

**HOUSE BILL NO. 201**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/27/95

Referred: State Affairs, Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to prisoner litigation, post-conviction relief, sentence appeals,  
2 amending Alaska Administrative Rule 10, Alaska Rules of Appellate Procedure  
3 204, 208, 209, 215, 521, 603, and 604, and Alaska Rules of Criminal Procedure  
4 11, 33, 35, and 35.1; and providing for an effective date."

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

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

7 CHAPTER 19. PRISONER LITIGATION AGAINST THE STATE.

8 Sec. 09.19.010. LIMITATION ON EXEMPTION FROM FILING FEES. (a)

9 A prisoner may not commence an action or appeal from a civil action or from the final  
10 decision of an administrative agency that involved the state, involved a state employee,  
11 or involved a former state employee regarding conduct that occurred during that former  
12 employee's state employment, unless the prisoner has paid full filing fees to the court  
13 or is a claimant under AS 23.20, except that the court may exempt a prisoner from  
14 paying part of those fees if the court finds exceptional circumstances as described in

1 this section.

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

3 (1) an affidavit that sets out

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

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

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

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

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

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

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

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

1 the date of distribution of the order, unless the time for payment is extended by the  
2 court. If timely payment is not made, the court shall dismiss the case or appeal. If  
3 payment is made, the prisoner's filing and supporting documents shall be accepted for  
4 filing with the court.

5 Sec. 09.19.015. SERVICE OF PROCESS IN CERTAIN PRISONER CASES  
6 OR APPEALS. If a prisoner has been exempted from paying full filing fees under  
7 AS 09.19.010, a prisoner may not commence service of process of the summons or  
8 notice of appeal without court approval under AS 09.19.017 or 09.19.019.

9 Sec. 09.19.017. REVIEW AND DISMISSAL OF CERTAIN PRISONER  
10 ACTIONS. (a) If a prisoner has filed a civil action or an administrative appeal and  
11 paid less than full filing fees under an exemption granted under AS 09.19.010, the  
12 court shall review the prisoner's filings to determine whether the standards of this  
13 section have been met.

14 (b) In order for the court to allow the civil action or administrative appeal to  
15 proceed against the state, a state employee, or a former state employee, the court must  
16 find that, based on the information available to the judge,

17 (1) material statements made by the prisoner are not untrue;

18 (2) the action or administrative appeal is not frivolous or malicious; and

19 (3) the pleadings filed set out specific facts that would, if proven,

20 (A) state a claim upon which relief may be granted; or

21 (B) entitle the prisoner to reversal on appeal.

22 (c) If the court determines that the requirements of (b)(1) - (3) of this section  
23 have not been met, the court shall give notice to the prisoner of its intent to dismiss  
24 the case or administrative appeal and allow the prisoner an opportunity to reply in  
25 writing. If the reply does not demonstrate that the requirements of (b)(1) - (3) of this  
26 section have been met, or if no reply is filed, the court shall issue an order dismissing  
27 the case or administrative appeal. If the court determines that the requirements of  
28 (b)(1) - (3) of this section have been met, the court shall direct service of process.

29 Sec. 09.19.019. REVIEW AND DISMISSAL OF CERTAIN PRISONER  
30 APPEALS. (a) Upon the filing of an appeal for which the prisoner has been  
31 exempted from paying full filing fees under AS 09.19.010, the appellate court shall

1 notify the lower court of the filing.

2 (b) Upon receiving notice under (a) of this section, the lower court shall  
3 review its records and advise the appellate court in writing as to whether the appeal  
4 appears

5 (1) to present a colorable issue of fact or law;

6 (2) not to be frivolous; and

7 (3) not to be malicious.

8 (c) If the appellate court is advised by the lower court that the standards set  
9 out in (b)(1) - (3) of this section have not been met, the court shall give notice to the  
10 prisoner of its intent to dismiss the appeal and allow the prisoner an opportunity to  
11 reply in writing. If the reply does not demonstrate that the requirements of (b)(1) - (3)  
12 of this section have been met, or if no reply is filed, the court shall issue an order  
13 dismissing the appeal. If the court determines that the standards of (b)(1) - (3) of this  
14 section have been met, the court shall direct service of process.

15 Sec. 09.19.020. STAY IN PRISONER DISCIPLINARY APPEALS. A  
16 superior court that reviews a disciplinary decision of the Department of Corrections  
17 as an administrative appeal may not enter an order staying disciplinary sanctions unless  
18 the pleadings filed by the prisoner establish by clear and convincing evidence that the  
19 prisoner has alleged a violation of a fundamental constitutional right and is likely to  
20 succeed on the merits in the appeal, that the prisoner faces irreparable harm if a stay  
21 is not granted, that the Department of Corrections can be adequately protected if a stay  
22 is granted, and that a stay will not adversely affect the public interest in effective penal  
23 administration.

24 Sec. 09.19.030. INJUNCTIONS OR ORDERS IMPOSING OBLIGATIONS  
25 IN PRISONER CASES. In an action or an appeal brought by a prisoner, a court may  
26 not enter an injunction or issue an order or decision that would impose an obligation  
27 on the state or its employees that would exceed the obligations imposed by the United  
28 States Constitution, the Constitution of the State of Alaska, and applicable federal and  
29 state statutes and regulations, unless the obligation is agreed to by the state.

30 Sec. 09.19.040. DISCOVERY IN PRISONER CASES. The automatic  
31 disclosure provisions in the Alaska Rules of Civil Procedure do not apply to a civil

1 action brought by a prisoner against the state, against a state employee, or against a  
2 former state employee regarding conduct that occurred during that former employee's  
3 state employment.

4 Sec. 09.19.900. DEFINITION. In this chapter, "prisoner" has the meaning  
5 given in AS 33.30.901.

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

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

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

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

25 \* **Sec. 4.** AS 09.38.030 is amended by adding a new subsection to read:

26 (f) The state may execute on a judgment awarded to the state, to a state  
27 employee, or to a former state employee against a party to an action who is  
28 incarcerated for a criminal conviction by sending a notice of levy to the correctional  
29 facility in which the person is incarcerated. All money in an incarcerated person's  
30 account at a correctional facility is available for disbursement under a notice of levy  
31 by the state under this subsection, in the following order of priority:

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

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

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

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

9 (5) to satisfy other judgments entered in favor of the state, in favor of  
10 a state employee, or in favor of a former state employee regarding conduct that  
11 occurred during that former employee's state employment.

12 \* **Sec. 5.** AS 09.38.500 is amended by adding a new paragraph to read:

13 (16) "correctional facility" has the meaning given in AS 33.30.901.

14 \* **Sec. 6.** AS 12.30.040 is amended by adding a new subsection to read:

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

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

21 (a) A sentence of imprisonment lawfully imposed by the superior court for a  
22 term or for aggregate terms **exceeding two years of unsuspended incarceration** [OF  
23 ONE YEAR OR MORE] may be appealed to the court of appeals by the defendant on  
24 the ground that the sentence is excessive, **unless the sentence was imposed in**  
25 **accordance with a plea agreement under the applicable Alaska Rules of Criminal**  
26 **Procedure and that agreement provided for imposition of a specific sentence or**  
27 **a sentence equal to or less than a specified maximum sentence. If the superior**  
28 **court imposed a sentence in accordance with a plea agreement that provided for**  
29 **a minimum sentence, the defendant may appeal only that portion of the sentence**  
30 **that exceeds the minimum sentence provided for in the plea agreement and that**  
31 **exceeds two years of unsuspended incarceration.** By appealing a sentence under this

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

4 \* **Sec. 8.** AS 12.55.120(d) is amended to read:

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

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

24 CHAPTER 72. POST-CONVICTION RELIEF  
25 PROCEDURES FOR PERSONS CONVICTED OF CRIMINAL OFFENSES.

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

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

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

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

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

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

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

12 (7) that

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

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

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

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

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

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

31 Sec. 12.72.020. LIMITATIONS ON APPLICATIONS FOR POST-

1 CONVICTION RELIEF. (a) A claim may not be brought under AS 12.72.010 or the  
2 Alaska Rules of Criminal Procedure if

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

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

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

9 (A) two years after the entry of the judgment of conviction; or

10 (B) one year after a decision is final under the Alaska Rules of  
11 Appellate Procedure, if the conviction was appealed;

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

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

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

19 (b) Notwithstanding (a)(3) and (a)(4) of this section, a court may hear a claim  
20 if the applicant establishes due diligence in presenting the claim and sets out facts  
21 supported by admissible evidence establishing that

22 (1) the applicant suffered from a physical disability or from a mental  
23 disease or defect that precluded the timely assertion of the claim; or

24 (2) the applicant was physically prevented by an agent of the state from  
25 filing a timely claim.

26 (c) Notwithstanding (a)(3) of this section, a court may hear a claim based on  
27 newly discovered evidence if the applicant establishes due diligence in presenting the  
28 claim and sets forth facts supported by evidence that is admissible and

29 (1) was not known or reasonably discoverable through due diligence  
30 within two years after entry of the judgment of conviction;

31 (2) is not cumulative to the evidence presented at trial;

1 (3) is not impeachment evidence; and  
2 (4) establishes by clear and convincing evidence that the applicant is  
3 innocent.

4 Sec. 12.72.030. FILING OF APPLICATION FOR POST-CONVICTION  
5 RELIEF. An application for post-conviction relief shall be filed with the clerk at the  
6 court location where the underlying criminal case was filed.

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

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

11 (c) An indigent person is entitled to representation under (a) and (b) of this  
12 section for purposes of bringing a timely application for post-conviction relief under  
13 AS 12.72. An indigent person is not entitled to representation under (a) and (b) of this  
14 section for purposes of bringing

15 (1) an untimely or successive application for post-conviction relief  
16 under AS 12.72;

17 (2) an appeal from a district or superior court ruling on an application  
18 for post-conviction relief;

19 (3) a petition for hearing from an appellate court ruling on an  
20 application for post-conviction relief; or

21 (4) an action or claim for habeas corpus in federal court attacking a  
22 state conviction.

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

24 (b) **Except as limited in AS 12.55.120, the** [THE] court of appeals has  
25 jurisdiction to hear appeals of **unsuspended** sentences of imprisonment **exceeding two**  
26 **years** imposed by the superior court on the grounds that the sentence is excessive, or  
27 **a sentence of any length on the grounds that it is** too lenient. **The court of appeals**  
28 [AND], in the exercise of this jurisdiction, may modify the sentence as provided by  
29 law and the state constitution.

30 \* **Sec. 12.** AS 22.10.020(f) is amended to read:

31 (f) An appeal to the superior court may be taken on the ground that **an**

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

7        \* **Sec. 13.** AS 33.30 is amended by adding a new section to read:

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

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

20                (b) A disciplinary decision may not be reversed

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

24                        (2) because the department failed to follow hearing requirements set out  
25       in state statutes and regulations, unless the prisoner was prejudiced by the denial of a  
26       right guaranteed by the Alaska or United States Constitution; if such prejudice is  
27       found, the court shall enter judgment as provided in (c) of this section and remand the  
28       case to the Department of Corrections; or

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

1 (c) The court shall enter judgment setting aside or affirming the disciplinary  
2 decision without limiting or controlling the discretion vested in the Department of  
3 Corrections to allocate resources within the department and to control security and  
4 administration within the prison system.

5 \* **Sec. 14.** Rule 10 of the Alaska Administrative Rules of Court is amended by adding a  
6 new subsection to read:

7 (e) The provisions of this rule do not apply to an exemption from payment of  
8 filing fees in civil actions filed by prisoners against the state, a state employee, or a  
9 former state employee, that is governed by the provisions of AS 09.19.

10 \* **Sec. 15.** Rule 204(b) of the Alaska Rules of Appellate Procedure is amended to read:

11 (b) APPEAL -- HOW TAKEN. A party may appeal from a final order or  
12 judgment by filing a notice of appeal with the clerk of the appellate courts. The notice  
13 of appeal must identify the party taking the appeal, the final order or judgment  
14 appealed from, and the court to which the appeal is taken. The notice of appeal must  
15 be accompanied by

16 (1) a completed docketing statement in the form prescribed by these  
17 rules;

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

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

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

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

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

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

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

- 1 (A) the cost bond or deposit required by Rule 204(c)(1);  
2 (B) a copy of a superior court order approving the party's  
3 supersedeas bond or other security in lieu of bond or a copy of the party's  
4 motion to the superior court for approval of a supersedeas bond or other  
5 security;  
6 (C) a motion for waiver of cost bond; or  
7 (D) a motion to appeal at public expense pursuant to Rule 209;  
8 (6) a designation of transcript if the party intends to have portions of  
9 the electronic record transcribed pursuant to Rule 210(b); and  
10 (7) proof of service of the notice of appeal and all required  
11 accompanying documents, except the filing fee, on  
12 (A) the clerk of the trial court which entered the judgment or  
13 order being appealed; and  
14 (B) all other parties to the trial court action.

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

20 \* **Sec. 16.** Rule 208 of the Alaska Rules of Appellate Procedure is repealed and reenacted  
21 to read:

22 **RULE 208. CUSTODY OF PRISONERS IN POST-CONVICTION RELIEF**  
23 **PROCEEDINGS. (a) RELEASE OF APPLICANT PENDING REVIEW OF ORDER**  
24 **DENYING RELEASE.** The court having jurisdiction over the appeal of a denial of  
25 an application for post-conviction relief may not grant bail or release the applicant  
26 pending appeal. If the appellate court determines that post-conviction relief should be  
27 granted, the case shall be remanded to the trial court for a bail hearing.

28 (b) **RELEASE OF APPLICANT PENDING REVIEW OF DECISION**  
29 **ORDERING A NEW TRIAL.** If an appeal of an order granting an applicant a new  
30 trial is pending, Appellate Rule 206(b) shall govern an appeal from an order that  
31 denies bail pending appeal or imposes conditions of release pending appeal.



1 services of an attorney, the court will appoint an attorney to represent the defendant  
2 on the appeal.

3 \* **Sec. 19.** Rule 521 of the Alaska Rules of Appellate Procedure is amended to read:

4 RULE 521. CONSTRUCTION. These rules are designed to facilitate business  
5 and advance justice. They may be relaxed or dispensed with by the appellate courts  
6 where a strict adherence to them will work surprise or injustice. **In a matter**  
7 **involving the validity of a criminal conviction or sentence, this rule does not**  
8 **authorize an appellate court or the superior court, when acting as an intermediate**  
9 **appellate court, to allow, (1) an appeal to be filed more than 60 days late, or (2)**  
10 **a petition for review or petition for hearing to be filed more than 30 days late.**

11 \* **Sec. 20.** Rule 603(a) of the Alaska Rules of Appellate Procedure is amended by adding  
12 a new paragraph to read:

13 (6) STAY IN PRISONER DISCIPLINARY APPEALS. The court may not  
14 stay imposition of sanctions arising from a disciplinary decision of the Department of  
15 Corrections unless the court finds that the prisoner has alleged a violation of a  
16 fundamental constitutional right and is likely to succeed on the merits of the appeal,  
17 that the prisoner faces irreparable harm if a stay is not granted, that the Department  
18 of Corrections can be adequately protected if a stay is granted, and that a stay will not  
19 adversely affect the public interest in effective penal administration. In evaluating the  
20 stay motion, the court may consider documents and affidavits offered by either party,  
21 and shall consider the stay motion without waiting for the record to be certified.

22 \* **Sec. 21.** Rule 604(b)(1)(A) of the Alaska Rules of Appellate Procedure is amended to  
23 read:

24 (A) The record on appeal consists of the original papers and  
25 exhibits filed with the administrative agency, and a typed transcript of the  
26 record of proceedings before the agency. In an appeal from the revocation of  
27 a driver's license by the Division of Motor Vehicles **or from a prisoner**  
28 **disciplinary decision of the Department of Corrections,** the record of  
29 proceedings will include cassettes rather than transcripts unless otherwise  
30 ordered by the court.

31 \* **Sec. 22.** Rule 11(c)(3) of the Alaska Rules of Criminal Procedure is amended by adding

1 new subparagraphs to read:

2 (iii) that the defendant waives the right to appeal a  
3 sentence as excessive and waives the right to seek reduction of a  
4 sentence under Criminal Rule 35 if a plea agreement between the  
5 defendant and the prosecuting attorney provides for a specific sentence  
6 or a sentence equal to or less than a specified maximum; and

7 (iv) that the defendant waives the right to appeal as  
8 excessive that portion of a sentence that is less than or equal to a  
9 minimum sentence specified in a plea agreement between the defendant  
10 and the prosecuting attorney and waives the right to seek reduction of  
11 a sentence under Criminal Rule 35 to a length less than the length of  
12 the minimum sentence.

13 \* **Sec. 23.** Rule 11(e)(3) of the Alaska Rules of Criminal Procedure is amended to read:

14 (3) ACCEPTANCE OF PLEA. If the court accepts the plea agreement,  
15 the court shall inform the defendant that the judgment and sentence will embody  
16 [EITHER] the disposition provided for in the plea agreement [OR ANOTHER  
17 DISPOSITION MORE FAVORABLE TO THE DEFENDANT].

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

19 (4) REJECTION OF PLEA. If the court rejects the plea agreement, the  
20 court shall inform the parties of this fact and advise the defendant personally in open  
21 court that the court **and the prosecuting attorney are** [IS] not bound by the plea  
22 agreement. The court shall then afford the defendant the opportunity to withdraw the  
23 plea, and advise the defendant that if the defendant persists in the plea of guilty or  
24 nolo contendere, the disposition of the case may be less favorable to the defendant  
25 than that contemplated by the plea agreement.

26 \* **Sec. 25.** Rule 11(h)(1) of the Alaska Rules of Criminal Procedure is amended to read:

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

31 (i) A motion for withdrawal is **untimely** [TIMELY] and

1 is [NOT] barred if [BECAUSE] made subsequent to judgment or  
2 sentence [IF IT IS MADE WITH DUE DILIGENCE]. After  
3 imposition of sentence, the withdrawal of a plea may be sought only  
4 under AS 12.72.

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

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

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

11 (cc) The plea was involuntary, or was entered without  
12 knowledge of the charge or that the sentence actually imposed could be  
13 imposed, or

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

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

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

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

24 \* **Sec. 26.** Rule 33 of the Alaska Rules of Criminal Procedure is amended to read:

25 RULE 33. NEW TRIAL. (a) GROUND. The court may grant a new trial  
26 to a defendant if required in the interest of justice. The court may not grant a new  
27 trial to a defendant on the ground that the jury's verdict is contrary to the weight  
28 of the evidence.

29 (b) SUBSEQUENT PROCEEDINGS. If trial was by the court without a  
30 jury, the court may vacate the judgment if entered, take additional testimony and enter  
31 a new judgment.

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

7    \* **Sec. 27.** Rule 35(a) of the Alaska Rules of Criminal Procedure is repealed and reenacted  
8 to read:

9            (a) **CORRECTION OF SENTENCE.** The court may correct an illegal  
10 sentence at any time.

11    \* **Sec. 28.** Rule 35(b) of the Alaska Rules of Criminal Procedure is repealed and reenacted  
12 to read:

13            (b) **MODIFICATION OR REDUCTION OF SENTENCE.** The court

14                    (1) may modify or reduce a sentence within 60 days of the distribution  
15 of the written judgment upon a motion made in the original criminal case;

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

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

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

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

26    \* **Sec. 29.** Rule 35.1(a) of the Alaska Rules of Criminal Procedure is amended to read:

27            (a) **SCOPE.** Any person who has been convicted of, or sentenced for, a crime  
28 **may institute a proceeding for post-conviction relief under AS 12.72.010 -**  
29 **12.72.040 if the person** [AND WHO] claims:

30                    (1) that the conviction or the sentence was in violation of the  
31 constitution of the United States or the constitution or laws of Alaska;

- 1 (2) that the court was without jurisdiction to impose sentence;
- 2 (3) that a prior conviction has been set aside and the prior  
3 conviction was used as a statutorily required enhancement of the sentence  
4 imposed [THAT THE SENTENCE IMPOSED EXCEEDED THE MAXIMUM  
5 AUTHORIZED BY LAW, OR IS OTHERWISE NOT IN ACCORDANCE WITH  
6 THE SENTENCE AUTHORIZED BY LAW];
- 7 (4) that there exists evidence of material facts, not previously presented  
8 and heard, that requires vacation of the conviction or sentence in the interest of justice;
- 9 (5) that the applicant's [HIS] sentence has expired, that the  
10 applicant's [HIS] probation, parole or conditional release has [HAVE] been  
11 unlawfully revoked, or that the applicant [PERSON] is otherwise unlawfully held in  
12 custody or other restraint;
- 13 (6) that the conviction or sentence is otherwise subject to collateral  
14 attack upon any ground or alleged error heretofore available under any common law,  
15 statutory or other writ, motion, petition, proceeding, or remedy; [OR]
- 16 (7) that
- 17 (A) there has been a significant change in law, whether  
18 substantive or procedural, applied in the process leading to the applicant's  
19 conviction or sentence;
- 20 (B) the change in law was not reasonably foreseeable by a  
21 judge or a competent attorney;
- 22 (C) it is appropriate to retroactively apply the change in law  
23 because the change in law requires observance of procedures without  
24 which the likelihood of an accurate and fair conviction is seriously  
25 diminished; and
- 26 (D) the failure to retroactively apply the change in law  
27 would result in a fundamental miscarriage of justice, which is established  
28 by demonstrating that, had the change in law been in effect at the time of  
29 the applicant's trial, a reasonable trier of fact would have a reasonable  
30 doubt as to the guilt of the applicant;
- 31 (8) that the applicant should be allowed to withdraw a plea of

1 guilty or nolo contendere in order to correct manifest injustice as set out in  
2 Criminal Rule 11(h)(1)(ii); or

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

8 \* **Sec. 30.** Rule 35.1(c) of the Alaska Rules of Criminal Procedure is amended to read:

9 (c) COMMENCEMENT OF PROCEEDINGS -- FILING -- SERVICE. A  
10 proceeding is commenced by filing an application with the clerk **at the court location**  
11 **where the underlying criminal case was filed** [OF THE COURT IN WHICH THE  
12 CONVICTION OCCURRED]. Application forms will be furnished by the clerk of  
13 court. An application **must be filed within the time limitations set out in**  
14 **AS 12.72.020.** [MAY BE FILED AT ANY TIME.] The clerk shall open a new file  
15 for the application, promptly bring it to the attention of the court and give a copy to  
16 the district attorney.

17 \* **Sec. 31.** Rule 35.1(d) of the Alaska Rules of Criminal Procedure is amended to read:

18 (d) APPLICATION -- CONTENTS. The application shall (1) identify the  
19 proceedings in which the applicant was convicted, (2) state the date shown in the  
20 clerk's certificate of distribution on the judgment complained of, (3) state the sentence  
21 complained of and the date of sentencing, (4) specifically set forth the grounds upon  
22 which the application is based, and (5) clearly state the relief desired. **If the**  
23 **application challenges a Department of Corrections or Parole Board decision, the**  
24 **application shall (1) identify the specific nature of the proceedings or challenged**  
25 **decision, (2) state the date of the proceedings or decision, (3) specifically set forth**  
26 **the facts and legal grounds upon which the application is based, and (4) clearly**  
27 **state the relief desired.** Facts within the personal knowledge of the applicant shall  
28 be set forth separately from other allegations of facts and shall be under oath.  
29 Affidavits, records, or other evidence supporting its allegations shall be attached to the  
30 application or the application shall recite why they are not attached. The application  
31 shall identify all previous proceedings, together with the grounds therein asserted,

1 taken by the applicant to secure relief from the conviction or sentence. Argument,  
2 citations and discussion of authorities are unnecessary. Applications which are  
3 incomplete shall be returned to the applicant for completion.

4 \* **Sec. 32.** Rule 35.1(g) of the Alaska Rules of Criminal Procedure is amended to read:

5 (g) HEARING -- EVIDENCE -- ORDER. The application shall be heard in,  
6 and before any judge of, the court in which the conviction took place. An electronic  
7 recording of the proceeding shall be made. All rules and statutes applicable in civil  
8 proceedings, including pre-trial and discovery procedures are available to the parties  
9 **except that the automatic disclosure provisions in the Alaska Rules of Civil**  
10 **Procedure do not apply to post-conviction relief proceedings.** The court may  
11 receive proof by affidavits, depositions, oral testimony, or other evidence. **The**  
12 **applicant bears the burden of proving all factual assertions by clear and**  
13 **convincing evidence.** The court may order the applicant brought before it for the  
14 hearing **or allow the applicant to participate telephonically or by video**  
15 **conferencing.** If the court finds in favor of the applicant, it shall enter an appropriate  
16 order with respect to the conviction or sentence in the former proceedings, and any  
17 supplementary orders as to re-arraignment, retrial, custody, bail, discharge, correction  
18 of sentence, or other matters that may be necessary and proper. The court shall make  
19 specific findings of fact, and state expressly its conclusions of law, relating to each  
20 issue presented. The order made by the court is a final judgment.

21 \* **Sec. 33.** Alaska Rule of Criminal Procedure 35.1(h) is repealed.

22 \* **Sec. 34.** Notwithstanding any other provision of this Act, a person whose conviction was  
23 entered before July 1, 1994, has until July 1, 1996, to file a claim under AS 12.72.

24 \* **Sec. 35.** (a) AS 09.19.040, added by sec. 1 of this Act, and the provision of sec. 32 of  
25 this Act relating to automatic disclosure, take effect only if the Alaska Supreme Court orders  
26 amendments to the Alaska Rules of Civil Procedure that require automatic disclosure in civil  
27 actions involving prisoners against the state, a state employee, or a former state employee  
28 regarding conduct that occurred during that employee's state employment.

29 (b) If AS 09.19.040, added by sec. 1 of this Act, and the provision of sec. 32 of this  
30 Act relating to automatic disclosure, take effect under (a) of this section, they take effect on  
31 the effective date of the Alaska Supreme Court's rule amendment described in (a) of this

1 section.

2 \* **Sec. 36.** Except as provided in sec. 35 of this Act, this Act takes effect July 1, 1995,  
3 only if this Act receives the two-thirds majority vote of each house required by art. IV,  
4 sec. 15, Constitution of the State of Alaska.