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

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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.

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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

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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/ltgov/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]

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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]

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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

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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

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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

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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 Act[39] 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

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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 nature[45] 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]

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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

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> *fendants* 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

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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 hearing[74] 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

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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.

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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 confidential[117] 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 agency[120] 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 jury[123] 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

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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 adjudication[137] 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

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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' advocate[142] 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

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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

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(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

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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 ("PFD"). 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

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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 visted 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]

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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-PFDcalculation summary.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 Assault[183] 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 nonprofit 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

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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 divided 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/census 2000/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-

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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-

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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.

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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.