

**CS FOR HOUSE BILL NO. 316(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 3/10/10**  
**Referred: Finance**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to post-conviction DNA testing, to the preservation of certain evidence,**  
2 **and to the DNA identification registration system; relating to post-conviction relief**  
3 **procedures; relating to representation by the public defender; amending Rule 35.1,**  
4 **Alaska Rules of Criminal Procedure; and providing for an effective date."**

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

6 **\* Section 1.** AS 12.36.020(a) is amended to read:

7 (a) A law enforcement agency may

8 (1) not return property in its custody to the owner or the agent of the  
9 owner, **except as provided in AS 12.36.200,** if

10 (A) the property is in custody in connection with a children's  
11 court proceeding, a criminal proceeding, or an official investigation of a crime;  
12 or

13 (B) the property in custody is subject to forfeiture under the  
14 laws of the

- 1 (i) state; or
- 2 (ii) United States, and the United States has commenced
- 3 forfeiture proceedings against the property or has requested the transfer
- 4 of the property for the commencement of forfeiture proceedings; and
- 5 (2) with the approval of the court, transfer the property to another state
- 6 or federal law enforcement agency for forfeiture proceedings by that agency; the court
- 7 having jurisdiction shall grant the approval under this paragraph if the property
- 8 (A) will be retained within the jurisdiction of the court by the
- 9 agency to which the property is being transferred; or
- 10 (B) is
- 11 (i) not needed as evidence; or
- 12 (ii) needed as evidence, and the property is fungible or
- 13 the property's evidentiary value can otherwise be preserved without
- 14 retaining the property within the jurisdiction of the court.

15 \* **Sec. 2.** AS 12.36.090 is amended to read:

16 **Sec. 12.36.090. Definitions.** In AS 12.36.010 - 12.36.090 [THIS CHAPTER],

- 17 (1) "final disposition of a case" means the time when all appeals have
- 18 been exhausted or the time when all appeals that could have been taken has expired;
- 19 (2) "law enforcement agency" means a public agency that performs as
- 20 one of its principal functions an activity relating to crime prevention, control, or
- 21 reduction or relating to the enforcement of the criminal law; "law enforcement
- 22 agency" does not include a court.

23 \* **Sec. 3.** AS 12.36 is amended by adding a new section to read:

24 **Article 2. Preservation of Evidence.**

25 **Sec. 12.36.200. Preservation of evidence.** (a) Except as otherwise provided in

26 this section and notwithstanding AS 12.36.010 - 12.36.090, an agency shall preserve

- 27 (1) evidence that is obtained in relation to an investigation and relevant
- 28 to the prosecution of a crime under AS 11.41.100 - 11.41.130, 11.41.410, or 11.41.434
- 29 for the following periods:

- 30 (A) 18 months after the entry of a judgment of conviction of
- 31 the crime;

1 (B) if the conviction for the crime is appealed, one year after  
2 the judgment becomes final by the conclusion of direct review; or

3 (C) if a timely application for post-conviction relief is filed  
4 within the periods stated in (A) and (B) of this paragraph, the date that a  
5 judgment dismissing or denying the application for post-conviction review  
6 becomes final;

7 (2) biological material, contained in or found on evidence, relevant to  
8 an investigation and prosecution of a person convicted of a felony under AS 11.41,  
9 until the person is unconditionally discharged for the crime, until the person is no  
10 longer required to register as a sex offender, or until the periods of time provided in  
11 (1) of this subsection have expired, whichever is longest; biological material must be  
12 preserved in an amount and manner that is sufficient to develop a DNA profile under  
13 technology available at the time that the biological material is preserved.

14 (b) An agency is not required under (a) of this section to preserve physical  
15 evidence that is of a size, bulk, quantity, or physical character that makes preservation  
16 impractical or hazardous. If preservation of evidence is impractical or hazardous, the  
17 agency shall, before returning or disposing of the evidence, remove and preserve  
18 portions of the evidence likely to contain relevant evidence related to the crime in an  
19 amount and manner sufficient to retain its evidentiary value and, if appropriate, to  
20 permit DNA testing under technology available at the time that the biological material  
21 is preserved. An agency shall develop written policies concerning the removal and  
22 preservation of samples of evidence for retention under this section. The development  
23 of written policies as described in this subsection is not subject to the adoption of  
24 regulation provisions of AS 44.62 (Administrative Procedure Act).

25 (c) On the written request of a person convicted of a crime described in (a) of  
26 this section, an agency shall provide an inventory of the evidence that has been  
27 preserved under (a)(1) of this section and of the biological material that has been  
28 preserved under (a)(2) of this section in connection with the person's conviction.

29 (d) The person who requests evidence that has been preserved under this  
30 section shall pay reasonable costs incurred in the retrieval of the evidence from storage  
31 unless the person does not have the ability to pay the costs.

1 (e) An agency required to preserve evidence or biological material under (a) of  
2 this section may return or otherwise dispose of evidence or biological material before  
3 the expiration of the time period described in (a) of this section if the agency

4 (1) is not required to preserve the evidence or biological material by  
5 court order or under any other provision of federal, state, or municipal law;

6 (2) sends by certified mail with proof of delivery by the United States  
7 Postal Service, or by a comparable delivery method with proof of delivery, notice of  
8 intent to return or otherwise dispose of the evidence or biological material to

9 (A) each person who is convicted of a crime for which the  
10 evidence or biological material was preserved under (a) of this section;

11 (B) if known, the attorney of record in the criminal prosecution  
12 and the current attorney for each person described in (A) of this paragraph; and

13 (C) the prosecuting authority responsible for prosecuting the  
14 crime; and

15 (3) has not received, within 120 days after delivering notice under (2)  
16 of this subsection, a written request for continued preservation of the evidence or  
17 biological material or an application for post-conviction DNA testing under  
18 AS 12.73.010 from a person notified under (2) of this subsection.

19 (f) An agency may petition the court for permission to return or otherwise  
20 dispose of the evidence or the biological material if the agency receives a request for  
21 continued preservation of evidence or biological material under (e) of this section. The  
22 court may grant the petition if the court finds, by a preponderance of evidence, that  
23 evidence or biological material preserved under (a) of this section

24 (1) is fungible and the evidentiary value of the property can be  
25 preserved without retaining the property; or

26 (2) does not have significant evidentiary value.

27 (g) If an agency is requested to produce evidence or biological material and is  
28 unable to locate evidence or biological material required to be preserved under this  
29 section, the chief evidence custodian of the agency shall prepare an affidavit  
30 describing the evidence or biological material that could not be located and the efforts  
31 taken to locate it. The agency shall file the affidavit with the court that entered the

1 judgment in the criminal case to which the biological material or evidence relates. A  
2 copy of the affidavit must be sent to the persons identified in (e)(2) of this section.

3 (h) If a court finds that evidence or biological material was disposed of in  
4 violation of the provisions of this section, the court may order the remedy the court  
5 determines to be appropriate. However, the court may not reverse or vacate a  
6 conviction based solely on a good faith violation of the provisions of this section. The  
7 burden of proof to establish good faith shall be on the prosecution.

8 (i) A person may not bring a civil action for damages against the state or  
9 political subdivision of the state or the officers, agents, or employees of the state or a  
10 political subdivision of the state, or a law enforcement agency or its officers, agents, or  
11 employees for a good faith failure to comply with the provisions of this section.

12 (j) For purposes of (a) of this section, an agency shall consider that

13 (1) direct review as provided in (a)(1)(B) of this section concludes on  
14 the latest of the following dates:

15 (A) 16 days after entry of the judgment on appeal;

16 (B) if a defendant files a petition for hearing seeking review of  
17 the judgment affirming the conviction, 90 days after the denial of the petition  
18 or a decision affirming the judgment of conviction;

19 (C) if a defendant seeks review by the United States Supreme  
20 Court of the judgment of conviction, 25 days after denial of the petition for  
21 writ of certiorari or a decision affirming the judgment of conviction;

22 (2) a conviction occurs on the date a person is sentenced.

23 (k) In this section, unless the context otherwise requires,

24 (1) "agency" means the Department of Law, the Department of Public  
25 Safety, the Alaska Court System, or a municipal law enforcement agency;

26 (2) "biological material" means

27 (A) the contents of a sexual assault forensic examination kit;

28 (B) semen, blood, hair, saliva, skin tissue, fingernail scrapings,  
29 bone, bodily fluids, or other identifiable human bodily material collected as  
30 part of a criminal investigation;

31 (C) a slide, swab, or test tube containing material described in

1 (B) of this paragraph; and

2 (D) swabs or cuttings from items that contain material  
3 described in (B) of this paragraph;

4 (3) "DNA" means deoxyribonucleic acid;

5 (4) "unconditionally discharged" means that a defendant is released  
6 from all disability arising under a sentence, including probation and parole.

7 \* **Sec. 4.** AS 12.72.010 is amended to read:

8 **Sec. 12.72.010. Scope of post-conviction relief.** A person who has been  
9 convicted of, or sentenced for, a crime may institute a proceeding for post-conviction  
10 relief if the person claims

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

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

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

16 (4) that there exists evidence of material facts, not previously  
17 presented and heard by the court, that requires vacation of the conviction or sentence  
18 in the interest of justice; **if the person seeks post-conviction DNA testing to support**  
19 **a claim under this paragraph, the person's exclusive method for obtaining that**  
20 **testing is an application under AS 12.73;**

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

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

27 (7) that

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

31 (B) the change in the law was not reasonably foreseeable by a

1 judge or a competent attorney;

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

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

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

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

15 \* **Sec. 5.** AS 12.72.030 is amended by adding a new subsection to read:

16 (b) A person who files an application for post-conviction relief under this  
17 chapter or the Alaska Rules of Criminal Procedure may not pursue discovery related to  
18 the application unless the applicant first pleads a prima facie case for relief and the  
19 court finds that a prima facie case for relief has been established under this chapter or  
20 the Alaska Rules of Criminal Procedure.

21 \* **Sec. 6.** AS 12 is amended by adding a new chapter to read:

22 **Chapter 73. Post-Conviction DNA Testing Procedures.**

23 **Sec. 12.73.010. Application for post-conviction DNA testing.** (a) A person  
24 convicted of a felony against a person under AS 11.41 who has not been  
25 unconditionally discharged may apply to the superior court for an order for DNA  
26 testing of evidence. The application must be filed in the court that entered the  
27 judgment of conviction, and a copy shall be served on the prosecuting authority  
28 responsible for obtaining the conviction.

29 (b) An application filed under (a) of this section must specifically identify the  
30 evidence sought to be tested and must include facts from which the court can make the  
31 findings required under AS 12.73.020. The application must also include

1 (1) an affidavit by the applicant that attests to the following:

2 (A) the applicant did not commit the offense for which the  
3 applicant was convicted or a lesser included offense;

4 (B) the applicant did not solicit another person to commit, or  
5 aid or abet another person in planning or committing, that offense or a lesser  
6 included offense; and

7 (C) the applicant did not admit or concede guilt in an official  
8 proceeding for the offense that was the basis of the conviction or a lesser  
9 included offense; for the purposes of this subparagraph, the entry of a guilty or  
10 nolo contendere plea is not an admission or concession of guilt;

11 (2) an affidavit by the applicant or the applicant's attorney stating the  
12 results of each DNA test performed on the evidence in the prosecution that resulted in  
13 the applicant's conviction;

14 (3) an affidavit by the applicant or the applicant's attorney describing  
15 all previous efforts to obtain DNA testing and any previous application filed under  
16 AS 12.72 or this section;

17 (4) an affidavit by the applicant's attorney in the criminal trial stating  
18 the reason that DNA testing was not sought before or during trial, or an affidavit by  
19 the applicant or the applicant's attorney describing the efforts made to obtain the  
20 affidavit from the criminal trial attorney and the reason the applicant was unable to  
21 obtain it.

22 (c) An attorney who represents an applicant under this section shall investigate  
23 and, if possible, confirm the accuracy of information provided by the applicant under  
24 (b)(2) - (4) of this section.

25 (d) If an applicant is indigent, filing fees must be paid under AS 09.19, and  
26 counsel shall be appointed under AS 18.85.100 to represent the applicant.

27 **Sec. 12.73.020. Findings required for post-conviction DNA testing orders.**

28 The court shall order post-conviction DNA testing of specific evidence if

29 (1) the applicant was convicted of a felony under AS 11.41;

30 (2) the applicant and, if represented, the applicant's attorney, have  
31 submitted the affidavits required by AS 12.73.010(b);

1 (3) the applicant has not, in an official proceeding, admitted or  
2 conceded guilt for the crime that was the basis for the conviction; for the purposes of  
3 this paragraph the entry of a guilty or nolo contendere plea is not an admission or  
4 concession of guilt;

5 (4) the evidence sought to be tested was obtained as part of the  
6 investigation or prosecution described in (1) of this section;

7 (5) the evidence either

8 (A) was not subjected to DNA testing; or

9 (B) was previously subjected to DNA testing, and

10 (i) the applicant is requesting DNA testing using a  
11 method or technology that is substantially more probative than the  
12 previous DNA testing; or

13 (ii) the court determines that granting the application is  
14 in the best interest of justice;

15 (6) the evidence to be tested has been subject to a chain of custody and  
16 retained under conditions that ensure that the evidence has not been substituted,  
17 contaminated, or altered in any manner material to the proposed DNA testing;

18 (7) the proposed DNA testing is reasonable in scope, uses scientifically  
19 sound methods, and is consistent with accepted forensic practices;

20 (8) the applicant identifies a theory of defense that

21 (A) is not inconsistent with a defense presented at trial; and

22 (B) would establish the applicant's innocence;

23 (9) the applicant was convicted after a trial and the identity of the  
24 perpetrator was a disputed issue in the trial;

25 (10) there is a reasonable probability, in light of all available evidence,  
26 regardless of whether the evidence was introduced at the applicant's trial, that the  
27 requested DNA testing will produce new material evidence that

28 (A) would support the theory of defense described in (8) of this  
29 section; and

30 (B) could establish that the applicant is innocent;

31 (11) the applicant consents to provide a DNA sample for purposes of

1 comparison and to entry of the results into the DNA identification registration system  
2 under AS 44.41.035 and into any other law enforcement database; and

3 (12) the application is timely as described in AS 12.73.040.

4 **Sec. 12.73.030. Summary dismissal and response.** (a) If an application under  
5 AS 12.73.010(a) does not set out the specific facts necessary for the court to make the  
6 findings required under AS 12.73.020 or does not comply with AS 12.73.010(b), the  
7 court shall deny the application without further proceedings.

8 (b) If an application filed under AS 12.73.010(a) is not denied under (a) of this  
9 section, the prosecuting authority shall file a response within 45 days after service of  
10 the application. The court shall conduct an evidentiary hearing to resolve any disputed  
11 facts.

12 **Sec. 12.73.040. Timeliness.** In determining whether an application is timely  
13 under AS 12.73.020(12), there is a presumption of

14 (1) timeliness if the application is filed before three years after the date  
15 of conviction; this presumption may be rebutted if the court finds that the application  
16 is based solely upon information used in a previously denied application; and

17 (2) untimeliness if the application is filed three years or more after  
18 conviction; this presumption may be rebutted if the court finds good cause for filing  
19 three years or more after conviction.

20 **Sec. 12.73.050. Testing procedures.** (a) If the court grants the application and  
21 DNA samples for comparison purposes are required, samples taken from the applicant  
22 or a prisoner must be collected at a law enforcement or correctional facility. If the  
23 DNA sample is being collected from a person other than the applicant or a prisoner,  
24 the sample must be taken by a law enforcement officer or other authorized person at a  
25 location that is convenient for the person from whom the sample is being collected and  
26 the person collecting the sample.

27 (b) The court may not order that a person other than the applicant provide a  
28 DNA sample for comparison purposes unless that person is first afforded notice and an  
29 opportunity to be heard by the court. The results of DNA testing of a sample provided  
30 by a person other than the applicant may not be made available to the DNA  
31 identification registration system under AS 44.41.035 or to any other law enforcement

1 database unless specifically ordered by the court.

2 (c) DNA testing ordered under this section shall be performed at the state's  
3 expense and at a laboratory operated or approved by the Department of Public Safety.  
4 If, after completion of the testing ordered under this section, an applicant requests  
5 additional testing, any additional testing ordered by the court at the applicant's request  
6 must be at the applicant's expense. If the court orders additional testing by another  
7 laboratory at the request of the applicant, the laboratory operated or approved by the  
8 Department of Public Safety shall preserve a portion of the evidence for later testing.  
9 A laboratory selected by the applicant to perform testing under this section must  
10 comply with the quality assurance standards for DNA adopted by the United States  
11 Department of Justice and be accredited by the American Society of Crime Laboratory  
12 Directors Laboratory Accreditation Board or the accepted as equivalent by the  
13 Department of Public Safety. The applicant shall pay the reasonable costs incurred in  
14 the retrieval from storage of the material to be tested unless the applicant does not  
15 have the ability to pay the costs.

16 (d) Except as provided in (b) of this section, the results of testing ordered  
17 under this section shall be entered into the DNA identification registration system  
18 under AS 44.41.035 and into any other law enforcement database available to the  
19 Department of Public Safety.

20 **Sec. 12.73.060. Post-conviction testing by stipulation.** The provisions of this  
21 chapter do not prohibit an applicant and the prosecuting authority from agreeing to  
22 conduct post-conviction DNA testing without the person's filing an application under  
23 this chapter. The parties may also stipulate to the payment of costs for the DNA  
24 testing and other costs associated with the terms of the agreement.

25 **Sec. 12.73.090. Definitions.** In this chapter, unless the context requires  
26 otherwise,

27 (1) "DNA" means deoxyribonucleic acid;

28 (2) "innocence" or "innocent" means that the applicant was not a  
29 perpetrator of or an accomplice to the offense or lesser included offense for which the  
30 applicant was convicted;

31 (3) "prisoner" has the meaning given in AS 33.30.901;

1 (4) "unconditionally discharged" means that a defendant is released  
2 from all disability arising under a sentence, including probation and parole.

3 \* **Sec. 7.** AS 18.85.100 is amended by adding a new subsection to read:

4 (g) An indigent person is entitled to representation under (a) and (b) of this  
5 section for purposes of bringing an application for post-conviction DNA testing under  
6 AS 12.73.

7 \* **Sec. 8.** AS 44.41.035(b) is amended to read:

8 (b) The Department of Public Safety shall collect for inclusion into the DNA  
9 identification registration system a blood sample, oral sample, or both, from (1) a  
10 person convicted in this state of a crime against a person or a felony under AS 11 or  
11 AS 28.35 or a law or ordinance with elements similar to a crime against a person or a  
12 felony under AS 11 or AS 28.35, (2) a minor [16 YEARS OF AGE OR OLDER,]  
13 adjudicated as a delinquent in this state for an act **committed when the minor was 16**  
14 **years of age or older,** that would be a crime against a person or a felony under AS 11  
15 or AS 28.35 if committed by an adult or for an act that would violate a law or  
16 ordinance with elements similar to a crime against a person or a felony under AS 11 or  
17 AS 28.35 if committed by an adult, (3) a voluntary donor, (4) an anonymous DNA  
18 donor for use in forensic validation, forensic protocol development, quality control, or  
19 population or statistical data bases, (5) a person required to register as a sex offender  
20 or child kidnapper under AS 12.63, and (6) a person arrested for a crime against a  
21 person or a felony under AS 11 or AS 28.35, or a law or ordinance with elements  
22 similar to a crime against a person or a felony under AS 11 or AS 28.35. The  
23 department also may collect for inclusion into the DNA identification registration  
24 system a blood sample, oral sample, or tissue sample from crime scene evidence or  
25 from unidentified human remains. The DNA identification registration system consists  
26 of the blood, oral, or tissue samples drawn under this section, any DNA or other blood  
27 grouping tests done on those samples, and the identification data related to the samples  
28 or tests. Blood samples, oral samples, and tissue samples not subject to testing under  
29 this section, and test or identification data related to those samples, may not be entered  
30 into, or made a part of, the DNA identification registration system.

31 \* **Sec. 9.** AS 44.41.035(g) is amended to read:

1 (g) A person **or minor** from whom a sample has been collected under this  
2 section

3 (1) may inspect and obtain a copy of the identification data regarding  
4 the person **or minor** contained within the DNA identification registration system; **and**

5 **(2) may request the Department of Public Safety to destroy the**  
6 **material in the system regarding the person or minor under the provisions**  
7 **described in (i) of this section.**

8 \* **Sec. 10.** AS 44.41.035(i) is amended to read:

9 (i) The Department of Public Safety shall [, UPON RECEIPT OF A COURT  
10 ORDER,] destroy the material in the system relating to a person **or minor on the**  
11 **written request of the person or minor, if the request is accompanied by a**  
12 **certified copy of a court order making the written findings required by this**  
13 **subsection.** The court shall issue **an** [THE] order **under this subsection** if the  
14 person's or minor's DNA was included in the system under

15 (1) (b)(1) or (2) of this section, **and the court order establishes**  
16 [DETERMINES] that

17 (A) the conviction or adjudication that subjected the person to  
18 having a sample taken under this section **was** [IS] reversed; and

19 (B) the person

20 (i) **was** [IS] not retried, readjudicated, or convicted or  
21 adjudicated for another crime that requires having a sample taken under  
22 this section; or

23 (ii) after retrial, **was** [IS] acquitted of the crime or, after  
24 readjudication for the crime, **was** [IS] not found to be a delinquent, and  
25 **was** [IS] not convicted or adjudicated for another crime that requires a  
26 sample under this section;

27 (2) (b)(6) of this section, **and the court order establishes**  
28 [DETERMINES] that

29 (A) the person arrested was released without being charged;

30 [OR]

31 (B) the criminal complaint, indictment, presentment, or

1 information for the offense for which the person was arrested was dismissed,  
 2 and a criminal complaint, indictment, presentment, or information for an  
 3 offense requiring submission of a DNA sample was [IS] not refiled; or

4 (C) the person was found by the trier of fact to be not guilty  
 5 of the offense for which the person was arrested and was not convicted of  
 6 another offense requiring submission of a DNA sample under (b)(1) or (2)  
 7 of this section.

8 \* **Sec. 11.** AS 44.41.035(k) is amended to read:

9 (k) The provisions of this section apply to a person or a minor from another  
 10 state that this state has accepted under any interstate corrections or probation  
 11 agreement or compact, regardless of whether the person or minor is confined or  
 12 released, if the person was convicted of or the minor was adjudicated for an offense  
 13 that is similar to an offense described in (b) of this section.

14 \* **Sec. 12.** AS 44.41.035(o) is amended to read:

15 (o) A person or minor may not bring a civil action against the state or a  
 16 municipality, or their employees or agents, for actions arising out of DNA collection  
 17 in conformity with this section.

18 \* **Sec. 13.** AS 44.41.035 is amended by adding subsections to read:

19 (r) A DNA sample collected or placed in the DNA identification registration  
 20 system that was taken or retained in good faith may be used as provided by law in a  
 21 criminal investigation. Evidence obtained from a match from a data collection system  
 22 may be used in a criminal prosecution or juvenile adjudication if the DNA sample was  
 23 taken or retained in good faith, even if the DNA sample is later removed from the  
 24 DNA identification registration system.

25 (s) If a sample collected under (b) of this section does not contain sufficient  
 26 material necessary to obtain an accurate DNA identification authorized under this  
 27 section, the Department of Public Safety or other agency authorized by the  
 28 Department of Public Safety may collect another sample.

29 \* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to  
 30 read:

31 **INDIRECT COURT RULE CHANGE.** AS 12.73, added by sec. 6 of this Act, has the

1 effect of amending Rule 35.1, Alaska Rules of Criminal Procedure, relating to post-conviction  
2 relief procedure.

3 \* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 **TASK FORCE ON STANDARDS FOR PRESERVATION AND RETENTION OF**  
6 **EVIDENCE.** (a) The Task Force on Standards for Preservation and Retention of Evidence is  
7 created in the Department of Law. The task force consists of the following:

- 8 (1) the attorney general, who serves as the chair of the task force;
- 9 (2) the commissioner of public safety;
- 10 (3) a chief of a municipal police department not on the state's interconnected  
11 road system;
- 12 (4) a chief of a municipal police department;
- 13 (5) the state medical examiner appointed under AS 12.65.015;
- 14 (6) a representative of the state crime laboratory;
- 15 (7) a representative from the court system;
- 16 (8) the victims' advocate appointed under AS 24.65.020;
- 17 (9) the public defender;
- 18 (10) a member of the Alaska senate;
- 19 (11) a member of the Alaska house of representatives;
- 20 (12) a representative of the office of public advocacy;
- 21 (13) a representative of the Alaska Native Justice Center.

22 (b) Task force members listed in (a)(3), (4), (6), (12) and (13) of this section are  
23 appointed by the governor. Except for task force members appointed under (a)(7), (8), (10),  
24 and (11) of this section, task force members serve at the pleasure of the governor. The task  
25 force member listed in (a)(7) of this section is appointed by the chief justice of the supreme  
26 court and serves at the pleasure of the chief justice. The task force member in (a)(10) of this  
27 section is appointed by the president of the senate, and the task force member in (a)(11) of  
28 this section is appointed by the speaker of the house of representatives.

29 (c) A task force member may select a designee from the same agency or organization  
30 to act on the person's behalf as a member of the task force.

31 (d) Not later than December 31, 2012, the task force shall

1 (1) recommend standards and protocols regarding the identification,  
2 collection, storage, organization, cataloging, retention, disposal, retrieval of evidence and  
3 biological materials, and return of property to owners;

4 (2) identify possible sources of financing for the costs of implementing the  
5 standards and protocols recommended under (1) of this subsection;

6 (3) recommend minimum qualifications and training programs for law  
7 enforcement officers and other employees who are responsible for the identification, storage,  
8 organization, cataloging of evidence and biological materials, and return of property to  
9 owners; and

10 (4) report its findings and recommendations to the governor and the  
11 legislature.

12 (e) Task force members do not receive compensation as members of the task force.  
13 Members of the task force who are not state employees are entitled to per diem and travel  
14 expenses in the same manner permitted for members of state boards and commissions under  
15 AS 39.20.180. Per diem and travel expenses for members of the commission who are  
16 representatives of a state agency are the responsibility of that agency.

17 \* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to  
18 read:

19 APPLICABILITY. (a) AS 12.36.200, enacted by sec. 3 of this Act, applies to all  
20 evidence in the possession of an agency, as defined in AS 12.36.200(k), on or after January 1,  
21 2011, for evidence collected before, on, or after the effective date of this Act.

22 (b) AS 12.73, enacted in sec. 6 of this Act, applies to offenses committed before, on,  
23 or after the effective date of this Act.

24 (c) Notwithstanding any other provision of law, a person whose conviction was  
25 entered before July 1, 2010, has until July 1, 2013, to file a claim under AS 12.73, enacted by  
26 sec. 6 of this Act, or a later date if the court finds good cause for a later filing.

27 \* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to  
28 read:

29 CONDITIONAL EFFECT. AS 12.73, added by sec. 6 of this Act, takes effect only if  
30 sec. 14 of this Act receives the two-thirds majority vote of each house required by art. IV, sec.  
31 15, Constitution of the State of Alaska.

- 1     \* **Sec. 18.** Section 15 of this Act is repealed January 1, 2013.
- 2     \* **Sec. 19.** This Act takes effect July 1, 2010.