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(7)

Date Referred: February 25, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-8-93

The JUDICIARY Committee considered:

HB 181

HOUSE BILL NO. 181

APPEALS IN CRIMINAL CASES

"An Act relating to the state's right to appeal in criminal cases; relating to sentence appeals; amending Rule 202 of the Alaska Rules of Appellate Procedure; and providing for an effective date."

RECOMMENDATIONS: the same title
be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Law, Public Defender, Public Advocacy

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Brian D. Fortes</i>	<input checked="" type="checkbox"/>	<i>copy made</i>		<input checked="" type="checkbox"/>	
<i>Jim Woodcock</i>	<input checked="" type="checkbox"/>				
<i>Frank Phillips</i>	<input checked="" type="checkbox"/>				
<i>Robert [unclear]</i>	<input checked="" type="checkbox"/>				
<i>Joseph [unclear]</i>	<input checked="" type="checkbox"/>				
<i>Hehnette James</i>	<input checked="" type="checkbox"/>				

Brian D. Fortes
CHAIRMAN'S SIGNATURE

Rep. Brian Porter, Chairman

House Judiciary Committee

Date: March 8, 1993

Place: Capitol Room 120

Subject of Meeting: HB 62 Employee's Use of Lawful Products; HB 147 Employer's Liability for Reference Info; HB 181 State's Right to Appeal/Criminal Cases

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
✓ Mike McMullen	Dept. of Admin	P.O. Box 110701 Juneau, AK	99811	364-3883	465-4431	<input checked="" type="radio"/> Y <input type="radio"/> N	4362 HB 147
✓ Jamie Dawson	AK STATE CHAMBER	217 SECOND ST # 201	99801	789-9201	584-2323	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 147
Margot Knuth	Law - CDCO	7th Fl City Bldg Juneau 99811			465-4049	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 181
✓ Vera Jemel	NFIB	9159 Skywood	99801		789-4278	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 147
✓ Ben Goussard	District II					<input checked="" type="radio"/> Y <input type="radio"/> N	HB 62
Willie Anderson	NEA					<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

SPONSOR STATEMENT

HB 181, An Act relating to the State's Right to Appeal in a Criminal Case

HB 181 would expand the circumstances under which the State could appeal from an adverse decision in a criminal case. State law would be amended to allow state prosecutors the same rights to appeal that federal prosecutors now have.

Our criminal justice system is not perfect. Like all human beings, judges sometimes make mistakes. If an erroneous decision is made in favor of the state, the defendant may appeal and seek reversal of that decision. That is entirely appropriate; basic justice requires no less. But if a judge makes a mistake in favor of a defendant, under present law the state may not be able to obtain appellate review of the erroneous decision. The state could file a "petition for review" with the Court of Appeals under Appellate Rule 402, but certain conditions must be met, and the appellate court may deny discretionary review.

Under the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Constitution of the State of Alaska, a defendant may not "be put in jeopardy twice for the same offense". Nothing in HB 181 affects that constitutional guarantee. But neither the state nor the federal constitution requires that erroneous legal decisions stand uncorrected. HB 181 changes present state law to allow the state to appeal in circumstances where an error has been made, so long as the appeal would not violate the constitutional prohibitions against double jeopardy.

A handwritten signature in cursive script that reads "Brian D. Porter".

Representative Brian Porter
Chairman, House Judiciary Committee

FISCAL NOTE

BILL NO. HB 181

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: March 5, 1993
 Title: "An Act relating to the state's right to appeal
 in criminal cases..."
 Sponsor: House Judiciary Committee
 Requestor: House Judiciary Committee

Department Affected: Department of Law
 BRU: Prosecution
 Component: All
 COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: March 5, 1993

Richard I. Peques / RRP

Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

Date: March 5, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 181

ANALYSIS (Continued):

This bill amends AS 22.07, AS 22.10, AS 22.15, and repeals Rule 202(c), Alaska Rules of Appellate Procedure, to provide that the state's right appeal in criminal cases is limited by the prohibition against double jeopardy contained in the United States Constitution and the Alaska Constitution. Existing law limits this right except to test the sufficiency of the indictment or information or to appeal a sentence on the ground it is too lenient. The effect of granting broadened appeals rights to the state will be to permit it to test evidentiary rulings that are adverse to the state's case at the outset. Currently, the state's only opportunity to test evidentiary rulings is when a defendant appeals a ruling adverse to the defense and the state gets to respond.

Although there will be some incremental cost when the state elects to affirmatively bring an evidentiary appeal, it will certainly be more efficient than the current system where we must wait for a defense appeal before evidence issues are finally resolved.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 181

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the state's right to appeal in criminal cases . . ." BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: House Judiciary Committee
 Requestor: House Judiciary COMPONENT SERIAL NO. 43

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ none

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: _____

Approved by Commissioner: Nancy Bear Usura Date: 3/4/93
 Agency: Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO HB 181

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the State's right to appeal in BRU: Public Defender Agency
criminal cases" Component: Public Defender Agency
 Sponsor: House Judiciary
 Requestor: House Judiciary COMPONENT SERIAL NO. 1631

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: John Saiemi, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: _____

Approved by Commissioner: Nancy Bear Usura *NBCU* Date: 3/4/93
 Agency: Department of Administration *[Signature]*

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DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 3, 1993

SUBJECT: Sectional Summary of HB 181. (Work Order No 8-LS0714\A)

TO: Representative Brian Porter
Attn: Gayle Horetski

FROM: Jerry Luckhaupt *JLB*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill provides a finding.

Section 2 of the bill amends AS 22.07.020(b) to give the court of appeals the authority to hear appeals of sentences from the district court as well as the superior court. This amendment is merely a cleanup amendment as AS 22.07.020(c) gives the court of appeals the right to hear appeals of district court sentences and the amendment only tries to group the sentence appeal authority together.

Section 3 of the bill amends AS 22.07.020(c) to conform to the change made in section 2 of the bill.

Section 4 of the bill amends AS 22.07.020(d) to provide the state with the right to appeal to the court of appeals in criminal cases and as long as the appeal does not violate double jeopardy principles.

Section 5 of the bill amends AS 22.10.020(e) to provide the state with the right to appeal a criminal case from the district court to the superior court as long as the appeal does not offend double jeopardy principles.

Section 6 of the bill amends AS 22.10.020(f) to clarify the existing right of the state to appeal a sentence to the superior court that the state believes is too lenient.

Representative Brian Porter
March 3, 1993
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Section 7 of the bill amends AS 22.15.240(b) to give the state the right to appeal in a criminal case from the district court to the superior court as long as the appeal does not offend double jeopardy principles.

Section 8 of the bill repeals Alaska Rule of Appellate Procedure 202(c) which restricts the state's right to appeal in criminal cases.

Section 9 of the bill provides an immediate effective date.

GPL:pl
93-149.plm

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 485-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 5, 1993

Representative Brian Porter
Chairman, House Judiciary Committee
House of Representatives
State Capitol
Juneau, AK 99801-1182

Ref: House Bill No. 181

Dear Representative Porter:

This letter is in response to Gayle Horetski's request for information regarding how House Bill No. 181, which broadens the state's right to appeal, would affect the Criminal Division of the Department of Law. The bill would eliminate the need to file petitions for discretionary review of adverse dispositive rulings by trial courts, thereby reducing the workload of the appellate office of the Department of Law's Criminal Division.

The Office of Special Prosecutions and Appeals (OSPA) represents the State of Alaska in all felony merit appeals, in all criminal cases in the Alaska supreme court, and in all federal actions challenging state convictions. Under existing law, the state's right to appeal in most cases is limited by the court of appeals' discretion. OSPA must file petitions for review, seeking discretionary appellate review of adverse dispositive rulings by the trial court. For example, the state cannot currently appeal a trial court's dismissal of charges based upon an alleged violation of the defendant's right to a speedy trial; it must file a petition for review. Though in practice the court of appeals nearly always decides to grant the state's petitions in these cases, OSPA must nevertheless devote a significant amount of time to draft the petition.

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Under existing law, the state has thirty days from the certification of the record or the filing of the appellant's brief to file its brief, but only ten days from the adverse ruling to file a petition for review. This ten-day time frame for filing a petition for review puts a strain on OSPA. Because the appellate attorney is new to the case, he must review the trial court pleadings and listen to cassette tapes of all relevant hearings. The attorney must then research the law because the petition must contain a "[d]iscussion of the reasons why the decision below is alleged to be erroneous." Appellate Rule 403(b)(1)[d]. This is often as time consuming as filing a brief on direct appeal, and usually takes several days. If the petition is granted, the case proceeds as if an appeal had been filed: the parties designate a record, the clerk prepares the record, and the parties file briefs.

Under House Bill No. 181, the state would be permitted to appeal adverse decisions as a matter of right. A state attorney could initiate an appeal by filing a notice of appeal, a statement of points on appeal, and a designation of record. Preparation of these documents ordinarily would occupy at most a few hours. Once the record is certified, the state would have thirty days to file a brief.

At the current time, OSPA has seven appellate attorneys, two trial attorneys and a supervising attorney. Thirty-seven briefs and other responsive pleadings are due within the next thirty days. Two of the cases in the office (involving three defendants) have extremely long trials, requiring the assigned attorneys to read between 3000 and 5400 pages of transcripts and several hundred pages of pleadings filed in the trial court. In addition, there are five arguments scheduled before the state and federal courts in the next five weeks. It would be difficult today for an appellate attorney to drop everything and devote the necessary time to filing a petition for review. An appellate attorney can more easily juggle an appeal into his caseload than he can a petition for review.

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I strongly urge you to support the passage of the bill for it will greatly assist OSPA in providing effective representation in all appellate proceedings.

Yours truly,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Cynthia M. Hora*
Cynthia M. Hora
Assistant Attorney General