

CS FOR HOUSE BILL NO. 201(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/1/95

Offered: 4/24/95

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to prisoner litigation, post-trial motions, post-conviction relief,
2 sentence appeals, execution on judgments against prisoners; amending Alaska
3 Administrative Rule 10, Alaska Rules of Appellate Procedure 204, 208, 209, 215,
4 403, 521, 602, 603, and 604, Alaska Rules of Civil Procedure 3, 16.1, and 65,
5 and Alaska Rules of Criminal Procedure 11, 33, 35, and 35.1; and providing
6 for an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** AS 09 is amended by adding a new chapter to read:

9 CHAPTER 19. PRISONER LITIGATION AGAINST THE STATE.

10 Sec. 09.19.010. LIMITATION ON EXEMPTION FROM FILING FEES. (a)
11 A prisoner may not commence litigation against the state unless the prisoner has paid
12 full filing fees to the court or is a claimant under AS 23.20, except that the court may
13 exempt a prisoner from paying part of those fees if the court finds exceptional

1 circumstances as described in this section.

2 (b) To apply for a filing fee exemption, a prisoner shall submit to the court

3 (1) an affidavit that clearly discloses that the person is a prisoner and
4 that sets out

5 (A) the prisoner's complete financial situation, including the
6 prisoner's income, assets, and court-ordered payments;

7 (B) the circumstances that prevent the prisoner from paying full
8 filing fees; and

9 (C) the nature of the action or appeal and specific facts that
10 would, if proven, state a claim on which relief can be granted or entitle the
11 prisoner to reversal on appeal;

12 (2) a certified copy of the prisoner's account statement from the
13 correctional facility in which the prisoner is being or has been held for the six-month
14 period preceding the submission of the application; and

15 (3) other documentation or financial information as the court may
16 require.

17 (c) Based on the submission under (b) of this section, the court may grant an
18 exemption from part of the applicable filing fees if the court finds that exceptional
19 circumstances prevent the prisoner from paying full filing fees. Imprisonment and
20 indigency do not constitute exceptional circumstances if the prisoner has available
21 income or resources that can be applied to the filing fee.

22 (d) If the court orders an exemption under (c) of this section, the court shall
23 determine the amount of the exemption and set a filing fee to be paid by the prisoner.
24 In setting the fee, the court, at a minimum, shall require the prisoner to pay filing fees
25 equal to 20 percent of the larger of the average monthly deposits made to the prisoner's
26 account described in (b)(2) of this section, or the average balance in that account, not
27 to exceed the amount of the full filing fee required under applicable court rules.

28 (e) The court shall mail or otherwise serve its order under (d) of this section
29 on the prisoner. Along with its order, the court shall give written notice that the case
30 or appeal will not be accepted for filing if payment of a filing fee is not made within
31 30 days after the date of distribution of the order, unless the time for payment is

1 extended by the court. If timely payment is not made, the court may not accept any
2 filing in the case or appeal. If payment is made, the prisoner's filing and supporting
3 documents shall be accepted for filing with the court.

4 Sec. 09.19.020. DISMISSAL FOR MATERIAL MISSTATEMENTS. If a
5 prisoner has filed litigation against the state, the court shall dismiss that litigation if
6 the court finds that the pleadings filed by the prisoner or an application filed by the
7 prisoner to obtain an exemption under AS 09.19.010 contain a material statement made
8 by the prisoner that is not true.

9 Sec. 09.19.030. STAY IN PRISONER DISCIPLINARY APPEALS. A
10 superior court that reviews a disciplinary decision of the Department of Corrections
11 as an administrative appeal may not enter an order staying disciplinary sanctions unless
12 the pleadings filed by the prisoner establish by clear and convincing evidence that the
13 prisoner has alleged a violation of a fundamental constitutional right and is likely to
14 succeed on the merits in the appeal, that the prisoner faces irreparable harm if a stay
15 is not granted, that the Department of Corrections can be adequately protected if a stay
16 is granted, and that a stay will not adversely affect the public interest in effective penal
17 administration.

18 Sec. 09.19.040. INJUNCTIONS OR ORDERS IMPOSING OBLIGATIONS
19 IN PRISONER CASES. In litigation against the state brought by a prisoner, a court
20 may not enter an injunction or issue an order or decision that would impose an
21 obligation on the state or its employees that would exceed the obligations imposed by
22 the United States Constitution, the Constitution of the State of Alaska, and applicable
23 federal and state statutes and regulations, unless the obligation is agreed to by the state.

24 Sec. 09.19.050. DISCOVERY IN PRISONER CASES. The automatic
25 disclosure provisions of Alaska Rule of Civil Procedure 16.1 do not apply to litigation
26 against the state brought by a prisoner.

27 Sec. 09.19.100. DEFINITIONS. In this chapter,

28 (1) "litigation against the state" means a civil action or an appeal from
29 a civil action or from the final decision of an administrative agency that

30 (A) involves the state, an officer or agent of the state, or a state
31 employee, or a former officer or agent of the state or state employee, regarding

1 conduct that occurred during that former officer's, agent's, or employee's state
2 employment or agency, whether the officer, agent, or employee is sued in an
3 official or a personal capacity; and

4 (B) is related to a person's status or treatment as a prisoner or
5 to a criminal charge against or involving the person;

6 (2) "prisoner" has the meaning given in AS 33.30.901.

7 * **Sec. 2.** AS 09.38.030(a) is amended to read:

8 (a) Except as provided in (b), [AND] (c), and (f) of this section and
9 AS 09.38.050, an individual debtor is entitled to an exemption of the individual
10 debtor's weekly net earnings not to exceed \$350. The weekly net earnings of an
11 individual are determined by subtracting from the weekly gross earnings all sums
12 required by law or court order to be withheld. The weekly net earnings of an
13 individual paid on a monthly basis are determined by subtracting from the monthly
14 gross earnings of the individual all sums required by law or court order to be withheld
15 and dividing the remainder by 4.3. The weekly net earnings of an individual paid on
16 a semi-monthly basis are determined by subtracting from the semi-monthly gross
17 earnings all sums required by law or court order to be withheld and dividing the
18 remainder by 2.17.

19 * **Sec. 3.** AS 09.38.030(b) is amended to read:

20 (b) An individual who does not receive earnings either weekly, semi-monthly,
21 or monthly is entitled to a maximum exemption for the aggregate value of cash and
22 other liquid assets available in any month of \$1,400, except as provided in (f) of this
23 section and in AS 09.38.050. The term "liquid assets" includes deposits, securities,
24 notes, drafts, accrued vacation pay, refunds, prepayments, and receivables, but does not
25 include permanent fund dividends before or after receipt by the individual.

26 * **Sec. 4.** AS 09.38.030 is amended by adding new subsections to read:

27 (f) The state may execute on a judgment awarded to the state and an officer
28 or agent of the state or a state employee, or a former officer, agent, or employee of the
29 state may execute on a judgment to that person against a party to an action who is
30 incarcerated for a criminal conviction by sending a notice of levy to the correctional
31 facility in which the person is incarcerated. All money in an incarcerated person's

1 account at a correctional facility is available for disbursement under a notice of levy
2 under this subsection, in the following order of priority:

3 (1) to support the dependents of the incarcerated person and to provide
4 child support payments as required by AS 25.27;

5 (2) to satisfy restitution or fines ordered by a sentencing court to be
6 paid by the incarcerated person;

7 (3) to pay a civil judgment entered against the incarcerated person as
8 a result of that person's criminal conduct;

9 (4) to reimburse the state for an award made for violent crimes
10 compensation under AS 18.67 as a result of the incarcerated person's criminal conduct;

11 (5) to satisfy other judgments entered against a prisoner in litigation
12 against the state; in this paragraph, "litigation against the state" has the meaning given
13 in AS 09.19.100.

14 (g) In this section, "correctional facility" has the meaning given in
15 AS 33.30.901.

16 * **Sec. 5.** AS 12.30.040 is amended by adding a new subsection to read:

17 (c) A person who has been convicted of an offense and who has filed an
18 application for post-conviction relief may not be released on bail until the trial court
19 or an appellate court enters an order vacating all convictions against the person. A
20 person who has prevailed on an application for post-conviction relief may seek release
21 before trial in accordance with the provisions of AS 12.30.020.

22 * **Sec. 6.** AS 12.55.088(a) is amended to read:

23 (a) The court may modify or reduce a sentence by entering a written order
24 **under a motion made** within **180** [60] days of the original sentencing.

25 * **Sec. 7.** AS 12.55.120(a) is amended to read:

26 (a) A sentence of imprisonment lawfully imposed by the superior court for a
27 term or for aggregate terms **exceeding two years of unsuspended incarceration for**
28 **a felony offense or exceeding 120 days for a misdemeanor offense** [OF ONE YEAR
29 OR MORE] may be appealed to the court of appeals by the defendant on the ground
30 that the sentence is excessive, **unless the sentence was imposed in accordance with**
31 **a plea agreement under the applicable Alaska Rules of Criminal Procedure and**

1 that agreement provided for imposition of a specific sentence or a sentence equal
2 to or less than a specified maximum sentence. If the superior court imposed a
3 sentence in accordance with a plea agreement that provided for a minimum
4 sentence, the defendant may appeal only that portion of the sentence that exceeds
5 the minimum sentence provided for in the plea agreement and that exceeds two
6 years of unsuspended incarceration for a felony offense or 120 days of
7 unsuspended incarceration for a misdemeanor offense. By appealing a sentence
8 under this section, the defendant waives the right to plead that by a revision of the
9 sentence resulting from the appeal the defendant has been twice placed in jeopardy for
10 the same offense.

11 * **Sec. 7.** AS 12.55.120(d) is amended to read:

12 (d) A sentence of imprisonment lawfully imposed by the district court for a
13 term or for aggregate terms exceeding 120 [90] days of unsuspended incarceration
14 may be appealed to the superior court by the defendant on the ground that the sentence
15 is excessive, unless the sentence was imposed in accordance with a plea agreement
16 under the applicable Alaska Rules of Criminal Procedure and that agreement
17 provided for imposition of a specific sentence or a sentence equal to or less than
18 a specified maximum sentence. If the district court imposed a sentence in
19 accordance with a plea agreement that provided for a minimum sentence, the
20 defendant may appeal only that portion of the sentence that exceeds the minimum
21 sentence provided for in the plea agreement and that exceeds 120 days of
22 unsuspended incarceration. By appealing a sentence under this section, the
23 defendant waives the right to plead that by a revision of the sentence resulting from
24 the appeal the defendant has been twice placed in jeopardy for the same offense. A
25 sentence of imprisonment lawfully imposed by the district court may be appealed to
26 the superior court by the state on the ground that the sentence is too lenient; however,
27 when a sentence is appealed by the state, the court may not increase the sentence but
28 may express its approval or disapproval of the sentence and its reasons in a written
29 opinion.

30 * **Sec. 9.** AS 12 is amended by adding a new chapter to read:

31 CHAPTER 72. POST-CONVICTION RELIEF

1 PROCEDURES FOR PERSONS CONVICTED OF CRIMINAL OFFENSES.

2 Sec. 12.72.010. SCOPE OF POST-CONVICTION RELIEF. A person who has
3 been convicted of, or sentenced for, a crime may institute a proceeding for post-
4 conviction relief if the person claims

5 (1) that the conviction or the sentence was in violation of the
6 Constitution of the United States or the constitution or laws of this state;

7 (2) that the court was without jurisdiction to impose sentence;

8 (3) that a prior conviction has been set aside and the prior conviction
9 was used as a statutorily required enhancement of the sentence imposed;

10 (4) that there exists evidence of material facts, not previously presented
11 and heard by the court, that requires vacation of the conviction or sentence in the
12 interest of justice;

13 (5) that the person's sentence has expired, or the person's probation,
14 parole, or conditional release has been unlawfully revoked, or the person is otherwise
15 unlawfully held in custody or other restraint;

16 (6) that the conviction or sentence is otherwise subject to collateral
17 attack upon any ground or alleged error previously available under the common law,
18 statutory law, or other writ, motion, petition, proceeding, or remedy;

19 (7) that

20 (A) there has been a significant change in law, whether
21 substantive or procedural, applied in the process leading to the person's
22 conviction or sentence;

23 (B) the change in the law was not reasonably foreseeable by a
24 judge or a competent attorney;

25 (C) it is appropriate to retroactively apply the change in law
26 because the change requires observance of procedures without which the
27 likelihood of an accurate conviction is seriously diminished; and

28 (D) the failure to retroactively apply the change in law would
29 result in a fundamental miscarriage of justice, which is established by
30 demonstrating that, had the changed law been in effect at the time of the
31 applicant's trial, a reasonable trier of fact would have a reasonable doubt as to

1 the guilt of the applicant;

2 (8) that after the imposition of sentence, the applicant seeks to
3 withdraw a plea of guilty or nolo contendere in order to correct manifest injustice
4 under the Alaska Rules of Criminal Procedure; or

5 (9) that the applicant was not afforded effective assistance of counsel
6 at trial or on direct appeal.

7 Sec. 12.72.020. LIMITATIONS ON APPLICATIONS FOR POST-
8 CONVICTION RELIEF. (a) A claim may not be brought under AS 12.72.010 or the
9 Alaska Rules of Criminal Procedure if

10 (1) the claim is based on the admission or exclusion of evidence at trial
11 or on the ground that the sentence is excessive;

12 (2) the claim was, or could have been but was not, raised in a direct
13 appeal from the proceeding that resulted in the conviction;

14 (3) the later of the following dates has passed, except that if the
15 applicant claims that the sentence was illegal there is no time limit on the claim:

16 (A) if the claim relates to a conviction, two years after the entry
17 of the judgment of the conviction or, if the conviction was appealed, one year
18 after the court's decision is final under the Alaska Rules of Appellate
19 Procedure;

20 (B) if the claim relates to a court revocation of probation, two
21 years after the entry of the court order revoking probation or, if the order
22 revoking probation was appealed, one year after the court's decision is final
23 under the Alaska Rules of Appellate Procedure;

24 (4) one year or more has elapsed from the final administrative decision
25 of the Board of Parole or the Department of Corrections that is being collaterally
26 attacked;

27 (5) the claim was decided on its merits or on procedural grounds in any
28 previous proceeding; or

29 (6) a previous application for post-conviction relief has been filed under
30 this chapter or under the Alaska Rules of Criminal Procedure.

31 (b) Notwithstanding (a)(3) and (4) of this section, a court may hear a claim

1 (1) if the applicant establishes due diligence in presenting the claim and
2 sets out facts supported by admissible evidence establishing that the applicant

3 (A) suffered from a physical disability or from a mental disease
4 or defect that precluded the timely assertion of the claim; or

5 (B) was physically prevented by an agent of the state from
6 filing a timely claim;

7 (2) based on newly discovered evidence if the applicant establishes due
8 diligence in presenting the claim and sets out facts supported by evidence that is
9 admissible and

10 (A) was not known within

11 (i) two years after entry of the judgment of conviction
12 if the claim relates to a conviction;

13 (ii) two years after entry of a court order revoking
14 probation if the claim relates to a court's revocation of probation; or

15 (iii) one year after an administrative decision of the
16 Board of Parole or the Department of Corrections is final if the claim
17 relates to the administrative decision;

18 (B) is not cumulative to the evidence presented at trial;

19 (C) is not impeachment evidence; and

20 (D) establishes by clear and convincing evidence that the
21 applicant is innocent.

22 (c) Notwithstanding (a)(6) of this section, a court may hear a claim based on
23 a final administrative decision of the Board of Parole or the Department of Corrections
24 if

25 (1) the claim was not and could not have been challenged in a previous
26 application for post-conviction relief filed under this chapter or under the Alaska Rules
27 of Criminal Procedure; and

28 (2) a previous application for post-conviction relief relating to the
29 administrative decision has not been filed under this chapter or under the Alaska Rules
30 of Criminal Procedure.

31 Sec. 12.72.030. FILING OF APPLICATION FOR POST-CONVICTION

1 RELIEF. An application for post-conviction relief shall be filed with the clerk at the
2 court location where the underlying criminal case is filed.

3 Sec. 12.72.040. BURDEN OF PROOF IN POST-CONVICTION RELIEF
4 PROCEEDINGS. A person applying for post-conviction relief must prove all factual
5 assertions by clear and convincing evidence.

6 * Sec. 10. AS 18.85.100 is amended by adding a new subsection to read:

7 (c) An indigent person is entitled to representation under (a) and (b) of this
8 section for purposes of bringing a timely application for post-conviction relief under
9 AS 12.72. An indigent person is not entitled to representation under (a) and (b) of this
10 section for purposes of bringing

11 (1) an untimely or successive application for post-conviction relief
12 under AS 12.72 or an untimely or successive motion for reduction or modification of
13 sentence;

14 (2) a petition for review or certiorari from an appellate court ruling on
15 an application for post-conviction relief; or

16 (3) an action or claim for habeas corpus in federal court attacking a
17 state conviction.

18 * Sec. 11. AS 22.07.020(b) is amended to read:

19 (b) **Except as limited in AS 12.55.120, the** [THE] court of appeals has
20 jurisdiction to hear appeals of **unsuspended** sentences of imprisonment **exceeding two**
21 **years for a felony offense or 120 days for a misdemeanor offense** imposed by the
22 superior court on the grounds that the sentence is excessive, or **a sentence of any**
23 **length on the grounds that it is** too lenient. **The court of appeals** [AND], in the
24 exercise of this jurisdiction, may modify the sentence as provided by law and the state
25 constitution.

26 * Sec. 12. AS 22.07.020(c) is amended to read:

27 (c) The court of appeals has jurisdiction to review (1) a final decision of the
28 district court in an action or proceeding involving criminal prosecution, post-conviction
29 relief, extradition, probation and parole, habeas corpus, or bail; and (2) the final
30 decision of the district court on a sentence imposed by it **if the sentence exceeds 120**
31 **days of unsuspended incarceration for a misdemeanor offense**. In this subsection,

1 "final decision" means a decision or order, other than dismissal by consent of all
2 parties, that closes a matter in the district court.

3 * **Sec. 13.** AS 22.10.020(f) is amended to read:

4 (f) An appeal to the superior court may be taken on the ground that **an**
5 **unsuspended** [A] sentence of imprisonment **exceeding 120** [OF 90] days [OR MORE]
6 was excessive and the superior court in the exercise of this jurisdiction has the power
7 to reduce the sentence. The state may appeal a sentence on the ground that it is too
8 lenient. When a sentence is appealed on the ground that it is too lenient, the court
9 may not increase the sentence but may express its approval or disapproval of the
10 sentence and its reasons in a written opinion.

11 * **Sec. 14.** AS 33.30 is amended by adding a new section to read:

12 Sec. 33.30.295. REVIEW OF PRISONER DISCIPLINARY DECISIONS. (a)

13 A prisoner may obtain judicial review by the superior court of a final disciplinary
14 decision by the department only if the prisoner alleges specific facts establishing a
15 violation of the prisoner's fundamental constitutional rights that prejudiced the
16 prisoner's right to a fair adjudication. An appeal shall be commenced by the prisoner
17 filing a notice of appeal and other required documents in accordance with AS 09.19
18 and the applicable rules of court governing administrative appeals that do not conflict
19 with AS 09.19. Unless the appeal is not accepted for filing under AS 09.19.010 or is
20 dismissed under AS 09.19.020, a record of the proceedings shall be prepared by the
21 department, consisting of the original papers and exhibits submitted in the disciplinary
22 process and a cassette tape of the disciplinary hearing. The record shall be prepared
23 and transmitted in accordance with the applicable rules of court governing
24 administrative appeals.

25 (b) A disciplinary decision may not be reversed

26 (1) unless the court finds that the prisoner's fundamental constitutional
27 rights were violated in the course of the disciplinary process, and that the violation
28 prejudiced the prisoner's right to a fair adjudication;

29 (2) because the department failed to follow hearing requirements set out
30 in state statutes and regulations, unless the prisoner was prejudiced by the denial of a
31 right guaranteed by the Alaska Constitution or United States Constitution; if such

1 prejudice is found, the court shall enter judgment as provided in (c) of this section and
2 remand the case to the department; or

3 (3) because of insufficient evidence if the record described in (a) of this
4 section shows that the disciplinary decision was based on some evidence that could
5 support the decision reached.

6 (c) The court shall enter judgment setting aside or affirming the disciplinary
7 decision without limiting or controlling the discretion vested in the department to
8 allocate resources within the department and to control security and administration
9 within the prison system.

10 * **Sec. 15.** AS 33.32.060 is amended to read:

11 Sec. 33.32.060. LIMITATION ON ATTACHMENT, ETC., OF WAGES.

12 Except for execution by the state under AS 09.38.030(f), only [ONLY] the prisoner
13 payments retained by the commissioner of corrections under AS 33.32.050(d) are
14 subject to lien, attachment, garnishment, execution, or similar procedures to encumber
15 funds or property.

16 * **Sec. 16.** Rule 10, Alaska Administrative Rules of Court, is amended by adding a new
17 subsection to read:

18 (e) The provisions of this rule do not apply to an exemption from payment of
19 filing fees in litigation against the state. In this subsection, "litigation against the state"
20 has the meaning given in AS 09.19.100.

21 * **Sec. 17.** Rule 204(b), Alaska Rules of Appellate Procedure, is amended to read:

22 (b) Appeal -- How Taken. A party may appeal from a final order or judgment
23 by filing a notice of appeal with the clerk of the appellate courts. The notice of appeal
24 must identify the party taking the appeal, the final order or judgment appealed from,
25 and the court to which the appeal is taken. The notice of appeal must be accompanied
26 by

27 (1) a completed docketing statement in the form prescribed by these
28 rules;

29 (2) a copy of the final order or judgment from which the appeal is
30 taken;

31 (3) a statement of points on appeal as required by Rule 204(e);

(4) unless the party is represented by court-appointed counsel, [OR] the party is the state or an agency thereof, **or the party is a prisoner whom the court finds is eligible to pay less than full fees under AS 09.19.010,**

(A) the filing fee required by Administrative Rule 9(a);

(B) a motion for waiver of filing fee pursuant to Administrative Rule 9(f)(1); or

(C) a motion to appeal at public expense pursuant to Rule 209;

(5) unless the party is represented by court-appointed counsel, the party is the state, municipality, or officer or agency thereof, or the party is an employee appealing denial of compensation by the Alaska Workers' Compensation Board or denial of benefits under AS 23.20 (Employment Security Act),

(A) the cost bond or deposit required by Rule 204(c)(1);

(B) a copy of a superior court order approving the party's supersedeas bond or other security in lieu of bond or a copy of the party's motion to the superior court for approval of a supersedeas bond or other security;

(C) a motion for waiver of cost bond; or

(D) a motion to appeal at public expense pursuant to Rule 209;

(6) a designation of transcript if the party intends to have portions of the electronic record transcribed pursuant to Rule 210(b); and

(7) proof of service of the notice of appeal and all required accompanying documents, except the filing fee, on

(A) the clerk of the trial court which entered the judgment or order being appealed; and

(B) all other parties to the trial court action.

A party may move for an extension of time to file the docketing statement, the statement of points on appeal, and the designation of transcript. The clerk of the appellate courts shall refuse to accept for filing any notice of appeal not conforming to this paragraph and accompanied by the items specified in (1) - (7) or a motion to extend the time for filing item (1), (3), or (6).

* **Sec. 18.** Rule 208, Alaska Rules of Appellate Procedure, is repealed and reenacted to

1 read:

2 RULE 208. CUSTODY OF PRISONERS IN POST-CONVICTION RELIEF
3 PROCEEDINGS. (a) Release of Applicant Pending Review of Order Denying
4 Release. The court having jurisdiction over the appeal of a denial of an application
5 for post-conviction relief may not grant bail or release the applicant pending appeal.
6 If the appellate court determines that post-conviction relief should be granted, the case
7 shall be remanded to the trial court for a bail hearing.

8 (b) Release of Applicant Pending Review of Decision Ordering a New Trial.
9 If an appeal of an order granting an applicant a new trial is pending, Appellate Rule
10 206(b) shall govern an appeal from an order that denies bail pending appeal or imposes
11 conditions of release pending appeal.

12 * **Sec. 19.** Rule 209(a), Alaska Rules of Appellate Procedure, is amended by adding a new
13 paragraph to read:

14 (7) The provisions of this subsection do not apply to the filing fees in
15 a prisoner's appeal against the state or an officer, agent, employee, or former officer,
16 agent, or employee of the state that is governed by the provisions of AS 09.19.

17 * **Sec. 20.** Rule 215(a), Alaska Rules of Appellate Procedure, is repealed and reenacted to
18 read:

19 (a) Notification of Right to Appeal Sentence. At the time of imposition of a
20 sentence of more than two years of unsuspended incarceration for a felony offense, or
21 more than 120 days of unsuspended incarceration for a misdemeanor offense, the judge
22 shall inform the defendant that

23 (1) if the sentence was

24 (A) imposed in accordance with a plea agreement under
25 Criminal Rule 11, the defendant may appeal as excessive only the part of the
26 sentence that exceeds the minimum sentence provided for in the plea
27 agreement; or

28 (B) not imposed in accordance with a plea agreement, the
29 defendant may appeal the sentence on the ground that it is excessive;

30 (2) upon an appeal of the sentence, the appellate court may reduce or
31 increase the sentence and that, by appealing the sentence under this rule, the defendant

1 waives the right to plead that by a revision of the sentence resulting from the appeal
2 the defendant has been twice placed in jeopardy for the same offense; and

3 (3) if the defendant wants counsel and is unable to pay for the services
4 of an attorney, the court will appoint an attorney to represent the defendant on the
5 appeal.

6 * **Sec. 21.** Rule 521, Alaska Rules of Appellate Procedure, is amended to read:

7 RULE 521. CONSTRUCTION. These rules are designed to facilitate business
8 and advance justice. They may be relaxed or dispensed with by the appellate courts
9 where a strict adherence to them will work surprise or injustice. **In a matter**
10 **involving the validity of a criminal conviction or sentence, this rule does not**
11 **authorize an appellate court or the superior court, when acting as an intermediate**
12 **appellate court, to allow**

13 **(1) the notice of appeal to be filed more than 60 days late; or**

14 **(2) a petition for review or petition for hearing to be filed more**
15 **than 60 days late.**

16 * **Sec. 22.** Rule 603(a), Alaska Rules of Appellate Procedure, is amended by adding a new
17 paragraph to read:

18 (6) Stay in Prisoner Disciplinary Appeals. The court may not stay
19 imposition of sanctions arising from a disciplinary decision of the Department of
20 Corrections unless the court finds that the prisoner has alleged a violation of a
21 fundamental constitutional right and is likely to succeed on the merits of the appeal,
22 that the prisoner faces irreparable harm if a stay is not granted, that the Department
23 of Corrections can be adequately protected if a stay is granted, and that a stay will not
24 adversely affect the public interest in effective penal administration. In evaluating the
25 stay motion, the court may consider documents and affidavits offered by either party,
26 and shall consider the stay motion without waiting for the record to be prepared.

27 * **Sec. 23.** Rule 604(b)(1)(A), Alaska Rules of Appellate Procedure, is amended to read:

28 (A) The record on appeal consists of the original papers and
29 exhibits filed with the administrative agency, and a typed transcript of the
30 record of proceedings before the agency. In an appeal from the revocation of
31 a driver's license by the Division of Motor Vehicles **or from a prisoner**

1 disciplinary decision of the Department of Corrections, the record of
2 proceedings will include cassettes rather than transcripts unless otherwise
3 ordered by the court.

4 * **Sec. 24.** Rule 11(c), Alaska Rules of Criminal Procedure, is amended by adding a new
5 paragraph to read:

6 (4) in cases when a plea agreement has been accepted by a court,
7 informing the defendant:

8 (i) that the defendant waives the right to appeal a
9 sentence as excessive and waives the right to seek reduction of a
10 sentence under Criminal Rule 35 if a plea agreement between the
11 defendant and the prosecuting attorney provides for a specific sentence
12 or a sentence equal to or less than a specified maximum; and

13 (ii) that the defendant waives the right to appeal as
14 excessive that portion of a sentence that is less than or equal to a
15 minimum sentence specified in a plea agreement between the defendant
16 and the prosecuting attorney and waives the right to seek reduction of
17 a sentence under Criminal Rule 35 to a length less than the length of
18 the minimum sentence.

19 * **Sec. 25.** Rule 11(e)(3), Alaska Rules of Criminal Procedure, is amended to read:

20 (3) Acceptance of Plea. If the court accepts the plea agreement, the
21 court shall inform the defendant that the judgment and sentence will embody
22 [EITHER] the disposition provided for in the plea agreement [OR ANOTHER
23 DISPOSITION MORE FAVORABLE TO THE DEFENDANT].

24 * **Sec. 26.** Rule 11(e)(4), Alaska Rules of Criminal Procedure, is amended to read:

25 (4) Rejection of Plea. If the court rejects the plea agreement, the court
26 shall inform the parties of this fact and advise the defendant personally in open court
27 that the court **and the prosecuting attorney are** [IS] not bound by the plea agreement.
28 The court shall then afford the defendant the opportunity to withdraw the plea, and
29 advise the defendant that if the defendant persists in the plea of guilty or nolo
30 contendere, the disposition of the case may be less favorable to the defendant than that
31 contemplated by the plea agreement.

1 * **Sec. 27.** Rule 11(h)(1), Alaska Rules of Criminal Procedure, is amended to read:

2 (1) The court shall allow the defendant to withdraw a plea of guilty or
3 nolo contendere whenever the defendant, upon a timely motion for withdrawal filed
4 before the imposition of sentence, proves that withdrawal is necessary to correct
5 manifest injustice.

6 (i) A motion for withdrawal is untimely [TIMELY] and is
7 [NOT] barred if [BECAUSE] made subsequent to judgment or sentence [IF IT
8 IS MADE WITH DUE DILIGENCE]. After imposition of sentence, the
9 withdrawal of a plea may be sought only under AS 12.72.

10 (ii) Withdrawal is necessary to correct a manifest injustice
11 whenever it is demonstrated that:

12 (aa) The defendant was denied the effective assistance
13 of counsel guaranteed by constitution, statute, or rule, or

14 (bb) The plea was not entered or ratified by the
15 defendant or a person authorized to act in the defendant's behalf, or

16 (cc) The plea was involuntary, or was entered without
17 knowledge of the charge or that the sentence actually imposed could be
18 imposed, or

19 (dd) The defendant did not receive the charge or
20 sentence concessions contemplated by the plea agreement, and

21 (A) the prosecuting attorney failed to seek or
22 opposed the concessions promised in the plea agreement, or

23 (B) after being advised that the court no longer
24 concurred and after being called upon to affirm or withdraw the
25 plea, the defendant did not affirm the plea.

26 (iii) The defendant may move for withdrawal of the plea
27 without alleging innocence of the charge to which the plea has been entered.

28 * **Sec. 28.** Rule 33, Alaska Rules of Criminal Procedure, is amended to read:

29 RULE 33. NEW TRIAL. (a) Grounds. The court may grant a new trial to
30 a defendant if required in the interest of justice.

31 (b) Subsequent Proceedings. If trial was by the court without a jury, the

1 court may vacate the judgment if entered, take additional testimony, and enter a new
2 judgment.

3 **(c) Time for Motion.** A motion for a new trial based on the ground of newly
4 discovered evidence may be made only before or within **180 days** [TWO YEARS]
5 after final judgment, but if an appeal is pending the court may grant the motion only
6 on remand of the case. A motion for a new trial based on any other grounds shall be
7 made within 5 days after verdict or finding of guilt, or within such further time as the
8 court may fix during the 5-day period.

9 * **Sec. 29.** Rule 35(a), Alaska Rules of Criminal Procedure, is repealed and reenacted to
10 read:

11 (a) Correction of Sentence. The court may correct an illegal sentence at any
12 time.

13 * **Sec. 30.** Rule 35(b), Alaska Rules of Criminal Procedure, is repealed and reenacted to
14 read:

15 (b) Modification or Reduction of Sentence. The court

16 (1) may modify or reduce a sentence within 180 days of the distribution
17 of the written judgment upon a motion made in the original criminal case;

18 (2) may not entertain a second or successive motion for similar relief
19 brought under this paragraph on behalf of the same defendant;

20 (3) may not reduce or modify a sentence so as to impose a term of
21 imprisonment that is less than the minimum required by law;

22 (4) may not reduce a sentence imposed in accordance with a plea
23 agreement between the defendant and the prosecuting attorney that provided for
24 imposition of a specific sentence or a sentence equal to or less than a specified
25 maximum; and

26 (5) may not reduce a sentence below the minimum specified in a plea
27 agreement between the defendant and the prosecuting attorney.

28 * **Sec. 31.** Rule 35, Alaska Rules of Criminal Procedure, is amended by adding new
29 subsections to read:

30 (e) An indigent defendant not already represented by counsel may request the
31 court to appoint counsel for purposes of filing a motion under this rule. If the

1 defendant is represented by appointed counsel, counsel may file with the court and
2 serve on the prosecuting attorney a certificate that counsel

- 3 (1) does not have a conflict of interest;
- 4 (2) has completed a review of the facts and law related to sentence;
- 5 (3) has consulted with the applicant and, if appropriate, with trial and
6 appellate counsel; and
- 7 (4) has determined that a motion under this subsection would not
8 warrant relief by the court.

9 (f) If appointed counsel has filed a certificate under (e) of this rule, and it
10 appears to the court that the applicant is not entitled to relief, the court shall indicate
11 its intention to permit counsel to withdraw and, if appropriate, to dismiss the motion.
12 The applicant and the prosecuting attorney shall be given an opportunity to reply to
13 the proposed withdrawal or dismissal. If the defendant files a response and the court
14 finds that a motion under this rule would not warrant relief, the court shall permit
15 counsel to withdraw and, if appropriate, dismiss the motion. If the court finds that a
16 motion under this rule may warrant relief, the court may direct that the proceedings
17 continue or take other appropriate action.

18 * **Sec. 32.** Rule 35.1(a), Alaska Rules of Criminal Procedure, is amended to read:

19 (a) Scope. Any person who has been convicted of, or sentenced for, a crime
20 may institute a proceeding for post-conviction relief under AS 12.72.010 -
21 12.72.040 if the person [AND WHO] claims:

- 22 (1) that the conviction or the sentence was in violation of the
23 constitution of the United States or the constitution or laws of Alaska;
- 24 (2) that the court was without jurisdiction to impose sentence;
- 25 (3) that a prior conviction has been set aside and the prior
26 conviction was used as a statutorily required enhancement of [THAT] the sentence
27 imposed [EXCEEDED THE MAXIMUM AUTHORIZED BY LAW, OR IS
28 OTHERWISE NOT IN ACCORDANCE WITH THE SENTENCE AUTHORIZED BY
29 LAW];
- 30 (4) that there exists evidence of material facts, not previously presented
31 and heard, that requires vacation of the conviction or sentence in the interest of justice;

1 (5) that the applicant's [HIS] sentence has expired, that the
2 applicant's [HIS] probation, parole, or conditional release has [HAVE] been
3 unlawfully revoked, or that the applicant [PERSON] is otherwise unlawfully held in
4 custody or other restraint;

5 (6) that the conviction or sentence is otherwise subject to collateral
6 attack upon any ground or alleged error heretofore available under any common law,
7 statutory or other writ, motion, petition, proceeding, or remedy; [OR]

8 (7) that

9 (A) there has been a significant change in law, whether
10 substantive or procedural, applied in the process leading to the applicant's
11 conviction or sentence;

12 (B) the change in law was not reasonably foreseeable by a
13 judge or a competent attorney;

14 (C) it is appropriate to retroactively apply the change in law
15 because the change in law requires observance of procedures without
16 which the likelihood of an accurate and fair conviction is seriously
17 diminished; and

18 (D) the failure to retroactively apply the change in law
19 would result in a fundamental miscarriage of justice, which is established
20 by demonstrating that, had the change in law been in effect at the time of
21 the applicant's trial, a reasonable trier of fact would have a reasonable
22 doubt as to the guilt of the applicant;

23 (8) that the applicant should be allowed to withdraw a plea of
24 guilty or nolo contendere in order to correct manifest injustice as set out in
25 Criminal Rule 11(h)(1)(ii); or

26 (9) that the applicant was not afforded effective assistance of
27 counsel at trial or on direct appeal [, WHEN SUFFICIENT REASONS EXIST TO
28 ALLOW RETROACTIVE APPLICATION OF THE CHANGED LEGAL
29 STANDARDS; MAY INSTITUTE A PROCEEDING UNDER THIS RULE TO
30 SECURE RELIEF].

31 * Sec. 33. Rule 35.1(c), Alaska Rules of Criminal Procedure, is amended to read:

(c) Commencement of Proceedings -- Filing -- Service. A proceeding is commenced by filing an application with the clerk at the court location where the underlying criminal case is filed [OF THE COURT IN WHICH THE CONVICTION OCCURRED]. Application forms will be furnished by the clerk of court. An application must [MAY] be filed within the [AT ANY] time limitations set out in AS 12.72.020. The clerk shall open a new file for the application, promptly bring it to the attention of the court and give a copy to the district attorney.

* **Sec. 34.** Rule 35.1(d), Alaska Rules of Criminal Procedure, is amended to read:

(d) Application -- Contents. The application shall (1) identify the proceedings in which the applicant was convicted, (2) state the date shown in the clerk's certificate of distribution on the judgment complained of, (3) state the sentence complained of and the date of sentencing, (4) specifically set forth the grounds upon which the application is based, and (5) clearly state the relief desired. If the application challenges a Department of Corrections or Board of Parole decision, the application shall (1) identify the specific nature of the proceedings or challenged decision, (2) state the date of the proceedings or decision, (3) specifically set forth the facts and legal grounds upon which the application is based, and (4) clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set out [FORTH] separately from other allegations of facts and shall be under oath. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from the conviction or sentence including any previous applications for post-conviction relief. Argument, citations and discussion of authorities are unnecessary. Applications which are incomplete shall be returned to the applicant for completion.

* **Sec. 35.** Rule 35.1(e), Alaska Rules of Criminal Procedure, is amended to read:

(e) Indigent Applicant.

(1) If the applicant is indigent, filing fees shall be paid under the provisions of AS 09.19 and [, TRANSCRIPT AND OTHER COURT COSTS SHALL BE BORNE BY THE STATE. WHERE THE COURT DETERMINES THAT THE

1 APPLICATION SHALL NOT BE SUMMARILY DISPOSED OF ON THE
2 PLEADINGS AND RECORD PURSUANT TO SUBDIVISION (f) OF THIS RULE,
3 BUT THAT THE ISSUE RAISED BY THE APPLICATION REQUIRE AN
4 EVIDENTIARY HEARING,] counsel shall be appointed consistent with AS 18.85.100
5 to assist the applicant [INDIGENT APPLICANTS].

6 (2) Within 60 days of court appointment under (e)(1) of this rule,
7 counsel shall file with the court and serve on the prosecuting attorney

8 (A) an amended application or a notice that counsel will
9 proceed on the grounds alleged in the application filed by the applicant;
10 or

11 (B) a certificate that counsel

12 (i) does not have a conflict of interest;

13 (ii) has completed a review of the facts and law in the
14 underlying proceeding or action challenged in the application;

15 (iii) has consulted with the applicant and, if
16 appropriate, with trial counsel; and

17 (iv) has determined that the application does not
18 allege a colorable claim for relief.

19 * Sec. 36. Rule 35.1(f)(1), Alaska Rules of Criminal Procedure, is amended to read:

20 (1) The state shall file an answer or a motion within 45 days of
21 service of an original, amended, or supplemental application filed by counsel or
22 by an applicant who elects to proceed without counsel, or of a notice of intent to
23 proceed on the original application under (e)(2)(A) of this rule. The applicant
24 shall have 30 days to file an opposition, and the state shall have 15 days to file a
25 reply. The motion, opposition, and reply may be supported by affidavit. [WITHIN
26 30 DAYS AFTER THE FILING OF THE APPLICATION, OR WITHIN SUCH
27 FURTHER TIME AS THE COURT MAY FIX, THE STATE SHALL RESPOND BY
28 ANSWER OR BY MOTION WHICH MAY BE SUPPORTED BY AFFIDAVITS.]
29 At any time prior to entry of judgment the court may grant leave to withdraw the
30 application. The court may make appropriate orders for amendment of the application
31 or any pleading or motion, for pleading over, for filing further pleadings or motions,

1 or for extending the time of the filing of any pleading. In considering a pro se [THE]
2 application the court shall consider substance and disregard defects of form, but a pro
3 se applicant will be held to the same burden of proof and persuasion as an
4 applicant proceeding with counsel. If the application is not accompanied by the
5 record of the proceedings challenged therein, the respondent may [SHALL] file with
6 its answer the record or portions thereof that are material to the questions raised in the
7 application.

8 * **Sec. 37.** Rule 35.1(f)(2), Alaska Rules of Criminal Procedure, is amended to read:

9 (2) If appointed counsel has filed a certificate under (e)(2)(B) of this
10 rule, and it appears to the court that the applicant is not entitled to relief, the
11 court shall [WHEN A COURT IS SATISFIED, ON THE BASIS OF THE
12 APPLICATION, THE ANSWER OR MOTION, AND THE RECORD, THAT THE
13 APPLICANT IS NOT ENTITLED TO POST-CONVICTION RELIEF AND NO
14 PURPOSE WOULD BE SERVED BY ANY FURTHER PROCEEDINGS, IT MAY]
15 indicate to the parties its intention to permit counsel to withdraw and dismiss the
16 application and its reasons for so doing. The applicant and the prosecuting attorney
17 shall be given an opportunity to reply to the proposed withdrawal and dismissal. If
18 the applicant files a response and the court finds that the application does not
19 present a colorable claim, or if the applicant does not file a response, the court
20 shall permit counsel to withdraw and [IN LIGHT OF THE REPLY, OR ON
21 DEFAULT THEREOF, THE COURT MAY] order the application dismissed. If the
22 court finds that the application presents a colorable claim, the court may [OR]
23 grant leave to file an amended application or direct that the proceedings otherwise
24 continue. [DISPOSITION ON THE PLEADINGS AND RECORD SHALL NOT BE
25 MADE WHEN A MATERIAL ISSUE OF FACT EXISTS.]

26 * **Sec. 38.** Rule 35.1(g), Alaska Rules of Criminal Procedure, is amended to read:

27 (g) Hearing -- Evidence -- Order. The application shall be heard in, and
28 before any judge of, the court in which the underlying criminal case is filed
29 [CONVICTION TOOK PLACE]. An electronic recording of the proceeding shall be
30 made. All rules and statutes applicable in civil proceedings, including pre-trial and
31 discovery procedures are available to the parties except that Alaska Rule of Civil

Procedure 16.1 does not apply to post-conviction relief proceedings. The court may receive proof by affidavits, depositions, oral testimony, or other evidence. **Unless otherwise required by statute or constitution, the applicant bears the burden of proving all factual assertions by clear and convincing evidence.** The court may order the applicant brought before it for the hearing **or allow the applicant to participate telephonically or by video conferencing.** If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. The order made by the court is a final judgment.

* **Sec. 39.** Alaska Rule of Criminal Procedure 35.1(h) is repealed.

* **Sec. 40.** Notwithstanding any other provision of this Act, a person whose conviction was entered before July 1, 1994, has until July 1, 1996, to file a claim under AS 12.72.

* **Sec. 41.** APPLICABILITY. This Act applies to offenses committed before, on, or after the effective date of this Act.

* **Sec. 42.** SPECIAL APPLICABILITY OF SECTIONS 29 - 31. (a) Notwithstanding Rule 35, Alaska Rules of Criminal Procedure, as amended in secs. 29 - 31 of this Act, the trial court, under Rule 35(b), as amended by this Act, may reduce the sentence of a defendant sentenced before the effective date of this section if the defendant took an appeal and the sentence reduction occurs within 120 days of the day that jurisdiction is returned to the trial court under Rule 507(b), Alaska Rules of Appellate Procedure, unless the defendant petitions the United States Supreme Court for certiorari, in which case the 120 days commences on the day that the Supreme Court denies relief.

(b) This section has the effect of amending Rule 35, Alaska Rules of Criminal Procedure.

* **Sec. 42.** (a) Section 1 of this Act has the effect of amending

(1) Alaska Rule of Civil Procedure 3, by providing that a prisoner may not commence litigation against the state until the prisoner has paid the filing or obtained an exemption from those fees;

1 (2) Alaska Rule of Civil Procedure 16.1, by providing that the automatic
2 disclosures of that rule do not apply to litigation against the state by a prisoner;

3 (3) Alaska Rule of Civil Procedure 65, by restricting the availability of
4 injunctive relief in litigation against the state by a prisoner;

5 (4) Alaska Rules of Appellate Procedure 204 and 403, by altering the
6 procedure for appeals and petitions for review in litigation by the state by prisoners; and

7 (5) Alaska Rule of Appellate Procedure 603, by restricting the availability of
8 stays in appeals by a prisoner to the superior court of disciplinary decisions of the Department
9 of Corrections.

10 (b) In this section, "prisoner" and "litigation against the state" have the meanings
11 given in AS 09.19.100, added by sec. 1 of this Act.

12 * **Sec. 43.** Sections 1 - 15, 40 and 41 of this Act take effect only if secs. 15 - 39, 42, and
13 43 of this Act take effect.

14 * **Sec. 44.** If this Act takes effect, it takes effect July 1, 1995.