1 (2003); VA. CODE ANN. § 19.2-11.01 (Michie 2004).

8. See, e.g., CAL. PENAL CODE § 679 (West 1999); COLO. REV. STAT. § 24-4.1-302.5 (2003); HAW. REV. STAT. ANN. § 801D-1 (Michie 2003); KAN. STAT. ANN. § 74-7333 (2002); MONT. CODE ANN. § 46-24-101 (1997); N.H. REV. STAT. ANN. § 21-M:8-K (2001); N.J. STAT. ANN. § 52:4B-36 (West 2001); N.Y. EXEC. LAW §§ 640-49 (McKinney 1996); OR. REV. STAT. § 147.410 (2003); R.I. GEN. LAWS § 12-28-2 (2002); TENN. CODE ANN. § 40-38-102 (2003); WASH. REV. STAT. § 950.01 (West 1996); WIS. STAT. ANN. § 950.01 (West 1996); WYO. STAT. ANN. § 1-40-203 (Michie 2003).

9. 42 U.S.C. § 10606(b) (2000) (establishing rights of crime victims, including rights to fairness, respect, and dignity, as well as the rights to be notified of proceedings, to confer with government attorneys, and the right to information about conviction, sentencing, imprisonment, and release of prisoners).

10. S.B. 105, 22d Leg., 1st Sess. (Alaska 2001).

11. ALASKA CONST. art. I, § 24.

III. ESTABLISHMENT OF THE OVR

In a press release on February 20, 2001, announcing the enactment of Senate Bill 105, Senate President Rick Halford, the chief architect and proponent of the legislation, stated, "In 1994 voters approved an amendment to Alaska's Constitution that guarantees victims' rights, but simply passing an amendment is not enough."¹² He then added, "[i]t 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."¹³

The OVR was created as an inspector general's office within the legislative, rather than the executive, branch as a way to avoid conflicts within state government.¹⁴ This separation helps ensure that the victims' advocate and his professional staff have sufficient independence to investigate criminal justice agencies of the executive and judicial branches and to make appropriate findings and recommendations.¹⁵

In order to fully implement the legislature's intent to assist crime victims, lawmakers granted the victims' advocate the statutory authority to adopt regulations to

[e]stablish procedures for advocacy on behalf of crime victims, receiving and processing complaints, conducting investigations, reporting findings, and ensuring that confidential information obtained by the victims' advocate in the course of advocacy on behalf of a crime victim or in the course of an investigation will not be improperly disclosed.¹⁶

12. Press Release, 22d Alaska State Legislature, Halford Bills Enforce Victims' Rights, Expand DNA Registry (Feb. 20, 2001), available at http://www.akrepublicans.org/pastlegs/22ndleg/press/prhalford10220_2001.shtml.

13. *Id.* Senate Bill 4, an earlier bill similar to Senate Bill 105, was passed by the 21st legislature and transmitted to then-Governor Tony Knowles, who vetoed the legislation on June 8, 2000. Governor Knowles signed Senate Bill 105 on July 20, 2001.

14. STEPHEN E. BRANCHFLOWER, 2004 ALASKA OFFICE OF VICTIMS' RIGHTS ANN. REP., at 6, available at http://www.officeofvictimsrights.legis.state.ak.us/ovrdocuments/2004_Annual_Report.pdf (last visited Oct. 22, 2004) [hereinafter 2004 ANNUAL REPORT].

15. *Id.* The OVR professional staff consists of the victims' advocate and two associate victims' advocates, an OVR investigator, and a support staff. See Alaska Office of Victims' Rights, *Office of Victims Rights Staff* available at <http://www.officeofvictimsrights.legis.state.ak.us/ovrstaff.htm> (last visited Oct. 27, 2004). The advocates all have previous experience as prosecutors, and the investigator is a former career police officer. *Id.*

16. ALASKA STAT. § 24.65.090(a) (Michie 2002). This authority was granted pursuant to the Administrative Procedure Act, which is codified in Alaska Statutes § 44.62.

The victims' advocate was also empowered to establish procedures so that advocacy and investigations on behalf of crime victims in felony cases could take priority over misdemeanor cases.¹⁷ The OVR law, which may be found in Alaska Statutes sections 24.65.010-24.65.250, went into effect on July 1, 2002.¹⁸

Crime victims have responded enthusiastically to this new agency.¹⁹ It is the first and only such office to have been vested by a legislature with such extensive investigatory tools and powers to advocate for crime victims' rights. Since its inception, OVR's clients have obtained a variety of services including information, education, investigation, in-court advocacy and support.²⁰ In providing these needed services, the OVR has focused on facilitating a cooperative relationship between criminal justice agencies, the courts, and victims of crime.²¹ The OVR's first annual report documents the agency's success and was published July 1, 2003.²²

Additionally, lawmakers have sought OVR's assistance and advice to help craft victims' rights legislation and to provide supportive testimony before various legislative committees.²³ With such support, the 23rd Alaska Legislature recently passed five victims' rights bills that were signed into law by Governor Frank Murkowski on April 20, 2004.²⁴ Persuaded by the OVR's widely recognized success during its

17. *Id.* OVR regulations were published in July 2004 in Register 170 and encompass sections 23 AAC 05.010-40.100. The regulations may be viewed online at http://www.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=*/doc/{t73958}? (last visited Oct. 22, 2004).

18. ALASKA STAT. §§ 24.65.010-.250 (Michie 2002).

19. Between July 1, 2002, when the OVR was created, and June 30, 2004, the end of its second fiscal year, the OVR had opened 445 new cases. STEPHEN E. BRANCHFLOWER, FIRST ANNUAL REPORT OF THE ALASKA OFFICE OF VICTIMS' RIGHTS ANN. REP., at 11 (July 1, 2003), available at http://www.officeofvictimsrights.legis.state.ak.us/ovrdocuments/2003_Annual_Report.pdf (last visited Oct. 22, 2003) [hereinafter 2003 ANNUAL REPORT] (207 cases were opened between July 1, 2002 and July 1, 2003); 2004 ANNUAL REPORT, *supra* note 14, at 16 (238 new cases between July 1, 2003 and June 30, 2004).

20. 2003 ANNUAL REPORT, *supra* note 19, at 6.

21. *Id.*

22. *Id.* ALASKA STAT. § 24.65.170 provides that "[t]he victims' advocate shall make available to the public an annual report of the victims' advocate's activities under this chapter and notify the legislature that the report is available."

23. 2003 ANNUAL REPORT, *supra* note 19, at 6.

24. H.B. 398, 23d Leg., 2d Sess. (Alaska 2004) (authorizing the Commissioner of Public Safety and municipalities of the State to empanel domestic violence fatality review teams); H.B. 357, 23d Leg., 2d Sess. (Alaska 2004) (requiring judges to order restitution from convicts in all cases in which a victim has suffered a financial loss and repealing a law requiring the court to take into account the defendant's present ability to

first two years of operations, the legislature in 2004 repealed the OVR's sunset provision, thereby making it a permanent agency of the legislature.²⁵

IV. OVERVIEW OF THE ALASKA OFFICE OF VICTIMS' RIGHTS

A. Selection and Appointment of the Victims' Advocate

Legislators wanted the director of the new agency to be a lawyer with substantial experience in the practice of criminal law, and they did not want politics to play a role in the selection process. Consequently, a candidate for appointment as the victims' advocate was to be nominated by a victims' advocate selection committee, "composed of three members of the senate appointed by the president of the senate and three members of the house of representatives appointed by the speaker of the house; one member of a minority party caucus in each house was required to be part of the selection committee."²⁶ The selection committee's charge was to examine applicants regarding their qualifications and ability and to place the name of the person selected in nomination.²⁷ The

pay when determining restitution awards); H.B. 348, 23d Leg., 2d Sess. (Alaska 2004) (requiring police and prosecutors to notify crime victims about the Alaska Office of Victims' Rights upon first contact); H.B. 397, 23d Leg., 2d Sess. (Alaska 2004) (requiring criminal defense attorneys and investigators in sexual offense cases to first obtain the consent of a minor victim or witness' parent or guardian before contacting or conducting a tape-recorded interview with the minor); H.B. 349, 23d Leg., 2d Sess. (Alaska 2004) (amending Alaska Rule of Evidence 412 to permit prosecutors to use suppressed statements and physical evidence to impeach a defendant who commits perjury during a criminal proceeding, bringing Alaska into the mainstream of the law in this area and in line with the United States Supreme Court's holding in *Harris v. New York*, 401 U.S. 222 (1971), which approved the use of statements obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), for impeachment purposes but not as part of the prosecutor's case-in-chief).

25. H.B. 534, 23d Leg., 2d Sess. (Alaska 2004) (repealing sections 8, 18, 22, 24, 28, 30, 32, 34, 41, and 51, ch. 92 of Senate Bill 105, the original OVR enabling statute; these sections would have eliminated the OVR on July 1, 2006).

26. ALASKA STAT. § 24.65.020 (Michie 2002). OVR director Stephen E. Branchflower was nominated from a field of 10 applicants by a bipartisan victims' advocate selection committee, composed of Speaker of the House Brian Porter (R-Anchorage), Senate President Rick Halford (R-Chugiak), Sen. Dave Donley (R-Anchorage), Sen. Donny Olson (D-Nome), Rep. Pete Kott (R-Eagle River), and Rep. Reggie Joule (D-Kotzebue). He was unanimously confirmed to the appointment in a joint meeting of the Alaska House and Senate on May 13, 2002, and assumed his new duties on July 8. See Press Release, 22d Alaska State Legislature, Branchflower to Head Victim's Rights Office (May 22, 2002), available at <http://www.akrepublicans.org/pastlegs/22ndleg/press/prhalford105222002.shtml> (last visited Oct. 22, 2004).

27. ALASKA STAT. § 24.65.020 (Michie 2002).

appointment became effective if approved by a two-thirds vote of a joint session of the legislature.²⁸

In addition to other statutory requirements and limitations, “[a] person may not serve as the victims’ advocate (1) unless the person has been a resident of the state for the three years immediately preceding the person’s appointment, [and] (2) . . . has been engaged in the active practice of law for the three years immediately preceding the person’s appointment.”²⁹ The term of office of the victims’ advocate is five years, and reappointment is possible but may not exceed three terms.³⁰ The victims’ advocate may be removed or suspended from office only by the legislature, upon a concurrent resolution adopted by a roll call vote of two-thirds of the members of each house entered in the journal, and then only for “neglect of duty, misconduct, or disability.”³¹ The services of the OVR are free, and no fees or costs may be required of its clients.³² In sum, legislators wanted to ensure that the newly created agency would be guided by an apolitical director, experienced in the criminal law, who would have a free hand to zealously defend crime victims and would simultaneously be insulated from repercussions from police, prosecutors, and judges when unpopular findings or recommendations were made.

B. Jurisdiction and Role of the Victims’ Advocate

In promulgating the OVR Act, the legislature clearly defined the mission of the new agency: “The victims’ advocate shall assist crime victims in obtaining the rights crime victims are guaranteed under the constitution and laws of the state with regard to the contacts crime victims have with justice agencies of the state.”³³ The class of crime victims statutorily entitled to the protection and assistance of the OVR are those in all felony offenses, all class A misdemeanors involving domestic violence, and all misdemeanors involving crimes against the person.³⁴

Because the OVR holds a broad mandate from the legislature to protect the rights of the victim zealously, several of the terms defining its scope are given wide breadth of application. First, consistent with that broad mandate, the term “justice agency” was defined expansively by lawmakers to include agencies of the executive as well as the judicial

28. *Id.*

29. *Id.* § 24.65.030 (Michie 2002).

30. *Id.* § 24.65.040(a).

31. *Id.* § 24.65.050.

32. *Id.* § 24.65.090(b).

33. *Id.* § 24.65.110(a).

34. *Id.* § 24.65.100(a). Crimes against the person are defined in ALASKA STAT. § 11.41 (Michie 2002).

branches of state government.³⁵ Examples of justice agencies and officers that come under OVR oversight are state and municipal police departments, municipal and state prosecutor's offices, adult and juvenile probation and parole officers of the Alaska Department of Corrections, the Alaska Parole Board, and judges of the Alaska court system to name a few.³⁶ Second, although OVR's jurisdiction is restricted to providing legal services to crime "victims," Alaska law defines that term broadly. It specifically excludes the perpetrator and includes not only the person against whom an offense was actually committed, but also that person's extended family, given certain conditions.³⁷ Such a broad definition recognizes that the impact of a crime affects the entire family structure and not just the person directly aggrieved by the defendant's misconduct.

C. Receiving and Processing Complaints From Crime Victims

The victims' advocate is authorized by statute to investigate complaints from crime victims that they "have been denied the rights they are guaranteed under the constitution and laws of this state."³⁸ One of the most difficult tasks undertaken by the author during OVR's start-up months was the establishment of written criteria and procedures regarding how to evaluate complaints from crime victims and how to investigate them. This was accomplished by adopting regulations pursuant to Alaska's Administrative Procedure Act³⁹ by virtue of the specific authority vested in the OVR to do so.⁴⁰ Those regulations require that an allegation that a crime victim has been denied a right guaranteed under the constitution and laws of the state be in writing and be specific.⁴¹ The regulations also require that the written allegation must be submitted to

35. *Id.* § 24.65.250(1). "Justice agency means a department, office, institution, corporation, authority, organization, commission, committee, council, court, or board in the executive or judicial branches of the state government that is, in any manner, involved with or responsible for the apprehension, prosecution, incarceration, or supervision of criminal or juvenile offenders; it also includes an officer, employee, or member of an agency acting or purporting to act in the exercise of official duties." *Id.*

36. *Id.* Such offices fall within the description of the term "justice agency." *Id.*

37. *Id.* § 12.55.185(17). For example, if the "victim" is a minor, incompetent, or is incapacitated, that term includes: (1) "an individual living in a spousal relationship" with the de facto victim; (2) "a parent, adult child, guardian, or custodian" of that person; (3) if the de facto victim is deceased, "a person living in a spousal relationship with the deceased before the deceased died;" (4) "an adult child, parent, brother, sister, grandparent, or grandchild of the deceased;" and (5) "any other interested person, as may be designated by a person having authority in law to do so." *Id.*

38. *Id.* § 24.65.120(a).

39. *Id.* § 44.62. See *supra* note 16 and accompanying text.

40. *Id.* § 24.65.090(a).

41. ALASKA ADMIN. CODE tit. 23, § 10.010(b) (2004).

the victims' advocate on an OVR complaint form and must be signed by the victim or a person authorized by law to act on the victim's behalf.⁴² Anonymous complaints are not accepted.⁴³

The victims' advocate retains substantial discretion to refuse to accept a complaint or provide crime victim advocacy or investigative services when, in his judgment: (1) it appears that the OVR does not have jurisdiction as established by Alaska Statutes section 24.65; (2) the complaint does not involve a violation of a specific statutory or constitutional "crime victim" right; (3) the complaint may involve a violation of a specific statutory or constitutional crime victim right, but the complainant is not a crime victim as defined by Alaska Statutes section 12.55.185(17); or (4) the complainant is a "criminal defendant" as that term is defined in OVR's regulations.⁴⁴ The complaint may also be rejected if (1) it is a civil matter or is primarily civil in nature⁴⁵ or (2) the resources of the OVR are, or may be, inadequate to provide the complainant with competent advocacy or investigative services, or may be unduly diminished by providing the complainant with such services to the detriment of other cases.⁴⁶ Finally, a complaint may be rejected if the complainant refuses to sign the complaint form or, in the judgment of the victims' advocate, accepting the complaint or providing crime victim advocacy or investigative services to the complainant would not serve the public's interest or welfare.⁴⁷

Upon receipt of a signed complaint asserting denial of a crime victim's right, the victims' advocate conducts a preliminary examination of the complaint to determine whether, based upon the information provided, the OVR has jurisdiction to investigate the complaint under Alaska Statutes section 24.65.⁴⁸ The victims' advocate then determines whether there is "specific and credible information to indicate that one or more crime victims' rights guaranteed by law may have been violated by a justice agency."⁴⁹ If the resources of the OVR are not sufficient to process pending or new complaints or requests for assistance from crime victims within reasonable time limits, the victims' advocate is required by law to apply a priority standard as follows. First, complaints "of an emergency nature in which disposition according to normal handling would subject the complainant or victim to a substantial risk of serious

42. *Id.* The complaint may be submitted to the OVR in person or online through the office web site, mailed by regular U.S. mail, or submitted by facsimile. *Id.*

43. *Id.* § 10.010(c).

44. *Id.* § 10.020.

45. *Id.* § 10.020(a)(5).

46. *Id.* § 10.200.

47. *Id.*

48. *Id.* § 10.030.

49. *Id.*

and irreparable violation of crime victim rights or other harm" are given the greatest priority.⁵⁰ Next come complaints involving felony offenses, followed by complaints regarding class A misdemeanors involving domestic violence or "crimes against the person" under Alaska Statutes section 11.41.⁵¹

Within each of these priority categories, the victims' advocate may assign further priority to the processing of a complaint "alleging, or where there is evidence of, prejudice, harm, or disadvantage to a class of people."⁵² Such cases have precedence over processing of a complaint alleging an individual instance of prejudice, harm, or disadvantage.⁵³ Processing of complaints is undertaken substantially in accordance with an order based on priority of the date on which the complaint was received.⁵⁴ The author believes that the establishment of these screening and processing criteria has greatly enhanced the efficiency and productivity of the OVR and allowed the agency to better direct its limited professional and financial resources to victims whose constitutional and statutory rights have been violated.

D. Investigative Powers of the OVR

The victims' advocate's investigative powers are considerable. While conducting an investigation of a complaint from a crime victim, he is authorized to "make inquiries and obtain information considered necessary," and to hold private hearings.⁵⁵ In order to investigate fully, the victims' advocate is also entitled to have complete access to any record of a justice agency, including court records of criminal prosecutions and juvenile adjudications, which the victims' advocate believes is necessary to investigate claims and to ensure that the rights of crime victims are protected.⁵⁶ Further, with regard to records held by a court or the prosecutor, the victims' advocate is further entitled to obtain access "to every record that the defendant is entitled to access or receive."⁵⁷

50. *Id.* § 10.040(a).

51. *Id.*

52. *Id.* § 10.040(b)(1).

53. *Id.* § 10.040(b).

54. *Id.* § 10.040(b)(2).

55. ALASKA STAT. §§ 24.65.120(b)(1), (2) (Michie 2004).

56. *Id.* § 24.65.120(b)(3).

57. *Id.* See also ALASKA R. CRIM. P. 16. Additionally, the uncodified law of Alaska was amended to advance the work of the victims' advocate by adding a new section which reads:

INDIRECT COURT RULE AMENDMENT. AS 24.65.110 and 24.65.120, added by sec. 19 of this Act, have the effect of amending Rule 16, Alaska Rules of Criminal Procedure, and Rule 9, Alaska Delinquency Rules, by allowing the victims' advocate a right of access to information in criminal prosecutions and juvenile adjudications that is equal to that *available to criminal de-*

The victims' advocate may elect to conduct a formal investigation of a complaint,⁵⁸ or he may simply elect to attempt to resolve the matter informally by contacting the person or justice agency in question to make the necessary inquiries and to obtain information and documents he considers essential.⁵⁹ Regardless of which approach is employed, when the victims' advocate initially contacts a respondent he will briefly describe in writing the basis for the complaint and provide details that he considers necessary and sufficient for the person or justice agency to respond fully.⁶⁰

The power to "make inquiries and obtain information considered necessary," which is authorized by Alaska Statutes section 24.65.120(b)(1), may be exercised in different ways. For example, the victims' advocate may simply request the agency or person who is the subject of the complaint to provide a written explanation of the relevant facts.⁶¹ The victims' advocate must make this request in writing, and the respondent is also required to submit the explanation in writing.⁶² If deemed necessary and appropriate to the circumstances in the judgment of the victims' advocate, the written explanation must be provided under oath.⁶³ This informal procedure does not preclude the victims' advocate from additionally requiring the person or justice agency to provide the explanation of the relevant facts and circumstances under oath pursuant to a formal inquiry as authorized by Alaska Statutes sections 24.65.120(b)(2) and 24.65.130(a).⁶⁴

The victims' advocate is authorized to make inquiries and obtain information considered necessary, under Alaska Statutes section 24.65.120(b)(1).⁶⁵ This authority may also be invoked to require submission of all information or documents available to the criminal defendant without regard to whether the information or documents sought

defendants or juveniles when the advocate is engaging in advocacy or *that is unlimited* when the advocate is engaging in investigations concerning victims' rights.

See S.B. 105, 22d Leg. (Alaska 2001) (emphasis added).

58. ALASKA ADMIN. CODE tit. 23, § 10.100 (2004). Formal investigations are those investigations "utilizing the power to 'hold private hearings' accorded to the victims' advocate provided in Alaska Statutes section 24.65.120(b)(2)." *Id.* § 40.100(6). Informal investigations are those investigations "utilizing the powers accorded to the victims' advocate in Alaska Statutes section 24.65 other than as provided in Alaska Statutes section 24.65.120(b)(2)." *Id.* § 40.100(7).

59. *Id.* § 10.100(a).

60. *Id.*

61. *Id.* § 10.100(b)(1).

62. *Id.*

63. *Id.*

64. *Id.* § 10.100.

65. *Id.*

have been provided to the defendant when the request is made.⁶⁶ For example, prosecutors, police and juvenile authorities are required to grant discovery of materials to the OVR even before charges are filed or when materials are otherwise required to be provided under the state's criminal discovery rules and case law.⁶⁷ In dealing with the OVR, individuals and justice agencies are required by law to cooperate fully with the victims' advocate and to provide all requested information in a timely, complete, and good faith manner.⁶⁸ Specifically, they must respond fully in writing within ten calendar days from receipt of the victims' advocate's written request.⁶⁹ A request for additional time beyond the ten calendar days may be granted, but the total amount of time may not exceed thirty calendar days from the victims' advocate's initial request.⁷⁰ In accordance with Alaska Statutes section 24.65, if a person or a justice agency fails to respond in a timely, complete, or good faith manner, the victims' advocate has two choices: (1) he may elect to proceed with the investigation without further notice to the person or justice agency, or (2) he may elect to seek judicial enforcement in superior court.⁷¹ These OVR discovery provisions are necessary to enable the victims' advocate to fully investigate complaints from crime victims in a timely fashion, something that, because of Alaska's speedy trial provisions for defendants, is especially critical if there is a pending criminal case.⁷²

Another investigative tool granted by the legislature to the victims' advocate is the power to "compel by subpoena, at a specified time and place, the appearance of any person whom the victims' advocate reasonably believes may be able to give information and produce documents and objects relating to a matter under formal or informal investigation under Alaska Statute[s] [section] 24.65."⁷³ The victims' advocate

66. *Id.*

67. *Id.* § 10.100(b)(2).

68. *Id.* § 10.100(c).

69. *Id.*

70. *Id.*

71. *Id.* § 10.100(d).

72. ALASKA R. CRIM. P. 45; ALASKA CONST. art. I, § 24.

73. ALASKA ADMIN. CODE tit. 23, § 10.120(a) (2004). Persons exempt from subpoena are: (1) "a justice, judge, magistrate, or a law clerk" concerning a judicial action or nonaction taken by the person; (2) "a member of a jury concerning a matter that was considered by the jury;" (3) the "person accused or convicted of committing the crime that is the basis for the complaint, and investigation;" (4) a "victim counselor concerning a matter made confidential by Alaska Statute[s] [sections] 18.66.200 - 18.66.250;" or (4) "a justice agency concerning records that lead to the disclosure of a confidential police informant." ALASKA STAT. § 24.65.130(c) (Michie 2002).

may elect to issue the subpoena in connection with a private hearing⁷⁴ or in connection with an informal investigation, without requiring the witness to provide testimony at that time.⁷⁵ If the victims' advocate elects to conduct a private hearing, it must be conducted subject to the privileges recognized by Alaska court rules and statutes but "in an informal manner to the end that truth may be ascertained and proceedings justly determined."⁷⁶ To ensure this goal, OVR regulations provide that the Alaska Rules of Court, including the Alaska Rules of Evidence, the Alaska Rules of Civil Procedure, the Alaska Rules of Criminal Procedure, the Alaska Child in Need of Aid Rules, the Alaska Delinquency Rules, and the Alaska Administrative Rules are inapplicable to any hearings or proceedings before the OVR, including the taking of sworn testimony.⁷⁷ Any witness appearing at a private hearing has the right to counsel at the witness' expense.⁷⁸ The only persons permitted to be present at a private hearing during the taking of sworn testimony are (1) the victims' advocate, or members of his staff; (2) a court reporter; (3) an interpreter or other person needed to assist a witness who is hearing, speech, or otherwise medically impaired; (4) the witness under examination; and (5) the witness' attorney if one has been retained.⁷⁹ Witnesses are required to "be examined individually outside the presence of other witnesses."⁸⁰

A person properly subpoenaed may not refuse to provide the material sought by claiming that the material is privileged unless the person first asserts the privilege and the basis for the privilege in writing to the victims' advocate.⁸¹ If requested in writing by the victims' advocate, the written assertion of privilege must be provided under oath.⁸² If the person asserting the privilege is a public employee, then the commissioner of the department or the head of the justice agency involved is required to assert in writing the privilege and the basis for the privilege to the victims' advocate.⁸³ If the victims' advocate deems it appropriate, he is empowered to require the written assertion of privilege and the basis for asserting it to be provided by the commissioner of the department or the head of the justice agency involved under oath.⁸⁴ In any case in which a

74. ALASKA STAT. § 24.65.120(b)(2) (Michie 2002).

75. ALASKA ADMIN. CODE tit. 23, § 10.120(a) (2004).

76. *Id.* § 10.120(g).

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* § 10.120(h).

82. *Id.*

83. *Id.* § 10.120(i).

84. *Id.*

person refuses to provide material sought by claiming a privilege, the victims' advocate may seek review of the claim in the superior court by instituting enforcement proceedings under Alaska Statutes section 24.65.⁸⁵

Whenever the victims' advocate seeks enforcement of a subpoena to compel testimony or the production of documents, he must initiate proceedings in the superior court in accordance with Alaska Statutes section 24.65.130(b) under the provisions of Rule 90 of the Alaska Rules of Civil Procedure.⁸⁶

OVR regulations permit the victims' advocate to discontinue, terminate, postpone, or suspend an investigation at any time if certain factors are determined.⁸⁷ For example, an investigation may be closed if any of the following requirements are met: (1) "the victims' advocate subsequently learns that the subject matter of the complaint is not within the jurisdiction of the office under Alaska Statute[s] [section] 24.65";⁸⁸ (2) it is "determine[d] that disclosure of the complainant's or victim's name is necessary to enable the victims' advocate to carry out duties under Alaska Statute[s] [section] 24.65 or to support recommendations, and the complainant or victim refuses to allow disclosure of the complainant's or victim's name";⁸⁹ or (3) "the victims' advocate requests information or documents from the complainant or victim and the complainant or victim fails or refuses to produce the information or documents within the time specified by the victims' advocate for its receipt."⁹⁰ The same result would be obtained: (1) if a "complainant fails to file a written complaint as required or requests to withdraw a previously filed complaint";⁹¹ (2) when "information or evidence provided by the complainant or otherwise obtained by the victims' advocate provides no specific or credible basis to believe that continuing an investigation is warranted";⁹² (3) where the victims' advocate concludes that there is some evidence to believe that the complainant's or victim's rights may have been denied, but the victims' advocate finds he may not be able to present an opinion, finding or recommendation that would provide direct

85. *Id.* § 10.120(j).

86. *Id.* § 10.120(l). ALASKA STAT. § 24.65.130(b) (Michie 2002) provides that "[i]f a person refuses to comply with a subpoena issued under (a) of this section, the superior court may, on application of the victims' advocate, compel obedience by proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court or refusal to testify in the court."

87. ALASKA ADMIN. CODE tit. 23, § 10.200 (2004).

88. *Id.* § 10.200(1).

89. *Id.* § 10.200(2).

90. *Id.* § 10.200(3).

91. *Id.* § 10.200(4).

92. *Id.* § 10.200(5).

relief or benefit to the complainant or victim; or (4) where it could be without substantial value or significance to improvement of the public administration under the law.⁹³

In order to conserve limited human and financial resources, the victims' advocate is empowered to "discontinue, terminate, postpone or suspend an investigation" if he determines that the act complained of was recently investigated by the OVR, and that "the complaint fails to present an issue not considered in that prior investigation, and the victims' advocate believes that further investigation would not advance a material interest of the complainant or the victim or a significant public interest."⁹⁴ The victims' advocate may also alter the investigation's timetable where he determines that the resources available are insufficient to maintain the investigation;⁹⁵ the complainant or victim refuses or fails to maintain contact with the victims' advocate;⁹⁶ the complainant or victim has knowingly provided false, misleading or incomplete information or documents to the OVR;⁹⁷ or "the complainant refuses to sign the complaint form."⁹⁸ Finally, the victims' advocate may also elect to "discontinue, terminate, postpone or suspend an investigation" if "in the sole opinion of the victims' advocate the investigation should be terminated in furtherance of justice, the public interest or for the reasons stated in a written request of the victim or complainant."⁹⁹ In sum, the above OVR regulations, and others, were designed to facilitate the victims' advocate's effective enforcement of Alaska Statutes section 24.65 to safeguard victims' rights.¹⁰⁰ In drafting them, the author balanced considerations of law, equity, and practicality to ensure that the OVR staff would have the capability of taking timely, decisive, and effective legal action as appropriate when investigating complaints in order to protect and advance the rights of crime victims under a wide range of circumstances.

93. *Id.* § 10.200(6).

94. *Id.* § 10.200(7).

95. *Id.* § 10.200(8).

96. *Id.* § 10.200(9).

97. *Id.* § 10.200(10).

98. *Id.* § 10.200(11).

99. *Id.* § 10.200(12).

100. *Id.* § 40.040 (2004), captioned "Relaxation of regulations," provides that: [t]he procedural regulations in this title are designed to facilitate the victims' advocate's enforcement of AS 24.65 and advance justice. In the discretion of the victims' advocate, these regulations may be relaxed or dispensed with for good cause by the victims' advocate in any case where it shall be manifest to the victims' advocate that strict adherence to them will work injustice.

Id.

E. Preparation of a Report Following a Formal Investigation

OVR regulations authorize the victims' advocate to prepare a written report of his findings, opinions, and recommendations upon completion of a formal investigation of a justice agency or a person.¹⁰¹ However, a written report must be prepared if the victims' advocate's findings are critical of a justice agency or person or it has been determined that a justice agency or person has denied a crime victim's rights protected under Alaska law.¹⁰² The report may classify the complaint or allegation by the crime victim as either justified, partially justified, not supported, or indeterminate depending upon whether the complaint is supported by evidence.¹⁰³

Before giving an opinion or recommendation that is critical of a justice agency or a person, the victims' advocate is required by statute to consult with them,¹⁰⁴ and all communications are deemed confidential.¹⁰⁵ Such consultations may be in writing or accomplished orally.¹⁰⁶ The victims' advocate may ask the justice agency to notify him of any action taken on his recommendations.¹⁰⁷ All replies must be provided in writing within fifteen days unless extended by the victims' advocate.¹⁰⁸ Any request to modify the preliminary report must be complete and specific and may be supported by documentary or other evidence considered appropriate by the justice agency or person.¹⁰⁹ "The victims' advocate may accept or reject, in whole or in part" the request to modify his preliminary report.¹¹⁰

"Within a reasonable time following receipt and consideration by the victims' advocate of a response or request submitted by a justice agency," "or if a justice agency has failed to submit a timely response or request," the victims' advocate must complete a final report and provide a copy of it to the justice agency, stating that the investigation has been concluded.¹¹¹ In preparing his final report, the victims' advocate is given considerable leeway. For example, the report may contain references or summaries of witness testimony, documentary evidence, or other evidence submitted under 23 Alaska Administrative Code section 10.230, seeking a modification of a finding or opinion in the preliminary

101. *Id.* § 10.210(a).

102. *Id.* § 10.210(b).

103. *Id.* § 10.210(c).

104. ALASKA STAT. § 24.65.140 (Michie 2002).

105. *Id.* § 24.65.140, .150.

106. ALASKA ADMIN. CODE tit. 23, § 10.220(b) (2004).

107. ALASKA STAT. § 24.65.150(b) (Michie 2002).

108. ALASKA ADMIN. CODE tit. 23, § 10.230(a) (2004).

109. *Id.* § 10.230(c).

110. *Id.*

111. *Id.* § 10.240(a).

report.¹¹² It may also include different and additional findings or opinions not contained in the preliminary report.¹¹³

The final report may conclude that the subject matter of the investigation has been "rectified" if the victims' advocate determines that the "agency has initiated corrective action or commits to take corrective action substantially as recommended" by the victims' advocate.¹¹⁴ If corrective action is refused, or if an agency does not affirmatively commit to take recommended corrective action, the victims' advocate may comment upon that refusal.¹¹⁵ The ability of the victims' advocate to issue written reports identifying violations of crime victims' constitutional and statutory rights and suggesting corrective action to criminal justice agencies is key to ensuring that such agencies will grant victims their constitutional rights to be treated with "dignity, respect, and fairness during all phases of the criminal and juvenile justice process."¹¹⁶

F. Opinions and Recommendations of the Victims' Advocate May Be Released to the Governor, Legislature, a Grand Jury or the Public

While most of the investigative and deliberative work product of the OVR is confidential¹¹⁷ and privileged,¹¹⁸ there may arise circumstances in which it becomes necessary to make findings and recommendations known in order to improve agency accountability and the administration of justice, not only for the crime victim, but also for the public. In recognition of this, the legislature decreed that within a reasonable amount of time after the victims' advocate has reported the advocate's opinion and recommendations to a justice agency, he may also present his report to the governor, the legislature, or the public.¹¹⁹ The victims' advocate must include with his report any reply made by the agency¹²⁰ or state if there was no reply.¹²¹

The final report may be disclosed only after notice has been provided to the justice agency that the investigation has been concluded and after the written consent of the complainant to release the report has been obtained.¹²² The victims' advocate may also present his findings

112. *Id.* § 10.240(b).

113. *Id.*

114. *Id.* § 10.240(c).

115. *Id.* § 10.240.

116. ALASKA CONST. art. I, §24.

117. ALASKA STAT. §§ 24.65.110(d), .120(c).

118. *Id.* § 24.65.200.

119. *Id.* § 24.65.160.

120. *Id.*

121. ALASKA ADMIN. CODE tit. 23, § 10.260(a) (2004).

122. *Id.* § 10.260(b).

and recommendations to a grand jury¹²³ and explain his report to them.¹²⁴ If requested, he may also provide advice to them regarding his opinions and recommendations.¹²⁵

G. Objections to Publication of Confidential Matters in the Victims' Advocate's Opinion to the Governor, Legislature, or the Public under Alaska Statutes section 24.65.160

Occasionally, in publicizing a written report, the victims' advocate may find it necessary to disclose information believed by a justice agency to be confidential in nature and therefore, non-disclosable. The following procedure has been adopted by the victims' advocate through regulation to address questions regarding confidentiality of such information.¹²⁶

If a justice agency has an objection to the publication of confidential materials in a preliminary report, it must send a written objection, describing the basis of the objection in detail, to the victims' advocate within ten calendar days of receipt of the preliminary report.¹²⁷ The victims' advocate must then proceed in accordance with OVR regulations. However, if a timely objection has not been filed, objections are "deemed waived and the victims' advocate may disclose the confidential matter."¹²⁸

If a timely objection is made, the victims' advocate may still publish the information.¹²⁹ He must first find that the disclosure is authorized by Alaska Statutes section 24.64.120(c) and necessary to inform others, and he must obtain the justice agency's acceptance of a recommended action.¹³⁰ The victims' advocate must give written notice of the intention to publish to the objecting agency.

At any time prior to that publication, a justice agency may request an order from the superior court seeking to prevent disclosure.¹³¹ Three considerations are determinative.¹³² First, if the record contains both disclosable and confidential matters, and the confidential matters cited may reasonably be separated from the disclosable matters, the court may

123. ALASKA STAT. § 24.65.160 (Michie 2002).

124. ALASKA ADMIN. CODE tit. 23, § 30.150(a) (2004).

125. *Id.*

126. *Id.* § 30.140. This provision is inapplicable to disclosures made to a grand jury because such matters are required by law to remain confidential. *See* ALASKA R. CRIM. P. 6(l)(1).

127. ALASKA ADMIN. CODE tit. 23, § 30.140(b) (2004).

128. *Id.*

129. *Id.* § 30.140(c).

130. *Id.*

131. *Id.* § 30.140(d).

132. *Id.*

order the confidential matters deleted and may allow the victims' advocate to release the disclosable portions.¹³³ Second, in cases in which the matter is wholly confidential, or if the matter contains both disclosable and confidential information that cannot be reasonably separated, the court may allow the victims' advocate to disclose the matter if it determines that the need for disclosure outweighs the nature and weight of the privacy interest asserted by the justice agency.¹³⁴ Finally, if the material objected to is found by the court not to be a confidential matter, the victims' advocate is free to make disclosure.¹³⁵ In any event, nothing in the OVR statutes or regulations may be construed to prevent or delay the publication of a final report if the material objected to has been redacted pending a decision of the superior court.¹³⁶ In sum, there exists a clear and specific written procedure in the law to address questions regarding the release of information that justice agencies claim to be confidential.

H. In-court Advocacy on Behalf of Crime Victims: Representation in Ongoing Criminal Cases or Juvenile Adjudications

The victims' advocate is authorized to represent a victim in any ongoing criminal case or juvenile adjudication¹³⁷ for the purpose of defending and promoting the victims' rights, including the constitutional right to counsel.¹³⁸ To do so, the victims' advocate must have "reason to believe a crime victim may have been denied, is being denied, or may in

133. *Id.* § 30.140(d)(1).

134. *Id.* § 30.140(d)(2).

135. *Id.* § 30.140(d)(3).

136. *Id.* § 30.140(e).

137. The term "ongoing criminal case or juvenile adjudication" includes: an active or closed prosecution, trial, legal action, lawsuit, or juvenile adjudication of any kind, at any stage or proceeding of the trial, legal action, adjudicatory hearing, parole or probation revocation hearing, lawsuit, or juvenile adjudication, including any appeal, in a court in Alaska or another state or of the United States.

Id. § 20.210(d), 40.100(12).

The phrase "ongoing criminal case or juvenile adjudication" is also defined to include:

an open or closed investigation conducted by any justice agency, and matters under investigation by a grand jury, undertaken by any one or more justice agencies of the state, regardless of whether the investigation is considered open or closed by the justice agency and regardless of whether criminal charges are still under consideration, have been filed or have been declined by a justice agency.

Id.

The term "legal action" includes a "grievance before the Alaska Bar Association or the bar association or licensing or disciplinary entity of another state or jurisdiction." *Id.*; see also ALASKA STAT. § 24.65.1101 (Michie 2002).

138. ALASKA ADMIN. CODE tit. 23, § 20.210(a). See also ALASKA CONST. art I, § 7.

the future be denied a right under the constitution and the laws of the state by any person or justice agency."¹³⁹

The right to representation includes the right to bring an action on behalf of a crime victim when the victims' advocate believes it will protect and advance the crime victim's statutory and constitutional rights.¹⁴⁰ Upon deciding to represent a victim, the advocate must file an entry of appearance and provide written notice to all parties and the court.¹⁴¹ The notice must contain a statement that the crime victim has submitted a written complaint with the victims' advocate¹⁴² and may set out the particulars of the complaint and request for relief.¹⁴³ The entry of appearance and notice may be made at any time in the ongoing case, either in writing or orally.¹⁴⁴ The advocate is precluded from advising or advocating for a victim in a way that would deter the victim from cooperating in a criminal investigation conducted by a justice agency, testifying in a criminal proceeding, or withholding evidence in a criminal investigation conducted by a justice agency.¹⁴⁵ In sum, because the legislature recognized that victims' statutory or constitutional rights could be deprived during a criminal prosecution or juvenile proceeding, the legislature granted the victims' advocate broad discretion to decide, given the specific circumstances, whether to participate as an independent attorney on the victims' behalf.

I. Standing of the Victims' Advocate to Appear Before the Courts of the State

The authority and jurisdiction of the OVR to appear before the courts of the state, and to seek requested relief for crime victims, does not depend on whether OVR is a party to the case; the victim is never a party to a criminal action in Alaska and such a rule would disable victims from enjoying rights enumerated in the state constitution and statutes. One of the goals of the legislature in establishing OVR was to grant crime victims "access to the same legal assistance as other participants" in the criminal justice system.¹⁴⁶ The principal architects of the

139. ALASKA ADMIN. CODE tit. 23, § 20.210(a).

140. *Id.*

141. *Id.* § 20.220(a).

142. *Id.*

143. *Id.*

144. *Id.* § 20.220(a)-(b).

145. ALASKA STAT. § 24.65.100(c) (Michie 2002); *See also* ALASKA ADMIN. CODE tit. 23, § 20.200(a)(1)-(3) (2004).

146. The legislative history for Senate Bill 105 suggests that the legislature intended that the OVR appear before the courts of the state to represent victims in ongoing criminal cases. *See, e.g., An Act Relating to Victims' Rights: Hearing on S.B. 105 Before the*

OVR believed it would increase victims' awareness of their constitutional rights and also serve to advocate for victims in Alaska courts.¹⁴⁷

The OVR has specific jurisdiction to assist felony and violent crime victims in vindicating their rights in ongoing proceedings in Alaska state courts.¹⁴⁸ OVR lawyers are also authorized by statute to address the sentencing judge on the victims' behalf when the victim does not personally make a victim impact statement.¹⁴⁹ In sum, by promulgating the OVR Act in 2001, the Alaska Legislature specifically authorized the OVR to represent crime victims before all state tribunals, at any stage of the proceedings in criminal cases, in order to ensure that their statutory and constitutional rights are protected and enforced.¹⁵⁰

Senate Finance Committee, 2001 Leg., 22d Sess. (Alaska 2001) (statement of Sen. Rick Halford, sponsor).

147. *See, e.g., An Act Relating to Victims' Rights: Hearing on S.B. 105 Before the House Judiciary Committee*, 2001 Leg., 22d Sess. (Alaska 2001) (statement of Juli Lucky, Chief of Staff to Sen. Rick Halford).

148. Alaska Statutes section 24.65.100 provides in pertinent part:

The victims' advocate has jurisdiction to *advocate on behalf of crime victims of felony offenses or class A misdemeanors, if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41, in the courts of the state* and to investigate the complaints of crime victims of felony offenses or class A misdemeanors, if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41, that they have been denied their rights under the constitution and the laws of the state. In this subsection, "crime involving domestic violence" has the meaning given in AS 18.66.990.

ALASKA STAT. § 24.65.100(a) (Michie 2002) (emphasis added). Additionally, Alaska Statutes section 24.65.110 provides in pertinent part:

(a) The victims' advocate shall assist crime victims in obtaining the rights crime victims are guaranteed under the constitution and laws of the state with regard to the contacts crime victims have with the justice agencies of the state. . . .

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

Id. § 24.65.110(a), (c) (emphasis added).

149. *Id.* § 24.65.110(b). Crime victims have "the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered." ALASKA CONST. art. I, § 24.

150. The OVR has represented victims in numerous criminal cases, in various parts of the state, at various stages of proceedings. *See, e.g., Alaska v. Carr*, 3 PA-S01-2455 CR (Alaska 2004); *Alaska v. Clemens*, 4 FA-04-2202 CR (Alaska 2004); *Alaska v. Foote*, 3 AN-S04-5216 CR (Alaska 2004); *Alaska v. Gioletti*, 3 AN-S01-5586 CR (Alaska 2003); *Alaska v. McComas*, 4 BE-04-682 CR (Alaska 2004); *Alaska v. Owens*, 2 NO-S03-821 CR (Alaska 2004); *Alaska v. Pomeroy*, 3 AN-S02-10469 CR (Alaska 2004); *Alaska v. Short*, 4 HE-04-63 CR (Alaska 2004); *Alaska v. Wright*, 3 AN-S02-9447/9463 CR (Alaska 2004); *Mun. of Anchorage v. Cooper*, 3AN 03-10934 CR

J. Maintaining Confidentiality of Documents and Information

The OVR statutes demonstrate a profound concern by the legislature that documents and information received by the victims' advocate remain confidential and within the exclusive custody of the agency. For example, the legislature spelled out that "[r]ecords obtained by the victim's advocate shall remain in the exclusive custody of the victims' advocate. The victims' advocate may not disclose confidential information to any person."¹⁵¹ Additionally, the advocate must maintain confidentiality concerning "identities of the complainants or witnesses coming before the victims' advocate except insofar as disclosures may be necessary to enable the victims' advocate to carry out duties and to support recommendations. However, the victims' advocate may not disclose a confidential record obtained from a court or justice agency."¹⁵²

In accordance with specific statutory authority, the victims' advocate has adopted regulations to ensure that confidential information about crime victims and specific cases will not be improperly disclosed in the course of advocacy or an investigation.¹⁵³ To further ensure confidentiality, the victims' advocate also requires that a court or justice agency that provides a document considered to be a confidential record must clearly identify and designate it as such at the time it is provided in order to be considered for nondisclosure.¹⁵⁴ In addition to being so identified and designated, it must in fact be a "confidential record" within the meaning of that term as used in Alaska Statutes section 24.65 and title 23 of the Alaska Administrative Code.¹⁵⁵

OVR's regulations are flexible and allow for authorized disclosures of some confidential information under certain circumstances. For example, certain confidential information may be disclosed if the victims' advocate first obtains written consent of the crime victim and no federal or state law or regulation specifically prohibits disclosure.¹⁵⁶ As long as the identity of the victim remains confidential, the victims' advocate

(Alaska 2004); *Cynthia Cooper v. Dist. Court and Daniel Cooper*, Ct. App. A-08836 (Alaska 2004); *Alaska v. Wade*, 3 AN-S00-8436 CR (Alaska 2003).

151. ALASKA STAT. § 24.65.110(d) (Michie 2002).

152. *Id.* § 24.65.120(c).

153. *Id.* § 24.65.090(a); *see also* Press Release, *supra* note 12.

154. ALASKA ADMIN. CODE tit. 23, § 30.010(b) (2004).

155. *Id.* Unless a federal or state law or regulation specifically prohibits the disclosure of the confidential record in question under any circumstances in the matter then under consideration, the term "confidential record obtained from a court or justice agency" as used in Alaska Statutes section 24.65 and this title does not include (1) a document obtained or obtainable by a member of the public under Alaska Statute section 40.25; (2) a document obtained or obtainable by a member of the public from other public sources; or (3) a document that is a matter of public record. *Id.*

156. *Id.* § 30.110.

may also reveal information as part of a report.¹⁵⁷ This exception is included in order to assist criminal justice and other government agencies in responding to inquiries, and to increase public understanding of the operation and achievements of the office of victims' rights.¹⁵⁸ The information may also be used as part of the annual report prepared by the victims' advocate that is required by Alaska Statutes section 24.65.170.¹⁵⁹

Finally, OVR regulations authorize disclosure of otherwise confidential information regarding a victim or complainant's case to the state bar association, or other licensing or disciplinary entity, in response to a complaint or inquiry about the victims' advocate or any member of the staff of the office of victims' rights, if the entity in question is required by law to keep such information confidential.¹⁶⁰ In sum, these provisions underscore the strong legislative policy of maintaining confidentiality while recognizing that in certain limited circumstances release of otherwise confidential information will assist the OVR in advancing and protecting crime victims' rights and informing the public about the functions of the OVR.

K. Procedural Protections and Immunities for the Victims' Advocate and Staff

It is evident from the OVR statutes that the legislature sought to permit the victims' advocate to discharge his duties with a minimum of interference by the justice agencies of the executive and judicial branches that it oversees.¹⁶¹ For example, the OVR Act states, "A proceeding or decision of the victims' advocate may be reviewed in superior court only to determine if it is contrary to the provisions of this chapter."¹⁶² To further insulate the victims' advocate from interference by those agencies or individuals investigated, the legislature promulgated a strongly worded civil immunity statute.¹⁶³ Furthermore, to safeguard the confidentiality of information, documents, and materials gathered by the OVR from acquisition by third parties, the legislature vested the victims' advocate with a broad statutory privilege not to testify or

157. *Id.* § 30.120(a).

158. *Id.* § 30.120(b).

159. *Id.*

160. *Id.* § 30.130.

161. *See* ALASKA STAT. §§ 24.65.180–210 (Michie 2002).

162. *Id.* § 24.65.180.

163. Alaska Statutes section 24.65.190 states: "Immunity of the victims' advocate. A civil action may not be brought against the victims' advocate or a member of the victims' advocate's staff for anything done, said, or omitted in performing the victims' advocate's duties or responsibilities under this chapter." *Id.* § 24.65.190.

produce documents or other evidence in any civil or criminal action.¹⁶⁴ Finally, the legislature criminalized ignoring or hindering OVR's lawful demands.¹⁶⁵ Legislators enacted a statute which provides in pertinent part that "[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 \$1,000."¹⁶⁶ The significance of these procedural protections and immunities is clear: legislators wanted to advance the work of the OVR by ensuring that limited human and financial resources were not unduly or unnecessarily diminished by detractors.

L. The Office of Victims' Rights is Funded by Convicts

Next to the collective legislative commitment, resolve, and continuing support needed to create and sustain an independent investigative and advocacy-oriented victims' support agency like the OVR, the second largest obstacle is the difficult issue of funding. Fortunately for crime victims in Alaska, this obstacle has been overcome.

By any measure, whether its panoramic landscape and variety of wildlife, vast size, bountiful natural resources, remote location, or extreme climate, Alaska stands uniquely apart from what Alaskans call "the lower 48" or the land "Outside." But one of the most unique aspects of living in the 49th state is the Alaska Permanent Fund ("PF"). This statutory program has paid more than \$23,000 in cash to each and every eligible resident of the state from oil royalties since it was created in 1982.¹⁶⁷

In 1968, huge recoverable reserves of crude oil were discovered at Prudhoe Bay on the state's North Slope.¹⁶⁸ In the fall of 1969, the state

164. *Id.* § 24.65.200. The OVR Act provides:

Victims' advocate's privilege not to testify or produce documents or other evidence. Except as may be necessary to enforce the provisions of this chapter, the determinations, conclusions, thought processes, discussions, records, reports, and recommendations of or information collected by the victims' advocate or staff of the victims' advocate are not admissible in a civil or criminal proceeding, and are not subject to questioning or disclosure by subpoena or discovery.

Id.

165. *Id.* § 24.65.210.

166. *Id.*

167. *Id.* § 37.13.010-.900; see also Alaska Permanent Fund Corp., *Permanent Dividend Fund Program*, at <http://www.apfc.org/alaska/dividendprgrm.cfm> (last visited Oct. 6, 2004).

168. See JuneauAlaska.com, *Alaska Permanent Fund History Timeline*, available at <http://www.juneaualaska.com/pfd/timeline.shtml> (last visited Sept. 2, 2004).

auctioned oil exploration leases that provided millions of dollars in lease bonuses to the state treasury.¹⁶⁹ Intending to conserve a portion of their newfound wealth for the benefit of future generations, Alaskans eventually approved passage of the Alaska Permanent Fund.¹⁷⁰ This fund was established through a constitutional amendment approved by Alaska voters in 1976.¹⁷¹ The constitutional amendment and its supporting statutes set aside at least 25% of certain natural resource revenues paid to the state for deposit into a public savings account to be invested for the benefit of the current and all future generations of Alaskans.¹⁷² Each year Alaska's statutory permanent fund program distributes a share of fund earnings from its investments in stocks, bonds, and real estate to every eligible Alaska resident.¹⁷³ The dividend program now in effect was enacted in 1982 and the first dividend—\$1,000—was issued that year.¹⁷⁴ Since 1982, eligible Alaskans have collected their PFD checks each fall.¹⁷⁵ In the fall of 2004, the fund was valued in excess of \$27 billion.¹⁷⁶ The 2004 dividend amount was \$919.84 and was distributed to eligible Alaskans on October 13, 2004.¹⁷⁷

169. *Id.*

170. See ALASKA PERMANENT FUND CORP., THE EARLY HISTORY OF THE ALASKA PERMANENT FUND, PERSPECTIVES ON THE ORIGINS OF ALASKA'S OIL SAVINGS ACCOUNT, TRUSTEES' PAPERS, VOL. 5 (1997) (overview of the Alaska Permanent Fund), available at <http://www.apfc.org/publications/tp5.cfm?s=5> (last visited Sept. 2, 2004); see also THE ALASKA PERMANENT FUND TRUSTEES, 2003 ANNUAL REPORT (2003), available at <http://www.apfc.org/publications/2003anreport.cfm> (last visited Oct. 6, 2004).

171. ALASKA CONST. art. IX, §15.

172. See ALASKA PERMANENT FUND CORP., AN ALASKAN'S GUIDE TO THE PERMANENT FUND (2001), available at <http://www.apfc.org/publications/2001guide.cfm> (last visited Sept. 2, 2004) (hereinafter ALASKAN'S GUIDE TO THE PERMANENT FUND); see also Alaska Permanent Fund Index, available at <http://www.apfc.org> (last visited Sept. 5, 2004).

173. See ALASKAN'S GUIDE TO THE PERMANENT FUND, *supra* note 172. Eligibility depends upon submission of a written application to the state Department of Revenue, state residency, physical presence, U.S. citizenship, and other factors. ALASKA STAT. § 43.23.005 (Michie 2002). A "state resident" is "an individual who is physically present in the state with the intent to remain indefinitely in the state under the requirements of AS 01.10.055 or, if the individual is not physically present in the state, intends to return to the state and remain indefinitely in the state under the requirements of [Alaska Statutes section] 01.10.055." *Id.* § 43.23.095(7).

174. See ALASKAN'S GUIDE TO THE PERMANENT FUND, *supra* note 172.

175. See *id.*

176. The PFD was valued at \$27,678,700,000 as of September 20, 2004. See Alaska Permanent Fund Index, <http://www.apfc.org/index.cfm> (last visited Sept. 20, 2004).

177. Alaska Department of Revenue, 2004 Permanent Fund Dividend Calculation, available at <http://www.pfd.state.ak.us/forms/2004DividendAPFC-PFDcalculationsummary.pdf> (last visited Sept. 28, 2004).

An individual is disqualified from receiving a permanent fund dividend check in a dividend year if the person was sentenced or jailed for certain criminal convictions.¹⁷⁸ Criminals lose their PFD when sentenced or jailed for a felony conviction during all or part of the qualifying year.¹⁷⁹ A person also forfeits his or her PFD for the year when incarcerated as a result of a conviction of a felony or a misdemeanor if the person was previously convicted of a felony or two or more misdemeanors.¹⁸⁰ Forfeited amounts are used to "obtain reimbursement for some of the costs imposed upon the state criminal justice system related to incarceration or probation of those [convicted] individuals" as well as to "provide funds for services for and payments to crime victims and for grants for the operation of domestic violence and sexual assault programs."¹⁸¹ Consequently, each year such funds are used to pay for the Alaska Violent Crime Compensation Fund for payments to crime victims,¹⁸² the Council on Domestic Violence and Sexual Assault¹⁸³ for grants for the operation of domestic violence and sexual assault programs, the Alaska Department of Corrections for incarceration and probation related expenses, the Alaska Office of Victims' Rights, and non-profit victims' rights organizations for grants for services to crime victims.¹⁸⁴

How does this translate into funding for the OVR? Fiscal year 2005 illustrates the multitude of uses to which these forfeited funds are put.¹⁸⁵ As a result of this legislation, 8,490 persons lost their PFD checks for dividend year 2003,¹⁸⁶ a number that represents approximately .01% of Alaska's total population.¹⁸⁷ This amount totaled \$9,403,184.40 in forfeited dividends.¹⁸⁸ Portions of that amount were

178. ALASKA STAT. § 43.23.005(d) (Michie 2002).

179. *Id.*

180. *Id.*

181. *Id.* § 43.23.028(5)(A), (B).

182. *Id.* § 18.67.162.

183. *Id.* § 18.66.010.

184. *Id.* § 43.23.028(7)(b).

185. Fiscal year 2005 is the period from July 1, 2004 through June 30, 2005.

186. According to the Alaska Department of Revenue's Permanent Fund Dividend Division, there were 4,832 incarcerated misdemeanants, 3,330 incarcerated felons, and 328 sentenced felons who forfeited their PFD dividends in dividend year 2003. E-mail from Paul E. Dick, Chief of Operations, Permanent Dividend Fund, to Stephen E. Branchflower, Director, Alaska Office of Victims' Rights (May 18, 2004, 10:09:20 Alaskan Time Zone) (on file with author).

187. According to the U.S. Census Bureau, Alaska's total population in 2000 was 626,932. See U.S. CENSUS BUREAU, 2000 Census, available at <http://www.census.gov/census2000/states/ak/html> (last visited Sept. 27, 2004).

188. Information provided by the Alaska Department of Revenue's Permanent Fund Dividend Division. E-mail from Paul E. Dick, Chief of Operations, Permanent Dividend

appropriated by the Alaska legislature in 2004 for fiscal year 2005 to the Alaska Department of Corrections,¹⁸⁹ Alaska's Violent Crimes Compensation Fund,¹⁹⁰ the Council on Domestic Violence and Sexual Assault,¹⁹¹ an anti-batterer's intervention program,¹⁹² and the Alaska Office of Victims' Rights, which received \$481,600 of the forfeited funds.¹⁹³

M. OVR Case Category Profiles

During its first twenty-four months of operations, July 1, 2002, through June 30, 2004 (the "reporting period"), 445 crime victims from around the state and all walks of life utilized a variety of services offered by the OVR, including information, education, legal advice and advocacy, investigation, in-court representation, and support.¹⁹⁴ Victims have been referred to the OVR by judges, prosecutors, defense attorneys, physicians, mental health practitioners, legislators, victim support and advocacy groups, and others. The following statistical overview demonstrates the breadth of legal services that have been provided to Alaskans since the OVR was founded.¹⁹⁵

During this reporting period 162 clients contacted the OVR for information and subsequently decided not to file a complaint with the OVR.¹⁹⁶ Seventy-two crime victims sought advice and information and, after speaking with OVR staff, filed a formal complaint with the of-

Fund, to Stephen E. Branchflower, Director, Alaska Office of Victims' Rights (May 18, 2004, 10:09:20 Alaskan Time Zone) (on file with author).

189. CONF. COMM. SUBSTITUTE FOR H.B. 375, 23d Sess., at 44, line 26 (Alaska 2004), available at <http://www.legis.state.ak.us/PDF/23/Bills/HBO375Z.PDF> (last visited Oct. 6, 2004).

190. *Id.* at 6, line 11.

191. *Id.* at 30, line 23.

192. *Id.* at 31, line 3.

193. *Id.* at 37, line 17; see also 2003 ANNUAL REPORT OF THE PERMANENT FUND DIVIDEND DIVISION, available at <http://www.pfd.state.ak.us/annualreports/reports/2003AnnualReport.pdf> (last visited Oct. 6, 2004).

194. Figures for the OVR's first fiscal year are reported in 2003 ANNUAL REPORT, *supra* note 19, at 11 (207 new cases opened between July 1, 2002 and June 30, 2003). Figures for the OVR's second fiscal year are reported in 2004 ANNUAL REPORT, *supra* note 14, at 16 (238 new cases opened between July 1, 2003 and June 30, 2004). Data from these two reports have been aggregated to compute figures for the twenty-four month "reporting period" discussed here.

195. ALASKA ADMIN CODE tit. 23, § 30.120 (2004) authorizes the "disclosure as statistical, or summary information . . . as part of a statistical report, summary, or compilation if the identity of each person about whom the information relates is not identifiable in the statistical report, summary or compilation." *Id.*

196. See 2003 ANNUAL REPORT, *supra* note 19, at 11-12; and 2004 ANNUAL REPORT, *supra* note 14, at 15-17. Numerical data in this overview are aggregate sums of both the 2003 and 2004 Annual Reports.

fice.¹⁹⁷ These cases were easily resolved and involved minimal document collection and preparation. They primarily involved victims who only needed information on how the criminal justice system operates and who wished to have an independent third party look over their case to determine whether their treatment in the criminal process was consistent with crime victims' legal rights.¹⁹⁸ An additional eighty-seven crime victims came to OVR with particular problems or concerns regarding active criminal cases.¹⁹⁹ These clients filed formal written requests, and their cases required OVR to seek documentary evidence from the justice agency involved.²⁰⁰ 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.²⁰¹ One-hundred eleven crime victims came to OVR, seeking assistance with:

[S]ignificant 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 Alaska Statute[s] [section] 24.65.160.²⁰²

During this reporting period fourteen clients came to the OVR with "significant problems or concerns regarding active in-court criminal cases."²⁰³ "In addition to requesting documentary evidence from judicial agencies," these cases required the OVR to represent and argue on behalf of crime victims in the courtroom.²⁰⁴ Finally, during its first twelve months of operation, the OVR opened one formal inquiry that involved significant problems regarding an active police investigation.²⁰⁵ In that case, a crime victim filed a formal written request with the OVR, which required the agency to seek documentary evidence from the police de-

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. 2003 ANNUAL REPORT, *supra* note 19, at 11-12.

203. *Id.*

204. *Id.*

205. *See generally* STEPHEN E. BRANCHFLOWER & TAMARA DE LUCIA, INVESTIGATIVE REPORT REGARDING THE ANCHORAGE POLICE DEPARTMENT'S E-911 EMERGENCY RESPONSE TO THE PATRICIA GODFREY RESIDENCE, OVR complaint no. 02-004 (Nov. 26, 2002) [hereinafter INVESTIGATIVE REPORT] (on file with the author); 2003 ANNUAL REPORT, *supra* note 19, at 18-20.

partment in question.²⁰⁶ The 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.²⁰⁷ The case resulted in the publication of a thirty-six page formal report pursuant to Alaska Statutes section 24.65.160.²⁰⁸

V. CONCLUSION

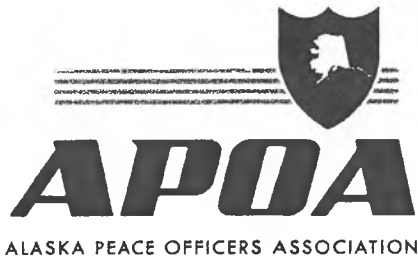
The Alaska Office of Victims' Rights was expressly created by the legislature to help crime victims cope with, understand, and successfully navigate the criminal justice system. More importantly, it was established to provide victims with free legal services provided by experienced criminal lawyers whose sole duty is to explain and secure for them the rights they are guaranteed under Alaska law in their contacts with police, prosecutors, defense counsel, judges, and other criminal justice agencies. Since its inception in 2002, the OVR has helped foster administrative and judicial sensitivity to crime victims and has worked to promote respect for and protection of victims' privacy and safety.

In a real sense, the OVR has served to illustrate what can be done to help crime victims when legislative resolve is strong and funding is available. To that end, the author hopes that states wishing to strike a fair balance between crime victims' rights and the rights of criminal defendants will follow in Alaska's pioneering footsteps and implement the Office of Victims' Rights model.

206. INVESTIGATIVE REPORT, *supra* note 205, at 1-3.

207. *Id.* Pursuant to ALASKA STAT. § 24.65.130 (Michie 2002), the OVR subpoenaed and reviewed approximately 4,105 documents from the Anchorage Police Department, the Municipality of Anchorage Office of Management and Budget and a private computer software applications developer. *Id.* The OVR also heard sworn testimony from police officials and interviewed numerous private individuals who had relevant information about the facts of the case. *Id.*

208. 2003 ANNUAL REPORT, *supra* note 19, at 20.



February 10, 2012

Business Manager

Joseph Young
Anchorage

**Board of Directors
Officers**

John Lucking, Jr., President
Soldotna

Kris Sell, Vice President
Juneau

Angella Long, Past President
Wasilla

Marilyn Bailey, Secretary-Treasurer
Anchorage

Directors

John Waldron, President
Aleutian Islands Chapter
Unalaska

Michele Logan, President
Anchorage Chapter
Anchorage

Steve Hall, President
Capital City Chapter
Juneau

Brad Johnson, President
Farthest North Chapter
Fairbanks

James Kimura, President
First City Chapter
Ketchikan

Mark Pearson, President
Kenai Peninsula Chapter
Kenai

Bob Griffiths, President
Mat-Su Chapter
Wasilla

Thecla LaLonde, President
Wrangell Chapter
Wrangell

PO Box 240106
Anchorage AK 99524

† 907 277 0515
f 907 272 5355

Senator Hollis French
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator French:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing Senate Bill 135, an act relating to the rights of crime victims; relating to the duties of prosecuting attorneys; and amending Rule 45, Alaska Rules of Criminal Procedure.

The APOA State Board of Directors recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.
State President

Making A Difference In The Last Frontier





January 24, 2012

The Honorable Hollis French, Senator
Chair, Senate Judiciary Committee
Alaska State Legislature, State Capitol
Juneau, Alaska 99801

RE: Senate Bill 135, Continuances in Criminal Trials; Victims

Dear Senator French:

On behalf of the Board of Directors of Victims for Justice, I am writing to support Senate Bill 135.

Time and time again, we see continuances provided to defendants in criminal cases for reasons that seem insufficient and sometimes disingenuous, with absolutely no consideration given to the challenges this presents to victims in the case.

We have supported victims of violent crimes, and the surviving family members of homicide victims, in cases where so many continuances have been granted that they caused the trial to be delayed more than a decade. This length of delay can work to the benefit of the defendant, when witnesses die or leave the state, memories fade, prosecutors change over and over and it becomes difficult or impossible to win a conviction. And these delays work to the serious disadvantage of victims who only want to see justice done, and to society in general.

We have known victims to travel hundreds or thousands of miles, and incur great expense and inconvenience so that they may exercise their right to attend a trial or hearing, only to have the trial or hearing continued with absolutely no consideration given as to how this impacts the victim.

We recognize that courts want to extend the benefit of the doubt to defendants, who, after all, are the ones whose liberty is at stake. However, we feel the courts often fail to take into consideration the rights afforded by our state Constitution to victims in these situations. Senate Bill 135 puts the victim in the picture, and supports the judge who considers the victim when deciding whether to grant a continuance.

This bill is a very modest change to existing statutes and court rules. It simply describes a means to implement the requirements of our state Constitution and statutes with regard to victims. However, in a very important way, this bill brings balance to our justice system.

The Board of Directors of Victims for Justice strongly support SB 135.

Regards,

Susan Sullivan
Executive Director



**STATE OF ALASKA
OFFICE OF VICTIMS' RIGHTS**

January 17, 2012

The Honorable Hollis French, Senator
State of Alaska Senate
Chair, Judiciary Committee
Alaska State Legislature
State Capital
Juneau, Alaska 99801

Re: Senate Bill 135, Continuances in Criminal Trials; Victims

Dear Senator French:

I write in support of Senate Bill 135, Continuances in Criminal Trials; Victims.

The proposed legislation strengthens notification standards for informing crime victims of any request for a continuance that may substantially delay the prosecution, the date of trial, sentencing, an appeal, and any hearing which the defendant's release from custody is considered.

The amendments to Alaska Criminal Rule 45 strengthen a crime victim's right to address the court, and for the court to consider the crime victim's perspective, before issuing an order based on a motion for continuance.

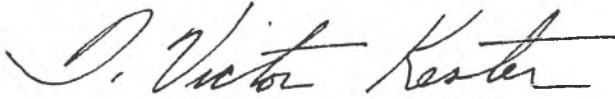
Both components to the proposed legislation fortify a crime victim's statutory rights and Alaska Constitutional rights to be "treated with dignity, respect, and fairness" and "to timely disposition of the case..." (Alaska Constitution, Article 1, Section 24). The proposed legislation also stands to amplify the crime victim's voice before the court and other criminal justice agencies regarding delay in the criminal justice process.

I believe strongly that the administration of justice is improved when a crime victim's voice is heard and considered within the Alaska criminal justice system.

In sum, the proposed legislation wisely aligns with the Alaska Constitutional rights of a crime victim - especially with regard to the timely disposition of a criminal case.

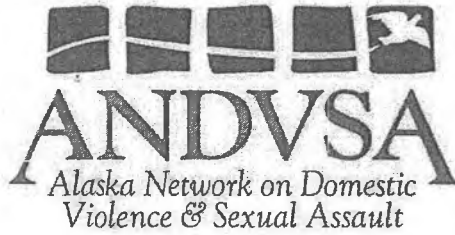
I stand ready to testify in support of this legislation.

Respectfully submitted,

A handwritten signature in cursive script that reads "D. Victor Kester". The signature is written in black ink and is positioned above the typed name and title.

D. Victor Kester
Executive Director

Main Office
130 Seward St #214
Juneau, Alaska 99801
Phone: (907) 586-3650
Fax: (907) 463-4493
www.andvsa.org



Pro Bono Office
PO Box 6631
Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907) 747-7547

January 25, 2012

Honorable Senator Hollis French
State Capitol, Room 417
Juneau, Alaska 99801

Re: Senate Bill 135, Right to a Timely Disposition

Dear Senator French:

Thank you so much for introducing this very important bill. The Alaska Network on Domestic Violence and Sexual Assault strongly supports Senate Bill 135. It is our understanding that this bill will provide a victim of crime, including domestic violence and sexual assault crime victims, a notice from law enforcement or prosecution when there will be a request for a continuance that would substantially delay a prosecution. All too often in Alaska victims have been disappointed in the process, procedure and outcome of their case. This bill will provide for consideration of the victim's wishes, the impact that continual delays will have on a victim of crime, and provide the victim with information of what to expect or what not to expect, in the nearer future.

Our eighteen member victim service agencies throughout the state witness daily the impact these delays have on the people they serve. Time and time again, our advocates appear in court with victims of both domestic violence and sexual assault, only to have their courage and hopes dashed by yet another delay. It has become a 'tactic' which, when employed, disheartens the victim, decreases their sense of safety and decreases their faith in the criminal justice system and the State of Alaska. Hopefully, this bill will strike a balance between the Constitutional right to a speedy trial for both defendants and victims.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peggy Brown', written in a cursive style.

Peggy Brown
Executive Director

cc: Lisa Mariotti, Policy Director

Member Programs

Anchorage AWAIC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFE Fairbanks IAC Homer SPHH
Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRCC Kotzebue MFCC Nome BSWG
Seward SeaView Community Services Sitka SAFV Unalaska USAFV Valdez AVV



Crisis Intervention | Advocacy | Education | Prevention

January 20, 2012

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801

Re: Senate Bill 135, Continuances in Criminal Cases

Dear Senator French:

Standing Together Against Rape (STAR) strongly supports any bill that affords a victim of crime the opportunity to have their voice and concerns heard by the justice system. Senate Bill 135 appears to strengthen "the right to a timely disposition of the case following the arrest of the accused" as stated in the Alaska Constitution.

Crime victims, in particular, victims of sexual assault feel a tremendous amount of anxiety when contemplating facing the person who assaulted them in court. The anxiety builds, creating sleepless nights and increased reliance on coping skills. The day arrives, and the trial is continued. This pattern can be repeated over and over and over again. If the offender is incarcerated the victim is afraid they will be released. If the offender is not incarcerated the victim feels they must continue watching over their shoulder at the market, the department store, the movies, etc. The ability of the victim to move about freely may be inhibited.

While I believe it is not the intent of prosecution to re-victimize crime victims, repeated continuances often do. At the same time STAR recognizes the need for the prosecution to put forth a strong case, to increase the possibility of conviction, to hear defense requests and to lessen the likelihood of appeal. Hopefully this bill will allow for a balance to be struck between the two.

Respectfully submitted,

Standing Together Against Rape
Nancy A Haag, MSW
Executive Director

STAR's mission is to provide quality crisis intervention, education and advocacy services to victims of sexual assault, sexual abuse, their families and our community.

1057 W. Fireweed Lane
Suite 230
Anchorage, Alaska 99503

Office Line 907.276.7279
Fax 907.278.9983
Web www.staralaska.com

24-Hour Crisis Line 907.276.7273
Relay Friendly
Toll Free 800.478.8999

Dear Lawmakers,

I am writing to encourage your support for Senator Hollis French's SB 135 dealing with a victim's constitutional right to "timely disposition of their case."

As many of you may recall, my daughter, Bonnie Craig, was murdered in September 1994. Her killer, Kenneth Dion was finally sentenced October 31st, 2011. For 17 years our family, friends and the community waited for justice. Our constitutional right to "timely disposition of our case" was violated again and again. I vowed, when thrown into this horror story, that I would make sure the things that went wrong in our case would be changed for others.

Protecting a victim's right to "timely disposition" is the most important change that needs to come out of this incredible tragedy. It was the most egregious violation that our family had to endure, and that violation was at the hands of the State of Alaska, not the criminal. I need your help to ensure all future victims will have their constitutional rights protected in Alaska. Let's balance the scales of justice and honor the victim's right to "timely disposition."

Do not be mistaken. It is not okay to think: "At least the criminal is behind bars and can't hurt anyone else." The pain inflicted on the victims is inexcusable and the prosecution of the case against the defendant weakens daily. Delays are a tactical advantage for defense attorneys to accommodate defense attorneys, rarely the defendant.

Kenneth Dion was identified November 2006. From the time he was identified our family was basically placed under a "gag order." Nothing could be said to the press, our friends, or the community. Our incredible grief - the wounds being ripped wide open, bringing us back to the day we were notified of Bonnie's death - were to be muzzled, and kept deep within us. We weren't allowed to share the news, our private trauma, our personal hell, for four months. As a family, we tried to continue our life as if nothing was happening, pretending this incredible burden and stress didn't exist. It was tearing us apart, eating at the very core of our existence, like a cancer. It destroyed relationships and financially ruined me. It affected our health and my parenting abilities. It could, and can, destroy a whole family.

Finally, May 1st, 2007 the news was released. Although we talked with the press and could finally share the information with friends, the gag was, once again, placed on our family members to avoid all contact with media. The threat of a "change of

venue" is not something a victim's family can take lightly. Until a jury is selected, avoiding any media coverage is critical. Our jury was selected more than 4 years later. During that time it became abundantly clear that the defense attorney and the defendant hold all the power and they call all the shots. Victims can only sit back and wait without complaining.

I know that you will never be able to even imagine the pain and suffering a parent, a sister and brothers goes through while awaiting a trial. Our pain and stress and fear was multiplied ten-fold with the memories of Joshua Wade being acquitted. We knew things could go wrong, evidence could get lost, a technicality could cause a mistrial, investigators and witnesses could die or be lost. We know memories fade. We know each day something could come up that could make it impossible to prosecute the man who brutally raped and murdered Bonnie. Our life is in a limbo, teetering on insanity. It is beyond comprehension. Yet, we try to continue our life with a new kind of normalcy.

Our first trial date was set for September, 2008. Please keep in mind that the killer was identified November, 2006. I wept when Judge Patrick MMcKay set the date. It was like having your guts ripped out of your body. He justified it by saying it would give both the prosecution and the defense plenty of time to prepare and that there would be absolutely no reason for any continuance. He vowed that he wanted to make sure both sides would be prepared, so we were going to have pretrial conferences to avoid any surprises or complications from arising. And we did. By the time we got to trial we had 45 pre-trial conferences, status and motion hearings. The judges, both Judge McKay and Judge Jack Smith were trying to make sure the defense was getting all they needed and getting ready for trial. They both failed. If the defense asks for anything, the judge, in fear of an appeal, will always grant the defense more time, even if it meant losing Pat Gullufson, our prosecutor of 3 years who had to retire for medical reasons. (July 15, 2010 a new prosecutor, Paul Miovas, took the case over. He successfully handled the case in less than 10 months.)

More than once, Lee De Grazia, the first public defender, misled the Judge. We all knew it and yet he never called her on it. One month before the trial was to start she claimed she fired her "DNA Expert" and would need more time. We all sat there amazed and wondering if she was lying. Had she even hired one yet? She doesn't need to answer to anyone. There was no accountability. She made a mockery of the whole system. When the case was finally handed over to Office of Public Advocacy defense attorney Andrew Lambert (03/23/09) he told Judge McKay that De Grazia had done virtually nothing on the case and the judge

responded, "I was afraid of that." 18 months had been wasted on a totally incompetent defense attorney.

Make no mistake, the delays are not about affording the defendant a fair trial, nor protecting the defendant's rights. They are for the benefit of, more times than not, the defense attorney's schedule and needs. The litigation of a case is dictated by the personal life of the defense attorney. Timely disposition is about case management and having efficient and effective counsel. It is about prioritizing cases that have been lingering on for the benefit of the defense attorney's schedules. You can't imagine how disheartening it is to hear your case is going to be delayed, yet again, for 4-5 months because the defense attorney wants to go on their second, one month vacation of the year and he needs about a week to do a divorce case for a buddy of his and he is going to visit some schools for his daughter. Why can't co-counsel take over?

If a builder is building a home he can't tell the client he is going away for a month on vacation and will need 3-4 more months. In just about any profession a project must be completed before those involved can decide to take time off.

If you were diagnosed with cancer and the doctor goes for vacation for a month you have the opportunity to use another doctor. Victims have no choice, but to sit and wait. Prosecutors can't request that we use another defense attorney or that co-counsel handle the scheduled hearing, nor can the judge tell a defense attorney they will need to hold off on their vacation.

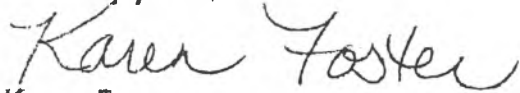
Below, I have listed each trial date that was set. I can never describe the sickening feeling a family feels when you are told, once again, that the trial date will be changed. You feel like you are going to vomit. Again, it's like your guts are being ripped out of you. In many cases I was on the verge of tears, knowing we would be given no consideration. And, it is always incredulous reasoning, something that you think may require an extra week or two, delays the trial by 4 months or more.

Preparing for each pretrial hearing is mentally exhausting. You have difficulty functioning and sleeping in fear of what the defense is going to do each time. The tension and anxiety are overwhelming. Getting to court is difficult. We had 45 pretrial hearings. Please consider what that does to families. As a victim, you can't plan life too far in advance; you can't start to rebuild your life.

Refusal to deal with "timely disposition" is a refusal to address the inefficiencies in our justice system, and allowing the "justice system" to re-victimize the victims. Please, support Senator French's SB 135 to honor victim's constitutional right to

"timely disposition of their case." Show the victims the respect they deserve and stop the re-victimization of the victims.

Sincerely yours,



Karen Foster

November, 2006	Defendant Identified	
September 15, 2008	First Trial Date	4 month delay
January 5th, 2009	Second Trial Date	4 month delay
May 11, 2009	Third Trial Date	4 month delay
April 19, 2010	Fourth Trial Date	One year delay
August 30, 2010	Fifth Trial Date	4 month delay
February 7th, 2011	Sixth Trial Date	6 month delay
May 10th, 2011	Went to Trial, Jury finally selected.	

Lila Hobbs

From: karen.dynamic@gci.net on behalf of Karen Foster <karen.dynamic@gci.net>
Sent: Friday, January 27, 2012 7:38 AM
To: Lila Hobbs
Subject: Today's Hearing

The earlier email I sent had the wrong date for the new defense attorney. It should have been 2009 Can you please change it. Thanks,

Karen

State of Alaska v. Kenneth Dion

November, 2006	Kenneth Dion Identified	
September 15, 2008	First Trial Date	4 month delay
January 5th, 2009	Second Trial Date	4 month delay
May 11, 2009	Third Trial Date	4 month delay
March 23, 2010	New Defense attorney assigned	
April 19, 2010	Fourth Trial Date	One year delay
July 15, 2010	New Prosecutor assigned	
August 30, 2010	Fifth Trial Date	4 month delay
February 7th, 2011	Sixth Trial Date	6 month delay
May 10th, 2011	Went to Trial, Jury finally selected.	
June 15th, 2011	Dion convicted	
October 31st, 2011	Dion sentenced to 124 years	