Chapter Five

CRIMINAL LAW AND VICTIMS’ RIGHTS

In a criminal case, a prosecuting attorney (working for the city, state, or federal government) decides if charges should be brought against the perpetrator. The decision to bring charges is not just based on whether the prosecutor believes the crime occurred, but whether the case can be proven to a jury. The prosecutor’s burden requires proof beyond a reasonable doubt that the defendant committed the crime charged. If even one juror does not find evidence beyond a reasonable doubt, the offender is not convicted. This heavy burden sometimes results in cases not being prosecuted, even though the police and prosecutor believe the victim.

Victims of crimes have certain rights and protections under state and federal law. Alaska has the Alaska Office of Victims’ Rights and the Violent Crimes Compensation Board to assist victims of crime.

What are the different types of crimes in Alaska?

Crimes are divided into felonies, misdemeanors, and violations. Felonies are serious offenses, such as murder, for which the sentence can include imprisonment for more than a year. Misdemeanors are less serious crimes, such as driving while intoxicated, that can lead to imprisonment for up to one year. Violations are minor infractions, such as traffic tickets, that cannot be punished by imprisonment and are generally punished by fines.

How is a criminal case different from a civil court case?

A criminal case differs from a civil case in several ways. Unlike criminal cases in which a government prosecutor files charges, civil cases are filed by people (or their attorneys). People in civil cases are asking for remedies or relief, such as money or protection, for themselves. In criminal cases, prosecutors are representing the “people” and trying to protect communities from criminal activity. Criminal cases always involve some type of crime. In a criminal trial, the jury must unanimously agree in order to reach a verdict. Civil cases cover a wide range of subjects including protective orders (discussed in Chapter 6), divorces and dissolutions (discussed in Chapter 14), child custody and support, property division, and paternity issues. At a civil trial, only a majority of the jury must agree on the decision to reach a verdict and many civil cases, including family law cases, are tried in front of a judge rather than a jury.

Note: Domestic violence protective orders are unique because, although a protective order is a civil remedy, it can result in criminal charges if violated.

If criminal charges are filed, will I have to go to court?

If you are the victim of a crime or a witness to one, you may be asked or subpoenaed to testify at a grand jury and/or trial proceeding. If you are served with a subpoena, you have been ordered to appear before a judge and/or a jury. If you do not appear, you may be charged with the crime of contempt. If you are subpoenaed in a criminal case, you can call the agency that subpoenaed you for answers to any questions you have.
Your local domestic violence or sexual assault program or the Office of Victims’ Rights can provide advocacy and information about the criminal process. See the Resource Directory at the end of this handbook for contact information.

What help can paralegals in the prosecutor’s office provide?

Paralegals provide support and information to crime victims and assist the prosecutor with case preparation throughout the criminal justice process. They are a valuable resource to contact if you need to find out the status of your case, to learn what your legal rights are, or to answer questions you have about the criminal process.

How do I know what my rights are as a crime victim?

Police and prosecutors are required by law to tell you about the Alaska Office of Victims’ Rights (OVR) and provide OVR’s contact information. You can contact OVR at any time after the crime is reported to law enforcement. There are other resources available to learn about your rights such as this handbook, OVR’s website, domestic violence and sexual assault advocacy programs, the Alaska Department of Law’s website, as well as paralegals at the Prosecutor’s Office (like the District Attorney’s Office or the Municipal Prosecutor’s Office). See the Resource Directory at the end of this handbook for contact information.

CRIME VICTIM RIGHTS

You have both constitutional and statutory rights as a crime victim. Your constitutional rights are those contained in Alaska’s Constitution, Article I, Section 24. Statutory rights are those created by the Alaska legislature.

If you are a victim of a crime, you have the following rights under the Alaska Constitution:

• The right to be treated with dignity, respect, and fairness throughout all phases of the criminal justice or juvenile justice process.

• The right to protection from the defendant by the judge setting bail and/or conditions of release.

• The right to the timely disposition of the case following the arrest of the defendant.

• The right to talk with the prosecutor.

• The right to obtain information about and to attend all criminal or juvenile delinquency hearings that the defendant has a right to attend.

• The right to be heard, if you request, at the defendant’s sentencing or the juvenile’s disposition.

• The right to be heard at bail hearings, if you request, or at any proceeding where the accused’s release from custody is considered.

• The right to restitution from the defendant.
Many of these rights are also protected in federal law under 42 U.S.C. Section 10606(b).

In addition to the rights crime victims have under the Alaska Constitution, there are numerous statutory rights crime victims have in Alaska. Some of these rights include:

• The right of all crime victims upon initial contact with police and prosecutors to be told about and given contact information for the Office of Victims’ Rights.

• The right to be provided information about and application forms for the Violent Crimes Compensation Board.

• The right to see a doctor if you are in need of immediate medical attention.

• The right to protection from harassment or threats because of your involvement in this case. If someone bothers you or threatens you, call the police or the Prosecutor’s Office. They may be able to help in these ways:
  • by contacting the person, or the person’s attorney, to tell the person to stop bothering you;
  • by investigating and, if necessary, arresting and prosecuting the person;
  • by asking a judge to put the person back in jail, if the person has been released; and
  • by providing information about shelter programs that may be available in your area.

• The right not to be fired from your job because you have to miss time from work to go to court at the request of the prosecuting attorney.

• The right not to have your address released to the public.

• The right to be told when the defendant will go to court for trial and for sentencing and to be told if those court dates change.

• The right to be told, after the defendant is convicted, about the defendant’s other criminal convictions.

• The right to choose if you want to talk to the defense. The person who is charged with the crime will usually have an attorney to help with the case. The attorney, or a person working for the attorney, may want to talk to you. There is nothing wrong with this, but when the person contacts you, he/she must tell you:
  • his or her name and how he or she is associated with the defendant;
  • that you do not have to speak to him or her unless you want to do so; and
  • that you may have a District Attorney or other person present during the interview.

Note: The defense’s attorney may record your conversation if you choose to talk to them, pursuant to a 2007 court case called Murtaugh v. State, and they do not have to tell you that they are recording the conversation.
What rights do crime victims have regarding a defendant’s sentencing and post-sentencing?

As a crime victim, you have a number of rights specifically related to the defendant’s sentencing and after the defendant has served his sentence. Some of these rights include:

• The right to be heard at sentencing in misdemeanor, felony or juvenile cases, if you request.

• The right to Violent Crimes Compensation Board information and how to apply. The Violent Crimes Compensation Board (VCCB) is a program to reimburse victims of violent crime for crime-related expenses such as medical bills, lost wages, and counseling costs. Some VCCB reimbursements are made prior to a defendant’s sentencing. More information on VCCB is presented later in this chapter. See the Resource Directory at the end of this handbook for contact information for VCCB.

• The right to restitution if the defendant is convicted. Restitution is when the judge orders the defendant to pay for your expenses/losses caused by the crime that are not covered by other sources (such as insurance). To request restitution, you must fill out a “Restitution Request Form” and return it to the Prosecutor’s Office. If expenses are ongoing (so you do not yet have a final amount), provide the current total and explain which amount you will provide in the future giving an approximate date. Be sure to follow up. Contact your local Prosecutor’s Office for assistance.

If the judge orders restitution for you, a special office that oversees the collection of restitution should contact you soon. That office is the Attorney General’s Office, Collections Unit, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501. If you have questions, you may contact the office by calling 1-800-580-5205. It is important to notify the collections unit if you change your address, so they can get to you any money collected. You also have the right to seek collection privately if you choose.

• The right to notice and the right to attend the defendant’s parole board hearing if you request.

• The right to be provided, after conviction, the defendant’s complete conviction history.

• The right to notice that the defendant has filed an appeal.

• The right to a written copy of the judgment or disposition within 30 days of the end of a domestic violence or felony case, if you make a request.

• The right to be told when the defendant will be released and/or if the defendant escapes from jail, if you make a request. Make your request by registering with the VINE system (an automated notification system) by calling 1-800-247-9763 and following prompts, or signing up online (www.vinelink.com). In addition, if you make a written request, a recent photo of the defendant will be sent to you with the notice of release or escape. To make a request for a recent photo, write to:

Department of Corrections
4500 Diplomacy Dr., Suite 219
Anchorage, AK 99508

From Women’s Legal Rights Handbook
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• The right to be told when the defendant will be released from a mental institution if the defendant was found not guilty by reason of insanity, if you make a request. To make a request for notification of release or escape from a mental institution, write to:

Alaska Psychiatric Institute
2900 Providence Dr.
Anchorage, AK 99508

How can you be heard at sentencing?

You can give your statement to the judge at sentencing by:

• writing a letter to the judge;
• appearing in person to speak at the sentencing;
• having someone speak on your behalf at sentencing; and/or
• providing a victim impact statement in the presentence report if a presentence report is ordered (see more below about presentence reports).

What can you say or write about when addressing the court on sentencing?

For sentencing, you may write or talk about any relevant information including:

• how the crime hurt you or your family (emotionally, physically, financially, etc.) and affected your life;
• what you think should happen to the defendant (jail, counseling, having to stay away from you and your family, paying you for your out-of-pocket expenses not covered by insurance, etc.); and
• other information you would like the judge to know about the defendant or this case.

Note: If you wish to speak at the sentencing, please inform your contact person in the Prosecutor’s Office so time can be set aside for you to do so.

What is a presentence report?

If the defendant is convicted of a felony crime, the judge may order a “presentence report.” The purpose of the report is to provide information to the judge about the defendant, the crime, and how the crime affected you. For that reason, the person writing the report should contact you to get your victim impact statement whether you provide it orally to the report writer or in writing. You have the right to be told the address and phone number of the office that will prepare the presentence report for the judge and the right to be interviewed by the person writing the presentence report. If you want restitution from the defendant, it is important to let the presentence report writer know. The presentence report is confidential to specific parties. Only the prosecutor, the judge, the defense attorney, and the defendant are allowed to read the entire report.
If you are the victim in the crime, you are entitled to read parts of the report before the sentencing if you request. You can contact the paralegal or prosecutor in the Prosecutor’s Office handling your case or contact OVR for assistance. The parts of the pre-sentence report that are available to you are:

• the summary of the offense;

• the defendant’s version of the offense;

• the summary of your statements;

• letters of support for the defendant that have been provided; and

• the sentence recommendation made by the report writer.

THE ALASKA OFFICE OF VICTIMS’ RIGHTS:

What is the Alaska Office of Victims’ Rights?

The Alaska Office of Victims’ Rights (OVR) provides free legal representation to crime victims throughout the criminal process. Its purpose is to help crime victims secure the rights they have under the Alaska constitution and statutes with regard to their contacts with criminal justice agencies in this state.

The Alaska legislature passed a law in 2001 that created OVR. The agency operates similar to an Inspector General’s office. It was created within the legislative, rather than the executive branch, to avoid any conflicts of interest within state government and to ensure that the OVR director and staff attorneys would have the necessary independence to investigate criminal justice agencies and make appropriate recommendations in their effort to help crime victims and their families. The law went into effect on July 1, 2002. [AS 24.65.010-250] Contact information for the Alaska Office of Victims’ Rights is in the Resource Directory at the end of this handbook.

Can OVR advocate in court on behalf of crime victims?

To accomplish the goal of assisting you as a crime victim and of protecting your rights as a crime victim, OVR can advocate in court for you. OVR has authority to represent you and advocate on your behalf in state court in cases involving any felony offense, all class A misdemeanors involving domestic violence, and all class A misdemeanors involving crimes against the person.

What types of things can OVR do to advocate for crime victims?

OVR works with you to understand what your individual concern or complaint is as it relates to your being a crime victim. Here are just a few of the ways OVR can assist:

• contact law enforcement to determine why the criminal investigation is taking a long time or to determine whether the case is being referred for prosecution.

• determine why a case is not being charged by the prosecution or why it is taking so long to have charges filed.
• help you understand what specifically is happening with the case including what to expect in the various stages of the criminal justice process, and what your rights are at each stage of the process.
• upon consultation with you, OVR can file pleadings on your behalf to assert your rights in the criminal case, such as the right to speedy disposition of the case or to assert your privacy rights.
• address the court about a bail release proposal, continuances, or to provide a victim impact statement on your behalf if you choose not to personally address the judge.
• help protect your right to privacy when the defense or prosecution tries to obtain your privileged or confidential records such as mental health, substance abuse, counseling, medical or other personal records.

How does OVR investigate complaints by victims?

If you are a victim of crime, you have a right to file a request for help with OVR when you believe you have or may be denied any of the victims’ rights established by Article 1, Section 24 of Alaska’s Constitution or an Alaska statute. OVR is empowered to investigate your concerns and take appropriate action on your behalf regarding your contacts with criminal justice agencies such as law enforcement, prosecution, the courts, or defense attorneys. In conducting an investigation, OVR may:

• make inquiries and obtain necessary information or documentation from justice agencies;
• hold private hearings; and
• notwithstanding other provisions of law, have access to records of justice agencies, including court records of criminal prosecutions and juvenile adjudications, necessary to ensure that the rights of crime victims are not being denied; with regard to court and prosecution records, OVR is entitled to obtain access to every record that any criminal defendant is entitled to access or receive. [AS 24.65.120.]

Some examples of information and records available to OVR are police reports, witness statements, lab reports, photos, taped statements, grand jury proceedings and exhibits, officers’ notes, scene diagrams, dispatch records, autopsy reports, presentence reports, access to all physical evidence, and more. All information and/or records obtained during any OVR investigation, including information and records subpoenaed by OVR are deemed confidential, and cannot be provided to victims.

Are matters that come before OVR confidential?

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

Can OVR assist criminal defendants?

The term “criminal defendant” means any person who is charged with a crime or who has been convicted of a crime. It is the general policy of OVR not to investigate complaints from crime victims who are also
charged with crimes from the same event.

COMPENSATION FOR VICTIMS OF VIOLENT CRIMES

Alaska has a Violent Crimes Compensation Board that can provide compensation to victims who have been physically or emotionally injured in a violent crime in Alaska, victims of drunk drivers or when a car is used as a weapon, and survivors of a homicide victim. This program can provide up to $40,000 per person per incident. In the case of a victim’s death where there is more than one dependent, up to $80,000 may be awarded. [AS 18.67.130.] See the Resource Directory at the end of this handbook for contact information.

What are the requirements to be eligible to apply for compensation?

• You must have reported the crime to local law enforcement within five days, unless there is an explanation why you could not reasonably report in that period.

• You must file an application with the program within two years from the date of the crime.

• You must cooperate with the reasonable requests of law enforcement officers, prosecutors and their staff during the investigation and prosecution of the crime.

• You must not have caused or contributed to your injury or death by violation of a state law or by your own behavior (note: in cases of domestic violence, sexual assault or sexual abuse of a minor, the use of drugs or alcohol will not be taken into account as “contributory behavior”).

How long will it take?

It can take three to six months to determine if you can be helped by the program. Payments will be made when all required information is received and the claim is approved.

What is emergency compensation?

Emergency compensation is available in an amount up to $5000 and may be awarded for lost wages, counseling, relocation (where safety is a concern), or security measures.

Should I apply for compensation?

If you have been the victim of a violent crime and have reported it to law enforcement, you may apply for compensation even if you are not sure whether you meet all the eligibility requirements. You will have an opportunity to explain your circumstances if necessary.

What costs may be paid?

Costs that may be paid include:

• Medical care needed for victim's injuries
• Counseling
• Transportation to medical and counseling services
• Wages lost as a direct result of the crime injuries
• Criminal proceeding attendance costs not paid by other sources such as transportation, lodging, food, and lost wages
• Security measures such as new locks, motion lights, monitored systems, cell phone, temporary mailbox, and dog training
• Loss of support for dependents of deceased victims
• Funeral and burial costs for homicide victims
• Replacement of doors, locks and windows

The Violent Crimes Compensation Board will not pay for:

• lost or damaged property (other than medically necessary items e.g. eyeglasses, or repairs needed for security);
• money aimed at compensating you for any physical or emotional pain you are experiencing; or
• costs compensated under Workers’ Compensation or another State or federal program.