HB

201

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)
Date Referred: April 12, 1995

FURTHER REFERRALS:

Date of Committee Action: 4/22/95

The FINANCE Committee considered: HB 201

HOUSE BILL NO. 201 — PRISONER LITIGATION AND APPEALS

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

recommends it be replaced
with the following committee substitute CS HB 201 (FIN)

[ ] the same title
[ ] a new title

[ ] additional referral to ____________ Committee
[ ] attached amendment(s)

ADOPTS: ____________ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) ____________

[✓] zero fiscal note(s) AK Court Sys

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ____________

[✓] zero fiscal note(s) Law 2/27/95
Corrections 2/27/95 ; DPS 2/27/95 ; Admin (2) 2/27/…

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
[signature] Hanley	X			
[signature] Martin	X			
[signature] Kohring	X			
[signature] Grussendorf	X			
[signature] Navarre	✓			
[signature] Brown				✓
[signature] Kelly	✓			
[signature] Therriault	X			
[signature] Foster	X			

CO-CHAIR'S SIGNATURE [signature] Hanley [signature] Foster

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 201 (FIN)

Revision Date: 04/19/95
Title: Prisoner Litigation and Appeals
Sponsor: House Rules by request of the Governor
Requestor:

Dept. Affected: Alaska Court System
BRU: Trial Courts
Components:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						

CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: $ None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact

Prepared by: C. S. Christensen III, Staff Counsel — Phone: 264-8228
Agency: Alaska Court System — Date: 04/19/95

Approved by: Arthur H. Snowden, II, Administrative Director — Date: 04/19/95
Agency: Alaska Court System

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No. 1

FISCAL NOTE

Bill Version: HB 201
(H) Publish Date: 2/27/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:		Dept. Affected:	Department of Law
Title:	"...relating to prisoner litigation, post-conviction relief, sentence appeals...Alaska Administrative Rule 10..."	BRU:	Prosecution
		Component:	All
Sponsor:	Rules by Request of the Governor		
Requester:	Governor's Office/OMB	COMPONENT SERIAL NO.	0085-0090

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ 0.0

POSITIONS

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill addresses many of the problems arising from prisoner litigation, sentence appeals, and frivolous or extremely tardy post-conviction relief applications. With respect to prisoner litigation, the bill would require prisoners to pay filing fees commensurate with their ability to pay and amends the exemptions statutes so that the state can collect judgments entered against prisoner litigants. The bill recognizes prisoners' right of access to the courts and reduces frivolous litigation without infringing on that right.

With respect to sentence appeals, the bill prevents defendants from appealing sentences or those portions of sentences that they agreed to as part of a plea agreement with the state. For example, a defendant who agrees to a sentence of up to three years should not be heard to complain if the court imposes a sentence of that length or less. It also restricts defendants convicted of felonies from appealing as excessive any sentence of two years or less and defendants convicted of misdemeanors from appealing as excessive a sentence of 120 days or less.

Prepared by: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 2/21/95

Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 2/21/95
Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO.

ANALYSIS CONTINUATION:

Finally, the bill sets limits on the ability of prisoners to challenge their convictions years after they have already pursued normal appellate procedures, including one round of post-conviction relief proceedings, and lost.

Although the bill will not result in a cost reduction in the near-term, existing litigation will probably be maintained and the reforms in the post-conviction relief process will not take effect for another year, the bill will certainly contain current costs and avoid the continuing increases in the state's prisoners' rights and appeals litigation costs.

COMMITTEE COPY

HB 201

TONY KNOWLES
GOVERNOR

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Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 27, 1995

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that addresses many of the problems arising from prisoner litigation, sentence appeals, and frivolous or extremely tardy post-conviction relief motions. This bill is intended to ensure that offenders focus their attention on their rehabilitation and reformation, rather than on endless "recreational" litigation.

The bill also is intended to promote the finality of convictions, preserve the sanctity of jury verdicts, minimize the litigation of stale claims, and prevent the unjustified dismissal of a criminal case when reprosecution is not possible. Frivolous litigation filed by prisoners misallocates resources of the judiciary, the Department of Law, the Public Defender's Office, the Office of Public Advocacy, the Department of Corrections, and the public.

Sections 1-5, 13-15, 17, 20-21, and 31 relate to prisoner litigation. These sections are designed to reduce the number of frivolous suits filed by prisoners that involve the state, its employees, and former employees. This prisoner litigation is preventing the state and the court from giving adequate attention to legitimate lawsuits.

Sections 1, 15, and 17 of the bill require prisoners to pay filing fees for civil proceedings according to their ability to pay. Section 1 authorizes the court to summarily dismiss suits or appeals filed by prisoners who pay less than full filing fees when those suits or appeals are frivolous or malicious or fail to state a claim upon which relief can be granted. Sections 2-5 amend the exemptions statutes so that the state can collect judgments entered against prisoner litigants.

Section 13 authorizes prisoners to appeal administrative disciplinary decisions when their fundamental constitutional rights were violated. Section 20 authorizes courts to stay the imposition of sanctions arising from a disciplinary decision only if the court finds, among other factors, that the prisoner faces irreparable harm if the stay is not granted and the prisoner is likely to succeed on the merits of the appeal.

Sections 7, 8, 11, 12, 18, 22, 27, and 28 relate to sentence appeals. In fiscal year 1994, the court of appeals published opinions from 13 sentence appeals. Twelve of those sentences were upheld by the court of appeals. The court summarily ruled on another 93 sentence appeals in this same time period. Only eight of those were reversed. Thus, over 90 percent of all sentence appeals (97 of 106) have resulted in the sentence being affirmed by the court of appeals. This bill limits appeals from the 90 percent of cases in which the lower court's sentences are routinely upheld. Sections 18 and 22 prevent defendants from appealing sentences or portions of sentences that they agreed to as part of a plea agreement with the state. For example, a defendant who agrees to a sentence of up to three years should not be heard to complain if the court imposes a sentence of that length or less. Similarly, secs. 27 and 28 prevent a court from modifying or reducing a sentence that was imposed in accordance with a sentencing agreement. Sections 7 and 11 restrict defendants convicted of felonies from appealing as excessive any sentence of two years or less, while secs. 8 and 12 restrict defendants convicted of misdemeanors from appealing as excessive a sentence of 120 days or less.

Most of the remaining sections of this bill set limits on the ability of prisoners to challenge their convictions years after they have already pursued normal appellate procedures and lost. After a prisoner loses on direct appeal, current law allows the prisoner to pursue a second or third round of challenges in state court. These challenges are referred to as "post-conviction relief" proceedings. If the prisoner loses these rounds, the prisoner can start yet another round of challenges in federal court. This bill seeks to reduce the number of third and subsequent rounds of challenges currently allowed under state law. This would limit most prisoners to one direct appeal and one set of post-conviction relief proceedings in the state court system and one set of post-conviction relief proceedings in the federal system.

Section 9 creates a new chapter in the code of criminal procedure to govern post-conviction relief procedures for persons convicted of criminal offenses. This chapter delineates the scope of permissible post-conviction relief claims by prohibiting claims based on the erroneous admission of evidence, illegal searches and seizures, and the excessiveness of a sentence.

In addition, sec. 9 imposes a maximum time limit from the entry of a conviction for filing an application for post-conviction relief to challenge a judgment of conviction. This section also imposes a one-year limit from the entry of an administrative decision by the Parole Board or Department of Corrections for filing an application for post-conviction relief to challenge a decision involving parole or time accounting. Section 26 imposes a 180-day limit for the filing of a motion for a new trial based on newly discovered evidence, while sec. 19 limits the authority of the appellate court to accept late appeals and petitions for hearing in cases involving criminal offenders.

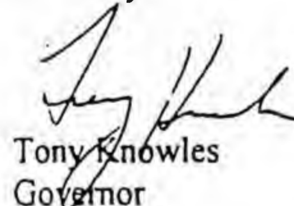
Current law allows a defendant to try to withdraw a plea of guilty or no contest after entering the plea or even after being sentenced if the defendant so chooses. Section 25 requires a defendant who wants to withdraw a plea after having been sentenced to file an application for post-conviction relief. Section 26 eliminates the ability of trial judges to grant a new trial on the ground that the jury's verdict is contrary to the weight of the evidence.

Sections 6 and 16 prohibit appellate courts from releasing convicted defendants on bail until all of the defendant's convictions are vacated. Section 10 limits indigent offenders' right to an appointed attorney to timely applications for post-conviction relief; appointed counsel will no longer be available for appeals from the denial of post-conviction relief.

The bill includes changes to the Alaska Administrative Rules of Court, the Rules of Appellate Procedure, and the Rules of Criminal Procedure, which are necessary to make the rules conform to the proposed statutory changes. Section 32 also amends Criminal Rule 35.1(g) to allow the court in post-conviction relief proceedings to authorize the applicant to participate telephonically or by video conferencing, as an alternative to transporting the applicant to court for the hearing. Finally, secs. 22 and 23 require a court to impose the sentence contemplated by a plea agreement or allow either party to withdraw from the agreement; this is a change from existing law, which allows the court to impose the sentence contemplated in the agreement or impose a sentence more favorable to the defendant. There is no reason that the state should be prohibited from withdrawing from an agreement that the court believes is inappropriate, as defendants are permitted to do.

I urge your favorable action on this bill.

Sincerely,



Tony Knowles
Governor

No. 2
Bill Version: HB [illegible]
(H) Publish Date: [illegible]

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: An Act relating to prisoner litigation.....
Sponsor:
Requester: Governor's Office

Dept. Affected: Corrections
BRU: all
Component: all
COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ 0.0

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would free staff time to address important functions such as security and rehabilitation. It would tend to focus the inmates attention on the treatment and rehabilitation aspects of their confinement and might tend to direct the efforts of family and friends toward more positive activities as well.

This bill would have little effect on additional time served in the system as a whole and would have an offsetting effect of improving the efficiency of the use of staff time.

Prepared by: Jerry Shriner
Division: Commissioner's Office
Phone: 465-5582
Date: 2/21/95

Approved by Commissioner: [signature]
Agency: Department of Corrections
Date: 2/21/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 3
Bill Version: HB 201
(H) Publish Date: 2/27/95

Revision Date:
Title: Frivolous Prisoner Litigation
Sponsor: Rules/Governor
Requestor: Governor's Office

Dept. Affected: Public Safety
DPS Statewide Support
Component: Commissioner's Office
COMPONENT SERIAL NO. 0523

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: $

POSITIONS:

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Lee Ann Lucas, Special Assistant to the Commissioner
Phone: 465-4322
Division: Commissioner's Office
Date: 2/22/95
Approved by Commissioner: [signature]
Date: 2/22/95
Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 4
Bill Version: HB 201
(H) Publish Date: 2/27/95

Revision Date:
Title: "An Act relating to prisoner litigation . . ."

Sponsor:
Requestor:

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

FUND SOURCE						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: $ -0-

POSITIONS:

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

If this bill becomes law, there will be some reduction of the Public Defender's appellate and post-conviction caseload.

Prepared by: John Salemi, Director
Division: Public Defender Agency
Phone: 264-4412
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 2/22/95

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Rev: 01/95

FISCAL NOTE

No. 5
Bill Version: HB 201
(H) Publish Date: 2/27/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: "An Act relating to prisoner litigation . . . ."
Sponsor:
Requestor:

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: $ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will have minimum impact on the Office of Public Advocacy.

Prepared by: Brant McGee, Director
Division: Office of Public Advocacy
Phone: 274-1684
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 2/22/95

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Rev: 01/95

9-GH0028\O
Luckhaupt
4/20/95

Adopted 4/21/95

CS FOR HOUSE BILL NO. 201( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

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, 16.1, and 65, and Alaska Rules**
5 **of Criminal Procedure 11, 33, 35, and 35.1; and providing for an effective**
6 **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 clearly discloses that the person is a prisoner and

4 that sets out

5 (A) the prisoner's complete financial situation, including the

6 prisoner's income, assets, and court-ordered payments;

7 (B) the circumstances that prevent the prisoner from paying full

8 filing fees; and

9 (C) the nature of the action or appeal and specific facts that

10 would, if proven, state a claim on which relief can be granted or entitle the

11 prisoner to reversal on appeal;

12 (2) a certified copy of the prisoner's account statement from the

13 correctional facility in which the prisoner is being or has been held for the six-month

14 period preceding the submission of the application; and

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

16 require.

17 (c) Based on the submission under (b) of this section, the court may grant an

18 exemption from part of the applicable filing fees if the court finds that exceptional

19 circumstances prevent the prisoner from paying full filing fees. Imprisonment and

20 indigency do not constitute exceptional circumstances if the prisoner has available

21 income or resources that can be applied to the filing fee.

22 (d) If the court orders an exemption under (c) of this section, the court shall

23 determine the amount of the exemption and set a filing fee to be paid by the prisoner.

24 In setting the fee, the court, at a minimum, shall require the prisoner to pay filing fees

25 equal to 20 percent of the larger of the average monthly deposits made to the prisoner's

26 account described in (b)(2) of this section, or the average balance in that account, not

27 to exceed the amount of the full filing fee required under applicable court rules.

28 (e) The court shall mail or otherwise serve its order under (d) of this section

29 on the prisoner. Along with its order, the court shall give written notice that the case

30 or appeal will not be accepted for filing if payment of a filing fee is not made within

31 30 days after the date of distribution of the order, unless the time for payment is

1 extended by the court. If timely payment is not made, the court may not accept any
2 filing in the case or appeal. If payment is made, the prisoner's filing and supporting
3 documents shall be accepted for filing with the court.
4 Sec. 09.19.020. DISMISSAL FOR MATERIAL MISSTATEMENTS. If a
5 prisoner has filed litigation against the state, the court shall dismiss that litigation if
6 the court finds that the pleadings filed by the prisoner or an application filed by the
7 prisoner to obtain an exemption under AS 09.19.010 contain a material statement made
8 by the prisoner that is not true.
9 Sec. 09.19.030. STAY IN PRISONER DISCIPLINARY APPEALS. A
10 superior court that reviews a disciplinary decision of the Department of Corrections
11 as an administrative appeal may not enter an order staying disciplinary sanctions unless
12 the pleadings filed by the prisoner establish by clear and convincing evidence that the
13 prisoner has alleged a violation of a fundamental constitutional right and is likely to
14 succeed on the merits in the appeal, that the prisoner faces irreparable harm if a stay
15 is not granted, that the Department of Corrections can be adequately protected if a stay
16 is granted, and that a stay will not adversely affect the public interest in effective penal
17 administration.
18 Sec. 09.19.040. INJUNCTIONS OR ORDERS IMPOSING OBLIGATIONS
19 IN PRISONER CASES. In litigation against the state brought by a prisoner, a court
20 may not enter an injunction or issue an order or decision that would impose an
21 obligation on the state or its employees that would exceed the obligations imposed by
22 the United States Constitution, the Constitution of the State of Alaska, and applicable
23 federal and state statutes and regulations, unless the obligation is agreed to by the state.
24 Sec. 09.19.050. DISCOVERY IN PRISONER CASES. The automatic
25 disclosure provisions of Alaska Rule of Civil Procedure 16.1 do not apply to litigation
26 against the state brought by a prisoner.
27 Sec. 09.19.100. DEFINITIONS. In this chapter,
28 (1) "litigation against the state" means a civil action or an appeal from
29 a civil action or from the final decision of an administrative agency that
30 (A) involves the state, an officer or agent of the state, or a state
31 employee, or a former officer or agent of the state or state employee, regarding

1 conduct that occurred during that former officer's, agent's, or employee's state
2 employment or agency, whether the officer, agent, or employee is sued in an
3 official or a personal capacity; and
4 (B) is related to a person's status or treatment as a prisoner or
5 to a criminal charge against or involving the person;
6 (2) "prisoner" has the meaning given in AS 33.30.901.
7 * **Sec. 2.** AS 09.38.030(a) is amended to read:
8 (a) Except as provided in (b), [AND] (c)**, and (f)** of this section and
9 AS 09.38.050, an individual debtor is entitled to an exemption of the individual
10 debtor's weekly net earnings not to exceed $350. The weekly net earnings of an
11 individual are determined by subtracting from the weekly gross earnings all sums
12 required by law or court order to be withheld. The weekly net earnings of an
13 individual paid on a monthly basis are determined by subtracting from the monthly
14 gross earnings of the individual all sums required by law or court order to be withheld
15 and dividing the remainder by 4.3. The weekly net earnings of an individual paid on
16 a semi-monthly basis are determined by subtracting from the semi-monthly gross
17 earnings all sums required by law or court order to be withheld and dividing the
18 remainder by 2.17.
19 * **Sec. 3.** AS 09.38.030(b) is amended to read:
20 (b) An individual who does not receive earnings either weekly, semi-monthly,
21 or monthly is entitled to a maximum exemption for the aggregate value of cash and
22 other liquid assets available in any month of $1,400, except as provided in **(f) of this**
23 **section and in** AS 09.38.050. The term "liquid assets" includes deposits, securities,
24 notes, drafts, accrued vacation pay, refunds, prepayments, and receivables, but does not
25 include permanent fund dividends before or after receipt by the individual.
26 * **Sec. 4.** AS 09.38.030 is amended by adding new subsections to read:
27 (f) The state may execute on a judgment awarded to the state and an officer
28 or agent of the state or a state employee, or a former officer, agent, or employee of the
29 state may execute on a judgment to that person against a party to an action who is
30 incarcerated for a criminal conviction by sending a notice of levy to the correctional
31 facility in which the person is incarcerated. All money in an incarcerated person's

1 account at a correctional facility is available for disbursement under a notice of levy
2 under this subsection, in the following order of priority:
3 (1) to support the dependents of the incarcerated person and to provide
4 child support payments as required by AS 25.27;
5 (2) to satisfy restitution or fines ordered by a sentencing court to be
6 paid by the incarcerated person;
7 (3) to pay a civil judgment entered against the incarcerated person as
8 a result of that person's criminal conduct;
9 (4) to reimburse the state for an award made for violent crimes
10 compensation under AS 18.67 as a result of the incarcerated person's criminal conduct;
11 (5) to satisfy other judgments entered against a prisoner in litigation
12 against the state; in this paragraph, "litigation against the state" has the meaning given
13 in AS 09.19.100.
14 (g) In this section, "correctional facility" has the meaning given in
15 AS 33.30.901.
16 * **Sec. 5.** AS 12.30.040 is amended by adding a new subsection to read:
17 (c) A person who has been convicted of an offense and who has filed an
18 application for post-conviction relief may not be released on bail until the trial court
19 or an appellate court enters an order vacating all convictions against the person. A
20 person who has prevailed on an application for post-conviction relief may seek release
21 before trial in accordance with the provisions of AS 12.30.020.
22 * **Sec. 6.** AS 12.55.120(a) is amended to read:
23 (a) A sentence of imprisonment lawfully imposed by the superior court for a
24 term or for aggregate terms **exceeding two years of unsuspended incarceration for**
25 **a felony offense or exceeding 120 days for a misdemeanor offense** [OF ONE YEAR
26 OR MORE] may be appealed to the court of appeals by the defendant on the ground
27 that the sentence is excessive**, unless the sentence was imposed in accordance with**
28 **a plea agreement under the applicable Alaska Rules of Criminal Procedure and**
29 **that agreement provided for imposition of a specific sentence or a sentence equal**
30 **to or less than a specified maximum sentence. If the superior court imposed a**
31 **sentence in accordance with a plea agreement that provided for a minimum**

1 **sentence, the defendant may appeal only that portion of the sentence that exceeds**
2 **the minimum sentence provided for in the plea agreement and that exceeds two**
3 **years of unsuspended incarceration for a felony offense or 120 days of**
4 **unsuspended incarceration for a misdemeanor offense**. By appealing a sentence
5 under this section, the defendant waives the right to plead that by a revision of the
6 sentence resulting from the appeal the defendant has been twice placed in jeopardy for
7 the same 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

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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 is 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 for a felony offense or 120 days for a misdemeanor offense** imposed by the
18 superior court on the grounds that the sentence is excessive, or **a sentence of any**
19 **length on the grounds that it is** too lenient**. The court of appeals** [AND], in the
20 exercise of this jurisdiction, may modify the sentence as provided by law and the state
21 constitution.
22 * **Sec. 11.** AS 22.07.020(c) is amended to read:
23 (c) The court of appeals has jurisdiction to review (1) a final decision of the
24 district court in an action or proceeding involving criminal prosecution, post-conviction
25 relief, extradition, probation and parole, habeas corpus, or bail; and (2) the final
26 decision of the district court on a sentence imposed by it **if the sentence exceeds 120**
27 **days of unsuspended incarceration for a misdemeanor offense**. In this subsection,
28 "final decision" means a decision or order, other than dismissal by consent of all
29 parties, that closes a matter in the district court.
30 * **Sec. 12.** AS 22.10.020(f) is amended to read:
31 (f) An appeal to the superior court may be taken on the ground that **an**

1 **unsuspended** [A] sentence of imprisonment **exceeding 120** [OF 90] days [OR MORE]
2 was excessive and the superior court in the exercise of this jurisdiction has the power
3 to reduce the sentence. The state may appeal a sentence on the ground that it is too
4 lenient. When a sentence is appealed on the ground that it is too lenient, the court
5 may not increase the sentence but may express its approval or disapproval of the
6 sentence and its reasons in a written opinion.
7 * **Sec. 13.** AS 33.30 is amended by adding a new section to read:
8 Sec. 33.30.295. REVIEW OF PRISONER DISCIPLINARY DECISIONS. (a)
9 A prisoner may obtain judicial review by the superior court of a final disciplinary
10 decision by the department only if the prisoner alleges specific facts establishing a
11 violation of the prisoner's fundamental constitutional rights that prejudiced the
12 prisoner's right to a fair adjudication. An appeal shall be commenced by the prisoner
13 filing a notice of appeal and other required documents in accordance with AS 09.19
14 and the applicable rules of court governing administrative appeals that do not conflict
15 with AS 09.19. Unless the appeal is not accepted for filing under AS 09.19.010 or is
16 dismissed under AS 09.19.020, a record of the proceedings shall be prepared by the
17 department, consisting of the original papers and exhibits submitted in the disciplinary
18 process and a cassette tape of the disciplinary hearing. The record shall be prepared
19 and transmitted in accordance with the applicable rules of court governing
20 administrative appeals.
21 (b) A disciplinary decision may not be reversed
22 (1) unless the court finds that the prisoner's fundamental constitutional
23 rights were violated in the course of the disciplinary process, and that the violation
24 prejudiced the prisoner's right to a fair adjudication;
25 (2) because the department failed to follow hearing requirements set out
26 in state statutes and regulations, unless the prisoner was prejudiced by the denial of a
27 right guaranteed by the Alaska Constitution or United States Constitution; if such
28 prejudice is found, the court shall enter judgment as provided in (c) of this section and
29 remand the case to the department; or
30 (3) because of insufficient evidence if the record described in (a) of this
31 section shows that the disciplinary decision was based on some evidence that could

1 support the decision reached.

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

6 * **Sec. 14.** AS 33.32.060 is amended to read:

7 Sec. 33.32.060. LIMITATION ON ATTACHMENT, ETC., OF WAGES.
8 **Except for execution by the state under AS 09.38.030(f), only** [ONLY] the prisoner
9 payments retained by the commissioner of corrections under AS 33.32.050(d) are
10 subject to lien, attachment, garnishment, execution, or similar procedures to encumber
11 funds or property.

12 * **Sec. 15.** Rule 10, Alaska Administrative Rules of Court, is amended by adding a new
13 subsection to read:

14 (e) The provisions of this rule do not apply to an exemption from payment of
15 filing fees in litigation against the state. In this subsection, "litigation against the state"
16 has the meaning given in AS 09.19.100.

17 * **Sec. 16.** Rule 204(b), Alaska Rules of Appellate Procedure, is amended to read:

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

23 (1) a completed docketing statement in the form prescribed by these
24 rules;

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

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

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

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

1 (B) a motion for waiver of filing fee pursuant to Administrative
2 Rule 9(f)(1); or
3 (C) a motion to appeal at public expense pursuant to Rule 209;
4 (5) unless the party is represented by court-appointed counsel, the party
5 is the state, municipality, or officer or agency thereof, or the party is an employee
6 appealing denial of compensation by the Alaska Workers' Compensation Board or
7 denial of benefits under AS 23.20 (Employment Security Act),
8 (A) the cost bond or deposit required by Rule 204(c)(1);
9 (B) a copy of a superior court order approving the party's
10 supersedeas bond or other security in lieu of bond or a copy of the party's
11 motion to the superior court for approval of a supersedeas bond or other
12 security;
13 (C) a motion for waiver of cost bond; or
14 (D) a motion to appeal at public expense pursuant to Rule 209;
15 (6) a designation of transcript if the party intends to have portions of
16 the electronic record transcribed pursuant to Rule 210(b); and
17 (7) proof of service of the notice of appeal and all required
18 accompanying documents, except the filing fee, on
19 (A) the clerk of the trial court which entered the judgment or
20 order being appealed; and
21 (B) all other parties to the trial court action.
22 A party may move for an extension of time to file the docketing statement, the
23 statement of points on appeal, and the designation of transcript. The clerk of the
24 appellate courts shall refuse to accept for filing any notice of appeal not conforming
25 to this paragraph and accompanied by the items specified in (1) - (7) or a motion to
26 extend the time for filing item (1), (3), or (6).
27 * **Sec. 17.** Rule 208, Alaska Rules of Appellate Procedure, is repealed and reenacted to
28 read:
29 RULE 208. CUSTODY OF PRISONERS IN POST-CONVICTION RELIEF
30 PROCEEDINGS. (a) Release of Applicant Pending Review of Order Denying
31 Release. The court having jurisdiction over the appeal of a denial of an application

1 for post-conviction relief may not grant bail or release the applicant pending appeal.
2 If the appellate court determines that post-conviction relief should be granted, the case
3 shall be remanded to the trial court for a bail hearing.
4 (b) Release of Applicant Pending Review of Decision Ordering a New Trial.
5 If an appeal of an order granting an applicant a new trial is pending, Appellate Rule
6 206(b) shall govern an appeal from an order that denies bail pending appeal or imposes
7 conditions of release pending appeal.
8 * **Sec. 18.** Rule 209(a), Alaska Rules of Appellate Procedure, is amended by adding a new
9 paragraph to read:
10 (7) The provisions of this subsection do not apply to the filing fees in
11 a prisoner's appeal against the state or an officer, agent, employee, or former officer,
12 agent, or employee of the state that is governed by the provisions of AS 09.19.
13 * **Sec. 19.** Rule 215(a), Alaska Rules of Appellate Procedure, is repealed and reenacted to
14 read:
15 (a) Notification of Right to Appeal Sentence. At the time of imposition of a
16 sentence of more than two years of unsuspended incarceration for a felony offense, or
17 more than 120 days of unsuspended incarceration for a misdemeanor offense, the judge
18 shall inform the defendant that
19 (1) if the sentence was
20 (A) imposed in accordance with a plea agreement under
21 Criminal Rule 11, the defendant may appeal as excessive only the part of the
22 sentence that exceeds the minimum sentence provided for in the plea
23 agreement; or
24 (B) not imposed in accordance with a plea agreement, the
25 defendant may appeal the sentence on the ground that it is excessive;
26 (2) upon an appeal of the sentence, the appellate court may reduce or
27 increase the sentence and that, by appealing the sentence under this rule, the defendant
28 waives the right to plead that by a revision of the sentence resulting from the appeal
29 the defendant has been twice placed in jeopardy for the same offense; and
30 (3) if the defendant wants counsel and is unable to pay for the services
31 of an attorney, the court will appoint an attorney to represent the defendant on the

1 appeal.

2 *** Sec. 20.** Rule 521, Alaska Rules of Appellate Procedure, is amended to read:

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

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

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

12 *** Sec. 21.** Rule 603(a), Alaska Rules of Appellate Procedure, is amended by adding a new
13 paragraph to read:

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

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

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

31 *** Sec. 23.** Rule 11(c), Alaska Rules of Criminal Procedure, is amended by adding a new

1 paragraph to read:

2 (4) in cases when a plea agreement has been accepted by a court,
3 informing the defendant:

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

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

15 * **Sec. 24.** Rule 11(e)(3), Alaska Rules of Criminal Procedure, is amended to read:

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

20 * Sec. 25. Rule 11(e)(4), Alaska Rules of Criminal Procedure, is amended to read:

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

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

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

1 manifest injustice.

2 (i) A motion for withdrawal is **untimely** [TIMELY] and is
3 [NOT] barred **if** [BECAUSE] made subsequent to judgment or sentence [IF IT
4 IS MADE WITH DUE DILIGENCE]. **After imposition of sentence, the**
5 **withdrawal of a plea may be sought only under AS 12.72.**

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

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

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

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

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

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

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

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

24 * Sec. 27. Rule 33, Alaska Rules of Criminal Procedure, is amended to read:

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

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

1 **(c) Time for Motion.** A motion for a new trial based on the ground of newly
2 discovered evidence may be made only before or within **180 days** [TWO YEARS]
3 after final judgment, but if an appeal is pending the court may grant the motion only
4 on remand of the case. A motion for a new trial based on any other grounds shall be
5 made within 5 days after verdict or finding of guilt, or within such further time as the
6 court may fix during the 5-day period.
7 * **Sec. 28.** Rule 35(a), Alaska Rules of Criminal Procedure, is repealed and reenacted to
8 read:
9 (a) Correction of Sentence. The court may correct an illegal sentence at any
10 time.
11 * **Sec. 29.** Rule 35(b), Alaska Rules of Criminal Procedure, is repealed and reenacted to
12 read:
13 (b) Modification or Reduction of Sentence. The court
14 (1) may modify or reduce a sentence within 60 days of the distribution
15 of the written judgment upon a motion made in the original criminal case;
16 (2) may not entertain a second or successive motion for similar relief
17 brought under this paragraph on behalf of the same defendant;
18 (3) may not reduce or modify a sentence so as to impose a term of
19 imprisonment that is less than the minimum required by law;
20 (4) may not reduce a sentence imposed in accordance with a plea
21 agreement between the defendant and the prosecuting attorney that provided for
22 imposition of a specific sentence or a sentence equal to or less than a specified
23 maximum; and
24 (5) may not reduce a sentence below the minimum specified in a plea
25 agreement between the defendant and the prosecuting attorney.
26 * **Sec. 30.** Rule 35.1(a), Alaska Rules of Criminal Procedure, is amended to read:
27 (a) Scope. Any person who has been convicted of, or sentenced for, a crime
28 **may institute a proceeding for post-conviction relief under AS 12.72.010 -**
29 **12.72.040 if the person** [AND WHO] claims:
30 (1) that the conviction or the sentence was in violation of the
31 constitution of the United States or the constitution or laws of Alaska;

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

2 (3) <u>that a prior conviction has been set aside and the prior</u>
3 <u>conviction was used as a statutorily required enhancement of</u> [THAT] the sentence
4 imposed [EXCEEDED THE MAXIMUM AUTHORIZED BY LAW, OR IS
5 OTHERWISE NOT IN ACCORDANCE WITH THE SENTENCE AUTHORIZED BY
6 LAW];

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

9 (5) that <u>the applicant's</u> [HIS] sentence has expired, that <u>the</u>
10 <u>applicant's</u> [HIS] probation, parole, or conditional release <u>has</u> [HAVE] been
11 unlawfully revoked, or that the <u>applicant</u> [PERSON] is otherwise unlawfully held in
12 custody or other restraint;

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

16 (7) that

17 <u>(A)</u> there has been a significant change in law, whether
18 substantive or procedural, applied in the process leading to <u>the</u> applicant's
19 conviction or sentence<u>;</u>

20 <u>(B) the change in law was not reasonably foreseeable by a</u>
21 <u>judge or a competent attorney;</u>

22 <u>(C) it is appropriate to retroactively apply the change in law</u>
23 <u>because the change in law requires observance of procedures without</u>
24 <u>which the likelihood of an accurate and fair conviction is seriously</u>
25 <u>diminished; and</u>

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

31 <u>(8) that the applicant should be allowed to withdraw a plea of</u>

1 **guilty or nolo contendere in order to correct manifest injustice as set out in**
2 **Criminal Rule 11(h)(1)(ii); or**
3 **(9) that the applicant was not afforded effective assistance of**
4 **counsel at trial or on direct appeal** [, WHEN SUFFICIENT REASONS EXIST TO
5 ALLOW RETROACTIVE APPLICATION OF THE CHANGED LEGAL
6 STANDARDS; MAY INSTITUTE A PROCEEDING UNDER THIS RULE TO
7 SECURE RELIEF].
8 * **Sec. 31.** Rule 35.1(c), Alaska Rules of Criminal Procedure, is amended to read:
9 (c) Commencement of Proceedings -- Filing -- Service. A proceeding is
10 commenced by filing an application with the clerk **at the court location where the**
11 **underlying criminal case is filed** [OF THE COURT IN WHICH THE CONVICTION
12 OCCURRED]. Application forms will be furnished by the clerk of court. An
13 application **must** [MAY] be filed **within the** [AT ANY] time **limitations set out in**
14 **AS 12.72.020**. The clerk shall open a new file for the application, promptly bring it
15 to the attention of the court and give a copy to the district attorney.
16 * **Sec. 32.** Rule 35.1(d), Alaska Rules of Criminal Procedure, is amended to read:
17 (d) Application -- Contents. The application shall (1) identify the proceedings
18 in which the applicant was convicted, (2) state the date shown in the clerk's certificate
19 of distribution on the judgment complained of, (3) state the sentence complained of
20 and the date of sentencing, (4) specifically set forth the grounds upon which the
21 application is based, and (5) clearly state the relief desired. **If the application**
22 **challenges a Department of Corrections or Board of Parole decision, the**
23 **application shall (1) identify the specific nature of the proceedings or challenged**
24 **decision, (2) state the date of the proceedings or decision, (3) specifically set forth**
25 **the facts and legal grounds upon which the application is based, and (4) clearly**
26 **state the relief desired.** Facts within the personal knowledge of the applicant shall
27 be set **out** [FORTH] separately from other allegations of facts and shall be under oath.
28 Affidavits, records, or other evidence supporting its allegations shall be attached to the
29 application or the application shall recite why they are not attached. The application
30 shall identify all previous proceedings, together with the grounds therein asserted,
31 taken by the applicant to secure relief from the conviction or sentence **including any**

1 previous applications for post-conviction relief. Argument, citations and discussion
2 of authorities are unnecessary. Applications which are incomplete shall be returned
3 to the applicant for completion.
4 * Sec. 33. Rule 35.1(e), Alaska Rules of Criminal Procedure, is amended to read:
5 (e) Indigent Applicant.
6 (1) If the applicant is indigent, filing fees shall be paid under the
7 provisions of AS 09.19 and [, TRANSCRIPT AND OTHER COURT COSTS SHALL
8 BE BORNE BY THE STATE. WHERE THE COURT DETERMINES THAT THE
9 APPLICATION SHALL NOT BE SUMMARILY DISPOSED OF ON THE
10 PLEADINGS AND RECORD PURSUANT TO SUBDIVISION (f) OF THIS RULE,
11 BUT THAT THE ISSUE RAISED BY THE APPLICATION REQUIRE AN
12 EVIDENTIARY HEARING,] counsel shall be appointed consistent with AS 18.85.100
13 to assist the applicant [INDIGENT APPLICANTS].
14 (2) Within 60 days of court appointment under (e)(1) of this rule,
15 counsel shall file with the court and serve on the prosecuting attorney
16 (A) an amended application or a notice that counsel will
17 proceed on the grounds alleged in the application filed by the applicant;
18 or
19 (B) a certificate that counsel
20 (i) does not have a conflict of interest;
21 (ii) has completed a review of the facts and law in the
22 underlying proceeding or action challenged in the application;
23 (iii) has consulted with the applicant and, if
24 appropriate, with trial counsel; and
25 (iv) has determined that the application does not
26 allege a colorable claim for relief.
27 * Sec. 34. Rule 35.1(f)(1), Alaska Rules of Criminal Procedure, is amended to read:
28 (1) The state shall file an answer or a motion within 45 days of
29 service of an original, amended, or supplemental application filed by counsel or
30 by an applicant who elects to proceed without counsel, or of a notice of intent to
31 proceed on the original application under (e)(2)(A) of this rule. The applicant

1 **shall have 30 days to file an opposition, and the state shall have 15 days to file a**
2 **reply. The motion, opposition, and reply may be supported by affidavit.**
3 [WITHIN 30 DAYS AFTER THE FILING OF THE APPLICATION, OR WITHIN
4 SUCH FURTHER TIME AS THE COURT MAY FIX, THE STATE SHALL
5 RESPOND BY ANSWER OR BY MOTION WHICH MAY BE SUPPORTED BY
6 AFFIDAVITS.] At any time prior to entry of judgment the court may grant leave to
7 withdraw the application. The court may make appropriate orders for amendment of
8 the application or any pleading or motion, for pleading over, for filing further
9 pleadings or motions, or for extending the time of the filing of any pleading. In
10 considering **a pro se** [THE] application the court shall consider substance and
11 disregard defects of form**, but a pro se applicant will be held to the same burden**
12 **of proof and persuasion as an applicant proceeding with counsel**. If the application
13 is not accompanied by the record of the proceedings challenged therein, the respondent
14 **may** [SHALL] file with its answer the record or portions thereof that are material to
15 the questions raised in the application.
16 * **Sec. 35.** Rule 35.1(f)(2), Alaska Rules of Criminal Procedure, is amended to read:
17 (2) **If appointed counsel has filed a certificate under (e)(2)(B) of this rule,**
18 **and it appears to the court that the applicant is not entitled to relief, the court**
19 **shall** [WHEN A COURT IS SATISFIED, ON THE BASIS OF THE APPLICATION,
20 THE ANSWER OR MOTION, AND THE RECORD, THAT THE APPLICANT IS
21 NOT ENTITLED TO POST-CONVICTION RELIEF AND NO PURPOSE WOULD
22 BE SERVED BY ANY FURTHER PROCEEDINGS, IT MAY] indicate to the parties
23 its intention to **permit counsel to withdraw and** dismiss the application and its
24 reasons for so doing. The applicant **and the prosecuting attorney** shall be given an
25 opportunity to reply to the proposed **withdrawal and** dismissal. **If the applicant files**
26 **a response and the court finds that the application does not present a colorable**
27 **claim, or if the applicant does not file a response, the court shall permit counsel**
28 **to withdraw and** [IN LIGHT OF THE REPLY, OR ON DEFAULT THEREOF, THE
29 COURT MAY] order the application dismissed**. If the court finds that the**
30 **application presents a colorable claim, the court may** [OR] grant leave to file an
31 amended application or direct that the proceedings otherwise continue.

1 [DISPOSITION ON THE PLEADINGS AND RECORD SHALL NOT BE MADE
2 WHEN A MATERIAL ISSUE OF FACT EXISTS.]
3 * **Sec. 36.** Rule 35.1(g), Alaska Rules of Criminal Procedure, is amended to read:
4 (g) Hearing -- Evidence -- Order. The application shall be heard in, and
5 before any judge of, the court in which the **underlying criminal case is filed**
6 [CONVICTION TOOK PLACE]. An electronic recording of the proceeding shall be
7 made. All rules and statutes applicable in civil proceedings, including pre-trial and
8 discovery procedures are available to the parties **except that Alaska Rule of Civil**
9 **Procedure 16.1 does not apply to post-conviction relief proceedings**. The court
10 may receive proof by affidavits, depositions, oral testimony, or other evidence. **The**
11 **applicant bears the burden of proving all factual assertions by clear and**
12 **convincing evidence.** The court may order the applicant brought before it for the
13 hearing **or allow the applicant to participate telephonically or by video**
14 **conferencing**. If the court finds in favor of the applicant, it shall enter an appropriate
15 order with respect to the conviction or sentence in the former proceedings, and any
16 supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction
17 of sentence, or other matters that may be necessary and proper. The court shall make
18 specific findings of fact, and state expressly its conclusions of law, relating to each
19 issue presented. The order made by the court is a final judgment.
20 * **Sec. 37.** Alaska Rule of Criminal Procedure 35.1(h) is repealed.
21 * **Sec. 38.** Notwithstanding any other provision of this Act, a person whose conviction was
22 entered before July 1, 1994, has until July 1, 1996, to file a claim under AS 12.72.
23 * **Sec. 39.** (a) Section 1 of this Act has the effect of amending
24 (1) Alaska Rule of Civil Procedure 3, by providing that a prisoner may not
25 commence litigation against the state until the prisoner has paid the filing or obtained an
26 exemption from those fees;
27 (2) 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 (3) Alaska Rule of Civil Procedure 65, by restricting the availability of
30 injunctive relief in litigation against the state by a prisoner;
31 (4) 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 (5) 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. 40.** Sections 1 - 14 and 38 of this Act take effect only if secs. 15 - 37 and 39 of this
8 Act take effect.
9 * **Sec. 41.** If this Act takes effect, it takes effect July 1, 1995.

NO OBJ

9-GH0028\O.2
Luckhaupt
4/22/95

AMENDMENT | ADOPTED

OFFERED IN THE HOUSE BY REPRESENTATIVE BROWN

TO: CSHB 201( ), Draft "O" version, dated 4/20/95

1 Page 15, line 9:

2 Delete "**an**"

3 Insert "**the notice of**"

4 Page 15, line 11:

5 Delete "**30**"

6 Insert "**60**"

9-GH0028\O.1 ✓
Luckhaupt
4/21/95

adopted NO OBJ

AMENDMENT 2

OFFERED IN THE HOUSE BY REPRESENTATIVE BROWN

TO: CSHB 201( ), draft, version "O", dated 4/20/95

1 Page 18, line 14:
2 Delete "60"
3 Insert "120"

9-GH0028\O.4
Luckhaupt
4/22/95

ADopted NO OBj

AMENDMENT 3

OFFERED IN THE HOUSE BY REPRESENTATIVE BROWN

TO: CSHB 201( ), Draft "O" version, dated 4/20/95

1 Page 23, line 10:
2 Delete "**The**"
3 Insert "**Unless otherwise required by statute or constitution, the**"

custody or admitted to bail, to answer the new indictment or information, if one be found or filed. If the evidence shows the defendant to be guilty of another crime than that charged in the indictment or information, the defendant must in like manner be committed or held thereon, and in neither case is the verdict a bar to another action for the same crime.

(c) **Discharge of Defendant.** If no evidence appears sufficient to charge the defendant with any crime, the defendant must, if in custody, be discharged, or, if the defendant has given bail or deposited money in lieu thereof, the bail is exonerated or the money must be refunded to the defendant, and in such case the arrest of judgment operates as an acquittal of the charge upon which the indictment or information was founded. (Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; and by SCO 1153 effective July 15, 1994)

Annotations

Cases

A motion in arrest of judgment raises only objections which appear on the face of the record. State v. Adkerson, Op. No. 294, 403 P2d 673 (Alaska 1965).

A motion to dismiss an indictment on the grounds that it did not charge an offense which was filed after the verdict was returned, was treated as a motion in arrest of judgment. State v. Adkerson, Op. No. 294, 403 P2d 673 (Alaska 1965).

Trial court was correct in granting motions in arrest of judgment where appellees had been charged in the indictment and were found guilty of the offenses of procuring a female for an immoral purpose "to appear in a lewd show" and of transporting a female for an immoral purpose "to appear in a lewd show" and an analysis of AS 11.40.330 and of AS 11.40.350 impelled the conclusion that a "lewd show" was not within the prohibitions of this statute. State v. Adkerson, Op. No. 294, 403 P2d 673 (Alaska 1965).

PART VII. JUDGMENT

Rule 35. Reduction, Correction or Suspension of Sentence.

(a) **Correction or Reduction of Sentence.** The court may correct an illegal sentence at any time. The court may reduce a sentence within 120 days of the day it is imposed. If the defendant takes an appeal, and the judgment is affirmed or the appeal is dismissed, the court also may reduce a sentence within 120 days of the day on which jurisdiction over the case is returned to the trial court under Appellate Rule 507(b), unless the defendant petitions the United States Supreme Court for certiorari, in which case the 120 days commences on the day that the Supreme Court denies relief.

(b) **Modification or Reduction of Sentence — Changed Conditions or Circumstances.** The court may modify or reduce a sentence at any time during a term of imprisonment if it finds that conditions or circumstances have changed since the original sentencing hearing such that the purposes of the original sentence are not being fulfilled.

(1) The sentencing court is not required to entertain a second or successive motion for similar relief brought under this paragraph on behalf of the same petitioner.

(2) No sentence may be reduced or modified so as to result in a term of imprisonment which is less than the minimum required by law.

(3) A motion made under this paragraph must be made in the original criminal case.

(c) The victim may comment on motions made under this rule as follows:

(1) When an individual convicted of a crime against a person or arson in the first degree files a motion to modify or reduce a sentence, the court shall, if feasible, send a copy of the motion to the Department of Corrections sufficiently in advance of any scheduled hearing or briefing deadline to enable the department to notify the victim, as directed by AS 12.55.088(c).

(2) The court shall provide copies of the victim's comments to the prosecuting attorney and to the person filing the motion to reduce or modify a sentence, or the person's attorney.

(3) The court shall consider the comments of the victim when relevant, and any response offered by the prosecuting attorney or the person filing the motion, in deciding whether to reduce or modify a sentence.

(4) If more than one person who qualifies as a victim under paragraph (d)(2) of this rule requests the opportunity to exercise rights under this paragraph, the court shall allow the person designated under AS 12.55.172 to exercise those rights, or if a person has not been designated under AS 12.55.172, the court shall designate one person for purposes of exercising rights under this paragraph.

(d) In this rule,

(1) "crime against a person" has the meaning given in AS 33.30.901; and

(2) "victim" has the meaning given in AS 12.55.185.

(Adopted by SCO 4 October 4, 1959; amended by SCO 30 effective February 1, 1961; amended by SCO 49 effective January 1, 1963; by SCO 98 effective September 16, 1968; by SCO 319 effective August 16, 1978; by SCO 426 effective August 1, 1980; by SCO 477 effective August 17, 1981; by SCO 554 effective April 4, 1983; and by SCO 644 effective September 15, 1985; by SCO 822 effective August 1, 1987; by SCO 974 effective January 15, 1990; and by SCO 979 effective August 28, 1989)

NOTE: Paragraphs (c) and (d) of Criminal Rule 35 were added by ch. 59, § 28, SLA 1989.

NOTE: Ch. 79 § 25 SLA
has the effect of amend
legislation added AS 12.5
sentenced to a mandatory
AS 12.55.125(a) to apply
sentence after serving one
consideration of good tim

Cro

(b) CROSS REFER
(c) CROSS REFE
12.55.090

A

Cases

I. In General
II. Correction of Illegal
III. Reduction or Vacati
A. In General
B. Specific Grounds
IV. Procedure
V. Time Limits

I. In General

Criminal Rule 53, on
rule. Thomas v. State, C
1977).

Criminal Rule 35(a)
vehicle to seek relief as to
tions or the civil rights
1668, 584 P2d 38 (Alask

Where defendant rece
same day sentence was pr
which apparently relied
sentence within 120 day
defendant's request for a
the error was harmless. P
850 (Alaska App. 1983).

Prisoner's claims that
mandated rehabilitation
Corrections was not appro
ing brought pursuant to t
894, 767 P2d 203 (Alask

II. Correction of Illegal

Where a defendant c
served half of an illegal
remand the case for im
maximum punishment the
son v. City of Anchorage
1962).

A sentence is illegal w
. (a) if it is rendered
Shagloak v. State, Op.
1978).

The term "illegal sen
sentences which the judgm
not to sentences illegally
consideration of matters
does it authorize a collate

ALASKA CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union
P. O. Box 201844 Anchorage, AK 99520-1844
Phone: 1-907-258-0044 Fax: 1-907-258-0288

April 7, 1995

The Honorable Brian Porter
Chair, Judiciary Committee
Alaska State House of Representatives
State Capitol Building, Room 118
Juneau, AK 99801-1182

Re: House Bill 201

Dear Representative Porter:

I am writing to you on behalf of the Board of Directors and members of the Alaska Civil Liberties Union (AkCLU) to express concerns about House Bill 201 which is currently pending before the House Judiciary Committee.

This bill is lengthy and complicated so, for purposes of clarity, I will address my comments to specific sections of the bill. The overall intention of the bill is to limit access to post-conviction relief proceedings. The AkCLU is concerned that these restrictions may eliminate the ability of innocent persons to seek relief against wrongful convictions. Several of the provisions are unnecessarily draconian and will ultimately prove to severely restrict the rights of Alaskans. We oppose adoption of the bill because the overall result of the bill will be to eliminate access to the courts and potentially compromise due process rights of Alaskans.

Section 1 of the bill, which sets forth the procedure to use for seeking a waiver of fees, is very complicated and will result in severely limiting access to the court system. Many indigent persons who are incarcerated are either illiterate or do not speak English, or both. The proposed procedure is complicated and would require the appointment of an attorney to ensure that everyone who needs access to the courts can have it. The result of this section will be that indigent persons with worthy claims will be unable to file the claims because they will not be able to decipher the complicated procedure for seeking a waiver of the filing fees. If a person is unable to access the courts with claims of constitutional magnitude, a denial of constitutionally protected due process will occur.

This entire section should be deleted or simpler procedures drafted. For example, the court should automatically waive filing fees for any inmate who had previously qualified for public

defender services, having already established indigency under Alaska law. However, if the inmate has obtained money since incarceration, the court should be able to access the inmate's prison account to pay the filing fee.

Sections 7, 10 and 11 of HB 201 set out limitations on a defendant's right to appeal his or her sentence. The current law provides that any person sentenced to 45 days or more of unsuspended time may appeal his sentence. The proposed bill would raise the minimum allowable time to 120 days for a misdemeanor or two years for a felony.

The AkCLU strenuously objects to this change. Our position is that appellate review of sentences set by lower courts should be liberally granted. Two years is an extremely long time for most persons to serve in jail. Allowing judges to impose sentences of up to two years without the right of review is very dangerous. It is particularly surprising that the Legislature is willing in this bill to consider allowing judges such liberal sentencing authority, given that the Alaska Legislature has adopted presumptive sentencing laws to ensure uniformity in sentencing and to protect persons against precisely the types of judicial abuses of discretion that these new provisions would allow. Allowing this expanded judicial discretion is contrary to the espoused rationale underlying presumptive sentencing.

Sections 8 and 9 seek to limit access to post-conviction relief proceedings. We oppose proposed sec. 12.72.020(a)(1), which would exclude any claims based on the admission or exclusion of evidence at trial. A person could be severely prejudiced by inadmissible evidence or by failure to admit important evidence. This major area of post-conviction relief should not be denied to a defendant. To deny applicants the right to raise such claims could result in an unconstitutional denial of due process. We also oppose proposed 12.72.040 of Section 8, which would raise the burden of proof to clear and convincing evidence.

We are further opposed to the language of Section 9, which would deny legal representation to a person who makes a successive claim for post-conviction relief. See proposed AS 18.85.100(c). It is not unusual for wrongful convictions to be discovered after successive applications for post-conviction relief. We are particularly concerned that the opportunity for post-conviction relief not be limited if Alaska adopts either of the pending death penalty bills which have been proposed. See HB 45 and SB 52. Nationwide, there are dozens of examples of innocent persons who would have been wrongfully executed by a state had those persons been limited to only one application for post-conviction relief.

Further, the AkCLU believes that it is crucial that defendant's be provided legal representation to seek habeas corpus relief in federal court. However, defendants are usually represented by the Federal Public Defender Agency when seeking habeas relief and would probably not be affected by this section of the proposed bill.

Section 19 of HB 201 seeks to limit the amount of time a defendant has to file an appeal. We strenuously oppose an absolute time limit which is inflexible. A defendant's liberty rights should not depend on whether his or her lawyer was able to file a timely appeal. Most defendants are represented by attorneys who are able to file timely appeals. However, in those cases of attorney error, it is necessary to provide flexibility in the interest of justice so that a defendant's appeal rights are protected.

Section 26 seeks to eliminate a judge's ability to set aside a jury verdict. A judge should be entitled to grant a new trial when he or she believes there is insufficient evidence to support a conviction. A judge rarely uses this power; however, it is a necessary power to avoid the prejudice which sometimes comes from an unfair jury verdict which is not supported by the evidence. One must ask: what is the motive behind this attempt to amend present language, language that clearly acts to provide a balance against the potential of biased juries? This section of the bill is highly suspect.

We further oppose limiting the time for filing a motion for a new trial to 180 days. The best way to ensure that the justice system works fairly is to provide for liberal measures to make corrections. There is no reason to limit this section to 6 months. Again, we are particularly concerned about the ramifications of this change if Alaska were to pass death penalty legislation. The experience of defendants in other states has demonstrated that new evidence, such as the discovery of perjured testimony or recanting witnesses, often comes <u>years</u> -- not days or months -- after the conviction.

We are also opposed to the proposed changes to Criminal Rule 35 contained in this bill. Section 28 would limit the amount of time a person has to file a sentence modification to 60 days. This change is unnecessary and harmful. There are a multitude of reasons why a person may seek a sentence modification which could stem from circumstances arising after 60 days. Examples such as family emergencies, health of the inmate, or the inmate successfully completing rehabilitation programs are all valid reasons for seeking sentence modification. To limit the time to 60

days effectively eliminates a person's opportunity to apply for a sentence modification. With the state's current fiscal crisis and concomitant difficulty of affording the cost of housing inmates, it makes sense to provide judicial discretion in order to modify the sentences of those inmates who no longer need to be incarcerated.

Finally, we oppose other proposed changes to Criminal Rule 35. Section 32 would amend Rule 35.1 and eliminate the Alaska Rule of Civil Discovery from post-conviction relief proceedings. In the interest of judicial expediency, it is better to provide ample opportunities for discovery. The full and free exchange of information often promotes settlement of claims. It also often eliminates the need to hold court hearings and call witnesses simply because the parties do not know what information the other side has.

While we understand the state's interest in making the courts run as efficiently as possible, this must not be done at the cost of limiting access to the courts. When this happens, all citizens are at risk that they will not be able to get redress when wrongfully convicted. Besides the due process concerns that we have, this bill seriously discriminates against indigent people and poses equal protection problems, as well.

We appreciate your attention to the above stated concerns and ask that you seriously consider the changes we have suggested. The Alaska Civil Liberties Union is strongly opposed to this legislation; we firmly believe many of the HB 201's proposals are a particularly egregious and unconstitutional attack on the due process rights of Alaskans.

Respectfully yours,

Randall P. Burns
Executive Director

RCK:RPB

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION & SOCIAL SERVICES
VICE-CHAIR RULES

Alaska State Legislature
House of Representatives

DURING SESSION:
STATE CAPITOL, ROOM 108
JUNEAU, ALASKA 99801-1182
1 (907) 465-4843

DURING INTERIM:
716 WEST 4th AVENUE
ANCHORAGE, ALASKA 99501-2133
1 (907) 258-8168

SPONSOR STATEMENT
CSHB 38 (JUD)

HB 38 provides a definite term of imprisonment of 40-99 years for a specific group of offenders who have two separate prior class A or unclassified felony convictions.

Under this proposed legislation, discretionary parole and good time sentence reductions are not available to offenders who are sentenced to a definite term of 40 to 99 yrs. However, HB 38 allows those sentenced to a definite term of 40 to 99 yrs to ask the court for a reduction in sentence after they have served the greater of one half of the definite term or; 30 years.

This proposed legislation gives prosecutors some discretion in the decision to pursue third strike sentencing. This will avoid unjust results in certain cases where the evidence may be weak. This provision will also allow the prosecutor some flexibility to proceed with the normal presumptive sentencing provisions when necessary.

There are a costs involved in keeping a person incarcerated for an extended period of time. However, this legislation is crafted to keep cost to a minimum. The threat of strong punishments can shape behavior and deter crime. Some persistent offenders may find they want to move to a state without a three strikes statute or they may decide the third strike is not worth the rest of their life, and change their behavior. Persistent offenders are taking up costly time in our judicial system by committing similar crimes again and again.

It is time to close the revolving door too many repeat offenders depend upon. This proposed legislation will help make our state a safer place. I urge your positive consideration of this legislation.

Replace

FISCAL NOTE

No. 6
Bill Version: CSHB 201 (JUD)
(H) Publish Date: 4/12/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: Prisoner Litigation and Appeals
Sponsor: House Rules by request of the Governor
Requestor:

Dept. Affected: Alaska Court System
BRU: Trial Courts
Components:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0.8					
SUPPLIES	0.2					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	1.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	1.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: $ None

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System
Phone: 264-8228
Date: 03/24/95

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 03/24/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

04:48 PM
Rev 1/95

COMMITTEE COPY

This legislation will require revision of numerous rules of court. It is anticipated that the rules will be drafted by the court's rules attorney and will be circulated to all Bar members for review and commnent.

Contractual

Postage costs for mailing the revised rules to 2,600 Bar members	832

Supplies

Printing supplies: copier paper, envelopes per page copier maintenance charges, etc.	182
Total Estimated Cost	$1,014

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

☒ CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043

☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 272-1249

DEPARTMENT OF LAW

CRIMINAL DIVISION

April 11, 1995

The Hon. Mark Hanley
Chair, House Finance Committee
Alaska State Legislature
Juneau, AK 99801

Re: HB 201 (Frivolous Prisoner Litigation)

Dear Representative Hanley:

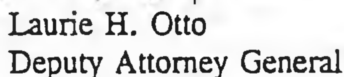
This is to request that you calendar HB 201, reducing frivolous prisoner litigation for hearing on April 19, 1995, if possible. This bill has already been heard by the House State Affairs and House Judiciary committees.

This bill is designed to reduce the number of frivolous suits filed by prisoners that are preventing the state and the court from giving adequate attention to legitimate lawsuits. The bill focuses on three different types of litigation misused by some prisoners: civil actions in the trial court, sentence appeals, and post-conviction relief applications. This proposed legislation is intended to ensure that offenders focus their attention on their rehabilitation and reformation, rather than on endless "recreational" litigation. It is also intended to promote the finality of judgments of conviction, preserve the sanctity of jury verdicts, and minimize the litigation of stale claims.

If you have any questions about the bills or require any further information, please do not hesitate to contact me.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL



By:
Laurie H. Otto
Deputy Attorney General

MOK:jf

03-C31LH

HB 200
HOUSE BILL NO. 200 by Representatives Mulder by request and Foster, entitled:

"An Act reassigning responsibility for the custody of persons pending their arraignments, commitment to the custody of the commissioner of corrections, or admission to a state correctional facility, and authorizing the commissioner of corrections to employ guards for emergencies on the same basis as the commissioner of public safety, as partially exempt service employees; and providing for an effective date."

was read the first time and referred to the Judiciary and Finance Committees.

HB 201
HOUSE BILL NO. 201 by the House Rules Committee by request of the Governor, entitled:

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

was read the first time and referred to the State Affairs, Judiciary and Finance Committees.

The following fiscal notes apply:

Zero fiscal notes (2), Dept. of Administration, 2/27/95
Zero fiscal note, Dept. of Corrections, 2/27/95
Zero fiscal note, Dept. of Law, 2/27/95
Zero fiscal note, Dept. of Public Safety, 2/27/95

TRANSMITTAL LETTER

The Governor's transmittal letter, dated February 27, 1995, appears below:

"Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that addresses many of the problems arising from

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prisoner litigation, sentence appeals, and frivolous or extremely tardy post-conviction relief motions. This bill is intended to ensure that offenders focus their attention on their rehabilitation and reformation, rather than on endless "recreational" litigation.

The bill also is intended to promote the finality of convictions, preserve the sanctity of jury verdicts, minimize the litigation of stale claims, and prevent the unjustified dismissal of a criminal case when reprosecution is not possible. Frivolous litigation filed by prisoners misallocates resources of the judiciary, the Department of Law, the Public Defender's Office, the Office of Public Advocacy, the Department of Corrections, and the public.

Sections 1-5, 13-15, 17, 20-21, and 31 relate to prisoner litigation. These sections are designed to reduce the number of frivolous suits filed by prisoners that involve the state, its employees, and former employees. This prisoner litigation is preventing the state and the court from giving adequate attention to legitimate lawsuits.

Sections 1, 15, and 17 of the bill require prisoners to pay filing fees for civil proceedings according to their ability to pay. Section 1 authorizes the court to summarily dismiss suits or appeals filed by prisoners who pay less than full filing fees when those suits or appeals are frivolous or malicious or fail to state a claim upon which relief can be granted. Sections 2-5 amend the exemptions statutes so that the state can collect judgments entered against prisoner litigants.

Section 13 authorizes prisoners to appeal administrative disciplinary decisions when their fundamental constitutional rights were violated. Section 20 authorizes courts to stay the imposition of sanctions arising from a disciplinary decision only if the court finds, among other factors, that the prisoner faces irreparable harm if the stay is not granted and the prisoner is likely to succeed on the merits of the appeal.

Sections 7, 8, 11, 12, 18, 22, 27, and 28 relate to sentence appeals. In fiscal year 1994, the court of appeals published opinions from 13 sentence appeals. Twelve of those sentences were upheld by the court of appeals. The court summarily ruled on another 93 sentence appeals in this same time period. Only eight of those were reversed. Thus, over 90 percent of all sentence appeals (97 of 106) have resulted in the

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sentence being affirmed by the court of appeals. This bill limits appeals from the 90 percent of cases in which the lower court's sentences are routinely upheld. Sections 18 and 22 prevent defendants from appealing sentences or portions of sentences that they agreed to as part of a plea agreement with the state. For example, a defendant who agrees to a sentence of up to three years should not be heard to complain if the court imposes a sentence of that length or less. Similarly, secs. 27 and 28 prevent a court from modifying or reducing a sentence that was imposed in accordance with a sentencing agreement. Sections 7 and 11 restrict defendants convicted of felonies from appealing as excessive any sentence of two years or less, while secs. 8 and 12 restrict defendants convicted of misdemeanors from appealing as excessive a sentence of 120 days or less.

Most of the remaining sections of this bill set limits on the ability of prisoners to challenge their convictions years after they have already pursued normal appellate procedures and lost. After a prisoner loses on direct appeal, current law allows the prisoner to pursue a second or third round of challenges in state court. These challenges are referred to as "post-conviction relief" proceedings. If the prisoner loses these rounds, the prisoner can start yet another round of challenges in federal court. This bill seeks to reduce the number of third and subsequent rounds of challenges currently allowed under state law. This would limit most prisoners to one direct appeal and one set of post-conviction relief proceedings in the state court system and one set of post-conviction relief proceedings in the federal system.

Section 9 creates a new chapter in the code of criminal procedure to govern post-conviction relief procedures for persons convicted of criminal offenses. This chapter delineates the scope of permissible post-conviction relief claims by prohibiting claims based on the erroneous admission of evidence, illegal searches and seizures, and the excessiveness of a sentence.

In addition, sec. 9 imposes a maximum time limit from the entry of a conviction for filing an application for post-conviction relief to challenge a judgment of conviction. This section also imposes a one-year limit from the entry of an administrative decision by the Parole Board or Department of Corrections for filing an application for post-conviction relief to challenge a decision involving parole or time accounting. Section 26 imposes a 180-day limit for the filing of a

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motion for a new trial based on newly discovered evidence, while sec. 19 limits the authority of the appellate court to accept late appeals and petitions for hearing in cases involving criminal offenders.

Current law allows a defendant to try to withdraw a plea of guilty or no contest after entering the plea or even after being sentenced if the defendant so chooses. Section 25 requires a defendant who wants to withdraw a plea after having been sentenced to file an application for post-conviction relief. Section 26 eliminates the ability of trial judges to grant a new trial on the ground that the jury's verdict is contrary to the weight of the evidence.

Sections 6 and 16 prohibit appellate courts from releasing convicted defendants on bail until all of the defendant's convictions are vacated. Section 10 limits indigent offenders' right to an appointed attorney to timely applications for post-conviction relief; appointed counsel will no longer be available for appeals from the denial of post-conviction relief.

The bill includes changes to the Alaska Administrative Rules of Court, the Rules of Appellate Procedure, and the Rules of Criminal Procedure, which are necessary to make the rules conform to the proposed statutory changes. Section 32 also amends Criminal Rule 35.1(g) to allow the court in post-conviction relief proceedings to authorize the applicant to participate telephonically or by video conferencing, as an alternative to transporting the applicant to court for the hearing. Finally, secs. 22 and 23 require a court to impose the sentence contemplated by a plea agreement or allow either party to withdraw from the agreement; this is a change from existing law, which allows the court to impose the sentence contemplated in the agreement or impose a sentence more favorable to the defendant. There is no reason that the state should be prohibited from withdrawing from an agreement that the court believes is inappropriate, as defendants are permitted to do.

I urge your favorable action on this bill.

Sincerely,
/s/
Tony Knowles
Governor"

April 4, 1995

Honorable Tony Knowles
Governor
State of Alaska
State Capital Building
Juneau, AK 99801

Dear Gov. Knowles:

Victims for Justice (VFJ) would like to take the time to thank you for introducing HB 201 and HB 202.

HB 201 will hopefully reduce the river of frivolous lawsuits filed by prisoners, as well as streamlining the appellate process. By doing so, the system will become more efficient and far more friendly to the victims of crime, who more often than not do not have the time to learn how the various systems within our judicial process work. "Justice delayed is justice denied" is a complaint that VFJ is very familiar with. Mostly, the delays in a case are due to the overworked court system, and by eliminating many of the frivolous lawsuits, we will be able to deliver justice to both the victims and the community at large in a more timely fashion.

HB 202, dealing with parental responsibility for both actions of their children, and restitution, is long overdue. Unless we as a society force both juveniles to accept responsibility for their actions, and parents to face their responsibility as parents, we will have a very difficult time of stemming the evergrowing tide of juvenile crime. This bill will give the latitude to judges to make the parents stand up and take notice of what their children are doing. It will force parents to learn not only the nitty gritty details of their kids activities, but also to possibly shoulder some of the financial burden.

It is often said that you cannot legislate morality, and that if parents don't care about their kids, then there is nothing that government can do that will make them. Although this may be partially true, we as citizens owe it to the victims of crime to try and educate the parents of juvenile criminals what the impact that their child has had on the community.

Sincerely,

Ralph Samuels
Victims for Justice

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Anchorage Daily News Monday, March 6, 1995

The crime bill

Good ideas, but more are needed

Crime hits us all. Maybe our car has been stolen. Maybe we know somebody whose home has been broken into, who lives with a family member who has been assaulted — or lives without a family member who's been murdered.

We pay more property tax for police protection, or worry more when we drive to the store after dark for a gallon of milk. Nobody's family escapes completely.

The ones doing the thieving, the drug dealing and the murdering come from families, too. The crime bill that Gov. Tony Knowles delivered to the legislature this past Monday acknowledges that crime is a family problem.

The governor has a long list of valuable ideas for demanding more responsibility from juvenile criminals and their families. He's trying to do it inexpensively, without stuffing more bodies into our overcrowded prisons. He's off to a good start, but he could offer more ideas for helping stop youth crime before it starts.

The governor's bill uses driver's licenses as an inexpensive weapon against juvenile crime. Teens who carry weapons illegally would be subject to losing their license for a time, as would teens who drink and drive.

Most teens do treasure the freedom that a driver's license brings, and the threat of losing it will likely deter many kids who may otherwise have been tempted to drink. But is there good reason to believe that somebody who packs a gun illegally is going to be stopped from driving because he or she doesn't have the proper piece of paper? In fact, it seems likely that a lot of the kids carrying weapons are the same ones stealing cars.

Along with providing more severe penalties for gang activities, the bill would allow courts to require parents to attend hearings for their children and to be responsible for restitution for harm caused by their children.

Good. Let's get these parents involved. If some of them had been to more school conferences and hockey games, chances are they wouldn't need to be in court now. There's nothing like a threat to the pocketbook to catch the attention of parents who lack personal or civic responsibility.

Still, if parents must pay restitution for harm done by their children, how do children learn that they are responsible for their own actions? The law must not be used as an opportunity for vengeful adolescents to hurt their parents.

The bill follows the Federal Gun-Free Schools A… to require school districts to expel for one year student who brings a gun to school. Almost anythin is worth doing to keep kids with guns from roamin the halls at school, but they'll have lots of free time t fill somewhere (maybe in your neighborhood?). Th bill doesn't say what we'll do with these kids afte they've been expelled.

The governor's bill also addresses adults who drin and drive. People with drunken-driving convictions … other states — even where definitions of DWI differ — would have their convictions count toward Alaska mandatory minimum sentences for repeat DW convictions.

One provision that many taxpayers will no doub cheer would cut down on "frivolous and recreationa litigation by inmates. Alaska now has four sta attorneys working full-time with prisoner litigatio — and the case load has grown by 40 percent in th past two years.

Charging nominal filing fees to deter nuisance sui is a good idea, but we must be careful to let prisoner air legitimate grievances in court. Our justice system is not perfect.

Gov. Knowles' bill is a good start to dealing wit Alaska's growing crime problem even though a vita element — prevention — is missing. Wouldn't it b great if we could figure out what kids and thei families need *before* they start bringing weapons t school? If we could provide children with alternative to gangs?

If you support the governor's plan, or parts of it, o have ideas of your own, don't hold back: Now's th time to let your legislators know what you think.

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March 31, 1995

FAX - 465-3834

House Judiciary Committee
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801-1182

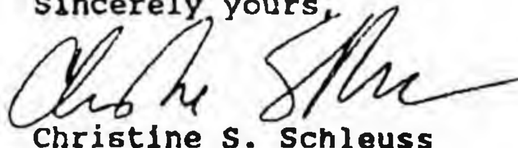
Re: HB-201

Dear Representatives:

Enclosed please find a position paper prepared by the Criminal Defense section of the Alaska Action Trust regarding HB-201. I understand this bill is being teleconferenced on April 3, 1995. I would much appreciate it if you would examine this position paper and consider it and my testimony on Monday in evaluating what amendments should be made to this bill before it is passed out of committee.

Thank you very much for your consideration.

Sincerely yours,



Christine S. Schleuss

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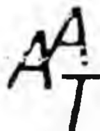
Enclosure



Alaska Action Trust

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March 31, 1995

The Criminal Defense Section of the Alaska Action Trust presents this position paper in response to HB 201, a bill introduced in the Alaska Legislature at the request of the Governor. The Trust opposes some sections of the bill and urges revision of them. Moreover, this bill must not be viewed in a legislative vacuum. Two bills to legalize the death penalty are now pending. If capital punishment resumes and this bill is in effect, many innocent people will be executed. By eliminating a meaningful right to post-conviction correction of trial and appellate mistakes, this bill will grease the wheels on death row. More than a thousand capital convictions have been thrown out in this century alone. Even with present procedures, dozens of demonstrably innocent citizens have been mistakenly executed, only to be vindicated when it was too late. If both this bill and the death penalty pass, Alaska will have the dubious distinction of running the most efficient railroad in the country.

A primary objection to the section eliminating the few existing rights to sentence modifications is that it will have a particularly adverse effect on Native Alaskans. The sections to which we object are discussed in the order in which they appear in HB 201.

Section 1. The sub-sections limiting exemptions from filing fees require an unreasonable amount of paperwork from indigent offenders in order for them to prove they are indeed indigent. People who may have very little education and who may speak English as a second language will be required to file lengthy affidavits discussing their finances in detail. To provide full and fair access to the courts, judges will have to appoint attorneys just to assist those seeking a filing fee exemption. Otherwise, indigent offenders will unconstitutionally be denied access to the courts. These sub-sections should be deleted. They would create far more problems than they purport to solve.

Sections 7 and 8. A person sentenced to imprisonment between 45 days (the current limit for sentence appeals) and two years (the proposed limit) should be entitled to appeal a sentence as excessive. The Alaska Supreme Court has said that a first felony offender convicted of an un-aggravated property crime should be sentenced to probation plus restitution. Leuch v. State, 633 P.2d 1006 (Alaska 1981). Often those offenders can be rehabili-

tated without the state undergoing the unnecessary expense of incarceration. Victims can more quickly be paid for their loss by a working not incarcerated offender. If a trial court erroneously sentences such an offender to prison, he or she should be able to appeal, even if his or her sentence is less than two years. The risk of an increased sentence on a cross-appeal by the state is adequate deterrence to prevent frivolous appeals.

Two years is a very long time to any of us, and one judge's decision to imprison for such a period should be reviewable. If money judgements are appealable in America, then surely lengthy losses of freedom ought to be.

Section 9. The limitations to post-conviction relief in proposed new A.S. 12.72.020 should not be implemented. To clearly set out the scope of post-conviction relief, the proposals of A.S. 12.72.010 are a good idea. However the limits of 020 are not. They eliminate the right to relief from unjust conviction for those who were unfairly convicted because their lawyers were ineffective by failing to object to illegal evidence improperly admitted at trial, by failing to raise issues of merit on appeal or by failing to raise them for a period of time after conviction. Citizens who were convicted in violation of statutory or constitutional law should not be penalized when, through no fault of their own, they had bad lawyers. That would be the unjust result of this proposed statute.

Section 19. This section penalizes a defendant who has a bad lawyer who fails to file his appeal in a timely fashion. That is very unfair. In a case where it was the lawyer's fault that the appeal was not timely filed, the court should have discretion to relax the deadline for filing the appeal.

Section 26. A judge should be entitled to grant a new trial to a defendant where the jury verdict was against the weight of the evidence. What a judge would be doing in such a case is correcting an unconstitutional conviction of an innocent person. The trial judge's evaluation would be subject to appeal by the state and could be reversed if erroneous by an appellate court.

Sections 27 and 28. These sections are the most unfairly damaging sections of the entire bill. The limit of 60 days in which to file a modification of sentence means that virtually no one will have a sentence modification, including individuals who could affirmatively prove that they have successfully rehabilitated themselves into productive, noncriminal members of society in less time than seemed necessary when they were originally sentenced.

It is the consensus of criminal defense lawyers who have looked at this bill that these section modifications will have

greatest impact on rural native Alaskans because they are the individuals who most often under present law qualify for sentence modifications. It is frequently the case that after sentencing, often during the year or two that individuals are released on bail pending appeal, offenders from rural bush communities are, after careful thought by the community, accepted back into the community and back with their families. The individuals who are eligible for sentence modifications are those who are not subject to presumptive sentencing. They are the least serious, non-repeat offenders. Often, after four months, or after an unsuccessful appeal, they come back to court and show rehabilitation to merit a sentence reduction. It is not uncommon for the local district attorney's office to non-oppose these motions.

Under the proposed changes to Criminal Rule 35(a) and (b), people who file appeals could no longer file for sentence modifications. People who rehabilitate themselves within 120 days of the convictions could no longer have their sentenced modified. Under the proposed changes those who need not be incarcerated for as long as was originally thought will not have adequate time after sentencing to prove their changed behavior.

It is a good idea to limit each offender to one, and only one, 35(b) motion to modify sentence. However, it should be made clear that the sentencing court has discretion to grant this motion for the traditional purposes, including affirmative proof of rehabilitation, formerly available under Criminal Rule 35(a). This purpose could be set out in legislative history or legislative purpose provisions. Most important, it is a bad idea to so restrict the time for filing the motion that it becomes meaningless.

If the purpose is to eliminate frivolous litigation, this proposed change will have the opposite effect. Offenders cut off from their one chance for a reduced sentence, will resort to other, more complicated and time-consuming procedures such as claims that their convictions and/or sentences were illegal.

For these reasons, section 28 should be adopted, but <u>with</u> the following important change in (b)(1) eliminating the 60 day time limitation:

(b)(1) may modify or reduce a sentence;

The legislature should carefully review the proposed bill and delete those provisions which unnecessarily restrict access to the courts of indigent and/or rehabilitated offenders.

is governed by the narrower prerequisites of Criminal Rule 35(b). **Mitchell v. State**, Op. No. 894, 767 P2d 203 (Alaska App. 1989).

V. Time Limits

Where motion to modify sentence was filed two years after sentence was imposed, trial court did not abuse discretion in refusing to relax rule imposing 60-day limitation on such motions. **Taylor v. State**, Op. No. 1436, 564 P2d 1219 (Alaska 1977).

Where defendant's counsel had a bona fide belief that a motion for reduction or modification of sentence had been timely filed, defendant had requested such a motion and tried to learn if it had been filed, within prescribed period, and defendant was imprisoned in institution that could not afford him treatment for alcoholism, to fail to relax the 60-day limit of Criminal Rule 35(a) pursuant to Rule 53 would work an injustice. **Wheeles v. State**, Op. No. 3046, 566 P2d 1013 (Alaska 1977).

Superior Court is without authority to modify sentence absent a timely motion under this rule. Szeratics v. State, Op. No. 1525, 572 P2d 63 (Alaska 1977).

The filing of a supplemental application for correction of sentence did not terminate the running of the time for filing an appeal from the denial of the original application for correction of sentence. **Abraham v. State**, Op. No. 1747, 585 P2d 526 (Alaska 1978).

By relaxing the rules to permit a late sentence appeal because it was unclear whether counsel for defendant had failed him in not making a timely appeal, the court did not relax Rule 35(a) so as to allow defendant to take advantage of that rule in a manner which would not be available to an ordinary criminal defendant who appeals in a timely fashion. **Davis v. State**, Op. No. 2101, 612 P2d 49 (Alaska 1980).

The time limitations in this rule are subject to the trial court's power to relax rules in the interest of justice. **Mitchell v. State**, Op. No. 894, 767 P2d 203 (Alaska App. 1989).

A motion to modify a sentence which is not brought within the 120-day time limitation prescribed in Criminal Rule 35(a) is governed by the narrower prerequisites of Criminal Rule 35(b). **Mitchell v. State**, Op. No. 894, 767 P2d 203 (Alaska App. 1989).

Where defendant was convicted of two driving offenses and his sentence for each offense included revocation of his driver's license for 10 years, the sentences to run concurrently, modification of the sentence to make the revocations concurrent if defendant were to have no jailable traffic violations during the first 10 years was error, since its effect would be to defer modification of the originally imposed sentence for 20 years; deferring modification for a 10-year period is plainly violative of the 120-day time limit for sentence reductions imposed under this rule. **Rollefson v. Municipality of Anchorage**, Op. No. 983, 782 P2d 305 (Alaska App. 1989).

Where request for reduction of sentence came almost three years after defendant's conviction was affirmed on appeal, and there was nothing in the record to suggest that he intended to make the request within 120-days permitted by the rule or was somehow frustrated by his attorney or the court system in taking action, the trial court did not err in refusing to relax the 120-day time limit. **S.B. v. State**, Op. No. 997, 785 P2d 900 (Alaska App. 1989).

If a defendant intends to bring a motion within the 120-day period but negligently calculates the time, or if defense counsel refuses to bring the motion or discourages defendant from bringing the motion, it might be an abuse of discretion to refuse to relax the 120-day time limit of this rule. **Cook v. State**, Op. No. 1052, 792 P2d 682 (Alaska App. 1990).

Although convicted sex offender's motion to reduce sentence would have failed if made within the 120-day time limit of this rule because his completion of an institutional sex-offender program, upon which the motion was based, did not occur until after the time limit, the trial court did not err in refusing to relax the time limit. **Cook v. State**, Op. No. 1052, 792 P2d 682 (Alaska App. 1990).

Rule 35.1. Post-conviction Procedure.

(a) **Scope.** Any person who has been convicted of, or sentenced for, a crime and who claims:

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

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

(3) that the sentence imposed exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;

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

(5) that his sentence has expired, that probation, parole or conditional release have been unlawfully revoked, or that the person is otherwise unlawfully held in custody or other restraint;

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

(7) that there has been a significant change in law, whether substantive or procedural, applied in the process leading to applicant's conviction or sentence, when sufficient reasons exist to allow retroactive application of the changed legal standards; may institute a proceeding under this rule to secure relief.

(b) **Not a Substitute for Remedies in Trial Court — Replaces All Other Remedies for Challenging the Validity of a Sentence.** This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. It is intended to provide a standard procedure for accomplishing the objectives of all of the constitutional, statutory or common law writs.

(c) **Commencement of Proceedings — Filing — Service.** A proceeding is commenced by filing an application with the clerk of the court in which the conviction occurred. Application forms will be furnished by the clerk of court. An application may be filed at any time. The clerk shall open a new file for the application, promptly bring it to the attention of the court and give a copy to the district attorney.

(d) **Application — Contents.** The application shall (1) identify the proceedings in which the applicant was convicted, (2) state the date shown in the clerk's certificate of distribution on the judgment complained of, (3) state the sentence complained of and the date of sentencing, (4) specifically set forth the grounds upon which the application is based, and (5) clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be under oath. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from the conviction or sentence. Argument, citations and discussion of authorities are unnecessary. Applications which are incomplete shall be returned to the applicant for completion.

(e) **Indigent Applicant.** If the applicant is indigent, filing fees, transcript and other court costs shall be borne by the state. Where the court determines that the application shall not be summarily disposed of on the pleadings and record pursuant to subdivision (f) of this rule, but that the issues raised by the application require an evidentiary hearing, counsel shall be appointed to assist indigent applicants.

(f) **Pleadings and Judgment on Pleadings.**

(1) Within 30 days after the filing of the application, or within such further time as the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall consider substance and disregard defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

(2) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record shall not be made when a material issue of fact exists.

(3) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

(g) **Hearing — Evidence — Order.** The application shall be heard in, and before any judge of, the court in which the conviction took place. An electronic recording of the proceeding shall be made. All rules and statutes applicable in civil proceedings, including pre-trial and discovery procedures are available to the parties. The court may receive proof by affidavits, depositions, oral testimony, or other evidence. The court may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. The order made by the court is a final judgment.

(h) **Waiver of or Failure to Assert Claims.** All grounds for relief available to an applicant under this rule must be raised in the original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

(Added by SCO 822, effective August 1, 1987; amended by SCO 1153 effective July 15, 1994

Annotations

Cases

I. In General