

CS FOR HOUSE BILL NO. 201(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/12/95
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, sentence appeals,
2 execution on judgments against prisoners; amending Alaska Administrative Rule
3 10, Alaska Rules of Appellate Procedure 204, 208, 209, 215, 403, 521, 602, 603,
4 and 604, Alaska Rules of Civil Procedure 3, 4, 5, 8, 16.1, and 65, and Alaska
5 Rules of Criminal Procedure 11, 33, 35, and 35.1; and providing for an
6 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 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 prisoner's
25 account described in (b)(2) of this section, or the average balance in that account, not
26 to exceed the amount of the full filing fee required under applicable court rules. The
27 court shall issue a written order stating its reasons for its determinations under this
28 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. 09.19.020. SERVICE OF PROCESS IN CERTAIN PRISONER CASES
6 OR APPEALS. A prisoner may not commence service of process of the summons or
7 service of the notice of appeal in litigation against the state without court approval
8 under AS 09.19.030 or 09.19.040.

9 Sec. 09.19.030. REVIEW AND DISMISSAL OF CERTAIN PRISONER
10 ACTIONS. (a) If a prisoner has filed litigation against the state consisting of a civil
11 action or an administrative appeal, the court shall review the prisoner's filings to
12 determine whether the standards of this section have been met.

13 (b) In order for the court to allow the civil action or administrative appeal to
14 proceed, the court must find that, based on the information available to the judge,

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

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

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

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

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

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

27 Sec. 09.19.040. REVIEW AND DISMISSAL OF CERTAIN PRISONER
28 APPEALS. (a) If a prisoner files an appeal from litigation against the state, the
29 appellate court shall notify the lower court of the filing.

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

1 appears

- 2 (1) to present a colorable issue of fact or law;
- 3 (2) not to be frivolous; and
- 4 (3) not to be malicious.

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

12 Sec. 09.19.050. STAY IN PRISONER DISCIPLINARY APPEALS. A
13 superior court that reviews a disciplinary decision of the Department of Corrections
14 as an administrative appeal may not enter an order staying disciplinary sanctions unless
15 the pleadings filed by the prisoner establish by clear and convincing evidence that the
16 prisoner has alleged a violation of a fundamental constitutional right and is likely to
17 succeed on the merits in the appeal, that the prisoner faces irreparable harm if a stay
18 is not granted, that the Department of Corrections can be adequately protected if a stay
19 is granted, and that a stay will not adversely affect the public interest in effective penal
20 administration.

21 Sec. 09.19.060. INJUNCTIONS OR ORDERS IMPOSING OBLIGATIONS
22 IN PRISONER CASES. In litigation against the state brought by a prisoner, a court
23 may not enter an injunction or issue an order or decision that would impose an
24 obligation on the state or its employees that would exceed the obligations imposed by
25 the United States Constitution, the Constitution of the State of Alaska, and applicable
26 federal and state statutes and regulations, unless the obligation is agreed to by the state.

27 Sec. 09.19.070. DISCOVERY IN PRISONER CASES. The automatic
28 disclosure provisions of Alaska Rule of Civil Procedure 16.1 do not apply to litigation
29 against the state brought by a prisoner.

30 Sec. 09.19.100. DEFINITIONS. In this chapter,

- 31 (1) "litigation against the state" means a civil action or an appeal from

1 a civil action or from the final decision of an administrative agency that

2 (A) involves the state, an officer or agent of the state, or a state
3 employee, or a former officer or agent of the state or state employee, regarding
4 conduct that occurred during that former officer's, agent's, or employee's state
5 employment or agency, whether the officer, agent, or employee is sued in an
6 official or a personal capacity; and

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

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

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

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

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

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

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

30 (f) The state may execute on a judgment awarded to the state, to a state
31 employee, or to a former state employee against a party to an action who is

1 incarcerated for a criminal conviction by sending a notice of levy to the correctional
2 facility in which the person is incarcerated. All money in an incarcerated person's
3 account at a correctional facility is available for disbursement under a notice of levy
4 by the state under this subsection, in the following order of priority:

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

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

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

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

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

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

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

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

24 * **Sec. 6.** AS 12.55.120(a) is amended to read:

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

1 court imposed a sentence in accordance with a plea agreement that provided for
2 a minimum sentence, the defendant may appeal only that portion of the sentence
3 that exceeds the minimum sentence provided for in the plea agreement and that
4 exceeds two years of unsuspended incarceration. By appealing a sentence under this
5 section, the defendant waives the right to plead that by a revision of the sentence
6 resulting from the appeal the defendant has been twice placed in jeopardy for the same
7 offense.

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

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

27 * **Sec. 8.** AS 12 is amended by adding a new chapter to read:

28 CHAPTER 72. POST-CONVICTION RELIEF
29 PROCEDURES FOR PERSONS CONVICTED OF CRIMINAL OFFENSES.

30 Sec. 12.72.010. SCOPE OF POST-CONVICTION RELIEF. A person who has
31 been convicted of, or sentenced for, a crime may institute a proceeding for post-

1 conviction relief if the person claims

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

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

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

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

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

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

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 person's
19 conviction or sentence;

20 (B) the change in the 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 requires observance of procedures without which the
24 likelihood of an accurate conviction is seriously diminished; and

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

30 (8) that after the imposition of sentence, the applicant seeks to
31 withdraw a plea of guilty or nolo contendere in order to correct manifest injustice

1 under the Alaska Rules of Criminal Procedure; or

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

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

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

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

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

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

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

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

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

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

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

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

31 (A) suffered from a physical disability or from a mental disease

1 or defect that precluded the timely assertion of the claim; or

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

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

7 (A) was not known within

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

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

12 (iii) one year after an administrative decision of the
13 Board of Parole or the Department of Corrections is final if the claim
14 relates to the administrative decision;

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

16 (C) is not impeachment evidence; and

17 (D) establishes by clear and convincing evidence that the
18 applicant is innocent.

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

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

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

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

31 Sec. 12.72.040. BURDEN OF PROOF IN POST-CONVICTION RELIEF

1 PROCEEDINGS. A person applying for post-conviction relief must prove all factual
2 assertions by clear and convincing evidence.

3 * **Sec. 9.** AS 18.85.100 is amended by adding a new subsection to read:

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

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

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

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

14 * **Sec. 10.** AS 22.07.020(b) is amended to read:

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

21 * **Sec. 11.** AS 22.10.020(f) is amended to read:

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

29 * **Sec. 12.** AS 33.30 is amended by adding a new section to read:

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

31 A prisoner may obtain judicial review by the superior court of a final disciplinary

1 decision by the department only if the prisoner alleges specific facts establishing a
2 violation of the prisoner's fundamental constitutional rights that prejudiced the
3 prisoner's right to a fair adjudication. An appeal shall be commenced by the prisoner
4 filing a notice of appeal and other required documents in accordance with AS 09.19
5 or the applicable rules of court governing administrative appeals that do not conflict
6 with AS 09.19. If the appeal is not dismissed under AS 09.19.010, a record of the
7 proceedings shall be prepared by the department, consisting of the original papers and
8 exhibits submitted in the disciplinary process and a cassette tape of the disciplinary
9 hearing. The record shall be prepared and transmitted in accordance with the
10 applicable rules of court governing administrative appeals.

11 (b) A disciplinary decision may not be reversed

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

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

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

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

27 * **Sec. 13.** AS 33.32.060 is amended to read:

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

29 **Except for execution by the state under AS 09.38.030(f), only** [ONLY] the prisoner
30 payments retained by the commissioner of corrections under AS 33.32.050(d) are
31 subject to lien, attachment, garnishment, execution, or similar procedures to encumber

1 funds or property.

2 * **Sec. 14.** Rule 10, Alaska Administrative Rules of Court, is amended by adding a new
3 subsection to read:

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

8 * **Sec. 15.** Rule 204(b), Alaska Rules of Appellate Procedure, is amended to read:

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

14 (1) a completed docketing statement in the form prescribed by these
15 rules;

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

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

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

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

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

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

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

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

31 (B) a copy of a superior court order approving the party's

1 supersedeas bond or other security in lieu of bond or a copy of the party's
2 motion to the superior court for approval of a supersedeas bond or other
3 security;

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

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

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

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

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

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

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

18 * **Sec. 16.** Rule 208, Alaska Rules of Appellate Procedure, is repealed and reenacted to
19 read:

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

26 (b) Release of Applicant Pending Review of Decision Ordering a New Trial.
27 If an appeal of an order granting an applicant a new trial is pending, Appellate Rule
28 206(b) shall govern an appeal from an order that denies bail pending appeal or imposes
29 conditions of release pending appeal.

30 * **Sec. 17.** Rule 209(a), Alaska Rules of Appellate Procedure, is amended by adding a new
31 paragraph to read:

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

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

6 (a) Notification of Right to Appeal Sentence. At the time of imposition of
7 sentence, the judge shall inform the defendant that

8 (1) the defendant may appeal a sentence on the ground that it is
9 excessive, except as provided in (a)(2) and (3) of this rule;

10 (2) the defendant has no right to appeal a sentence as excessive if

11 (A) the sentence does not exceed two years of unsuspended
12 incarceration for a felony or 120 days of unsuspended incarceration for a
13 misdemeanor; or

14 (B) the sentence was imposed in accordance with a plea
15 agreement under Criminal Rule 11 that provided for imposition of a specific
16 sentence or a sentence equal to or less than a specified maximum;

17 (3) the defendant may appeal a sentence imposed in accordance with
18 a plea agreement under Criminal Rule 11 that provided for a minimum sentence, but
19 may appeal as excessive only the part of the sentence that exceeds the greater of

20 (A) the minimum sentence provided for in the plea agreement;

21 or

22 (B) two years of unsuspended incarceration in a felony case or
23 120 days of unsuspended incarceration in a misdemeanor case;

24 (4) upon an appeal the appellate court may reduce or increase the
25 sentence and that, by appealing the sentence under this rule, the defendant waives the
26 right to plead that by a revision of the sentence resulting from the appeal the defendant
27 has been twice placed in jeopardy for the same offense;

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

31 * **Sec. 19.** Rule 521, Alaska Rules of Appellate Procedure, is amended to read:

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

7 **(1) an appeal to be filed more than 60 days late; or**

8 **(2) a petition for review or petition for hearing to be filed more**
9 **than 30 days late.**

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

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

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

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

29 * **Sec. 22.** Rule 11(c)(3), Alaska Rules of Criminal Procedure, is amended by adding new
30 subparagraphs to read:

31 (iii) that the defendant waives the right to appeal a

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

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

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

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

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

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

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

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

29 (i) A motion for withdrawal is **untimely** [TIMELY] and is
30 [NOT] barred **if** [BECAUSE] made subsequent to judgment or sentence [IF IT
31 IS MADE WITH DUE DILIGENCE]. **After imposition of sentence, the**

1 **withdrawal of a plea may be sought only under AS 12.72.**

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

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

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

8 (cc) The plea was involuntary, or was entered without
9 knowledge of the charge or that the sentence actually imposed could be
10 imposed, or

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

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

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

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

20 * **Sec. 26.** Rule 33, Alaska Rules of Criminal Procedure, is amended to read:

21 RULE 33. NEW TRIAL. **(a) Grounds.** The court may grant a new trial to
22 a defendant if required in the interest of justice. **The court may not grant a new**
23 **trial to a defendant on the ground that the jury's verdict is contrary to the weight**
24 **of the evidence.**

25 **(b) Subsequent Proceedings.** If trial was by the court without a jury, the
26 court may vacate the judgment if entered, take additional testimony, and enter a new
27 judgment.

28 **(c) Time for Motion.** A motion for a new trial based on the ground of newly
29 discovered evidence may be made only before or within **180 days** [TWO YEARS]
30 after final judgment, but if an appeal is pending the court may grant the motion only
31 on remand of the case. A motion for a new trial based on any other grounds shall be

1 made within 5 days after verdict or finding of guilt, or within such further time as the
2 court may fix during the 5-day period.

3 * **Sec. 27.** Rule 35(a), Alaska Rules of Criminal Procedure, is repealed and reenacted to
4 read:

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

7 * **Sec. 28.** Rule 35(b), Alaska Rules of Criminal Procedure, is repealed and reenacted to
8 read:

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

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

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

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

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

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

22 * **Sec. 29.** Rule 35.1(a), Alaska Rules of Criminal Procedure, is amended to read:

23 (a) Scope. Any person who has been convicted of, or sentenced for, a crime
24 may institute a proceeding for post-conviction relief under AS 12.72.010 -
25 12.72.040 if the person [AND WHO] claims:

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

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

29 (3) that a prior conviction has been set aside and the prior
30 conviction was used as a statutorily required enhancement of [THAT] the sentence
31 imposed [EXCEEDED THE MAXIMUM AUTHORIZED BY LAW, OR IS

1 OTHERWISE NOT IN ACCORDANCE WITH THE SENTENCE AUTHORIZED BY
2 LAW];

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

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

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

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 applicant's
15 conviction or sentence;

16 (B) the change in 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 change in law requires observance of procedures without
20 which the likelihood of an accurate and fair conviction is seriously
21 diminished; and

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

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

30 (9) that the applicant was not afforded effective assistance of
31 counsel at trial or on direct appeal [, WHEN SUFFICIENT REASONS EXIST TO

1 ALLOW RETROACTIVE APPLICATION OF THE CHANGED LEGAL
2 STANDARDS; MAY INSTITUTE A PROCEEDING UNDER THIS RULE TO
3 SECURE RELIEF].

4 * **Sec. 30.** Rule 35.1(c), Alaska Rules of Criminal Procedure, is amended to read:

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

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

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

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

31 (g) Hearing -- Evidence -- Order. The application shall be heard in, and

1 before any judge of, the court in which the conviction took place. An electronic
2 recording of the proceeding shall be made. All rules and statutes applicable in civil
3 proceedings, including pre-trial and discovery procedures are available to the parties
4 **except that Alaska Rule of Civil Procedure 16.1 does not apply to post-conviction**
5 **relief proceedings.** The court may receive proof by affidavits, depositions, oral
6 testimony, or other evidence. **The applicant bears the burden of proving all factual**
7 **assertions by clear and convincing evidence.** The court may order the applicant
8 brought before it for the hearing **or allow the applicant to participate telephonically**
9 **or by video conferencing.** If the court finds in favor of the applicant, it shall enter
10 an appropriate order with respect to the conviction or sentence in the former
11 proceedings, and any supplementary orders as to arraignment, retrial, custody, bail,
12 discharge, correction of sentence, or other matters that may be necessary and proper.
13 The court shall make specific findings of fact, and state expressly its conclusions of
14 law, relating to each issue presented. The order made by the court is a final judgment.

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

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

18 * **Sec. 35.** (a) Section 1 of this Act has the effect of amending

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

22 (2) Alaska Rules of Civil Procedure 4 and 5 and Alaska Rules of Appellate
23 Procedure 204, 403, and 602, by providing that a prisoner may not commence service of
24 process in litigation against the state without court approval;

25 (3) Alaska Rule of Civil Procedure 8, by providing specific requirements for
26 pleading by a prisoner in litigation against the state;

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

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

31 (6) Alaska Rules of Appellate Procedure 204 and 403, by altering the

1 procedure for appeals and petitions for review in litigation by the state by prisoners; and
2 (7) Alaska Rule of Appellate Procedure 603, by restricting the availability of
3 stays in appeals by a prisoner to the superior court of disciplinary decisions of the Department
4 of Corrections.

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

7 * **Sec. 36.** Sections 1 - 13 and 34 of this Act take effect only if secs. 14 - 33 and 35 of this
8 Act take effect.

9 * **Sec. 37.** If this Act takes effect, it takes effect July 1, 1995.