

CS FOR HOUSE BILL NO. 122(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/17/98

Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to prisoner litigation, post-conviction relief, and sentence
2 appeals; relating to violation of certain testing orders for those convicted of
3 certain crimes; relating to probation and parole conditions and revocation of
4 parole; amending Rule 10(e), Alaska Administrative Rules, Rule 502(b), Alaska
5 Rules of Appellate Procedure, Rule 26, Alaska Rules of Civil Procedure, and
6 Rules 32 and 35, Alaska Rules of Criminal Procedure."

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

8 * **Section 1.** AS 09.19.010(b) is amended to read:

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

10 (1) an affidavit that clearly discloses that the person is a prisoner and

11 that sets out

12 (A) the prisoner's complete financial situation, including the
13 prisoner's income, money in financial accounts, assets, and court-ordered

1 payments;

2 (B) the circumstances that prevent the prisoner from paying full
3 filing fees; and

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

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

10 (3) other documentation or financial information as the court may
11 require.

12 * **Sec. 2.** AS 09.19.050 is amended to read:

13 **Sec. 09.19.050. Discovery in prisoner cases.** The automatic disclosure
14 provisions of **Rule 26**, Alaska **Rules** [RULE] of Civil Procedure, [16.1] do not apply
15 to litigation against the state brought by a prisoner.

16 * **Sec. 3.** AS 09.19.100(1) is amended to read:

17 (1) "litigation against the state" means a civil action or an appeal from
18 a civil action or from the final decision of an administrative agency, **a petition for**
19 **review, a petition for hearing, an original application for relief, or another action**
20 **filed under the Alaska Rules of Appellate Procedure** that

21 (A) involves the state, an officer or agent of the state, or a state
22 employee, or a former officer or agent of the state or state employee, regarding
23 conduct that occurred during that former officer's, agent's, or employee's state
24 employment or agency, whether the officer, agent, or employee is sued in an
25 official or a personal capacity; and

26 (B) is related to a person's status or treatment as a prisoner,
27 [OR] to a criminal charge against or involving the person, **or to an alleged**
28 **violation of the person's constitutional rights**;

29 * **Sec. 4.** AS 11.56 is amended by adding a new section to read:

30 **Sec. 11.56.760. Violating an order to submit to DNA testing.** (a) A person
31 commits the crime of violating an order to submit to DNA testing if, when requested

by a health care professional acting on behalf of the state to provide a blood sample, oral sample, or both, the person refuses to provide the sample or samples and the person has been

(1) ordered to submit to DNA testing as part of a sentence imposed under AS 12.55.015; or

(2) convicted of an offense that requires DNA testing under the provisions of AS 44.41.035.

(b) In this section, "DNA testing" means the collection of a blood sample, oral sample, or both, for the deoxyribonucleic acid identification registration system under AS 44.41.035.

(c) Violating an order to submit to DNA testing is a class A misdemeanor.

*** Sec. 5.** AS 12.55.015 is amended by adding a new subsection to read:

(i) In addition to penalties authorized by this section, the court shall order a person convicted of an offense requiring the state to collect a blood sample, oral sample, or both, for the deoxyribonucleic acid identification registration system under AS 44.41.035 to submit to the collection of the sample or samples when requested by a health care professional acting on behalf of the state to provide the sample or samples.

*** Sec. 6.** AS 12.55.100 is amended by adding a new subsection to read:

(d) If the court orders probation for a defendant convicted of an offense requiring the state to collect a blood sample, oral sample, or both, from the defendant for the deoxyribonucleic acid identification registration system under AS 44.41.035, the court shall order the defendant, as a condition of probation, to submit to the collection of the sample or samples when requested by a health care professional acting on behalf of the state to provide the sample or samples.

*** Sec. 7.** AS 33.16.150(a) is amended to read:

(a) As a condition of parole, a prisoner released on special medical, discretionary, or mandatory parole

(1) shall obey all state, federal, or local laws or ordinances, and any court orders applicable to the parolee;

(2) shall make diligent efforts to maintain steady employment or meet

1 family obligations;

2 (3) shall, if involved in education, counseling, training, or treatment,
3 continue in the program unless granted permission from the parole officer assigned to
4 the parolee to discontinue the program;

5 (4) shall report

6 (A) upon release to the parole officer assigned to the parolee;

7 (B) at other times, and in the manner, prescribed by the board
8 or the parole officer assigned to the parolee;

9 (5) shall reside at a stated place and not change that residence without
10 notifying, and receiving permission from, the parole officer assigned to the parolee;

11 (6) shall remain within stated geographic limits unless written
12 permission to depart from the stated limits is granted the parolee;

13 (7) may not use, possess, handle, purchase, give, distribute, or
14 administer a controlled substance as defined in AS 11.71.900 or under federal law or
15 a drug for which a prescription is required under state or federal law without a
16 prescription from a licensed medical professional to the parolee;

17 (8) may not possess or control a firearm; in this paragraph, "firearm"
18 has the meaning given in AS 11.81.900;

19 (9) may not enter into an agreement or other arrangement with a law
20 enforcement agency or officer that will place the parolee in the position of violating
21 a law or parole condition without the prior approval of the board;

22 (10) may not contact or correspond with anyone confined in a
23 correctional facility of any type serving any term of imprisonment or a felon without
24 the permission of the parole officer assigned to a parolee;

25 (11) shall agree to waive extradition from any state or territory of the
26 United States and to not contest efforts to return the parolee to the state;

27 **(12) shall provide a blood sample, an oral sample, or both, when**
28 **requested by a health care professional acting on behalf of the state to provide the**
29 **sample or samples if the prisoner is being released after a conviction of an offense**
30 **requiring the state to collect the sample or samples for the deoxyribonucleic acid**
31 **identification system under AS 44.41.035.**

* **Sec. 8.** AS 33.16.220(a) is amended to read:

(a) The board may revoke parole if the prisoner or [(1)] parolee (1) engages in conduct in violation of AS 33.16.150(a), (b), or (f), [;] or (2) has violated an order of the court to participate in or comply with the treatment plan of a rehabilitation program under AS 12.55.015(a)(10). **Mandatory parole may be revoked before a prisoner's actual release on parole.**

* **Sec. 9.** AS 33.16.220(i) is amended to read:

(i) If, after the final revocation hearing, the board finds that the parolee has violated a condition of parole imposed under AS 33.16.150(a), (b), or (f) [AS 33.16.150(b)], or a law or ordinance, the board may revoke all or a portion of the parole, or change any condition of parole.

* **Sec. 10.** Rule 502(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Extensions of Time.** When by these rules or by a notice given thereunder or by order of the appellate court an act is required or allowed to be done at or within a specified time, the appellate court may in its discretion, either on motion of a party, showing good cause, or sua sponte:

(1) Extend the time period, either before or after its expiration or

(2) Validate an act done after the expiration of the time period.

Motions to extend a time period, or to validate an act done after the expiration of the time period, must comply with Rule 503. Time periods specified in the Appellate Rules, including time periods for doing an act or filing a document in the trial court, may be extended only by the appellate courts and not by the trial court. **In a matter requesting review of or appealing a criminal conviction or sentence, this rule does not authorize an appellate court, or the superior court acting as an intermediate appellate court, to validate the filing of a notice of appeal, petition for review, or petition for hearing more than 60 days after the expiration of the time specified in the rule or statute or in the last extension of time previously granted.**

* **Sec. 11.** Rule 32, Alaska Rules of Criminal Procedure, is amended by adding a new subsection to read:

(e) **Judgment for crime against a person.** In a case in which the defendant is convicted of a crime against a person as defined in AS 44.41.035(j), the written

1 judgment must set out the requirements of AS 12.55.015(i).

2 * **Sec. 12.** Rule 35, Alaska Rules of Criminal Procedure, is amended by adding a new
3 subsection to read:

4 (g) **Relaxing the time period for request.** A court may not relax by more
5 than 10 days the time period in which a request to modify or reduce a sentence under
6 (b) of this rule must be filed.

7 * **Sec. 13.** The provisions of sec. 2 of this Act have the effect of changing Rule 26, Alaska
8 Rules of Civil Procedure, by providing that the automatic disclosure provisions of the rule do
9 not apply to litigation against the state brought by prisoners.

10 * **Sec. 14.** The provisions of sec. 3 of this Act have the effect of changing Rule 10(e),
11 Alaska Administrative Rules, by expanding the definition of "litigation against the state" so
12 that it has the meaning given in AS 09.19.100 as amended by sec. 3 of this Act.

13 * **Sec. 15.** Sections 1 - 4 and 6 - 14 of this Act apply to offenses committed before, on,
14 or after the effective date of this Act.

15 * **Sec. 16.** Sections 2 and 3 of this Act take effect only if secs. 13 and 14 of this Act take
16 effect.