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Governor Sean Parnell
STATE OF ALASKA

January 25, 2010

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault,

Under the authority of Art. III, Sec. 18, of the Alaska Constitution, I am transmitting a bill that adopts procedures for post-conviction deoxyribonucleic acid (DNA) testing and evidence retention.

This bill will adopt standards for evidence retention and disposal. As well as procedures for post conviction DNA testing and address changes in the DNA identification registration system.

The United States Supreme Court recently upheld Alaska's post-conviction procedures against a challenge based on due process of the law. In the District Attorney's Office for the *Third Judicial District v. Osborne*, 129 S. Ct. 2308 (2009), the court found Alaska's post-conviction relief statutes and procedures to be constitutional. While our current law is legally satisfactory, provide statutory guidance for granting post-conviction DNA testing will allow policy makers to adopt the most reasonable balance for ensuring that a person is not mistakenly convicted, and at the same time will protect the vast majority of convictions that are correct.

A person who has been convicted of a crime, and whose conviction has been upheld on appeal, has already had adequate opportunity to argue legal issues arising at trial and on appeal. The post-conviction DNA testing procedure should be limited to cases where the person reasonably claims that the wrong person was convicted. The bill provides for post-conviction DNA testing when there is a reasonable probability that the testing would produce evidence that could conclusively establish that the applicant is innocent.

The bill addresses retention of physical evidence and biological material in homicide, sexual assault, and abuse cases, and provides standards that may vary according to the community and the law enforcement resources of that community. A small community may be unable to retain large items of evidence in a criminal prosecution, but it can preserve samples of the evidence for use in future DNA testing or other post-conviction procedures. A larger community may have more space for evidence retention, and would be able to keep more of the original evidence rather than cutting representative samples of it. The bill also includes a procedure in which a law enforcement agency,

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after giving notice to all parties, may dispose of physical evidence and biological material if there is no objection to the disposition.

In addition to keeping evidence so that it may be used at a later date, law enforcement and other agencies, such as courts and prosecution offices, must safeguard it so that it is useful for possible future testing. The bill authorizes the establishment of a task force to include law enforcement, prosecutors, the court system, a representative from the crime laboratory, and the medical examiner to develop policies and procedures for maintaining evidence in a way that will protect and safeguard against tampering or degradation. Standards for evidence collection and retention will be established as well.

Although the Alaska post-conviction law has been upheld by the United States Supreme Court, standards for evidence retention and a procedure for post-conviction DNA testing will strengthen the current law and provide one more protection in our justice system.

I urge your prompt and favorable consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Parnell". The signature is written in a cursive, flowing style with a large initial "S".

Sean Parnell
Governor

Enclosure